

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

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

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

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

UNITED NATIONS WAR CRIMES COMMISSION.

The Legal Status of Germany.

A statement by the United Kingdom Foreign Office.

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

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

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

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

Misc. No. 38

July 12th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Greek Legislation on the Trial and

Punishment of War Criminals and

Enemy Collaborators.

Compiled by the Secretary to Committee III.

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

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

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

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

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

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

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

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

COMPULSORY LAW NO. 533.

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

GEORGE II, KING OF THE HELLENES.

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

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

CHAPTER "A".

OFFENCES

ARTICLE 1.

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

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

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

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

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

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

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

ARTICLE 2.

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

ARTICLE 3.

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

ARTICLE 4.

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

ARTICLE 5.

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

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

ARTICLE 6.

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

ARTICLE 7.

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

ARTICLE 8.

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

.....

In the King's name:

THE REGENT,

&c., &c., &c.

Athens, 1st September, 1945.

Misc. 39
July 15th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

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

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

IMPORTANT

Misc. 40
15th August, 1946

UNITED NATIONS WAR CRIMES COMMISSION

SECRETARIAT OF COMMITTEE I

FOR THE ATTENTION OF NATIONAL OFFICES

SUBMISSION OF CHARGES

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

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

RESTRICTED
SECRET

MISC. NO. 41
19th August, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

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

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

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

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

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

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

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

AG 000.5 (24 Sep 45) JA

APD 500
24 September 1945

SUBJECT: Regulations Governing the Trial of War Criminals.

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

ESTABLISHMENT OF MILITARY COMMISSIONS

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

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

JURISDICTION

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

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

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

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

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

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

MEMBERSHIP OF COMMISSION

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

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

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

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

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

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

PROSECUTORS

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

12. DUTIES. The duties of the prosecutors are:

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

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

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

POWERS AND PROCEDURE OF COMMISSIONS.

13. CONDUCT OF THE TRIAL. A Commission shall:

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

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

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

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

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

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

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

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

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

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

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

15. WITNESSES. The commission shall have power:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. The prosecution shall make its opening statement.

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

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

f. The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

g. The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

h. The defense, and thereafter the prosecution, shall address the commission.

i. The commission shall consider the case in closed session and thereafter in open court deliver its judgment, and in the event of a conviction shall pronounce sentence.

18. RECORD OF PROCEEDINGS. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

JUDGMENT AND SENTENCE

19. JUDGMENT. The judgment of a commission as to guilt or acquittal shall be delivered in open court. It may state the reasons on which based.

20. SENTENCE. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine, or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property, or order its delivery to the Commander-in-Chief, United States Army Forces, Pacific, for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

21. APPROVAL OF SENTENCE. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into effect until confirmed by the Commander-in-Chief, United States Army Forces, Pacific. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

RULE MAKING POWER

22. SUPPLEMENTARY RULES AND FORMS. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof or such rules and forms as may be prescribed by the convening authority or by the Commander-in-Chief, United States Army Forces, Pacific.

By command of General MacARTHUR:

/s/ B.M. Fitch
/t/ B.M. FITCH
Brigadier General, U.S. Army,
Adjutant General. "

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/s/ B.M. Fitch
/t/ B.M. FITCH
Brigadier General, U.S. Army,
Adjutant General. "

UNITED NATIONS WAR CRIMES COMMISSION

MISC. 42

27th August, 1946.

PROGRESS REPORT OF WAR CRIMES TRIALS AS AT 31ST JULY, 1946.

	<u>Total Number of Cases Tried to Date.</u>	<u>Accused Involved.</u>	<u>Death</u>	<u>S e n t e n c e s.</u>	
				<u>Imprisonment</u>	<u>Acquittals</u>
USFET	69	319	182	115	22
BAOR	} 116	427	106	197	124
CMF(Italy & Austria)					
ALFSEA	101	292	118	131	43
SCAP	9	16	2	14	-
AUSTRALIA	129	489	77	232	180
FRANCE ⁺	not given	130	69	56	5
		<hr/>	<hr/>	<hr/>	<hr/>
TOTALS:		1673	554	745	374

⁺ not complete

SECRET
RESTRICTED.

Misc. No. 43
27th August 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

The Provisions of the Draft Peace Treaties
concerning War Criminals.

Note by Egon Schwelb, Legal Officer.

By the courtesy of the United Kingdom Foreign Office, the Draft Peace Treaties with Italy, Rumania, Bulgaria, Hungary and Finland, presented to the Paris Peace Conference by the Council of Foreign Ministers, have been made available to the Commission's Secretariat.

I. All the Draft Peace Treaties contain express provisions regarding the apprehension and surrender of war criminals (in the wider sense) and traitors. The respective provisions form, in the Draft Peace Treaty with Italy, its Part III, (Part I being "Territorial Clauses", Part II "Political Clauses" and Part IV "Naval, Military and Air Clauses"). Article 38 of the Draft Peace Treaty with Italy reads as follows:

- " 1. Italy shall take the necessary steps to ensure the apprehension and surrender for trial of:
 - (a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace and humanity.
 - (b) Nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war.

2. At the request of the United Nations Government concerned, Italy will likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

3. Any disagreement concerning the application of the provisions of paragraphs 1 and 2 of this Article shall be referred by any of the Governments concerned to the Ambassadors in Rome of the Union of Soviet Socialist Republics, United Kingdom, United States of America, and France, who will reach agreement with regard to the difficulty. "

II. In the Draft Peace Treaties with Rumania, Bulgaria, Hungary and Finland, the corresponding provisions do not form a separate part of the respective treaty, but are inserted in Part II (Political Clauses). The provision as to the War Criminals and Traitors are contained in Article 6 of the Draft Treaty with Rumania, in Article 5 of the Draft Treaty with Bulgaria, in Article 5 of the Draft Treaty with Hungary and in Article 9 of the Draft Treaty with Finland.

The quoted paragraphs of the four treaties are identical with Art. 38 of the Draft Peace Treaty with Italy, with the modification that it is the Heads of the Diplomatic Missions in Bucharest, Sofia and Budapest respectively of the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, in whom the right to decide in cases of disagreement is vested, France being excluded. In the Finnish Treaty, it is stated that any disagreement concerning the application of the provisions of paragraphs 1 and 2 of Article 9 shall be referred by any of the Governments concerned to the Ministers in Helsinki of the Union of Soviet Socialist Republics, and the United Kingdom who "will reach agreement with regard to the difficulty". The United States and French envoys in Helsinki do not, therefore, participate in such decisions.

- III. Article 38 of the Draft Peace Treaty with Italy replaces the provisions of the surrender document signed at Malta on 29th September 1943, as amended at Brindisi on 9th November 1943, Article 29 of which reads as follows:

" Benito Mussolini, his chief Fascist associates, and all persons suspected of having committed war crimes or analogous offences whose names appear on lists to be communicated by the United Nations and who now or in the future are on territory controlled by the Allied Military Command or by the Italian Government, will forthwith be apprehended and surrendered into the hands of the United Nations. Any instruction given by the United Nations to this purpose will be complied with. "

- IV. In the Armistice Conventions concluded with the four other Powers, the provisions regarding war criminals were as follows:

In the case of Rumania:

Conditions of an Armistice with Rumania, signed at Moscow, 12th September 1944.
(Miscellaneous No.1.(1945) Cmd.6585. H.M.Stationery Office.
Department of State Bulletin, Vol.XI, No.273, (17 September 1944, Reprinted in American Journal of International Law, Vol.39, Supplement p.88.)

Article 14:

The Rumanian Government and High Command undertake to collaborate with the Allied (Soviet) High Command in the apprehension and trial of persons accused of war crimes.

In the case of Bulgaria:

Conditions of an Armistice with Bulgaria, signed at Moscow, 28th October, 1944.
(Miscellaneous No.3. (1945) Cmd.6587, H.M.Stationery Office.
Department of State Bulletin, Vol.XI. No.279 (29 October 1944), Reprinted in American Journal, ibid p.93.)

Article 6:

The Government of Bulgaria will co-operate in the apprehension and trial of persons accused of war crimes.

In the case of Hungary:

Armistice with Hungary, signed at Moscow, 20th January 1945.
(Department of State Bulletin, Vol.XII, No.291 (21 January 1945) p.83.
Reprinted in American Journal, ibid, p.97.)

Article XIV:

Hungary will co-operate in the apprehension and trial, as well as the surrender to the Governments concerned, of persons accused of war crimes.

In the case of Finland:

Conditions of an Armistice with Finland, signed at Moscow, 19th September 1944.
(Miscellaneous No.2. (1945) Cmd.6586. H.M.Stationery Office
Reprinted in American Journal, ibid page 85.)

Article 13:

Finland undertakes to collaborate with the Allied Powers in the apprehension of persons accused of war crimes and in their trial.

V. For the purposes of comparison and illustration, we herewith reproduce the corresponding provisions of the Peace Treaty of Versailles:

Articles 228 - 230 of the Versailles Treaty read as follows:

" Article 228.

The German Government recognises the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies.

The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the German authorities.

Article 229.

Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power.

Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned.

In every case the accused will be entitled to name his own counsel.

Article 230.

The German Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders and the just appreciation of responsibility. "

VI. Article 38 of the Draft Treaty with Italy (and, of course, the above quoted provisions of the four other treaties) differs in several respects from the provisions of Article 29 of the Italian Armistice.

1) The 1943 Armistice did not restrict its provisions to war crimes in the narrower sense, but spoke of persons suspected of having committed war crimes "or analogous offences". The Italian Armistice Convention mentioned Benito Mussolini by name and also spoke of "his chief Fascist Associates". It was obvious that the text of the Italian Armistice aimed at including into the retributive action of the United Nations also persons who were not accused of war crimes in the narrower sense, denoting the violation of the laws and customs of war. In the Charter of the International Military Tribunal attached to the Four-Power Agreement of 8th August 1945, the crimes to be made the subject of prosecutions, in addition to war crimes in the narrower sense, were more precisely defined, Article 6 of the Charter juxtaposing to war crimes crimes against peace, (Art.6(a)) and crimes against humanity, (Art.6(c)).

The United Kingdom, the United States of America, the U.S.S.R. and France, were Signatories of the Four-Power Agreement of 8th August 1945, to which then other allied nations adhered under its Article 5.

The same four Great Powers were the members of the Council of Foreign Ministers which prepared the five Draft Peace Treaties and presented them to the Paris Peace Conference. There can be no doubt that the expressions "war crimes", "crimes against peace" and "crimes against humanity" are in the Draft Peace Treaties used in the same sense as in the Charter of the International Military Tribunal and that, therefore, the explanation of these terms in the Charter of 8th August 1945, may be also used in interpreting the terms of Article 38 of the Italian Treaty and the corresponding provisions of the four other treaties.

2) The five Draft Treaties are therefore a further step in the process of developing International Law and embodying in it the notions of crimes against peace and crimes against humanity.

Originally the law regarding these two types of crimes had been stated by the four Great Powers only.

Eventually the provisions of the Charter of the International Military Tribunal were endorsed by other allied States which adhered to the Four-Power Agreement under its Article 5.

Then, on 13th February 1946, the General Assembly of the United Nations passed a resolution regarding the surrender of war criminals (circulated as Doc.C.179) in the Preamble of which it took note of the definition of war crimes, crimes against peace and crimes against humanity, contained in the Charter of the International Military Tribunal dated 8th August 1945.

Now, when the five Peace Treaties will be signed and ratified and will come into force, the definition of these two types of crimes will be accepted also by the five former Axis and Satellite countries.

3) Article 38(1)(b) of the Italian Treaty (and the corresponding articles of the four other draft Treaties,) contain provisions regarding the so-called quislings and traitors, who are defined as "Nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war". It will be noted that the provision is restricted to nationals of the Allied and Associated Powers. Enemy nationals and citizens of neutral States are outside its scope. This will mean that, e.g., an enemy national or a neutral citizen who was a resident of an Allied State, and has violated the law of the allied country by treason or collaboration with the enemy during the war, will not have to be surrendered unless he is also accused of a war crime, a crime against peace or a crime against humanity, under Article 38(1)(a).

4) It is submitted that the expressions "treason" and "collaboration" are not used in a technical sense because the terminology used in the municipal penal laws of different States is different and so are the actual provisions and the delimitations of the several types of offences against the safety of the State in different municipal penal laws.

5) It is not stated to whom the war criminals and traitors are to be surrendered. In the Italian Armistice it was provided that the criminals would be surrendered "into the hands of the United Nations". From the text of Article 38, paragraph 2, which deals with witnesses, it seems probable that not only witnesses but also accused persons should be made available "at the request of the United Nations Government concerned".

6) The reference to lists to be communicated by the United Nations, which appears in Article 29 of the Italian Armistice, is omitted in the Draft Peace Treaties. The Draft Peace Treaties do not contain a provision corresponding to Article 228, paragraph 2 of the Versailles Treaty, which ordained that all persons should be handed over "who are specified either by name or by the rank, office or employment which they held under the German authorities".

7) It will be noted that the limitation "during the war" is contained in Article 38(1)(b) of the Italian Treaty which deals with traitors and collaborators, but not in sub-paragraph (a) which deals with perpetrators of war crimes, crimes against peace and crimes against humanity.

From the text itself, it could therefore even be argued that the five former enemy countries undertake to apprehend and surrender for trial not only persons who have committed war crimes and crimes against peace and crimes against humanity during the last war, but also persons who will commit such crimes in future. This would be of particular importance with regard to crimes against peace, but it must be admitted that this interpretation would probably not be in accordance with the intention of the draftsmen of the five Treaties.

8) Article 38, paragraph 3 of the Draft Treaty with Italy provides that any disagreement concerning the application of the provisions of paragraphs 1 and 2 of the Article shall be referred by any of the Governments concerned to the Ambassadors in Rome of the Four Great Powers, who will reach agreement with regard to the difficulty. (As to the different composition of the body of diplomatic representatives under the four other Draft Peace Treaties, see *supra* II, paragraph 2.)

It is submitted that this provision applies both to any disagreement between an Allied Power on the one hand and Italy on the other, and to a disagreement among United Nations Governments. The latter would include, for instance, a difference of opinion on the question to whom an accused wanted by more than one Government should be handed over. The decision of the four (in other Treaties, 3 or 2) diplomatic envoys must be unanimous, because it is stated that they "will reach agreement."

9) Article 38 of the Draft Treaty does not contain a provision corresponding to Article 228, paragraph 1 in fine of the Versailles Treaty that the provision will apply notwithstanding any proceedings or prosecution before a Tribunal in Germany or in territory of her Allies.

10) No duty corresponding to Article 230 of the Versailles Treaty is imposed on the five countries. In Article 230 the German Government had undertaken to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders and the just appreciation of responsibility.

VII. The United Nations War Crimes Commission has dealt extensively with the Articles to be inserted in any Armistice and Peace Treaties and reference is made, inter alia, to Documents C.18, C.27, C.31 and C.34.

The Draft contained in Doc.C.31 provides in its paragraph 2 for a detailed enumeration of the steps which Germany (or the non-German Axis countries (C.34),) should undertake. Doc.C.31 also contains a number of recommendations providing against obstruction of its provisions.

UNITED NATIONS WAR CRIMES COMMISSION.

Roumanian Provisions regarding the Prosecution of
War Criminals and persons responsible for the
National Disaster.

The following information on Roumanian legislation is a translation from the book "La Guerre-Crime et Les Criminels de Guerre", by Vespasien V. Pella, Geneva, 1946, page 71.

The Roumanian Decree-Law of April 1945 for the prosecution of war criminals and those responsible for the national disaster, is particularly interesting. It seems in fact, to be an anticipation of the Charter annexed to the Agreement of 8th August 1945 of the Four Great Powers, concerning the suppression of crimes against peace, crimes against the laws and customs of war and crimes against humanity.

From the following texts can be discerned the criteria of guilt.

Article 2 of the Roumanian Law regards, among others, as being "responsible for the disaster of the country by committing war crimes, persons:

- (a) who have decided in favour of the declaration or the continuation of war against the Soviet Union and the other United Nations;
- (b) who have not respected the international rules relating to the waging of war;
- (c) who have submitted prisoners of war and hostages to inhumane treatment;
- (d) who have ordered or have committed acts of terrorism or cruelty, or the suppression of peoples inhabiting the territories on which war has been fought;
- (e) who have ordered or have committed acts of suppression, either collective or individual, in accordance with a political or racial plan;
- (f) who have ordered the carrying out of excessive labour, or the removal and transportation of persons in order to exterminate them;
- (g) who, as commandants, directors, keepers and prison guardians of camps for political prisoners or internees, or for political deportees or detained persons, or of camps for forced labour or of labour gangs, have imposed inhumane treatment upon those who were in their power;
- (h) who, as police officers or officers in charge of enquiries into political or racial questions, by whatever right they were conducted, have committed acts of violence or torture, or have used any other illegal means of constraint;
- (i) who, as procurators and civil or military judges, have aided or intentionally committed acts of terror or of violence;
- (j) who have improperly appropriated private or public belongings in territory where war has been waged. "

Secret.
Restricted.

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UNITED NATIONS WAR CRIMES COMMISSION.

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UNITED NATIONS WAR CRIMES COMMISSION

To be attached to:

Doc. Misc. 45.

Please attach as footnote to page 1 of Doc. Misc. 45:

The first and second supplements to the Bibliography of
Legal Literature (Doc. Misc. No. 19) were circulated as
Documents Misc. 24 and Misc. 34.

Misc. No. 46.
4th September, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Note

on the

Report of the Secretary-General of the United Nations
on the Work of the Organisation.

By Egon Schwelb, Legal Officer.

I. Introductory.

On 30th June 1946, the United Nations, New York, published as Document A/65, the report of Mr. Trygve LIE, the Secretary-General, on the work of the United Nations. The Report covers the period until 30th June 1946. It is proposed to give in this paper a survey of those parts of the Report which are of particular interest to the United Nations War Crimes Commission, either

because they touch upon the terms of reference of the United Nations War Crimes Commission, or

because they are of interest to all international organisations other than the United Nations, of which the United Nations War Crimes Commission is one.

A report on the Proceedings of the General Assembly, First Part of First Session, London, 10th January - 14th February 1946, and a Summary of Proceedings of the first meetings of the Security Council, London, 17th January - 16th February 1946, have also been published by H.M. Stationery Office, London.

II. The Work of the Atomic Energy Commission and its bearing on the development of International Criminal Law.

Chapter I, (Political and Security Questions) of the Report, contains on pp. 9 et seq., paragraph E, the report on the activities of the Atomic Energy Commission.

The setting up of the Atomic Energy Commission was decided by the General Assembly on 24th January 1946. According to the Resolution of the General Assembly, the Commission was to be composed of one representative from each of the States represented on the Security Council and Canada when that State was not a member of the Security Council.

The terms of reference of the Atomic Energy Council provide, inter alia:

- (b) for control of Atomic Energy to the extent necessary to ensure its use only for peaceful purposes;
- (c) for the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction;
- (d) for effective safeguards by way of inspection and other means to protect complying States against the hazards of violations and evasions.

The American Plan.

At the first meeting of the Commission, the representative of the United States submitted a United States plan based on the creation of an International Atomic Development Authority. The plan contains the proposal that there must be no veto in the governing body of the Authority. The American representative proposed that once renunciation of the bomb as a weapon has been agreed upon and an adequate system of control put into effective operation, with punishments set up for any violations, manufacture of atomic bombs should stop, and existing bombs should be disposed of under treaty.

The representative of Canada supported the United States proposals, especially that concerning the veto of the permanent members of the Security Council.

The representative of the United Kingdom accepted the United States plan as a basis for consideration and endorsed in particular the emphasis on progressive development of the system of control, and on the necessity for effective punishment of any violation.

The Soviet Plan.

At the second meeting of the Commission, the representative of the USSR made, inter alia, the following propositions: One of the first measures should be a study of the question of the conclusion of an international agreement to forbid the production and use of weapons based upon the use of atomic energy for the purpose of mass destruction. The essentials of such an agreement would include, inter alia,

- (1) The prohibition of the production and use of a weapon based upon the use of atomic energy.
- (2) The destruction of all stocks of atomic energy weapons.
- (3) Any violation of the agreement shall be regarded as a serious threat against humanity.
- (4) Violation of the terms of the agreement shall be severely punished under the domestic legislation of the contracting parties.
- (6) All States (whether Members or not of the United Nations), shall be obliged to fulfil all provisions of the agreement.

The USSR representative proposed the setting up of two committees, the task of one of which would be to prepare recommendations, inter alia, on the following subjects concerning the prevention of the use of atomic energy for the harm of humanity:

- (1) The preparation of a draft international agreement to outlaw weapons based upon the use of atomic energy and to forbid the production and use of such weapons and all similar forms of weapons destined for mass destruction.
- (3) Measures, systems and organisation of control in the use of atomic energy to ensure the observance of the above mentioned conditions for the international agreement to outlaw atomic weapons.
- (4) The elaboration of measures for application against the unlawful use of atomic energy.

The representatives of China, Brazil and Egypt endorsed the United States proposal.

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The representatives of France and the Netherlands believed that the United States and Soviet plans were not incompatible.

The representative of Poland, inter alia, wished to embody the principle of individual responsibility for violations of such international agreements, to provide that these violations be considered breaches of the peace under Art. 39 of the Charter, and to direct that the prohibition of atomic warfare be written into the constitution of Member States.

The representative of Australia thought that the Soviet proposal could be fitted into the general plan outlined by the United States representative.

Establishment of a Working Committee.

The Atomic Energy Commission established a Working Committee composed of one representative from each of the twelve members of the Commission, which is to report regularly and frequently to the Commission on its work.

III. The Commission on Human Rights.

Article 55 of the Charter of the United Nations provides, inter alia, that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." The Charter further provides, in Article 57, that the various specialised agencies, established by inter-governmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields shall be brought into relationship with the United Nations, which shall make recommendations for the co-ordination of their policies and activities (Art. 58.) The responsibility for the discharge of these functions is vested, by Article 60 of the Charter, in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council.

During the course of its first session, the Economic and Social Council adopted resolutions, inter alia, on the following matters:

- (4) Commission on Human Rights,
- (7) Committee on Negotiations with Inter-Governmental Relations,
- (10) Committee on Refugees and Displaced Persons. (Report, p.13.)

In setting up the Commission on Human Rights, the Council decided that the work of the Commission should consist, inter alia, of the preparation of proposals, reports and recommendations on an international bill of rights, international declarations or conventions on civil liberties, and the prevention of discrimination on grounds of race, sex, language, or religion. The Economic and Social Council instructed the Secretary-General to make arrangements for: (a) the compilation and publication of a yearbook on law and usage relating to human rights, the first edition of which should include all declarations and bills on human rights now in force in the various countries; (b) the collection and publication of information on the activities concerning human rights of all organs of the United Nations; (c) the collection and publication of information concerning human rights arising from trials of war criminals, quislings, and traitors, and in particular from the Nuremberg and Tokyo trials; (d) the preparation and publication of a survey of the development of human rights; (e) the collection and publication of plans and declarations on human rights by specialised agencies and non-governmental national and international organisations.

It may be noted that in connection with (c)(supra), the United Nations got into touch with the United Nations War Crimes Commission, (Doc.A.10; see also M.110).

The Council decided that pending the adoption of an international bill of rights, the general principle should be accepted that international treaties involving basic human rights, including to the fullest extent practicable treaties of peace shall conform to the fundamental standards relative to such rights set forth in the Charter of the United Nations.

IV. Specialised Agencies.

In paragraph C. of Chapter II of the Secretary-General's Report, (page 21), it is pointed out that "the multiplicity of international organisations calls for the provision of an effective system for the co-ordination of their activities". Pursuant to directives from the General Assembly, the Economic and Social Council, at its first session in London, began the work of bringing international organisations having wide international responsibilities into relationship with the United Nations.

Appointment of a Committee on Negotiations with Inter-governmental Agencies.

On 16th February 1946, the Economic and Social Council appointed a Committee on Negotiations with Inter-governmental Agencies, and instructed it to enter into negotiations with:

The International Labour Organisation, (I.L.O.)
The United Nations Educational, Scientific and Cultural Organisation, (UNESCO),
The Food and Agriculture Organisation, (FAO)
The International Monetary Fund, and
The International Bank for Reconstruction and Development,

with a view to bringing them into relationship with the United Nations in accordance with Articles 57 and 63 of the Charter.

In the meantime, agreements were negotiated with the ILO, UNESCO and FAO and these agreements were approved by the Economic and Social Council at its second session on 21st June 1946.

At the request of the International Monetary Fund and the International Bank for Reconstruction and Development, it was agreed to postpone the negotiating of agreements with these organisations, inasmuch as they were not at the present time in a position to consider definite agreements with the United Nations in view of the urgent organisational problems, with which they were confronted.

Relationship of Specialised Agencies with the United Nations.

The Negotiating Committee have interpreted the relevant provisions of the Charter as clearly requiring that specialised agencies be brought into relationship with the United Nations as a whole and not with the Economic and Social Council alone. Thus, the possibility is not excluded of specialised agencies having direct relations with other principal organs of the United Nations, where this is clearly to the mutual advantage of the parties concerned. Members of the United Nations having undertaken to carry out decisions of the Security Council for the maintenance of peace and security, "through their action in the appropriate international agencies of which they are members", the draft agreement in each case includes an undertaking on the part of the specialised agency concerned to assist the Security Council, upon its request, in carrying out such decisions. Similarly provisions are included obliging each agency to assist the Trusteeship

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Relationship of Specialised Agencies with the United Nations.

The Negotiating Committee have interpreted the relevant provisions of the Charter as clearly requiring that specialised agencies be brought into relationship with the United Nations as a whole and not with the Economic and Social Council alone. Thus, the possibility is not excluded of specialised agencies having direct relations with other principal organs of the United Nations, where this is clearly to the mutual advantage of the parties concerned. Members of the United Nations having undertaken to carry out decisions of the Security Council for the maintenance of peace and security, "through their action in the appropriate international agencies of which they are members", the draft agreement in each case includes an undertaking on the part of the specialised agency concerned to assist the Security Council, upon its request, in carrying out such decisions. Similarly provisions are included obliging each agency to assist the Trusteeship

Council in carrying out its functions, and to furnish such information as may be requested by the International Court of Justice.

Reciprocal Representation.

The principle has been accepted that representatives of the United Nations should be invited to attend meetings of the conferences and executive bodies of the agencies and to participate, without vote, in their deliberations. On the other hand, this representation was made reciprocal on the basis of the following arrangements:

- (a) Representatives of the specialised agencies will be invited to participate, without vote, in meetings of the Economic and Social Council and of its commissions, and of the Trusteeship Council, with respect to items on their agenda relating to matters in which the agency has indicated that it has an interest, or which comes within the scope of its activities;
- (b) Representatives of the specialised agencies will be invited to attend meetings of the General Assembly in a consultative capacity and to participate, without vote, in the deliberations of its main Committees when matters which come within the scope of the activities of an agency are under discussion;
- (c) Written statements will be distributed by the United Nations Secretariat whenever a specialised agency so requests.

Proposal of Agenda Items.

The agreements contain also a reciprocal obligation under which the Economic and Social Council or the Trusteeship Council, on the one hand, and the specialised agencies on the other, agree to include in their agenda, items which either body may propose to the other.

Recommendations of the United Nations to the Specialised Agencies.

While many of the provisions which have been written into the draft agreements refer to what may be described as mandatory obligations on the part of the specialised agencies, the United Nations expressly recognises in Article 1 of each agreement the special competence of the agencies within their respective fields of activity as laid down in their basic instruments. Those functions and responsibilities which belong exclusively to the United Nations are nevertheless fully safeguarded. Each draft agreement requires the specialised agency to submit to its policy-making or executive organ all formal recommendations which the United Nations may make to it, to report to the United Nations (in accordance with Article 64 of the Charter) all action taken to give effect to these recommendations, and to enter into consultation with the United Nations upon request. Similarly, in recognition of the responsibility conferred on the General Assembly and on the Economic and Social Council for the co-ordination of the policies and activities of the specialised agencies and those of the United Nations, the specialised agencies specifically undertake to co-operate with the United Nations in whatever measures may be necessary to make such co-ordination fully effective.

Miscellaneous Provisions of the Agreements with Specialised Agencies.

The Draft Agreements between the United Nations and the Specialised Agencies further provide for the exchange of information and documents, for consultation regarding permanent headquarters of the agencies, for statistical and administrative services, for budgetary and financial arrangements and for implementation and revision of agreements.

Personnel Arrangements.

Emphasis was given to the desirability of securing as much uniformity as practicable in matters relating to personnel arrangements. The United Nations and the specialised agencies jointly affirm that the eventual development of a single unified international civil service is desirable. With this end in view, they undertake to develop common personnel standards, methods and arrangements designed to avoid serious discrepancies in terms and conditions of employment, to avoid competition in recruitment of personnel and to facilitate interchange of personnel, when desirable, on either a temporary or permanent basis. Initial steps have been taken at the Secretariat level to give effect to the principles stated in the draft agreements.

Consultation at Secretariat Level.

The members of the Negotiating Committee placed particular emphasis on the necessity for close and continuous consultation at the Secretariat level in order to assure effective co-ordination of activities. The Secretariat of the United Nations has already made substantial progress in developing the necessary technical and administrative liaison.

V. The Problem of Refugees and Displaced Persons in its bearing on the question of war criminals.

The General Assembly resolved, on 12th February 1946, to refer the question of refugees and displaced persons to the Economic and Social Council for examination and report to the second part of the first session of the General Assembly. It recommended that the Council take into consideration the international scope of the problem, certain principles to be considered with regard to the early return of refugees and displaced persons to their countries of origin and the extent of international responsibility for the fate of those who might be considered as unrepatriable. The General Assembly further recommended that, under whatever international arrangements the Economic and Social Council might make for dealing with the problem of refugees and displaced persons, there should be no interference with the surrender and punishment of war criminals, quislings and traitors, in accordance with existing and future conventions and international agreements.

The text of this Resolution has been circulated in Document C.179, part II.

Pursuant to these recommendations, the Economic and Social Council, by a resolution adopted during its first session, established a Special Committee on Refugees and Displaced Persons, to carry out promptly a thorough examination of the problem and to make a report thereon to the Council at its second session.

The Special Committee recommended to the Economic and Social Council, inter alia: to set up an International Refugee Organisation; to draw the attention of all the United Nations and of all appropriate international bodies to the necessity of making available to the Organisation the necessary transport in order to continue the operations of repatriation before the winter sets in and to ensure that the greatest possible number of displaced persons are repatriated before 15th September 1946; to take all practical measures in order that repatriation shall not be impeded through difficulties in transit, reception, absorption and food supplies; to keep in mind the fact that in certain areas a considerable number of refugees and displaced persons are not fully employed and to make arrangements immediately, in areas where it seems necessary, for providing more work for them, pending their repatriation or resettlement; to draw the attention of any international body conducting a census of persons receiving international assistance or protection to the urgency of such a census; and

to furnish the organisation with the text of the document known as the "Moscow Declaration of 1 November 1943" relating to "war criminals", "quislings" and "traitors", and with all other available documents containing authoritative interpretation of the terms "war criminal", "quisling" and "traitor", and with the texts of all future documents relating to the same subject.

Reference is also made to Doc.C.206, where the relevant parts of the Report by the Special Committee on Refugees and Displaced Persons were circulated.

VI. Legal Affairs.

Chapter V of the Secretary General's Report describes, on pp.36 et seq. the work of the Legal Department of the United Nations' Secretariat, and refers particularly to the General Convention on Privileges and Immunities, approved by the General Assembly on 13th February 1946, (C), to the Convention to be concluded with the USA (D), and to Agreements with the Swiss authorities providing for the status of the United Nations in Switzerland. Under (J) (Development and codification of International Law), it is pointed out that early steps should be taken to prepare for the implementation of Art.13(1)(a) of the Charter concerning the encouragement of the progressive development of international law and its codification.

A special Division for this purpose was created in the Legal Department, and the first task of the Division was to undertake a study of the possibilities and the method of international legislation and the codification of international law. As a preliminary step it engaged on a survey in the realm of international legislation and codification through informal contacts established with officials of Member governments and with private organisations and persons eminent in international law. The Division will now undertake a programme of work consisting of: (a) making studies concerning the promotion of international legislation in the form of multilateral conventions; (b) examining the possibilities of resuming the process of codification of international law and assisting in promoting conferences on the codification of international law in the future; (c) undertaking research in the work of public and private bodies and serving as a centre of information concerning matters offering possibilities of codification. Also, within the framework of the activities of the United Nations itself, the Division will analyse and record legal principles practised by the principal organs of the United Nations in applying the provisions of the Charter.

It may be mentioned in this connection that Dr. Yuen-li Liang one of the representatives of China on the United Nations War Crimes Commission, and its Committees II and III, has been appointed Director of the Division of the Development and Codification of International Law of the Legal Department of the United Nations Secretariat.

VII. Administrative and Financial Services.

Chapter IX of the Report, (pp.50 et seq.) deals with general questions connected with the administration of the United Nations and its finances. It is pointed out there, and in the Secretary General's introduction, that the task of organising the Secretariat and making the necessary administrative arrangements for the meetings of the several Councils, has occupied much of the time and energy of the executive staff of the Organisation. This task was not eased by the pressure which the world political and economic events imposed upon the United Nations, or by the material conditions in which it had to be undertaken. As a result of these conditions and of the haste in which decisions had to be taken, some mistakes have inevitably been made and results have not always equalled expectations. But every effort has been made to correct mistakes and overcome difficulties, and it is believed that these efforts have not been without avail. Much has been accomplished, though much still remains to be done.

A Special Division of the Secretariat has been established to deal with substantive and constitutional aspects of relationships with specialised agencies.

Misc. No. 47
10th September, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Danish Provisions

Regarding

Punishment of War Crimes.

The following translation of an extract from the Danish Act regarding the Punishment of War Crimes of 12th July 1946, has been made available to the Secretariat by the Danish Representative.

" Translation
of
The Danish Act on Punishment of War Crimes.
Assented to by H.M. The King of Denmark
on the 12th July, 1946.

Chapter I.

1. If a non-Danish subject, being in the service of Germany or serving under one of Germany's allies, has infringed the rules and customs of international law governing Occupation and War and has performed, in Denmark or to the detriment of Danish interests, any deed punishable per se in Danish law, an action can be brought against such person in respect of the crime committed and a punishment imposed in a Danish Court in pursuance of this Act.

2. In addition to the instances cited in paragraph 1, persons having committed the following crimes shall be liable to prosecution under this Act: war crimes or crimes against humanity such as murder, maltreatment of civilians, prisoners or seamen, the killing of hostages, looting of public or private property, requisitioning of money or other valuables, violation of the Constitution, imposition of collective punishments, destruction by explosives or otherwise, all in so far as these actions were performed in violation of the rules of international law governing Occupation and War. This Act shall further apply to deportation or other political, racial or religious persecution contrary to principles of Danish law, and further to all actions which, though not specifically cited above, are covered by Article 6 in the Charter of the International Military Tribunal, of the Order issued by the Danish Ministry for Foreign Affairs, Law Journal C. No. 7, dated 13th November 1945.

3. For crimes to which this Act applies, the punishment prescribed in the relevant Statute of Penalties may be increased to imprisonment for any term up to imprisonment for life. Should the case not be covered by any Danish code of penalties hitherto in force, the punishment shall be imprisonment for any term up to imprisonment for life.

The capital punishment, however, may be imposed in the circumstances laid down in Act. No. 259, dated 1st June, 1945, amending the Civil Penal Code, paragraph 8, section 2(*), or, further, in specially aggravating circumstances.

4. The fact that the criminal deed was performed by a person acting under orders or in a subordinate capacity does not exempt the criminal from responsibility, but may be taken into consideration as an extenuating circumstance, and in specially extenuating circumstances the punishment may be waived altogether.

5. When in pursuance of this Act a non-Danish subject is sentenced to a term of imprisonment, the sentence shall include the provision that on completion of his term of imprisonment he shall be deported from Denmark and warned that any illegal return to Denmark will render him liable to punishment.

.....

8. The liability of the criminals, or other legal implications provided by this Act never lapse, and the sentences passed may be carried out at any time.

9. Unless otherwise determined by the above stipulations the regulations in the General Section of the Civil Penal Code shall apply to the crimes to which this Act refers.

Chapter II.

.....

12. In actions brought in pursuance of this Act any appropriate lawyer may be engaged for the defence. An obligation to accept an appointment for the defence rests, however, only on the official Advocates appointed by the Minister of Justice in accordance with the Law on the Administration of Justice, para. 733.

Should the accused desire any particular lawyer as his counsel for the defence, this lawyer should be engaged, unless this is excluded by the provisions of paragraph 1.

.....

(*) The said paragraph provides that capital punishment i.a. may be imposed in case of murder, or torture with a view to provoking a confession; furthermore in some cases of treason in aggravating circumstances and in some cases of arson.

UNITED NATIONS WAR CRIMES COMMISSION

Canadian War Crimes Legislation

(The material reproduced in this paper
has been received from
Mr. H. R. Horne).

The Canadian provisions corresponding to the British Royal Warrant of 14th June, 1945, Army Order 81/1945 (see Document C. 131) and to the Commonwealth of Australia War Crimes Act 1945 (see Document C. 196) have, in the Dominion of Canada been made by an Order in Council 30th August 1945, (The War Crimes Regulations, (Canada)).

The text of these Regulations is reproduced below.

On the 6th August, 1946, the House of Commons of Canada passed a Bill (No. 309; Second Session, Twentieth Parliament, 10 George VI, 1946) which eventually will become The Canadian War Crimes Act (An Act respecting War Crimes). The provisions of this Bill are to the effect that the War Crimes Regulations, Canada, made by the Governor in Council on the 30th August, 1945, are re-enacted. The Act shall be deemed to have come into force on 30th August, 1945; it will, therefore, retrospectively give to the Regulations made by the Governor in Council statutory effect as of the date of the making of the Regulations.

WAR CRIMES REGULATIONS (CANADA).

1. These Regulations may be cited as the War Crimes Regulations (Canada).
2. In these Regulations, unless the context otherwise requires and subject to any express provision to the contrary:
 - (a) "accused" means a person charged with or suspected of the commission of a war crime;
 - (b) "Army Act" means the Army Act of the United Kingdom as made applicable from time to time to members of the Canadian military forces;
 - (c) "convening officer" means an officer authorized to convene a military court under these Regulations;
 - (d) "military court" means a military court constituted and held under these Regulations;
 - (e) "Rules of Procedure" means the Rules of Procedure made pursuant to the Army Act, as made applicable from time to time to members of the Canadian military forces;
 - (f) "war crime" means a violation of the laws or usages of war committed during any war in which Canada has been or may be engaged at any time after the ninth day of September, 1939;
 - (g) other expressions bear the same meaning as they have in the Army Act or Rules of Procedure.
3. The custody, trial and punishment of persons charged with or suspected of war crimes shall, on and after the date hereof, be governed by these Regulations.
4. (1) Any Canadian flag, general or air officer commanding any Canadian forces, wherever such forces may be serving, whether in the field or in occupation of enemy territory or otherwise, and any officer acting for such officer commanding in his absence, and any officer not below the rank of colonel, or its relative rank, whom such officer commanding, or officer acting for him in his absence, may authorize in

writing/

writing in that behalf, shall have power to convene military courts for the trial of persons charged with having committed war crimes and to confirm the findings and sentences of such courts: Provided that no military court shall be convened for the trial of any person for a war crime unless the case has been certified by the Judge Advocate General, or any representative of his appointed by him for that purpose, as approved for trial.

(2) Any authority to convene military courts conferred by an officer commanding or an officer acting for him in his absence under (1) of this Regulation may be addressed to an officer by name or designation of an office and may be made subject to such restrictions, reservations, exceptions and conditions, compatible with these Regulations, as may seem meet to the officer conferring the authority.

(3) An officer having authority to confirm the finding and sentence of a military court may reserve confirmation of the finding and sentence, or of the sentence alone, to any authority superior in rank or appointment to him who is competent to confirm the findings and sentences of the like kind of military court convened under these Regulations.

5. Except as herein otherwise provided expressly or by implication, the provisions of the Army Act and the Rules of Procedure, so far as they relate to field general courts-martial and to any matters preliminary or incidental thereto or consequential thereon, shall apply so far as applicable or practicable to military courts and to any matters preliminary or incidental thereto or consequential thereon in like manner as if military courts were field general courts-martial and the accused were persons subject to military law charged with having committed offences on active service; Provided that

- (a) Sections 49, 51, 54(I) (d) and (7) and 57(2) and (4) and 57A of the Army Act, and Rules of Procedure 3, 34, 35(D), 56, 110, 118(A) and (B), 119(B) and 120(C), (D) and (E) made pursuant thereto shall not apply;
- (b) No departure from any procedural rule or other provision contained in the Army Act or the Rules of Procedure shall affect the jurisdiction of, or the validity of any proceedings by or before, any military court, or of any proceedings preliminary or incidental thereto or consequential thereon, unless in the opinion of the court, or of the confirming authority, substantial injustice has thereby been done to the accused.

6. (1) If it appears to a convening officer that a person then within the limits of his command or otherwise under his control has at any place committed a war crime he may direct that such person if not already in custody shall be taken into and kept in custody pending trial in such manner and in such charge as he may direct.

(2) The commanding officer of any body of naval, military or air forces having charge of an accused shall be deemed to be the commanding officer of the accused for the purposes of all matters preliminary and relating to trial and punishments; Provided that such commanding officer shall have no power to dismiss the charge or deal with the accused summarily for a war crime. He shall without any such preliminary hearing as is referred to in Rule of Procedure 3 either cause a summary of evidence to be taken in accordance with Rule of Procedure 4 or an abstract of evidence to be prepared as the convening officer may direct.

(3) The accused shall not have the right of having a summary taken or of demanding that the evidence at the summary shall be taken on oath or that any witness shall attend for cross-examination at the taking of the summary.

7. (1) A military court shall consist of not less than two or more than six officers in addition to the president, all of whom shall be appointed by name, but no officer, whether sitting as president or as a member, need have held his commission for any special length of time.

(2) If the accused is an officer of the naval, military or air forces of an enemy or ex-enemy power the convening officer should, so far as practicable, but shall be under no obligation to do so, appoint or detail as many officers as possible of equal or superior relative rank to the accused.

(3) If the accused belongs to the naval, military or air forces of an enemy or ex-enemy power, or if Canadian naval, military or air force personnel are in any way affected by the alleged war crime, the convening officer should appoint or detail, if available, at least one naval, military or air force officer as a member of the court, as the case may be.

(4) Notwithstanding anything in these Regulations, where any war crime appears to affect the interest of any Allied power, including any member of the British Commonwealth of Nations, a convening officer may:

- (a) invite one or more officers of the naval, military or air forces of such Allied power to become a member or members of the military court convened to try the person or persons charged with having committed the offence, in which case any officer so invited may sit as a member of the military court;
- (b) appoint as a member of the court one or more officers of an Allied force serving under his command;

Provided that in no case shall the number of such Allied officers on a military court comprise more than half the members of the military court excluding the president.

(5) Any Allied officer sitting as a member of a military court pursuant to (4) (a) or (b) of this Regulation shall be vested with the same rights, duties and powers as an officer of the Canadian forces duly appointed to serve as a member of such a court.

(6) A convening officer may, with the consent of the appropriate naval, military or air force authority, appoint as president or member of a military court, an officer not under his command.

(7) The convening officer shall normally appoint at least one officer having one of the legal qualifications mentioned in Rule of Procedure 93(B) as president or as a member of the court. If no such officer is appointed, and in default of a person deputed to act as judge advocate by the Judge Advocate General, or any representative of his appointed by him for that purpose, the convening officer shall by order appoint a person having one of the said legal qualifications to act as judge advocate at the trial.

8. The accused shall not be entitled to object to the president or any member of the court or the judge advocate or to offer any special plea to the jurisdiction of the court.

9. Counsel may appear on behalf of the prosecutor and accused in like manner as if the military court were a general court-martial, and Rules of Procedure 88 to 93, both inclusive, shall in such cases apply accordingly. In addition to the persons deemed to be properly qualified as counsel under Rule of Procedure 93 any person qualified to appear before the courts of the country of the accused and any person approved by the convening officer shall be deemed to be properly qualified as counsel for the defence.

10. (1) At any hearing before a military court convened under these Regulations the court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the court to be of assistance in proving or disproving the charge, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a field general court-martial, and without prejudice to the generality of the foregoing, in particular:

(2) If the accused is an officer of the naval, military or air forces of an enemy or ex-enemy power the convening officer should, so far as practicable, but shall be under no obligation to do so, appoint or detail as many officers as possible of equal or superior relative rank to the accused.

(3) If the accused belongs to the naval, military or air forces of an enemy or ex-enemy power, or if Canadian naval, military or air force personnel are in any way affected by the alleged war crime, the convening officer should appoint or detail, if available, at least one naval, military or air force officer as a member of the court, as the case may be.

(4) Notwithstanding anything in these Regulations, where any war crime appears to affect the interest of any Allied power, including any member of the British Commonwealth of Nations, a convening officer may:

- (a) invite one or more officers of the naval, military or air forces of such Allied power to become a member or members of the military court convened to try the person or persons charged with having committed the offence, in which case any officer so invited may sit as a member of the military court;
- (b) appoint as a member of the court one or more officers of an Allied force serving under his command;

Provided that in no case shall the number of such Allied officers on a military court comprise more than half the members of the military court excluding the president.

(5) Any Allied officer sitting as a member of a military court pursuant to (4) (a) or (b) of this Regulation shall be vested with the same rights, duties and powers as an officer of the Canadian forces duly appointed to serve as a member of such a court.

(6) A convening officer may, with the consent of the appropriate naval, military or air force authority, appoint as president or member of a military court, an officer not under his command.

(7) The convening officer shall normally appoint at least one officer having one of the legal qualifications mentioned in Rule of Procedure 93(B) as president or as a member of the court. If no such officer is appointed, and in default of a person deputed to act as judge advocate by the Judge Advocate General, or any representative of his appointed by him for that purpose, the convening officer shall by order appoint a person having one of the said legal qualifications to act as judge advocate at the trial.

8. The accused shall not be entitled to object to the president or any member of the court or the judge advocate or to offer any special plea to the jurisdiction of the court.

9. Counsel may appear on behalf of the prosecutor and accused in like manner as if the military court were a general court-martial, and Rules of Procedure 88 to 93, both inclusive, shall in such cases apply accordingly. In addition to the persons deemed to be properly qualified as counsel under Rule of Procedure 93 any person qualified to appear before the courts of the country of the accused and any person approved by the convening officer shall be deemed to be properly qualified as counsel for the defence.

10. (1) At any hearing before a military court convened under these Regulations the court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the court to be of assistance in proving or disproving the charge, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a field general court-martial, and without prejudice to the generality of the foregoing, in particular:

- (a) if any witness is dead or is unable to attend or to give evidence or it is, in the opinion of the court, not practicable for him to do so, the court may receive secondary evidence of statements made by or attributable to such witness;
 - (b) any document purporting to have been signed or issued officially by any member of any Allied (including British Commonwealth) or enemy force or by any Allied (including British Commonwealth), neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof;
 - (c) the court may receive as evidence of the facts therein stated any report of the "Comité International de la Croix Rouge" or by any representative thereof, by any member of the medical profession or of any medical service, by any person acting as a "man of confidence" (homme de confiance), or by any other person whom the court may consider was acting in the course of his duty when making the report;
 - (d) the court may receive as evidence of the facts therein stated any depositions or any record or report of any military court or military court of inquiry or of any examination made by any officer detailed for the purpose by any military authority;
 - (e) the court may receive as evidence of the facts therein stated any diary, letter or other document appearing to contain information relating to the charge;
 - (f) if any original document cannot be produced or, in the opinion of the court, cannot be produced without undue delay, a copy of such document or other secondary evidence of its contents may be received in evidence;
 - (g) any statement made prior to trial by an accused or by any witness at such trial, whether or not such statement was made on oath, and whether made before or after or without the giving of any caution, shall be admissible in evidence for all purposes.
- (2) It shall be the duty of the court to judge of the weight to be attached to any evidence given in pursuance of this Regulation which would not otherwise be admissible.
- (3) Where there is evidence that a war crime has been the result of concerted action upon the part of a formation, unit, body, or group of persons, evidence given upon any charge relating to that crime against any member of such a formation, unit, body, or group may be received as prima facie evidence of the responsibility of each member of that formation, unit, body, or group for that crime; in any such case all or any members of any such formation, unit, body, or group may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the court.
- (4) Where there is evidence that more than one war crime has been committed by members of a formation, unit, body, or group while under the command of a single commander, the court may receive that evidence as prima facie evidence of the responsibility of the commander for those crimes.
- (6) The court shall take judicial notice of the laws and usages of war.
- (7) Unless the convening officer otherwise directs, a finding of guilty and the sentence shall be announced in open court by the president, who shall at the same time state that such finding and sentence are subject to confirmation. If such announcement is not made in open court the president shall notify the accused of the finding and sentence under sealed cover at the termination of the proceedings and record in the proceedings that this has been done. A finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation or be subject to be revised and shall be pronounced at once in open court, but the court shall not thereupon release the accused, unless otherwise entitled to be released.
- (8) The sittings of military courts will ordinarily be open to the public so far as accommodation permits. Nevertheless the court may, on the ground that it is expedient to do so in the national interest or in the interests of justice, or for the effective prosecution of war crimes generally/

See
Erratum

generally, or otherwise, by order prohibit the publication of any evidence given or to be given or of any statement made or to be made, or of the names, descriptions or photographs of any witnesses heard or to be heard, in the course of the proceedings before it, or direct that all or any portion of the public shall be excluded during any part of such proceedings as normally take place in open court, except during the announcement of the finding and sentence pursuant to paragraph (6) above.

(9) A record shall be made of the proceedings of every military court.

11. (1) A person found guilty by a military court of a war crime may be sentenced to and shall be liable to suffer any one or more of the following punishments, namely:

- (a) Death (either by hanging or by shooting);
- (b) Imprisonment for life or for any less term;
- (c) Confiscation;
- (d) A fine.

(2) In a case where the war crime consists wholly or partly of the taking, distribution or destruction of money or other property the court may as part of the sentence order the restitution of such money or other property and in default of complete restitution award a penalty equal in value to that which has been so taken, distributed or destroyed or not restored.

(3) Sentence of death shall not be passed on any person by a military court without the concurrence of all those serving on the court if the court consists of not more than three members, including the president, or without the concurrence of at least two-thirds of those serving on the court if the court consists of more than three members, including the president.

12. The accused may within 14 days of the termination of the proceedings in court submit a petition to the confirming officer against the finding or sentence or both if he gives notice to the confirming officer within 48 hours of such termination of his intention to submit such a petition. The accused shall have no right to submit any petition otherwise than as aforesaid: Provided that, if such petition is against the finding, it shall be referred by the confirming officer, together with the proceedings of the trial, to the Judge Advocate General, or to any representative of his appointed by him for that purpose for advice and report thereon.

13. (1) The finding and any sentence which the court had jurisdiction to pass may be confirmed and, if confirmed, shall be valid, notwithstanding any deviation from these Regulations, or the Army Act or the Rules of Procedure or any technical or other defect or objection.

14. When a sentence passed by a military court has been confirmed, the senior combatant officer of the Canadian forces in the theatre in which the trial took place not below the rank of major general or its relative rank, or any officer not below the rank of brigadier, or its relative rank, authorized by him, shall have power to mitigate or remit the punishment thereby awarded or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court: Provided that this power shall not be exercised by an officer holding a command or rank inferior to that of the officer who confirmed the sentence.

15. The fact that an accused acted pursuant to the order of a superior or of his government shall not constitute an absolute defence to any charge under these Regulations; it may, however, be considered either as a defence or in mitigation of punishment if the military court before which the charge is tried determines that justice so requires.

16. Any sentence passed by a military court shall, so far as practicable, be carried out as if the person so sentenced were a member of the Canadian military forces on whom a like sentence had been passed by court-martial.

17. In any case not provided for in these Regulations such course will be adopted as appears best calculated to do justice.

UNITED NATIONS WAR CRIMES COMMISSION.

Erratum.

Misc. No. 48.

In Doc. Misc. No.48, p.4, insert between sub-paragraph (4) and sub-paragraph (6), the following text of sub-paragraph (5):

(5) Where there is evidence that a war crime has been committed by members of a formation, unit, body or group and that an officer or non-commissioned officer was present at or immediately before the time when such offence was committed, the court may receive that evidence as prima facie evidence of the responsibility of such officer or non-commissioned officer, and of the commander of such formation, unit, body, or group, for that crime.

UNITED NATIONS WAR CRIMES COMMISSION.

Collecting International and Municipal Provisions
regarding War Crimes.

Report by Egon Schwelb, Legal Officer.

In the meeting of the Commission held on 27th March 1946, (M.101), several members expressed the wish that statutory provisions enacted in different countries to deal with the problems of war criminals, should be collected by the Secretariat and made available to Members.

The Chairman of the Commission ruled that the Legal Secretariat should take up this matter.

This paper is a survey of the action taken to comply with this decision.

The following enactments are available to the Secretariat, and have, with the exception of those which have been published by H.M. Stationery Office and may therefore be easily purchased in London, been circulated to Members of the Commission.

Part I.

International and Multilateral Provisions.

- 1) The Charter of the International Military Tribunal attached to the London Agreement of 8th August 1945. British Command Paper, Cmd. 6668, and United States Department of State Publication 2461, Executive Agreement Series 472. The latter publication contains also the Protocol signed at Berlin, 6th October 1945, which has been circulated as Document C.193. The U.S. Department of State Publication 2420, also contains the Four-Power Agreement and the Indictment. (See also the Indictment, British Command Paper Cmd. 6696 and the Proceedings of the International Military Tribunal sitting at Nuremberg, Part I, the Opening Speeches of the Chief Prosecutors and the Speeches of the Chief Prosecutors at the Close of the Case, against the Individual Defendants, the latter three published under the authority of H.M. Attorney General, by H.M. Stationery Office, London.)
- 2) The Charter of the International Military Tribunal for the Far East, (Doc. C.182, amended text Doc. C.198) and the Indictment before the International Military Tribunal for the Far East (C.197). (See also below, Part III, (2)(c).)
- 3) The Draft Peace Treaties with Italy, Roumania, Bulgaria, Hungary and Finland. The Draft Peace Treaties have been published by H.M. Stationery Office as Command papers, viz: Italy, Cmd. 6892, Hungary, Cmd. 6894, Bulgaria, Cmd. 6895, Roumania Cmd. 6896, Finland, Cmd. 6897. The provisions regarding war crimes are quoted in Doc. Misc. No. 43.

Part II.
Inter-Allied Provisions.

1) Western Zones.

Military Government Courts. Ordinance No.2. printed in "Military Government Gazette, 6 Army Group Area of Control" No.1., page 7 and in Military Government Gazette, Germany, 21 Army Group Area of Control, No. 2., page 7. (See Doc.C.132)

2) Provisions for the whole of Germany.

Control Council Law No.10 regarding the punishment of persons guilty of war crimes, crimes against peace and against humanity. Printed in the Official Gazette of the Control Council for Germany, No.3., Berlin, Allied Secretariat, 31st January 1946, and in the Military Government Gazette, Germany, British Zone of Control, No.5., page 46, circulated also by the Research Office in its Document Series as No.15 bis.

Part III.
Municipal and Occupational Provisions.

1) United Kingdom.

Royal Warrant of 14th June 1945, (Army Order 81/1945), amended by the Royal Warrant of 4th August 1945, (Army Order 127/1945), Royal Warrant of 30th January 1946, (Army Order 8/1946) and Royal Warrant of 20th February 1946, (Army Order 24/1946). (Docs. C.131 and Misc.No.13).

2) United States of America.

(a) Regulations for the trial of war crimes in the Mediterranean Theater of Operations, Doc.Misc.No.16.

(b) Provisions regarding Military Commissions in the European Theater of Operations and Military Government Courts. (Doc.Misc.23).

(c) Regulations governing the Trial of War Criminals in the Pacific Theater of Operations, (Misc.41). (See also the Charter of the International Military Tribunal for the Far East, Supra under I(2), Docs.C.182 and 198, and the Executive Order providing for the representation of the United States in preparing and prosecuting in the trials against the leaders of the European Axis Powers, Doc.C.112, Amendment in Annex to Doc. C.178).

3) France.

Ordinance of 28th August 1944, concerning the prosecution of war criminals. Document Series of the Research Office, No.26.

4) Australia.

War Crimes Act, 1945; Regulations under the War Crimes Act 1945, Statutory Rules 1945, No.164; Amendment of the Regulations Statutory Rules 1946, No.30; Copy of Instrument of Appointment referred to in definition of "War Crimes" in Section 3 of the War Crimes Act. These documents have been circulated, in extract, as Doc.C.196.

5) Dominion of Canada.

War Crimes Regulations (Canada) and the Canadian War Crimes Bill.
(Doc.Misc.No.48).

6) Poland.

Decree of 31st August 1944, Official Gazette No.4/1944; Decree of 6th May 1945, Official Gazette No.17/1945 and Decree of 22nd January 1946, No.5/1946. Summary circulated in Doc.C.218.

7) Czechoslovakia.

A report on legislative measures is contained in Doc.III/14.

8) Greece.

Emergency Law No.533 concerning the imposition of Penal Sanctions on enemy collaborators. Printed in "Report of the British Legal Mission to Greece", Command Paper, Cmd.6838; an extract circulated as Doc. Misc.38.

9) Denmark.

Danish Act on the Punishment of War Crimes of 12th July 1946.
Extract circulated as Doc.Misc.47.

10) Austria.

Austrian Constitutional Law of 26th June 1945, concerning War Crimes and other National Socialist misdeeds, and amendment thereto of 18th October 1945. Circulated in Document Series of the Research Office, under Nos. 23 and 32.

11) Roumania.

Decree Law of April 1945, Extract from the book by Professor V.Pella, circulated as Doc.Misc.44.

UNITED NATIONS WAR CRIMES COMMISSION

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON SEPTEMBER 30TH, 1946.

	:Cases tried:	:Accused involved:	S e n t e n c e s			: R e m a r k s
			Death	Imprison- ment.	Acquittal	
EUROPE.	:	:	:	:	:	:
UNITED STATES:	:	:	:	:	:	:
U.S.F.E.T.)	:	:	:	:	:	:
U.S.Mediterranean)	78	341	192	123	26	U.S.Mediterranean figures relate to June 1946 only
BRITISH:	:	:	:	:	:	:
B.A.O.R.	126	482	117	229	136)	Situation as at 1.10.46
C.M.F.	28	57	8	28	21)	:
FRANCE:	Not given	138	75	58	5	Situation as at 18.7.46.
(A) Total reported for Europe	:	1,018	392	438	188	:
FAR EAST.	:	:	:	:	:	:
UNITED STATES:	103	225	79	135	11	:
BRITISH	127	406	170	187	49	:
AUSTRALIAN	129	489	77	232	180	Situation as at 18.4.1946
(B) Total - Far East:	:	1,120	326	554	240	:
GRAND TOTAL A + B:	:	2,138	718	992	428	:

Misc. No. 51.
October 22, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Additional United States Provisions regarding Military
Commissions and Military Government Courts Trying War
Criminals

In complying with the task with which the Secretariat was charged in the meeting of the Commission held on 27th March 1946, (M.101), and referring to the general report contained in Doc. Misc. No. 49, the Secretariat herewith circulates three additional documents which have been made available by the United States Commissioner. Previous United States documents of a similar character have been circulated as Misc. Nos. 16, 23 and 41.

The present paper contains: .

I. The Regulations Governing the Trials of Accused War Criminals in the Pacific Theater of Operations, issued by command of General MacArthur on 5th December 1945. These Rules, (the SCAP Rules of 5th December 1945) replace the Regulations made on 24th September 1945 which were circulated as Doc. Misc. 41. (p.1)

II. The Regulations Governing the Trial of War Criminals in the China Theater, issued by Command of Lieut. General Wedemeyer on 21st January 1946. (p.7)

III. The Directive issued by Command of General McNarey on 26th June 1946, regarding the trial of war criminals in the European Theater. (p.12)

I
R E S T R I C T E D
GENERAL HEADQUARTERS, SUPREME COMMANDER
FOR THE ALLIED POWERS.

AG 000.5 (5 Dec 45) LS

AP0 500
5 December 1945.

Subject: Regulations Governing the Trials of Accused War Criminals.

To: Commander-in-Chief, United States Army Forces, Pacific, APO 500
Commanding General, Sixth Army, APO 442
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235.

The following rules and regulations will govern the trials of persons, units and organisations accused as war criminals;

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units or organisations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The Commissions will be established dependent upon the number, nature of the offences involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offences against one (1) or more nation.

2. Jurisdiction

a. Over Persons. The military commission appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offences

(1) Military commissions established hereunder shall have jurisdiction over all offences including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages, plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offences need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case, shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally investigated, nor if he is required as a witness in that case. A Commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission or an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

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

4. PROSECUTORS

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offences involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

- (1) To prepare and present charges and specifications for reference to a commission.
- (2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A Commission shall:

- (1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any necessary delay or interference.
- (2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.
- (3) Hold public sessions except when otherwise decided by the commission.
- (4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

- (1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offence charged.
- (2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defence.
- (3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defence, and cross-examine each adverse witness who personally appeared before the commission.
- (4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The commission shall have power:

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

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(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to advise the accused of each offence charged.

(2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defence.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defence, and cross-examine each adverse witness who personally appeared before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The commission shall have power:

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

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing, general rules, the following evidence may be admitted:-

- (a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.
- (b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.
- (c) Affidavits, depositions or other signed statements.
- (d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.
- (e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

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

(3) The commission may require the prosecution of the defence to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offence involving concerted criminal action upon the part of a military or naval unit, or any group or organisation, evidence which has been given previously at a trial resulting in the conviction of any other member of that unit, group or organisation, relative to that concerted offence, may be

received as prima-facie evidence that the accused likewise is guilty of that offense.

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

(6) The official position of the accused shall not absolve him from responsibility, not be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defence, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

e. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:-

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

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement

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

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

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defence shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defence, and thereafter the prosecution, shall address the commission.

(9) The commission shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused upon conviction to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation or any property of a convicted accused, deprive that accused of any stolen property of order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer, shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

BY Command of General MacARTHUR:

/s/H.W. ALLEN
H.W. ALLEN
Colonel, A.G.D.,
Asst. Adjutant General.

- 7 -
II
R E S T R I C T E D.

HEADQUARTERS
UNITED STATES FORCES, CHINA THEATER

A.G. 000.5(21 Jan 46) JA

APC 971

21 January 1946

SUBJECT: Regulations governing the Trial of War Criminals.

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

ESTABLISHMENT OF MILITARY COMMISSIONS

1. General Trial of persons, units, and organizations accused as War Criminals will be by military commissions to be convened by the Commanding General, United States Army Forces, China Theater.

2. Number and Types The number and types of commissions to be established will depend upon the number and nature of the offenses involved and of the offenders to be tried. Such commissions may include members of any one branch or of several branches of the armed services, to try cases involving offenses against any one or more of such service branches, or any other offenses.

JURISDICTION

3. Over Territory: The military commissions established hereunder shall have jurisdiction over all of China, co-extensive with the China Theater of Operations and territory now or formerly belonging to China, including Formosa, Manchuria, and Hainan Island and other areas wherein the armed forces commanded by the Commanding General, United States Army Forces, China Theater, are or have been stationed.

4. Over Persons - a. The military commissions established hereunder shall have jurisdiction over all persons, units or organizations within China Theater of Operations including Formosa, Manchuria, and Hainan Island and other areas wherein the armed forces, commanded by the Commanding General, United States Army Forces, China Theater are or have been stationed.

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

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

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

b. Persons whose offenses have a particular geographic location outside the China Theater of Operations may be returned to the scene of their crimes for trial by competent military or civil tribunals of local jurisdiction. In the event a person is requested for trial in two (2) or more countries, the Commanding General, United States

Army Forces, China Theater, will determine the place of trial on the basis of the relative gravity of the respective charges and other relevant circumstances.

MEMBERSHIP OF COMMISSION

6. Appointment. The members of each military commission will be appointed by the Commanding General, United States Army Forces, China Theater, or under authority delegated by him. The appointment may be made in the order convening the commission or in a separate order. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission and in case of illness or other incapacity of any principal member alternates shall take the place of that member. Any vacancy among the members or alternates occurring after a trial has begun may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

7. Number of Members. Each commission shall consist of not less than three (3) members.

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

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

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

PROSECUTORS

11. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission.

12. Duties. The duties of the prosecutor are:-

- a. To determine the offenses and the offenders to be tried before the commission in addition to those specifically ordered by the convening authority.
- b. To prepare and present to the commission charges and specifications.
- c. To prepare cases for trial and to conduct the prosecution of each case before the commission.

POWERS AND PROCEDURE OF COMMISSION

13. Conduct of the trial. A Commission shall:

- a. Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.
- b. Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.
- c. Sessions of a commission shall be public except when otherwise directed by the commission.
- d. A commission shall hold each session at such time and place as it shall determine or as may be directed by the convening authority.

14. Rights of the Accused. The accused shall be entitled:

- a. To have in advance of trial a copy of the charges and specifications, so worded as clearly to apprise the accused of each offense charged.
- b. To be represented prior to and during trial by counsel of his own choice, or to conduct his own defense. If the accused fails to designate his counsel, the commission shall appoint competent counsel to represent or advise the accused.
- c. To have his own counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.
- d. To have the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

15. Witnesses. The commission shall have power:

- a. To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmation to witness and other persons, and to question witnesses.
- b. To require the production of documents and other evidentiary material.
- c. To have evidence taken by a special commissioner appointed by the commission.

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

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

- (3) Affidavits, depositions, or other statements taken by an officer detailed for that purpose by military authority.
- (4) Any diary, letter or other document appearing to the commission to contain information relating to the charge.
- (5) A copy of any document or other secondary evidence of its contents.
- (6) Hearsay evidence.

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

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

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

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

f. The official position of the accused shall not absolve him from responsibility, or be considered in mitigation or punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defence, but may be considered in mitigation of punishment if the commission determines that justice so requires.

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

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

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

c. The prosecution shall make its opening statement.

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

e. The commission may put any question to any witness and to any accused at any time. The prosecution and the defence may then further examine and/or cross-examine any such witness or accused.

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

g. The defence may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defence to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

h. The witnesses and other evidence for the defence shall be heard or presented. Thereafter, the prosecution and defence may introduce such evidence in rebuttal as the commission may rule admissible.

i. The defence, and thereafter the prosecution, shall address the commission.

j. The commission shall consider the case in closed session and thereafter in open court deliver its judgment, and in the event of a conviction shall pronounce sentence.

18. RECORD OF PROCEEDINGS. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defence counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

JUDGMENT AND SENTENCE

19. JUDGMENT. The judgment of a commission as to guilt or acquittal shall be delivered in open court. It may state the reasons ^{on} which based.

20. SENTENCE. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine, or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property, or order its delivery to the Commanding General, United States Army Forces, China Theater, for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

21. APPROVAL OF SENTENCE. No sentence, including the death sentence, of a military commission shall be carried into effect until approved by the Commanding General, United States Army Forces, China Theater, or his successor. He shall have authority to approve, mitigate, remit, commute, suspend, reduce, or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. Except as herein provided, the judgment and sentence and interlocutory rulings of a commission shall be final and not subject to review. No appeal may be taken from the judgment and/or sentence of a commission to any civil court or higher military authority.

RULE MAKING POWER

22. SUPPLEMENTARY RULES AND FORMS. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof or such rules and forms as may be prescribed by the convening authority to-wit, the Commanding General, United States Army Forces, China Theater.

By command of Lieutenant General WEDMEYER:

/s/ PAUL W. CARAWAY

PAUL W. CARAWAY

Brigadier General, GSC
Acting Chief of Staff.

III
HEADQUARTERS
US FORCES, EUROPEAN THEATRE

A.G. 000.5 WCB-AGO

APO 757
26 June 1946

SUBJECT: Trial of War Crimes Cases

TO: Commanding General, Third US Army Area
Theater Judge Advocate

1. References.

a. Letter, this headquarters, file AG 000.5-2 GAP, subject: "Trial of War Crimes and Related Cases", 16 July 1945.

b. Letter, this headquarters, file AG 210.6 JAG-AGO, subject: "Execution of Death Sentences Adjudged in Trials of War Crimes and Related Cases", 16 August 1945.

c. Letter, this headquarters, file AG 013.3 GAP-AGO, subject: "Disposition of Military Government Court Case Records in Certain War Crimes Cases", 18 August 1945.

d. Letter, this headquarters, file AG 000.5 WCB-AGO, subject: "Trial of War Crimes and Related Cases", 12 December 1945.

e. Letter, this headquarters, file AG 250.4 JAG-AGO, subject: "Military Commissions", 25 August 1945.

f. Letter, this headquarters, file AG 014.1 GEC-AGO, subject: "Administration of Military Government in US Zone in Germany", 30 November 1945.

g. Letter, this headquarters, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes and Related Cases", 29 January 1946.

h. Letter, this headquarters, file AG 000.5 JAG-AGO, subject: "Assumption of War Crimes Responsibilities Previously Exercised by Seventh US Army", 12 March, 1946.

i. General Order No:337, this headquarters, subject: "Responsibility for Military Government in US Zone in Germany", 14 December, 1945.

2. Revocation of Authority

The authority heretofore vested in the Commanding General, Third US Army, to appoint special Military Government Courts and Military Commissions for the trial of war crimes cases as well as all authority to take other actions in connection therewith is revoked.

3. Appointment of Military Government Courts.

Hereafter Military Government Courts for the trial of war crimes cases involving American Nationals as victims and mass atrocities committed in the American Zone of Occupation will be appointed by, and all further actions in connection with such cases will be taken by this headquarters. The principles hereinafter set forth will be adhered to in the appointing of such courts and in the taking of such actions.

4. General

As a matter of policy, such cases involving offences against the laws and usages of war or the laws of the occupied territory or any part

thereof, commonly known as war crimes, committed prior to 9 May 1945, as may from time to time be determined by the Deputy Theater Judge Advocate for War Crimes, will be tried before specially appointed Military Government Courts, except where otherwise directed by the Theater Commander.

5. Procedural Matters before Trial.

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

b. Reference for Trial. The charges will be referred to special Military Government Courts by the Deputy Theater Judge Advocate for War Crimes.

c. United Nations Observers. At the time of referring such charges for trial the Deputy Theater Judge Advocate for War Crimes will determine those United Nations, if any, which in his judgment should be invited to send observers to the trial and will extend such invitations on behalf of the Theater Commander.

d. Appointment of Courts The courts will be appointed by this headquarters and will be composed of officers within this command. General Military Government Courts and Intermediate Military Government Courts appointed as contemplated herein will consist of not less than five and not less than three members, respectively, and the senior member present at each trial will be the president and presiding officer of the court. The orders appointing such courts will detail at least one officer with legal training as a member of such courts. The Deputy Theater Judge Advocate for War Crimes will assign one or more prosecutors and defence counsel but they will not be formally designated in the orders appointing the courts.

6. Trial.

a. If after the trial has begun a new member is sworn or a member, on account of unavoidable absence during a trial misses part of the proceedings, the president will cause such member to read the record of the proceedings had prior to his being sworn or during absence, as the case may be.

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

c. The effective date of prison sentences will be as provided for other Military Government Courts. Sentences imposing death will provide for the execution thereof by hanging.

7. Post-trial Action.

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

b. The prosecuting officer will be responsible for the preparation of the record of trial, which, after being properly authenticated, will be forwarded to the Deputy Theater Judge Advocate for War Crimes, who will prepare a written Review and Recommendations for submission to the Theater Judge Advocate.

c. In taking the action prescribed in paragraph b, above, the Deputy Theater Judge Advocate for War Crimes will take into consideration and include in the Review and Recommendations any Petition for Review or request for clemency filed on behalf of the accused.

d. Except as hereinafter provided in this paragraph, no sentence will be carried into execution until the sentence has been approved by the Theater Judge Advocate as to the views expressed in the Review and Recommendations. The Theater Judge Advocate is hereby authorized and directed to exercise all of the powers of the Theater Commander in cases where the sentence of death has not been pronounced. The action taken will be entered on the case record in the space provided on Legal Form No. 13 over the signature of the Theater Commander or, in the case of sentences not involving death, of the Theater Judge Advocate.

8. Witnesses to Executions. Death sentences adjudged may be executed without attendance of "mandatory witnesses" specified in MGR-382.5. Such executions will be attended by such US Army officer or officers as may be designated in the death warrant or order of execution.

9. Permanent Filing of Records. After final action the case records of all trials will be forwarded to the Deputy Theater Judge Advocate for War Crimes for permanent file.

10. Cases Being Tried. Upon the issuance of this directive the tribunals heretofore appointed by the Third US Army for the trial of war crimes cases will simultaneously become tribunals of this headquarters and will complete all war crimes cases then on trial by such tribunals. Courts appointed by this headquarters will proceed to trial with the war crimes cases heretofore referred to the Third US Army for trial. This headquarters will take all appropriate action in connection with war crimes trials heretofore completed by the Third or Seventh US Armies as though such cases had been referred to courts appointed by this headquarters in the first instance.

11. Mass Atrocity Subsequent Proceedings.

a. Certain mass atrocity cases have heretofore been tried, i.e. Hadamar, Dachau, and Mauthausen cases, wherein the principal participants in the respective mass atrocities were charged with violating the laws and usages of war under particulars alleging that they acted in pursuance of a common design to subject persons to killings, beating, tortures, starvation, abuses and indignities, or particulars substantially to the same effect. The courts pronounced sentences in those cases involving imprisonment and death and of necessity, in view of the issues involved therein, found that the mass atrocity operation involved in each was criminal in nature and that those involved in the mass atrocities acting in pursuance of a common design did subject persons to killings, beatings, tortures, etc.

b. With regard to subsequent proceedings against accused other than those involved in initial or "parent" mass atrocity cases heretofore or hereafter tried involving charges and particulars substantially similar to those described in paragraph a, above, it is prescribed as follows:

(1) After final action by the reviewing and confirming authority, if any, in connection with a parent mass atrocity case, this headquarters will appoint one or more Intermediate Military Government Courts to try such additional individuals as may be charged with participating in the mass atrocity.

(2) In such trial of additional participants in the mass atrocity, the prosecuting officer will furnish the court certified copies of the charge and particulars, the findings and the sentence pronounced in the parent case. Thereupon, such Intermediate Military Government Courts will take judicial notice of the decision rendered in the parent case, including the finding of the court (in the parent case) that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, did subject persons to killings, beating, tortures, etc., and no examination of the record in such parent case need be made for this purpose. In such trials of additional participants in the mass atrocity, the court will presume, subject to being rebutted by appropriate evidence, that those shown by competent evidence to have participated in the mass atrocity know of the criminal nature thereof.

d. Except as hereinafter provided in this paragraph, no sentence will be carried into execution until the sentence has been approved by the Theater Judge Advocate as to the views expressed in the Review and Recommendations. The Theater Judge Advocate is hereby authorized and directed to exercise all of the powers of the Theater Commander in cases where the sentence of death has not been pronounced. The action taken will be entered on the case record in the space provided on Legal Form No. 13 over the signature of the Theater Commander or, in the case of sentences not involving death, of the Theater Judge Advocate.

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(3) The Intermediate Military Government Court will examine the evidence presented to it bearing upon the nature and extent of the participation of the additional participants in the mass atrocity operation and pronounce such sentences, if any, as may be appropriate, providing, however, that in any instance where in the opinion of the court the evidence presented warrants a greater sentence than is within the power of the Intermediate Military Government Courts, the court will suspend proceedings with regard to the accused involved and refer the matter to the Deputy Theater Judge Advocate for War Crimes, recommending that charges against the accused be referred to a General Military Government Court.

BY COMMAND OF GENERAL McNARNEY

/s/ George VW Pope
GEORGE WV POPE
Colonel, Inf.
Acting, Adjutant General.

TELEPHONE: Wiesbaden 7117

Misc. No. 52
4th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Bibliography of Legal Literature on the Law of War Crimes and Belligerent

Occupation in the Second World War

Fourth Supplement to the Bibliography (*)

Compiled by Egon Schwelb, Legal Officer

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RESTRICTED.

MISC.No.53.
5th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Control Council Directive No:38 regarding the
Arrest and Punishment of War Criminals, Nazis
and Militarists, and the Internment, Control
and Surveillance of Potentially Dangerous Germans.

ALLIED CONTROL AUTHORITY

CONTROL COUNCIL

Directive No. 38

The Arrest and Punishment of War Criminals, Nazis and
Militarists and the Internment, Control and Surveillance
of Potentially Dangerous Germans.

The Control Council directs as follows:

PART I

1. OBJECT

The object of this paper is to establish a common policy for Germany covering:

- a) The punishment of war criminals, Nazis, Militarists, and industrialists who encouraged and supported the Nazi Regime.
- b) The complete and lasting destruction of Nazism and Militarism by imprisoning and restricting the activities of important participants or adherents to these creeds.
- c) The internment of Germans, who, though not guilty of specific crimes are considered to be dangerous to Allied purposes, and the control and surveillance of others considered potentially so dangerous.

2. REFERENCES

- a) Potsdam Agreement, Sec. III, Para 3, I, a)
- b) Potsdam Agreement, Sec. III, Para. 3, III.
- c) Potsdam Agreement, Sec. III, Para 5.
- d) Control Council Directive No. 24.
- e) Control Council Law No. 10, Article II, Para 3 and Article III, Paras. 1 and 2.

3. THE PROBLEM AND GENERAL PRINCIPLES

It is considered that in order to carry out the principles established at Potsdam, it will be necessary to classify war criminals and potentially dangerous persons into five main categories and to establish punishments and sanctions appropriate to each category. We consider that the composition of categories and the nature of penalties and sanctions should be agreed in some detail but without limiting in any way the full discretion conferred by Control Council Law No. 10 upon Zone Commanders.

4. A clear definition of Allied policy with regard to the obviously dangerous as well as to only potentially dangerous Germans is required at this time in order to establish uniform provisions for disposing of these persons in the various Zones.

5. CATEGORIES AND SANCTIONS.

Composition of categories and sanctions are treated in detail in Part II of this Directive. They shall be applied in accordance with the following general principles:

a) A distinction should be made between imprisonment of war criminals and similar offenders for criminal conduct and internment of potentially dangerous persons who may be confined because their freedom would constitute a danger to the Allied Cause.

b) Zone Commanders may, if they so desire, place an individual in a lower category on probation, with the exception of those who have been convicted as major offenders on account of their guilt in specific crimes.

c) Within the categories, Zone Commanders will retain discretion to vary the sanctions if necessary to meet the requirements of individual cases within the limits laid down in this Directive.

d) The classification of all offenders and potentially dangerous persons, assessment of sanctions and the review of cases will be carried out by agencies to be designated by the Zone Commanders as responsible for the implementation of this directive.

e) The Zone Commanders and tribunals will have the authority to upgrade or downgrade individuals between categories. Zone Commanders may, if they wish, use German tribunals for the purpose of classification, trial and review.

f) In order to prevent persons dealt with under this Directive avoiding any of the consequences of the Directive by moving to another Zone, each Zone Commander will ensure that the other Zones know and understand the methods employed by him in endorsing the identity documents of classified individuals.

g) To implement this Directive, it is recommended that each Zone Commander will issue Orders or Zonal Laws conforming in substance to the provisions and principles of this Directive in his own Zone. Zone Commanders will supply each other with copies of such Laws or Orders.

h) Provided that such Zonal Laws are in general conformity with the principles here set forth, full discretion is reserved to the individual Zone Commanders as regards their application in detail in accordance with the local situation in their respective Zones.

i) In Berlin the Allied Kommandatura will have the responsibility for implementing the principles and provisions of this Directive and will issue such regulations and orders as are required for that purpose. Whatever discretion in the implementation of this Directive is left to Zone Commanders will be exercised by the Allied Kommandatura in Berlin.

j) Apart from the categories and sanctions set forth in Part II of this Directive, persons who committed war crimes or crimes against peace or humanity as defined in Control Council Law No.10, will be dealt with under the provisions and procedures prescribed by that Law.

PART II

Article 1

Groups of Persons Responsible

In order to make a just determination of responsibility and to provide for imposition (Except in the case of 5) below) of sanctions the following groupings of persons shall be made.

- 1) Major offenders;
- 2) Offenders (activists, militarists, and profiteers);
- 3) Lesser offenders (probationers);
- 4) Followers;
- 5) Persons exonerated. (Those included in the above categories who can prove themselves not guilty before a tribunal).

Article 2.

Major Offenders

Major Offenders are:

- 1) Anyone who, out of political motives, committed crimes against victims or opponents of national socialism;
- 2) Anyone who, in Germany or in the occupied areas, treated foreign civilians or prisoners of war contrary to International Law.
- 3) Anyone who is responsible for outrages, pillaging, deportations, or other acts of brutality, even if committed in fighting against resistance movements;
- 4) Anyone who was active in a leading position in the NSDAP, one of its formations or affiliated organizations, or in any other national socialistic or militaristic organisation;
- 5) Anyone who, in the government of the Reich, the Laender, or in the administration of formerly occupied areas, held a leading position which could have been held only by a leading national socialist or a leading supporter of the national socialistic tyranny;
- 6) Anyone who gave major political, economic propagandist or other support to the national socialistic tyranny, or who, by reason of his relations with the national socialistic tyranny, received very substantial profits for himself or others;
- 7) Anyone who was actively engaged for the national socialistic tyranny in the Gestapo, the SD, the SS, or the Geheime Feld or Grenz-Polizei;
- 8) Anyone who, in any form whatever, participated in killings, tortures, or other cruelties in a concentration camp, a labour camp, or a medical institution or asylum;

- 9) Anyone who, for personal profit or advantage, actively collaborated with the Gestapo, SD, SS or similar organisations by denouncing or otherwise aiding in the persecution of the opponents of the national socialistic tyranny.
- 10) Any member of the High Command of the German Armed Forces so specified.
- 11) In part I of Appendix "A" a list of categories of persons is given, who, because of the character of the crimes allegedly committed by them, shown in paras. 1 - 10 of this Article, as well as the positions occupied by them, will be carefully investigated and, if the results of the investigation necessitate a trial, must be brought to trial as major offenders and punished if found guilty.

Article 3.

Offenders

A. Activists

I. An activist is:

- 1) Anyone who, by way of his position or activity, substantially advanced the national socialistic tyranny;
- 2) Anyone who exploited his position, his influence or his connections to impose force and utter threats, to act with brutality and to carry out oppressions or otherwise unjust measures;
- 3) Anyone who manifested himself as an avowed adherent of the national socialistic tyranny, more particularly of its racial creeds.

II. Activists are in particular the following persons, insofar as they are not major offenders:

- 1) Anyone who substantially contributed to the establishment, consolidation or maintenance of the national socialist tyranny, by word or deed, especially publicly through speeches or writings or through voluntary donations out of his own or another's property or through using his personal reputation or his position of power in political, economic or cultural life;
- 2) Anyone who, through national socialistic teachings or education, poisoned the spirit and soul of the youth;
- 3) Anyone who, in order to strengthen the national socialistic tyranny, undermined family and marital life disregarding recognised moral principles;
- 4) Anyone who in the service of national socialism unlawfully interfered in the administration of justice or abused politically his office as judge or public prosecutor.
- 5) Anyone who in the service of national socialism agitated with incitement or violence against churches, religious communities or ideological associations;
- 6) Anyone who in the service of national socialism ridiculed, damaged or destroyed values of art or science;
- 7) Anyone who took a leading or active part in destroying trade unions, suppressing labour, and misappropriating trade union property;
- 8) Anyone who, as a provocateur, agent or informer, caused or attempted to cause, institution of a proceeding to the detriment of others because of their race, religion or political opposition to national socialism or because of violation of national socialist rules;

- 9) Anyone who exploited his position or power under the national socialistic tyranny to commit offences, in particular, extortions, embezzlements and frauds;
- 10) Anyone who by word or deed took an attitude of hatred towards opponents of the NSDAP in Germany or abroad, towards prisoners of war, the population of formerly occupied territories, foreign civilian workers, prisoners or like persons;
- 11) Anyone who favoured transfer to service at the front because of opposition to national socialism.

III An activist shall also be anyone who after 8 May 1945 has endangered or is likely to endanger the peace of the German people or of the world, through advocating national socialism or militarism or inventing or disseminating malicious rumours.

B. Militarists

I. A Militarist is:

- 1) Anyone who sought to bring the life of the German people into line with a policy of militaristic force;
- 2) Anyone who advocated or is responsible for the domination of foreign peoples, their exploitation or displacement; or
- 3) Any who, for these purposes, promoted armament.

II. Militarists are in particular the following persons, insofar as they are not major offenders:

- 1) Anyone who, by word or deed, established or disseminated militaristic doctrines or programs or was active in any organisation (except the Wehrmacht) serving the advancement of militaristic ideas.
- 2) Anyone who before 1935 organized or participated in the organisation of the systematic training of youth for war;
- 3) Anyone who, exercising the power of command, is responsible for the wanton devastation, after the invasion of Germany, of cities and country places;
- 4) Anyone who, without regard to his rank, as a member of the Armed Forces (Wehrmacht), the Reich ^{Labour} Service (Reichsarbeitsdienst), the Organisation Todt (OT), or Transport Group Speer, abused his official authority to obtain personal advantages or brutally to mistreat subordinates.
- 5) Anyone whose past training and activities in the General Staff Corps or otherwise has in the opinion of Zone Commanders contributed towards the promotion of militarism and who the Zone Commanders consider likely to endanger Allied purposes.

C. Profiteers

I. A profiteer is:

Anyone who, by use of his political position or connections, gained personal or economic advantages for himself or others from the national socialistic tyranny, the rearmament, or the war.

II. Profiteers are in particular the following persons, insofar as they are not major offenders,

- 1) Anyone who, solely on account of his membership in the NSDAP, obtained an office or a position or was preferentially promoted therein.
- 2) Anyone who received substantial donations from the NSDAP or its formations or affiliated organisations;
- 3) Anyone who obtained or strove for advantages for himself or others at the expense of those who were persecuted on political, religious or racial grounds, directly or indirectly, especially in connection with appropriations, forced sales, or similar transactions.
- 4) Anyone who made disproportionately high profits in armament or war transactions.
- 5) Anyone who unjustly enriched himself in connection with the administration of formerly occupied territories;
- D) In Part II of Appendix "A" a list of categories of persons is given who, because of the character of the crimes allegedly committed by them, shown in this Article, paragraphs A, B and C, will be carefully investigated and, if the results of the investigation necessitate a trial, must be brought to trial as offenders and punished if found guilty.

ARTICLE 4

Lesser Offenders Probationers

I. A lesser offender is:

- 1) Anyone including former members of the Armed Forces who otherwise belongs to the groups of offenders but because of special circumstances seems worthy of a milder judgment and can be expected according to his character to fulfil his duties as a citizen of a peaceful democratic state after he has proved himself in a period of probation.
- 2) Anyone who otherwise belongs to the group of followers but because of his conduct and in view of his character will first have to prove himself.

II. A lesser offender is more particularly:

- 1) Anyone who, born after the first day of January 1919, does not belong to the group of major offenders, but seems to be an offender, without however having manifested despicable or brutal conduct and who can be expected in view of his character to prove himself;
- 2) Anyone, not a major offender, who seems to be an offender but withdrew from national socialism and its methods, unqualifiedly and manifestly, at an early time.
- 3) In Part III of Appendix "A" a list of categories of persons is given who will be carefully investigated and, if there is evidence of guilt in accordance with the provisions of paras I and II of this Article, will be charged as lesser offenders and punished if found guilty.

ARTICLE 5.

Followers

I. A follower is:

Anyone who was not more than a nominal participant in, or a supporter of the national socialistic tyranny.

II. Subject to this standard, a follower is more particularly:

- 1) Anyone who as a member of the NSDAP or of one of its formations, except the HJ and BDM, did no more than pay membership fees, participate in meetings where attendance was obligatory, or carry out unimportant or purely routine duties such as were directed for all members;
- 2) Anyone, not a major offender, an offender, or a lesser offender, who was a candidate for membership in the NSDAP but had not yet been finally accepted as a member.
- 3) Anyone being a former member of the Armed Forces who, in the opinion of the Zone Commander, is liable by his qualification to endanger Allied purposes.

Article 6.

Exonerated Persons

An exonerated person is:

Anyone who, in spite of his formal membership or candidacy or any other outward indication, not only showed a passive attitude but also actively resisted the national socialistic tyranny to the extent of his powers and thereby suffered disadvantages.

Article 7.

Sanctions

In accordance with the extent of responsibility the sanctions set forth in Art. 8 - 11 shall be imposed in just selection and gradation, to accomplish the exclusion of national socialism and militarism from the life of the German people and reparation of the damage caused.

Article 8.

Sanctions against Major Offenders.

I. Major Offenders having committed a specific war crime will be liable to the following sanctions:

- a) Death
- b) Imprisonment for life or for a period of five to fifteen years, with or without hard labour.
- c) In addition, any of the sanctions listed in Paragraph II of this Article may be imposed.

II. The following sanctions may be imposed upon other Major Offenders:

- a) They shall be imprisoned, or interned for a period not exceeding 10 years. Internment after 8 May 1945 can be taken into account. Disabled persons will be required to perform special work in accordance with their capability.
- b) Their property may be confiscated. However, there shall be left to them an amount necessary to cover the bare existence after taking into consideration family conditions and earning power.
- c) They shall be ineligible to hold any public office, including that of notary or attorney.
- d) They shall lose any legal claims to a pension or allowance payable from public funds.

- 1) Anyone who as a member of the NSDAP or of one of its formations, except the HJ and BDM, did no more than pay membership fees, participate in meetings where attendance was obligatory, or carry out unimportant or purely routine duties such as were directed for all members;
- 2) Anyone, not a major offender, an offender, or a lesser offender, who was a candidate for membership in the NSDAP but had not yet been finally accepted as a member.
- 3) Anyone being a former member of the Armed Forces who, in the opinion of the Zone Commander, is liable by his qualification to endanger Allied purposes.

Article 6.

Exonerated Persons

An exonerated person is:

Anyone who, in spite of his formal membership or candidacy or any other outward indication, not only showed a passive attitude but also actively resisted the national socialistic tyranny to the extent of his powers and thereby suffered disadvantages.

Article 7.

Sanctions

In accordance with the extent of responsibility the sanctions set forth in Art. 8 - 11 shall be imposed in just selection and gradation, to accomplish the exclusion of national socialism and militarism from the life of the German people and reparation of the damage caused.

Article 8.

Sanctions against Major Offenders.

I. Major Offenders having committed a specific war crime will be liable to the following sanctions:

- a) Death
- b) Imprisonment for life or for a period of five to fifteen years, with or without hard labour.
- c) In addition, any of the sanctions listed in Paragraph II of this Article may be imposed.

II. The following sanctions may be imposed upon other Major Offenders:

- a) They shall be imprisoned, or interned for a period not exceeding 10 years. Internment after 8 May 1945 can be taken into account. Disabled persons will be required to perform special work in accordance with their capability.
- b) Their property may be confiscated. However, there shall be left to them an amount necessary to cover the bare existence after taking into consideration family conditions and earning power.
- c) They shall be ineligible to hold any public office, including that of notary or attorney.
- d) They shall lose any legal claims to a pension or allowance payable from public funds.

- e) They shall lose the right to vote, the capacity to be elected, and the right to be politically active in any way or to be members of a political party.
- f) They shall not be allowed to be members of a trade union or a business or vocational association.
- g) They shall be prohibited for a period of not less than ten years after their release:
 - 1) To be active in a profession or, independently, in an enterprise of economic undertaking of any kind, to own a share therein or to supervise or control it.
 - 2) To be employed in any dependent position, other than ordinary labour.
 - 3) To be active as teacher, preacher, editor, author, or radio commentator.
- h) They are subject to restrictions as regards living space and place of residence, and may be enlisted for public works service.
- i) They shall lose all licences, concessions and privileges granted them and the right to keep a motor vehicle.

Article 9

Sanctions against Offenders.

- 1. They may be imprisoned or interned for a period up to ten years in order to perform reparation and reconstruction work. Political internment after 8 May 1945 can be taken into account.
- 2. Their property may be confiscated (as a contribution for reparation), either as a whole or in part. In case the property is confiscated in part, capital goods (Sachwerte) should be preferred. The necessary items for daily use shall be left to them.
- 3. They shall be ineligible to hold any public office, including that of notary or attorney.
- 4. They shall lose any legal claims to a pension or allowance payable from public funds.
- 5. They shall lose the right to vote, the capacity to be elected, and the right to be politically active in any way or to be members of a political party.
- 6. They shall not be allowed to be members of a trade union or business or vocational association.
- 7. They shall be prohibited, for a period of not less than five years after their release:
 - a) To be active in a profession or, independently, in an enterprise or economic undertaking of any kind, to own a share therein or to supervise or control it.
 - b) To be employed in any dependent position, other than ordinary labour.
 - c) To be active as a teacher, preacher, editor, author, or radio commentator.
- 8. They are subject to restriction as regards living space and place of residence.

9. They shall lose all licenses, concessions and privileges granted them and the right to keep a motor vehicle.
10. Within the discretion of Zone Commanders sanctions may be included in zonal laws forbidding offenders to leave a Zone without permission.

Article 10

Sanctions against lesser offenders

If the finding of the tribunal places an individual in the category of lesser offenders, he may be placed on probation. The time of probation shall be at least two years but, as a rule, not more than three years. To which group a person responsible hereunder will be finally allocated will depend on his conduct during the period of probation. While on probation, the following sanctions will apply:

1. They shall be prohibited, during the period of probation -
 - a) To operate an enterprise as owner, partner, manager or executive supervise or control an enterprise or to acquire any enterprise in whole or in part, or any interest or share therein, in whole or in part.
 - b) To be active as teacher, preacher, author, editor or radio commentator.
2. In the event the lesser offender is the owner of an independent enterprise, or any share therein, at the time of his classification, his interest in such enterprise may be blocked.
3. The term enterprise as used in paragraph 1 a) and 2 of this article need not include small undertakings of craftsmen, retail shops, firms and like undertakings, having less than 20 employees.
4. Property values, acquisition of which rested upon use of political connections or special national socialistic measures such as aryanization and armament shall be confiscated.
5. For the period of probation additional sanctions, taken from those set forth in Article 11 hereof may be imposed, with just selection and modification, more particularly:
 - a) Restrictions in the exercise of an independent profession, and prohibition to train apprentices.
 - b) In respect of civil servants: reduction of retirement pay, retirement or transfer to an office with lesser rank or to another position with reduction of compensation, rescission of promotion, transfer from the civil service relationship into that of a contractual employee.
6. Internment in a labor camp or confiscation of the whole property may not be ordered.
7. Within the discretion of Zone Commanders sanctions may be included in zonal laws forbidding the lesser offenders to leave a Zone without permission.
8. Within the discretion of Zone Commanders sanctions may be included in zonal laws denying them the capacity to be elected and the right to be politically active in any way or to be members of a political party. They may also be denied the right to vote.
9. They may be required to report periodically to the police in the place of their residence.

R E S T R I C T E D

Article II

Sanctions against followers:

The following sanctions against followers may be applied at the discretion of the Zone Commanders:

- 1 They may be required to report periodically to the police in the place of their residence.
- 2 They will not be permitted to leave a Zone or Germany without permission.
- 3 Civilian members in this category may not stand for election at any level but may vote.
- 4 In addition, in the case of civil servants, retirement or transfer to an office with lesser rank or to another position, possibly with reduction of compensation or rescission of a promotion instituted while the person belonged to the NSDAP, may be ordered. Corresponding measures may be ordered against persons in economic enterprises including agriculture and forestry.
5. They may be ordered to pay single or recurrent contributions to funds for reparations. When determining contributions, the follower's period of membership, the fees and contributions paid by him, his wealth and income, his family conditions and other relevant factors shall be taken into consideration.

Article 12

Exonerated Persons

No sanction will be applied against persons declared to be exonerated by a tribunal.

Article 13

Persons in the categories defined in Article 2 to 6 above who are guilty of specific war crimes or other offences may be prosecuted regardless of their classification under this Directive. Imposing of Sanctions under this Directive shall not bar criminal prosecutions for the same offence.

Done at Berlin on the 12th day of October 1946.

R. NOIRET,
General de Division.

P. A. KUROCHKIN,
Colonel General

Lucius D. CLAY,
Lieutenant General

G. W. E. J. ERSKINE
Major General
for B. H. ROBERTSON,
Lieutenant General

Appendix "A" containing the categories of persons is available for inspection by Members in Dr. Schwelb's Office, Room 314.

UNITED NATIONS WAR CRIMES COMMISSION

MISC. 54.

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON OCTOBER 31ST, 1946.

	Cases tried	Accused involved	Death	Imprison- ment	Acquittal	Remarks
<u>EUROPE:</u>						
<u>UNITED STATES:</u>						
U.S.F.E.T. }						
U.S. Mediter- }						
ranean }	87	364	194	142	28	Figures for Germany as at 1.10.46 Mediterranean figures as at 25.10.46
<u>BRITISH</u>						
B.A.O.R. }						
C.M.F. }	168	580	128	275	177	Situation as at 1.11.46
<u>FRANCE:</u>	Not given	146	80	61	5	Situation as at 1.10.46
<u>GREECE:</u>	1	2	-	2	-	As at 16.10.46
<u>NORWAY:</u>	-	16	11	5	-	As at 16.10.46
(A) Total reported for Europe	256	1,108	413	485	210	
<u>FAR EAST:</u>						
<u>UNITED STATES:</u>	159 ⁺	225	79	135	11	⁺ The total of 159 does not include U.S. cases in India
<u>BRITISH:</u>	141	505	184	259	62	
<u>AUSTRALIAN:</u>	200	620	121	310	189	As at October 5th, 1946
(B) Total - Far East	500	1,350	384	704	262	
GRAND TOTAL A + B		2,458	797	1,189	472	

Misc. No. 55
13th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Translation of the Netherlands Legislation
regarding the Investigation of War Crimes.

STATUTE BOOK
of the
KINGDOM OF THE NETHERLANDS

(No. F 85) DECREE of 29th May 1945, establishing the Decree on the Investigation of War Crimes.

We WILHELMINA, by the Grace of God Queen of the Netherlands, Princess of the House of Oranje-Nassau, etc., etc., etc.

On the submission of Our Ministers for the Co-ordination of Warfare, for Foreign Affairs, of Justice, the Interior, War and the Navy, dated 16th May 1945, No. G.U. 103/45;

Considering that, for the carrying out of obligations accepted by the Netherlands and the United Nations in the declaration made on 13th January 1942 at St. James's Palace, London, in connection with the present extraordinary circumstances, it is necessary to draw up a special regulation for the appropriate investigation of those crimes to which the Decree on Extraordinary Criminal Law is applicable in so far as such crimes were committed by other than Dutchmen or Dutch subjects;

Have approved and understood;

Article 1.

Under war crimes shall be understood in this decree facts which constitute crimes considered as such according to Dutch law and which are forbidden by the laws and usages of war and which have been committed during the present war by other than Dutchmen or Dutch subjects.

Article 2.

1. There exists a Netherlands Commission for the Investigation of War Crimes.
2. The Commission consists of a president, vice-president, ordinary members and one or more secretaries, the which are nominated, suspended and dismissed by Us on the submission of Our Minister of Justice.
3. The ordinary members are Investigation officers in the meaning of Article 142 of the Code of Penal Procedure.

Article 3.

An office may be established in London which shall be composed of the Netherlands Representative on the United Nations War Crimes Commission, one or more members of the Netherlands Commission together with a secretary.

Article 4.

1. The task of the Commission consists in the investigation of war crimes, the collection of all available data in connection with such and the preparation and submission of charges to the United Nations War Crimes Commission.
2. Copies of the prepared charges shall be supplied to Our Minister of Justice.

Article 5.

1. The Commission may be assisted by investigation officers appointed for that purpose by Our Minister of Justice.
2. These are charged with the investigation of certain charges and receive their instructions from the President or Vice-president of the Commission.
3. The reports and statements resulting from these investigations shall be presented to the person responsible for having given instructions thereto or, if no instruction has been given, to the President of the Commission.

Article 6.

1. There exist sub-commissions for the investigation of war crimes whose task, composition and jurisdiction shall be further regulated by Our Minister of Justice.
2. These sub-commissions consist of a president with legal qualification, at least two members qualified as investigation officers and a secretary.
3. The task of these sub-commissions is the investigation and collection of data concerning war crimes.
4. These sub-commissions present their data and charges, which have been prepared as far as possible, to the President of the Commission.
5. The president orders if necessary supplementary investigation.

Article 7.

The Prosecutors of the Special Courts of Justice notify the President of the Commission of all charges where the accused is not in the Realm in Europe.

Article 8.

The investigation officers, appointed by or in virtue of the first title of the second book of the Code of Penal Procedure, have to report without delay all data etc. to the sub-commission in their area, as set out in Article 6.

Article 9.

Burgomasters must call upon the population of their municipalities by means of a general proclamation to give information and data concerning war crimes to the authorities named in the proclamation.

Article 10.

Our Ministers of Justice, the Interior and War shall see to it that

civil servants and departments under them transmit to the President of the Commission all data concerning war crimes which have already come or shall come to their knowledge and further supply him with the information which may be required.

Article 11.

1. At the request of the President of the Commission, of a Prosecutor of a Special Court of Justice or of the Allied Occupation Authorities in enemy territory, liaison officers with legal qualifications shall be appointed by Our Minister of War or the Navy in consultation with Our Minister of Justice in order to carry out in enemy territory investigations concerning war crimes in consultation with the Allied authorities mentioned above.

These appointments shall be made known to the other authorities mentioned above.

2. The liaison officers as mentioned in paragraph 1 shall send in the result of their investigations to the President of the Commission.

Article 12.

Our Minister of Justice shall fix compensation to be paid for services rendered as a result of this decree by persons not employed in the service of the State.

Article 13.

1. This decree, in respect of which the power mentioned in article 9, paragraph 2, of the Decree on the Special State of Siege cannot be exercised, shall come into force on the day on which it is issued.
2. It shall be quoted under the title "Decree on the Investigation of War Crimes".

Our Ministers for the Co-ordination of Warfare, for Foreign Affairs, of Justice, the Interior, War and the Navy are each in so far as he is concerned charged with the execution of this decree which shall be published in the Gazette.

Breda, 29th May 1945.

WILHELMINA

The Minister for the Co-Ordination of Warfare,
President of the Council of Ministers,
P.S. GERBRANDY.

For the Minister for Foreign Affairs,
E. MICHIELS van VERDUYNEN.

The Interim Minister of Justice,
P.S. GERBRANDY.

The Minister of the Interior,
BEEL.

The Minister of War,
J. de QUAY.

The Minister of the Navy,
De BOOY.

Published the sixth June, 1945.

The Interim Minister of Justice,
P.S. GERBRANDY.

MISC. 56.
November 19th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Provisions regarding crimes against humanity in the British
Zone of Control in Germany.

The following Ordinance has been
enacted for the British Zone
and promulgated in No. 13 of the
Military Government Gazette,
p. 306.

ORDINANCE NO. 47

Crimes against Humanity
(Control Council Law No. 10)

In accordance with Control Council Law No. 10, Article III,
Paragraph 1(d) it is HEREBY ORDERED AS FOLLOWS:-

ARTICLE I

Jurisdiction

1. The German Ordinary Courts are authorised to exercise
jurisdiction in all cases of Crimes against Humanity as defined
by Article II, paragraph 1(c) of Control Council Law No. 10
committed by persons of German nationality against other persons
of German nationality or stateless persons.

2. In exercising jurisdiction in pursuance of paragraph 1
hereof the German Ordinary Courts shall apply the provisions of
Article II, paragraphs 2, 3, 4 and 5 of Control Council Law No. 10.

ARTICLE II

Offences under German Law

3. If in any case the facts alleged, in addition to constituting
a crime as defined by Article II, paragraph 1(c) of Control Council
Law No. 10, also constitute an offence under ordinary German Law,
the charge against the accused may be framed in the alternative
and the provisions of Article II, paragraph 5 of Control Council
Law No. 10 shall apply mutatis mutandis to the offence under
ordinary German law.

ARTICLE III

Preliminary Proceedings etc.

4. German judges, prosecutors, police and other authorities
responsible for the maintenance of law and order shall have the
same powers with regard to all preliminary proceedings, arrests,
investigations and other matters necessary for the implementation
of this Ordinance as they exercise under ordinary German law.

ARTICLE IV

Effective Date.

5. This Ordinance comes into effect on the 30th August, 1946.

BY ORDER OF MILITARY GOVERNMENT

MISC. 57.
25th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

CO-OPERATION WITH CROWOASS
Matters to be considered by the Commission
in its Meeting on 27th November, 1946.

Note by the Secretary of Committee I.

In connection with the discussion in the Commission Meeting held on 6th November 1946 in the presence of Lieut. Colonel RYAN and Captain GOWING of CROWOASS (Draft Minutes No. 116) and the subsequent deliberations of Committee I (Minutes No. 80), and further in connection with a draft Memorandum on "WHAT IS CROWOASS?" prepared for circulation by that organization, it appears that the following matters require the Commission's attention and consideration.

I. Object of CROWOASS

On page 4, 1st paragraph, of the above mentioned Memorandum, it is stated that filing of a Wanted Report with CROWOASS is the only basis for an official claim on the war criminal wanted. The relevant sentence reads as follows: "It is important to note that a Wanted Report should be filed with CROWOASS even if the filing authority is aware of the address or place of detention of the wanted person as only thereby can an official claim be made on that person".

Taking into account what is generally understood as the object of CROWOASS as well as the procedure already established in regard to handing over of war criminals it would seem that the above statement does not correspond to the actual position as the filing of Wanted Reports with CROWOASS is not necessarily a pre-requisite for extradition of war criminals.

II. Commission's Lists and Wanted Reports.

Asked by members of the Commission what action is being taken by CROWOASS in regard to the Commission's Lists of War Criminals, Captain GOWING stated that though they had acted upon the Lists for a certain time, it was later decided that if a country wanted a person it should send a Wanted Report to CROWOASS. Therefore, from the 16th List onwards, the Commission's Lists have not been endorsed in CROWOASS records because of the hope that thereby CROWOASS would inspire all National offices concerned to send them Wanted Reports.

It may be noted that this policy is being re-stated in the CROWOASS Memorandum, where, without any reference to the Commission and in particular to its List of War Criminals, it is stated, on page 8, that "it is considered that except for special internal reasons it should not be necessary for any authority other than CROWOASS to publish Wanted Lists, and further that "it is hoped that after perusal of this account a clear understanding of the CROWOASS organization will lead to the elimination of other Wanted Lists."

According to the explanations given by Lieut. Colonel RYAN, there were also other reasons for not endorsing the Commission's lists by CROWOASS. First, the classification of

the Lists as Secret, a consideration which in fact has not prevented CROWCASS from acting upon the first 15 Lists, though they were also marked Secret. This obstacle has already been removed as in the Meeting of 6th November 1946, the Commission has decided to remove the ban of secrecy from all Lists issued by the Commission.

The second reason was that entries against the Commission's Lists are not as full as the CROWCASS Wanted Reports. CROWCASS keeps a panel for personal description while the Commission's Lists give no physical descriptions of persons listed.

It is to be noted that all personal data and descriptions submitted by the National Offices in charges filed with the Commission are being included in the Commission's Lists as far as practicable. In the great majority of cases, however, there is very rarely any detailed information as is required in Wanted Reports and in cases where such descriptive information is not known to the National Offices, Wanted Reports would not supply CROWCASS with any additional information than that contained in the Commission's Lists. It does not follow, however, that such entries should be disregarded as either the additional information might be forthcoming later or the persons wanted might be apprehended even in cases where insufficient personal data have been provided.

Notwithstanding, the question has been raised as to whether or not it would be practicable for Committee I to request the National Offices always to give in their charges full descriptions of individuals where known and whether, in that case, such descriptions could usefully be included in the Commission's Lists. As on the other hand, the Committee was not quite sure whether in the great majority of cases that come before that Committee, Wanted Reports are being sent to CROWCASS, it was decided first of all to find out from the National Offices whether they are filing Wanted Reports with that organization and if such is the case, whether the Wanted Reports are sent in at the same time as the cases are submitted to the Commission, or only after the individuals have been listed.

Of the replies received up to date from ten National Offices, it would appear that in the great majority of cases, Wanted Reports are being filed with CROWCASS, though it is not quite clear whether they cover all persons listed by the Commission. It appears, however, that in filing Wanted Reports, the National Offices have established different practices, in that some of them are sending Wanted Reports before the cases are submitted to the Commission, some of them at the same time, and others only after the accused have been listed by the Commission.

It is submitted that filing of Wanted Reports with CROWCASS before and/or at the same time as the charges are submitted to the Commission runs counter to the Commission's policy as such practice implies that in cases where individual charges have not been accepted by the Commission, the persons concerned would still remain on CROWCASS records and be subject to apprehension and in some cases, even to extradition. It is therefore suggested that before CROWCASS accepts a Wanted Report, they should enquire whether the particular case has been placed before and accepted by the Commission or else wait until the respective Commission List is published.

III. Listing of Allied Nationals charged with War Crimes.

On page 4, first and second paragraphs, of the CROWCASS Memorandum, it is stated that Wanted and Detention Reports should be filed in regard to nationals of ex-enemy countries only. There

is, however, no provision covering allied nationals listed by the Commission as war criminals which at the same time, it is true, might fall under the category of Quislings or traitors. This has been confirmed by Lieut. Colonel RYAN, who stated that it would be against CROWCASS policy established by its controlling body, the Control Commission for Germany, to include in their Lists any persons falling under this category as they all must be dealt with only and exclusively by the countries concerned.

It is not known what means of discrimination are available in this respect to CROWCASS, but it must be presumed that could only be acting on the information supplied by the National Offices. As the latter could not cover all possible cases, it is safe to assume that there will always be a great number of persons included in CROWCASS Lists in spite of that ruling.

The question of establishing the actual nationality of persons, who, being allied nationals, voluntarily joined any of the enemy organizations is a complicated one and involves many legal points, the solving of which could not be entrusted to a body set up for purely technical purposes. It is therefore suggested that in this respect CROWCASS should rely upon the United Nations War Crimes Commission and its careful examination of such cases before the individuals concerned are placed upon its Lists.

IV. From the foregoing it would appear that the only way out of the difficulties mentioned under II and III or any other that might arise in the future is that all the names of war criminals and only those contained in the Commission's Lists should be included automatically and promptly in CROWCASS Wanted Lists, irrespective of whether Wanted Reports have, or have not, been sent in by the National Offices.

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IV. From the foregoing it would appear that the only way out of the difficulties mentioned under II and III or any other that might arise in the future is that all the names of war criminals and only those contained in the Commission's Lists should be included automatically and promptly in CROWCASS Wanted Lists, irrespective of whether Wanted Reports have, or have not, been sent in by the National Offices.

MEMORANDUM ON THE SUGGESTIONS WHICH HAVE BEEN
MADE CONCERNING THE WORK OF CROWCASS.

BY

M. DE BAER.

Before reading this paper, it may be useful to reiterate the respective purposes of the Commission's lists and the CROWCASS Wanted lists: CROWCASS lists are the key lists for the arrest of wanted persons, whereas the UNWCC lists are the key lists for the surrender of wanted persons. In other words, when a Government or National Office has reason to believe that a person has been involved in a war crime, it sends in a wanted report, the data of which CROWCASS includes in its list of wanted persons; it is on the strength of these lists that the wanted persons are arrested and detained. That is the part of CROWCASS in this connection. In order to obtain the surrender of such persons the Government concerned sends a case to the UNWCC where, within a few days, the case is examined on its merits and the persons named therein are placed on the Commission's lists. This work, which lies within the exclusive province of the UNWCC is completely separate from the work of CROWCASS. The effect of UNWCC lists is that zone commanders are authorised to surrender upon request of any of the Governments of the United Nations, accused persons whose names are on the Commission's lists; zone commanders who surrender persons who are not on the Commission's lists do so on their own responsibility. From information received it appears that requests for the surrender of quislings (these are not within the province of the UNWCC) are made direct to the zone commanders, who use their own discretion.

A few weeks ago we were fortunate in receiving the visit of Colonel Ryan and Captain Gowing, who gave the Commission some valuable information on the recent changes in the scope of the work of CROWCASS and on the way in which that body functions. Since that time different suggestions have been made from various sources, and I intend to list them hereafter, examining each in the light of information which has been received recently from Colonel Harris.

Suggestion I. CROWCASS should act automatically on the UNWCC lists as was done for lists 1 to 16.

This amounts to demanding that CROWCASS should check the UNWCC lists when they arrive and that they should establish Wanted Reports for persons in respect of whom wanted reports have not yet been received.

Against this suggestion it should be pointed out that there is no reason for imposing upon CROWCASS a heavy burden, which lies within the province of - and which should be shouldered by - the National Offices. They are moreover in a better position than CROWCASS to obtain from the victims or their families such supplementary information as may be necessary to complete the Wanted Reports.

Suggestion II. Before accepting a Wanted Report, CROWCASS should wait until the accused has been placed on one of the Commission's lists, and act accordingly.

A reason for rejecting this suggestion may be that the sooner the wanted person is placed on a wanted list the better it will be. There is no reason to wait, before arresting someone, for his name to appear on one of the UNWCC lists.

It is feared in some quarters that by including in the "Wanted

lists" names of persons who may not appear in the UNWCC lists, some uncertainty as to the status or future of these persons may arise, or they might even stay indefinitely in custody. This danger should however not be exaggerated. We have been repeatedly told that no steps are taken to arrest persons who are on the UNWCC lists (who number 18000) because they are too numerous. We can therefore set our minds at rest: the CROWCASS lists are much more voluminous and it may safely be assumed that, in the absence of any action by an allied government or its liaison teams, no search for any wanted person will be instituted ex officio.

Suggestion III. If Suggestion II is rejected, should CROWCASS then at least not delete from the Wanted Lists persons whom the UNWCC has refused to place on its list?

The answer to this suggestion is that CROWCASS does not know what cases have been rejected or adjourned by the UNWCC and that they cannot therefore know what name should be deleted. Moreover, when a case is adjourned, the Government that has brought this case is always entitled to bring more evidence which might -- and often does -- result in the accused being finally placed on the UNWCC lists. If CROWCASS were required to delete a name because the case has been adjourned this would result in hopeless confusion.

Suggestion IV. CROWCASS should discontinue its practice of refusing to accept Wanted Reports concerning persons of Allied nationality (Quislings and Traitors).

From CROWCASS' letter dated 19th November 1946 it appears that the method which is used there for deciding whether a person's name should be placed on the lists is not the same as that which is in use in the UNWCC. CROWCASS' yardstick is subjective: it is nationality. The UNWCC on the contrary has adopted an objective measure: it considers nationality as irrelevant and merely considers the act: if the act charged was a war crime, then the doer is a war criminal; if it was not a war crime, the case is rejected although the doer may be a traitor according to his own national law.

The reasons for adopting this policy have appeared from the first days of the work of this Commission.

Even in peace time, questions of nationality are not easily solved, and in many cases there is a conflict of laws between the provisions of the two countries concerned, which may result in statelessness or in double nationality. In time of war the nationality of an individual becomes even more uncertain: serving the enemy, in some countries, causes an individual to lose his original nationality, in others it does not. Furthermore, acquiring a foreign nationality during a war is recognised by some Governments and not by others. It follows that an individual who has, let us say, enlisted in the German Army, or agreed to broadcast for Germany, and who may or may not have acquired German nationality, may or may not have lost his original nationality, as this depends not only on the law of his country of origin, but also on the law of his country of adoption, all of which differ from each other. So that, taking two individuals of different nationalities who have entered the service of two different enemy governments, one may have two nationalities and the other may be stateless.

This is further complicated by the German legal provisions, according to which German citizens inhabiting regions which had been separated from the Reich by the Versailles Treaty, were arbitrarily deemed never to have lost German citizenship. Others, such as the Alsacians, did not know themselves, during the war, what was, technically speaking, their own national status. Taking all this into account, when

the Commission was faced with cases of this kind, it was unanimously decided that although we had in our midst specialists in international private law, among them one of high repute, questions of nationality were so complicated that it was impossible to solve any one of them without a complete knowledge of the position and without a long study. Therefore, we decided that nationality could not possibly be used as a yardstick and this policy has been followed ever since and has never been challenged. It is not known what yardstick CROWCASS uses for the determination of a person's nationality, but there is no doubt that it is a controversial issue.

My conclusion to this question is that CROWCASS should regard its functions as those of a registry of possible war criminals, and should limit its activity to that view. It should not attempt to decide either on questions of nationality or on the merits of the charges brought by Governments. This last is the function of this Commission which is properly equipped to carry out this task.

Suggestion V. The National Offices should be asked to send their Wanted Reports to CROWCASS at the same time as (or not later than) they send the relevant case to the UNWCC.

This is, in my opinion, a valuable suggestion. I am well aware that some National Offices do not follow this practice because they consider that, as the search for the wanted persons is the business of their own liaison teams - and not that of CROWCASS - it is useless to send in Wanted Reports before they know that the wanted persons have been put on the UNWCC lists. I believe this is a mistake: the circulation of the CROWCASS lists is very wide, and although no actual search is instituted for all the persons mentioned on them, this may lead to some valuable information being obtained on the whereabouts of the wanted persons.

Suggestion VI. It should be necessary to register with CROWCASS (i.e. to send a Wanted Report) before any claim can be made.

It is difficult to see what reasons might be invoked in favour of this suggestion, and I am of the opinion that Dr. Litawski's remarks (Misc. 57 I Object of CROWCASS) should be endorsed.

Suggestion VII. That each name which is also on a UNWCC List should be eventually marked with an asterisk on the CROWCASS lists.

If this suggestion is practicable for CROWCASS I cannot see any reason why it should not be done: it will certainly help to indicate, in a clear way, such "wanted persons" who are charged with war crimes.

There is, in the connection, a last point which deserves consideration.

As mentioned by Dr. Litawski in his note (Misc. 57) CROWCASS intends to circulate a pamphlet entitled: What is CROWCASS. A preliminary draft of this pamphlet was brought to London by Colonel Ryan. The Section headed "Submission of Wanted Lists to CROWCASS" began with these words: "With the exception of the UNWCC which fulfils a similar function to CROWCASS in a slightly different way, and with whom CROWCASS maintains close liaison, there should be no necessity for any other authority to issue a wanted list....."

The very fact that the person who drafted the first version of "What is CROWCASS" thought that the UNWCC fulfils "a similar function to CROWCASS in a slightly different way" indicates that there is a misapprehension.

The function of the two bodies is quite different: the UNWCC has been functioning for over three years, consistently carrying out its terms of reference as laid down by the United Nations. It has changed neither its aims nor its policy. It examines cases on their merits and gives advice on policy.

CROWCASS on the contrary, which was, until a few months ago, a registry endeavouring to set up an index of all prisoners of war, has now become a registry of war criminals.

It is true that the wording of the said paragraph has been altered in the revised version which was sent to the Secretariat it reads as follows: "It is considered that except for special internal reasons it should not be necessary for any authority other than CROWCASS to publish Wanted lists.... It is hoped that after perusal of this account a clearer understanding of the CROWCASS organisation will lead to the elimination of other Wanted lists".

The "wanted lists" to which reference is made seem to be the lists of the UNWCC, which at once time CROWCASS has searched. However, this seems to be taking no account of the purpose of both lists, which, as I have pointed out in the beginning of this paper are quite different from each other

As "What is CROWCASS" is obviously intended to convey an accurate idea of the valuable work of that body, I would suggest that, in the aforesaid paper, a reference should be made to the UNWCC, showing what are the relations of this Commission with CROWCASS, as well as clearly defining the purpose of both lists. This is the only way to show that the work of CROWCASS does not duplicate that of the UNWCC, and that, although there is close cooperation between them, each of these bodies has its own well defined field of action.

Misc. No. 59.
4th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Luxemburg War Crimes Legislation.

Grand Ducal Decree of 3rd July, 1945,
Establishing a National Office for the
Investigation of War Crimes.

Promulgated in
"Mémorial du Grand-Duché de Luxembourg"
No. 33, of 7 July, 1946, (p. 373).

(Translation by Col. H.H. Wade, Research Officer.)

WE, CHARLOTTE, by the Grace of God Grand Duchess of Luxembourg,
Duchess of Nassau, etc., etc., etc;

Having regard to the numerous infractions of international law
and of the obligations of humanity which have been committed by the
invaders;

Having regard to the Inter-Allied Declaration of January 13th,
1942, concerning the punishment of war crimes;

Having regard to the laws of September 28th, 1938, and August
29th, 1939, extending the scope of the executive authorities;

Having regard to Article 27 of the law of January 16th 1866,
concerning the organisation of the Council of State; and having in
view the urgency of the question;

Having considered the report of our Minister of Justice, and the
Government having deliberated in Council;

We have decided and decide:

Article 1: A National Office for the investigation of war crimes is
hereby established in connection with the Ministry of Justice.

The National Office will deal, generally, with all matters
connected with war crimes; in particular, acting in conjunction with
the United Nations War Crimes Commission(*), it will collect evidence
concerning infractions of the rules of international law, of the laws
and customs of war, of the obligations of humanity and of all crimes
or offences committed by the invaders with a view to ensuring their
subsequent punishment.

(*) The original French text uses the expression: United War Crimes
Committee.

Article 2: The Office shall be managed, under the authority of the Ministry of Justice, by a President to be designated by the Minister of Justice.

Counsellors and attachés of the Ministry of Justice may be appointed to the Office.

Article 3: The Office will undertake all necessary investigations; with that object it may call on all administrative and judicial authorities, who will be required to afford it their assistance. In particular, it may apply for information, and with that object may address itself to the detective service, the gendarmerie, or the police, and may require public departments and administrations, including prosecuting authorities, to communicate to it any charges or necessary documents, and it may appoint experts or take evidence from witnesses.

Witnesses may be examined on oath, in the interests of veracity and to give added weight to their evidence.

Persons who refuse to appear or to make statements shall be liable to imprisonment of from 8 days to one month and to a fine of from 1,000 to 10,000 francs, or to one only of the above penalties, which will be awarded by a court of summary jurisdiction.

Article 4: With a view to facilitating investigation of offences and the collection of evidence, the President of the Office may, in agreement with the Minister of Justice, delegate the performance of the duties mentioned in the preceding article to persons, designated as investigating officers, who have special knowledge of certain classes of war crimes.

Article 5: The results of the work shall be set forth in reports which will be addressed to the Minister of Justice and communicated, with his consent, to the national or Allied authorities with a view to the prosecution and punishment of offences.

Article 6: The emoluments of the investigating officers shall be fixed by the Minister of Justice.

Investigating Officers who are already in receipt of salaries or fixed emoluments as officials, agents, employés or temporary employés of the State, or State-controlled institutions, or of municipalities or railway services, shall not be entitled to emoluments.

The judicial expenses resulting from the performance of the duties assigned to the National Office shall be fixed and, where necessary, be recovered in conformity with the scale of expenses laid down for criminal proceedings, after having been passed by the President or his deputy.

Article 7: Our Minister of Justice is entrusted with the execution of the present decree, which shall come into force as from the date of its publication in the Mémorial (Official Gazette).

LUXEMBOURG, July 3rd, 1945.

(sd) CHARLOTTE.

Members of the Government:

P. DUPONG,
Jos. BECH,
N. MARGUE,
V. BODSON,

P. FRIEDEN,
P. KRIER,
R. ALS,
G. KONSBRUCK.

Misc. No. 60.
9th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Yugoslav War Crimes Legislation.

The following translation of the Yugoslav Law of 25th August 1945, was made available to the Secretariat by the representative of Yugoslavia on the United Nations War Crimes Commission.

The law was passed on 25th August 1945, by the Presidium of the Provisional Parliament of Democratic Federal Yugoslavia, and came into force on 1st September 1945, when it was published in No. 66 of Volume I of the Official Gazette of Democratic Federal Yugoslavia, page 645, under No. 619.

By this special law all previous criminal legislature, insofar as it dealt with criminal acts against the people and the State, has been abrogated. The law was considered a provisional one until the passing of a general codified criminal law, but is still in force.

LAW CONCERNING CRIMINAL ACTS AGAINST THE PEOPLE AND THE STATE.

No. 619.

By virtue of Article 2 of the Decision of the 30th November 1943, concerning the Supreme Legislative and Executive People's representative body of Yugoslavia as the provisional organ of the Supreme people's authority in Yugoslavia and by virtue of the Resolution of 10th August 1945, concerning the alteration of the name of the anti-Fascist National Liberation Council of Yugoslavia to that of the Provisional Parliament of Democratic Federal Yugoslavia, and upon the proposal made by the Minister of the Interior, the Provisional Parliament of Democratic Federal Yugoslavia enacts the

LAW

concerning Criminal Acts against the People and the State.

THE LAW

Article 1

Until the Criminal Code of Democratic Federal Yugoslavia is passed, criminal acts against the people and the state are punishable under this Law.

Article 2.

1. As a criminal act against the people and the state is considered an act aimed at the forcible overthrow of or threat to the existing state system of Democratic Federal Yugoslavia, or the menace of its foreign security, or of the basic democratic, political, national and economic achievements of the liberation war, e.g. the Federal structure of the State, the equality and fraternity of the Yugoslav peoples, and the system of the people's authorities.

2. As a criminal act under this Law any act outlined in the preceding paragraph directed against the security of other states with which Democratic Federal Yugoslavia has a treaty of alliance, friendship or co-operation, is punishable with due regard to the principle of reciprocity.

Article 3

As guilty of criminal acts under Article 2, the following shall be liable to punishment:

1. Any person who undertakes an act aimed at the forcible overthrow of the people's representative body of Democratic Federal Yugoslavia or of the Federative Units, or at overthrowing the Federal or Federative Units organs of supreme state administration, or the local organs of state administration, or at preventing these by menace from fulfilling their legal rights and duties, or at compelling them to fulfil those to the end desired by the person thus exercising force.

2. Any subject of Yugoslavia who commits an act to the detriment of the military strength, the defensive capacity or the economic power of Democratic Federal Yugoslavia, or which threatens the independence or integrity of its territory.

3. Any person who commits a war crime, i.e. who during the war or the enemy occupation acted as instigator or organiser, or who ordered, assisted or otherwise was the direct executor of murders, of condemnations to the punishment of death and the execution of such, or of arrests, torture, forced deportation or removal to concentration camps, of interning, or of forced labour of the population of Yugoslavia; any person who caused the intentional starvation of the population, compulsory loss of nationality, compulsory mobilisation, abduction for prostitution, or raping, or forced conversion to any other faith; any person who under these circumstances was responsible for any denunciation resulting in any of the measures of terror or terrorisation outlined in this paragraph, or any person who in these circumstances ordered or committed arson, destruction or loot of private or public property; any person who entered the service of the terroristic or police organisations of the occupying forces, or the service of any prison or concentration or labour camp, or who treated Yugoslav subjects and prisoners-of-war in an unhumane manner.

4. Any person who during the war organised or recruited others to enter, or himself entered any armed military or police organisation composed of Yugoslav subjects, for the purpose of assisting the enemy and fighting with the enemy against his own Fatherland, accepting from the enemy arms and submitting to the orders of the enemy.

5. Any person who during the war against Yugoslavia or against the allies of Yugoslavia, accepted service in the enemy army, or took part in the war as a fighter against his Fatherland or its allies.

6. Any person who during the war and enemy occupation entered the police service or accepted service in any organ of enemy authority, or assisted these in the execution of requisition orders for the taking

Article 2.

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3. Any person who commits a war crime, i.e. who during the war or the enemy occupation acted as instigator or organiser, or who ordered, assisted or otherwise was the direct executor of murders, of condemnations to the punishment of death and the execution of such, or of arrests, torture, forced deportation or removal to concentration camps, of interning, or of forced labour of the population of Yugoslavia; any person who caused the intentional starvation of the population, compulsory loss of nationality, compulsory mobilisation, abduction for prostitution, or raping, or forced conversion to any other faith; any person who under these circumstances was responsible for any denunciation resulting in any of the measures of terror or terrorisation outlined in this paragraph, or any person who in these circumstances ordered or committed arson, destruction or loot of private or public property; any person who entered the service of the terroristic or police organisations of the occupying forces, or the service of any prison or concentration or labour camp, or who treated Yugoslav subjects and prisoners-of-war in an unhumane manner.

4. Any person who during the war organised or recruited others to enter, or himself entered any armed military or police organisation composed of Yugoslav subjects, for the purpose of assisting the enemy and fighting with the enemy against his own Fatherland, accepting from the enemy arms and submitting to the orders of the enemy.

5. Any person who during the war against Yugoslavia or against the allies of Yugoslavia, accepted service in the enemy army, or took part in the war as a fighter against his Fatherland or its allies.

6. Any person who during the war and enemy occupation entered the police service or accepted service in any organ of enemy authority, or assisted these in the execution of requisition orders for the taking