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DOCUMENTS

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Misc.1

December 3rd, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

The following translation of a memorandum by Professor Gros is circulated to representatives for their personal use only

OBSERVATIONS ON CROWCASS

The Commission has raised the question of the rôle of CROWCASS at a number of its meetings. The remarks below, which are purely personal, are intended to demonstrate the possible usefulness of this organisation for the Commission.

In November 1944, a Central Registry of War Criminals and Security Suspects was established under the control of SHAEF, G-1 division. The organisation was to be administered by a director (a British lieutenant-colonel) and an assistant (an American major). The staff was to consist of civilian Frenchwomen.

It was not until March 25th, 1945, that CROWCASS was installed on several floors of the building situated at 53, Rue des Mathurins, Paris, although that building had been requisitioned by the Americans on November 8th, 1944, and left vacant since December 1944.

Three sorting machines and machinery for punching cards were obtained from the Hollerith Co. in England and a hundred or so other machines of all types were brought in from the American occupation zone of Germany.

The American "Labour Office" undertook to recruit staff and, at first, operated without discrimination, sending along German and Austrian women, and persons who had worked for the German Army during the occupation. At the present time, virtually all the female staff is French in principle.

Operation of CROWCASS

In April 1945, CROWCASS received Lists Nos. 1, 2, 3, 4 and 5 from the United Nations War Crimes Commission, and several thousand cards concerning Wanted Suspects from the "Evaluation and Dissemination" department of SHAEF; a great number of these cards were duplicates and contained very few details. The information was recorded on forms adopted by CROWCASS, and in that way the card-index was started. Gradually, each United Nation filled in the details on the CROWCASS forms, which are called "Wanted Reports" and "Detention Reports".

As soon as they are received, the "Wanted Reports" and "Detention Reports" are sent to the department called "Name Index" where the information is transferred to "slips" for filing alphabetically, according to the Scotland Yard system, then passed to the Coding Section and afterwards sent to be punched. The completed cards are then taken over by the filing department which, working on electric calculating machines, establishes two indices:

- (a) The first according to the town or country where the crime was committed;
- (b) The second according to the military rank of the individual;

Every detention report is accompanied by two cards of fingerprints, which are filed by a new department composed of inspectors from the Paris "Préfecture de Police".

The task of CROWCASS was increased when the indexing of all prisoners of war detained by the United Nations was added to it. Emphasis was henceforth laid on the purely mechanical aspect of the organisation. Forms came flooding in, sent by the American camps in Europe, in America, and finally by British camps. This card-index was set up on the same system as that of the "Wanted Persons" or "Detained Persons" except in so far as inclusion in the "Name Index" was concerned; the cards are filed alphabetically on the one hand and according to military occupation on the other.

CROWCASS is thus in charge of three card-indices:

- (a) Wanted Persons;
- (b) Detained Persons; and
- (c) Prisoners of War.

Since CROWCASS was only an information centre, the circulation of this information had to be organised. A first "Wanted List" was circulated on April 24th, 1945, and a second on May 25th, 1945. CROWCASS' first intentions were to publish these lists every fortnight, but instructions were given at the beginning of June 1945 for publication to be stopped in order to provide a complete recapitulation of all the names received up to that date.

Despite difficulties - due in part to the accommodation problem - the first part of this list was ready for printing by the middle of June and was published on September 14th, 1945, while the second part appeared on October 1st, 1945.

The "Name Index" handled all urgent enquiries relating to named persons, and the "sorting machines" department all collective enquiries.

CROWCASS further received from the "Ministerial Collecting Centre" in Germany the lists of Germans proposed for the new German administration in order to check that no individual was wanted as a war criminal or security suspect. The British military headquarters sent lists of prisoners of war about to be released to be similarly checked, and a small number of requests are being received from other United Nations.

## II. Usefulness of CROWCASS in tracing war criminals

The card-index is being increased only at the rate of about 10,000 cards per day, owing to lack of space and qualified staff. When completed, it will contain seven million names.

Thus, even under the most hopeful conditions, if CROWCASS already had records of these seven million names, what would happen? CROWCASS would have a dictionary of the German Army, but no progress would have been made in the search for and tracing of war criminals. As has been shown in Part I of this memorandum, CROWCASS only answers one definite

question: Where is Josef SCHMITT, corporal .... etc.? But CROWCASS cannot take the initiative; it is the National Offices, the G-2 branches, Intelligence departments, etc. who search for the criminal or the suspect and who ask the question, because it is they who have the "prima facie" evidence with which to accuse the individual. So that even if CROWCASS had its seven million cards today, the problem of tracing criminals would not be a step nearer its solution.

At the present time, there are in Germany many tens of thousands of detained suspects of whose names the Commission is ignorant .. and in some cases CROWCASS, too, although it is probable that among them there is a fair number of criminals of interest to the United Nations.

When CROWCASS has finished its mechanical work of indexing prisoners of war, the latter will automatically be released in Germany and afterwards untraceable from the practical point of view. Its participation in the work of tracing criminals does not appear, therefore, to be of the first importance. That would only be so, if the National Offices and Intelligence departments had already completed their task and furnished their final lists. As the Commission has already declared in one of its recommendations: to release prisoners before they are indexed would affect their final punishment.

The disproportion between "slips" of wanted persons (amounting to 200,000 - mostly security suspects) and those of ordinary prisoners about whom nothing is yet known (seven million) proves that the operation of CROWCASS does not foster the illusion that the United Nations will find that organization of much assistance for the punishment of war criminals. It is a military body, set up primarily for the purpose of making a census of prisoners of war before their release, and it will probably never be anything more than a library of seven million names.



SECRET

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December 10th, 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

ITALIAN WAR CRIMES.

Copy of letter from Dr. Zivkovic to Lord Wright, dated 19th November, 1945.

1. I read in the Minutes of the 85th Meeting of our Commission which was held on the 8th November 1945, when I was unable to attend the meeting, that the Commission has unanimously decided to receive charges against German war criminals presented by the Italian Government.

I regret not to have been present when the question was raised, and I am taking the first opportunity to inform you that my Government feel bound to express their objection to the above decision.

2. As you will probably be aware, up to the present time no instructions have been issued by either the British or the U.S. Governments to their military authorities to proceed with the handing over of Italian war criminals, whereas such instructions were issued months ago in respect of German criminals.

On the other hand, you know that up to date there are many hundreds of Italian war criminals wanted by my Government for trial, and that it is the sad fate of my country to head the list of nations requesting Italian war criminals owing to this large number.

In view of such a position, should the decision of the War Crimes Commission be carried out my Government and the other Governments concerned, would be confronted with the difficult situation that, at the time when war criminals whom the present Italian Government is pledged to hand over are still at large, the same Italian Government is, under the existing arrangement in the actual position to bring to justice Germans for offences many of which were perpetrated at the time when Germany and Italy were still allied powers.

This would mean that the Italian Government, which is the Government of a country that still has the status of an enemy State awaiting definite peace settlements, would enjoy recognition of rights which, in respect of the same Italian Government have not yet been exercised on behalf of the United Nations.

I trust you will fully appreciate that this is unacceptable, at least so far as my Government is concerned, and that it is only natural that my Government should object to seeing the machinery of the U.N.W.C.C., which was set up for the bringing to justice of war criminals of all the Axis countries, placed at the disposal of one of the two chief Axis countries before justice has even started to be done in respect of the criminals of that very Axis country.

I should be very much obliged if you would communicate to the Commission the above statement, and convey to it the following proposal:

(a) Until the fulfilment of the obligation of the Italian Government in respect of the handing over of Italian war criminals is secured, the War Crimes Commission should refrain from carrying out the decision taken at its 85th meeting.

(b) Any further delay in settling this question being detrimental to the United Nations, the War Crimes Commission should make representations to the Governments in military control of Italy to the effect that instructions be issued to the military authorities concerned to proceed with the handing over of Italian war criminals to the United Nations.

Copy of letter from Dr. Zivkovic to Sir Robert Craigie, dated 19th November 1945.

I am writing this letter with a view to asking for your kind assistance in the practical solution of a very important matter.

1. I read in the Minutes of the 85th Meeting of the U.N.W.C.C. which was held on the 8th November, 1945, when I was prevented from attending the meeting, that the Commission has unanimously decided to receive charges against German war criminals presented by the Italian Government.

In view of the position existing at present in regard to the handing over of the Italian war criminals, for crimes which they have perpetrated against the United Nations, and more particularly against Jugoslavs, I am now sending a letter to the Commission to the effect that my Government feel bound to object to the above decision.

2. As you will probably be aware, up to the present time, no instructions have been issued by the British or the U.S. Government to their military authorities to proceed with the handing over of the Italian war criminals wanted for trial by other Governments concerned, whereas such instructions were issued months ago in respect of the German criminals.

I need not tell you how unjustified this difference in dealing with war criminals appears to be in the eyes of my Government and the public opinion in my country. In Jugoslavia the Italians showed themselves as brutal and as criminal as the Germans were in all the countries which they occupied during this war. There are at present not less than 535 Italian war criminals listed by the War Crimes Commission at the instance of my Government, and yet none of them have been surrendered for trial. On the other hand, there were Italian war criminals tried and sentenced by British Military Courts in Italy, for offences comparatively far less serious in their results than those perpetrated against Jugoslavs.

The decision taken by the War Crimes Commission, once carried out, will lead to the result that, at the very time when war criminals whom the present Italian Government is pledged to hand over are still at large, the same Italian Government will, under the existing arrangements, be in the actual position to bring to justice German criminals for offences many of which were perpetrated at the time when Germany and Italy were still allied powers.

I trust that you will fully realise the anomaly and iniquity of such results, particularly in view of the fact that, however desirable it may be to see Italy become a member of the United Nations, she still has the status of an enemy state awaiting a definite peace settlement.

It is, therefore, only natural that my Government should object to seeing the machinery of the U.N.W.C.C., which was set up for the bringing to justice of war criminals of all the Axis countries, placed at the disposal of one of the two chief Axis countries before justice has even started to be done in respect of the criminals of that very Axis country.

3. In August of this year I had the opportunity of discussing this question with Mr. R.A. Beaumont, acting representative of the United Kingdom Government. Mr. Beaumont informed me at that time that the question was under consideration and on the way to being settled by the Combined Chiefs of Staff, who had to instruct the military authorities on the same lines as was previously done in respect of the German criminals.

This expectation failing to materialise in a reasonable period of time, the Yugoslav Ambassador in London applied to the Secretary of State for Foreign Affairs, requesting a decision on the subject. (Ref. Yugoslav Ambassador's Note P.N. 3142 of the 19th October 1945.)

The decision taken by the War Crimes Commission has, so far as my Government is concerned, brought the matter to a new and unexpected development.

4. Would you kindly assist me in trying to have this question settled by approaching the department concerned of your Government?

I personally believe that it would be most unfortunate to leave things as they stand, and thus unnecessarily allow false impressions to impose themselves between Allies at an hour when all efforts are required to strengthen mutual confidence among the United Nations.

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Copy of letter from Sir Robert Craigie to Dr. Zivkovic, dated 28th November, 1945.

Thank you for your letter, P. No. 371, of November 19th, in which you drew my attention to the delay in making arrangements for the handing over to the Yugoslav authorities of Italian war criminals "wanted" by Yugoslavia for trial.

I have looked into the question and I hope that within the next few days this matter will be satisfactorily settled and the necessary instructions given to the competent military authorities for the handing over of these people.

While I can understand that you should be disappointed at the delays to which the matter has been subjected, I can assure you that, in so far as the British authorities are concerned, they have been caused by nothing other than the working out of the necessarily complicated machinery for obtaining the concurrence of the combined British and United States Chiefs of Staff, to which you refer in paragraph 3 of your letter.

I understand that the necessary arrangements are on the point of completion and that the Foreign Office, who have, as I need hardly say, been as anxious as all of us to help matters along, hope very shortly to be communicating with the Yugoslav Ambassador in this sense in reply to his note P.No. 142 of October 19th.

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SECRET.

Misc.3.  
14th December 1945.

UNITED NATIONS WAR CRIMES COMMISSION

The following letter, dated 11th December, which has been addressed to the Chairman by Monsieur de Baer, is circulated to members of the Commission, for their personal consideration only.

"I have a few matters which I would be grateful if you would bring before the Commission.

The first is the election of a deputy chairman of Committee I. My journeys to the Continent and the resulting absences are becoming so frequent that I feel that it would be of some use to elect a deputy chairman to that Committee.

Secondly, I have been asked by my Government to request that the National Offices - and/or the War Crimes-Commission be informed in advance of any trials that are to be held in Germany, especially those concerning concentration camp officials. The Belgian National Office were informed only a few days in advance of the opening of the Belsen and Dachau trials, and the same may have happened for the trial of Brigadefuhrer Kurt Meyer.

Furthermore, when one compares the list of the persons accused of atrocities in concentration camps with the list of those who were actually tried, one notices that only a few of the guilty are brought to justice, and for a relatively small number of crimes (e.g. Belsen). As the United Nations War Crimes Commission is the central agency concerned with the general problems connected with war crimes, and not merely an agency for making lists of war criminals, when the National Offices send a dossier to the Commission, they expect that the fullest use will be made of its contents, in accordance with the interests of justice. Therefore, it is desirable that the authorities which are prosecuting some categories of war criminals in Germany (such as staff of concentration camps) should apply to the War Crimes Commission for any information which this Commission might have on the subject. In this respect there seems to be a lack of co-ordination which should be remedied in the near future. By neglecting to collect information which is available in the National Offices, as well as in the War Crimes Commission, the Military Authorities not only place the United Nations War Crimes Commission in a difficult position vis-à-vis the Governments, but they also lay themselves open to criticism. By informing the Commission in advance of any intended trials, they would not only show a desire to co-operate, which would be appreciated, but they would secure valuable assistance, together with material and evidence from the War Crimes Commission and from the National Offices, which these bodies are only too willing to provide.

Thirdly, Monsieur Billiet, of the French War Crimes exhibition has approached me with a request that the War Crimes Commission should discuss a proposal to establish some sort of international organisation or institute for the collecting and keeping of all matters concerning war crimes: books, pamphlets, photos, films, documents, etc. This is merely a tentative proposal and I would not have brought it up if I had not seen in the Daily Telegraph that a somewhat similar question was going to be discussed in the Cabinet, (Daily Telegraph 28.11.45 "Official Records of War Trials"). I will submit the full proposal when M. Billiet sends it to us. (Our Commission, of course, could not undertake such a task, but it might perhaps give an opinion on its practicability).

Fourthly - the Belgian National Office is concerned about CROWCASS: over six hundred Wanted Reports have been sent to CROWCASS and only one

/answer



answer has been received.

The fifth point concerns the U.S.S.R. It is, of course, most desirable that the USSR should surrender persons accused of war crimes by the other allied governments. To this effect it should be ascertained whether the United Nations War Crimes Commission's lists have been forwarded to them. If that has not been done, this omission should be remedied without delay.

The sixth point concerns the search for war criminals in prisoners' camps. The Belgian National Office realises that great efforts are being made to find war criminals among those who have been captured and are still in Germany; but they have asked me to inquire whether a similar search was being conducted among the prisoners who ~~have~~ been transported overseas. Perhaps this question might usefully be asked to CROWCASS.

Finally, I have pleasure in informing the Commission that nine Germans accused by Belgium of atrocities in the "Bulge" (December 1944) have been handed over to the Belgian Justice. Schmit, the well-known commandant of the Breendonck camp has also been apprehended and handed over to the Belgians."

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MISC. 4.  
14th December, 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

Memorandum  
On the Recording of War Crimes Trials, Law Reporting, and  
Related Subjects.

By The Legal Officers.

- I. As far as we know, there is, among the members of the Commission a complete consensus of opinion that the production of authentic reports on War Crimes and on the way they have been dealt with by International and National Courts and authorities, falls within the jurisdiction of the Commission and is one of the most important tasks it has to fulfil. It is the purpose of this paper to point out the necessity of deciding on a long term policy on this subject.

The general task may be sub-divided into three different parts, which, in our opinion, it is necessary to distinguish carefully. These three aspects of the general task are as follows:

- (1) the collecting of material and making it available to the member Governments,
- (2) the publication of reports on war crimes trials as documents for the International Lawyer, Historian, Sociologist, Statesman and Politician,
- (3) a final progress report on the activities of the Commission itself.

- II. As to the first of the tasks, outlined in I(1), namely the collecting of material and making it available to the member Governments for action by National Authorities and Municipal Courts, this has so far been performed by the Research Office through the medium of the documents issued by it, particularly through its Summaries of Information.

The proposed activities of the Commission in connection with documentary evidence assembled at Nuremberg and not made use of in the Nuremberg trial, serve the same purpose. In this respect the three Governments occupying Germany, represented on this Commission, and the four chief prosecuting counsel at Nuremberg have been approached.

The proposals made in this memorandum do not purport to interfere with this part of the Commission's activities from which it follows that it is devoted only to the other two parts of the general task. (Supra I(2) and (3)).

- III. With regard to the second of the above mentioned tasks, it has been stated in note 5 of Doc.C.124 (Draft Budget) that the Commission may find it desirable to begin the production of its reports on war crimes during the present year, since they are to be carefully documented studies incorporating the results of actual trials and must nevertheless be published without too much delay.

On 30th August 1945, the Chairman wrote a letter to all members requesting the Governments represented on the Commission to make a practice of sending regularly to the Commission the reports of all the trials in which the Commission are interested. The members of the



Commission were asked to impress upon their governments the importance of taking this course.

Most members of the Commission reported either in writing or orally at meetings of the Commission that they had transmitted this request to their authorities and some of the Governments have, in the meantime, replied promising to take the course asked by the Commission.

The actual result so far achieved may be seen from the synopsis appended to this memorandum. The synopsis shows that further help from the members of the Commission and the National Offices will be necessary in order to make the Commission really the place where all the relevant material is available.

- IV. The publications we have in mind will not so much be addressed to the general public, but should be documents for the International Lawyer, Historian, Sociologist, Statesman and Politician. There is at present no official international body in the world which would be both willing and competent to undertake this very important task, namely the production of a publication or publications which would form the basis for the study of International law and history for generations to come. The Commission, having successfully performed its task of advising the Governments and thereby influencing the practice of the States, an activity to the successful performance of which the Charter of the International Military Tribunal bears witness, should complete its historic task by furnishing International Lawyers, Historians and Politicians with a reliable and annotated documentation of the results actually achieved.

As we have said, there is no international official body at present in existence which could be charged with this task, with the exception of the Commission, but it should be mentioned in this connection that the United Nations Information Organisation, (UNIO), has recently produced a publication (Information Paper No.1.) devoted to "War Crimes and the Punishment of War Criminals". As far as we are aware, the United Nations Information Organisation, in producing this publication, has not sought the collaboration of this Commission.

As far as the publication and the editing of the reports of the trial or trials conducted before the International Military Tribunal are concerned, collaboration with its Secretariat should be sought.

From a statement made by the Lord Chancellor in the House of Lords on 13th December, 1945, it appears that it has so far not been possible for the British Government to form an opinion whether the publication of the evidence and proceedings of the Nuremberg trial as a State paper or a summary of the evidence would be desirable in the public interest. Printed copies of the record would shortly be available for sale to the public.

According to press reports (Daily Telegraph, 28th November 1945) the British Cabinet will shortly have to decide the exact form in which permanent records of the Belsen and Nuremberg trials will be handed down to posterity.

Among private bodies who will certainly, in one form or another, undertake activities in connection with our problem, the Carnegie Endowment for International Peace and the Rockefeller Foundation should be mentioned. Some sort of collaboration between the Commission as an International Corporation on the one hand, and these famous private scientific institutions on the other, can be envisaged for a later stage.



We have also reason to believe that private publishing firms will be only too eager to collaborate in the production of publications of the kind we have in mind.

- V. While we propose that the publication activities of the Commission should comprise the results achieved by International and Municipal Courts and authorities, the actual work done by the Commission itself should also be recorded for future generations, and, to the extent to which the secrecy of the Commission's proceedings can be relaxed, made available to the interested public. A "Case Book" of the more important charges submitted by the National Offices and accepted by the Commission should be produced. Such a Case Book, as distinguished from the Lists of War Criminals, could usefully provide not only a short summary of the charges, but also a commentary on the relevant legal points as well as a record on and an analysis of the decisions taken by Committee I, and by the Commission in this respect. The reports compiled in this way would, at the same time, constitute a kind of final progress report so far as the task accomplished through Committee I is concerned.

This report on the activities centered round Committee I could usefully be supplemented or prefaced by an outline of the discussions conducted in the Commission, particularly in the earlier stages, concerning such controversial legal problems as, e.g., International or National Tribunals; immunity of heads of State; the crime of initiating aggressive war; the problem of "collective responsibility", (associations de malfaiteurs); the plea of superior order; ex post facto legislation, etc. It could simultaneously be shown how these and similar questions have been eventually decided in the Four-Powers Agreement, in the municipal provisions of the individual countries and by International and National Courts. This would place on record the very considerable influence of the Commission's proceedings on the final outcome.

In connection with the above suggestion, it would be desirable to ask all Governments represented on the Commission, to supply the Secretariat with all the reliable books, pamphlets and official literature and reports of war crimes, committed in their respective countries. This would enable the Commission to include in its publication or publications a general survey of crimes committed in each of the countries occupied by the enemy, together with a short outline of the general policy and aims established by the enemy authorities against the respective countries.

- VI. The tasks outlined above are very urgent. This is particularly true of the trial reports. The material to be dealt with will be accumulating at such a speed that after some months it will be impossible to cope with it. If the preparatory work does not start in the near future, it will be difficult to complete the publication or the first parts of it within a reasonable time.

We suggest that the United Nations War Crimes Commission should consider either in its plenary meeting or through one of the existing committees (Committee I, Committee III, the Committee on Documents, or through a special ad hoc committee), the whole problem, lay down as soon as possible a long term policy on this type of work, and elaborate a detailed programme for it. In our submission, the working out of such a binding programme is an indispensable condition for the successful start of the activities.

It is quite clear that if all the tasks outlined above or a substantial part of them are undertaken, the present Legal and Research staff of the Commission will not be in a position to cope with the immense material before them.

We therefore propose that, if the Commission should give a favourable decision with regard to our suggestions, both the members of the Commission and the National Offices should be invited to take part in the work either personally or by delegating from their staffs such lawyers and historians as are interested in work of this kind, and willing and capable of doing it.

It should be made clear that this collaboration should not be restricted to a general supervision, to attending meetings and the like, but that actual contribution to the work of studying, annotating and editing would be expected. For this reason, at a later stage, the question of remunerating the collaborating individuals and/or the question of part time appointments should also be considered.

VII. It may be pointed out that the Law Reports Series which has been prepared under the auspices of Committee III and which has now been enlarged into a "Trials and Law Reports Series", serves only for the preliminary information of members and National Offices about trials actually in progress and is neither a substitute for, nor a substantial contribution to, the preparation of the recording tasks dealt with in this paper.

A card index, as a basis for the preparation of a bibliography of the legal literature on war crimes, is being kept up to date and a copy of it in its present state has been circulated as Doc.III/24.

ANNEX TO  
MISC.4.  
14th December 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

Synopsis of Trial Reports received by the United Nations War  
Crimes Commission from National  
Authorities.

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I. INTERNATIONAL TRIALS:

1. Transcripts of the Nuremberg Trial.

II. BRITISH TRANSCRIPTS:

1. Complete transcripts of the trial against Josef Kramer and 44 others. British War Crimes Court, Lüneberg (Crimes committed in the Belsen and Auschwitz Concentration Camps.) (17th September to 17th November, 1945). (See also Dr. Cyprian's report Doc.C.151 and Law Reports Series Nos. 1, 2, 3, 4 and 6.)
2. Complete transcript of the trial against Kapitänleutnant Heinz ECK and 4 others. British War Crimes Court, Hamburg. (Killing of the survivors of the steamship "Peleus".) (17th October to 20th October 1945.) (See also Law Reports Series No.5.)

III. WAR CRIMES TRIAL REPORTS RECEIVED FROM THE UNITED STATES COMMISSIONER.

1. Trial against Anton SCHOSSER. Military Commission appointed by the Commanding General, Eastern Military District. (Murder of an unarmed American aviator). (Completed 15th September, 1945.)
2. Trial against Georg SCHULTHEISS. Military Commission appointed by the Commanding General, Eastern Military District. (Murder of an unarmed American aviator). (Completed 21st September, 1945.)
3. Trial against Dominikus THOMAS. Military Commission appointed by the Commanding General, Western Military District. (Murder of captured airmen). (Completed 15th October, 1945.)
4. Trial against Karl NEUNOBEL, Gustav WEBER and Karl BLOCK. Military Commission appointed by the Commanding General, Western Military District. (Murder of captured American airmen). (Completed 15th October, 1945.)
5. Trial against Wilhelm DIETERMANN. Military Commission appointed by the Commanding General, Western Military District. (Murder of American Prisoner of War.) (Completed 11th October, 1945.)
6. Trial against Alphons KLEIN and 6 others. Military Commission appointed by the Commanding General, Western Military District. (Murder of Allied Nationals by injections of poisonous drugs at the Hadamar Institution). (Completed 15th October 1945.) (See also Colonel Wade's report Doc.C.150).
7. Trial against Josef HANGOBL. General Military Government Court, appointed by the Commanding General, Eastern Military District. (Murder of a captured American airman.) (Completed 18th October, 1945.)



8. Trial against Clemens WIEGAND. General Military Government Court appointed by the Commanding General, Western Military District. (Murder of captured American airmen.) (Completed 16th October, 1945.)

IV. TRANSLATIONS OF BROADCAST REPORTS ON CZECHOSLOVAK TRIALS.

1. Trial against Josef PFITZNER, Deputy Mayor of Prague. Extraordinary People's Court, Prague. (High treason and treachery.) (5th and 6th September, 1945.)
2. Trial against S.S.Obergruppenfuehrer Walter SCHMITT, Extraordinary People's Court, Prague. (Responsibility for crimes committed in Concentration Camps Mauthausen, Schlossenburg, Ravensbruck, Sachsenhausen and other places.) (18th September, 1945.)
3. Trial against Franz KOPLER, Extraordinary People's Court, Prague. (Torture of political prisoners in Gestapo prison.) (18th September 1945)

V. SUMMARY RECEIVED FROM THE POLISH REPRESENTATIVE.

1. Trial against Herman VOGEL and 5 others for crimes committed in the extermination camp Majdanek. Polish Special Criminal Court in Lublin 27th November 1944 to 2nd December 1944. (See also Trials and Law Reports Series No.7.)

VI. MATERIAL RECEIVED FROM THE FRENCH REPRESENTATIVE.

The French representative has sent to the Commission several lists containing the names of war criminals tried by French military courts for war crimes, the crimes for which they were accused, the date of the judgment, the sentence passed and a statement whether or not the sentence is final.



8. Trial against Clemens WIEGAND. General Military Government Court appointed by the Commanding General, Western Military District. (Murder of captured American airmen.) (Completed 16th October, 1945.)

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3. Trial against Franz KOPLER, Extraordinary People's Court, Prague. (Torture of political prisoners in Gestapo prison.) (18th September 1945)

V. SUMMARY RECEIVED FROM THE POLISH REPRESENTATIVE.

1. Trial against Herman VOGEL and 5 others for crimes committed in the extermination camp Majdanek. Polish Special Criminal Court in Lublin 27th November 1944 to 2nd December 1944. (See also Trials and Law Reports Series No.7.)

VI. MATERIAL RECEIVED FROM THE FRENCH REPRESENTATIVE.

The French representative has sent to the Commission several lists containing the names of war criminals tried by French military courts for war crimes, the crimes for which they were accused, the date of the judgment, the sentence passed and a statement whether or not the sentence is final.

SECRET  
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Misc. 5.  
3rd January, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Proposal for report on the activities of  
the Commission

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The following letter is circulated to members for their information:

2nd January, 1946.

"Dear Lord Wright,

I have been wondering whether the time has not come for this Commission to begin considering the drafting of a full report of its activities.

You may remember that, after the last war, the Macdonell Commission compiled a report, known as the Peterson report, comprising 472 pages of printed matter.

Likewise, it seems to me that our Commission should undertake a similar work. The terms of reference and the composition of the Commission should of course be included. We should examine whether all the minutes of our meetings should be published "in extenso" or merely summed up. Furthermore, the Chairman of each Committee should be asked to write a report on the Committee's work, with the collaboration of present and possibly past members thereof. The recommendations adopted by the Commission should be published, together with the mention of the original proposal and synopsis of the discussions that followed. The best papers on legal questions should be sorted out, possibly with a comment on the influence which may have been exercised by them on later events. Statistics on the number of cases dealt with, on the number of persons tried in each country, would also be of some use for those who, in the future, would desire to study the question of punishment of war criminals.

To this effect a small committee comprising the Chairmen of existing committees and any other members desiring to collaborate could be set up.

Will you be so kind as to circulate this letter and put my proposal before the members of the Commission at one of its next meetings.

Yours sincerely,

(s) M. de Baer. "

SECRET.  
Restricted.

Misc. 6.  
4th January 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Removal from Church House.

The following letter has been received by the Chairman from Mr. Philip Noel-Baker, Minister of State, and is circulated to members, with copy of the Secretary General's acknowledgement, for their information.

It is not expected that the new premises will be ready for occupation until after the next Commission meeting on January 9th, and members will be kept informed as to the date of move.

Letter from Mr. Philip Noel-Baker

2nd. January 1946.

"My dear Lord Wright,

I have been asked to find additional accommodation in Church House for the Security Council and the Military Staff Committee of the United Nations Organisation. This can only be done, I understand, by giving them accommodation at present occupied by the War Crimes Commission. I am naturally very sorry to have to ask you to agree to vacate this accommodation, but I feel that it is of the highest importance that the two bodies mentioned should be accommodated in the same building as the other organs of the United Nations.

I am glad to be able to say that the Ministry of Works have been able to find you suitable alternative accommodation in Lansdowne House, Berkeley Street, and I would suggest that you should ask one of your officials to get into touch with Mr. Waller or Mr. Reid of that Department (Sloane 0838), who would arrange for him to see the proposed accommodation.

The question has now become one of great urgency, in view of the imminence of the meeting of the Assembly, and it is hoped that it may be possible for the move to take place in the next week.

I am extremely sorry that I have had to give you so little notice, but I am sure you will appreciate the importance of doing everything possible to make the first meeting of the United Nations a success.

With my apologies and regrets again,

Yours sincerely,

(sgd) Philip Noel-Baker."



Acknowledgement from the Secretary General

4th January 1946.

"Dear Mr. Noel-Baker,

I have been asked by Lord Wright, who is at present absent from London, to acknowledge with thanks receipt of your letter of the 2nd. instant.

Lord Wright and all the members of the War Crimes Commission received the intimation of your request to vacate Church House with much regret, but they readily appreciate that everything possible should be done to assist the United Nations Organisation in the formidable tasks which lie ahead.

Accordingly, Lord Wright has instructed me to accept your offer of alternative accommodation at Lansdowne House but, in view of the present condition of these premises, he sincerely hopes that you will cause to be impressed upon the Office of Works the necessity for suitable and adequate interior decoration and furnishings.

I am to add that we hold ourselves in readiness to move immediately the new premises are in a fit and presentable state.

Yours very truly,

(sgd) G.A. Ledingham,

Secretary General"



SECRET.

Restricted.

MISC. NO: 7

7th Jan, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

The Legal Status of the United Nations War Crimes Commission.

By E. Schwelb, Legal Officer.

I. The Establishment of the Commission. Its basic instrument.

The United Nations War Crimes Commission was established at a meeting of Allied and Dominions Representatives in London which was held in the Foreign Office on the 20th October 1943. The decision to set up the Commission was proposed by the then Lord Chancellor on behalf of His Majesty's Government in the United Kingdom, and agreed unanimously by the representatives of Australia, Belgium, Canada, China, Czechoslovakia, Greece, India, Luxembourg, Netherlands, New Zealand, Norway, Poland, The Union of South Africa, the United Kingdom, United States of America, Yugoslavia and the then French Committee of National Liberation.

It was decided that the Commission should serve two primary purposes;

- 1) it should investigate and record the evidence of war crimes, identifying where possible the individuals responsible,
- 2) it should report to the Governments concerned cases in which it appeared that adequate evidence might be expected to be forthcoming. /6

At the meeting of Allied and Dominions representatives, held on the 20th October 1943, it was further agreed that it would be desirable to set up in due course, a technical commission of legal experts which would work concurrently with the commission and in adequate contact with it. It would be charged with advising the Governments concerned upon matters of a technical nature such as the sort of tribunals to be employed for the trial of war criminals, the law to be applied, the procedure to be adopted and the rules of evidence to be followed. The function of this committee would be to formulate recommendations for the guidance of Governments. It would not be empowered to take any decisions which would be binding upon the Governments. It was decided that the actual establishment of this technical committee should be deferred.

The scope of the Commission's terms of reference was eventually extended by vesting in the Commission also the competence of the originally envisaged technical committee of lawyers.

It was agreed that the headquarters of the Commission should be established in London.

Thus an International Organisation or "inter-governmental agency" was established which, though it has its headquarters on the territory of one of its member States, is not incorporated in the municipal laws of any particular country, but is a truly international body.

That the United Nations War Crimes Commission has the legal capacities of a body corporate has been recognised by His Majesty's

Government in the United Kingdom by Order in Council, S.R. & O. 1945 No.1211.

On this Order in Council see below, paragraphs III et seq. On the position of the Commission within the framework of the post-war organisation of the world see below paragraph XII.

II. The Status of the Commission in English law.

The United Nations War Crimes Commission having its headquarters in London, it is of particular importance to expound what status international organisations in general and the Commission in particular have in the municipal law of the United Kingdom.

The question has been settled by a British statute, the Diplomatic Privileges (Extension) Act, 1944. The relevant provisions of this Act apply to any organisation declared by Order in Council to be an organisation of which His Majesty's Government in the United Kingdom and the governments of one or more foreign sovereign Powers are members; such declaration has so far been made by Order in Council with regard to the following international organisations:

- 1) The United Nations Relief and Rehabilitation Administration (UNRRA) (S.R. & O. 1945 No.79)
- 2) The United Nations Information Organisation (UNIO) (S.R. & O.1945 No.84)
- 3) The Inter-governmental Committee for Refugees (S.R. & O.1945 No.84)
- 4) The European Advisory Commission (S.R. & O.1945 No.84)

NOTE: The European Advisory Commission has been dissolved on the recommendations of the Potsdam Conference, August 1945 (Cmd.6689)

- 5) The Provisional Organisation for European Inland Transport (S.R. & O. 1945 No.1211)
- 6) The United Nations War Crimes Commission(S.R. & O.1945 No.1211)
- 7) The United Nations Organisation (S.R. & O.1945 No.1539)
- 8) The Preparatory Commission of the United Nations.(S.R. & O. 1945 No.1539)

III. The Diplomatic Privileges (Extension) Act, 1944, gives power to His Majesty to confer by Order in Council on the Organisation, on representatives of member Governments on it and on officers and servants of the organisation certain immunities and privileges. The extent of the immunities and privileges granted to the United Nations War Crimes Commission, to the representatives of the member governments on it and to its high officers and other officers and servants have been specified by the above mentioned Order in Council S.R. & O.1945 No.1211 in the way which is summarised in the following paragraphs of this paper.

IV. The Immunities and privileges of the Commission.

The Commission as such has the following immunities and privileges:

- 1) Immunity from suit and legal process.

- 2) The like inviolability of official archives and premises occupied as offices as is accorded in respect of the official archives and premises of an envoy of a foreign sovereign Power accredited to His Majesty.
- 3) The like exemption or relief from taxes and rates, other than taxes on the importation of goods, as is accorded to a foreign sovereign Power.
- 4) Exemption from taxes on the importation of goods directly imported by the organisation for its official use in the United Kingdom or for exportation, such exemption to be subject to compliance with such conditions as the Commissioners of Customs and Excise may prescribe for the protection of the Revenue.

It is further stated that the Commission has the legal capacities of a body corporate.

V. The immunities and privileges of non British Government Representatives on the UNMCC.

One representative of each member Government on the Commission has the following immunities and privileges (i.e. full diplomatic status):

- 1) The like immunity from suit and legal process as is accorded to an envoy of a foreign sovereign Power accredited to His Majesty.
- 2) The like inviolability of residence as is accorded to such an envoy.
- 3) The like exemption or relief from taxes and rates as is accorded to such an envoy.

NOTE: This provision does not apply to representatives of member Governments who are British subjects. On the legal position of British subjects representing member Governments, see below, paragraph VIII.

VI. The immunities and privileges of high officers of the Commission.

The Secretary General and the Executive Secretary of the Commission are considered to be "high officers". They have the same immunities and privileges as representatives of member Governments i.e. full diplomatic status.

The proviso made as to British subjects in paragraph V applies also in the case of the Secretary General and the Executive Secretary of the Commission. The Secretary General being a British subject and the post of Executive Secretary not being filled, there is, at present, no official of the Commission who enjoys full diplomatic privileges.

VII. The immunities and privileges of Government representatives and High Officers of the Commission who are British Subjects.

British subjects who are representatives of member governments on the Commission and British subjects holding the office of Secretary General or Executive Secretary of the Commission have the following immunities and privileges:

- 1) Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.



2) If they are nationals or citizens of, or belong to, any part of His Majesty's dominions outside the United Kingdom, they also have the like exemption or relief from taxes and rates as is accorded to an envoy of a foreign sovereign Power accredited to His Majesty.

This exemption or relief from taxes and rates does not extend to any British subject whose usual place of abode is in the United Kingdom.

IX. Immunities and privileges of officers of the Commission, holding a rank superior to that of Chief Clerk.

The officers of the Commission holding the rank superior to that of Chief Clerk have the following immunities and privileges (the so-called consular type of privileges).

- 1) Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.
- 2) Exemption from income tax in respect of emoluments received as an officer of the organisation.

The exemption from income tax specified under 2) does not extend to any British subject whose usual place of abode is in the United Kingdom.

X. Immunities and privileges of all other officers of the Commission.

All employees of the Commission except British subjects whose usual place of abode is in the United Kingdom, are exempted from income tax in respect of emoluments received as an officer or servant of the organisation.

XI. Exemption from Aliens Legislation.

In addition to the above mentioned immunities and privileges which are based on the Diplomatic Privileges (Extension) Act, 1944, and the Order in Council applying the statute to the Commission (S.R. & O. 1945 No. 1211), the Home Secretary, by a Direction, S.R. & O. 1945 No. 1054 has ordered the whole or partial exemption of Aliens connected with international organisations from the provisions of the Aliens Order, 1920.

These exemptions are as follows:-

- 1) Government representatives on the Commission and the Secretary General and Executive Secretary, their wives and children (of whatever age) residing with them are altogether exempted from the provisions of the Aliens Order, 1920.
- 2) The officers of the Commission holding a rank superior to that of Chief Clerk, their wives and children under the age of eighteen years residing with them are exempted from the requirement to register under the Aliens Order, 1920.

By administrative action it has also been arranged that aliens do not require Ministry of Labour permission to accept an appointment under the Commission.

Aliens serving under the Commission were also exempted from registration under the International Labour Force Orders. (This privilege has become obsolete because the International Labour Force Orders have

now been abrogated.)

XII. The UNWCC in the post war world.

Article 57 of the Charter of the United Nations contains provisions with regard to what is called "specialised agencies established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields." The Charter ordains that these various "specialised agencies" shall be brought into relationship with the United Nations in accordance with the provisions of Article 63. Article 63 of the Charter provides that the Economic and Social Council of the United Nations Organisation may enter into agreements with any of the specialised agencies, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly. The Economic and Social Council may co-ordinate activities of the specialised agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

The report by the Executive Committee of the Preparatory Commission of the United Nations contains in chapter VIII, pages 101-108, detailed observations on the relationship with specialised agencies, and particularly, on page 102, an interpretation of Art. 57 of the Charter. (The report by the Preparatory Commission to the General Assembly of the United Nations is not yet available.)

In the report by the Executive Committee, the term "inter-governmental agency" is used in its widest sense to include all agencies established by inter-governmental agreement whether they are to be brought into relationship or not. The term "specialised agency" is used to designate the particular type of inter-governmental agency coming within the definition of Art. 57, i.e. having wide international responsibilities as defined in its basic instrument.

The question, therefore, arises whether the UNWCC is an agency having "wide international responsibilities" in one of the fields enumerated in the Article. The question whether the UNWCC has "wide international responsibilities" has, in my submission to be answered in the affirmative and this the more so as it appears from the proceedings of the Economic and Social Committee of the Preparatory Commission (Journal of the Preparatory Commission No. 15, 11th December 1945) that the term "wide international responsibilities" is used to distinguish agencies of a world-wide character from inter-governmental agencies of a regional character, like the Inter-American System, including Inter-American Specialised Agencies, the Arab League, and so on.

The second question is whether the terms of reference of the Commission fall within the definition contained in Art. 57 which speaks of responsibilities in economic, social, cultural, educational, health and related fields.

The problem of the repression of war crimes belongs to the "social" field within the wide meaning attached to this term in the Charter of the United Nations. The promotion of universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion is enumerated in Art. 55 of the Charter under the heading "International Economic and Social Co-operation" and the Economic and Social Council

of the United Nations is in Art. 62 (2) charged with similar activities. There can be no doubt that the punishment of war crimes serves and is meant primarily to serve the promotion of universal respect for and observance of human rights and freedoms even in war time. The Commission's terms of reference are certainly also covered by the expression "and related fields". From this it seems to follow that the Commission is not only an "inter-governmental agency" but also a "specialised agency" within the meaning of Art. 57 of the Charter.



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Misc. 8.  
February 7th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

MEMORANDUM BY COMMANDER H.W. MOUTON AND PROPOSED RESOLUTION BY  
THE UNITED NATIONS WAR CRIMES COMMISSION, WITH REGARD TO LETTER  
FROM THE NETHERLANDS WAR CRIMES MISSION IN GERMANY TO THE  
NETHERLANDS MINISTER OF JUSTICE.

Translation of letter from Netherlands War Crimes  
Mission in Germany, Bad Oeynhausen, to the Netherlands  
Minister of Justice, 5th January 1946.

It is completely unnecessary that a case be sent to the  
United Nations War Crimes Commission before searching for the war  
criminal concerned and asking for his extradition.

If the address of a certain war criminal is known, and on  
supplying all the known particulars of the crime and person I  
request his extradition by the British authorities.

If CROWCASS finds on receiving my wanted report that no  
other country is claiming him, I obtain permission for his extradition.

London will be informed, but permission from London is un-  
necessary. Listing by the United Nations War Crimes Commission  
therefore is also unnecessary.

May I request your Excellency to send the cases to me in  
future, and to inform London only of the details.

Memorandum by Commander Mouton.

The United Nations War Crimes Commission has been established  
after exchange of notes between the Allied Governments, at a meeting  
of the diplomatic representatives of these Governments on October 20th,  
1943 and is consequently an Inter-Governmental Agency.

The United Nations War Crimes Commission is a fact-finding  
body.

The Commission has up to February 1st, 1946 investigated war  
crimes and listed more than 11,000 war criminals on lists which have  
been circulated to the Military authorities.

In a letter from the Foreign Office, dated August 20th, 1945,  
to the Chairman of the Commission about the surrender of War Criminals  
by SHAEF and SACIED it was stated that war criminals on the lists of  
the United Nations War Crimes Commission are, subject to certain  
conditions, to be handed over without question and in the letter,  
dated September 8th, 1945, from the American Representative to the  
Chairman it was stated that "it is the view of the War Department and  
the State Department that in practice great weight should be given to  
the determination of the United Nations War Crimes Commission in  
placing a name upon its official war crimes list and that, in the  
absence of extraordinary circumstances, this determination by the

Commission should be accepted. The impartial screening of cases by the Commission is believed to be exceedingly useful. It affords great support and assistance to the Commanding General of the mentioned Forces, and provides him with a reliable and strong basis for action.

I am further informed that, while listing by the Commission is considered as highly desirable as a basis for the apprehension and surrender of alleged war criminals, under present United States policy delivery can be made without such listing if request, otherwise adequately supported, is made by the demanding Government."

Besides the fact, that this procedure is the result of a decision taken by the Governments of the Allied countries, to which procedure the military authorities of these countries should submit and in which they should co-operate, it is clear that this procedure in view of the experience which the Commission has gathered in handling thousands of these cases, with all the legal aspects involved, is much more expedient than having the particulars of these cases scrutinised by military commanders.

In the second place by submitting cases to the United Nations War Crimes Commission uniformity in decision is guaranteed whereas different military commanders might use different criteria.

It is further to be observed that under the terms of the Commission's Mandate the Commission is to report on War Crimes. It keeps a record of all the cases submitted to it by the national offices which is of enormous value to the future historian.

The Commission is also preparing reports of trials-also an important part of the function entrusted to it-and its work cannot be properly executed unless the various Governments regularly submit to it reports on each case which is likely to be prosecuted.

#### RESOLUTION

Accordingly, I move the following resolution:

THAT, the United Nations War Crimes Commission protests against the view that it is unnecessary that a case be sent to it before searching for the war criminal concerned and asking for his extradition.

The Commission maintains that the procedure proposed by the Netherlands War Crimes Mission in Germany is not in accordance with the international resolution defining the duties of the Commission and is not in accordance with the directives of the American and British Military Authorities.



Misc. No. 9  
7th February 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

N O T E

on the Control Council Law No.10. (Punishment of Persons  
Guilty of War Crimes, Crimes against Peace and Crimes against Humanity.)

By Egon Schwelb, Legal Officer.

The English text of the enactment discussed in this note was circulated as No.15. (bis) of the Documents Series of the Research Office.

I. The Purpose of the Law.

From the Preamble and from Article I of the Law it follows that its purpose is to give effect in the local law of Germany to the Moscow Declaration of 30th October 1943 and to the London Agreement of the Four Powers of 8th August 1945. In particular it is the purpose of the Law to establish a uniform legal basis in Germany for the prosecution of those "war criminals and other similar offenders" who are not among the so-called "major war criminals" whose deeds fall under the jurisdiction of the International Military Tribunal. Article I further expressly points out that the nations which have adhered to the Four-Power Agreement are not entitled to participate or interfere in the operation of this law within the Control Council area of authority in Germany. This is only a declaratory statement of the law which follows already from the text of the Four-Power Agreement, as has been pointed out in the paper III/13.

II. The List of "crimes" falling under Law No.10.  
("War crimes in the wider sense").

Art. II(1) contains a list of the acts which are recognised as "crimes". This list follows in general, but not verbatim, the pattern set by Art.6. of the Charter of the International Military Tribunal. Law No.10 divides the crimes falling under its scope into:

- (a) crimes against peace,
- (b) war crimes, (in the narrower sense) and
- (c) crimes against humanity.

A fourth item is added to the list as a consequence of the provisions of Arts. 9 - 11 of the Charter, namely:

- (d) membership in categories of a criminal group or organisation declared criminal by the International Military Tribunal.

III. Crimes against Peace under Law No.10.

The definition of crimes against peace in Art. II(1)(a) of Law No.10 differs from Art. 6 (a) of the Charter in that it contains the general words "initiation of invasions of other countries and wars of aggression in violation of international laws and treaties". Upon this general statement there follows the list contained in Art.6(a) of the Charter introduced by the words "including but not limited to" "planning, preparation, etc.".

From this it appears that the notion of "crimes against peace" under Law No.10 is somewhat wider than under the Charter. Under Law No.10 the initiation of the invasion of another country is criminal even in cases where it is not intended to lead to war and does not actually lead to war.

The phrase "in violation of international laws and treaties" differs from the Charter which speaks of war "in violation of international treaties." The German text of Law No.10 speaks of wars of aggression "unter Verletzung des Völkerrechts und internationaler Verträge" i.e. "in violation of International law (the Law of Nations) and of international treaties." The juxtaposition of "International law" and "international treaties" can only mean that the former ("International Law") covers customary law, the latter conventional law. If this be correct, the result would be that while under the Charter only an aggressive war in violation of international conventional law constitutes a crime, under the municipal law as enacted by the four occupying Powers, an invasion or an aggressive war, in violation of either customary or conventional international law is punishable as a crime.

#### IV. Definition of War Crimes in the narrower sense under Law No.10.

This does not, in substance, differ from the notion of war crimes, namely violations of the laws or customs of war contained in Art.6 (b). The actual formulations in Law No.10, Art. II (1)(b) is "Atrocities or offences against person or property constituting a violation of the laws or customs of war, including but not limited to ... "

#### V. Crimes against Humanity under Law. No.10.

Here the definition again tallies with that contained in Art.6 (c) of the Charter, the general denomination being "Atrocities and offences, including but not limited to ... "

#### VI. Membership in Criminal Organisations.

The provisions of Art. II (1)(d) of the Law is a necessary consequence of the provisions of Articles 9 to 11 of the Charter. Under Art. 9 of the Charter, the Tribunal may declare at the trial of any individual member of any group or organisation that the group or organisation of which the individual was a member was a criminal organisation. In cases where a group or organisation is declared criminal by the tribunal, the competent national authority of any Signatory (of the Four-Power Agreement) shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case, the criminal nature of the group or organisation is considered proved and shall not be questioned. (Art.10). From Art.II(1)(d) of Law No.10, it follows that membership in a category of a group or organisation declared criminal is eo ipso a crime.

#### VII. Principals, Accessories and other persons implicated in war crimes.

Art. II(2) defines the orbit of persons criminally responsible for crimes, (war crimes in the wider sense). In addition to a person who was

(a) a principal, or

(b) an accessory to the commission of a crime or ordered or abetted the same, also those are guilty of the crime who

- (c) took a consenting part therein or
- (d) were connected with plans or enterprises involving its commission, or
- (e) were members of any organisation or group connected with the commission of any such crime.

The criminal membership of an organisation under Art. II(2)(e) must, of course, be distinguished from the case of Article III(1)(d), namely membership in an organisation declared criminal by the International Military Tribunal. The responsibility under Art. II(2)(e) is independent of whether or not the organisation or group in question has been declared criminal by the International Military Tribunal.

Of particular interest appears to be Art. II(2)(f) which provides that any person is deemed to have committed a crime if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held high position in the financial, industrial or economic life of any such country. This provision is restricted to the crime referred to in para. (1)(a) of Art. II, namely to crimes against peace. This means that all persons who held what in Committee I is usually called a "key position" in the political, civil, military, financial, industrial or economic life of any Axis country are, eo ipso guilty of a crime.

#### VIII. Punishment under Law No. 10.

Under Art. 27 of the Charter, the International Military Tribunal has the right to impose upon a defendant, on conviction, death or such other punishment as shall be determined by it to be just.

The British regulations for the trial of war criminals (Royal Warrant of 14th June 1945) provide the following punishment of war crimes: death, imprisonment, confiscation, fine (regulation 9).

Art. II(3)(a), (b), (c) and (d) of Law No. 10 follows this pattern in providing that the punishment may consist of one or more of the following:

- (a) death,
- (b) imprisonment for life or a term of years, with or without hard labour,
- (c) fine, and imprisonment with or without hard labour, in lieu thereof,
- (d) forfeiture of property.

"Term of years" in lit (b) does not, of course, mean that only sentences awarding imprisonment for one or more whole years are possible. The use of the phrase "term of years", which is taken not from criminal law, but from English land law, is probably due to a mistake in translation. The German text speaks of "zeitlich begrenzte Freiheitsstrafe".

Law No. 10 further provides in Art. II(3)

- (e) that "restitution of property wrongfully acquired" may also be ordered as a punishment, but this is certainly not a punishment in the legal sense. Under
- (f) deprivation of some or all civil rights may also be decreed as a punishment.



IX. An Official Position is no defence.

Art.II(4)(a) of Law No.10 corresponds to Art.7 of the Charter and provides that the official position of any person whether as Head of State or as a responsible official in a Government Department does not free him from responsibility for a crime or entitle him to mitigation of punishment.

X. The Plea of Superior Order under Law No.10.

The provision of Art.II(4)(b) of Law No.10 corresponds to Art.8 of the Charter. The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation.

XI. Statutes of Limitation.

Art.II(5) of the Law No.10 provides that in any trial or prosecution under the Law the accused shall not be entitled to the benefits of any statute of limitation in respect of the period from 30th January 1933 to the 1st July 1945, nor shall any immunity, pardon or amnesty granted under the Nazi régime be admitted as a bar to trial or punishment.

This provision is of great importance both on account of what it actually provides and for what it implies. Even if the prosecution of a crime should under the law in force before the enactment of Law No.10 be statute-barred, this is not so if the time between the 30th January 1933 and the 1st July 1945 is necessary to complete limitation. The 30th January 1933 is, of course, the date of Hitler's accession to power. The 1st July 1945 is a date after the assumption of sovereign power in Germany by the occupying Powers. This period of more than 12 years is to be neglected in computing the statutory periods of limitation.

Immunity, pardon or amnesty granted under the Nazi regime is no obstacle to a criminal prosecution under Law No.10.

The implication of the provision of Art.II(5) is, of course, that even crimes committed before 30th January 1933, if otherwise punishable, can be made a subject of criminal prosecution. This means that, e.g., crimes committed during Hitler's "struggle for power" through open violence and intrigues can be investigated and prosecuted.

XII. General procedural provisions.

Art.II(1), which to a great extent is only declaratory of existing law, gives to each occupying authority within its Zone of occupation certain rights and imposes certain obligations upon it. Under Art. III(1)(a) the occupying authority has the right to cause within its Zone a person suspected of having committed a crime to be arrested. It is expressly added that this includes those charged with crimes by one of the United Nations.

What do the words "including those charged with crime by one of the United Nations" mean? Two interpretations are possible: the one would be to the effect that in addition to those charged by occupational and local authorities in Germany, also such persons shall be arrested as have been charged by a member of the United Nations. The other, admittedly a little far-fetched, would say that the stress is on the word one, namely that it is sufficient that one of the United Nations, (as distinguished from the United Nations acting through the United Nations War Crimes Commission) charges a person to lead to his apprehension.

XIII. Jurisdiction of German Courts.

Art. III(1)(d) provides that each occupying authority shall have the right to cause all persons to be arrested and charged, and not delivered to another authority, or released, to be brought to trial before an appropriate tribunal. Such tribunal may in the case of crimes committed by persons of German citizenship or nationality against other persons of German citizenship or nationality or stateless persons, be a German court, if authorized by the occupying authorities.

It is not quite clear what difference there is, after the collapse of Nazism, between German "citizenship" and "nationality". ("deutsche Staatsbürger oder Staatsangehörige" in the German text of Law No. 10.)

XIV. Saving for Existing and Newly Established Courts.

From Art. III(2) it follows that it is not the purpose of Law No. 10 to make any alteration in the existing judicial machinery established in the occupation Zones, nor shall the commanders of the Zones be limited in their power of establishing new courts. It goes without saying that the jurisdiction of the International Military Tribunal is not touched by Law No. 10. On the contrary, Art. III(3) imposes upon the Zone commanders the duty to assist the International Military Tribunal by delivering to the Committee of Chief Prosecutors persons wanted by them who are within the Zone and to make witnesses and evidence available to the International Military Tribunal. Persons wanted for trial by an International Military Tribunal must not be tried without the consent of the Committee of Chief Prosecutors.

XV. The Extradition and Handing Over of Criminals.

This very important problem is dealt with in Art. III(4) and in Articles IV and V of Law No. 10.

A. In the case of concurrent claims the decision of the Legal Directorate must be sought.

Persons known to be wanted for trial in another Zone or outside Germany will not be tried, before the Legal Directorate has given its decision according to Art. IV(Art. III(4)). But if a criminal has been apprehended in one Zone and this apprehension has been reported to the Legal Directorate, the trial may be initiated after a lapse of three months if no request for delivery has been received by the Zone commander concerned.

B. The Zone commander decides in the first instance.

Requests for delivery of a criminal are decided in the first place by the Zone commander. When any person in a Zone in Germany is alleged to have committed a crime, namely a war crime in the wider sense, either outside Germany or in another Zone of Germany, then the Government of the country or the commander of the Zone where the crime has been committed may request the commander of the Zone in which the person is located for his arrest and delivery for trial to the country or Zone in which the crime was committed.

C. Strict application of the principle of territoriality.

It will be noted that this provision is based on the strict principle of territoriality. The right to demand the delivery of a criminal has the authority of the territory (government of a country, commander of a Zone), where the crime was committed. Art. IV does not provide for the delivery, e.g. to the government of the country against which the crime

was committed, or of which the victims were nationals, unless the crime was committed on the territory of the country (or Zone) concerned.

D. The request shall be granted. Exceptions.

Art. IV(1) states the general rule that it is the duty of the Zone commander receiving a request for delivery to comply with the request ("such request for delivery shall be granted"). From this general duty of the Zone commander to deliver the wanted person the following exceptions exist.

- (a) The Commander believes that the person is wanted for trial or as a witness by an International Military Tribunal.
- (b) The Commander believes that the person is wanted in Germany, either in his own Zone or in any other Zone of Germany.
- (c) The Commander believes that the wanted person is wanted also by a nation other than the one making the request.

These three exceptions (a), (b), (c), deal with existing or supposed concurrent claims to the wanted person.

The fourth exception is of an entirely different nature, namely:

- (d) the Zone Commander is not satisfied that delivery should be made.

This is not a case of concurrent claims but it is a provision which vests in the Zone commander the right to consider the request for delivery on its merits; if he, applying his unfettered discretion, is of opinion that "delivery should not be made" he is not bound to make delivery.

In such a case he has the right to forward the request to the Legal Directorate of the Allied Control authority. The same procedure has to be adopted by the Zone commander also in the cases of concurrent claims, (a), (b), (c) supra.

E. Decision of the Legal Directorate. Priorities.

The Legal Directorate shall consider all requests referred to it for any of the reasons mentioned under D. (a), (b), (c), (d), supra. The principles on which the decision of the Legal Directorate shall be based are stated in Art. IV (2).

These principles distinguish generally whether one of the competing authorities is an International Military Tribunal or not.

If a person is wanted for trial or as a witness by an International Military Tribunal he shall not be delivered for trial or required to give evidence outside Germany except upon the approval of the Committee of Chief Prosecutors. This means that if a claim of the International Military Tribunal competes with the claim of any national or Zone authority the claim of the International Military Tribunal prevails. (Art. IV(2)(a)). If the person is wanted for trial by several authorities other than an International Military Tribunal, the priorities are as follows: (Art. IV(2)(b).)

- (1) If the person is wanted for trial in the Zone in which he is, he should not be delivered unless arrangements are made for his return after trial elsewhere. The Zone where the wanted person actually resides or is being kept in custody has priority over any other Zone or country.



(2) If a person is wanted for trial in a Zone other than that in which he is he shall be delivered to that Zone in preference to delivery outside Germany. The individual Zones of Germany have, therefore, priority over non-German countries.

Special arrangements regarding the return of the wanted person to the Zone, making the delivery outside Germany possible, are provided for.

(3) Among two or more United Nations countries wanting the same person the country of which he is a citizen has the priority over the others.

(4) If a person is wanted for trial outside Germany by several countries, not all of which are members of the United Nations, the members of the United Nations should have priority. This provision implies that delivery can be demanded by and made to nations who are not members of the United Nations.

It is obvious that the framers of this provision thought mainly of former Axis and satellite countries, particularly Italy. The provision is applicable also to neutral countries like Switzerland and Sweden who can ask for the extradition of persons who have committed crimes against humanity on their territory, e.g. Nazi crimes and intrigues and frontier incidents in Switzerland. The provision would also apply to a request made by a future democratic Spanish Government for the delivery of persons responsible for the initiation of, and crimes against humanity committed during, the Spanish civil war.

(5) If a person is wanted for trial outside Germany by two or more members of the United Nations then that which has the most serious charges against him which are moreover supported by evidence should have priority. This provision is subject to Art.II(2)(b)(3) which gives priority to that member of the United Nations of which the wanted person is a citizen.

#### XVI. Law No.10 and the United Nations War Crimes Commission.

The United Nations War Crimes Commission is not mentioned in the enactment and no provision is contained in Law No.10 saying what the consequences are for the application of Art.IV of the fact that a wanted person is or is not listed by the United Nations War Crimes Commission. (Reference has already been made to Art.III(1)(a) in para. XII of this paper, indicating that the express pointing out of persons charged by one of the United Nations shows that possibly charges by several allied nations acting together and forming an International Organisation may have been in the mind of the legislating authority.) The silence of Law No.10 about this question may have different reasons. One of them may be the fact that the U.S.S.R. is not represented on the United Nations War Crimes Commission and that, therefore, the Commission is not a fact finding body as far as the Soviet Union is concerned. Another reason may be that the United Nations War Crimes Commission is an International Corporation based on an International Agreement and therefore based on International law, whilst the Control Council Law No.10 belongs to the province of municipal law, namely local German law. It is by no means self-evident that a municipal legislative body should expressly confer on an International Organisation immediate jurisdiction in its municipal legal order.

It is submitted, however, that the opinion can be maintained that Law No.10 has not made the listing of German War Criminals by the Commission nugatory. It has been said above (para.IV (D)(d)) that the Zone Commander has the right to reject a request for delivery of a wanted person if he "is not satisfied that delivery should be made."

According to the letter and the spirit of this provision, the Zone Commander has not only the right, but even the duty to use his discretion when deciding on the application of one individual Government requesting the delivery of a person. It would not in general be an appropriate use of this discretion, primarily given for cases of requests by individual national authorities, if a Zone Commander should decline the extradition of a person who appears on the list of the Commission. It can, therefore, be maintained that the listing of a person by the United Nations War Crimes Commission should constitute a fact which in general prevents the Zone Commander from rejecting a request for his delivery. The fact that a person has been listed should "satisfy" the Zone Commander "that delivery should be made".

This opinion may also be supported by the following considerations: it is not the purpose of Law No.10 to supersede the existing machinery with regard to the prosecution and trial of war criminals. This is implied in the provisions of Art.III(1)(d) and (2). At least as far as the British and American Zones are concerned the position remains as stated in the Documents reproduced under C.143, C.146 and C.163, to which reference has also been made in Misc.8.

SECRET  
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MISC. 10.  
February 8th, 1946

UNITED NATIONS WAR CRIMES COMMISSION

PROCEDURE FOR SURRENDER OF WAR CRIMINALS

With reference to the discussion at the Commission meeting held on February 6th, in connection with document Misc.8, an amended draft motion is circulated herewith to members for their consideration. This will be placed on the agenda of the Commission meeting next Wednesday.

DRAFT MOTION

200

The United Nations War Crimes Commission is unable to accept the view, which is said to be that of the Netherlands War Crimes Mission in Germany, that it is unnecessary for a case to be referred to the Commission before a search is made for a war criminal and a request is made to the Military Authorities for his surrender. Such procedure would not be in accordance either with the International Resolution defining the duties of the Commission nor does it comply with the directives issued by the American authorities as explained by Colonel Hodgson in his letter of September 3rd, 1945 or by the British authorities as stated in the letter from the Foreign Office dated 20th August, 1945. These directives contemplate that the normal and established practice is for the Commission, after due investigation, to put the accused on their List, and it follows from these directives that the normal procedure is departed from if an accused person is handed over without being listed by the Commission. The directives contemplate that that may be done only as an exceptional procedure to be adopted in urgent cases, and only after a careful examination of each case on its merits by the Commanding Officer of the forces by whom the accused is held.



SECRET  
Restricted.

MISC.10(1)  
February 14th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

PROCEDURE FOR SURRENDER OF WAR CRIMINALS

With reference to the discussion at the Commission meeting held on February 13th, in connection with document Misc.8, a further amended draft motion submitted by the Drafting Committee is circulated to members for their consideration. This will be placed on the agenda of the Commission meeting on February 20th.

DRAFT MOTION.

The United Nations War Crimes Commission is unable to accept the view which has been suggested by the authorities of one of its member States that it is unnecessary for a case to be referred to the Commission before a request is made to the Military authorities for the surrender of a war criminal for trial. Such a view would not be in accordance either with the International Resolution defining the duties of the Commission or with the practice of the American authorities as explained by Colonel Hodgson in his letter of September 3rd, 1945, or with the practice of the British authorities, as stated in a letter from the Foreign Office dated 20th August, 1945. The normal procedure is for the Commission after due investigation to put the accused on their List and it follows that it is departed from after an accused person is handed over without being listed by the Commission. Such a departure is only justified as an exceptional measure and after careful examination of each case on its merits by the Commanding Officer of the forces by whom the accused is held. It is the hope of the Commission that in any such cases the government concerned will at the same time forward a copy of the dossier to the United Nations War Crimes Commission.

RESTRICTED.  
(For members only.)

Misc.No. 11  
18th February, 1946.

PROGRESS REPORT OF WAR CRIMES TRIALS AS AT 31 JANUARY 1946.

	<u>Total Number of Cases Tried to Date.</u>	<u>Accused Involved.</u>	<u>Death:</u>	<u>Sentences: Imprisonment:</u>	<u>Acquitted:</u>
U S F E T	31	106	58	35	13
B A C R	36 <sup>x</sup>	128	30	55	43

<sup>x</sup> Includes 1 case CMF and 2 cases in NORWAY.

	<u>Cases Prepared and Awaiting Trial.</u>	<u>Accused Involved.</u>
U S F E T	48	147
B A O R	390*	1492.

\* Includes 62 cases of Polish victims involving 127 accused.  
(A number of these accused will be handed over to the Polish  
Authorities by arrangement with Polish Embassy.)

It is hoped to include in the February Progress Report, the figures from the French Zone of Occupation and from  
The National Offices.

Misc. No.12.  
20th February 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Synopsis (  
of Trial Reports

received by the United Nations War Crimes Commission from

National Authorities

by 20th February 1946.

Compiled by the Secretary to Committee III.

I. International Trials:

Transcripts of the Nuremberg Trial. (One Copy.)

II. British Transcripts:

- 1) Trial against Josef Kramer and 44 others.  
(British War Crimes Court, Lüneburg, 17th September to  
17th November, 1945.)  
Crimes committed in Belsen and Auschwitz Concentration camps.  
(See also Dr. Cyprian's report C.151 and Law Reports Series  
Nos. 1, 2, 3, 4 and 6.)

Verdict: 14 of the accused found not guilty.  
30 of the accused found guilty.

Against one accused the trial was not finished because of  
his illness.

The following sentences were imposed:

Death by hanging	11
Imprisonment for life,	1
" " 15 years	5
" " 10 "	9
" " 5 "	2
" " 3 "	1
" " 1 "	1
	<u>30</u>

- 2) Trial against Kapitänleutnant Heinz Eck and 4 others,  
(British War Crimes Court, Hamburg, 17th - 20th October, 1945)  
Killing of survivors of the Steam Ship PELEUS.  
(See also Law Reports Series Nos. 5 and 10.)

Verdict: All the accused were found guilty and the following sentences  
were imposed:

Death by shooting,	3
Imprisonment for life,	1
" " 15 years	1



- 3) The Almelo Case. Trial against G.O. Sandrock and 3 others.  
(British War Crimes Court at Almelo, Holland, 24th - 26th November, 1945.)  
Killing of a British pilot prisoner of war and a Dutch civilian.

Verdict: The accused were found guilty and the following sentences were passed:

Death by hanging, 2  
Imprisonment for 15 years 2.

- 4) The Dulak-Luft case. Trial against Erich Killinger and 4 other ,  
officers of the German Luftwaffe.  
(British War Crimes Court, Wuppertal, Germany, 26th November to 3rd December, 1945.)  
Ill-treatment of prisoners of war.

Verdict: 2 of the accused were found not guilty.  
3 were found guilty.

Sentences: Imprisonment for 5 years, 2,  
" " 3 " 1.

- 5) Trial against Johannes Oenning and another.  
(British War Crimes Court, Borken, Germany, 21st and 22nd December, 1945.)  
Killing of British Air Force officers.

Verdict: One of the accused was found not guilty,  
and the other, a 15-years old member of the Hitler Youth, was  
Sentence: found guilty and sentenced to 8 years imprisonment.  
(See also Trial and Law Reports Series No.11.)

- 6) Trial against 7 German civilians (Erich Heyer and 6 others)  
(British War Crimes Court, Essen, 18th - 22nd December, 1945.)  
Killing of 3 British airmen, prisoners of war.

Verdict and Sentence;  
2 of the accused were found not guilty. On the remaining  
5 who were found guilty, the following sentences were  
imposed:

Death by hanging 2  
Imprisonment for life 1  
" " 10 years 1  
" " 5 " 1

(See also Trial and Law Reports Series No.12.)

- 7) Trial against Hans Renoth and 3 others.  
(British War Crimes Court, Elten, Germany, 8th - 10th January, 1946.)  
Killing of Allied airmen.

Verdict: All the accused were found guilty.

Sentence: Death by hanging 1  
Imprisonment for 15 years 1  
" " 10 " 2.

III. Canadian Transcripts.

Trial against S.S. Brigadeführer Kurt Meyer.  
(Military Court held at Aurich, Germany. Trial completed  
28th December 1945.)

Verdict and sentence:

Kurt Meyer was found guilty and condemned to death for responsibility in connection with the shooting of Canadian prisoners of war, but not guilty of issuing any direct orders for such shooting. The confirming authority commuted the sentence to one of life imprisonment.

IV. War Crimes Trials Reports received from the United States Commissioner.

- 1) Trial against Anton Schosser and 2 others.  
(Military Commission, trial completed 15th September, 1945)  
Murder of 6 American Airmen.  
The accused Anton Schosser was tried separately and found guilty and sentenced to be hanged. The sentence was approved.  
The other accused were acquitted in a trial on 17th September 1945.  
(See also Trial and Law Reports Series No.9.)

- 2) Trial against Georg Schultheiss.  
(Military Commission. Trial completed 21st September 1945.)  
Murder of unarmed American Aviator.

Verdict: Acquittal.

(See also Trial and Law Reports Series No.9.)

- 3) Trial against Dominikus Thomas.  
(Military Commission. Trial completed 15th October, 1945.)  
Murder of Captured Airmen.

Verdict and sentence:

Guilty, accused sentenced to be hanged. Sentence confirmed, method of execution commuted into death by shooting.

(See also Trial and Law Reports Series No.9.)

- 4) Trial against Karl Neunobel, Gustav Weber and Karl Block.  
(Military Commission. Trial completed 15th October, 1945).  
Murder of captured American airmen.

Verdict and sentence:

Two of the accused were found guilty. One was sentenced to death by hanging. This sentence was approved and commuted into death by shooting.

Sentence on one accused was confinement and hard labour for 10 years. This sentence was disapproved by the Commanding General.

3rd accused - nolle prosequi.

(See also Trial and Law Reports Series No.9.)

- 5) Trial against Wilhelm Dietzmann and another.  
(Military Commission. Trial completed 11th October 1945.)  
Murder of an American prisoner of war.

Verdict and sentence:

One of the accused was found not guilty.  
One was found guilty and sentenced to death by hanging.  
The commanding General ordered that the method of execution  
be by shooting.  
(See also Trial and Law Reports Series No.9.)

- 6) The Hadamar Case. Trial against Alphons Klein and six others.  
(Military Commission. Trial completed 15th October 1945.)  
Murder of allied nationals by injections of poisonous drugs  
at the Hadamar Institution.

Verdict: All the accused were found guilty.

Sentence:	Death by hanging	3
	Imprisonment for life	1
	" " 35 years	1
	" " 30 years	1
	" " 25 "	1.

The sentences were approved, but the death sentences were  
modified to death by shooting.

(See also Colonel Wade's Report Doc.C.150 and Trial and  
Law Reports Series No.8.)

- 7) Trial against Josef Hangobl.  
(Military Commission. Trial completed 18th October 1945.)  
Murder of captured American airmen.

Verdict and sentence:

Guilty and sentenced to life imprisonment. The sentence  
was commuted into hard labour for 10 years.

- 8) Trial against Clemens Wiegand.  
(General Military Government Court, trial completed  
16th October, 1945.)  
Murder of captured American airmen.

Verdict and sentence:

Guilty and sentenced to death by decapitation. The  
sentence was confirmed, but it was ordered that the  
method of execution be by hanging.

- 9) Trial against Peter Back.  
(Military Commission. Trial on 16th June 1945.)  
Murder of an American airman.

Verdict and sentence:

The accused was found guilty and sentenced to death by  
hanging. The findings and sentence were approved, but  
it was ordered that the execution of the sentence be  
stayed pending further orders.



- 10) Trial against Gunther Thiele and Georg Steinert.  
(Military Commission, trial 13th June 1945.)  
Order to kill an American prisoner of war and execution  
of this order.

Verdict and sentence:

Both accused were found guilty and sentenced to death by hanging.

- 11) Trial against Albert Bury and another.  
(Military Commission, trial 15th and 16th July, 1945.).  
Killing of American Prisoner of war.

Verdict and sentence:

Both were found guilty and sentenced to death by hanging.  
Sentences were approved.

- 12) Trial against Ernst Waldmann.  
(Military Commission, trial 28th July 1945.)  
Killing of a member of the American forces.

Verdict and sentence:

Guilty and sentenced to death by hanging.  
Sentence confirmed.

- 13) Trial against Josef Hartgen and 10 others.  
(Military Commission. Trial 25 - 31 July, 1945.)  
Killing of American prisoners of war.

Verdict: One of the accused was found not guilty.  
The other 10 were found guilty.

Sentence:      Death by hanging,                      7  
                  Hard Labour for 25 years            1  
                  "                      "                      15                      "                      2.

Two of the death sentences (against two women) were  
commuted into confinement for 30 years, otherwise the  
sentence was confirmed.

- 14) Trial against Heinrich Deubert and 3 others.  
(Military Commission, trial on 15th August 1945.)  
Beating and striking American prisoners of war.

Verdict: All the accused were found guilty.

Sentence:      Hard Labour for 15 years,      1  
                  Hard Labour for 2 years,      1  
                  (One year of the sentence was remitted by the Commanding Officer.)  
                  Hard Labour for 1½ years,      1  
                  (Six months remitted by the Commanding Officer.)  
                  Hard Labour for 1 year,      1  
                  (Six months remitted by the Commanding Officer.)

- 15) Trial against Franz Strasser, Austrian National.  
(Trial by Military Commission at Dachau on 24th August 1945).  
Shooting of American airmen at or near Kaplitz, Czechoslovakia.

Verdict and Sentence:

Found guilty and sentenced to death by hanging.  
Sentence confirmed.

- 16) Trial against Heinrich Flauaus and Nikolaus Fachinger.  
(Military Commission on 3rd August 1945.)  
Killing of two American airmen.

Verdict and sentence:  
Both found guilty. Sentenced to death by hanging.  
Sentence confirmed.

- 17) Trial against Heinz Endress.  
(General Military Court, Dachau, 13th November 1945.)  
Killing of 4 members of the United States Army.

Verdict and sentence:  
Accused found guilty and sentenced to death by decapitation.  
Sentence approved but commuted to death by hanging.

- 18) Trial against August Kobus.  
(General Military Court, 13th and 14th November 1945.)  
Killing of prisoners of war.

Verdict: Guilty.  
Sentence: Death by shooting.  
The Commanding Officer changed the sentence to death by hanging.

- 19) Trial against Konrad Kremer and Wilhelm Krahn.  
(Intermediate Military Government Court, 18th December, 1945)  
Wrongfully assaulting an allied airman, prisoner of war.

Verdict and sentence:  
One of the accused was acquitted. The other was  
sentenced to imprisonment for 5 years. Sentence confirmed.

- 20) Trial against General Anton Dostler.  
(Military Commission at Caserta, Italy, 8th October 1945  
and following days.)  
Ordered the shooting summarily of 15 American prisoners  
of war.

Verdict and sentence:  
Found guilty and sentenced to death by shooting.  
Sentence approved, confirmed and executed.

#### V. Translations of Broadcast Reports on Czechoslovak Trials.

- 1) Trial against Josef Pfitzner, Deputy Mayor of Prague.  
(Extraordinary People's Court, Prague, 5th and 6th September  
High Treason and treachery. 1945.)

Sentence: Death by hanging.

- 2) Trial against S.S. Obergruppenfuhrer Walter Schmitt,  
(Extraordinary People's Court, Prague, 18th September 1945)  
Responsibility for crimes committed in Concentration Camps  
Mauthausen, Schlossenburg, Ravensbruck, Sachsenhausen and  
other places.

Sentence: Death by hanging.

- 3) Trial against Franz Kopler,  
(Extraordinary People's Court, Prague, 18th September 1945.)  
Torture of political prisoners in Gestapo prison.

Sentence: 20 years penal servitude.

VI. Summary Received from the Polish Representative.

- 1) Trial against Herman Vogel and 5 others for crimes committed in the extermination camp Majdanek.  
(Polish Special Criminal Court in Lublin, 27th November 1944 and 2nd December 1944.)

Verdict: All accused were found guilty.

Sentence: Death by hanging.

(See also Trials and Law Reports Series No.7.)



SECRET.  
Restricted.

Misc.No.13.  
22nd February 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Amendments of the British Regulations for the Trial of War Criminals.

Note by Egon Schwelb, Legal Officer.

Since the British Regulations for the Trial of War Criminals were issued by Royal Warrant of the 14th June 1945, (Army Order 81/1945) (see Dec.C.131,) two amendments to the regulations have been enacted.

The one made by Royal Warrant of 4th August 1945 (Army Order 127/1945) deals with the joint trial of members of units or groups. The second, made by Royal Warrant of 30th January 1946 (Army Order 8/1946) deals with the trial of an accused in his absence.

The First Amendment to the Regulations. (Army Order 127/1945.)

Regulation 8 (ii) of the Original Regulations reads as follows:

" Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as prima facie evidence of the responsibility of each member of that unit or group for that crime. "

By Royal Warrant of 4th August 1945, the following words have been added to this paragraph:

" In any such case all or any members of any such unit or group may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the Court. "

This amended regulation has been applied to the procedure in the Belsen trial (See Law Reports Series No.1, page 2/3) It is respectfully submitted that it is doubtful whether this provision, which categorically forbids applications for separate trials, did not prove more of an obstacle to, than a help towards a speedy trial. It may be that this rigid provision was one of the reasons for the long duration of the Lüneburg trial.

The Second Amendment to the Regulations. (Army Order 8/1946.)

Rule 119(C) of the Rules of Procedure, 1926, which under Regulation 3 of the Royal Warrant, Army Order 8/1946, also applies to the procedure of Military Courts for the Trial of War Criminals, reads as follows:

" The proceedings shall be held in open court in the presence of the accused, except on any deliberation among the members, and the judge-advocate (if any) when the court may be closed. "

By the second amendment to the Regulations the following provision has been added to Regulation 3:

" Notwithstanding the provisions of Rule of Procedure 119(C) a Court may, after his arraignment, proceed with the trial of an accused in his absence, if satisfied that so doing involves no injustice to such accused. "

This provision was obviously made as a consequence of the experience, inter alia, in the Belsen trial, where the sudden illness of one of the accused, (Gura), gave rise to difficult problems of procedure.

From the new provision it may be seen that, though allowing trial in the absence of the accused, it safeguards the rights of the accused, because it allows procedure in the accused's absence only if the Court is satisfied that so doing involves no injustice to him.

SECRET  
Restricted.

MISC. 14.  
DRAFT.

UNITED NATIONS WAR CRIMES COMMISSION.

Documents Committee.

DRAFT RECOMMENDATION.

THE COMMISSION

having considered the replies that have been received to the Chairman's letters of November 12th, 1945, from the Ministers for Foreign Affairs of France and Great Britain and the United States Secretary of State, concerning the disposal of documents relating to European War Crimes collected at Nuremberg and elsewhere in the European Theatre for purposes of prosecutions,

RECOMMENDS that all such documents, excepting those over which Governments possessing them desire to retain control, should be collected, after the completion of the trials and housed in a Research Centre, under the control of an appropriate International authority. The Commission is of opinion that London would be the most suitable place for the establishment of such a Research Centre.

Restricted.  
SECRET.  
(For members only.)

Misc. No. 15.  
27th February, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

PROGRESS REPORT OF CZECHOSLOVAK TRIALS OF WAR CRIMINALS AND QUILSLINGS  
Period 1st October - 30th November, 1945.

Report covers only the Western Provinces of Bohemia and Moravia - Trials held in Slovakia will be reported later.

<u>Total number of Cases Tried.</u>	<u>Accused involved.</u>	<u>Death</u>	<u>Sentences.</u> <u>Imprisonment.</u>	<u>Acquitted.</u>
1291	1291 (a)	44	1036 (b)	147

(a) 64 handed over to ordinary Courts.

(b) Includes 52 life sentences.  
Total number of years imposed 8348



RESTRICTED.  
SECRET.

Misc.No.16.  
1st March, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

The following document containing the provisions under which the American Military Commissions in the Mediterranean Theater of Operations of the United States Army operate, is being circulated for the information of the Commission.

The corresponding provisions valid in other theaters of the United States Army will be circulated as soon as they become available.

" HEADQUARTERS  
MEDITERRANEAN THEATER OF OPERATIONS,  
UNITED STATES ARMY  
APO 512.

CIRCULAR

NUMBER 114.

23 September 1945.

REGULATIONS FOR THE TRIAL OF WAR CRIMES.

1. As used in these regulations the expression "war crime" means a violation of the laws or customs of war.
2. Military commissions appointed by the Theater Commander or by other commanders under authority delegated to them by the Theater Commander, shall have jurisdiction to try all cases referred to them of persons accused of committing war crimes.
3. A military commission shall consist of not less than three officers, the senior present at any trial being president. For each military commission there shall be appointed a judge advocate and a defence counsel with such assistants as may be required, whose duties shall be similar to those of like officers before general courts-martial.
4. The president of a military commission is empowered to appoint court reporters and interpreters who shall be entitled to such compensation as may be authorized by law and regulation.
5. A formal charge and investigation as provided for court-martial procedure is not required for military commissions. The charge may state the offense by its legal name and may describe it in terms of international law. The specification may in non-legal terms set forth the details of the act constituting the offense. It should also include expressions to enable the commission to determine its jurisdiction both in respect of the offense and the accused. The charges should be subscribed by any person subject to military law but need not be under oath.
6. Members of a military commission may be challenged for cause either by the accused or by the judge advocate, but they shall not be subject to removal upon a peremptory challenge.

7. The oaths prescribed by Article of War 19 for courts-martial shall be applied to military commissions, judge advocates, interpreters and witnesses with such modification as to make them appropriate to military commissions.

8. Military commissions may conduct their proceedings as may be deemed necessary for a full and fair trial, having regard for but not being bound by, the rules of procedure prescribed for general courts-martial.

9. The fact that an accused acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the commission determines that justice so requires.

10. The technical rules of evidence shall not be applied but any evidence shall be admitted which, in the opinion of the president of the commission, has any probative value to a reasonable man. Without limiting the scope of the above rule the following in particular will apply:

a. If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the president of the commission, unable to attend without undue delay, the commission may receive secondary evidence of statements made by or attributed to such witness.

b. Any document purporting to have been signed or issued officially by any member of any allied or enemy force or by any official or agency of any allied, neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof.

c. Any report by any person when it appears to the president of the commission that the person in making the report was acting within the scope of his duty may be admitted in evidence.

d. Any deposition or record of any military tribunal may be admitted in evidence.

e. Any diary, letter or other document may be received in evidence as to the facts therein stated.

f. If any original document cannot be produced, or, in the opinion of the president of the commission, cannot be produced without undue delay, a copy or translated copy of such document or other secondary evidence of its contents may be received in evidence. A translation of any document will be presumed to be a correct translation until the contrary is shown.

g. Photographs, printed and mimeographed matter, and true copies of papers are admissible without proof.

h. Confessions are admissible without proof of circumstances or that they were voluntarily made. The circumstances surrounding the taking of a confession may be shown by the accused and such showing may be considered in respect of the weight to be accorded it, but not in respect of its admissibility.

11. A military commission shall record its proceedings as nearly as practicable as prescribed for a general court-martial.

7. The oaths prescribed by Article of War 19 for courts-martial shall be applied to military commissions, judge advocates, interpreters and witnesses with such modification as to make them appropriate to military commissions.

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11. A military commission shall record its proceedings as nearly as practicable as prescribed for a general court-martial.



12. Convictions and sentences shall be determined by the concurrence of at least two-thirds of the members present at the time the vote is taken.

13. Appropriate sentences imposed by a military commission are:

- a. Death (by hanging or shooting).
- b. Confinement for life or a lesser term.
- c. Fine.

14. No sentence imposed by a military commission shall be carried into execution until it shall have been approved by the appointing authority.

15. No sentence of death shall be carried into execution until it shall have been confirmed by the Theater Commander, but where the military commission that imposed the death sentence was appointed by the Theater Commander and he has acted on the sentence as approving authority, no additional confirmation by him is necessary.

By COMMAND OF GENERAL MCILRNEY:

M. G. WHITE  
Major General, GSC,  
Acting Chief of Staff.

"

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Misc.No.17.  
15th March, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Second Supplement to the Synopsis of Trial Reports Received.  
(Misc.12 and 12(A).)

In addition to the Trial Reports registered in Doc. Misc.12 and the first supplement thereto, (Misc.12(A)) the following reports have been received by the United Nations War Crimes Commission by 15th March, 1946.

II. British Reports.

The following summary reports have been received in respect of trials held by British Military Courts for the Trial of War Criminals, where there has been no shorthand writer.

- 12) Hans Werner Wandke, Lieut of the German Panzer Grenadier Regt.  
Date & Place of Trial: 17th October, 1945, Wuppertal.  
Charge: Committing a war crime in that he at Elst, Holland, on 3rd October 1944, while an officer of the German Armed Forces, having held up his hands in token of surrender, in violation of the laws and usages of war, fired on and wounded Major D.I.M. Robbins, 4th Bn. Wiltshire Regt.  
Verdict: Not Guilty.
- 13) Laszlo Pato, Lieut. Hungarian Army.  
Date & Place of Trial: 3rd December 1945, Celle.  
Charge: Committing a war crime in that he at Belsen, Germany, on 15th April 1945, in violation of the laws and usages of war, did kill two allied nationals whose identity is unknown.  
Verdict: Not Guilty.
- 14) Lt. Ujvary, Hungarian Army.  
Date & Place of Trial: 3rd December, 1945, Celle.  
Charge: Committing a war crime in that he at Belsen, Germany, on 14th April 1945, in violation of the laws and usages of war, did kill Bella Freundlich, an allied national.  
Verdict: Not Guilty.
- 15) Ernst Herbert Tanneberger, a German national.  
Date & Place of Trial: 12th December 1945, Celle.  
Charge: Committing a war crime in that he:  
(1) At Ilten in or about the month of December 1944, in violation of the laws and usages of war, when Director of a Salt Mine, issued instructions to German workers to beat foreign workers of any nationality if their work was not satisfactory.  
(2) at Ilten in or about the month of February 1945, in violation of the laws and usages of war ill-treated John Mendra, a Polish national.  
Verdict: Not Guilty on both charges.
- 16) Alois Stockl and Fritz Moller, German Nationals.  
Date & Place of Trial: 17th December, 1945. Borken.  
Charge: Committing a war crime in that they in the neighbourhood of Rhede, Germany on or about 17th December 1944, in violation of the laws and usages of war, were concerned in the ill-treatment of an unknown British airman prisoner of war.  
Verdict: Both Not Guilty.

- 17) Hermann Muller, Wilhelm Haring, Heinrich Fruchtnicht and Wilhelm Intermann, German citizens.  
Date & Place of Trial: 17th December 1945, Verden.  
Charge: Committing a War Crime in that they at Dauelsen, Kreis Verden, in or about the month of October 1943, in violation of the laws and usages of war were concerned in the ill-treatment of an unknown Allied airman after he had baled out of an aircraft which had been damaged in action.  
Verdict: All not guilty.
- 18) Vajna, Cadet Officer of the Hungarian Army.  
Date & Place of Trial: 22nd December 1945, Gifhorn.  
Charge: Committing a War Crime in that he at Belsen, Germany, on or about 13th April 1945, in violation of the laws and usages of war, did shoot at a number of unarmed civilian internees, Allied Nationals.  
Verdict: Not Guilty.
- 19) Friedrich Hoppe, German National.  
Date & Place of Trial: 11th December, 1945, Wolfenbüttel.  
Charge: Committing a War Crime in that he at Hallendorf, Germany, in or about the month of February 1945, in violation of the laws and usages of war, did ill-treat an unknown allied prisoner of war.  
Verdict: Guilty.  
Sentence: 14 days' imprisonment. Finding and sentence confirmed.
- 20) Gustav Klever, formerly Oberleutnant of the German Navy.  
Date & Place of Trial: 10th December, 1945, Cuxhaven.  
Charge: Committing a War Crime in that he at Cuxhaven, in or about the month of April 1945 in violation of the laws and usages of war, did ill-treat Allied Prisoners of War by depriving them of American Red Cross parcels.  
Verdict: Guilty.  
Sentence: Imprisonment for one year.  
Finding and sentence confirmed.
- 21) Karl Heinz Kniep, formerly an officer in the German Army.  
Date & Place of Trial: 30th Nov.-1st Dec., 1945, Hamburg.  
Charge: Committing a War Crime in that he at Bray-et-Lu, France, on 21 August 1944 being then in command of 3 Company Fusilier Bn 49, in violation of the laws and usages of war, gave orders to the Platoon Commanders of the said Company, that no prisoners were to be taken and that any prisoners taken were to be shot.  
Special Finding:  
Is guilty of the charge as laid with the exception of the words "and that any prisoners taken were to be shot".  
Sentence: Three years Penal Servitude.  
Finding and sentence confirmed but two years imprisonment remitted.
- 22) Hans Wichman, formerly an NCO in the German Army.  
Date & Place of Trial: 29th November 1945, Hamburg.  
Charge: Committing a war crime in that he at Bray-et-Lu, France, on 21 Aug 44, being then in command of 2 Platoon of 3 Company Fusilier Bn 49, in violation of the laws and usages of war gave orders to the said platoon that no prisoners were to be taken and that any prisoners taken were to be shot.  
Verdict: Guilty.  
Sentence: 3 years Penal Servitude.  
Finding and sentence confirmed but 2 years imprisonment remitted.



23) Heinz Zaun, formerly an NCO in the German Army.

Date & Place of Trial: 29th November 1945, Hamburg.

Charge: Committing a War Crime in that he at Bray-et-Lu, France, on 21 Aug 44, being then in command of the heavy platoon of 3 Company Fusilier Bn 49, in violation of the laws and usages of war, gave orders to the said platoon that no prisoners were to be taken and that any prisoners taken were to be shot.

Verdict: Not Guilty.

Restricted.

UNITED NATIONS WAR CRIMES COMMISSION.

MISC. No. 18.  
7th March, 1946.

N O T E

ON THE UNIVERSALITY OF CRIMINAL JURISDICTION.

In connection with the Report by Committee III on the Alsatian deserters case (Doc. C.174) the question was raised at the meeting of the Commission on 27th February whether the principle of universality of jurisdiction over war crimes, particularly the rule that military commanders may try war criminals in their custody regardless of the nationality of the victim or the place where the offence was committed, was restricted to Anglo-American jurisprudence and foreign to the law of the Continental European countries.

The Chairman of the Commission charged the Legal Officer, Dr. Schwelb, with the preparation of a report on the subject.

The report, presented to the Chairman by the Legal Officer on March 4th, 1946, is herewith circulated for the information of members.

- I. At the outset, I should like to point out that the long discussions and examinations which preceded the adoption of the Commission's Recommendation C.52 of 22nd September 1944 are not exactly in point as far as the present issue is concerned. Then the representatives of France and the smaller European countries made reservations based on the apprehension lest their territorial sovereignty be infringed by American, British or mixed Allied Military Courts, trying on their territory war crimes committed on their territory. This problem does not arise at present, the less so as the jurisdiction of British, American and Soviet Military Courts on liberated allied territory has been made the subject of agreements concluded in 1944 between the individual great Powers and the respective allied countries. The treaties concluded by the Western Powers have not been made public, but I know that this problem has been settled therein.
- II. The second preliminary remark which it is necessary to make is that the jurisdiction of allied Military Courts, Military Government Courts, Military Commissions and similar organs, established in Germany and wielding jurisdiction in Germany are not affected by the whole discussion either. Since the Declaration of Berlin, dated 5th June 1945, the four occupying Powers have been the territorial sovereigns of Germany, they have been in possession of unrestricted legislative competence which, incidentally, creates an adequate legal basis for the prosecution of German war criminals. (Kelsen, "The Legal Status of Germany according to the Declaration of Berlin", The American Journal of International Law, July 1945.)

The right of British, American, French and Russian Occupation Courts of all kinds to try German war criminals for crimes committed in Germany and elsewhere is, therefore, independent of the question whether or not the principle of universality of jurisdiction over war crimes is recognised, because it emanates from the territorial sovereignty of the four Allied Powers over Germany.

III. The reservation made in Doc. C.52, paragraph 2, regarding the recognised right of a Military Commander to constitute Military Tribunals, etc. was relevant only to allied territory in the course of liberation, and has, so far as Germany is concerned, been merged in the far wider jurisdiction incidental to the Declaration of 5th June, 1945.

IV. Prima facie, it appears to be rather improbable that the principle of universality of jurisdiction over crimes in general and war crimes in particular should be a peculiarity of the Anglo-Saxon legal systems and foreign to the Continental legal orders. It is well known that it is Great Britain and the United States who have, to a far larger extent than the States of Continental Europe (with the possible exception of Denmark and Portugal) strictly adhered to the principle of territoriality of criminal jurisdiction. It was only recently that American and British Courts took a somewhat wider view of the criminal jurisdiction vested in them; as to American developments, see the paper by Professor Lawrence Preuss, "American Conception of Jurisdiction with respect to Conflicts of Law on Crime", Transactions of the Grotius Society, of 1944, p. 184; with regard to England, see the recent decision of the Court of Appeal in *R.v. Joyce* and the decision of the House of Lords in *Joyce v. Director of Public Prosecutions*.

V. I suppose that no authority need be adduced for the statement that both under the conception of International law of European sea-faring countries and under their domestic criminal codes, the crime of piracy can be punished by the Court of any country that gets hold of the pirate. This jurisdiction has from time immemorial been based on the consideration that pirates are hostes generis humani and that it is in the interest both of the community of nations and of every individual nation that their punishment should be secured as safely and as efficiently as possible.

Piracy stands, of course, on such an exceptional basis that it throws no light on the question of penal jurisdiction generally. (Beckett, British Yearbook of International Law, 1925, p.45.) Piracy stands alone in this category by the common law of nations, though by convention certain other offences have been placed in the same position, e.g. counterfeiting currency, slave trade, etc.

Attempts have been made recently to put war criminals in the same category as pirates, the underlying consideration obviously being that people who sent millions of their victims into gas chambers, tortured hundreds of thousands in concentration camps and murdered prisoners of war, are certainly not less hostes generis humani than pirates. It must, however, be added that no authority, judicial or otherwise, can, at present, be adduced for this proposition equating the status of war criminals to that of pirates.

It may be mentioned in this connection that the Four Power Agreement of 8th August 1945, does by no means restrict the jurisdiction of the International Military Tribunal to crimes committed on the territory of the contracting Powers (territorial theory) or to crimes committed by nationals of the contracting Powers (active national theory) or to crimes committed against nationals of the contracting Powers (passive national theory).

There is one accused in the dock at Nuremberg, (Papen), who for the most part of the material time lived in Austria and in Turkey, (He is, of course, also charged with activities conducted on German territory, e.g. promoting Hitler's accession to power.)

The International Military Tribunal for the Far East has the power to try and punish "Far Eastern war criminals". It has jurisdiction irrespective of the nationality of either the perpetrator or



the victim and of the place where the crime was committed (Article 5. of the Charter, for the text see Doc. C.182.)

VI. In very many jurisdictions at least certain crimes committed by foreigners abroad are subject to the national criminal jurisdiction. Austria, Belgium, Brazil, Chile, China, Czechoslovakia, France, Germany, Greece, Holland, Hungary, Japan, Italy, Mexico, Norway, Poland, Spain, Sweden, Switzerland, Russia and Turkey all have provisions giving their courts power to punish aliens for some acts committed abroad.

In addition to this type of legislation, based on the so-called theory of protection, there is a considerable number of States that vest in their courts power to punish foreigners for crimes committed abroad who otherwise would go unpunished. (M. Maurice Travers in his book "Le Droit Pénal International" classifies this type of jurisdiction under the heading "De la Présence de l'auteur du fait sur le sol de l'état qui a édicté la loi pénale".) The idea underlying all these municipal provisions is in German called: "Weltstrafrechtsprinzip" or "Universalprinzip" and was first adopted in Section 40 of the Austrian Criminal Code of 1852, which is to the effect that if a foreign State whose national a criminal is, or on whose territory he has committed a crime does not ask for his extradition, he shall be tried by the Austrian court, although his crime was committed abroad and no special interest of the Austrian State or of an Austrian national was involved. This provision is in force at present:

- 1) In Austria,
- 2) in the Western Provinces of Czechoslovakia, and, if I am not mistaken,
- 3) in the North-Western Provinces of Yugoslavia, and
- 4) in the former Austrian part of Italy.

The provision was further in force

- 5) in Southern Poland (Galicia) until 1932 when it was replaced and extended by Art. 10 of the Polish Criminal Code of 11th July 1932. Similar provisions are contained in the criminal code of Hungary (Articles 9 and 16) which are at present in force in:
- 6) Hungary,
- in the Eastern part of Czechoslovakia, (Slovakia),
- 7) in part of the Soviet Union (Sub-Carpathian Ukraine),
- 8) in Western Roumania, and
- in Northern Yugoslavia.

Provisions of this kind are further contained

- 9) in the Criminal Code of Italy. (Art. 6 (3)) and
- 10) of the Argentine.
- 11) Art. 6. of the Turkish Penal Code of 1926 (this is the provision which was in point in the "LOTUS" case decided by the Permanent Court of International Justice in 1927) gives to Turkish courts the right to try crimes committed by foreigners abroad if there is no extradition treaty or the extradition has not been accepted either by the Government of the locality where the guilty person has committed the offence or by the Government of his own country

From this it follows that the criminal law of at least ten European countries and one South American contains provisions based on the principle of universality.

VII. The Convention for the Prevention and Punishment of Terrorism signed at Geneva on 16th November 1937 by Albania, Argentina, Belgium, India, Bulgaria, the Dominican Republic, Egypt, Ecuador, Spain, Estonia, France, Greece, Norway, The Netherlands, Peru, Roumania, Czechoslovakia, Turkey, Venezuela and Yugoslavia, provides in Art. 10:

Foreigners who are on the territory of a High Contracting Party and who have committed abroad any of the offences set out in Articles 2 and 3 shall be prosecuted and punished as though the offence had been committed in the territory of that High Contracting Party, if the following conditions are fulfilled - namely, that:-

- a. Extradition has been demanded and could not be granted for a reason not connected with the offence itself;
- b. The law of the country of refuge recognises the jurisdiction of its own courts in respect of offences committed abroad by foreigners;
- c. The foreigner is a national of a country which recognises the jurisdiction of its own courts in respect of offences committed abroad by foreigners.

Here, representatives of 20 States, among them eight member States of the United Nations War Crimes Commission, have recognised that in International law the municipal law of any country may confer on its own courts jurisdiction in respect of offences committed by foreigners abroad (Art. 10 b. and c.) Although Art. 18 of the Convention provides that the participation of a High Contracting Party in the Convention shall not be interpreted as affecting that party's attitude on the general question of the limits of jurisdiction as a question of International law, the Convention of 1937, though it never came into force, bears witness to the fact that, to say the least, there is neither a general rule of International law, nor a locally restricted rule of International law as applied on the European Continent, to the effect that a State, in vesting in its courts jurisdiction based on the "Weltstrafrechtsprinzip" would thereby be acting contrary to International law.

It may be said, therefore, that there is no prohibitive rule of International law barring States from enacting legislation based on the principle of universality. The Permanent Court of International Justice has said in the Lotus case that where there is no prohibitive rule of International law, "every State remains free to adopt the principles which it regards as best and most suitable" and that any exception to the right of States must be "conclusively proved". It may, therefore, be said that "as municipal jurisprudence is divided" also on the question of the Weltstrafrechtsprinzip, i.e. as some States have enacted legislation based on it and some have not, it is hardly possible to find an indication of the existence of a restrictive rule of International law.

VIII. It is, therefore, submitted that a State which by its municipal law vests in its courts, military and otherwise, the right to try war crimes wherever committed, and irrespective of the nationality of the perpetrator and of the victim, does not thereby violate either a general, or a particular Continental European, rule of International law.

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Misc.No.19.  
15th March 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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Compiled by Egon Schwelb, Legal Officer.

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(For members only)

Misc. 20  
20th March 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Progress Report of War Crimes Trials as at 28th February, 1946.

<u>Total Number of Cases Tried to Date.</u>		<u>Accused Involved.</u>	<u>Death.</u>	<u>Sentences. Imprisonment</u>	<u>Acquittal.</u>
USFET	36	117	63	38	16
BAOR	54	161 )	39	74	52
CMF	3	4 )			
ALFSEA +	12	36	14	17	5
AUSTRALIA	Not given	164	58	74	32
FRANCE #	Not given	72	49	21	2

+ Singapore.

# as at 31st. January, 1946.

<u>Cases Prepared and awaiting Trial</u>		<u>Accused Involved.</u>
USFET	59	181
BAOR	93 <sup>x</sup>	296 (59 accused not in custody)
CMF	20	56 (18 accused not in custody)

x includes 46 cases of Polish victims involving 111 accused

x in addition, there are 354 cases in BAOR and CMF ready for trial involving 1062 individuals but no accused in custody.

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Misc. 21.  
25th March, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Progress Report of War Crimes Trials in the Pacific Ocean Area (P.O.A) by the American Naval Forces.

Up to February 1st, 1946.

<u>Cases</u>	<u>Accused Involved</u>	<u>Death</u>	<u>Sentences</u>	
			<u>Imprisonment</u>	<u>Not Stated</u>
GUAM	24	6	16	2
MILLE	10	6	4	
JALUIT	5	3	1	1
WAKE	3	2		1

NOTE: The Pacific Ocean Area is generally the area between North America and part of South America on the East and the Phillipine Archipelago and Japan on the West - some of the area being South of the Equator.

The above figures relate to trials conducted by the American Naval Forces only.



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Misc. No.22,  
25th March, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Third Supplement to the Synopsis of Trial Reports Received.

(Misc.Nos. 12, 12(A) and 17.)

In addition to trials reports registered in Documents Miscellaneous Nos. 12, 12(A) and 17, the following reports have been received by the United Nations War Crimes Commission by the 25th March, 1946.

II. British Transcripts.

- 24) Full transcript of the Trial against Major Karl Rauer and six others.  
Date & Place of Trial: (British Military Court for the Trial of War Criminals, Wuppertal, 12th - 26th February, 1946.)  
Charge: Being concerned in the killing of Allied Aircrew Prisoners of War.  
Verdict: Guilty.  
Sentence: All seven to suffer death by being hanged.

The following summary reports have been received in respect of trials held by British Military Courts for the Trial of War Criminals, where there has been no shorthand writer present.

- 25) Otto Thiesze, Civilian.  
Date & Place of Trial, 28th-29th December 1945, Hameln.  
Charge: 1) Committing a War Crime at Liebenau, Germany in the month of May 1942 in violation of the laws and usages of war, did ill-treat causing the death of, an unknown allied national.  
2) Committing a War Crime at Liebenau, Germany, in the month of June 1943, in violation of the laws and usages of war, did ill-treat an unknown Polish national.  
Verdict: 1) Guilty, except that offence occurred in "or about" the month of May 1942 and excepting the words "causing the death of".  
2) Not Guilty.  
Sentence: Three years' imprisonment.  
Sentence confirmed.
- 26) Ernst Stegner, Civilian.  
Date & Place of Trial, 29th and 30th January 1946, Hamm.  
Charge: Committing a war crime in that he at Hamm, Germany, between 1st day of September 1943 and 31st day of December 1944, in violation of the laws and usages of war, ill-treated Kasimierz Kowakzyk; Jan Pietrzak, Josef Szczepanski, and other Polish nationals.  
Verdict: Not Guilty.
- 27) Helmuth Jung, (Dr.) German Medical Corps.  
Date & Place of Trial. 28th January 1946.  
Charge: Committing a war crime in that he at Kloster Haina between 1 April 1942 and 31 December 1943 in violation of the laws and usages of war when a Medical Officer concerned with the treatment of wounded British prisoners of War, did ill-treat certain of the said prisoners of war.  
Verdict: Not Guilty.

28) Otto Thielke,

Date & Place of Trial: 8th January 1945.

Charge: 1) Committing a War Crime in that he at Schonweide in or about the month of May 1942, in violation of the laws and usages of war, ill-treated Victoria Romanayak, a Polish national.  
2) Committing a War Crime in that he at Schonweide in the year 1943 in violation of the laws and usages of war, ill-treated an unknown Polish national.  
3) Committing a War Crime in that he at Schonweide in the year 1943 in violation of the laws and usages of war, ill-treated an unknown Polish national.

Verdict: All charges, Guilty.

Sentence: Two years' imprisonment without hard labour.  
Sentence confirmed.

29) Hans Hagel.

Date & Place of Trial: 3rd February, 1946, Celle.

Charge: Committing a war crime in that he at Stolle, between the years 1944 and 1945, in violation of the laws and usages of war, ill-treated Szymczak Leckadie and Yolieuw Michalowski, Polish nationals, and other Polish nationals.

Verdict: Not Guilty.

30) Otto Ruhmann,

Date & Place of Trial: 25 January 1946, Celle.

Charge: Committing a war crime in that he at Sehnde on or about 24 June 1944, in violation of the laws and usages of war ill-treated Jan Nowak and Josef Kozka, Polish nationals.

Verdict: Guilty.

Sentence: Two years' imprisonment.  
Sentence confirmed.

31) Heinrich Hoff.

Date & Place of Trial: 25th - 27th January, 1946.

Charge: Committing a war crime in that he at Ilten between the years 1943 and 1945, when camp leader of a foreign workers camp, in violation of the laws and usages of war, did ill-treat Florian Klimczak and John Rzeszotarski, Polish nationals and other Polish nationals inmates of the said camp.

Verdict: Guilty, except for the words "and other Polish nationals".

Sentence: Imprisonment for one day.  
Sentence confirmed.

32) Wilhelm Schroder.

Date & Place of Trial: 13th and 14th February 1946.

Charge: Committing a war crime in that he at Nienburg between June 1944 and May 1945 when second in command of a foreign labour camp in violation of the laws and usages of war, ill-treated Kazimir Tomaszewski, a Polish national and other Polish nationals.

Verdict: Not Guilty.

33) August Wille and Doris Wille.

Date & Place of Trial: 1st - 3rd February 1946, Celle.

Charge: Committing a war crime in that they at Wendischevern between the years 1940 and 1945, in violation of the laws and usages of war, did ill-treat Amelia Sukiennick, Czeslawa Kuligowska and Jan Grzempa, Polish nationals, and other Polish nationals.

Verdict: August Wille, Guilty of ill-treating Vincentz Dudek and  
Jan Grzempa, Polish Nationals, only, and  
Not Guilty as to the other persons named  
in charge.  
Sentence: Doris Wille, Not Guilty.  
August Wille, Imprisonment for one day.  
Sentence confirmed.

III. Canadian Transcripts.

Full transcripts of the Trial Against S.S. Brigadeführer Kurt Mayer,  
(two volumes, 857 pages and one volume of exhibits)  
have now been received from the Officer Commanding  
the First Canadian War Crimes Investigation Unit.

IV. War Crimes Trial Reports Received from the United States Commissioner.

- 22) Trial against Erich Weiss and Milhelm Mundo,  
(General Military Court, Ludwigsburg, Germany,  
9th and 10th November, 1945.)  
Charge: Wrongfully killing an unknown American Airman.  
Verdict: Not Guilty.
- 23) Trial against Otto Brehm, Wilhelm Bausch and Sebastian Schmidt.  
(General Military Court, Ludwigsburg, 16th November, 1945)  
Charge: Wrongfully assaulting an unknown American Airman,  
prisoner of war. The accused Schmidt was not present,  
not on trial and no evidence was presented against him.  
Verdict: The other two accused were found guilty.  
Sentence: Imprisonment for five years each.  
Sentence approved.
- 24) Trial against Ludwig Schardt.  
(General Military Court, Ludwigsburg, 20th-23rd Nov., 1945)  
Charge: Participation in the wrongful killing of three American  
Airmen prisoners of war.  
Verdict: Guilty.  
Sentence: Life Imprisonment.  
Sentence approved.
- 25) Trial against Werner Kornalewicz,  
(Intermediate Military Court, Ludwigsburg, 26th Nov., 1945)  
Charge: Wrongfully assaulting an unknown American airman, prisoner  
of war.  
Verdict: Guilty.  
Sentence: Imprisonment for one year.  
Sentence confirmed.
- 26) Trial against Karl Weissshuhn,  
(Intermediate Military Court, Ludwigsburg, 11th Dec., 1945)  
Charge: Wrongfully assaulting an unknown American prisoner of war.  
Verdict: Guilty.  
Sentence: Imprisonment for 3 years.  
Sentence approved.



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Misc. No. 23.  
26th March, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

United States Provisions Regarding  
Military Commissions and Military Government Courts  
Trying War Criminals.

In Doc. Misc. No. 16, the provisions have been circulated under which the American Military Commissions in the Mediterranean Theater of Operations of the United States Army, operate.

It was added that the corresponding provisions valid in other theaters of the United States Army would be circulated as soon as they became available.

The Secretariat is obliged to the United States Commissioner for placing at its disposal the letter from the Headquarters, United States Forces, European Theater, dated 16th July 1945, subject: "Trial of war crimes and related cases", (A-below) and the letter of the same headquarters dated 25th August 1945, subject: "Military Commissions" (B-below), which are herewith circulated.

In addition a booklet prepared in the Office of the Theater Judge Advocate as an aid to Court Officials containing "An Outline of Procedure for Trial of Certain War Criminals by General and Intermediate Military Government Courts", has been placed at the disposal of the Secretariat. A copy of this brochure which is merely a guide and is not to be regarded as directive in nature, is available for consultation in the Secretariat (Dr. Schwelb's office, Room 303.)

The United States Forces, European Theater, have used two separate sets of tribunals for the trial of war criminals, namely, Military Commissions and Military Government Courts. These tribunals are distinct and have a different origin and a different basis for their jurisdiction.

The origin and jurisdiction of Military Commissions is treated in a general way in document C.46. Certain statutory provisions found in the American Articles of War are thought by some lawyers to be applicable to their procedure, e.g. that at least two-thirds of the members of such a commission, present at the time of the vote, must concur in the findings and the sentence. As to some Articles of War which are not applicable see In Re Yamashita (Nos. 61 Misc. and 672, October Term, 1945.) (See also Trial and Law Reports Series No. 14).

Military Government Courts are generally based upon the occupants customary and conventional duty to govern occupied territory and to maintain law and order. Generally, they are not considered to be governed or restricted by the Articles of War.

(A).  
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HEADQUARTERS  
U.S. FORCES, EUROPEAN THEATER.

AG 000.5-2 GAP.

AFPO 757 (Main)  
16 July 1945.

SUBJECT : Trial of War Crimes and Related Cases.

TO : Third U.S. Army/Military District Commander.  
Seventh U.S. Army/Military District Commander.

1. General.

a. As a matter of policy, cases involving offenses against the laws and usages of war or the laws of the occupied territory or any part thereof commonly known as war crimes, together with such other related cases within the jurisdiction of Military Government Courts as may from time to time be determined by the Theater Judge Advocate, committed prior to 9 May 1945, shall be tried before the specially appointed courts provided for in this directive. Such trials in the United States Army zone of occupation will hereafter be conducted before Military Government Courts, except where otherwise directed by the Theater Commander.

b. Charges against persons accused of offenses of the character described above will originate in the Office of the Theater Judge Advocate, will be processed through Army Judge Advocates to trial by specially appointed Military Government courts, and will be reviewed by Army Judge Advocates prior to approval of sentences in accordance with procedures herein provided.

2. Procedural matters before trial.

a. Charges. Charges in the cases contemplated will be prepared under the direction of the Theater Judge Advocate in the form prescribed for Military Government courts.

b. Reference for trial. The Theater Judge Advocate, or the authority designated by him, will forward charges to the appropriate Army/Military District Commander for reference to trial by Military Government Courts. Such charges when forwarded will be addressed "Attention: Staff Judge Advocate". The charges will be referred to the court for trial by the Army/Military District Commander, or in his discretion by his Staff Judge Advocate.

c. At the time of forwarding such charges to the Army/Military District Commander the Theater Judge Advocate will in each case designate those United Nations, if any, which in his judgment should be invited by such commander to send observers to the trial.

3. Appointment of courts. Military Government courts will be appointed by Army/Military District Commanders for the special purpose of the trial of the cases herein contemplated, the personnel for the courts to be selected from the officer personnel of military organizations under the command of the appointing authority. General Military Courts and Intermediate Military Courts appointed under the authority hereof shall consist of not less than five members and not less than three members respectively. The orders appointing such courts will designate one or more prosecutors and defense counsel. The senior member present at each trial will be the president and presiding officer of the court. At least one officer with legal training will be detailed as a member of such courts.

4. Trial. The trial will be conducted according to pertinent Military Government directives and instructions, except that no person shall be convicted or sentenced by the courts provided for herein except by the concurrence of two-thirds of all the members present at the time the vote is taken.

5. Post-trial action.

a. Irrespective of the result of trial, the accused will be returned to custody pending final disposition.

b. The prosecuting officer will be responsible for the preparation of the record of trial which, after being properly authenticated, will be forwarded to the Staff Judge Advocate of the appointing authority, who will prepare a written review of the case for submission to the approving authority. No administrative examination by any other legal officer on the staff of the appointing authority will be required.

c. In taking the action prescribed in sub-paragraph b, above, the Staff Judge Advocate will take into consideration and include in the discussion and recommendations made in such written review any Petition for Review filed by or on behalf of the accused. Final action on each case will be deferred for the ten-day period prescribed under Military Government court procedure for the filing of such petition.

d. No sentence of a Military Government court appointed under the authority hereof shall be carried into execution until the case record shall have been examined by the Army/Military District Judge Advocate and the sentence approved by the officer appointing the court or by the officer commanding for the time being, except that such approving authority may designate an officer for such action on sentences of Intermediate Military Courts appointed hereunder. The action taken will be entered on the case record in the space provided on Legal Form No. 8. over the signature of the approving authority, or, in the case of Intermediate Military Courts, of his designee.

e. No sentence of death shall be carried into execution until confirmed as prescribed for Military Government courts.

f. Approving authorities will in each case where a death sentence is adjudged advise the Theater Judge Advocate (Attention: Chief, War Crimes Branch) of the approval of any such sentence, and will withhold execution after confirmation pending receipt of clearance from the Theater Judge Advocate in connection with each person so sentenced.

6. The execution of death sentences, designation of places of confinement, and the effective date of prison sentences will be as provided for other Military Government Courts.

7. All directives and instructions of this and subordinate headquarters relating to the conduct of trials by Military Government courts are modified to the extent necessary to give effect to the provisions of this letter. Except as so modified herein, all existing directives and instructions shall be applicable to the special category of courts hereby authorized.

BY COMMAND OF GENERAL EISENHOWER:

/s/ H. H. Newman.  
/t/ H. H. NEWMAN,  
Colonel, AGD.  
Assistant Adjutant General.



(B).

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R E S T R I C T E D.

HEADQUARTERS  
U.S. FORCES, EUROPEAN THEATER.

GAL/DSM/rm

AG 250.4 JAG-AGO.

(Main) APO 757.  
25 August 1945.

Subject: Military Commissions.

TO : Commanding Generals;  
Eastern Military District,  
Western Military District.

1. General.

a. Authority to appoint. You are hereby authorized to appoint military commissions for the trial of persons subject to the jurisdiction of such commissions who are charged with violations of the laws or customs of war, of the law of nations, or of the laws of occupied territory or any part thereof. You are not authorized to redelegate such appointing powers.

b. Cases to be Tried. As a matter of policy no case shall be referred to trial before a military commission except when directed by this headquarters. Applications for authority to proceed with such trials will be forwarded to the Deputy Theater Judge Advocate, War Crimes Branch, this headquarters, APO 757.

c. Composition. Military commissions shall be composed of not less than three commissioned officers of the United States Army. There shall also be appointed a trial judge advocate and defense counsel.

d. Conviction or Sentence. The concurrence of at least two-thirds of the members of the commission present at the time of voting shall be necessary for the conviction and for the sentence.

e. Approval of Sentence. No sentence of a military commission appointed under the authority cited in sub-paragraph a, above, shall be carried into execution until the same shall have been approved by the officer appointing the commission or by the officer commanding for the time being.

f. Confirmation of Death Sentence. No sentence of death shall be carried into execution until it shall have been confirmed by the Theater Commander or his designee.

2. Rules of Procedure. Military Commissions shall have power to make, as occasion requires, such rules for the conduct of their proceedings consistent with the powers of such commissions, and with the rules of procedure herein set forth, as are deemed necessary for a full and fair trial of the accused, having regard for, without being bound by, the rules of procedure and evidence prescribed for general courts-martial. The provisions of Section VII, paragraph 38-47, War Department FM 27-5, subject: "Military Government and Civil Affairs", dated 22nd December 1943, are designed as a general guide in this field and will be followed except as amended by this letter or other instructions of this headquarters.

3. Evidence Admissible. Such evidence shall be admitted before a military commission as, in the opinion of the president of the commission, has probative value to a reasonable man.

4. Charges and Specifications. Formal charge and investigation as contemplated in Article of War 70 are not necessary in proceedings before military commissions, although War Department, Adjutant General's Office Form Number 115, may be used as a charge sheet. The charge should

designate the offense by its legal name or describe it in terms of international law, preferably without reference to an Article of War. The specification should set forth the details of the act charged with sufficient definiteness to show the jurisdiction of the commission and the status of the accused. The accused shall be furnished with a copy of the charges and specifications. Although no oath is necessary, the charge should be signed by a person subject to military law. At some stage prior to the trial, the charge should be investigated sufficiently to enable the appointing authority to determine that the offense merits trial by military commission. Before directing the trial of any charge, the appointing authority will refer the case to his staff judge advocate for consideration and advice.

5. Challenges. Members of the military commission may be challenged by the accused or the trial judge advocate for cause stated to the court. Peremptory challenges shall not be allowed.

6. Oaths. Making such changes as are necessary, the appropriate oath contained in Article of War 19 shall be administered to members of the commission as well as to the prosecution and to others connected with the trial. All witnesses will be sworn.

7. Pleas. General and special pleas of the accused shall be heard and passed upon by the commission in order to insure a fair and impartial trial.

8. Fees and Allowances. Fees and allowances for witnesses, court reporters and interpreters will be set as provided in Army Regulation 35-4120, dated 30 July 1943, as changed, or as may be published in future instructions from this headquarters.

9. Interpreter for Accused. The accused shall have the right to have the proceedings of the commission interpreted into his own language if he so desires.

10. Records of Trial.

a. Preparation. Commission shall keep a record of their proceedings, conforming as nearly as practicable to that prescribed for general courts-martial. Court reporters may be detailed for this purpose. If for any cogent reason it is inexpedient to make a verbatim record of the proceedings by stenographer or in longhand, the record shall be prepared in form prescribed for special courts-martial, preparing in such case a sufficiently complete summary of the testimony of the witnesses that the reviewing authority may properly evaluate the evidence received by the commission.

b. Disposition. The record of trial will be prepared and authenticated in duplicate and forwarded, together with pertinent accompanying papers, including an original and signed copy of the review of the staff judge advocate, to the Deputy Theater Judge Advocate, War Crimes Branch, this headquarters, APO 757.

11. Sentence.

a. General. Subject to limitations imposed by this headquarters, military commissions may adjudge any type of punishment referred to in paragraph 45, War Department FM 27-5, subject: "Military Government and Civil Affairs", dated 22 December 1943. Commissions may be guided by, but are not limited to, the penalties authorized by the Manual for Courts-Martial, the laws of the United States, and of the territory in which the offence was committed or the trial is held.



b. Places of Confinement. Places of confinement will be designated by the appointing authority as in the case of prisoners sentenced to imprisonment by military government courts.

12. Review.

a. Every record of trial by military commission will be referred by the appointing authority to his staff judge advocate for review before he acts thereon.

b. Every record of trial in which a death sentence is adjudged, if such sentence is approved and not commuted by the appointing authority, will be forwarded to the Deputy Theater Judge Advocate, War Crimes Branch, this headquarters, APO 757, for review by the Theater Judge Advocate or his deputy and presentation with appropriate recommendations to the confirming authority for action.

13. Action Upon Sentences after Confirmation. The action taken by the confirming authority upon sentences requiring confirmation will be notified to the appointing authority, who will issue appropriate orders promulgating the sentence as confirmed and carry the same into execution. In confirmation cases the record of trial will be retained in the office of the Deputy Theater Judge Advocate.

14. Publicity. Trials will be held in open court, except when security, protection of witnesses, or other considerations make this inadvisable. Full publicity may be given to trial proceedings and execution of death sentences. Press material will be submitted to press censorship in the normal way and will be subject only to normal press censorship restriction to protect counter-intelligence organizations and method.

15. Mitigation, Remission, etc. The power to order the execution of a sentence, or to confirm a death sentence, of a military commission includes the power to disapprove or vacate in whole, or in part, any finding of guilty, and to mitigate, remit, approve and commute, suspend or to remand for further proceedings or for rehearing before a new military commission.

16. Reports.

a. The appointing authority will advise the Deputy Theater Judge Advocate, War Crimes Branch, this headquarters, APO 757, by TWX of the result of each trial by military commission immediately upon announcement of findings and sentence.

b. Reports of execution of all death sentences imposed by military commissions will be made to the Deputy Theater Judge Advocate.

17. Distribution of Orders Promulgating Sentences. The distribution listed below will be included for all orders promulgating sentences of military commissions:

- a. Three copies to the Adjutant General, Washington 25, D.C.
- b. Two copies to The Judge Advocate General, Washington 25, D.C.
- c. One copy to the Adjutant General, U.S. Forces, European Theater, APO 757.
- d. Three copies to the Theater Judge Advocate, APO 757.
- e. Two copies to The Assistant Judge Advocate General with the United States Forces, European Theater, APO 887.
- f. Three copies to the Deputy Theater Judge Advocate, War Crimes Branch, APO 757.



-7-

18. All directives and instructions of this and subordinate headquarters relating to military commissions are hereby superseded to the extent inconsistent with this letter.

BY COMMAND OF GENERAL EISENHOWER:

/s/ H. H. Newman.  
/t/ H. H. NEWMAN,  
Colonel, AGD.  
Assistant Adjutant General. "

RESTRICTED.  
SECRET.

Misc. No. 24.  
26th March 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Bibliography of Legal Literature on the Law of War Crimes and Belligerent Occupation in the Second World War.

First Supplement to the Bibliography  
Doc. Misc. No. 19.

Compiled by Egon Schwelb, Legal Officer.

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| Eagleton, C.   | Of the Illusion that War Does Not Change.   | (35) American Journal of Int. Law. (1941) p.660.                                 |
| Leale, John, Jurat, Guernsey.                            | Address to the Statesmen of Guernsey May 23, 1945. See Quincy Wright, The Value of International Law in Occupied Territory. | (39) American Journal of Int. Law. (1945). p.775.                                |
| Llosa T.C.G.P.   | Tito y el "Movimiento Guerrillero" de Yugoslavia.   | (5) Revista Peruana de Derecho Internacional, No. 15, Jan-Feb-March, 1945. p.27. |
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| Stowell, Ellery C.                                       | The Laws of War and the Atomic Bomb.  | (39) American Journal of Int. Law. (1945). p.784.                                |
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(Technical Manual.)

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SECRET  
RESTRICTED.

Misc. 25.  
10 April, 1946

UNITED NATIONS WAR CRIMES COMMISSION

The following is a copy of a letter received from Sir Robert Craigie, by the Secretary General:-

"Sir,

With reference to your letter of the 21st. December last asking that His Majesty's Government approach the Government of the Union of Soviet Socialist Republics with an invitation to join the United Nations War Crimes Commission at the unanimous request of all the governments represented on it, I am writing to inform you that this invitation was duly delivered on the 26th February by His Majesty's Chargé d'Affaires in Moscow to M. Vyshinsky, Soviet Deputy Minister for Foreign Affairs.

In reply to the invitation His Majesty's Chargé d'Affaires has now received a memorandum from the Soviet Ministry of Foreign Affairs of which the text is the following:-

"The Chargé d'Affaires of Great Britain, Mr. Roberts, handed on 26th February, 1946, to Deputy Minister for Foreign Affairs of the U.S.S.R., Mr. A. Ya. Vyshinski, a memorandum in which the British Government on behalf of the member Governments of the War Crimes Commission of the U.N.O., convey an invitation to the Soviet Government to take part in the work of the said Commission. The Soviet Government thanks the British Government for forwarding this invitation and is ready to take part in the work of the U.N.O. Commission on War Crimes, provided similar invitations are also sent to the Governments of the Ukrainian, Belorussian, Moldavian, Lithuanian, Latvian, Estonian and Karelo-Finnish Soviet Socialist Republics, the people of which suffered from the German occupation, experienced all the horrors of the Hitlerian terror and made the contribution to the cause of victory over the enemies of the United Nations."

I am,  
Sir,  
Your obedient Servant,

(sgd) R.L. Craigie."

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Misc. No. 26.  
16th April, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

The British - Belgian Treaty of 11th March, 1946.

regarding Privileges and Facilities for

British Forces.

(Provisions regarding war criminals and security suspects.)

Note by Egon Schwelb, Legal Officer.

On 11th March, 1946, a Treaty was concluded between the United Kingdom and Belgium regarding privileges and facilities for British forces in Belgium in connection with the occupation of Germany and Austria. (Belgium No.1.(1946); Cmd.6790).

The Treaty replaces, with effect from the 8th May, 1945, the provisions of the (unpublished) agreement regarding civil administration and jurisdiction in Belgian territory liberated by an Allied Expeditionary Force embodied in the notes exchanged between Mr. Eden and Monsieur Spaak on the 16th May, 1944.

While the main provisions of the Treaty regulate the status of British military personnel while on Belgian territory, particularly their exemption from Belgian criminal jurisdiction (Art.13), Article 5 of the Treaty contains provisions touching on the problem of war criminals. It reads as follows:

" The British High Command shall have the right to hold prisoners of war, disarmed enemy personnel, war criminals and security suspects in prisoner of war or internment camps on Belgian territory. This authority will normally be limited to persons of German or Japanese nationality, but it may be extended as a temporary measure to the detention of persons of non-German nationality other than Belgian who formed part of the German Wehrmacht or were incorporated in or affiliated to or connected with the German Wehrmacht. The British authorities shall be responsible for the effective custody of such prisoners of war or other persons. The detention of such prisoners of war or other persons in camps in Belgium shall be of a transitory nature only and shall not be extended beyond the minimum time required to make appropriate arrangements for their repatriation to their country of origin or their transfer to such other destination outside Belgium as may be decided by the British High Command or their transfer to the Belgian Government for labour purposes. "

The treaty does not expressly deal with the question whether the British authorities are entitled to conduct trials of war criminals on Belgian territory. Art. 5 only says that the British High Command shall have the right to hold prisoners of war, disarmed enemy personnel war criminals and security suspects in prisoner of war or internment camps on Belgian territory.

Art.13 provides that British courts and authorities shall have exclusive criminal jurisdiction over all members of the British forces and over all persons of non-Belgian nationality not belonging to the British forces who accompany those forces and are subject to British naval, military or air force law. This provision does not, *prima facie*, cover prisoners of war in British hands and still less war criminals who are not prisoners of war, because in British law the term "subject to British naval, military or air force law" is a technical expression which comprises persons enumerated in Section 175 et seq of the British Army Act, and the corresponding provisions of the Air Force Act and the Naval Discipline Act. These British municipal provisions do not include enemy prisoners of war or enemy civilians in British hands.

Art.45 of the 1929 Prisoners of War Convention on the other hand, provides that prisoners of war shall be subject to the laws, regulations and orders in force in the armed forces of the detaining Power. This conventional provision can be adduced in support of the proposition that British Military Courts have the right to exercise jurisdiction over prisoners of war alleged to have committed war crimes.

There can be no doubt that the British authorities are entitled to maintain order and discipline in prisoners of war and internment camps in Belgium because it is expressly provided in Art.5. of the Treaty that they shall be responsible for the effective custody of such prisoners of war or other persons.

It may be remarked in this connection that in at least one case German war criminals have been tried by a British Military Court on allied territory, namely in the "Almelo case" (see Doc.Misc.12, II(3).) A British War Crimes Court sitting at Almelo, Holland, having on its bench also Dutch officers, tried, in November 1945, four Germans accused of the killing of a British pilot prisoner of war, and of a Dutch civilian.



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Misc. 27. .  
10th April, 1946

UNITED NATIONS WAR CRIMES COMMISSION

Progress Report of War Crimes Trials as at 31st March, 1946

	<u>Total Number of Cases Tried to Date</u>	<u>Accused Involved</u>	<u>Death.</u>	<u>Sentences Imprisonment</u>	<u>Acquittal.</u>
USFET	44	142	70 <sup>*</sup>	55	17
BAOR	60	174	42	78	54
CNLF	5	9	3	6	-
ALFSEA	-	49	20	20	9
AUSTRALIA <sup>@</sup>	-	164	58	74	32
FRANCE <sup>*</sup>	-	83	51	29	3

<sup>\*</sup> 54 approved by the Reviewing Authority of which 18 have been executed  
2 awaiting execution  
34 awaiting confirmation.

<sup>@</sup> Since last return a further 32 individuals have been tried but results of trials not yet to hand.

<sup>\*</sup> Up to 28th February but excluding November.

Misc. No. 28.  
24th April, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Fourth Supplement to the Synopsis of Trial Reports Received.  
(Misc. Nos. 12, 12(A), 17 and 22.)

The following further reports have been received by the Secretariat by the 24th April, 1946.

II. British Transcripts.

34) Full Transcript of the trial against Bruno Tesch and two others.

Date & Place of Trial:

British Military Court, Hamburg, 1st - 8th March, 1946.

Charge: Supplying of poison gas used for the extermination of allied nationals interned in concentration camps, knowing that the gas was to be so used.

Verdict: In the case of the main accused, Bruno Tesch, owner of the firm, and Karl Weinbacher, "Prokurist" of the firm, Guilty.

In the case of Joachim Drosihn, a technical employee of the firm, Not Guilty.

Sentences: Tesch and Weinbacher: Death by hanging.

35) Full transcript of the trial against Karl Amberger (formerly Oberfeldwebel of the Luftwaffe).

Date & Place of Trial:

British Military Court, Wuppertal, 11th - 14th March, 1946.

Charge: Committing a war crime in that he at Dreierwalde Aerodrome in violation of the laws and usages of war, was concerned in the killing of four allied prisoners of war.

Verdict: Guilty.

Sentence: Death by hanging.

IV. War Crimes Trial Reports Received from the United States Commissioner.

27-J. Complete transcript of the case of the United States v. Rear Admiral Nisuke Masuda and others.

Date & Place of Trial:

U.S. Military Commission, convened at U.S. Naval Air Base, Kwajalein Island, Kwajalein Atoll, Marshall Islands. 7th December 1945, and following days.

Charge: Wilfully, feloniously, with malice aforethought, without justifiable cause and without trial or other due process, assault and kill by shooting and stabbing to death, three American fliers, prisoners of war, in violation of the dignity of the United States of America, the International rules of warfare and the moral standards of civilized society.

Verdict: Each of the four accused, guilty.

Sentences: The accused Lt. Tsugio Yoshimura, Ensign Mamoru Kawachi and W/O Toshimoto Tanaka, sentenced to be hanged. The accused Ensign Tadashi Tasaki, sentenced to imprisonment for 10 years.

Nolle Prosequi was entered against the accused Rear Admiral Nisuke Masuda.

Misc. No.28.  
24th April, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Fourth Supplement to the Synopsis of Trial Reports Received.  
(Misc. Nos. 12, 12(A), 17 and 22.)

The following further reports have been received by the Secretariat  
by the 24th April, 1946.

II. British Transcripts.

- 34) Full Transcript of the trial against Bruno Tesch and two others.  
Date & Place of Trial:  
British Military Court, Hamburg, 1st - 8th March, 1946.  
Charge: Supplying of poison gas used for the extermination of  
allied nationals interned in concentration camps,  
knowing that the gas was to be so used.  
Verdict: In the case of the main accused, Bruno Tesch, owner of  
the firm, and Karl Weinbacher, "Prokurist" of the firm,  
Guilty.  
In the case of Joachim Drosihn, a technical employee of  
the firm, Not Guilty.  
Sentences: Tesch and Weinbacher: Death by hanging.
- 35) Full transcript of the trial against Karl Amberger (formerly  
Oberfeldwebel of the Luftwaffe).  
Date & Place of Trial:  
British Military Court, Wuppertal, 11th - 14th March,  
1946.  
Charge: Committing a war crime in that he at Dreierwalde  
Aerodrome in violation of the laws and usages of war,  
was concerned in the killing of four allied prisoners  
of war.  
Verdict: Guilty.  
Sentence: Death by hanging.

IV. War Crimes Trial Reports Received from the United States Commissioner.

- 27-J. Complete transcript of the case of the United States v. Rear Admiral  
Nisuke Masuda and others.  
Date & Place of Trial:  
U.S. Military Commission, convened at U.S. Naval Air  
Base, Kwajalein Island, Kwajalein Atoll, Marshall  
Islands. 7th December 1945, and following days.  
Charge: Wilfully, feloniously, with malice aforethought,  
without justifiable cause and without trial or other  
due process, assault and kill by shooting and stabbing  
to death, three American fliers, prisoners of war, in  
violation of the dignity of the United States of  
America, the International rules of warfare and the  
moral standards of civilized society.  
Verdict: Each of the four accused, guilty.  
Sentences: The accused Lt. Tsugio Yoshimura, Ensign Mamoru Kawachi  
and W/O Toshimoto Tanaka, sentenced to be hanged.  
The accused Ensign Tadashi Tasaki, sentenced to  
imprisonment for 10 years.  
Nolle Prosequi was entered against the accused Rear  
Admiral Nisuke Masuda.



VI. Polish Trial Reports.

- 2) Summary of Trial against Paul Hoffman, supervisor of the crematorium at the death camp of Majdanek.

Date & Place of Trial:

Special Criminal Court at Lublin, 13th and 14th November, 1945.

Charge: Mass murder of camp inmates at Majdanek,

Verdict: Guilty.

Sentence: Death.

The prisoner was executed on 23rd December 1945.

VII. Australian Trial Reports.

- 1) Record of Military Court (Australian Military Forces). Trial against Sgt. Major Hidano Yoshiteru.

Date & Place of Trial:

Wewak, New Guinea, 11th December 1945.

Charge: Murder and cannibalism.

Verdict: Not Guilty.

Misc. No.29.  
22nd May, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Fifth Supplement to the Synopsis of Trial Reports Received.  
(Misc. Nos. 12, 12(A), 17, 22 and 28.)

The following further reports have been received by the Secretariat  
by 22nd May, 1946.

II. British cases.

36). Full transcript of the trial against Heinrich Gerike and 7 others.  
(Velpke Baby Farm Case.)

Date & Place of Trial: British Military Court, Brunswick,  
Germany, 20th March - 3rd April, 1946.

Charge: Committing a war crime in that they at Velpke,  
Germany, between May and December 1944, were  
concerned in the killing, by wilful neglect, of a  
number of children, Polish nationals.

Verdict: In the case of three of the accused, NOT GUILTY.  
In the case of four of the accused, GUILTY.  
One of the accused died during the trial.

Sentences: Death: 2,  
Imprisonment for 15 years: 1,  
" " 10 " : 1.

The accused were not on the lists of the U.N.W.C.C.

37-J) Trial against Capt. Gozawa Sadaichi and 9 others, all of the  
Japanese Army.

Date & Place of Trial: Military Court for the Trial of War  
Criminals, Singapore, 21st - 31st Jan., and 1st  
February, 1946.

Charge: Ill-treatment of Indian prisoners of war, resulting  
in the death of many of the prisoners, conspiracy  
to execute by beheading one Indian prisoner of war.

Verdict: 8 of the accused, Guilty.  
2 of the accused, Not Guilty.

Sentences: Death by hanging, 1,  
Imprisonment for 12 years, 1,  
" " 7 " 1,  
" " 5 " 2,  
" " 3 " 2,  
" " 2 " 1,

None of the accused were listed by the Commission.

38-J) Trial against Cpl. Hamada Kajumi of the Japanese Army.

Date & Place of Trial: Military Court for the Trial of War  
Criminals, Kuala Lumpur, 30th and 31st Jan., 1946.

Charge: Causing the death of 6 civilian residents of  
Kuala Kubu.

Verdict: Guilty.

Sentence: Death by hanging.

The accused was not listed by the Commission.

39-J) Trial against Sgt. Yamamoto Chusaburo of the Japanese Army.

Date & Place of Trial: Military Court for the trial of war  
Criminals, Kuala Lumpur, 30th-31st January and  
1st February 1946.

Charge: Killing of a civilian resident of Kuala Lumpur.

Verdict: Guilty.

Sentence: Death by hanging with a recommendation to mercy.  
The accused was not listed by the Commission.

40-J) Trial against Major Chida Sotomatsu and 5 others, all of the  
Japanese Army.

Date & Place of Trial: Military Court for the trial of war  
criminals, Singapore, 5th - 7th February, 1946.

Charge: Ill-treatment and killing of prisoners of war.

Verdict: All guilty.

Sentences: Death by hanging: 2,  
Imprisonment for life: 2,  
" " 8 years, 1,  
" " 1 day; 1.

The accused were not listed by the Commission.

41-J) Trial against Sugimoto Heikichi Sho-Cho and 2 others, all of the  
Japanese Army.

Date & Place of Trial: Military Court, Singapore, 5th - 7th  
February, 1946.

Charge: Torturing civilian residents, as a result of which  
one person died.

Verdict: One of the accused, Not Guilty.

Two of the accused, Guilty with exceptions.

Sentence: Imprisonment for 6 years, 1

" " 3 " 1.

The accused were not listed by the Commission.

42-J) Trial against Capt. Okamura Hideo of the Japanese Army.

Date & Place of Trial: Military Court, Singapore,  
7th and 8th February, 1946.

Charge: Killing and ill-treatment of prisoners of war.

Verdict: Guilty.

Sentence: Imprisonment for 7 years.

The accused was not listed by the Commission.

43-J) Trial against Sgt. Aoki Toshio of the Japanese Army.

Date & Place of Trial: Military Court, Singapore, 11th Feb., 1946.

Charge: Ill-treatment of prisoners of war as a result of  
which seven of the prisoners died.

Verdict: Guilty. (Special finding). Omitting the words  
"caused the death of seven of the said prisoners".

Sentence: Imprisonment for 3 years.

The accused was not listed by the Commission.

44-J) Trial against Sgt. Maj. Otsu Hiroshi of the Japanese Army.

Date & Place of Trial: Military Court, Alor Star, 11th Feb., 1946.

Charge: Brutal ill-treatment, causing the death of  
civilian residents of Alor Star.

Verdict: Guilty.

Sentence: Death by hanging.

The accused was not listed by the Commission.

45-J) Trial against Sgt. Yoshimura Ekio of the Japanese Army.

Date & Place of Trial: Military Court Ipoh, 18th - 20th Feb., 1946.

Charge: Brutal ill-treatment of civilian residents of  
Ipoh (Malaya).

Verdict: Guilty.

Sentence: Death by hanging.

The accused was not listed by the Commission.



- 46-J) Trial against S/Sgt. Terada Takao and 4 others of the Japanese Army.  
Date & Place of Trial: Military Court, Singapore, 8th - 19th February, 1946.  
Charge: Torture and ill-treatment of civilian residents of Singapore, as a result of which several persons died.  
Verdict: 4 Guilty, 1 Not Guilty.  
Sentences: Death by hanging, 2,  
Imprisonment for 14 years, 1,  
" " 5 " 1.  
The accused were not listed by the Commission.
- 47-J) Trial against Vice Admiral Teizo Hara and 5 others.  
Date & Place of Trial: Military Court, Singapore, 25th - 28th February and 1 - 2 March, 1946.  
Charge: Killing of Burmese civilians, resident in the Andaman Islands.  
Verdict: Vice Admiral Teizo Hara and two others, Not Guilty.  
3 guilty.  
Sentence: Death by hanging.  
The accused were not listed by the Commission.
- 48-J) Trial against Maj. Gen. Sato Tamenori and 4 others.  
Date & Place of Trial: Military Court, Singapore, 5th - 7th March, 1946.  
Charge: Killing and ill-treatment of Burmese civilians in the Andaman Islands numbering 18 men, 9 women and 34 children.  
Verdict: Guilty.  
Sentences: Death by hanging; Maj. Gen. Sato Tamenori and another.  
Imprisonment for 15 years, 1  
" " 1 year, 2.  
The accused were not listed by the Commission.
- 49-J) Trial against Mori Yoshitada, Chief Inspector, Imperial Japanese Army.  
Date & Place of Trial: Military Court, Kajang, 4th - 6th March, 1946.  
Charge: Torture and ill-treatment of civilian residents of Kajang and taking part in and/or failing to prevent the shooting of one Malayan civilian at that time in his custody.  
Verdict: Guilty.  
Sentence: Death by hanging.  
The accused was not listed by the Commission.
- 50-J) Trial against Capt. Tamura Shinji of the Japanese Army.  
Date & Place of Trial: Military Court, Singapore, 11th March, 1946.  
Charge: Commanding a firing party detailed to execute 152 civilians including women and children in the Andaman Islands.  
Verdict: Guilty.  
Sentence: Imprisonment for 2 years.  
The accused was not listed by the Commission.
- 51). Trial against Marinello Sodini.  
Date & Place of Trial: British Military Court at Afragola, 4th - 9th May, 1946.  
Charge: Committing a war crime in that he shot and killed Cpl. E.W. Symons, AIF, at Udine Gruppignani on 20th May 1943.  
Verdict: Guilty.  
Sentence: Death by shooting. (Sentence commuted to imprisonment for life.)  
The accused was not listed by the Commission.

- 52-J) Trial against Lt.Gen. Fukuei Shimpei of the Japanese Army.  
Date & Place of Trial: Military Court, Singapore, 22nd and 25th - 28th February, 1946.  
Charge: Killing and ill-treatment of prisoners of war.  
Verdict: Guilty.  
Sentence: Death by shooting.  
The accused was not listed by the Commission.
- 53) Trial against Capt. Antonio Somavilla.  
Date & Place of Trial: British Military Court at Naples, 13th - 24th February, 1946.  
Charge: Committing a war crime in that he was concerned in the killing of one and attempted killing of another British prisoners of war.  
Verdict: Not Guilty.  
The accused was listed on the Commission's Italian List 2, No.17.

IV. American Cases.

- 28) Trial against Rudolf Aurburger and Johann Hemauer.  
Date & Place of Trial: Intermediate Military Court, Dachau, 5th February, 1946.  
Charge: That they wrongfully encouraged, aided, abetted and participated in an assault upon an unknown member of the United States Army Air Force, who was then an unarmed, surrendered prisoner of war, by hitting him in the face and on the head with their fists and with their rifles.  
Verdict: Guilty, with the exception of the words "and with their rifles".  
Sentence: Each to imprisonment for a term of one year.  
Both the accused were listed by the Commission, Aurburger shown as "Augurger" on List 27, No.923, and Hemauer on List 27, No.973.
- 29) Trial against Bernhard Engelbrecht, Paul Eckert and Wilhelm Bork.  
Date & Place of Trial: Intermediate Military Court, Dachau, 14th February, 1946.  
Charge: That they wilfully, deliberately and wrongfully encouraged, aided, abetted and participated in committing assaults upon three members of the United States Army who were then unarmed, surrendered prisoners of war.  
Verdict: Not Guilty.  
All the accused were listed by the Commission, Engelbrecht, List 27, No.947,  
Eckert, List 27, No.941,  
Bork, List 27, No.930.
- 30) Trial against Richard Drauz.  
Date & Place of Trial: General Military Court, Dachau, 11th December, 1946.  
Charge: That he wilfully, deliberately and wrongfully encouraged, aided, abetted and participated in the killing of an unknown American prisoner of war.  
Verdict: Guilty.  
Sentence: Death by hanging.  
The accused was not listed by the Commission.

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Misc. 30  
29th May, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Progress Report of War Crimes Trials as at 30th April, 1946.

	<u>Total Number of Cases Tried to Date.</u>	<u>Accused Involved.</u>	<u>Sentences.</u>		
			<u>Death.</u>	<u>Imprisonment.</u>	<u>Acquittal.</u>
U.S.F.E.T.	54	160	74	67	19.
P.A.O.R.	65	189	52	96	62
C.M.F. (Italy & Austria).	9	21			
A.L.F.S.E.A. +	-	206	89	84	33
AUSTRALIA ≠	-	164	58	74	32
FRANCE ∅	-	101	60	38	3

+ As at 20th May - Refers to British only - other returns not yet received.

≠ No figures received since last returns Misc. 27.

∅ Up to 31st March but excluding November.



Misc. 31  
30th May, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

6th Supplement to the Synopsis of Trial Reports Received.

(Misc.Nos.12, 12(A), 17, 22, 28, and 29. )

I. International Military Tribunals.

- 2) Indictment of the trial of the major Far Eastern War Criminals.

II. British Cases.

The following summary reports have been received in respect of trials held by British Military Courts for the Trial of War Criminals, where there have been no shorthand writers.

- 54) Trial of August Buehning, Friedrich Konig, August Teckner and Norbert Müller, civilians.  
Date & Place of Trial: 17th - 19th December 1945, Osnabrück.  
Charge: Committing a war crime in that they at Bohnte, Germany, on 28th February 1945, in violation of the laws and usages of war were concerned in the killing of P.O. J.H. Taylor, Royal Air Force, and W/O F.W. Cuthbertson, Royal Air Force, prisoners of war.  
Verdict: All accused, guilty.  
Sentences: All accused sentenced to death by hanging. Findings and sentences confirmed by Commander-in-Chief B.A.O.R. on 27th Jan., 1946, but sentences in case of two of the accused commuted to 15 years' imprisonment each.  
The sentences imposed on Buehning and Konig were put into execution on 8th March 1946.  
The accused were listed by the Commission as follows:  
Buehning, 25/1315, Konig, 25/1352,  
Teckner, 25/1314, Müller, 25/1381.
- 55) Trial of Major Richard Geisler and Captain Alfred Buettner of the Luftwaffe, Otto Franke and Lina Schroder.  
Date & Place of Trial: 20th - 23rd Dec., 1945, Osnabrück.  
Charge: Killing of an unknown Allied prisoner of war.  
Verdict: Franke and Buettner, Guilty.  
Geisler and Schroder, Not Guilty.  
Sentences: Death by hanging.  
Sentences confirmed and executed on 8th March 1946,  
The accused were not listed by the Commission.
- 56) Trial of Emil Ferck, civilian.  
Date & Place of Trial: 10th January 1946, at Hamburg, the court consisting of a British Lieut. General, a British captain as Legal Member and a Lieutenant of the Polish forces as member.  
Charge: Committing a war crime in that he at Lutin, between the years 1942 and 1945 did ill-treat Josefa Sekurska, Stanislaw Steimach and Stanislaw Sekurski, Polish Nationals, and other Polish Nationals.

Verdict: Guilty.  
Sentence: Imprisonment for two years. Sentence confirmed.  
The accused was not listed by the Commission.

57) Trial of Oberfeldwebel Rolf Brinkmann and Feldwebel Werner Assmussen, of the Luftwaffe.

Date & Place of Trial: 21st - 23rd January 1946.

Charge: Committing a war crime in that they at Boesel, Germany, on 3rd April 1945, in violation of the laws and usages of war, were concerned in the killing of F/O. Harry Alfred Horsey, Royal Air Force, a prisoner of war.

Verdict: Brinkmann, guilty. Assmussen, not guilty.

Sentence: Imprisonment for life. Sentence confirmed.  
The accused were listed by the Commission as follows:  
Brinkmann, 27/762. Assmussen, 27/746.

58) Trial of Heinrich Geffert, civilian.

Date & Place of Trial: 26th - 30th January 1946, at Celle, the court consisting of four British officers and one Polish officer.

Charge: Committing a war crime in that he at Uelsen between the years 1943 and 1945, in violation of the laws and usages of war, ill-treated Maria Jakimice, Jan Jakimice, Wladislaw Pienazok and Stanislaw Borowiec, Polish nationals, and other Polish nationals.

Verdict: Guilty, with the exception that he did not ill-treat three of the Polish people named in the charge.

Sentence: Imprisonment for 15 years. Sentence confirmed, but 8 years' imprisonment remitted.  
The accused was not listed by the Commission.

59) Trial against Friedrich (or Fritz) Vonhoren, civilian.

Date & Place of Trial: 29th Jan., 1946, Hamburg, the court consisting of two British officers and one Polish officer.

Charge: (1) Committing a war crime in that he at Oranienburg on a day between 20th June 1940 and 3rd May 1945, in violation of the laws and usages of war, did kill one Frackowski, an Allied national.

(2) Committing a war crime in that he at Oranienburg on a day between 20th June 1940 and 3rd May 1945, in violation of the laws and usages of war, did kill one Surowiec, an Allied national.

(3) Committing a war crime in that he at Oranienburg on a day between 20th June 1940 and 3rd May 1945, in violation of the laws and usages of war did kill one Lewandowski, an Allied national.

Verdict: Not Guilty.

The accused was not listed by the Commission.

60) Trial of Heinrich Stein, civilian.

Date & Place of trial: 26th - 30th January 1946, Celle, the court consisting of four British Officers and one Polish officer.

Charge: Committing a war crime in that he at Uelsen in the month of June 1943, in violation of the laws and usages of war, ill-treated Maria Jakimice and Jan Jamimice, Polish nationals.

Verdict: Guilty.

Sentence: Imprisonment for 7 years. Sentence confirmed, but two years imprisonment remitted.  
The accused was not listed by the Commission.

61) Trial against Hans Asmussen, civilian.

Date & Place of Trial: 31st January 1946, at Hamburg, the court consisting of two British officers and one Polish officer.

Charge: Committing a war crime in that he at Neisgrau, between the years 1942 and 1945 when a farmer employing Polish nationals as labourers, in violation of the laws and usages of war did ill-treat Jan Perszyk, Karoline Nowacka, Alexander Yoltuchowski, Polish nationals, and other Polish nationals, on his, the accused's farm.

Verdict: Special Finding: Is guilty of the charge with the exception of the words Jan Perszyk, Karoline Nowacka and other Polish nationals.

Sentence: Imprisonment for 9 months, without hard labour. Sentence confirmed, but commuted to imprisonment for three months without hard labour. The accused was not listed by the Commission.

62) Trial against Walter Muller and Wilhelm Bremer, civilians.

Date & Place of Trial: 14th and 15th Feb., 1946 at Verden, the court consisting of four British officers and one Polish officer.

Charge: Committing a war crime in that they at Mienburg between the years 1940 and 1945, when in charge of Polish workers at the glass factory, in violation of the laws and usages of war, did ill-treat Z. Kucharski, N. Koczorowski and Jan Wasiewicz, Polish nationals, and other Polish nationals employed in the said factory.

Verdict: Guilty.

Sentences: Muller, imprisonment for six months. Bremer, imprisonment for two years. Sentences confirmed. The accused were not listed by the Commission.

63) Trial against Gunther Giesenhausen, civilian.

Date & Place of Trial: 6th February 1946, Hamburg, the court consisting of two British officers and one Polish officer.

Charge: Committing a war crime in that he at Gut Emkendorf, Germany, between the years 1941 and 1945, in violation of the laws and usages of war, did ill-treat Walerian Seroczynski and Stanislaw Seroczynski, Polish nationals and other Polish nationals.

Verdict: Guilty of the charge with the exception of the words "and other Polish nationals".

Sentence: Imprisonment for 8 months, without hard labour. The accused was not listed by the Commission.

64) Trial against Karl Bethge, civilian.

Date & Place of Trial: 7th - 9th February 1946, Verden, the court consisting of four British officers and one Polish officer.

Charge: Committing a war crime in that he at Warsaw in the year 1944 in violation of the laws and usages of war did ill-treat a number of Polish nationals employed in the "Mars" factory.

Verdict: Guilty.

Sentence: Imprisonment for 7 years. Sentence confirmed, but two years' imprisonment remitted. The accused was not listed by the Commission.



65) Trial of Otto Wrede, civilian.

Date & Place of Trial: 22nd February 1946, Brunswick, the court consisting of four British officers and one Polish officer.

Charge: Committing a war crime in that he at Alvesse, between the years 1944 and 1945 in violation of the laws and usages of war, ill-treated Roman Chudziak, a Polish national and other Polish nationals.

Verdict: Not Guilty.  
The accused was not listed by the Commission.

66) Trial of Karl Brunotte, civilian.

Date & Place of Trial: 11th February 1946, Verden, court consisting of four British officers and one Polish officer.

Charge: Ill-treatment of Polish nationals.

Verdict: Guilty, with the exception of two Polish people named in the charge.

Sentence: Imprisonment for 6 months.  
The accused was not listed by the Commission.

67) Trial of Hans Speck and Claus Voss, civilians.

Date & Place of Trial: 15th and 20th February 1946, Hamburg, court consisting of two British officers and one Polish Officer.

Charge: Hans Speck:

- (1) Committing a war crime in that he at Quarnstedt, between the years 1941 and 1945, in violation of the laws and usages of war, did ill-treat Eugenyus Nowakowski and Janna Brzost, Polish nationals and other Polish nationals.

Claus Voss:

- (1) Committing a war crime in that he at Beringstedt on a date unknown, in the year 1943, in violation of the laws and usages of war did ill-treat Pietro Dubik, a Polish national.
- (2) Committing a war crime in that he at Beringstadt in or about the month of August 1943, in violation of the laws and usages of war, did ill-treat Sophie Pavlik, a Polish national.

Verdict: Both guilty, Speck with the exception of the words "Eugenyus Nowakowski".

Sentences: Speck, imprisonment for 6 months,  
Voss, " " 18 "  
Sentences confirmed, but three months and nine months respectively of sentences remitted.  
The accused were not listed by the Commission.

68) Trial of Otto Nickel, civilian.

Date & Place of Trial: 18th February 1946, Gelsenkirchen.

Charge: Ill-treatment of an unknown allied airman after he had made a parachute descent.

Verdict: Guilty.

Sentence: Imprisonment for two months.  
The accused was not listed by the Commission.

69) Trial of Unteroffizier Wilhelm Menzel of the Wehrmacht.

Date & Place of Trial: 18th February, 1946, Hamburg.

Charge: Committing a war crime in that he on dated between 21st January 1945 and 2nd May 1945 in violation of the laws and usages of war was concerned with others not in custody in the ill-treatment of No. 97060 Private Reginald James Sudds, R.A.S.C. and other Allied prisoners of war on a forced march from Blechhammer, Upper Silesia, to Moosburg, Bavaria, in Germany.

Verdict: Guilty.  
Sentence: Imprisonment for 10 years. Sentence confirmed,  
but five years imprisonment remitted.  
The accused was listed by the Commission on  
List 25, No.1373.

70) Trial against Clements Vogtmann, Concentration Camp Staff.  
Date & Place of Trial: 25th-26th February, 1946, Brunswick,  
court consisting of four British Officers and one  
Polish Officer.  
Charge: Ill-treatment of Polish nationals in the  
concentration camp at Drutze.  
Verdict: Not Guilty.  
The accused was not listed by the Commission.

71) Trial against Bernard Rading, civilian.  
Date & Place of Trial: 26th - 27th February 1946, Brunswick,  
the court consisting of four British officers and  
one Polish officer.  
Charge: Committing a war crime in that he at Warnsdorf  
between September 1944 and April 1945, in violation  
of the laws and usages of war did ill-treat Feliks  
Yeowikowski, a Polish national.  
Verdict: Not Guilty.  
The accused was not listed by the Commission.

72) Trial against Gefreiter Edward Hillert, of the Wehrmacht.  
Date & Place of Trial: 1st - 2nd March 1946, Brunswick, the  
court consisting of four British officers and one  
Polish officer.  
Charge: Committing a war crime in that he at Graudenz, Poland,  
one day in the month of November 1939, in violation of  
the laws and usages of war, with a number of other  
persons unknown did kill a number of Polish nationals.  
Verdict: Not Guilty.  
The accused was not listed by the Commission.

73) Trial against Karl Wieben, civilian.  
Date & Place of Trial: 14th March, 1946, Hamburg, the court  
consisting of two British officers and one Polish  
Officer.  
Charge: Committing a war crime in that he at Beringstadt in  
or about the month of April 1944, in violation of  
the laws and usages of war, ill-treated Marian Rosik,  
a Polish national.  
Verdict: Not Guilty.  
The accused was not listed by the Commission.

General reports of the Proceedings of Military Courts have been  
received in the following cases.

74) Trial against Romano Martello, Rino Faggiani and Luigi Bellini.  
Date & Place of Trial: 11th and 12th February 1946, at Bologna.  
Charge: Committing a war crime in that they near Casselle  
Pressana, Italy, on 6th January 1945, in violation  
of the laws and usages of war, were concerned in the  
killing of 6846387, Rfn.P.Chapman, K.R.R.C.  
Verdict: All guilty.  
Sentences: Each of the accused sentenced to imprisonment for  
10 years. Sentence confirmed.  
The accused were listed by the Commission as follows:  
Martello, 26/29, Faggiani, 26/20, Bellini, 26/11.

- 75) Trial against Michael Kripps and four others.  
Date & Place of Trial: 1st - 2nd April 1946, at Bologna.  
Charge: Committing a war crime in that they near Roncegno, in or about the month of March 1945, in violation of the laws and usages of war, were concerned in the killing of a British Officer, believed to be Major J.P. Wilkinson, R.A.  
Verdict: 3 of the accused Not Guilty. 2, Guilty.  
Sentences: Death by shooting, 2.  
Sentences confirmed, but commuted to:  
Kripps, imprisonment for 17 years,  
Moser, " " 7 " .  
The accused were listed by the Commission as follows:  
Kripps, 28/212, Moser, 28/346,  
Morandel, 28/345, Tribus, 28/351,  
Schenk, 28/349.
- 76) Trial against Colonello Francesco Paolo Turco, Italian Army.  
Date & Place of Trial: 8th - 10th April 1946, at the Royal Palace of Justice, Milan.  
Charge: Committing a war crime in that he at Orio al Serio, Italy, on or about 16 July, 1943, in violation of the laws and usages of war, killed Private Lambris Tofi, a British prisoner of war.  
Verdict: Guilty.  
Sentence: Death by shooting, with a strong recommendation for mercy.  
Sentence confirmed, but commuted to imprisonment for 15 years.  
The accused was listed by the Commission on List 15, No.181.

#### IV. United States Cases.

- 31) Trial against Charlotte V. Battalo and 5 others.  
Date & Place of Trial: Intermediate Military Court at Dachau on 31st January 1946.  
Charge: Wilfully, deliberately and wrongfully encourage, aid, abet and participate in an assault upon unknown members of the United States Army who were then unarmed, surrendered prisoners of war in the custody of the then German Reich, by hitting them with their hands and with various articles, the exact nature of which is unknown, on their heads and bodies and by kicking them in various parts of their bodies.  
Verdict: All the accused found Guilty.  
Sentences: Imprisonment for two years, 3,  
" " one year, 3.  
Sentences were confirmed, but 5½ months of the confinement of one of the accused, Maria Hegele, was remitted. (Original sentence one year.)  
The accused were not listed by the Commission.
- 32) Trial against Erich Dietzschold.  
Date & Place of Trial: 11th March 1946, at Ludwigsburg, before a General Military Government Court.  
Charge: Wrongfully committing an assault upon an unknown American airman, a prisoner of war, by kicking him in the neck.  
Verdict: Not Guilty.  
The accused was not listed by the Commission.



33) Trial against Kurt Hartung,

Date & Place of Trial: 12th April 1946, at Ludwigsburg, before  
an Intermediate Military Government Court.

Charge: Wrongfully encouraging, aiding, abetting and  
participating in committing assaults upon five  
unknown members of the United States Army, prisoners  
of war.

Verdict: Not Guilty.

The accused was listed by the Commission on List 16,  
No.994.

UNITED NATIONS WAR CRIMES COMMISSION

The following figures giving the situation regarding Wanted Persons as at 26th May, 1946 has been received from the Belgian Liaison Officer at H.Q., E.A.O.R.:-

BELGIAN WAR CRIMES LIAISON GROUP HQ BAOR

Situation as at 26th May 1946.

"WANTED PERSONS".

<u>Names Listed by UNWCC.</u>	<u>Dead</u>	<u>Identified &amp; arrested</u>	<u>Extradition asked</u>	<u>Extradition obtained.</u>
<u>6th November 1945</u>				
1703	5	86	20	-
<u>31st December 1945</u>				
1858	10	129	59	4
<u>23rd April 1946</u>				
2369	19	220	115	43
<u>26th May 1946.</u>				
2856	32	348	141	70

Misc. 33  
17th June, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Progress Report of War Crimes Trials as at 31st May, 1946.

	<u>Total Number of Cases Tried to Date.</u>	<u>Accused Involved.</u>	<u>Sentences.</u>		
			<u>Death.</u>	<u>Imprisonment.</u>	<u>Acquittal.</u>
U.S.F.E.T.	62	232	134	77	21
B.A.O.R. )	92	297	77	139	81
C.M.F. (Italy & Austria)					
A.L.F.S.E.A. +	-	203	88	83	32
AUSTRALIA. ≠	60	244	33	165	46
FRANCE ø	-	<u>101</u>	<u>60</u>	<u>38</u>	<u>3</u>
		Totals 1077	392	502	183

+ As at 4th June

≠ As at 24th May

ø Up to 31st March only and excluding November.



RESTRICTED.  
SECRET.

Misc. No. 34.  
20th June, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Bibliography of Legal Literature on the Law of War Crimes and Belligerent  
Occupation in the Second World War.

Second Supplement to the Bibliography  
Doc. Misc. No. 19. (\*)

Compiled by Egon Schwelb, Legal Officer.

Bathurst, M.E.	The United Nations War Crimes Commission.	(39) American Journal of International Law (1945) p.565.
Bernays, Murray C.	The Legal basis of the Nuremberg Trials.	Survey Graphic, New York, Jan., 1946. Condensed from Survey Graphic in the Reader's Digest, March 1946.
Bial, Dr. Louis C.	Vergeltung und Wiedergutmachung in Deutschland.	Havana; Editorial Lex; 1945.
Bisschop, W.R.	Criminality of War and its prevention.	Transactions of the Grotius Society for the Year 1943. (S.S. 1943)
Campbell, A.H., Prof.	Fascism and Legality.	(62) Law Quarterly Review. Apr. '46, p.141.
Ečer, Bohuslav	Právo v boji s nacismem. (The Law in the struggle against Nazism) (In Czech).	Brno (Czechoslovakia) 1946. Knihovna Záf.
Fried, J.H.E.	The exploitation of Foreign labour in Germany.	Montreal: International Labour Office. 1945.
Fried, J.H.E.	Transfer of Civilian Manpower from Occupied Territory.	(40) American Journal of Int. Law. (1946) p.303.
Hall, J.W. (Editor)	Trial of William Joyce.	Wm. Hodge & Co., Ltd. Notable British Trials Series.
Jackson, R.H.	The case against the Nazi War Criminals.	New York; Alfred A. Knopf; 1946.
Jackson, R.H.	Opening Address at the Trial of War Criminals at Nuremberg.	The Washington Post. Washington, D.C.
Lemkin, Raphael	Genocide.	The American Scholar. March, 1946.

(\*)

The first supplement appeared as Doc. Misc. No. 24; the present paper contains both publications which have become available since the circulation of Misc. No. 24, and earlier treatises which have been omitted from Docs. Misc. 19 and 24.)

- Lippmann, Walter. War Trials and the World State. In Symposium "One World or None" published in the United States by the McGraw Hill Publishing Co. Extract in Sunday Times, April 14, 1946.
- Pella V. La Justice pénale Internationale. (23) Revue de Droit International de sciences diplomatiques et politiques. July-September, 1945.
- Roberts, C.E. Bechhefer, "Ephesian" (Editor) The Trial of William Joyce. Jarrolds Publishers London. The Old Bailey Trial Series, 1946.
- Watt, Fr. Lewis, S.J. Trials of War Criminals. Clergy Review, 1946.
- Winfield, P.H. Prof. War Crimes and the Future of International Law. Fortnightly Review, March, 1946.
- Wright, Quincy, Due Process and International Law. (Note on in re Yamashita.) (40) American Journal of International Law (1946). p. 398.

Misc. No. 35.  
21st June, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

International film for discovery and  
identification of war criminals.

The following is a condensation of an article by the author, inter alia, of the book "Axis Rule in Occupied Europe", which will probably appear in the periodical "The American Scholar", New York. It has been placed at the Secretariat's disposal by courtesy of Dr. Lemkin.

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International Film for Discovery and  
Identification of War Criminals.

By Raphael Lemkin.

The task of discovering and identifying war criminals in this post war period is difficult and it requires careful planning and even the application of scientific methods. One should not overlook the fact that we have to deal with a mass-criminality organized by a state in a scientific manner, which involved millions of criminals and millions of victims and witnesses of crime.

In normal conditions the identification of a criminal may be achieved by confronting him with the victim or the witnesses of the crime. Because of the great numbers of persons involved and particularly because of the wide dispersal of these persons throughout many countries it is impossible to bring together the criminal and the victim or the witness for purposes of identification. In these contingencies only notorious criminals are sought after or one has to rely upon a purely accidental discovery of a criminal.

Could this situation be remedied so as to establish greater probabilities or possibilities for identification of greater masses and not only of accidental individual war criminals?

One of the solutions might be found in the production of an international war criminals film. One should proceed in the following manner.

The inmates of all camps, in which civilian internees or prisoners of war of Germany and her satellites are held, should be filmed and such films should be displayed in camps of displaced persons throughout Germany and also in all countries, which were formerly under the occupation of Germany or of the Axis satellites. Such films may be also displayed in countries where a number of victims of Axis criminality may probably be found, such as New York, Palestine, Sweden, Portugal and Shanghai.



Every criminal should be filmed with an easily discernible number and eventually name on his chest so as to enable the making of notes, while the audience is watching the display of the film.

The films should be displayed several times before the same audience so as to make errors less probable. Such an identification will be only the first step towards a further investigation, which might prove or disprove the veracity of identification.

The work and costs involved in the production of such a film are not too great. The inmates of the camps must be lined up before the movie-camera, which might be moved in a vehicle or the prisoners might be made to march before a movie-camera, which remains in one place. The display of such a film in camps of displaced persons or in private movies in various countries is a matter which can be easily arranged with the UNRRA or with movie companies in various countries.

Because of the international and interzonal (occupied Germany) scope of this project, the only organisation which could successfully handle it, is in the opinion of the author, the United Nations War Crimes Commission. This would naturally involve an extension of its functions in the field of international criminal investigation.

P.S. This article represents the personal views of the author and cannot be ascribed to any office with which he is or has been connected.

Restricted

MISC. No. 36  
27th June 1946

UNITED NATIONS WAR CRIMES COMMISSION

HANDING OVER OF WAR CRIMINALS

Correspondence, in connection with the handing over of War Criminals, is circulated to members for their information.

I. "Dear Sir Robert, 13 May 46.

You will remember that we discussed last week the question of war criminals being handed over by the British to other nations on the grounds of a prima facie case being established and without referring the case to the UNWCC.

We are in communication with the Foreign Office on this subject as a matter of policy and are awaiting a reply to our letter of 18 April in which we proposed certain reservations to their proposal that no war criminal should be handed over until he was listed by UNWCC.

Yours sincerely,  
K.E. SAVILL."

II. "Dear Sir Robert, 22 June 46

I refer to my letter 0160/2539 AG 3 (VW) of 13 May regarding the handing over of war criminals to other nations.

We have now issued a policy letter on the subject to HQ BAOR and I enclose a copy for your information.

We need to put the matter to CMF separately as they, and BTA who are under their administration, are responsible to the Combined Chiefs of Staff. This will be done shortly; meanwhile we have instructed them verbally to this effect and we know that they are adhering carefully to this. As AFHQ is an integrated headquarters the exchange of prisoners between the British and the Americans in Italy and Austria is part of the normal system as they are held on a pooled basis.

Yours sincerely,  
K.E. SAVILL"

to Page 2

ENCL: to letter of 22nd June

"HQ B.MOR A(PS4)

19th June 46

1. The UNWCC recently unanimously adopted a resolution deprecating except in exceptional cases the practice of handing over alleged war criminals who have not been listed as such by the Commission.

2. The Commission consider that normally an accused should only be handed over to another country when he has been listed by the Commission as a war criminal on a charge brought by that country.

Listing by the Commission puts the matter on an international level, ensures uniformity of practice, and provides a valuable permanent record of war crimes.

Moreover failure to follow this procedure might lead to the handing over of an accused whose case the UNWCC had examined and rejected.

3. It is appreciated that the procedure recommended by the UNWCC will involve some additional work and a certain amount of delay. The UNWCC have, however, recently speeded up their procedure for listing war criminals, and are prepared in specially urgent cases to give their decision at their first fortnightly meeting after the submission of the names.

4. In these circumstances it has been decided to comply with the Commission's recommendations. The attached instructions are accordingly issued for guidance in dealing with handover of war criminals under Law No.10. These instructions apply only to handovers to countries that are members of the UNWCC; existing instructions will continue to apply to handovers to non-member countries such as the USSR and Italy.

G.R. Bradshaw.  
Director of Personal Services."

ANNEXURE TO ABOVE LETTER

INSTRUCTIONS FOR HANDING OVER  
ALLEGED WAR CRIMINALS TO ALLIED COUNTRIES

1. A person wanted by an Allied country for a war crime committed against its nationals should normally be handed over to that country for trial only when he has been listed by the UNWCC as a war criminal on a charge brought by that country. Unlisted persons

to Page 3



should only be handed over in cases of exceptional urgency and then only after satisfactory prima facie evidence of guilt has been produced. In such cases the country to whom the accused is handed over should be requested to make an immediate application to the UNWCC for his listing as a war criminal.

2. In the event of any country requesting the hand-over of a person whose case has been considered and rejected by the UNWCC, the case should, in view of the possible political implications, be referred to the War Office for consideration.

3. The above instructions apply only to handovers for trial. There is no objection to the temporary loan, at your discretion, of unlisted persons for interrogation or to give evidence in other cases."

Misc. No. 37.  
26th June, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

The Legal Status of Germany.

A statement by the United Kingdom Foreign Office.

In an application for a writ of habeas corpus by an interned German national, the court (King's Bench Division; Lord Goddard, Lord Chief Justice, and Croom-Johnson and Linskey, Justices) was, on 3rd April 1946, furnished by the Attorney-General with a certificate from the United Kingdom Secretary of State for Foreign Affairs.

The contents of the certificate as reproduced in [1946] 1 All England Reports p.635, Rex v. Bottril, ex parte Kuechenmeister, are herewith circulated for the information of members.

Attention is drawn to the article "The Legal Status of Germany according to the Declaration of Berlin" by Professor Hans Kelsen in The American Journal of International Law, Vol.39 (1945) p.518.

- "(1) Under para.5 of the preamble to the declaration dated 5th June 1945, of the unconditional surrender of Germany, the Governments of the United Kingdom, the United States of America, the Union of Soviet Socialist Republics and France, assumed "supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command, and any state, municipal or local government or authority. The assumption for the purposes stated of the said authority and powers does not effect the annexation of Germany".
- (2) That in consequence of this declaration Germany still exists as a state and German nationality as a nationality, but the Allied Control Commission are the agency through which the government of Germany is carried on.
- (3) No treaty of peace or declaration of the allied powers having been made terminating the state of war with Germany, His Majesty is still in a state of war with Germany, although, as provided in the declaration of surrender, all active hostilities have ceased."

Misc. No. 38

July 12th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Greek Legislation on the Trial and

Punishment of War Criminals and

Enemy Collaborators.

Compiled by the Secretary to Committee III.

Since liberation, a great amount of legislative activity has been devoted in Greece to the problem of war criminals and collaborators.

For the purpose of punishing Greek subjects who assisted the enemy to the detriment of their fellow countrymen an Act was passed in Greece early in 1945 entitled "Constitutional Act No. 6 concerning the imposition of penal sanctions on enemy collaborators". The Act was amended by Constitutional Act No. 12 of the same year, and by Laws Nos. 217, 271, 295 and 332 of 1945. It was further amended and codified by Law No. 533 on 3rd September, 1945 (a consolidating Act).

An English translation of the Act, thus amended and consolidated, has been published as Appendix "C" in the British Command Paper: Greece No. 2 (1946) Cmd. 6838, containing the Report of the British Legal Mission to Greece (p.34).

An extract of this enactment is herewith circulated in compliance with the wishes expressed by members of the Commission on 27th March, 1946 (M.101) to the effect that translations of municipal enactments should be circulated. For the full text and for a comment by the British Legal Mission reference is made to Cmd. 6838 p. 34 and p. 27 respectively.

By "Constitutional Law" is meant a law amending the Constitution (Cmd. 6838 p. 28).

By "Compulsory Law" is meant a law passed in the absence of the King and of a Parliament, which is made "compulsory" by the necessity of the case. Such a law cannot, however, amend the Constitution (Cmd. 6838 p. 16).

A translation is in progress of the Greek Law No. 384 "The institution of a Greek National War Crimes Office" and of the Greek Constitutional Act No. 73 "On the trial and punishment of war criminals". With the kind help from Monsieur K. A. Stavropoulos, the representative of Greece



on the Commission, these two enactments will also be circulated as soon as they are available.

COMPULSORY LAW NO. 533.

Re: "Amendment, completion and codification of Constitutional Act No. 6 (1945) concerning the imposition of penal sanctions on enemy collaborators."

GEORGE II, KING OF THE HELLENES.

On the recommendation of the Council of Ministers we have decided and ordain:-

Constitutional Act No. 6 (1945) as amended by Constitutional Act No. 12 (1945) and Laws Nos. 217, 271, 295 and 332 of 1945, &c., is hereby codified and amended as follows:-

CHAPTER "A".

OFFENCES

ARTICLE 1.

There shall be prosecuted and punished, subject to the conditions and presuppositions hereunder:-

- (a) Persons who during the foreign occupation undertook the formation of a Government or its presidency with the assent of the enemies of the country. If the intention was to serve the enemy, this shall be regarded as an aggravation of the offence.
- (b) Persons who became Ministers or Under-Secretaries of State during the enemy occupation and facilitated its task.
- (c) Persons who occupied a civil, military, administrative or judicial post, or any other posts, deliberately becoming instruments of the enemy, or who ~~exercised~~ their duties in an aggressive manner towards the people to facilitate the work of the occupation authorities, or who in any way facilitated the work of the occupation authorities.  
The taking over of such an official post during the occupation shall be regarded as an aggravation of the offence.  
This provision shall embrace personnel, whether elected or not, of self-government organisations as well as governors, directors and employees of public or private statutory bodies.

- (d) Persons who took any service under the occupation authorities and behaved in an oppressive manner towards the people and facilitated the work of the occupation authorities.
- (e) Persons who knowingly became instruments of the enemy in spreading their propaganda, praising the work of conquerors, or causing defeatism among the Greek people, or contempt for the national or Allied cause. If such persons were editors or directors of newspapers or magazines or journalists, such factor shall be regarded as an aggravation of the offence.
- (f) Persons who denounced Greek or foreign subjects to the enemy or who assisted in their discovery or arrest. Eventual sentence of the persons so betrayed or arrested shall particularly constitute an aggravation of the offence.
- (g) Persons who participated in any violent action, whether in co-operation with the enemy or not, to the detriment of Greeks who were engaged in activities directed against the enemy. The arming of such persons by the occupation authorities shall be regarded as a factor aggravating the offence.

There shall also be taken into consideration as an aggravating factor in the case of persons coming under the provisions of paragraphs (e) and (f) of this Article, the question of whether such persons belonged to the armed forces of the country.

If as a result of the action described in the foregoing paragraphs the death of a Greek or Allied subject has occurred, the exercise of leniency for which provision is made in Article 2 hereof, is excluded.

- (h) Persons who systematically gave information to the enemy concerning the movements of individuals or organisations working for the national or Allied cause.
- (i) Persons who prevented by whatever means any projected national or Allied operation.
- (j) Persons who, in co-operation with or with the help of the enemy became heads or leaders of any movement tending to attack the integrity of the country.
- (k) Persons who by taking advantage of their financial co-operation with the enemy caused damage to the Greek nation or to Greek civilians, helped in any way the war effort of the enemy or obtained financial gains.

- (l) Persons who during the enemy occupation in co-operation with the enemy profited in any way or caused damage to the Allied cause, Greek citizens or to the citizens.
- (m) In all the foregoing cases where the fact of facilitating the enemy does not in itself constitute an element of the offence, it shall be regarded as a factor aggravating it.

#### ARTICLE 2.

1. Persons accused of acts provided for in Article 1 hereof shall be punished according to their capacity, post held, importance or the results of their actions, by sentence of death, imprisonment for life or penal servitude and, in extenuating circumstances, to imprisonment or exile for life or provisionally, but for not less than five years, outside the State's boundaries. Should exile not be possible, persons so sentenced shall be put under police watch in places determined by the Special Procurator of the Special Court which issued the decision. Should any person leave the place determined for him, he shall be punished by imprisonment for at least two years, imposed by the appropriate Court of Misdemeanours (Plimmeliodikion).
2. The Courts, taking into consideration the gravity of any act, may also impose total or partial confiscation of the accused's property.
3. Cases under sub-paragraph (a) of Article 1 shall be considered more severely when awarding punishment.

#### ARTICLE 3.

1. Sentence for any of the offences mentioned in Article 1 will involve de jure the consequences under the provisions of Article 21, 23 and 24 of the Penal Law for life even if the Court imposing sentence omits to mention them.
2. The deprivation of civil rights will operate ipso facto, even in the event of discharge on the grounds of insanity.

#### ARTICLE 4.

1. Sentence of imprisonment for a period of at least six months and life-long deprivation of civil rights for lack of patriotic loyalty will be imposed on all persons who, though not guilty of an offence having all the features of those set forth in Article 1 hereof, have nevertheless collaborated with the enemy in a way unworthy of Greek citizens, and so have injured the national reputation and have thus generally facilitated the work of the occupation authorities.
2. Conversion of sentences of imprisonment into fines, and the suspension of sentences hereunder are forbidden.



ARTICLE 5.

1. Where an offence under Penal Law is also an offence under the foregoing provisions, the general principles concerning multiplicity of offences will be applied, the offences described in Article 1 hereof being always considered to be the graver offences.

2. The consequences mentioned in Article 3 shall be imposed even if they are not provided for in relation to a concurrent and graver offence.

ARTICLE 6.

The provisions of those Acts which concern the responsibility of Ministers will not apply in the case of those who have acted as Ministers during the occupation.

ARTICLE 7.

The offences defined by Articles 1 and 4 shall be deemed as barred by limitation if penal action has not been exercised ex officio or an indictment against accused persons has not been submitted prior to the 20th July, 1945, in the cases of offences in the district of Athens Court of Appeal, and up to the 31st October, 1945, in the case of those alleged to have been committed elsewhere.

ARTICLE 8.

In so far as no special provisions are made in the present Law, the provisions of the general section of Common Penal Law shall apply.

.....

In the King's name:

THE REGENT,  
&c., &c., &c.

Athens, 1st September, 1945.

Misc. 39  
July 15th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Progress Report of War Crimes Trials as at 30th June, 1946.

	<u>Total Number of Cases Tried to date</u>	<u>Accused Involved</u>	<u>Death</u>	<u>Sentences</u> <u>Imprisonment</u>	<u>Acquittal</u>
USFET	65	241	140	80	21
BAOR	107	369	96	173	100
CMF (Italy & Austria)					
ALFMEA	83	253	107	111	35
SCAP (involving British Victims)	9	16	2	14	-
Australia	82	379	54	217	108
France	-	116	64	49	3
		—	—	—	—
	Totals	1374	463	644	267

IMPORTANT

Misc. 40  
15th August, 1946

UNITED NATIONS WAR CRIMES COMMISSION

SECRETARIAT OF COMMITTEE I

FOR THE ATTENTION OF NATIONAL OFFICES

SUBMISSION OF CHARGES

In order to avoid any misunderstandings in future the National Offices are advised that in accordance with already established practice, only cases received up to Friday noon can be placed on the Agenda of Committee I for the following week.

Exceptionally URGENT cases received after Friday noon must be marked as such on the top of page 1, with a request that they be considered by the Committee at its next meeting.



RESTRICTED  
SECRET

MISC. NO. 41  
19th August, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

United States Provisions regarding  
Military Commissions  
in the  
Pacific Theater of Operations.

The provisions under which American Military Commissions in the Mediterranean Theater of Operations have been established have been circulated for the information of the Commission in Doc. Misc. No. 16.

The corresponding provisions for the European Theater of Operations are contained in Doc. Misc. No. 23, part B.

The present document contains the Regulations governing the trial of war criminals issued by General Headquarters, United States Armed Forces, Pacific.

Reference is also made to the Charter of the International Military Tribunal for the Far East, the original and amended text of which was circulated in Documents C.182 and C.198.

"R E S T R I C T E D"

GENERAL HEADQUARTERS  
UNITED STATES ARMY FORCES, PACIFIC

AG 000.5 (24 Sep 45) JA

APD 500  
24 September 1945

SUBJECT: Regulations Governing the Trial of War Criminals.

The following rules and regulations will govern the trials of persons, units, and organizations accused as War Criminals in this theater:

ESTABLISHMENT OF MILITARY COMMISSIONS

1. GENERAL. Trial of persons, units, and organizations accused as war criminals will be by military commissions to be convened by or under the authority of the Commander-in-Chief, United States Army Forces, Pacific.
2. NUMBER AND TYPES. The number and types of commissions to be established will depend upon the number and nature of the offenses involved and of the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against two (2) or more nations, or any other

offenses; and commissions consisting of members of any one branch or of several branches of the armed services of one or more nations, to try cases involving offenses against any one or more of such service branches, or any other offenses.

#### JURISDICTION

3. OVER TERRITORY. The military commissions established hereunder shall have jurisdiction over all of Japan and other areas occupied by the armed forces commanded by the Commander-in-Chief, United States Army Forces, Pacific.

4. OVER PERSONS. - a. The military commissions established hereunder shall have jurisdiction over all persons, units or organizations within Japan and other areas occupied by the armed forces, commanded by the Commander-in-Chief, United States Army Forces, Pacific.

b. Any military or naval unit or any official or unofficial group or organization, whether or not still in existence, may be charged with criminal acts or complicity therein and tried by a military commission.

c. The convening authority may specify particular offenders to be tried before any commission appointed by him.

5. OVER OFFENSES. - a. The military commissions established hereunder shall have jurisdiction over the following offenses: murder, torture or ill-treatment of prisoners of war or persons on the seas; killing or ill-treatment of hostages; murder, torture or ill-treatment, or deportation to slave labor or for any other illegal purpose, of civilians of, or in, occupied territory; plunder of public or private property; wanton destruction of cities, towns or villages; devastation, destruction or damage of public or private property not justified by military necessity; planning, preparation, initiation or waging of a war of aggression, or an invasion or war in violation of international law, treaties, agreements or assurances; murder, extermination, enslavement, deportation or other inhumane acts committed against any civilian population, or persecution on political, racial, national or religious grounds, in execution of or connection with any offense within the jurisdiction of the commission, whether or not in violation of the domestic law of the country where perpetrated; and all other offenses against the laws or customs of war; participation in a common plan or conspiracy to accomplish any of the foregoing. Leaders, organizers, instigators, accessories and accomplices participating in the formulation or execution of any such common plan or conspiracy will be held responsible for all acts performed by any person in execution of that plan or conspiracy.

b. Persons whose offenses have a particular geographical location outside Japan may be returned to the scene of their crimes for trial by competent military or civil tribunals of local jurisdiction. In the event a person is requested for trial in two (2) or more countries, the Commander-in-Chief, United States Army Forces, Pacific, will determine the place of trial on the basis of the relative gravity of the respective charges and other relevant circumstances.

#### MEMBERSHIP OF COMMISSION

6. APPOINTMENT. The members of each military commission will be appointed by the Commander-in-Chief, United States Army Forces, Pacific, or under authority delegated by him. The appointment may be made in the order convening the commission or in a separate order. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission and in case of illness or other incapacity of any principal member an alternate shall take the place of that member. Any vacancy among the members or alternates

occurring after a trial has begun may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

7. NUMBER OF MEMBERS. Each commission shall consist of not less than three (3) members.

8. QUALIFICATIONS. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice; provided, that no person shall be appointed to hear a case which he personally investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy and other service personnel, or of both service personnel and civilians. If feasible, one or more members of a commission should have had legal training.

9. QUORUM AND VOTING. A quorum shall consist of two-thirds (2/3) of the members of the commission, or alternates (if any) acting as members, but in no event less than three (3) members. All decisions of the commission shall be by majority vote of the members present when the vote is taken, which shall be a quorum, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members of the quorum. In case of a tie vote, the vote of the presiding member will determine.

10. PRESIDING MEMBERS. In the event the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

#### PROSECUTORS

11. APPOINTMENT. The convening authority shall designate one or more persons to conduct the prosecution before each commission. In prosecutions for offenses involving more than one nation, each nation concerned may be represented among the prosecutors.

12. DUTIES. The duties of the prosecutors are:

a. To determine the offenses and the offenders to be tried before the commission in addition to those specifically ordered by the convening authority.

b. To prepare and present to the commission charges and specifications.

c. To prepare cases for trial and to conduct the prosecution of each case before the commission.

#### POWERS AND PROCEDURE OF COMMISSIONS.

13. CONDUCT OF THE TRIAL. A Commission shall:

a. Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues of evidence and preventing any unnecessary delay or interference.

b. Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

c. Sessions of a commission shall be public except when otherwise directed by the commission.



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b. Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

c. Sessions of a commission shall be public except when otherwise directed by the commission.



d. A commission shall hold each session at such time and place as it shall determine or as may be directed by the convening authority.

14. RIGHTS OF THE ACCUSED. The accused shall be entitled:

a. To have in advance of trial a copy of the charges and specifications, so worded as clearly to apprise the accused of each offense charged.

b. To be represented prior to and during trial by counsel of his own choice, or to conduct his own defense. If the accused fails to designate his counsel, the commission shall appoint competent counsel to represent or advise the accused.

c. To have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

d. To have the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

15. WITNESSES. The commission shall have power:

a. To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons, and to question witnesses.

b. To require the production of documents and other evidentiary material.

c. To have evidence taken by a special commissioner appointed by the commission.

16. EVIDENCE. - a. The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

- (1) Any document which appears to the commission to have been signed or issued officially by any officer, department, agency, or member of the armed forces of any government, without proof of the signature or of the issuance of the document.
- (2) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a medical doctor or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission finds to have been acting in the course of his duty when making the report.

- (3) Affidavits, depositions, or other statements taken by an officer detailed for that purpose by military authority.
- (4) Any diary, letter or other document appearing to the commission to contain information relating to the charge.
- (5) A copy of any document or other secondary evidence of its contents, if the commission believes that the original is not available or cannot be produced without undue delay.

b. The Commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

c. A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

d. If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima facie evidence that the accused likewise is guilty of that offense.

e. The findings and judgment of a commission in any trial of a unit, group or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial by that or any other commission of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in such unit, group or organization convicted by a commission, the burden of proof shall shift to the accused to establish any mitigating circumstances relating to his membership or participation therein.

f. The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

17. TRIAL PROCEDURE. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances;

a. Each charge and specification will be read, or its substance stated, in open court.

b. The presiding member shall ask each accused whether he pleads 'Guilty' or 'Not Guilty.'

c. The prosecution shall make its opening statement.

d. The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

e. The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

f. The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

g. The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

h. The defense, and thereafter the prosecution, shall address the commission.

i. The commission shall consider the case in closed session and thereafter in open court deliver its judgment, and in the event of a conviction shall pronounce sentence.

18. RECORD OF PROCEEDINGS. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

#### JUDGMENT AND SENTENCE

19. JUDGMENT. The judgment of a commission as to guilt or acquittal shall be delivered in open court. It may state the reasons on which based.

20. SENTENCE. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine, or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property, or order its delivery to the Commander-in-Chief, United States Army Forces, Pacific, for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

21. APPROVAL OF SENTENCE. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into effect until confirmed by the Commander-in-Chief, United States Army Forces, Pacific. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.



RULE MAKING POWER

22. SUPPLEMENTARY RULES AND FORMS. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof or such rules and forms as may be prescribed by the convening authority or by the Commander-in-Chief, United States Army Forces, Pacific.

By command of General MacARTHUR:

/s/ B.M. Fitch  
/t/ B.M. FITCH  
Brigadier General, U.S. Army,  
Adjutant General. "

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/s/ B.M. Fitch  
/t/ B.M. FITCH  
Brigadier General, U.S. Army,  
Adjutant General. "

UNITED NATIONS WAR CRIMES COMMISSION

MISC. 42

27th August, 1946.

PROGRESS REPORT OF WAR CRIMES TRIALS AS AT 31ST JULY, 1946.

	<u>Total Number of Cases Tried to Date.</u>	<u>Accused Involved.</u>	<u>Death</u>	<u>S e n t e n c e s.</u>	
				<u>Imprisonment</u>	<u>Acquittals</u>
USFET	69	319	182	115	22
BAOR	} 116	427	106	197	124
CMF (Italy & Austria)					
ALFSEA	101	292	118	131	43
SCAP	9	16	2	14	-
AUSTRALIA	129	489	77	232	180
FRANCE <sup>+</sup>	not given	130	69	56	5
		<hr/>	<hr/>	<hr/>	<hr/>
TOTALS:		1673	554	745	374

<sup>+</sup> not complete



SECRET  
RESTRICTED.

Misc. No. 43  
27th August 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

The Provisions of the Draft Peace Treaties  
concerning War Criminals.

Note by Egon Schwelb, Legal Officer.

By the courtesy of the United Kingdom Foreign Office, the Draft Peace Treaties with Italy, Rumania, Bulgaria, Hungary and Finland, presented to the Paris Peace Conference by the Council of Foreign Ministers, have been made available to the Commission's Secretariat.

- I. All the Draft Peace Treaties contain express provisions regarding the apprehension and surrender of war criminals (in the wider sense) and traitors. The respective provisions form, in the Draft Peace Treaty with Italy, its Part III, (Part I being "Territorial Clauses", Part II "Political Clauses" and Part IV "Naval, Military and Air Clauses"). Article 38 of the Draft Peace Treaty with Italy reads as follows:
- " 1. Italy shall take the necessary steps to ensure the apprehension and surrender for trial of:
    - (a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace and humanity.
    - (b) Nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war.
  2. At the request of the United Nations Government concerned, Italy will likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.
  3. Any disagreement concerning the application of the provisions of paragraphs 1 and 2 of this Article shall be referred by any of the Governments concerned to the Ambassadors in Rome of the Union of Soviet Socialist Republics, United Kingdom, United States of America, and France, who will reach agreement with regard to the difficulty. "
- II. In the Draft Peace Treaties with Rumania, Bulgaria, Hungary and Finland, the corresponding provisions do not form a separate part of the respective treaty, but are inserted in Part II (Political Clauses). The provision as to the War Criminals and Traitors are contained in Article 6 of the Draft Treaty with Rumania, in Article 5 of the Draft Treaty with Bulgaria, in Article 5 of the Draft Treaty with Hungary and in Article 9 of the Draft Treaty with Finland.

The quoted paragraphs of the four treaties are identical with Art. 38 of the Draft Peace Treaty with Italy, with the modification that it is the Heads of the Diplomatic Missions in Bucharest, Sofia and Budapest respectively of the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, in whom the right to decide in cases of disagreement is vested, France being excluded. In the Finnish Treaty, it is stated that any disagreement concerning the application of the provisions of paragraphs 1 and 2 of Article 9 shall be referred by any of the Governments concerned to the Ministers in Helsinki of the Union of Soviet Socialist Republics, and the United Kingdom who "will reach agreement with regard to the difficulty". The United States and French envoys in Helsinki do not, therefore, participate in such decisions.

- III. Article 38 of the Draft Peace Treaty with Italy replaces the provisions of the surrender document signed at Malta on 29th September 1943, as amended at Brindisi on 9th November 1943, Article 29 of which reads as follows:

" Benito Mussolini, his chief Fascist associates, and all persons suspected of having committed war crimes or analogous offences whose names appear on lists to be communicated by the United Nations and who now or in the future are on territory controlled by the Allied Military Command or by the Italian Government, will forthwith be apprehended and surrendered into the hands of the United Nations. Any instruction given by the United Nations to this purpose will be complied with. "

- IV. In the Armistice Conventions concluded with the four other Powers, the provisions regarding war criminals were as follows:

In the case of Rumania:

Conditions of an Armistice with Rumania, signed at Moscow, 12th September 1944.  
(Miscellaneous No.1.(1945) Cmd.6585. H.M.Stationery Office.  
Department of State Bulletin, Vol.XI, No.273, (17 September 1944, Reprinted in American Journal of International Law, Vol.39, Supplement p.88.)

Article 14:

The Rumanian Government and High Command undertake to collaborate with the Allied (Soviet) High Command in the apprehension and trial of persons accused of war crimes.

In the case of Bulgaria:

Conditions of an Armistice with Bulgaria, signed at Moscow, 28th October, 1944.  
(Miscellaneous No.3. (1945) Cmd.6587, H.M.Stationery Office.  
Department of State Bulletin, Vol.XI. No.279 (29 October 1944),  
Reprinted in American Journal, ibid p.93.)

Article 6:

The Government of Bulgaria will co-operate in the apprehension and trial of persons accused of war crimes.

In the case of Hungary:

Armistice with Hungary, signed at Moscow, 20th January 1945.  
(Department of State Bulletin, Vol.XII, No.291 (21 January 1945)  
p.83.  
Reprinted in American Journal, ibid, p.97.)

Article XIV:

Hungary will co-operate in the apprehension and trial, as well as the surrender to the Governments concerned, of persons accused of war crimes.

In the case of Finland:

Conditions of an Armistice with Finland, signed at Moscow, 19th September 1944.  
(Miscellaneous No.2. (1945) Cmd.6586. H.M.Stationery Office  
Reprinted in American Journal, ibid page 85.)

Article 13:

Finland undertakes to collaborate with the Allied Powers in the apprehension of persons accused of war crimes and in their trial.

- V. For the purposes of comparison and illustration, we herewith reproduce the corresponding provisions of the Peace Treaty of Versailles:

Articles 228 - 230 of the Versailles Treaty read as follows:

" Article 228.

The German Government recognises the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies.

The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the German authorities.

Article 229.

Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power.

Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned.

In every case the accused will be entitled to name his own counsel.

Article 230.

The German Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders and the just appreciation of responsibility. "

- VI. Article 38 of the Draft Treaty with Italy (and, of course, the above quoted provisions of the four other treaties) differs in several respects from the provisions of Article 29 of the Italian Armistice.



1) The 1943 Armistice did not restrict its provisions to war crimes in the narrower sense, but spoke of persons suspected of having committed war crimes "or analogous offences". The Italian Armistice Convention mentioned Benito Mussolini by name and also spoke of "his chief Fascist Associates". It was obvious that the text of the Italian Armistice aimed at including into the retributive action of the United Nations also persons who were not accused of war crimes in the narrower sense, denoting the violation of the laws and customs of war. In the Charter of the International Military Tribunal attached to the Four-Power Agreement of 8th August 1945, the crimes to be made the subject of prosecutions, in addition to war crimes in the narrower sense, were more precisely defined, Article 6 of the Charter juxtaposing to war crimes crimes against peace, (Art.6(a)) and crimes against humanity, (Art.6(c)).

The United Kingdom, the United States of America, the U.S.S.R. and France, were Signatories of the Four-Power Agreement of 8th August 1945, to which then other allied nations adhered under its Article 5.

The same four Great Powers were the members of the Council of Foreign Ministers which prepared the five Draft Peace Treaties and presented them to the Paris Peace Conference. There can be no doubt that the expressions "war crimes", "crimes against peace" and "crimes against humanity" are in the Draft Peace Treaties used in the same sense as in the Charter of the International Military Tribunal and that, therefore, the explanation of these terms in the Charter of 8th August 1945, may be also used in interpreting the terms of Article 38 of the Italian Treaty and the corresponding provisions of the four other treaties.

2) The five Draft Treaties are therefore a further step in the process of developing International Law and embodying in it the notions of crimes against peace and crimes against humanity.

Originally the law regarding these two types of crimes had been stated by the four Great Powers only.

Eventually the provisions of the Charter of the International Military Tribunal were endorsed by other allied States which adhered to the Four-Power Agreement under its Article 5.

Then, on 13th February 1946, the General Assembly of the United Nations passed a resolution regarding the surrender of war criminals (circulated as Doc.C.179) in the Preamble of which it took note of the definition of war crimes, crimes against peace and crimes against humanity, contained in the Charter of the International Military Tribunal dated 8th August 1945.

Now, when the five Peace Treaties will be signed and ratified and will come into force, the definition of these two types of crimes will be accepted also by the five former Axis and Satellite countries.

3) Article 38(1)(b) of the Italian Treaty (and the corresponding articles of the four other draft Treaties,) contain provisions regarding the so-called quislings and traitors, who are defined as "Nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war". It will be noted that the provision is restricted to nationals of the Allied and Associated Powers. Enemy nationals and citizens of neutral States are outside its scope. This will mean that, e.g., an enemy national or a neutral citizen who was a resident of an Allied State, and has violated the law of the allied country by treason or collaboration with the enemy during the war, will not have to be surrendered unless he is also accused of a war crime, a crime against peace or a crime against humanity, under Article 38(1)(a).



4) It is submitted that the expressions "treason" and "collaboration" are not used in a technical sense because the terminology used in the municipal penal laws of different States is different and so are the actual provisions and the delimitations of the several types of offences against the safety of the State in different municipal penal laws.

5) It is not stated to whom the war criminals and traitors are to be surrendered. In the Italian Armistice it was provided that the criminals would be surrendered "into the hands of the United Nations". From the text of Article 38, paragraph 2, which deals with witnesses, it seems probable that not only witnesses but also accused persons should be made available "at the request of the United Nations Government concerned".

6) The reference to lists to be communicated by the United Nations, which appears in Article 29 of the Italian Armistice, is omitted in the Draft Peace Treaties. The Draft Peace Treaties do not contain a provision corresponding to Article 228, paragraph 2 of the Versailles Treaty, which ordained that all persons should be handed over "who are specified either by name or by the rank, office or employment which they held under the German authorities".

7) It will be noted that the limitation "during the war" is contained in Article 38(1)(b) of the Italian Treaty which deals with traitors and collaborators, but not in sub-paragraph (a) which deals with perpetrators of war crimes, crimes against peace and crimes against humanity.

From the text itself, it could therefore even be argued that the five former enemy countries undertake to apprehend and surrender for trial not only persons who have committed war crimes and crimes against peace and crimes against humanity during the last war, but also persons who will commit such crimes in future. This would be of particular importance with regard to crimes against peace, but it must be admitted that this interpretation would probably not be in accordance with the intention of the draftsmen of the five Treaties.

8) Article 38, paragraph 3 of the Draft Treaty with Italy provides that any disagreement concerning the application of the provisions of paragraphs 1 and 2 of the Article shall be referred by any of the Governments concerned to the Ambassadors in Rome of the Four Great Powers, who will reach agreement with regard to the difficulty. (As to the different composition of the body of diplomatic representatives under the four other Draft Peace Treaties, see *supra* II, paragraph 2.)

It is submitted that this provision applies both to any disagreement between an Allied Power on the one hand and Italy on the other, and to a disagreement among United Nations Governments. The latter would include, for instance, a difference of opinion on the question to whom an accused wanted by more than one Government should be handed over. The decision of the four (in other Treaties, 3 or 2) diplomatic envoys must be unanimous, because it is stated that they "will reach agreement."

9) Article 38 of the Draft Treaty does not contain a provision corresponding to Article 228, paragraph 1 in fine of the Versailles Treaty that the provision will apply notwithstanding any proceedings or prosecution before a Tribunal in Germany or in territory of her Allies.

10) No duty corresponding to Article 230 of the Versailles Treaty is imposed on the five countries. In Article 230 the German Government had undertaken to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders and the just appreciation of responsibility.

VII. The United Nations War Crimes Commission has dealt extensively with the Articles to be inserted in any Armistice and Peace Treaties and reference is made, inter alia, to Documents C.18, C.27, C.31 and C.34.

The Draft contained in Doc.C.31 provides in its paragraph 2 for a detailed enumeration of the steps which Germany (or the non-German Axis countries (C.34),) should undertake. Doc.C.31 also contains a number of recommendations providing against obstruction of its provisions.