

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 26th February 1947
at 3.0 p.m.

In the Chair: Sir Robert Craigie (United Kingdom)

Also Present:

Mr. Dao,	China,
Dr. Neumann,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Dr. Dimitzas,	Greece,
Dr. Aars-Rynning.	Norway.

Deliberate Bombardment of Undefended Places.
Request from the Far Eastern and Pacific Sub-Commission,
Docs. III/77, III/78 and I/82.

Sir Robert CRAIGIE suggested that the Committee might begin with a general discussion on the problem on the basis of the reports submitted by Dr. Schwelb and Dr. Litawski, before attempting to answer the three specific questions before it.

His first impression was that the term "deliberate bombardment of undefended places" was met with in International Law only as regards land bombardment. In connection with bombardments from the sea, the criterion adopted was whether a military objective was aimed at. The nature of "defendedness" had never been defined. He thought that an accused person could say in his defence that the presence of anti-aircraft guns would constitute "defendedness". His tentative conclusion was that the criterion as regards aerial bombardment should be whether a military objective existed. This was the test followed in Committee I and it was easier to operate than that of "defendedness", even though it had never been explicitly defined; for instance, there was the argument as to whether an industrial area was a military objective. During the second World War, there had been bombing from both sides of areas in which there existed only the remotest military objective. On the part of the Allies, however, this was done by way of reprisal for indiscriminate bombardment on the part of the Axis.

Dr. NEUMANN agreed with the papers before the Committee and with the remarks of the Chairman. The main consideration in judging cases of aerial bombardment should be whether there was a military target, as in cases of bombardment from the sea.

~~Mr. DAO suggested that the Committee should confine itself to answering the three questions before it.~~

The Committee then proceeded to discuss the first question, (a).

The SECRETARY, (Dr. Schwelb), suggested that the Committee should preface its replies to the three questions by a general statement saying that it was doubtful whether defendedness was any longer the correct criterion.

Dr. NEUMANN agreed with Dr. Schwelb.

Dr. SCHRAM-NIELSEN said that he was in full agreement with the tentative proposal contained in para.XIV(a) of Doc.III/78 if the words in brackets were omitted.

The Committee accordingly approved the following text regarding question (a):

" 'Deliberate Bombardment of undefended places' means the intentional bombardment of places with the knowledge that they are undefended.

According to general principles of criminal law, the burden of proof rests on the prosecution. The intention to bombard the undefended places may be inferred from actions taken by the accused persons. "

It was agreed that Dr. SCHWELB should draft a short introduction to the Committee's replies, showing why the Committee did not regard the criterion of undefendedness as useful in the present circumstances.

Dr. AARS-RYNNING said that undefended places might nevertheless include military objectives.

The SECRETARY said that in the law as it stood up to 1939, it was illegal to bomb civilian non-combatants. If an aviator could not bomb a military target without hitting civilians, he was expected not to use his bombs. Similarly in submarine warfare, according to written International Law, it was illegal to torpedo a merchant ship without warning and without providing means of safety for the crew. The whole practice of U-boat warfare was thus contrary to the written law. He pointed out that the Nuremberg Indictment and Judgment made no mention of aerial bombardment, even of the use of the V-weapon.

Sir Robert CRAIGIE said that the explanation of this was that indiscriminate bombardments had developed on both sides, but there was no question of reprisals being taken by the Japanese in China before 1939. In 1937 the Japanese Government was bound by the Hague Convention No. IV.

The SECRETARY said that the binding nature of Article 25 of the Hague Rules had been questioned from the beginning. Further, there was the General Participation Clause to consider. Dr. Schwelb said that the unratified Hague Air Warfare Rules of 1923 laid down, in para. 2. of Article 24, very specific objectives which it was legitimate to bomb from the air, and provided, in paragraph 3 that, when these objectives could not be bombed without indiscriminate bombardment of civilians, the aircraft must abstain from bombardments.

Sir Robert CRAIGIE said that as United Kingdom Ambassador to Japan he had had to make numerous protests against indiscriminate bombardments of civilians. The answer given was always that, owing to anti-aircraft defences, the aircraft in question was forced to fly higher and that, as a result, the bombs fell outside the area intended.

The Committee then went on to consider question (b).

The SECRETARY said that with the exception of the provision regarding contact mines in Article 1 of the Hague Convention No. IX, there was no provision in international law on the question of defendedness.

Sir Robert CRAIGIE said that even if the Hague Air Warfare Rules were taken to define what should be bombarded, it was legitimate for the Japanese to bomb an arsenal without hitting civilians. This, however, was not usually possible in practice. Furthermore, in nearly all cases, the places bombarded were defended by anti-aircraft guns, however weak.

The Committee was of the opinion that there was no indication in International Law of what was meant by undefended places; it agreed to the first sentence of paragraph XIV (b) of Doc.III/78 as reply to question (b) and charged Dr. Schwelb with the task of drafting a proviso referring to the introductory paragraph and expressing the opinion that the term "undefended place" should be read as place containing no military objective.

The Committee then proceeded to deal with question (c).

Dr. LITAWSKI, in introducing Doc.I/82, pointed out that the cases listed on 'A' were cases in which the bombardments had taken place only after the occupation of the country containing the areas bombed. It seemed to be the general attitude of Committee I that bombing of areas where partisans were hiding was legitimate.

The SECRETARY said that it seemed to him proper to say that the main practice of Committee I was governed by Dr. Litawski's conclusions (a) and (b) on page 5 of Doc.I/82. He added that if belligerent status were demanded for partisans, so as to afford them the protection of prisoners of war, then it must be admitted that to take military action against them could not be regarded as a war crime.

Mr. DAO said that it seemed to him that the expressions "undefended" and "without military objectives" were the same.

The CHAIRMAN said that to him they did not seem quite the same. Committee I had had to deal with a case in which a German commander had bombarded the civilian part of the town of Brest. Despite the fact that the town was defended, the Commander was listed on 'A' because the bombardment of the civilian area was more than was necessary in the circumstances.

The Committee agreed to answer question (c) in the sense of Dr. Litawski's points (a) and (b) on page 5 of Doc.I/82.

The SECRETARY pointed out that the questions referred to Committee III were not restricted to 1937. It would be necessary for the Committee to attempt to give an answer as regards the position in 1945 also. He was not sure that the question of reprisals should be mentioned in the Committee's replies. The International Military Tribunal at Nuremberg was faced with the same dilemma in the case of Raeder and Doenitz and their violations of the Submarine Protocol of 1936.

Dr. SCHRAM-NIELSEN said that the use of atomic bombs could hardly be considered under the aspect of reprisals.

Dr. MARS-RYNNING also advised great caution in referring to the concept of retaliation.

Sir Robert CRAIGIE agreed that mention of reprisals might be omitted. He suggested that the Committee simply state that it was impossible to define the law at the present time.

The SECRETARY said that that would be an argument in favour of listing the accused in case of doubt and leaving it to the court to clarify the law.

It was agreed that Dr. SCHWELB should submit to the Committee at its next meeting, a paper stating the three answers formulated by the Committee, prefacing these answers with a general statement shifting the emphasis from "undefended places" to "military objectives" and saying that there was no accurate definition of either.

The next meeting will be held either on Wednesday 5th or Thursday 6th March, the latter if there will be no meeting of Committee I next week.

UNITED NATIONS WAR CRIMES COMMISSION

Notes of the Meeting of COMMITTEE III held on 6th March, 1947,
at 3 p.m.

In the Chair: Sir Robert Craigie, United Kingdom.

Also present:

Dr. Aars-Rynning, Norway.
Col. Dr. Muszkat, Poland.

Dr. Schram-Nielsen, (Denmark), M. Dinitzas (Greece), and Commander Mouton (Netherlands) sent apologies for not being able to attend.

I. Deliberate Bombardment of undefended places.
(Documents III/77, III/78, III/79 and I/82)

The draft report, Document III/79, was considered. Sir Robert Craigie made the following suggestions which were agreed to by the Committee after a discussion, in which Dr. Aars-Rynning and Colonel Dr. Muszkat took part:

- (1) Omitting the first three lines:
- (2) Some verbal alterations in paragraph II.
- (3) Amendment of paragraph III to the effect that it will read as follows:-

"III. Subject to the observation contained in the preceding paragraph, the Commission replies to the three questions posed by the Sub-Commission, as follows:-

(a) "Deliberate bombardment of undefended places" means the intentional bombardment of places with the knowledge that they are undefended.

According to general principles of criminal law the burden of proof rests on the prosecution. In establishing such proof, the intention to bombard an undefended place and the knowledge that it was undefended may be inferred from the conduct and actions of the accused person.

(b) There is no indication either in conventional law or in the opinion of legal writers or in actual state practice what "undefended place" means.

In view of the considerations set forth in Section II of this Memorandum it has been the practice of this Commission to use the term "place containing no military objective" rather than the term "undefended place" as the criterion.

(c) As stated under (b) the Commission has, in its actual practice, considered the absence of military objectives to be the correct criterion. It has, therefore, declined to list persons accused of being responsible for the bombardment of places containing military objectives, and has, on the other hand, placed on its lists persons responsible for the deliberate, i.e., intentional, bombardment of places containing no military objectives".

The Committee further decided that in the accompanying letter from the Commission to the Far-Eastern and Pacific Sub-Commission the wish should be expressed that the Commission be informed of the way these charges will eventually be dealt with by the Sub-Commission.

II. The French Case No. 4695. (Doc. III/80, Part I).

In the tentative preliminary discussion, Dr. Aars-Rynning and Colonel Dr. Muszkat expressed the view that the subject matter of the charge constituted a war crime in view of the grand scale in which the use of the black market had been planned and in which the plan had been executed. The activities of the accused amounted to pillage and complicity in pillage.

The Secretary (Dr. Schwelb) expressed his doubts whether it was possible to consider, what has been done, as pillage. The charge proved that the scheme had been financed to 9/10ths from contributions which were extorted by the German authorities from France. The extortion of contributions far in excess of the needs of the army of occupation and the administration of the territory was, of course, a violation of Article 49 of the Hague Regulations. For these violations the persons demanding those contributions were responsible, not the persons who used part of the money for the operations on the black market. The Secretary put tentatively forward the suggestion that the organisation of the black market on such a scale might possibly be considered a violation of Article 43 of the Hague Regulations, under which the occupant has a duty to ensure public order and to respect, unless absolutely prevented, the laws in force in the occupied country. The prohibition is addressed to the occupant as such. Only the organising of the violation of the law on a grand scale and on a high level can be considered a violation of Article 43. Contraventions of economic provisions valid in occupied territory are probably offences under municipal law, but are not per se also war crimes.

Sir Robert Craigie suggested that the matter should be examined from the point of view of Articles 49 and 43 of the Hague Regulations and the Secretary was charged with the task of preparing a paper on these lines.

III. The French Case No. 4698. (Document III/80, Part 2; on p.5)

The Committee discussed this case and came to the conclusion that the facts as set forth in the charge, unless supplemented by further facts, did not constitute a war crime. The Committee had regard to the fact that the goods were sent back to Germany and that the compulsion was exercised by the Hide office and not by the trading firm.

The Secretary was charged with the task of preparing a paper giving expression to this opinion.

The Committee decided that its next meeting should be held in the week ending 22nd March, 1947.

Corrigendum
to the Notes of the
Joint Meeting of Committees I and III.

Committee I Minutes No. 92.
Committee III Minutes No. 3/47.

UNITED NATIONS WAR CRIMES COMMISSION.

The 6th paragraph on page 4 is amended to read as follows:

" It was further agreed that Dr. SCHWELB should draw up a short statement for the four Ambassadors which, when approved by Sir Robert Craigie as Chairman of Committee III and by Lord Wright as Chairman of the Commission, should be sent to the United Kingdom Foreign Office with the request to transmit it to the British Ambassador in Rome. The United States and French representatives on the Commission would doubtless arrange for copies to be sent to the United States and French Ambassadors. "

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 27th March 1947

at 10.30 a.m.

In the Chair, Sir Robert Craigie (Great Britain)

Also Present:

Dr. Neumann,	Czechoslovakia
Dr. Schram-Nielsen,	Denmark,
Male. Capiomont,	France,
Commander Mouton,	Netherlands,
Colonel Dr. Muszkat,	Poland,
Mr. Kintner,	United States of America,
Dr. Zivkovic.	Yugoslavia.

Dr. Aars-Rønning apologised for not being able to attend and expressed his full agreement with Dr. Schwelb's paper, No. III/83.

I. Exploitation of the Black Market as a War Crime.

The Committee discussed Doc. III/83.

Sir Robert CRAIGIE, Dr. ZIVKOVIC, Dr. SCHRAM-NIELSEN, Mr. KINTNER, Commander MOUTON and Dr. NEUMANN took part in the discussion.

The Document was unanimously approved subject to the following substantial amendments, in addition to some verbal amendments:

In paragraph VII, the repetition of "in the view of Committee III" is to be omitted from the 2nd and 3rd sub-paragraphs. The words "not possible to say" are to be replaced by "it would be incorrect to say" in the 1st and 3rd sub-paragraphs.

In paragraph VIII, last sub-paragraph, "Committee I" is to be replaced by "Committee III".

After paragraph IX, paragraph XIV of the document is to be inserted and the subsequent paragraphs are to be re-numbered accordingly.

Paragraph XI, 3rd sub-paragraph, on page 6, will read as follows:

" That acts constituting what corresponds to civil wrongs (torts) and breach of contract were by writers of international law put on the same footing as acts corresponding to crimes in municipal law, was, in the opinion of Committee III, mainly due to the fact that, until very recent times, only States were considered to be subjects of international law. According to this theory the law of nations excluded the possibility of "punishing" a State for an international delinquency and of considering the latter in the light of a crime and led to the conclusion that the only legal consequences of international delinquency were such as create reparation of the moral and material wrong done. The equation of acts morally shocking with acts constituting merely contraventions of contractual obligations, had its origin in the theory of this school of thought, which was by no means unchallenged, namely that even atrocious crimes were supposed to lead not to the punishment of the guilty individual, but only to a claim against the State for reparation and damages. "

As to the 4th sub-paragraph of paragraph XI, on page 6, the Committee agreed on the substance but the Secretary to Committee III was charged with rewording the paragraph to the effect that it should be divided into at least two or three different sentences.

The last sentence of the paragraph will read as follows:

" At a time when international law assumes the responsibility for punishing international crimes, it is necessary to establish the delimitation between acts entailing criminal responsibility and other illegal acts which, without constituting an international crime, are mere contraventions of customary or conventional rules."

The last sentence of the last sub-paragraph of paragraph XI on page 6, bottom, is to be deleted.

Paragraphs XII and XIII.

In the first sub-paragraph of paragraph XII, on page 7, the first "and" in line 7 is to be deleted, and in line 9, the words "there are" will be replaced by "we find". At the end of this first part of the paragraph, a reference to Rivier is to be inserted.

The second part of paragraph XII, together with paragraph XIII will be redrafted as follows and form paragraph XIII of the text:

" Provided that the facts alleged are taken to be established, Committee III is of the opinion that those persons who are responsible for the preparation or planning of this policy or for carrying in into effect, whether at the centre or locally, are criminally responsible for these violations of international law.

This does not implicate persons who, without operating this scheme or forming part of the machinery of carrying it out, have availed themselves of the possibility to make sales or purchases prohibited under French law.

The latter, though probably criminally liable under municipal law are, in the Committee's opinion, not guilty of a war crime. "

II. Minutes Nos. 28/46, and 1, 2 and 3 of 1947.

Minutes Nos. 28 of 1946 and 1, 2 and 3 of 1947 were approved.

COMMITTEE III MINUTES
No. 6/47.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes on the Meeting of COMMITTEE III held on 30th April 1947
at 3.0 p.m.

In the Chair, Sir Robert Craigie (Great Britain)

Also Present:

Lord Wright,	Chairman of the Commission,
Dr. Neumann,	Czechoslovakia,
Mr. Dimitas,	Greece,
Dr. Aars-Rynning,	Norway,
Mr. Kintner,	United States of America,
Dr. Zivković,	Yugoslavia.

M. MAILLARD had sent an apology for not being able to be present at this meeting, while adding that he had approved the amendment to Doc. III/86 contained in Doc. III/87. M. Maillard had said also that he had no instructions from his Government regarding the 3rd item on the agenda, Development and Codification of International Criminal Law.

I. Minutes Nos. 4 and 5 of 1947.

These minutes were approved.

II. Exploitation of the Black Market as a War Crime.
Final Approval of Draft Report annexed to Doc.
III/86, as amended in Doc. III/87.

The Committee proceeded to discuss Docs. III/86 and III/87.

Sir Robert CRAIGIE said that he would prefer to use the words "responsible for" instead of the words "implicated in" in the second line of the proposed amendment. He thought that the latter wording, though not quite clear, was sufficiently wide to include within its scope not only persons responsible for deciding on a policy but also persons responsible for its execution. If the words did indeed have this meaning, he could not agree to their use. The words "responsible for" were themselves fairly wide, and he thought that their substitution would satisfy M. Maillard.

Mr. KINTNER agreed that the wording suggested in Doc. III/87 would include persons responsible for the execution of the policy as well as those responsible for deciding on it. He felt that this text gave Committee I greater freedom when judging the facts before them.

After some further discussion, the Committee unanimously agreed to Sir Robert CRAIGIE's suggestion and asked the Secretary to Committee III (Dr. Schwelb) to explain to M. Maillard that Committee III had found the text proposed in Doc. III/87 a little vague and had felt that, if the words "implicated in" were replaced by "responsible for" the report could be considered as unanimously adopted. This was agreed to.

III. Development and Codification of International Criminal
Law. Continuation of the discussion of Doc. III/85.
(Docs. III/85, III/88, Misc. No. 88, see also Misc. Nos.
46, 66, 68 and 69.)

The Secretary, (Dr. SCHWELB) said that since the circulation of Docs. III/88 and Misc. No. 88, there had been new developments in the contact between the UNWCC and the United Nations. Professor Humphrey, the Director of the Human Rights Division of the United Nations Secretariat, had been in London

and had held consultations with Lord Wright, General de Baer and members of the Secretariat, between 22nd and 25th April. Dr. Schwelb read the Note on these discussions.

At the suggestion of Mr. KINTNER, the Committee agreed that the Note should be circulated as a Miscellaneous document. Mr. Kintner also expressed his appreciation of the way in which negotiations had been conducted by the Secretariat of the UNWCC.

Dr. SCHWELB further read the letter of invitation extended by General de Baer on behalf of the Belgian Government for the Commission to send one or two delegates to the 8th International Conference of the International Bureau for the Unification of Criminal Law, to be held at Brussels from 10th - 12th July 1947. One of the two points on the agenda of this international conference was "Definition of Crimes against Humanity".

At the suggestion of the Chairman, (Sir Robert CRAIGIE), the Committee decided that the letter of invitation from the Belgian Government and the attached note on the agenda of the conference should also be circulated as a Miscellaneous document.

Dr. ZIVKOVIC said that this conference would be very important from the point of view of lawyers and constituted a sequel to the Paris Conference of the previous year. The agenda of the Brussels conference was closely related to some aspects of the work of the United Nations Secretariat.

Sir Robert CRAIGIE suggested that the Commission should discuss the invitation at its next meeting and that in the meantime the Secretary General should express thanks to General de Baer and to the Belgian Government for extending this invitation.

Lord WRIGHT expressed his agreement with this proposal.

The Committee approved this course.

The Committee then went on to discuss the subject matter before it, in the same order as was followed in the minutes of the meeting with Professor Humphrey, (Doc.Misc.89).

Sir Robert CRAIGIE said that, should Gen. de Baer go to Lake Success, the Committee on his return would have a much clearer concept of the best way in which the UNWCC could help in the codification of international law. The experience of the Commission in this field was a long one and was of a practical nature. He added that he had made representations to his own government to the effect that it would be disastrous for the Commission to go out of existence without placing its experience on record in some form. It was necessary, however, to know how far the United Nations desired the help of the Commission, and in what direction. He enquired from Dr. Schwelb what would be the precise procedure to be followed should the Commission be asked by the Secretariat of the United Nations to carry out the study described in the Resolution of the Economic and Social Council regarding information concerning human rights arising from trials of war criminals and others.

Dr. SCHWELB said that it was not known what was in the minds of the authors of this Resolution, but he thought that the wisest thing would be for the Secretariat of the Commission to draft a plan of studies which would then be submitted for approval both to the UNWCC and to the United Nations Secretariat.

Sir Robert CRAIGIE emphasised that the Tokyo trials, which were mentioned in the Resolution, would be rich in material concerning human rights and that the documents relating to these trials were massive. Moreover, the trials had not received adequate attention in the press. Great issues were raised by these trials, including political ones. He enquired whether the United States had issued any material relating to them.

Mr. KINTNER said that United States reports on these trials would probably be issued a little later.

Dr. SCHWELB said that in his view the material concerning human rights to be studied in connection with the trials of war criminals, fell into two categories:

- (1) the human rights in respect of the violation of which the trials were held; these violations would include breaches of the human rights of subjects by their own governments, i.e. human rights protected by the provisions concerning crimes against humanity,
- (2) the human rights of the accused themselves and their protection by the courts; for instance, the International Military Tribunal had rejected the notion that every member of a criminal organisation was ipso facto himself a criminal and had laid it down that only those members who could be shown to have had knowledge of the criminal purposes of the organisation could be regarded as individually responsible.

Mr. KINTNER said that there was possibly a third heading of studies relating to the human rights of soldiers and partisans. The Commission was highly qualified to deal with this aspect.

Sir Robert CRAIGIE and Dr. ZIVKOVIC agreed in pointing out that the Resolution seemed to call for an analysis of the facts and not for any recommendations on the part of the Commission.

Sir Robert CRAIGIE, passing on to the question of Genocide, expressed his grave doubts as to the wisdom of introducing this new legal concept.

Dr. ZIVKOVIC agreed with Sir Robert, but pointed out that the term had now been adopted in official texts and had also been used in several United States newspapers.

Dr. SCHWELB pointed out that should the United Nations submit to the Commission a draft on the crime of Genocide, the Commission would then have the opportunity of commenting upon this draft.

Turning to the question of the general resolution of the General Assembly, regarding the progressive development of international law and its codification, Sir Robert CRAIGIE drew the attention of the Committee to paragraph II on page 3 of Doc.III/85, and to the five provinces of international law enumerated there, namely:

- (a) the laws and customs of war, particularly the laws and customs of land warfare including the law of belligerent occupation and the treatment of prisoners of war and internees; the law of naval warfare; the law of air warfare;
- (b) the law of State jurisdiction, including territorial and personal jurisdiction, immunities and limitations;
- (c) the law of international institutions, particularly international tribunals and investigating and prosecuting agencies;
- (d) international criminal law as a means of preventing threats to the peace, acts of aggression and breaches of the peace, ("crimes against peace");
- (e) the protection of human rights and fundamental freedoms by way of international criminal law ("crimes against humanity").

Sir Robert CRAIGIE said that he felt that he could fully agree to the estimate set out in this paragraph of the Commission's ability to render assistance as regards points (a) to (e) though he thought that the actual experience of the Commission was rather less as regards (c) than it was in connection with the other points.

After further discussion, during which the scope of paragraph (c) was explained by reference to the close contact the Commission had had with all the international and national investigating, prosecuting and judicial agencies, the Committee agreed that the Commission was qualified to aid in the codification of international law on these questions.

The Committee then proceeded to examine points (a) to (g) in paragraph III on page 4 of III/85, where it is set out that the principles of international law recognised by the London Charter and the Nuremberg Judgment are not restricted to crimes against peace, but include also such fundamental questions as:

- (a) the responsibility for inhumane acts committed "against any civilian population";
- (b) the responsibility for inhumane acts committed "before the war";
- (c) the irrelevance of the fact that inhumane acts were committed "in violation of the domestic law of the country where perpetrated";
- (d) the whole notion of crimes against humanity, its delimitation from common law crimes and its relation to war crimes and crimes against peace;
- (e) the doctrine of act of state, the irrelevance of the official position of the defendants as heads of state or responsible officials in government departments;
- (f) the plea of superior order;
- (g) the problem of criminal groups or organisations and the criminal responsibility for membership in such groups or organisations.

The Committee agreed with this summary of the principles and with the further statement that the principles recognised by the Charter and the Judgment of the International Military Tribunal also include detailed questions of the law of war.

Dr. ZIVKOVIC suggested that Dr. Schwelb should write to Dr. Liang asking for further elucidation on the scope of the Resolution concerning the affirmation of the Nuremberg principles.

Dr. SCHWELB referred to Document No.25 of Misc. 88.

Dr. ZIVKOVIC suggested that a special letter to Dr. Liang should be devoted to this question.

After further discussion, it was decided that, should M. de Baer's journey to New York not materialise, then a letter on these lines should be addressed to the Secretariat of the United Nations and that the letter should be written on a higher level. In this case the Committee decided to ask Lord Wright to write a letter on these lines to the Secretary-General of the United Nations.

The Committee then adjourned sine die.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 16th April, 1947
at 3.0 p.m.

In the Chair: Dr. Schram-Nielsen (Denmark),

Also Present:

Dr. Neumann,	Czechoslovakia,
M. Maillard,	France,
Dr. Aars-Kynning,	Norway,
Mr. Kintner,	United States of America,
Dr. Zivković,	Yugoslavia.

Sir Robert CRAIGIE and M. de BAER sent apologies for not being able to be present.

I. Appointment of Acting Chairman.

Mr. KINTNER proposed that Dr. SCHRAM-NIELSEN should be appointed Chairman for the meeting. The SECRETARY reported that he had spoken to Sir Robert Craigie on the telephone and that it was Sir Robert's opinion that Dr. Schram-Nielsen should be appointed Acting Chairman.

This was unanimously agreed to by the Committee.

II. Exploitation of the Black Market as a War Crime.
(French Case No. 4695.)

The Committee discussed Doc. III/86.

Monsieur MAILLARD made the following statement:

" I wish, first of all, on behalf of my Government to thank Committee III and specially Dr. Schweb for the very careful and valuable work they have done in regard to this important issue which was raised by the French case No. 4695 concerning the exploitation of the black market as a war crime. The French Government thinks, as a matter of fact, that this question is of fundamental importance not only for France itself but for all countries which have suffered from enemy occupation and have therefore been submitted, quite apart from the moral suffering, to a general dislocation of their respective economies through deliberate and conscious action, leading to a considerable rise in prices and impoverishment of the community, not to speak of a decline in the morality whose consequences are still felt in those countries today. For all those reasons, the French Government thinks that it is particularly important that correct legal principles be set up having regard to such activities.

Having read very carefully the long report redrafted by Committee III, and presented as Document III/86, the French authorities, though in agreement with the greater part of it, have found it difficult to accept the distinction made by the Committee between accused 1 and accused 2 - 37. They quite recognize the impossibility of charging the accused of pillage or plunder, in the traditional sense of the word. They consequently support the Committee's opinion that at least the 1st accused should be charged with a violation of Article 49 of the Hague Regulations, confirmed in the Nuremberg judgment, which provides that, if the occupant levies money contributions in the occupied territories, "this shall only be for the needs of the army or the territory in question." They consider, however, that to limit the application of these charges to the Head of the Economic mission specially set up to organise the black market would be

both legally incorrect and impracticable. The French Government would like to draw the Committee's attention in this connection to the principles which have been adopted regarding membership of criminal organisations, the S.A., S.S. and so on. Nobody would pretend, in that case that criminal responsibility could only be fastened upon the chiefs of such organisations, excluding all members thereof, except of course as regards such accused as could allege with some reason that they were in fact unaware of the special purposes and activities of those bodies. The same distinction should be made regarding black market activities. "Whereas of course it is impossible to charge every German soldier or civilian with complicity in such activities, just because they may have used for purchases on the black market the money raised on this special purpose, it seems difficult to deny the correctness of bringing similar charges against persons who, as members of the organisations set up by Veltjens, are at least suspect of having known the purposes of their task, which in fact most of them knew perfectly well.

The French Government would add, moreover, that this knowledge is implied also in the charge which the Committee proposes to fasten upon them, namely that of systematic violation of the municipal laws. I should refer in this respect to the terms used in the report itself, para. XIII, page 5, when it is said that "...the activities resulted, according to the charge, in the emptying of France of all substances, in the causing of a rise in prices, in inflation and in a certain moral decline. All these results are contrary to the duties which are enjoined upon an occupant by international law and we find therefore combined both the illegal means and the effect deprecated by international law." For it might be contested that the activities considered are, as a violation of an essential right, war crimes, provided of course the notion of essential right is understood so widely that it covers the exploitation of the economy of the occupied country, in other words the main charge which is fastened upon Veltjens.

The recourse to a new item seems, therefore, an unnecessary substitute, not to speak of the difficulties it involves as far as the notion of an international war crime is concerned (examined in para. XII of the present document.) The same difficulties would arise also in connection with the establishment of facts prohibited by the municipal laws and which may have varied according to the circumstances and according to different countries.

As a conclusion, the French Government suggests that the charge of the violation of the municipal laws proposed by Committee III of the accused 2 - 37 be abandoned and replaced by a general charge against the same accused, of complicity in the violation of the Article 49 of the Hague Regulations. "

The CHAIRMAN, (Dr. SCHRAM-NIELSEN) thanked M. Maillard and the French authorities for their contribution and reminded the Committee that it was difficult to alter a report which had already been unanimously agreed to. He called upon the Secretary to express his opinion on the French statement.

The SECRETARY (Dr. Schwelb) said that there were three possible approaches to the problem:

- (1) Art. 47 of the Hague Regulations, (pillaging),
- (2) Art. 49 of the Hague Regulations, (extortion of exorbitant contributions),
- (3) Art. 43 of the Hague Regulations, (disrespect to the local law.)

With regard to (1), all members, including the French authorities, were agreed that the provisions as to pillaging in the technical sense did not apply.

With regard to (2) it was expressed in the Draft Report that those persons who were personally implicated in exacting exorbitant contributions were guilty of a war crime.

With regard to (3), (disrespect to the local law), it was suggested in Art. XIV of the Draft Report that all persons responsible for the preparation or planning of the black market policy or of carrying it into effect, whether at the centre or locally, were criminally responsible.

The French statement amounted, in effect, to a proposal to drop the charge under the point of view of Art. 43 altogether and replace it by subjecting all 37 accused to the charge based on Art. 49. The Secretary was of the opinion that it was not advisable to drop the arguments based on Art. 43 altogether and to concentrate exclusively on Art. 49 for two reasons:

(a) The black market activities consisting in a large scale organised violation of the local law were a crime quite irrespective of how the money to finance them was raised. In other countries similar offences might have been committed without any connection with the raising of contributions. He referred to the instance mentioned by Dr. Schram-Nielsen in a previous meeting, concerning Denmark.

(b) It would probably be difficult to prove that all 37 accused were criminally liable for the raising of the contributions by the German Government from the French Government.

The Secretary thought, however, that the objections raised by the French authorities could be met by replacing the last sub-paragraph of paragraph VIII, (p.5, paragraph 3), of Doc. III/86 by a general statement restricted to the expression of the legal opinion, without entering into the examination of the guilt of the 37 individual accused.

Dr. NEUMANN said he sympathised with the French view and was in favour of striking out the 3rd paragraph on p.5. He also said that it was beyond the jurisdiction of Committee III to decide on individual responsibility.

Dr. ZIVKOVIC agreed, suggesting that the Committee should be careful to distinguish between expressing an abstract legal opinion and commenting on the personal responsibility of the individuals.

Mr. KINTNER concurred, suggesting that the paragraph could be omitted entirely and the French National Office could be invited to present to Committee I additional proof setting out the personal responsibility of the individual accused for the crime of raising exorbitant contributions.

M. MAILLARD also agreed, explaining that the main objection of the French authorities was that the present wording seemed to rule out a priori the responsibility of the accused 2 - 37 for the crime of raising exorbitant contributions.

The CHAIRMAN, (Dr. Schram-Nielsen), was doubtful whether the respective paragraph could be simply omitted and suggested that it would probably be necessary to replace it by some differently worded text.

After further discussion in which the Chairman, Dr. Zivkovic and M. Maillard took part, the Secretary suggested that the paragraph in question could be re-worded on the following lines:

" Persons who are responsible for the exaction of exorbitant contributions by Germany from France and persons who are accessories either before or after the fact of this crime in knowingly using the money thus extorted for purchases on the black market are suspect of having committed a war crime."

The CHAIRMAN suggested that the Secretary should be charged with the task of redrafting the discussed paragraph and circulating it to the members of Committee III. If no objections were received by the Secretariat within a few days from circulation, a proposed new text would be inserted in the appropriate place and the document circulated as the Report by Committee III to Committee I and to the Commission. In redrafting the paragraph, stress should be laid on the necessity of proving the mens rea.

This was unanimously agreed.

III. The task of the United Nations in the Province of International Criminal Law. Possibilities of Co-operation of the United Nations War Crimes Commission in this task. (Doc. III/85).

Called upon by the Chairman to do so, the SECRETARY gave a resumé of Doc. III/85.

Dr. ZIVKOVIC said that this question was part of the whole problem of regulating international relations in the future so as to secure the organisation of the world on a legal basis, so that law and not force would predominate. He was inclined, therefore, to think that matters should not be rushed and conclusions reached too hastily. One question which could be decided as soon as possible was that of the procedure of liaison to be reached between the U.N.W.C.C. and the various relevant departments of the United Nations. Regarding the substance of the problem, formidable questions arose and if the Committee were to enter into a discussion of the questions arising from the three resolutions referred to on p.2 of III/85, the Committee should do so with great care and skill. He stressed that before the Committee could adequately discuss these problems it would need to know much more of what work was currently being done in New York. It would also need to know the content of the correspondence between Dr. Schwelb and the Secretariat of the U.N. The Committee would also need to know what was the present position reached by the Human Rights Commission in this task. Dr. Zivkovic asked for more details on Mr. Trygve Lie's letter of 11th December 1946 referred to in the last but one paragraph on page 2. He recalled the contributions made by Dr. Liang while representing China on this Commission and also referred to the excellent qualities of Dr. Kerno, an eminent Czechoslovak lawyer, who was Assistant Secretary-General of the United Nations in charge of Legal Affairs.

Dr. SCHWELB replied that owing to the courtesy of the U.N. authorities the Secretariat had at its disposal all the relevant papers and records of the U.N. The Resolutions of the General Assembly had been circulated by the U.N.W.C.C. Secretariat as "Miscellaneous Documents". The Secretariat had also the full Minutes of the first session of the Human Rights Commission which was held in New York from 27th January to 10th February, 1947. He also said that the Secretariat would undertake to circulate to members of the Committee copies of the correspondence exchanged on the Secretariat level between the U.N. and the U.N.W.C.C. The Secretary General had sent to the U.N. Secretariat at their request, all the papers produced by this Committee concerning the problem of crimes against humanity but had, of course, stressed that they were only preparatory papers which had not yet been endorsed by the full Commission as a body.

Dr. ZIVKOVIC said that though the full Commission had not, so far, adopted any documents dealing with crimes against humanity, he was of the opinion that this could not be avoided. In dealing with the Charter of the International Military Tribunal the Commission could not avoid investigating the problem most thoroughly from the general point of view.

Mr. KINTNER said that, although he was not instructed on the point by his Government, he felt that the latter would disfavour any attempt on the part of the Commission to influence the policy of the U.N. on the questions raised in Doc. III/85. He felt, however, that any technical advice which the Commission and its legal authorities could give would meet the approval of his Government. The question was one of liaison and of what the U.N. would ask for and what the U.N.W.C.C. would give.

The CHAIRMAN, (Dr. Schram-Nielsen) said that it was not in any one's mind that the U.N.W.C.C. should attempt to influence the policy of the U.N., but it was clear that some kind of contact between the two must be established, not only for purposes of present needs, but also in view of the approaching winding up of the U.N.W.C.C. He agreed with Dr. Zivkovic on the advisability of the Committee receiving more documentary information.

Dr. ZIVKOVIC also said that he had not proposed that the U.N.W.C.C. should attempt to influence the U.N. on matters of policy.

The SECRETARY felt that the documentary information available to the Committee was complete as regards all matters relevant to the U.N.W.C.C.'s sphere of interest. There were the three resolutions of the General Assembly; the preceding discussions had been on general lines. The outcome of the first session of the Human Rights Commission was that its Chairman, (Mrs. Eleanor Roosevelt), together with the Vice-President, Dr. Chung (China) and the rapporteur, Dr. Malik (Lebanon) had been asked to prepare the first draft of the International Bill of Rights. With regard to personal contact, Mr. Trygve Lie had indicated that Professor Humphrey, the Director of the Human Rights Division, would come to London for discussions with the U.N.W.C.C. Professor Humphrey had been prevented from coming, and Professor Giraud had come in his place, and had had very fruitful discussions with members of the Secretariat of the U.N.W.C.C. at the beginning of January 1947. The Minutes of the meeting with Professor Giraud would be included in the paper to be circulated by the Secretariat.

Mr. KINTNER said that he could only at present give his personal opinion, but he thought that it might be feasible after the study of the problem in detail, to ask the Secretary General of the U.N.W.C.C. and a Legal Officer, to fly to New York in order to have personal consultations with various authorities in the U.N.

Dr. ZIVKOVIC raised the question whether anything was known about the programme and procedure of the U.N. authorities in connection with the task of codification.

The SECRETARY recalled that the General Assembly had directed the Codification Committee to treat as a matter of primary importance the affirmation of the principles recognized in the Nuremberg Charter.

Dr. ZIVKOVIC agreed that if the correspondence on the Secretariat level failed to produce the results, Mr. Kintner's proposal to send a delegation to New York was best.

The CHAIRMAN stated that Mr. Kintner's suggestion was an excellent one but that it must be certain before the representatives of the Commission left for New York, what their mandate would be.

The CHAIRMAN said that both parties would benefit from the day-to-day contact and it would be wise to avoid over-lapping of work and arriving at differing conclusions on the same questions. It was difficult to think of any other body which would be able to take over the custody of documents at present held by the Commission, than the U.N. His opinion was that the Legal Officer dealing with Committee III, which was the Legal Committee, should go with the Secretary General to New York.

The SECRETARY GENERAL said that he would be glad to accept the task of going to New York, accompanied by Dr. Schwelb, he himself to negotiate on the broader issues and Dr. Schwelb being present for the discussion of technical questions of International Law.

Dr. ZIVKOVIC said that the next step on the part of Committee III should be to start discussing the problems raised on pages 3 and following of III /85.

The CHAIRMAN suggested that it would be preferable to discuss first the question of forming a contact with the U.N. If the Commission was to send representatives to New York, they must leave soon.

Dr. ZIVKOVIC explained that he was not thinking in terms of a detailed discussion, but it was necessary to have some examination of the questions raised in order that the Commission's representatives would know what to ask for when they reached New York.

Mr. KINTNER said that it would be an excellent outcome if the Commission's representatives could return from New York with a written request as to the nature of the assistance which the Commission could render to the U.N.

The CHAIRMAN hoped that the Commission's representatives would return with a representative of the U.N. who would then be able to examine the files of the Commission.

It was decided to hold another meeting to continue the discussion in two weeks' time, and the Secretariat was charged with circulating the correspondence with the U.N. Secretariat as soon as possible.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 22nd May 1947

at 2.30 p.m.

In the Chair: Sir Robert Craigie (United Kingdom),

Also Present:

Dr. Neumann,	Czechoslovakia,
Commander Mouton,	Netherlands,
Dr. Aars-Rynning,	Norway,
Dr. Muszkat,	Poland,
Mr. Kintner.	United States of America.

I. Minutes No. 6/47.

These Minutes were approved.

II. Exploitation of the Black Market as a War Crime.

Final Approval of Draft Report annexed to Doc.
III/86, as amended in Doc. III/87, and at the
meeting of Committee III of 30th April 1947,
Minutes No. 6/47.

The Secretary, (Dr. SCHWELB), reported that Monsieur Maillard had informed him that he was not in agreement with the alteration agreed upon on 30th April 1947 (Minutes No. 6/47.)

In view of the fact that no representative of France was present and that to an enquiry by telephone at the French Embassy it was replied that M. MAILLARD was not available that afternoon and that he apologised for not being able to be present, consideration of this draft report was adjourned.

III. Collection and Publication of information concerning
Human Rights arising from trials of War Criminals, etc.
(Docs. A.45 and III/89.)

The Chairman, (Sir Robert CRAIGIE) referred to the previous day's decision of the Commission where the Commission had decided to do the work requested by the United Nations Secretariat as far as it referred to trials of war criminals and where the Commission had reserved its decision on the question whether the trials of quislings and traitors should be dealt with also. Discussing the memorandum III/89, Sir Robert CRAIGIE pointed out that the distinction between the two aspects of human rights made in paragraph IV of the memorandum were very sound. The same applied to paragraph VII of the memorandum where it was pointed out that the objective of the work to be done was discriminatory and that the indiscriminate collection of a great amount of material would not be useful. He also expressed his general agreement with the matters to be dealt with as enumerated in para. VII (a) to (g) of the memorandum. Sir Robert added that the Committee would have to be careful not to recommend things which would appear to interfere with the sovereign rights of States.

Dr. MUSZKAT asked the Secretary for further explanation of sub-paragraph (b) of paragraph VII of the memorandum III /89.

Dr. SCHWELB explained that sub-paragraph (b) was a corollary to sub-paragraph (a). Sub-paragraph (a) dealt with cases where a court had found that the existing provisions of international law did not furnish a sufficient basis for imposing a just penalty for activities

violating human rights. Sub-paragraph (b) dealt with cases where a court had assumed that international law furnished a sufficient basis for imposing a just penalty, but where the question remained still doubtful in international law because of the fact that other courts were not bound by the decisions already passed.

Dr. SCHWELB further reported that he had sent a copy of Doc. III/89 to the Director of the Division of Human Rights of the United Nations, pointing out, however, that for the time being, it represented only his personal views and had not yet been approved by any authority of the Commission. On 20th May, he had received a letter from the Director of the Division of Human Rights dated 15th May, where the latter expressed his opinion that the memorandum was an excellent piece of work and his agreement with the conclusions of the paper. Dr. Schwelb further informed the Committee that he had discussed the problems involved with the legal members of the Secretariat.

Mr. Brand, the Assistant Legal Officer, who was at present on leave, had handed him a paper on the subject which he would read to the Committee. Dr. Mayr-Harting had also drafted a paper on the subject, the substance of which he would explain orally. Both papers contained, in the Secretary's opinion, very valuable observations on, and additions to, the original memorandum, III/89.

Called upon by the Chairman to do so, Dr. MAYR-HARTING gave an outline of his views, particularly on paragraphs V and VII of Doc. III/89. He drew attention to the distinction to be made between the terms "quisling" and "traitor" and suggested that the Commission should only deal with trials of quislings who were responsible for the commission of war crimes in the wider sense, including crimes against humanity, but that the Commission should not deal with trials of persons who were charged only with treason against their own country without being involved in war crimes or crimes against humanity. Dr. Mayr-Harting further pointed out that the transcripts of trials would not necessarily give complete information with regard to gaps in international law because, in many instances, where such gaps did exist, the prosecuting authorities had refrained from preferring charges, in cases e.g., where existing international law offered to the prospective defendant a valid defence, such as the defence of legitimate reprisals. The Commission should therefore make requests to the national prosecuting authorities for reports on cases in which the prosecuting authorities had abstained from making the charges in view of gaps in international law. Dr. Mayr-Harting further stressed the necessity of dealing also with trials conducted by German, Austrian and other courts of former enemy and satellite countries, concerning crimes of enemy nationals committed against enemy nationals and stateless persons. He expressed the view that valuable results would be achieved if not only the present state of international law were taken into account, but also its development in the twentieth century.

Dr. MAYR-HARTING mentioned as instances of changes having taken place in international law, the law of U-boat warfare and the law of the bombardment of so-called undefended places, where way had been given to the requirements of modern warfare. In other respects, however, international law had moved towards a higher protection of human rights. He also suggested that it would be useful to examine the files of the Responsibilities Commission of 1919. (*)

The Chairman, (Sir Robert CRAIGIE) thanked Dr. Mayr-Harting for his valuable contribution to the discussion.

Mr. KINTNER stated that questions of policy were involved in the whole problem and he suggested that the papers prepared by Dr. Mayr-Harting and by Mr. Brand should be circulated.

(*) Dr. Mayr-Harting's paper will be circulated as Doc. III/91.

Sir Robert CRAIGIE agreed with the suggestion by Dr. Mayr-Harting that for the purposes of securing information only those acts of traitors should be dealt with which at the same time were war crimes in the wider sense, including crimes against humanity.

Dr. MAYR-HARTING instanced the Joyce trial as one which was restricted to treason without prima facie having any bearing on the problem of human rights.

Dr. SCHWELB mentioned the case of the Hungarian Prime Minister, referred to in Mr. Brand's paper, as an instance of a treason trial which fell on the other side of the line, because it involved the charge of crimes against humanity.

Commander MOUTON submitted that the Joyce trial might be of interest as an example of the misuse of human rights, namely the misuse of the right of freedom of expression. Referring to the question of reprisals, Commander MOUTON said that reprisals were one of the black pages of international law.

Dr. MAYR-HARTING mentioned as a further instance of the development of international law, that the shooting of hostages had up to a certain time, been legitimate.

Commander MOUTON and Sir Robert CRAIGIE dissented from this opinion.

Mr. KINTNER submitted that the work in hand should be done by way of recording the present state of affairs rather than by suggesting alterations of the law.

Dr. LITAWSKI recalled that the request from the United Nations spoke only of the collection of information.

Mr. KINTNER said that the purpose of the report should not be changed by inference.

Dr. NEUMANN suggested that it should be pointed out in the foreword that the Commission was not making any suggestions, but that it was pointing out the present state of affairs.

Dr. LITAWSKI said that in the matter of quislings and traitors it would be necessary to secure the material not only from member countries, such as Yugoslavia, Czechoslovakia and Poland, but also from the satellite countries like Bulgaria, Roumania and Hungary.

Dr. SCHWELB recalled that with the assistance of the United Kingdom Foreign Office, the Commission had received very valuable material on the enactments of the satellite countries and that a similar procedure should be adhered to in this respect.

Dr. LITAWSKI meant that the trials of traitors and quislings had some political implications and that it might be more difficult to get the necessary information with regard to them through the help of the United Kingdom Foreign Service, than in the case of the enactments. It will perhaps be necessary to enlist the help of the United Nations itself. The question of principle whether the report should include trials of traitors and quislings should, in Dr. Litawski's opinion, be approached by not taking into account the present terms of reference of the Commission. This was a special task entrusted to the Commission which had no bearing on its general jurisdiction.

Sir Robert CRAIGIE repeated that in his opinion it would be advantageous to limit the examination of trials of quislings and traitors to those who had committed war crimes in the wider sense, including crimes against humanity.

Mr. KINTNER pointed out that a traitor violated national or municipal law and the human rights guaranteed by his country. The United Nations had in mind human rights not bounded by a municipal statute.

Commander MOUTON thought that the Commission should restrict itself to dealing with quislings, if they had committed a war crime.

Sir Robert CRAIGIE suggested that for the time being the Committee should not arrive at any final decision. He summed up the discussion, however, by pointing out that the Committee was inclined to think that the Commission should limit itself to trials of quislings and traitors as far as these trials disclosed war crimes in the wider sense.

Dr. SCHWELB then read to the Committee the paper prepared by Mr. Brand, which like the paper prepared by Dr. Mayr-Harting, would, on Mr. Kintner's suggestion, be circulated to Committee III. (*)

Sir Robert CRAIGIE remarked that Mr. Brand's was a very useful paper and that his points would, to a great extent, be met by restricting the work to the trial of quislings and traitors who had committed crimes against humanity or war crimes.

It was decided that the Secretariat should prepare a draft report to be submitted by Committee III to the Commission. This report will have to be based on the memorandum III/89 and it should embody the suggestions contained in the papers prepared by Dr. Mayr-Harting and Mr. Brand and the result of that day's discussion in Committee.

The Committee adjourned. The next meeting will be held on 4th June 1947, at 3.15 p.m.

(*) Mr. Brand's paper will be circulated as Doc. III/90.

UNITED NATIONS WAR CRIMES COMMISSION

Notes of the Meeting of COMMITTEE III held on 4th June 1947
at 3.15 p.m.

In the Chair: Sir Robert Craigie, (United Kingdom)

Also Present:

M. de Baer,	Belgium,
Dr. Neumann,	Czechoslovakia,
M. Maillard,	France,
Commander Mouton,	Netherlands,
Dr. Aars-Rynning,	Norway,
Col. Dr. Muszkat,	Poland,
Mr. Kintner,	U.S.A.

I. French Case No. 4695. (Docs. III/86 and III/87)

M. MAILLARD explained that he had been instructed by his Government not to concur in the replacement of the words "implicated in" by the words "responsible for" in the text of Doc. III/87, which had been agreed to by Committee III in his absence on 30th April, 1947. (Minutes No. 6/47). He thought that the words "responsible for" would unduly narrow the scope of those persons who, in the opinion to be expressed by Committee III, could be held prima facie responsible by Committee I.

If Committee III insisted, however, in replacing the words "implicated in" by "responsible for", then he would alternatively suggest that the word "and" in the third line, be replaced by the word "or".

Sir Robert CRAIGIE repeated the reasons which had led him, in the meeting held on 30th April, to suggest the replacement of the words "implicated in" by "responsible for". In his, Sir Robert's, opinion, the words "implicated in" were rather vague and if they were retained everybody could be considered guilty who took however subordinate a part in the execution of the policy of exacting contributions.

Dr. NEUMANN supported the alternative proposal made by the French representative (replacement of "and" by "or").

Mr. KINTNER, Dr. AARS-RYNNING and M. de BAER expressed their opinion to the same effect.

Commander MOUTON said that he preferred "responsible for" to the words "implicated in". He was also in favour of the replacement of the word "and" by the word "or".

Dr. MUSZKAT also supported the French alternative proposal.

All members present unanimously agreed to the report III/86, as amended by III/87, provided that in the latter text two alterations were

made, namely,

- (a) the replacement of "implicated in" by "responsible for" and
- (b) the replacement of "and" by "or".

It was decided that the unanimous report by Committee III should be circulated to the Commission and to Committee I.

II. Report by M. de Baer on his visit to the United Nations Headquarters at Lake Success

M. de BAER stated that his journey had been decided on at a moment's notice. When Professor Humphrey, Director of the Human Rights Division, visited the Commission, only such members as were present, were able to speak to him; it had then been decided that it would be desirable to send a representative to the United Nations and M. de Baer had agreed to go at a moment's notice. Professor Humphrey had wired Lake Success asking if it would be in order for a representative of the Commission to be invited to attend a meeting of the Committee on the Codification of International Law. Some replies had been received and no further action was taken until suddenly about two or three weeks later an invitation arrived. These were the reasons why it had not been possible to consult the Commission.

There were two main questions to be discussed with the Legal Department, and M. de Baer had examined them at length with Dr. Ivan Kerno and Dr. Liang. The first dealt with the relations of the United Nations War Crimes Commission with the Committee which is concerned with the codification of international law, whose meeting was in progress at the time of M. de Baer's visit. His first task, which was purely exploratory, was to enquire whether the U.N. would welcome a contribution from the U.N.W.C.C. on the principles of international law, as they resulted from the Nuremberg judgment and from the documents in the possession of the Commission. The second matter was to arrange that this Commission should be placed on the list of inter-governmental agencies, which would be consulted when the codification of international law was discussed.

1. The Committee on Codification of International Law

It appeared that the Committee which is now in progress is not discussing questions of substance but merely questions of procedure and methods, in which the U.N.W.C.C. is not concerned. Before these discussions come to an end, however, the Committee is going to consult certain agencies. Dr. Liang promised M. de Baer that the U.N.W.C.C. would be consulted and would be charged with a mission on similar lines as that with which it has been charged by the Division of Human Rights. It will be for the members of the U.N.W.C.C. to decide whether to agree to this or not. The report of the Committee concerning procedure will go to the General Assembly in September, and it is expected that it will be adopted. M. de Baer was advised to ask the Commission (1) if it will be willing to undertake this task and if so, (2) to start collecting the material for the report. Dr. Liang gave M. de Baer a letter, (*) couched in cautious terms which he read to the meeting.

2. Listing of the United Nations War Crimes Commission as an Intergovernmental Agency to be consulted by the Codification Committee

It appears that there are objections to this: firstly, the list has not yet been drawn up, and if M. de Baer had not gone to Lake Success the U.N.W.C.C. would not have been put on this list because (1) it is believed to be an organ with the task to liquidate the consequences of the war which has nothing to do with the future and, (2) a temporary commission and there have been rumours that it would be closing down in a few weeks. M. de Baer

replied that the finances of the Commission were assured until next spring, and that it has been charged by the Social Department with the submission of a report. Moreover, there are some countries which think the Commission should go on after the middle of next year. Dr. Liang stated that in view of this, he will himself see that it is put on the list of inter-governmental agencies to be consulted, but there would probably be certain objections.

3. Dispatch of United Nations Documents to the United Nations War Crimes Commission

Up to now the U.N.W.C.C. has not automatically been sent the U.N. documents. M. de Baer talked this over with the appropriate authorities and on advice wrote to them a letter asking that all documents relating to human rights and to the codification of international law, should automatically be sent to the U.N.W.C.C. He subsequently received a reply agreeing to this.

4. Arrangements for the time of the Winding up of the Commission

M. de Baer raised the question as to who was to be the residuary of the U.N.W.C.C. when it finished its work and what would happen to certain of the present personnel of the Commission. He pointed out that it is a legal body, and explained some of the tasks which it has carried out. He showed them the copy of the Law Reports so far published and stated that others are in preparation. He stated that the Commission has valuable archives which must either stay in England or remain with someone who could manipulate them. He stated that the Commission is making a collection of the texts of municipal legislation on the subject of war crimes, that it has about 5000 dossiers dealing with specific war crimes, and that it is preparing a history of the Commission. This the United Nations authorities seemed to understand, but when this matter was broached to members of the Legal Department, the latter did not seem prepared to lend their support; they said that if the Commission can continue to be supported by the member-nations they would be delighted; as for the future of individual members of the Commission and of its staff, when the Commission winds up, it will be for these individuals to make direct application to U.N. It was indicated that at the moment all posts in the Legal Department are filled, but the situation may have changed in a year or two, when the Commission winds up.

5. Human Rights

M. de Baer had a long talk with Professor Laugier, Assistant Secretary-General, about the future of the Commission. On being informed that the Commission costs between twelve and fifteen thousand pounds a year, Professor Laugier seemed to be prepared to take over the Commission, provided it showed evidence that it had some useful contribution to make in the sphere of human rights. M. de Baer had another conversation with Professor Humphrey who advised him to follow up on this half promise, and the best way would be for the Commission to send, as soon as possible, a statement showing the contribution which it can make to the work of the Human Rights Division; this will enable the latter to see in what way they can incorporate either the whole or part of the Commission under the Economic and Social Council.

6. Economic Affairs

M. de Baer had conversations with three members of the Department of Economic Affairs, who informed him that the question of the incorporation of the U.N.W.C.C. would have to be recommended by Professor Laugier and Professor Humphrey, and they will then consider it. Present discussion

would therefore be premature. These conversations showed that at the present time there is no question of the United Nations financing this Commission. For the present it must continue to be financed by its member-governments.

Replying to questions by Sir Robert Craigie and M. Maillard, M. de Baer said that in his opinion the Commission would remain here in London, where it had its records, continuing with the same personnel. If it was to be taken over by U.N. it would not necessarily be primarily concerned with human rights. It would be for the member-governments to decide whether or not it continued to deal with the subject of war crimes. U.N. is not interested in the past, only in the future, for instance, in the codification of international law with a view to setting up an international court, and the laying down of human rights. It was a bit premature to ask what would be the status of the U.N.W.O.C. though it seemed that if it were taken over by U.N. it would continue to enjoy diplomatic status. So long as it is financed as at present it remains an independent inter-governmental agency.

M. de Baer believed that if the Commission accepts this mission on the codification of international law, it will then be charged with a work which will last a very long time, and it would be the duty of each representative to make this clear to his respective Government, for it would mean the prolongation of the life of the Commission for a number of years. The work of the Commission in the framework of the task of codification would be restricted to the principles of the Nuremberg judgment and the Commission would make its contribution while the Committee of experts in New York continued with its work.

III. Collection and publication of information concerning Human Rights. (Docs. III/92 and III/93).

Sir Robert CRAIGIE opened the discussion by stating that Doc. III/92 summed up correctly the discussion which had taken place.

Dr. NEUMANN considered III/92 a remarkable work and agreed with every point of it.

Mr. KINTNER said that he was in agreement with the conclusions contained in paragraph XIV of Doc. III/92 and would like the paper to go before the Commission.

M. de BAER also expressed his agreement with Doc. III/92. He stressed that the work could not be started too soon, particularly the collection of material, the necessity of which was implied in paragraphs III, VI and XII. He added that what was said in paragraph XII as to the British Element of the Control Commission for Germany, also applied to the American and French zones of Germany.

The SECRETARY, Dr. Schwelb, reported that the Secretary-General had held a conference with the legal members of the Secretariat on the 2nd June, 1947, in which the individual members of the staff had been allotted shares of the work in case the Commission should decide to perform it and distributed to members Doc. III/93, containing notes on this distribution of the work.

Dr. AARS-RYNNING expressed his agreement with the proposals contained in Doc. III/92.

Dr. MUSZKAT was also in full agreement with Doc. III/92 and informed the Committee that he had already approached his Government with a view to procuring the necessary material. He added that the Soviet Government would certainly also make available the necessary documentation although the Soviet Government was not a member of the Commission. He also pointed

out that in the Soviet Academy of Law there existed a special Research Department dealing with the problems of war crimes.

Sir Robert CRAIGIE agreed and expressed the opinion that it would be for the United Kingdom Government as the host government of the Commission to approach the governments which were not represented on it. He stressed the necessity to draw up a very clear questionnaire which should be sent to the governments.

As to the actual form of Doc. III/92, Sir Robert CRAIGIE submitted that perhaps too much scope was devoted to the question of the jurisdiction of the Commission in view of the fact that the document went on to say that the Commission will, in practice, deal only with trials concerning war crimes in the wider sense. The paper put up a terrific argument on the question of jurisdiction only to produce a solution which was well within the jurisdiction. In Sir Robert's opinion, however, it was conceivable that by crimes of quislings which constituted war crimes in the wider sense, the whole field of the violation of human rights would not be covered.

Sir Robert further said that Doc. III/92 proceeded on page 4, before paragraph 3, rather abruptly to the conclusion that the Commission will only deal with trials disclosing war crimes in the wider sense. He suggested that it should be stated that, in the Committee's opinion, trials involving war crimes and crimes against humanity would cover most of the ground and that the matter could be reconsidered if the Commission should find that this was not so.

Mr. BRAND said that Dr. Mayr-Harting and he had drawn up an alternative text for the last paragraph on page 3, and the first paragraph on page 4, of Doc. III/92, which, they suggested, should read as follows:

"The human rights usually referred to in everyday discussions, and indeed in the deliberations of the Human Rights Commission itself are such rights as those of equality before the law and the freedom of information and of the press. The trials which will be most illustrative of the extent of the protection or vindication of such rights are clearly the trials of quislings and traitors and those of the major war criminals. Of the Nuremberg and Tokyo trials this fact will readily be granted, but it is urged that no study of the protection of the basic human rights of the individual can afford to ignore the trials of quislings and traitors. For instance, Marshal Antonescu and certain others were tried by a Roumanian Court, inter alia, for enslavement of the press and information services with the object of spreading Nazism in Roumania and corrupting public opinion, and of crimes against the Jewish race, including deportation to the death camps of Eastern Europe and the compulsory "Roumanization" of Jewish property.

"An examination of the transcripts and records of trials of quislings and traitors will show that a large number of such violations of civic rights are also war crimes or crimes against humanity; and a study of offences having this dual aspect is clearly within the scope of the United Nations War Crimes Commission. For example, Bela Imredy, former Premier and Finance Minister, was found guilty in Hungary, inter alia, of the promulgation of anti-semitic legislation.

After discussion in which Sir Robert CRAIGIE, Dr. NEUMANN, M. de BAER and various members of the Secretariat took part, it was decided that the paragraphs affected should be altered and that it should be made clear that it was not suggested by the Commission that the suppression of freedom of press and information and similar civic rights in war time constituted, under the present law, a crime.

The Committee agreed unanimously to the draft report III/92, with the amendments suggested by Sir Robert CRAIGIE and with the alterations in the text of the last paragraph on page 3 and the first paragraph on page 4, which will be redrafted according to the Committee's discussions.

The SECRETARY was charged with circulating the report to the Commission in time for its next meeting. The Committee agreed that the report could also have the form of a 'C' Document containing the alterations envisaged in that day's meeting, to which the document III/92 could be annexed as it stood, if in this form the circulation of the document could be expedited.

The Committee adjourned.

COMMITTEE III MINUTES
No. 9/47.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 24th July 1947,
at. 3.30 p.m.

In the Chair, Sir Robert Craigie (United Kingdom),

Also Present:

Dr. Schram-Nielsen,	Denmark,
M. Maillard,	France,
Dr. Aars-Rynning,	Norway.

I. Minutes Nos. 7 and 8 of 1947.

Minutes Nos. 7 and 8 of 1947 were approved.

II. French Case No. 4615, (C.260 and III/97).

Sir Robert CRAIGIE recollected that at the last meeting of the Commission, Lord Wright had suggested that the report of Committee III (C.260) should be amended so as to be less positive in regard to the limitations on pillage as a war crime. Dr. Schwelb had therefore gone into the matter and produced Doc. III/97. On pages 2 and 3 of this paper, Dr. Schwelb proposed a new text of paragraphs VII and VIII of Doc. C.260. The main changes occur, in Sir Robert's opinion, at the bottom of page 2, where it is said that no opinion is expressed on the question whether the purchase of goods on the black market constitutes pillage or plunder.

M. MAILLARD thought that the document, as it now stood, brought very few alterations to the original document. He did not think, however, that the wording of the special paragraph was particularly lucky. Normally Committee III would have had an opinion on a question which went to the basis of the charge, and if it came to the conclusion that there was no legal basis for a charge, it would say so.

Dr. SCHRAM-NIELSEN supported M. Maillard. The fact that the goods were not taken against the will of the legitimate owners did not logically lead to the conclusion that Committee III should not express an opinion on the question of pillage and plunder. On the contrary, if a particular problem were raised, the Committee should express its views. Dr. Schram-Nielsen therefore suggested that the paragraph be re-worded replacing the words "does not express an opinion..." by the words "is in doubt on the question whether..." In this way the activities referred to in the French charge would fall outside the scope of pillage.

Sir Robert CRAIGIE said that the document did not say that we had no opinion; all it said was that we did not express an opinion on the question whether there was a case of pillage or plunder. The reason for this was, as Sir Robert explained, that in Lord Wright's view, we must be extremely careful not to interpret plunder or pillage in a too restricted sense.

M. MAILLARD pointed out that according to the Nuremberg Judgment, the black market operations came under the wider notion of plunder.

Sir Robert CRAIGIE thought that a clear distinction had to be drawn between the actual operations on the black market and the exacting of exorbitant contributions to the cost of the army of occupation. As to the first, we were not proposing to lay down that the action of operating on the black market constituted pillage. On the other hand, by refraining from expressing an opinion we did not state the contrary.

Mr. AARS-RYNNING suggested the following wording: "Committee III does not find it necessary to express a definite opinion on the question", the text then to continue as in paragraph VIII, where the reasons why we do not find it necessary are given.

Dr. MAYR-HARTING recalled that in Lord Wright's opinion, the French case could be decided without the Commission committing itself to a precise or definite definition of "pillage". The new wording of paragraph VII, as proposed in Doc. III/97, suggested that the actions charged by the French Government could be considered as war crimes for the reasons set out in paragraph VIII and that it was therefore, as pointed out by Mr. Aars-Rynning, unnecessary to deal with the pillage and plunder aspect of the matter.

Mr. KINTNER expressed the view that it was for the Courts to decide controversial questions. He supported the amendment suggested by Mr. Aars-Rynning.

Sir Robert CRAIGIE agreed that since the matter could be dealt with as explained in paragraph VIII, the Committee did not consider it necessary to express an opinion on the question whether the acts constituted pillage or plunder. He proposed the following wording:

" Since the question of the illegal character of these transactions can best be dealt with on the basis proposed in section 8 (below), Committee III does not consider it necessary to express an opinion whether the purchasing of goods on the black market constitutes pillage either in the traditional sense of this word or as extended by the leading writers on the subject, (cf. Feilchenfeld, "Economic Law of Belligerent Occupation") or whether these black market operations come under the wider notion of plunder as applied at Nuremberg."

M. MAILLARD proposed to add to the first part of the sentence the words: "In order not to preclude any national decision"

Sir Robert CRAIGIE thought that it would only complicate matters.

As Document C.260 had been adopted by the Commission, in its meeting held on 18th June 1947, subject to some drafting amendments, it was agreed to issue Doc.C.260 in its amended form without submitting it previously to the Commission.

III. Human Rights Report. (Doc. III/96, III/101, III/102, III/103, III/105, and III/106.)

Sir Robert CRAIGIE introduced the subject, saying that one of the purposes of to-day's meeting was to inform Committee III of the preparatory work which had been done and the further action now proposed. It would be convenient to take Doc. III/105 first because the most important thing to be done was the Progress Report for the Commission on Human Rights which was to meet in August 1947 at Geneva.

Mr. KINTNER said that his government was in agreement with anything within the terms of reference of the Commission and the work in connection with human rights and war crimes should be done by Committee III, but his government would be opposed to undertaking a task of such magnitude as would unduly prolong the life of the Commission. As to these documents and the task which Committee III had set before it, he felt sure that his government was quite willing to leave the task to the Legal Secretariat of the Commission.

Sir Robert CRAIGIE said that on the question of prolonging the life of the Commission, the United Kingdom entirely shared the view expressed by the United States Government. On the other hand, quite independently of the task which we had been asked to undertake by the United Nations Organisation, we had rather reached the view that it would be difficult to complete the tasks, particularly of Committee I, before the early part of the next year. That being the case, in order to meet the view of the United Kingdom and United States and possibly other governments, it was necessary to take steps to ensure that not only this work but the rest of the work of the Commission should be concluded by, say, the end of March next, the end of our Financial Year, and on the lines which we were proposing to work, he thought that this could be done. If this meant that it would not be possible to produce such a full report as would be desirable, it did not mean that we could not make a useful contribution to the study of the relationship between war crimes trials and human rights. There was no doubt that we could proceed if we always had the idea in mind that we must not allow this question to carry us so far into a field of research that we might in fact find it necessary at a later stage to ask for a prolongation.

Mr. KINTNER said that the opinion expressed by Sir Robert would meet with the full approval of his government.

Dr. SCHRAM-NIELSEN explained that he had had no instructions from his government, but his own view was that the work would be voluminous and prolonged if the suggestions set out in Doc. III/96, p.2., were carried out. There seemed to him to be too many unnecessary sub-headings. He would merely suggest that when we performed this work, we should try to make it as little complicated as possible and also as short as possible.

Mr. BRAND explained that it was certainly not intended to sub-divide all of the headings 1 - 7 into sub-headings (i) - (ix), but only into whichever sub-headings were relevant, for instance the material relating to spies would deal only with the right to a fair trial.

Dr. SCHRAM-NIELSEN approved the interpretation given by Mr. Brand.

Sir Robert CRAIGIE preferred the second type of Progress Report suggested in p.1. of Doc. III/105, summarising in one paper the work carried out so far. This would be of more use to the United Nations Secretariat. Some of the reports had been drawn up primarily for internal consumption and the members of the Secretariat had been feeling their way and they might want to modify their opinions at a later stage.

On being asked by the Chairman, Dr. Mayr-Harting, Mr. Brand and Dr. Zivkovic agreed that the second type of report would be preferable.

Sir Robert CRAIGIE expressed the view that the arrangement of the material suggested at the beginning of section III of Doc. III/105 was a sound preliminary division. He mentioned that it was then proposed to sub-divide each part as follows:

- (a) the rights of the victims,
- (b) spheres of conflict between the rights of the accused and the victims at the time of the offence,
- (c) the rights of the accused at the time of the trial.

Dr. MAYR-HARTING explained that this sub-division would be used fully in the second part of the report. Some modifications might, however, prove necessary in the first part.

Dr. SCHRAM-NIELSEN asked whether it would be possible to reduce the number of sub-headings appearing under D. Rights of the Accused. It seemed to him to be obvious that the rights mentioned would be guaranteed in all civilized states.

Mr. BRAND pointed out that the opening paragraph of Section D explained the contents thereof. Points 1 - 5 were concerned with the rights of the accused, whereas points 6 - 11 tended to illustrate the other point mentioned in the opening paragraph, namely that the guilty should not escape punishment through legal technicalities.

Sir Robert CRAIGIE said that the arrangement should be as simple as possible but that it was necessary to have a certain number of sub-headings in order to present the material in an orderly way. The report would be incomplete if it did not mention, for instance, that every accused had the right of knowing with what he was charged, but it could be done in very few words.

Mr. Brand said that it would be of value to include these paragraphs in order to show the world that the accused was allowed the fundamental rights of a fair trial.

Sir Robert CRAIGIE said that to many people these things were not so obvious as to us. Too much knowledge of war crimes matters must not be assumed on the part of either the Human Rights Commission or the United Nations Secretariat.

Mr. KINTNER agreed that the report should be comprehensive.

Sir Robert CRAIGIE said that if the Secretariat had ample time at its disposal, it would be possible to make the fullest use of the transcripts but it would be quite impossible to do so very fully as things stood at present. The Secretariat would always be working under a sense of urgency and in the report dealing with the Nuremberg trial it should be explained that it had been necessary to base the material primarily on the indictment and judgment and to make use of the transcripts in exceptional cases only. Members of the Secretariat must use their judgment on the points.

Dr. ZIVKOVIC said that that applied also to the Tokyo trial.

Mr. KINTNER supported Sir Robert CRAIGIE.

Sir Robert CRAIGIE said that Dr. Zivkovic had raised the question whether the material on the Tokyo trial, when once compiled and presented, would be better in a separate chapter of its own. In Sir Robert's opinion, it was very important to say in the Progress Report that this latter represented the general lines of the final Report insofar as it could be envisaged at present, but of course in the process of drafting, if it were found that amendments were necessary, they would be undertaken. At present, prima facie, he would prefer the Nuremberg and Tokyo, and other trials, to be dealt with together and not in separate chapters.

Dr. ZIVKOVIC suggested that for the time being the work should be performed on the lines of Mr. Brand's scheme.

The Committee authorized the Secretariat to draft a Progress Report based on Doc. III/10j and in the light of the Committee's discussions. Copies of the draft of the Progress Report would be sent to the members of the Committee to enable them to make suggestions by post or telephone.

COMMITTEE III MINUTES
No. 10/47.

UNITED NATIONS WAR CRIMES COMMISSION.

Minutes of the Meeting of COMMITTEE III held on 30th October, 1947

at 3.30 p.m.

In the Chair: Sir Robert Craigie, (United Kingdom)

Also Present:

Lord Wright,	Chairman of the Commission,
Dr. Schram-Nielsen,	Denmark,
Mr. Aars-Rynning,	Norway,
Dr. Muszkat,	Poland,
Mr. Kintner,	United States of America.

I. Minutes No. 9/47.

Minutes No. 9/47 were approved with the proviso that Mr. Kintner's name, which had been omitted erroneously, would be added to the list of those present.

II. Human Rights Report.

Sir Robert CRAIGIE introduced the first preliminary papers concerning the Human Rights Report, which had been submitted by the Legal Secretariat and asked the legal officers present to explain in greater detail the papers which had already been written and those which were being prepared.

Dr. MAYR-HARTING said that Part II of the Report would consist of three chapters, the first dealing with the jurisdiction of the Nuremberg Court over offences against Germans and Stateless persons; the second with the jurisdiction of the municipal courts, established in Germany over the same offences, and the third chapter would treat the information arising out of some quisling trials. A draft of the first chapter would be circulated within a few days and a draft of the third chapter was at present being prepared by Dr. Zivkovic.

Dr. ZIVKOVIC explained that he would distribute, within the next few days, one more paper on the war crimes trials conducted by French Tribunals and some pages of this paper would be devoted to the Laval trial, so as to insure that at least one quisling trial would be touched upon in the Report.

Dr. LITAWSKI referred to the covering note of Doc. III/107 where it was shown in detail which contributions he proposed to include. He mentioned that Part I of the Historical Survey covering the period prior to the outbreak of the 1939 war had been distributed; he had, however, abandoned the idea of including in the Report Part II of this survey dealing with developments during the war. It seemed preferable to devote the time still available to the more important items of the Nuremberg Trial. A paper on the legal basis and jurisdiction of the Nuremberg Tribunal was already in the hands of the members of the Committee and another on the rights of the victims would be circulated shortly. The remaining chapters of the Section of the Report dealing with the Nuremberg Trial, which had been indicated in the covering note of Doc. III/107, would have to be left at present.

Sir Robert CRAIGIE expressed the view that item 8 of this covering note, "General Conclusions" should be put at the end of the Report.

Mr. BRAND said that apart from Docs. III/96 and III/112 which were already circulated, he intended to contribute a third paper covering the whole sphere of information on human rights in trials other than those conducted by the International Military Tribunals and if time permitted, a fourth paper on aspects of jurisdiction.

A discussion followed on the advisability of one separate chapter on jurisdiction, in which Sir Robert CRAIGIE, Mr. BRAND, Dr. ZIVKOVIC and Dr. MAYR-HARTING took part. It was noted that there would be many repetitions in the papers when they were finally drafted.

Sir Robert CRAIGIE suggested that many of the repetitions would be avoided if questions of jurisdiction which were at present discussed in various sections of the Report, were treated comprehensively in one chapter.

Lord WRIGHT said that repetitions would be dealt with when revising the papers, but that a certain amount of such repetition would be inevitable.

Speaking of the work which remained to be done, Sir Robert CRAIGIE pointed out that after all papers had been drafted, they were to be merged into a single block. In view of the time limit given by the Human Rights Division, the individual contributions should be ready by 20th November, so as to leave sufficient time for merging them into one Report.

Sir ROBERT said that he would be glad to have any suggestions from the members of the Committee on the plans of the secretariat which had been explained. He suggested that the Committee should keep to a general discussion of the proceedings and plans, before details of documents were discussed.

Mr. KINTNER asked if it were necessary to retype the stencils or whether the present ones could be used.

Sir Robert was of the opinion that most of the stencils would have to be redone.

A discussion followed as to whether the Report should be printed.

It was finally decided that all parts of the Report should be available by 20th November.

During the discussion of the details of the papers already presented, Dr. SCHRAM-NIELSEN said that there was one question to which he had given thought, i.e., whether it was a survey which was being composed or a thesis, and he suggested that a survey would meet the requirements of the United Nations more than a thesis. He quoted as an example Doc. III/113, which dealt on 32 pages with the question of the legal basis and jurisdiction of the Nuremberg Tribunal, which was, after all, only one aspect of the theme.

Sir Robert CRAIGIE felt that some parts, such as the Introductory paragraphs, explanatory paragraphs, etc., could be cut down. It was, however, agreed that the whole Report had been compressed to the utmost limits.

Lord WRIGHT considered that it would take too long to cut down any one of the sections.

Dr. LITAWSKI remarked that some of the papers had been prepared for the Report as it was envisaged at the outset of the work. The time limit later imposed required changes in the original plan. It was thus that disproportions had occurred. He further mentioned that in his view the Report would be of greater value to the codification section of the United Nations than for the division which had asked for it.

Coming back to the question of the relative lengths of the various sections of the Report, Sir Robert CRAIGIE said that it seemed that some of the examples of trials illustrating Mr. Brand's section, were perhaps too long.

Mr. BRAND replied that it would be very difficult to re-write his section, although it might be attempted at the end.

Lord WRIGHT regretted that examples were not given from more countries, - Poland, Czechoslovakia, - and more from France.

Sir Robert CRAIGIE said that the time limit had affected this aspect of the work, which could be done in the future.

Dr. ZIVKOVIC gave a report on his previously mentioned paper which he was preparing.

It was decided that in order to discuss the papers which were at present prepared, another meeting of Committee III was necessary before the Report was sent to the United Nations.

COMMITTEE III MINUTES

No. 11/47.

UNITED NATIONS WAR CRIMES COMMISSION.

Minutes of the Meeting of COMMITTEE III held on 17th November, 1947

at 3.30 p.m.

In the Chair: Sir Robert Craigie, (United Kingdom)

Also Present:

Colonel Springer,	}	United States of America,
Mr. Kintner,		
Mr. Aarsleff,		Norway,
Col. Dr. Muszkat,		Poland.

Apologies were received from Dr. Zeman (Czechoslovakia), Dr. Zimonjic (Yugoslavia) and Dr. Schram-Nielsen (Denmark) for being unable to attend.

I. HUMAN RIGHTS REPORT.

Sir Robert CRAIGIE introduced Document III/118 containing proposals with regard to the arrangement of the report and the preliminary papers which had been circulated since the last meeting of the Committee.

A discussion followed as to the way in which the report should be sent to Geneva and the latest date of its dispatch. It was decided to send the Report not later than the 25th November 1947.

Sir Robert CRAIGIE suggested that if there were no remarks to make in regard to the arrangement of the Report (Doc. III/118), the Committee might proceed to discuss the preliminary papers.

Col. Dr. Muszkat pointed out that the report was so voluminous that during the meeting of the Human Rights Commission the members would hardly find the time to read the report. It was therefore important to draft general conclusions giving on 3 or 4 pages, a picture of the contents of all the papers and thus to afford the members of the Commission in Geneva the opportunity of studying and appreciating the work done by the U.N.W.C.C. Otherwise only the Secretariat would have time to study the complete document.

Sir Robert CRAIGIE remarked that in the preface and introductions there would be observations which would be of use to the Human Rights Commission. It was intended to draft the conclusions as succinctly as possible and to give a clear indication of what had been aimed at. Sir Robert added that, if time had been available, the volume of the document could no doubt have been reduced considerably and suggested that this might be said in the preface. It was, however, impossible at the present stage to contemplate any re-writing of the document.

Turning to the individual papers, Sir Robert CRAIGIE said that many linguistic amendments had been made. It would not be possible to re-distribute drafts showing these amendments; the Committee was, therefore, asked to leave these amendments to the Secretariat.

Colonel MUSZKAT suggested that it might be useful to concentrate such topics as the legal basis of the Nuremberg and Tokyo trials, in one chapter and in a similar way the jurisdiction of the different tribunals.

Part II of the Report

Sir Robert CRAIGIE considered it would be almost impossible to do so in the time available. There was a good deal to be said, e.g., for collecting everything concerning jurisdiction in one chapter. This and similar re-arrangements would, however, require several weeks.

Dr. MAYR-HARTING pointed out that the document would hardly gain in clarity if questions of a general nature, which were at present touched upon in various sections of the Report, were treated comprehensively in separate chapters. Part II of the Report, eg., required an investigation into the question of the international character of the Nuremberg Tribunal which appeared unnecessary for the purposes of Part I. It would be of no advantage if this and similar topics which were mainly of interest for the second part of the Report, were to be looked for in chapters at the beginning of the document.

Colonel MUSZKAT felt that the United Nations were interested not in the basis of the jurisdiction of the various courts, but in the points to be considered in the International Bill of Human Rights. Too much stress was placed in the document on questions concerning the legal basis and jurisdiction. He thought that the main interest would attach to the findings arrived at by the courts.

Dr. ZIVKOVIC was of the opinion that the legal basis of the trials had been given comparatively little attention. It was, however, thought necessary to include the treatment of this and other topics to make the subsequent analysis comprehensible.

Sir Robert CRAIGIE thought that to some extent Col. Muszkat's previous point would be covered by the conclusions which were still to be drawn up. Complete conclusions could not be drawn at present because the task was not finished. Some more months work were needed before final conclusions could be drawn.

Dr. LITAWSKI said that his last paper which had not yet been circulated, concerned violations of human rights dealt with in the Nuremberg trial. Conclusions as to what extent these rights were protected was one of the most important parts of the report.

He added that the Commission had not been charged by the United Nations with the presentation of a thesis; it had been asked to present a collection of information arising from trials and nothing else, and the very compressed conclusions drawn were already something more than had been asked.

Sir Robert CRAIGIE reiterated Col. Muszkat's point that an endeavour should be made to draw final conclusions.

Dr. MAYR-HARTING expressed the view that it was almost impossible to draw any general conclusions at that stage.

Col. MUSZKAT thought that the most important aspect was what human rights must be protected either by international law or by national law. This could be pointed out in final conclusions.

Col. SPRINGER thought that the arrangement of the Report proposed in Doc. III/118 presented a simple, easy diagram and that it impressed itself easily on the mind. He agreed with Colonel MUSZKAT that the object of the United Nations was to decide what human rights should be given international protection. He thought, however, that there was not enough time available to draft final conclusions such as those suggested by Colonel Muszkat.

Mr. KINTNER said that the Report might be more valuable in connection with the Codification of International Law than the development of human rights and the papers would therefore be of great value in their present form.

Sir Robert CRAIGIE thought that point to be important. He mentioned that Lord Wright was proposing to write to Professor Humphrey shortly and one of the points was that he hoped that the documents would be communicated also to the Committee which deals with the codification of international law.

On the proposal of Colonel SPRINGER, it was decided to entitle the Report: "Information concerning Human Rights arising from trials of War Criminals".

Mr. BRAND said that in Chapter III, trials held by the courts of 6 or 7 countries had been dealt with.

A discussion followed on the question of drafting final conclusions and Sir Robert CRAIGIE declared his willingness to undertake this work after he had seen the conclusions to the various chapters.

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On the proposal of Colonel SPRINGER, it was decided to entitle the Report: "Information concerning Human Rights arising from trials of War Criminals".

A discussion followed on the question of drafting final conclusions. Colonel MUSZKAT mentioned that these conclusions should explain why in Chapter III examples were given only from British and American trials.

Mr. BRAND said that in Chapter III trials held by the courts of 6 or 7 countries had been dealt with.

Sir Robert CRAIGIE declared his willingness to undertake this work after he had seen the conclusions to the various chapters.

The Committee then adjourned sine die.

COMMITTEE III MINUTES
No. 11/47.

ERRATUM.

UNITED NATIONS WAR CRIMES COMMISSION.

Please destroy page 3 of Committee III Minutes
No. 11/47 circulated on Friday 12th December, and replace
with page 3 attached.