

b after September 6th 1940, militated for the preparation or execution of the above, whether by word of mouth, in writing or any other means.

Art. 2. Those persons are responsible for the country's disaster by committing war crimes who:

- (a) decided on the declaration of war on the USSR and the United Nations or on the prosecution of this war;
- (b) did not observe international laws respecting the conduct of war;
- (c) submitted to inhuman treatment prisoners of war or hostages;
- (d) ordered or executed acts of terror, cruelty or murder on the population of the territories in which war was waged;
- (e) ordered or executed collective or individual repressive measures against the civilian population for reasons of race or political persecution;
- (f) ordered or organised excessive labour or removal and transport of persons with a view to their extermination;
- (g) as commanders, directors, supervisors and warders of prisons, camps for war prisoners or political internees, of deported persons or political prisoners or of compulsory labour camps or detachments, inflicted inhuman treatment on those in their power;
- (h) as judicial police officers or examiners in any capacity for questions of a political or racial nature, committed acts of violence torture or any other illegal means of constraint;
- (i) as civil or military public prosecutors or judges, assisted in committing or intentionally committed, acts of terror or violence;
- (j) left the national territory to serve Hitlerism or Fascism and attacked the country in writing, verbally or any other way;
- (k) appropriated illicitly or by abuse of power private or public property from the territories in which war was waged;
- (l) participating in the conduct of the war in any capacity or profiting by connections with such persons, or taking advantage of laws and de facto measures of a Hitlerist, legionary or racial nature, amassed illicit fortunes;
- (m) ordered or initiated the setting up of ghettos or internment camps, or deportation for reasons of race or political persecution;
- (n) ordered the drawing up of unjust laws or measures, inspired by Hitlerist, legionary or racial views, or, in the execution of laws arising from the state of war and racial and political regulations, showed intentional excess of zeal;
- (o) served Hitlerism or Fascism and, by their own actions, contributed to the realisation of their political aims or to the subservience of the economic life of the country, to the detriment of the interests of the Roumanian people.

Art. 3. Those guilty of acts coming under Art. 1 and 2, paras. m - o, will be punished by penal servitude for life, or penal servitude from 5 - 20 years, or imprisonment from 3 - 20 years.

Those guilty of acts coming under Art. 2., paras a - j, will be sentenced to death or to penal servitude for life.

Those guilty of acts coming under Art. 2., paras. k - l, will be sentenced to penal servitude for life or to hard labour for a limited period from 5 - 25 years or to imprisonment from 3 - 20 years.

Instigators and co-authors of those guilty of acts coming under the present law will be sentenced to the same penalties.

Accomplices and accessories before and after the fact of those guilty of acts coming under the present law will be sentenced to penalties one degree less severe than those provided for the main authors.

These penalties will entail loss of civil rights and confiscation of property to the good of the State as damages.

Art. 4. The Minister for Justice will appoint public prosecutors entrusted with the cross-examination of persons accused of acts coming under the present law, and of their instigators, co-authors, accomplices and accessories before and after the fact.

One of the public prosecutors will be appointed leader of the public prosecutors.

Public Prosecutors will be appointed from among Roumanian subjects, of age, regardless of sex, and may also be appointed from among civil servants.

Appointments will be made by Royal Decree, on the proposal of the Minister for Justice.

Organs for investigation and cross-examination will be attached to the Ministry for Justice, and will work in Bucharest. Should the need arise, they may also function in the resident towns of Courts of Appeal.

Art. 5. Public prosecutors will investigate all cases indicated by the Council of Ministers.

They may also start investigation ex officio, or after cases have been forwarded for investigation by the Presidency of the Council of Ministers.

They may take any measures to assure the property of any suspected person and of other individuals or constituted bodies. These measures will remain valid until the case is tried. Public prosecutors may make these measures partially or totally inoperable.

Art. 6. Public prosecutors have the right to make any investigation and to collect any proof. In this they may use all rights and powers granted to the public prosecutor and the examining magistrate by the Code of Penal Procedure.

They may be assisted by magistrates, clerks of courts or lawyers and by financial experts, as well as by experts and civil servants appointed or delegated by the Minister for Justice.

Public prosecutors have the right to demand that their instructions be executed both by organs of the judicial power and by organs of the executive power of any category. They may demand to be assisted in any circumstances by the organs of public order. They may also make any raid or search or remove any incriminating objects

or documents from individuals or from any civil or military authorities, even documents of a secret nature.

All public authorities are obliged to assist public prosecutors. Civil servants disregarding this obligation are liable to the penalties provided by Art. 243 of the Penal Code.

Military Courts and commanders of garrisons are obliged to place at the disposal of public prosecutors members of the regular army. In respect of officers above the rank of captain, the previous authorisation of the Ministry for War will be requested to this end.

Art. 7. Warrants for arrest will be issued by the Council of Ministers, or by public prosecutors with the approval of the leader of the public prosecutors.

Arrests ordered need not be confirmed.

Public prosecutors may order the release of persons arrested by them, only with the approval of the leader of the public prosecutors.

The Council of Ministers may in all cases order the release of those arrested.

Art. 8. Following investigations undertaken, the Public Prosecutor will draw up the charge sheet, which will be submitted to the Council of Ministers for approval.

The Council of Ministers will decide on the notification of the court in respect of the trial of the case.

The actions of the Public Prosecutor and of the Council of Ministers may not be contested through any channel.

Art. 9. The opening of proceedings deprives the accused of the power to dispose of any of his property, from the moment of the publication of the charge in the MONITOR OFICIAL.

The closing of the action through the decease of the accused occurring after the opening of the investigation, prevents neither the application of the measures provided in Art. 5 nor the sequestration of the property; investigation and action will be proceeded with against the heirs for the confiscation of the property for the good of the state as damages.

Art. 10. The actions coming under the present law will be tried by a People's Tribunal.

Art. 11. The People's Tribunal is composed of:

- (a) judges appointed from among magistrates by the Minister for Justice.
- (b) people's judges, Roumanian subjects, of age, of either sex, chosen from among the members of the 7 political groups forming the representative democratic government.

Each of these groups will appoint 5 members, to figure on the lists of people's judges.

Should one group not appoint its members within 15 days from the publication of the present law, the lists will be formed only with persons indicated by the other groups.

Lists of people's judges will be formed in all resident towns of Courts of Appeal.



Art. 12. The Minister for Justice will form one or more groups of presiding judges for the People's Tribunal as and when necessary.

The presiding judges will comprise 9 members, of which 2 will be appointed magistrates, and 7 people's judges.

The people's judges in the group of presiding judges will be drawn by lots by the Minister for Justice - one each from the list of 5 judges proposed by each separate group. If any one of the groups has not appointed its members, the drawing of lots for the respective judge will be made from among members appointed by the other groups.

The group of judges will be presided over by that appointed magistrate whose rank is greater or of longer standing.

If either of the magistrates is prevented from attending the trial, the Minister for Justice will replace him by another.

If a people's judge is prevented from attending the trial, he will be replaced by another, drawn by lots from the list of members of the group to which the absent judge belongs, while in the absence of the members appointed by that group, the drawing of lots will be made from among members appointed by the other groups.

Before assuming their functions, the people's judges drawn by lots will be sworn in by the Minister for Justice with the oath of loyalty provided for the judicial body.

The appointed magistrates and the people's judges drawn by lots may not be challenged.

Art. 13. The groups of judges will execute their functions in Bucharest.

The Minister for Justice may form groups of judges also in resident towns of the other Courts of Appeal. In this case, these groups of judges will have the right to judge persons accused of offences committed on the territory within the circuit of the respective Court of Appeal.

Persons accused of offences committed beyond the Roumanian frontiers will be tried by the Bucharest People's Tribunal.

Instigators, co-authors, accomplices and accessories before and after the fact will be tried by the same court.

Art. 14. The President opens the hearing and orders the summoning of parties and witnesses, cross-examines the accused in order to establish his identity and orders the reading out of the charge sheet. He then proceeds to the cross-examination of the accused and the examination of the witnesses, after which he calls on the Public Prosecutor and the counsel for the defence to speak, leaving the last word to the defence. The President declares the debate closed, after which the Tribunal pronounces its verdict.

Reports of hearings will be brief.

Motives must be given for the verdict, which may be contested with the right of appeal to the Supreme Court of Appeal and Justice only for faulty composition of the Court or mistaken application of the punishment.

The appeal must be declared verbally before the court and will be tried within three days from the reception of the file. Motives for the appeal will be proposed and expounded in a written memorandum, deposited up to the day of the trial. Appeal entails the suspension of the execution of the punishment only if the death sentence has been pronounced.



The verdict will be carried out by the prosecutors of the County Court resident in the town where it was pronounced.

Art. 15. The provisions of the Code of Penal Procedure with regard to trials and the carrying out of penal verdicts apply to the People's Tribunals, so long as they are not contrary to the provisions of the present decree-law.

Art. 16. Any legal acts of any nature, made after August 23, 1944, in respect of the property of those condemned by virtue of the present law, are null and void, and property no longer belonging to the condemned persons will be liable to confiscation pronounced by the Court. Property and rights belonging to the wife or descendants of the condemned person, acquired after September 6, 1940, with the exception of inherited property, come under the same provisions.

Art. 17. Those who in any way conceal persons coming under this law, or assist them to escape, as well as those who conceal the property of such persons, will be punished by the People's Tribunals with imprisonment from 3 - 5 years.

Art. 18. The provisions of laws No. 50 for the prosecution and punishment of war criminals and profiteers, and No. 51 for the prosecution and punishment of those responsible for the country's disaster, published in the MONITORUL OFICIAL of January 21, 1945, as well as any provisions contrary to those of the present law, are and remain repealed.

Writs for prosecution and cross-examination and warrants for arrests issued in accordance with these laws prior to the publication of the present decree-law, remain valid.

The prosecution and trial by virtue of the present decree-law of those responsible for the country's disaster or guilty of war crimes, may take place up to December 1, 1945.

Given under my hand and seal, in Bucharest, April 21, 1945.

MIHAI

L. Pătrășcanu  
Minister for Justice.

No. 1318.

Misc. No. 71.  
25th January, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

War Crimes Enactments

for the

French Zone of Germany.

The Ordinance of 28th August 1944, concerning the suppression of war crimes in France has been circulated as No.26 of the Documents Series (Research Office).

The two ordinances, translations of which are reproduced in this paper, apply in the French Zone of Germany.

Reference is also made to Doc. Misc.No.63, containing the translation of Instructions issued by the French Supreme Command in Germany.

I.

Extract from the Official Journal of the French High Command in Germany  
(of the 12th December 1945).

Ordinance No.20 of the Commander-in-Chief, concerning the  
suppression of war crimes.

(Translation).

The French Commander-in-Chief in Germany,

In view of the Decree of 15th June 1945, establishing a French High Command in Germany, as amended by that of 18th October 1945,

In view of the Hague Conventions of 27th July 1899 and of 18th October 1907, and in particular the Regulations annexed to the Fourth Hague Convention concerning the laws and customs of war,

In view of the London Agreement of 8th August 1945 for the prosecution and punishment of war criminals,

In view of Ordinance No.1 of the Commander-in-Chief of 28th July 1945, maintaining in force the Ordinance promulgated by or under the authority of the Supreme Allied Command,

In view of Ordinance No.1 of the Supreme Allied Command dealing with offences,

In view of Ordinance No.2 of the Supreme Allied Command dealing with  
Military Government Tribunals,

Having consulted the Legal Committee,

O R D E R S:

Art. 1.

Military Government Tribunals are competent to try all war crimes defined by international agreements in force between the occupying Powers whenever the authors of such war crimes, committed after the 1st September 1939, are of enemy nationality or are agents, other than Frenchmen, in the service of the enemy, and whenever such crimes have been committed outside of France or territories which were under the authority of France at the time when the crimes were committed.

Art. 2.

These crimes are punishable by all the penalties which such Tribunals are empowered to pronounce, including the death penalty.

Art. 3.

The General Officer, deputy to the Commander-in-Chief of the Occupying Troops, the deputy Administrator General for the Military Government of the French Zone of Occupation, and the Delegate for the Investigation of War Crimes and War Criminals for the French Zone of Occupation in Germany, are entrusted, in so far as they are respectively concerned, with the carrying out of the present Ordinance, which will be published in the Official Journal of the French High Command in Germany.

(signed) P. Koenig.

Army Corps General,

French Commander-in-Chief in Germany.

Baden-Baden, 25th November, 1945.



II.

Extract from the Official Journal of the French High Command in Germany  
(of the 8th March 1946)

Ordinance No.36, concerning the suppression of war crimes, crimes against  
peace and crimes against humanity, and membership of criminal organisations.

(Translation).

The French Commander-in-Chief in Germany,

In view of the Decree of 15th June 1945, establishing a French High  
Command in Germany, as amended by that of the 18th October, 1945,

In view of the Decree of 26th December 1945, creating a Commissioner  
General's Office for German and Austrian Affairs,

In view of Law No.10 of 20th December 1945, of the Allied Control Council,  
concerning the punishment of persons responsible for war crimes,  
crimes against peace and crimes against humanity,

In view of Ordinance No.20 of the 25th November 1945, made by the  
French Commander-in-Chief in Germany,

On the proposal of the deputy Administrator General for the Military  
Government in the French Zone of Occupation,

Having consulted the Legal Committee,

O R D E R S:

Art. 1.

Military Government Tribunals in the French Zone of Occupation  
in Germany are competent, in virtue of Law No.10 of the Allied Control  
Council concerning the punishment of persons responsible for war crimes,  
crimes against peace and crimes against humanity, to try the crimes set  
out in that law.

Art. 2.

The General Officer, deputy to the Commander-in-Chief of the  
Occupying Troops, the deputy Administrator General for the Military  
Government in the French Zone of Occupation, and the Delegates for the  
Investigation of War Crimes and War Criminals for the French Zone of  
Occupation in Germany, are entrusted, in so far as they are respectively  
concerned, with the carrying out of the present Ordinance, which will  
be published in the Official Journal of the French High Command in Germany.

(Signed) P. Koenig,

Army Corps General,

French Commander-in-Chief in Germany.

Baden-Baden, 25th February 1946.

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(Translation by G.Brand, LL.B., Assistant Legal Officer.)

Misc. No. 72.  
5th February 1947.

CROWCASS CONSOLIDATED STATISTICS.  
WANTED REPORTS RECEIVED.

+ 4000 Names are to be added to this total as a result  
of checking UNICC List against CROWCASS records.

1946

COUNTRY	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUN JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
UNITED STATES	823	97	234	142	9	877	2174	745	317	688	429	6535
GREAT BRITAIN	72	129	119	76	70	205	26	2	5	3	2	709
CANADA	24	2	10	-	-	56	-	-	-	-	-	92
FRANCE	405	372	637	484	170	1557	447	181	143	255	632	5283
BELGIUM	154	52	352	122	157	755	22	69	117	13	-	1813
HOLLAND	102	92	142	140	-	269	108	72	37	139	90	1191
NORWAY	511	-	-	-	-	-	-	65	1	3	-	580
CZECHOSLOVAKIA	199	234	174	169	26	439	194	98	23	2	77	1635
POLAND	50	139	202	58	4	210	136	63	395	68	460	1785
YUGOSLAVIA	28	-	370	2	13	274	526	117	224	143	145	1842
LUXEMBURG	-	18	53	-	4	29	1	1	4	24	1	135
RUSSIA	-	-	-	-	-	-	1	-	-	-	-	1
GRAND TOTAL	2368	1135	2293	1193	453	4671	3635	1413	1266	1338	1836	21601

DETENTION REPORTS RECEIVED.

-2-

1 9 4 6.

COUNTRY	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUN JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
UNITED STATES	3999	968	17756	2852	1091	7407	708	1185	156	96	133	36351
GREAT BRITAIN	4182	4908	5004	4881	3079	12800	1500	1088	1537	1183	1454	41616
CANADA	109	-	-	-	-	-	-	-	-	-	-	109
FRANCE	26	-	24	71	7	80	10	5	73	-	15	311
BELGIUM	-	-	-	-	-	24	-	-	-	-	-	24
HOLLAND	-	-	-	25	-	268	46	80	91	7	-	517
NORWAY	-	-	-	-	-	49	-	-	-	-	-	49
CZECHOSLOVAKIA	-	17	-	-	-	419	1	1	-	-	-	438
POLAND	-	-	-	-	-	7	-	-	-	-	-	7
YUGOSLAVIA	-	-	-	-	-	1	-	-	-	-	-	1
LUXEMBURG	-	-	6	-	21	4	-	-	7	12	1	51
DENMARK	-	-	-	-	-	17	-	-	-	-	-	17
GRAND TOTAL	8316	5893	22790	7829	4198	21076	2265	2359	1864	1298	1603	79491



DETENTION REPORTS RECEIVED.

-2-

1 9 4 6.

COUNTRY	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUN JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
UNITED STATES	3999	968	17756	2852	1091	7407	708	1185	156	96	133	36351
GREAT BRITAIN	4182	4908	5004	4881	3079	12800	1500	1088	1537	1183	1454	41616
CANADA	109	-	-	-	-	-	-	-	-	-	-	109
FRANCE	26	-	24	71	7	80	10	5	73	-	15	311
BELGIUM	-	-	-	-	-	24	-	-	-	-	-	24
HOLLAND	-	-	-	25	-	268	46	80	91	7	-	517
NORWAY	-	-	-	-	-	49	-	-	-	-	-	49
CZECHOSLOVAKIA	-	17	-	-	-	419	1	1	-	-	-	438
POLAND	-	-	-	-	-	7	-	-	-	-	-	7
YUGOSLAVIA	-	-	-	-	-	1	-	-	-	-	-	1
LUXEMBURG	-	-	6	-	21	4	-	-	7	12	1	51
DENMARK	-	-	-	-	-	17	-	-	-	-	-	17
GRAND TOTAL	8316	5893	22790	7829	4198	21076	2265	2359	1864	1298	1603	79491

DEFINITE MATCHES.  
1945-1946.

-3-

	NOV '45	DEC '45	JAN '46	FEB '46	MAR '46	APR '46	MAY '46	SEP '46	OCT '46	NOV '46	DEC '46	TOTAL
UNITED STATES	2	4	10	28	64	96	66	163	56	115	99	703
GREAT BRITAIN	5	-	3	3	9	8	13	29	17	19	41	147
CANADA	2	-	-	-	-	2	2	5	2	2	3	18
FRANCE	3	8	5	12	3	26	34	36	23	23	29	202
BELGIUM	-	-	-	1	7	5	2	13	8	19	467	522
HOLLAND	1	1	-	-	-	8	2	10	6	11	2	41
NORWAY	3	2	-	-	-	1	-	6	9	7	5	33
CZECHOSLOVAKIA	-	1	-	1	3	14	16	39	32	16	6	128
POLAND	1	2	1	-	3	11	4	31	17	18	9	97
YUGOSLAVIA	2	-	-	1	-	1	2	3	10	9	7	35
LUXEMBURG	-	-	-	-	4	2	3	26	18	2	2	57
UNWCC	-	-	-	-	2	7	3	2	7	38	18	77
DENMARK	-	-	-	-	-	-	-	1	-	1	-	2
GREECE	-	-	-	-	-	-	-	1	-	-	1	2
GRAND TOTAL	19	18	19	46	95	181	147	365	205	280	689	2064

-4-

POSSIBLE MATCHES.  
1945-1946.

COUNTRY	NOV '45	DEC '45	JAN '46	FEB '46	MAR '46	APR '46	MAY '46	SEP '46	OCT '46	NOV '46	DEC '46	TOTAL
UNITED STATES	23	17	56	37	97	103	69	470	184	60	84	1200
GREAT BRITAIN	2	2	14	13	61	31	29	148	65	30	19	414
CANADA	1	-	-	2	-	-	1	7	6	5	-	22
FRANCE	16	18	57	25	39	69	82	335	197	50	49	937
BELGIUM	-	4	4	4	10	10	6	1243	57	22	9	1369
HOLLAND	-	-	5	2	1	3	2	30	19	7	9	78
NORWAY	4	-	1	-	1	3	5	29	39	3	9	97
CZECHOSLOVAKIA	1	2	2	1	2	8	16	63	32	4	3	134
ISLAND	-	-	-	3	2	3	6	69	41	11	4	141
YUGOSLAVIA	-	-	-	3	-	4	2	35	22	13	8	87
LUXEMBURG	-	-	-	-	-	-	11	36	11	2	2	62
UNWCC	-	-	-	-	6	26	-	17	51	16	4	120
DENMARK	-	-	-	-	-	1	-	-	1	-	-	2
GREECE	-	-	-	-	-	1	-	4	2	-	-	7
GRAND TOTAL	47	45	139	90	219	262	229	2486	727	223	200	4667



RELEASES.

COUNTRY	SEPT '46	OCT '46	NOV '46	DEC '46	TOTAL.
UNITED STATES	21	9	17	209	256
GREAT BRITAIN	2928	2595	2557	2603	10683
GRAND TOTAL	2949	2604	2574	2812	10939

TRANSFERS.

UNITED STATES	70	5	17	209	301
GREAT BRITAIN	138	77	4	9	228
GRAND TOTAL	208	82	21	218	529

ACQUITTED.

UNITED STATES	6	6	-	-	12
GREAT BRITAIN	-	3	83	18	104
GRAND TOTAL	6	9	83	18	116

x)

SENTENCED.

UNITED STATES	21	22	2	-	45
GREAT BRITAIN	2	9	197	14	222
GRAND TOTAL	23	31	199	14	267

x)

DIED.

UNITED STATES	1	1	1	-	3
GREAT BRITAIN	6	12	17	11	46
GRAND TOTAL	7	13	18	11	49

SPECIAL SEARCHES.

UNITED STATES	1122	3273	1270	785	6450
GREAT BRITAIN	229	337	567	361	1494
FRANCE	2	26	2	9	39
POLAND	1	35	-	-	36
CZECHOSLOVAKIA	-	39	-	11	50
BELGIUM	-	39	345	128	512
YUGOSLAVIA	-	732	-	-	732
NORWAY	-	373	2	143	518
RUSSIA	-	-	-	4	4
HOLLAND	-	-	9	1	10
GRAND TOTAL	1354	4854	2195	1442	9845

x) Actual figures given by A(PG)4 as at 7 Jan. 1947:

ACQUITTED	150
IMPRISONED	248
DEATH	112
	<u>510</u>

UNITED NATIONS WAR CRIMES COMMISSION.

The Provisions of the Peace Treaties with  
Italy, Roumania, Bulgaria, Hungary and Finland,  
prepared for Signature in Paris on 10th February, 1947,  
concerning War Crimes.

- I. In Document Misc.No.43, the provisions of the Draft Peace Treaties presented to the Paris Peace Conference by the Council of Foreign Ministers in July 1946, have been reproduced and annotated, on the basis of the text dated Palais du Luxembourg, Paris, 17th July, 1946. The texts of the Draft Peace Treaties have also been published in this country in the following Command Papers:
- Italy, No.1 (1946) Cmd. 6892.  
Roumania, No.1 (1946), Cmd. 6896,  
Hungary, No.1 (1946), Cmd. 6894,  
Bulgaria, No.1(1946), Cmd. 6895,  
Finland, No.1 (1946), Cmd. 6897.
- II. Now the texts of the Treaties of Peace with Italy, Roumania, Bulgaria, Hungary and Finland, for signature in Paris on 10th February 1947, have been made public (Misc. No.1, (1947), Cmd. 7022).
- The United Kingdom Secretary of State for Foreign Affairs has also presented to Parliament a Commentary on these Treaties (Misc. No.2 (1947), Cmd. 7026).

III. The Provisions of the Peace Treaty with Italy regarding War Criminals.

- 1) The following is the text of the provision regarding war criminals contained on the one hand in the Draft Peace Treaty with Italy (Palais du Luxembourg, Paris, 17th July, 1946), and in the text for signature, Cmd. 7022. The differences in the two texts are underlined.

Part III of the Draft Peace Treaty  
with Italy, 17th July, 1946.

Part III - War Criminals.

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.

Part III of the Peace Treaty with  
Italy; text for Signature in Paris,  
10th February, 1947. Cmd.7022.

Part III - War Criminals.

1. Italy shall take all 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 or humanity.

(b) Nationals of any Allied or Associated Power 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.

2) At the request of the United Nations Government concerned, Italy shall 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 Soviet Union, of the United Kingdom, of the United States of America, and of France, who will reach agreement with regard to the difficulty.

2) As will be seen, the differences between Article 38 of the original text and Article 45 of the more recent text, are only verbal. The replacement of "and" by "or" in paragraph 1(a) makes it clear that the crimes against peace and the crimes against humanity are considered to be different crimes and that it is not a necessary condition for the apprehension of a person, that he is accused of having committed both crimes against peace and crimes against humanity, a result which a reasonable interpretation would have also derived from the original text.

The alteration in paragraph 1(b) brings in a more precise text without altering the sense. The replacement of "will" by "shall" in paragraph 2 lays greater stress on the obligatory character of the Italian collaboration in producing witnesses. The replacement of "Union of Soviet Socialist Republics" by "Soviet Union" and the other alterations in paragraph 3, have no relevance at all for the interpretation.

3) In the official Commentary by the United Kingdom Foreign Office (Cmd.7026), the following is said respecting the provisions which have been quoted above:

" The United Nations have concluded certain agreements between themselves for the bringing to justice of war criminals. Italy, once the Peace Treaty comes into force, would be under no obligation to assist in this matter. Provision is thus made in Article 45 that she should assist in the apprehension and surrender both of war criminals and of quislings. "

The "certain agreements" which the United Nations have concluded between themselves which are alluded to in the Commentary, are probably the London Agreement of 8th August 1945, the Agreement establishing the United Nations War Crimes Commission of 20th October 1943, and the Declarations and Agreements regarding the administration of Germany and Austria including such documents as the Control Council Law No.10.

4) Special provisions as to crimes committed against Ethiopia.

Article 38 of the Peace Treaty with Italy (Cmd.7022, p.17) which was not contained in the Draft Peace Treaty, submitted to the Paris Conference, reads as follows:



" The date from which the provisions of the present Treaty shall become applicable as regards all measures and acts of any kind whatsoever entailing the responsibility of Italy or of Italian nationals towards Ethiopia, shall be held to be October 3, 1935."

This provision is of some relevance on the questions which were dealt with in Docs. C.217, III/50 and I/76.

In accordance with the decision taken by Committee I in its meeting held on 30th January 1947, a paper devoted to the bearing of this provision on the previous papers regarding Ethiopia will be prepared by Dr. Litawski and the Secretary to Committee III.

IV. The provisions of the Peace Treaties with Roumania, Bulgaria, Hungary and Finland.

Provisions similar to those of Article 45 of the Peace Treaty with Italy are contained in the Peace Treaties with the other satellite countries, namely in Article 6 of the Peace Treaty with Roumania, (p.80 of Cmd.7022), Art.6. of the Peace Treaty with Bulgaria, (p.100 *ibid*), Art.6. of the Peace Treaty with Hungary (p.119 *ibid*) and Art.9 of the Peace Treaty with Finland, (p.140, *ibid*).

UNITED NATIONS WAR CRIMES COMMISSION  
Progress Report of War Crimes Trials from data available on January 1, 1947

MISC. 74  
 February 6, 1947

	Cases tried	Accused Involved	Death	Imprisonment	Acquittal	Remarks
EUROPE: Countries whose reports comprise war criminals only.						
UNITED STATES: USMPT) USMT )	154	724	211	421	92	as at 17.1.47
BRITISH: BAOR IMF & BTA	182	602	130	290	182 -	as at 31.1.47
FRANCE:	7 +	191	95	90	6	No. as at 1.12.46/of cases relates to November 1946 only.
GREECE:	2	4	2	2	-	as at 31.1.47
NORWAY:	not given	16	11	5	-	as at 16.10.46
YUGOSLAVIA:	3	47	34	13	-	as at 1.1.47
TOTAL:		1584	483	821	280	
EUROPE: Countries whose reports show War Criminals & Collabor- ators combined.						
CZECHOSLOVAKIA:	-	18496	362	13969	4165	as at 31.10.46
POLAND:	-	4593	631	1840	2122	as at 1.7.46
TOTAL:		23089	993	15809	6287	
FAIR EAST:						
UNITED STATES:	-	420	138	255	27	as at 17.1.47
BRITISH:	193	657	228	350	79	as at 31.1.47
AUSTRALIAN	not given	686	124	351	211	as at 31.1.47
NETHERLANDS EAST INDIES:	12	13	9	4	-	as at 31.1.47
TOTAL:		1776	499	960	317	

UNITED NATIONS WAR CRIMES COMMISSION

MISC. NO 75

21st February, 1947.

HUNGARIAN WAR CRIMES LEGISLATION

The following English  
translation of war crimes  
enactments passed in  
Hungary have been made  
available to the  
Secretariat by the  
United Kingdom Foreign  
Office.

ACT VII OF 1945

of the incorporation in law (giving the binding force of law thereto) of the Orders in Council issued in re the administration of justice by (jurisdiction of) People's Courts.

We herewith bring to the notice of all concerned that the Provisional National Assembly has framed the following Act:-

Section 1.

(1) The Provisional National Assembly herewith incorporates in law (gives the binding force of law to) the following Orders in Council issued by the Provisional National Government in re the administration of justice by (jurisdiction of) People's Courts:-

Order in Council No. 81/M.E. ex 1945 ( of the Jurisdiction of People's Courts), which was issued at Debrecen on the Twenty-fifth Day of January, 1945, and came into force on the Fifth Day of February, 1945.

Order in Council No. 1440/M.E. ex 1945 ( in re the Amendment and Supplementation of Order in Council No. 81/M.E. ex 1945 ( of the Jurisdiction of People's Courts) which was issued in Budapest on the Twenty-seventh Day of April, 1945, and came into force on the First Day of May, 1945;

Order in Council No. 5000/M.E. ex 1945 ( of the Supplementation of the Regulations relating to proceedings against an absent delinquent before a People's Court and to the manner of presenting a public indictment) which was issued in Budapest on the First Day of August, 1945, and came into force on the Fifth Day of August, 1945.

Order in Council No. 6750/M.E. ex 1945 ( in re the enhancement of labour discipline among public officials); which was issued in Budapest on the Fifteenth Day of August, 1945, and came into force on the Nineteenth Day of August, 1945.

(2) The Texts of the Orders in Council referred to in the foregoing paragraph are to be found in Annexes I - IV of the present Act.

Section 2.

The Provisional National Government is authorised - subject to the approval of the Political Committee of the Provisional National Assembly - to amend and supplement as required the above Orders in Council herewith incorporated in law.

Section 3.

The present Act comes into force on the day on which it is promulgated.

Everyone is required to observe the present Act as being the will of the Nation

Given in Budapest this Fourteenth Day of the Month of September  
One thousand Nine Hundred and Forty-Five.

(Signed) Dr. Bela Zsedenyi  
President(Speaker) of the  
Provisional National Assembly

(Signed) Bela Miklos de Dalnok  
Prime Minister.

L. S.

ANNEX I OF ACT VII OF 1945

Order in Council No. 81/M.E. ex 1945  
(of the administration of justice by - jurisdiction of - People's Courts).



By virtue of the powers vested in them at Debrecen on December 21 -22, 1944, by the Provisional National Assembly, the Provisional National Government, actuated thereto by the necessity of providing that all persons who were the causes of or shared in the responsibility for the historical catastrophe inflicted on the Hungarian people should as soon as possible be punished according to their deserts - until such time as trial by jury shall be restored by legislature - ordain as follows respecting the establishment of jurisdiction (the administration of justice) by People's Courts:-

#### General Provisions

##### Section 1

The crimes described in the present Order in Council are punishable even in cases where the criminal action was already completed at the time of the coming into force of the Order and was not punishable under the legal provisions in force at the time when the action was completed.

##### Section 2

The jurisdiction of the People's Court shall extend to civilians and members of the armed forces, inclusive also of the police and gendarmerie as well as to persons taken into custody in the territory of the Hungarian States, irrespective of their nationality.

In respect of a criminal act committed outside the territory<sup>of</sup> the Hungarian State, as well as in respect of any criminal, who may eventually be subject to extradition, the jurisdiction of the People's Courts shall be in force until the extradition of the perpetrator has been ordained.

In applying the present Order in Council all persons specified in paragraph 3 of Act XVIII of 1940 are to be regarded as public servants.

##### Section 3

The penalties inflictable by a People's Court shall be:-

1. Sentence of death
2. Hard Labour
3. Imprisonment
4. Confinement
5. Internment
6. Fines, which may be extended to the confiscation of property.
7. Discharge from office, or prohibition to continue in an occupation (profession)
8. Suspension of exercise of political rights
9. Punishments of a disciplinary character specified in points (a), (b) and (c) of Paragraph 3 of paragraph 19 of Order in Council No. 15/M.E. ex 1945.

The penalties enumerated above may be inflicted as principal punishments in themselves, the punishments specified in points 6-8 above being inflictable also as additional penalties in the case of every criminal act referred to the jurisdiction of a People's Court, even where the relevant legal statute does not stipulate the application as additional penalties the punishments specified in points 6-8 above. Any sentence passed may include the infliction of more than one additional penalty.

The minimum term of internment shall be six months, the maximum term two years.

Where the Order in Council stipulates the infliction of internment as punishment the minimum term of that internment shall be determined in its sentence by the People's Court. After expiration of the term fixed for the Court, however, an internee may be released from confinement in an internment camp only in the event of his conduct during the period of internment having been exemplary. Otherwise the authorities in control of the internment camp may prolong the confinement of the person sentenced to internment for a further period of six months. The maximum period of internment may not exceed two (2) years in such cases either.

With respect to the infliction, commutation and collection of fines the provisions of Act X of 1928 are to be duly applied.

A People's Court may instead of confiscating the whole property of a person who has been sentenced, decide also to confiscate a specified quota of the said property.

For the purpose of carrying into effect a sentence involving confiscation of property, a notification must be sent to the Public Revenue Directorate territorially competent to act in the matter, which shall proceed as prescribed by Ordinance of the Minister of Finance.

A person sentenced to discharge from office shall forfeit his public office and his position in the public service. He shall not forfeit his claim to a pension or lose the pension or bounty allowance enjoyed by him unless such forfeit is expressly determined in the sentence pronounced by the People's Court. The People's Court may determine to maintain intact the pension claims of those members of a sentenced person's family who are unprovided for.

Discharge from office may be decided also in the case of a private employee holding a leading position. Such decision shall not prevent the person sentenced from occupying a position not of a leading character.

A person forbidden to continue in his occupation (profession) may not exercise such occupation for a period of five years in that commune(parish) or those communes(parishes) specified as banned in the sentence of the People's Court.

#### Section 4

Paragraph 125 of the Regulations for the simplification of Judicial Procedure shall not be applicable.

#### Section 5

When determining punishment paragraphs 91 and 92 of the Criminal Code may be applied and, over and above the mitigations comprised in paragraph 92 of the Criminal Code, any of the milder penalties specified in paragraph 3 above may be applied too.

#### Section 6

Criminal procedure may be carried on also against accused persons who have escaped. subject to the restrictions contained in paragraph 2 of Section 12 of Act III of 1921, it not being necessary however to summon the persons in question by public notice, though the time appointed for the trial must be announced thirty days previously in the usual manner at the last places of residence of the said persons. Failure to do so cannot serve as a reason for annulling the procedure.

#### Section 7

A death sentence passed by a People's Court may be commuted by a pardon to hard labour(penal servitude) for life or for a specified term extending to 10-15 years.

The right of granting pardon(reprieve) with the Supreme National Council.

The Supreme National Council shall take its decision on the basis of a proposal of the Minister for Justice.

#### Section 8

The Minister for Justice may sanction a postponement of the beginning of the term of punishment or the interruption of a term of punishment already begun.

The remission of any part of the term of punishment not yet completed is a matter for the decision of the Supreme National Council in cases



where the persons sentenced have not yet completed two-thirds of their terms of punishment.

Where a person sentenced has already completed two-thirds of his term of punishment, the remission of the rest of his term of punishment rests with the Prime Minister, whose decision shall be taken on the basis of a proposal of the Minister for Justice.

#### Section 9

In the matter of prescription paragraph 106 of the Criminal Code is to be applied, it being hereby stipulated that in respect of actions committed between June 21st, 1941, and the conclusion of the Armistice the period of prescription shall be taken as beginning with the day on which the Armistice was concluded (January 20th, 1945)

In respect of political murders committed in 1919 and the following years - prosecution for which was prevented by the regime formerly in power - the period of prescription must be taken as beginning only on December 21st, 1944.

#### Section 10.

The provisions contained in Act V of 1878 - provided they do not run counter to the present Order in Council - are to be duly applied.

#### Special Provisions.

##### Section 11

As war criminals are to be regarded:-

1. Persons who by their activities or conduct in leading positions furthered the extension to Hungary of the war of 1939 or the constantly increasing measure of Hungary's participation in the war, or who failed to endeavour to prevent that issue, though the leading positions occupied by them in public offices or the roles played by them in the political, economic or public life of the country would have enabled them to do so;
2. Who as Members of the Government or of the Parliament or as public servants occupying leading positions initiated or - though they must have foreseen the consequences - took part in the passing of any resolution responsible for plunging the Hungarian people into the war of 1939;
3. Who endeavoured, either by force or by the use of their influence, to prevent the conclusion of an armistice;
4. Who by an act calculated to lead others assisted the "Arrow Cross" movement in its insurrection aimed at seizing the power or in its efforts to retain possession of that power, or who without being compelled to do so by threats endangering their lives accepted leading positions - on the basis of appointments made after the said seizure of the power - in the "Arrow Cross" Government, administration or National Defence organisation. (Leading position as used here means the offices of Minister, Chief Burgomaster, High Sheriff, Army Commander, Corps Commander, or positions of similar importance);
5. Who in respect of the treatment of the inhabitants of occupied territories or of prisoners of war committed serious breaches of the rules of international law relating to warfare or - abusing their power - committed atrocities against the inhabitants of reincorporated territories or who in general incited to, were themselves guilty of or took part in the unlawful execution or torture of human beings.

#### Section 12

Unless some other legal statute ordains the application to the act of a severer penalty, the severest penalties inflictible by a People's Court shall be:

sentence of death for any of the criminal acts specified in paragraph 1 of point 1 and in points 3, 4 and 5 of paragraph 11.

ten(10) years' penal servitude in the case of any of the criminal acts specified in paragraph 2 of point 1 of paragraph 11;

fifteen (15) years' penal servitude in cases coming under point 2 of paragraph 11.

Section 13.

As war criminals shall be regarded also;

1. Persons who agitated in favour of a more intensive continuation of the war by printed matter (by any writing multiplied in any form whatsoever), in speeches delivered before an assembly or by broadcasting;
2. Persons who offered assistance to any formation of a military character in the committal of any forcible act against any person or property;
3. Persons who assisted the "Arrow Cross" movement by actions not of a leading character to obtain possession of the power or to retain possession thereof;  
or who by appointment received after the seizure of that power undertook any offices of importance other than those specified in paragraph 4 of Section 11 in the "Arrow Cross" administration or within the framework of the National Defence organisation;
4. Persons who, though Hungarian citizens, entered the German Army or any German security service (S.S., Gestapo, etc.);
5. Persons who supplied any German formation with information (data) injurious to the interests of the Hungarian people or functioned as spies (informers);
6. Persons who contributed materially (by pen or other intellectual activity) to further war propaganda.

Section 14.

Unless some other legal statute ordains the application to the act of a severer penalty, the severest penalties inflictible by a People's Court shall be:-

- three (3) years' imprisonment for any of the acts specified in point 1 of paragraph 13;
- two (2) years' imprisonment for any of the acts specified in points 2 and 3;
- five (5) years' imprisonment for any of the acts specified in points 4;
- three (3) years' imprisonment for either of the acts specified in point 5;
- One (1) year's imprisonment for the act specified in point 6.

In the case coming under point 2 of paragraph 13, where the forcible act in question involved physical injury to the victim that could only be cured in a period exceeding 20 days, the severest penalty shall be three (3) years' imprisonment and where the act in question caused the death of the victim, the severest penalty shall be ten (10) years' penal servitude.

In cases coming under point 4 of paragraph 13, in which the persons guilty of such acts took part in any forcible act against Hungarian nationals the severest penalty shall be ten (10) years' penal servitude, while the case of persons causing the death of a Hungarian national or fighting against Hungarian National Defence troops or by armed force preventing individuals or detachments from going over to the Red Army the severest penalty shall be sentence of death.

In cases coming under point 5 of paragraph 13 in which a denunciation resulted in a Hungarian national thereby denounced being murdered or presumably dragged out of the country, the severest penalty shall be fifteen (15) years' penal servitude, that penalty to be sentence of death in the case of a person who functioned systematically or for a reward.



#### Section 15

As guilty of a crime against the people shall be regarded:-

1. Any member of the Government(Ministry) or Parliament or public servant holding a leading office who initiated any legal statute(enactment) seriously injuring the people's interests or took part deliberately in the work of framing such enactment;
2. Any person who in the period subsequent to September 1st, 1939 in the course of his activity as a public official, in the course of carrying into effect laws or Orders aimed against certain sections of the people, exceeding the measure of activity prescribed him and took action, endangering or injuring personal liberty or involving physical injury or contributed to bring about the material ruin of individual persons;
3. Any public servant endowed with legal authority who consistently acted in his official capacity in an anti-democratic, pro-fascist manner.

#### Section 16

Unless some other legal statute ordains the application to the act in question of a severer penalty -

the severest penalty for any act coming under point 1 of paragraph 15 shall be five(5) years' penal servitude.

the severest penalty for any act specified in point 2 of paragraph 15 shall be three (3) years' imprisonment.

In cases in which the act specified in point 2 involved physical injury to the victims requiring for its cure a period exceeding 20 days, the severest penalty shall be five (5) years' imprisonment.

And in cases in which, as a consequence of the physical injury inflicted, the victims suffered the injury specified in Section 303 of the Criminal Code, the severest penalty shall be five (5) years' penal servitude;

The severest penalty for any act specified in point 3 of paragraph 15 shall be two(2) years' imprisonment.

#### Section 17.

As guilty of an offence against the people shall be regarded:-

1. Anyone who failed to endeavour to prevent the commitment of any of the acts specified in point 2 of paragraph 15, though he would have been able in the sphere of authority conferred on him by law to do so;
2. Anyone who in a fascist, anti-democratic party displayed an activity which, though of lesser importance, was nevertheless of a leading character;
3. Anyone who in print( in a writing multiplied in any form whatsoever), before an assembly, by broadcasting or in any other way publicly agitated in favour of the taking of measures injurious to the people or anti-democratic in character or who spoke or wrote in praise of such measures after they had been taken.
4. Anyone who without being compelled to do so contributed to further propaganda aimed against the people or anti-democratic in character;
5. Anyone who by his menacing conduct prevented the expression of any anti-fascist(anti-"Arrow Cross", anti-German, anti-war)opinion.

#### Section 18

Unless some other legal statute ordains the application to the said act of a severer penalty, the severest penalty inflictible by a People's Court shall be -

for the act specified in point 1 of paragraph 17, one (1) year's confinement.

for any of the acts specified in points 2 and 3 of paragraph 17, one (1) year's internment;

for any of the acts specified in points 4 and 5 of paragraph 17, one (1) year's confinement (as first-class misdemeanour)

#### Section 19

The criminal acts enumerated in the present Order in Council are to be prosecuted officially.

#### Jurisdiction and Competency

#### Section 20

The passing of judgment on the criminal acts specified in paragraphs 11, 13, 15 and 17 of the present Order in Council shall be within the jurisdiction of the People's Courts.

The jurisdiction of the People's Courts shall extend also to the criminal acts specified in Sections 1 - 5 of Act III of 1921, in Sections 58 - 59 of Act III of 1930, in Chapter IV of Act V of 1878, in paragraph 1 of Section 172 of Act V of 1878 (Section 19 of Act LXIII of 1912).

as well as to other criminal acts connected with those so far enumerated in the present Section, in particular to the criminal acts specified in Chapters XVIII, XX, XXI, XXII, XXXVI, XXXVII, XXXVIII, and XXXIX of Act V of 1878.

#### Section 21

In the case of the criminal acts specified in the closing paragraph of Section 20, in the absence of the connection referred to therein People's Courts have no jurisdiction unless the act be of a political character and unless the head of the Office of Public Prosecutions (Director of Public Prosecutions) designated in the Criminal Procedure regulations as competent to act shall on the proposal of the head of the People's Office of Public Prosecutions (Nepugyeszeg) approve of the case being referred to a People's Court.

#### Section 22

a People's Court may also take proceedings in cases of juvenile offenders. In such cases - apart from the measures specified in Article IV of Chapter II of Act XXXVI of 1908 - the penalties specified in Section 3 of the present Order in Council may also be applied though with the difference that sentences of death may not be inflicted, while imprisonment or penal servitude may be inflicted only on juvenile offenders already over 15 years of age.

#### Section 23

The question of competency shall be decided in accordance with the provisions contained in Chapter II of Act XXXIII of 1896.

In the event of a person under suspicion being suspected of several criminal acts committed in different places, the People's Public Prosecutor handling the affair shall refer the case - specifying the acts and any proofs that may be available - to the People's Office of Public Prosecutions (Nepugyeszeg) attached to the People's Court competent to act in the district where the suspect's place of residence is situated.

People's Office of Public Prosecutions/Nepugyeszeg: People's Attorneys).

#### Section 24

The prosecution in trials before People's Courts shall be in the hands of a People's Public Prosecutor. People's Public Prosecutors and their chiefs (heads of offices) shall be appointed by the Minister of Justice from among persons who have qualified as judges or lawyers or - where necessary - from among persons having taken the degree of doctor of law (LL.D) on nomination by or after consultation with the local National Committee. The Minister of Justice may at any time relieve People's Public Prosecutors (Attorneys) of their office.



During the term of their activity People's Public Prosecutors - unless already appointed as Public Prosecutors - shall receive the emoluments due to judges and public prosecutors in Section 4 of Group 1 (classification adjusting scale of salaries)

People's Public Prosecutors may not carry on any other profession (occupation) yielding earnings.

The appointment of Public Prosecutors is only temporary. When relieved of office - unless appointed public prosecutors by the Minister of Justice, they shall receive, by way of global composition, three months' salary.

People's Public Prosecutors - unless they have already been sworn in as public prosecutors - shall have administered to them by the competent Chief Public Prosecutor the oath prescribed in Section 2 of Order in Council No. 17/M.E. ex 1945.

#### Section 25

In respect of the right of supervision of the Minister of Justice the provisions of Section 5 of Act XXXIII of 1871 and of Ordinance No. 4600/I.M. ex 1899 of the Minister of Justice and the legal rules supplementing the same are to be applied.

#### Section 26

People's Public Prosecutors (attorneys) must sign with their own hands all indictments and decisions drafted by them which must be countersigned by the head of the respective People's Public Prosecutor's Office. No decision or indictment may be issued which has not been counter-signed (endorsed)

A People's Public Prosecutor is personally responsible for all decisions (findings) signed by him. For decisions (findings) which have been countersigned the responsibility devolves on the respective Chief Public Prosecutor (Chief People's Attorney).

#### Section 27

The President of the High Court of Justice and the Chief Public Prosecutor shall jointly nominate the auxiliary staff of the People's Public Prosecutor's (Attorney's) Office from among the members of the auxiliary staffs (clerks) of the courts and public prosecutions office respectively.

#### Section 28

The President of the High Court of Justice and the Chief Public Prosecutor shall likewise jointly designate the premises to be used by the People's Public Prosecutor's Office (Attorney's), doing so in a manner providing that the same shall as far as possible be situate in the vicinity of the courts. the

#### Section 29

Investigations shall be carried out as provided in Sections 83 - 86 of the Criminal Procedure Regulations.

#### Section 30

The rights (duties) specified in Chapter XII of the Criminal Procedure Regulations as due to (incumbent upon) a police magistrate (coroner) shall be in force in the case of People's Prosecutors (Attorneys)

#### Section 31

A People's Prosecutor may not take note of a denunciation, unless the person making such denunciation communicates his (her) full address and appends his (her) signature. No account must be taken of a denunciation made without these stipulations being observed or under a false name, such being manifestly without foundation.

Denunciations made orally shall be recorded by the People's Public Prosecutor in a protocol containing the name and address of the denouncer, the facts

upon which the denunciation is based and the evidence relating thereto. The denouncer must be made to sign the denunciation.

In cases of denunciations made to the People's Public Prosecutor's Office no proceedings can be taken against the denouncers for an act coming under Section 20 of Act XLI of 1914. This provision shall not prejudice the application of Chapter XIII of the Criminal Code.

#### Section 32.

Cases referred in terms of point 2 of Section 10 of Order in Council No.15/M.E. ex 1945 to the jurisdiction of a People's Court must be submitted to the respective People's Public Prosecutor's Office. The procedure taken, in cases thus referred to him, by a People's Public Prosecutor shall be the same as that followed in cases originating from denunciations.

#### Section 33

Previous arrest(taking into custody) is to be ordained by a People's Public Prosecutor in the cases specified in Section 141 of the Criminal Procedure Regulations.

There is no appeal against a warrant of previous arrest.

Where a People's Public Prosecutor has failed within 30 days to bring an accused person before a People's Court for trial of his case or fails to submit an indictment to the People's Court within the same period, the person in previous custody must be released or the papers referring to the case submitted without delay to the People's Court. The People's Court is required to decide within three days whether the person under arrest shall be kept in custody or not. A People's Court may on the proposal of the People's Public Prosecutor concerned prolong the period of previous arrest by 30 days. While the trial proper is in progress the previous arrest may be prolonged until the People's Court has taken a final decision. The period of previous arrest thus prolonged, i.e. until the taking of a final decision by the People's Court - may not exceed altogether six (6) months.

However, should a People's Court - by intermediate finding fully motivated - establish the guilt of an accused person in respect of any criminal act figuring in the indictment the period of previous arrest may be prolonged for a further six (6) months.

The period of previous arrest prolonged after the publication of such finding of a People's Court shall last until the passing of the final judgment in the case in question.

#### Section 34

A people's Public Prosecutor shall either submit an indictment or, in cases of minor importance, shall - duly applying the provisions of Sections 107 -108 of the Regulations for the Simplification of Criminal Procedure - bring the accused before a People's Court.

#### Section 35

Of intermediate procedure there can be no question.

#### Section 36

In respect of the defence of the accused the provisions of Chapter V of the Criminal Procedure Regulations must be applied.

#### People's Courts

#### Section 37

A People's Court must be set up at the seat of each High Court of Justice (Court of Law).

The Minister of Justice may ordain the formation of more than one Council within the framework of any single People's Court.



Section 38

Premises suitable for the holding of trials by the People's Court shall be designated by the President of the High Court of Justice.

Section 39

A People's Court Council shall consist of 5 Members.

Within 8 days of the coming into force of the present Order in Council the local organisations of the five political Parties (Democratic Bourgeois Party, Independent Smallholder Party, Hungarian Communist Party, National Peasant Party, Social Democratic Party) amalgamated in the Hungarian National Independence Front shall nominate 5 Members for each of the People's Court Councils which the Minister of Justice shall have ordered to be formed in the place (township) in question. The High Sheriff shall within a further period of 8 days from the presentation of the lists of Members - on the basis of a proposal submitted by the local National Committee - designate from each list of names one Ordinary and one Supernumerary Member. In this way each of the five political Parties specified above will be represented in the People's Court Councils by one Ordinary and one Supernumerary Member respectively. In the event of any Ordinary Member of a Council being prevented from attendance, the Supernumerary Member belonging to the same Party shall be called in.

No one may be appointed judge of a People's Court who has been sentenced for a crime, for an offence committed for lust of gain or for any act of a fascist character. In applying the present Order in Council persons sentenced for anti-fascist acts or for any of the acts specified in the Jewish Laws must not be considered as "not having clean records".

To the lists submitted by the political Parties must be annexed written declarations of the candidates in which in full cognizance of their responsibility under criminal law they state that they are persons possessing clean records as interpreted in terms of the present provision.

In the event of any of the political Parties enumerated above not functioning actively at the seat of a People's Court to be set up, the High Sheriff shall fill the vacant offices of Ordinary and Supernumerary Member by nomination from among the 5 persons recommended by some other Democratic Party or Parties not figuring in the enumeration - or, in the absence of such Party, from among non-Party persons who must nevertheless be politically reliable - in this case too after consultation with the National Committee.

A person nominated for the office of Member of a People's Court may not refuse to accept nomination.

Members and Supernumerary Members of People's Courts may after functioning for three months ask to be relieved by the High Sheriff, who shall nominate the new Members and Supernumerary Members by the procedure specified in the present section.

Section 40

Members of People's Courts receive for each day of a trial the daily fees appointed by the Minister of Justice. At present the amount of such fees is 20 pengő for each day of a trial. No fees are due for extra-trial sittings.

All expenses - including the cost incidental to visits to the scenes of crimes, etc. - are to be advanced on behalf of the Treasury by the local government body to whose jurisdiction the seat of the People's Court in question belongs.

Section 41

Should both the Ordinary and the Supernumerary Member (representing a particular Party) be permanently prevented from attendance, the High Sheriff shall designate a new Ordinary and Supernumerary Member from among the five members recommended by the Party concerned.

Section 42

The Minister of Justice shall designate a professional (juridically qualified) judge to direct the work of each Council (referred to hereinafter as "head judge" as well as a deputy judge.

Procedure of People's Courts

Section 43

The preparations for a trial (summoning of accused and witness, notification of members and supernumerary members of the respective Council) are to be made by the head judge, whose business it is also to designate a recorder of proceedings from among the members of the clerical staff of the courts functioning at the seat (of the People's Court).

Section 44

The minutes of proceedings are to be recorded as provided in Sections 331-332 of the Criminal Procedure Regulations and of Section 113 of the Regulations for the Simplification of Judicial Procedure.

Section 45

People's Judges shall take an oath (make a vow) before the opening of the first trial. The oath shall be administered by the head judge. The text of the oath shall be as prescribed in Section 1 of Ordinance No. 45, D.O./I.M. ex 1945. Where a vow (solemn declaration) is made, the text of the oath shall be modified as provided in paragraph 3 of Section 8 of Order in Council No. 15/M.E. ex 1945.

Section 46

The exclusion of a head judge, a People's Judge, a recorder of proceedings or a People's Public Prosecutor shall be subject to the stipulations contained in Chapter VI of the Criminal Procedure Regulations.

Section 47

Proceedings shall be directed by the head judge in accordance with the provisions of the Criminal Procedure Regulations relating to trials.

After the head judge the People's Judges, the People's Public Prosecutor and counsel for the defence may address questions to the accused and witnesses - the accused being also entitled to address questions to the witnesses.

Section 48

A People's Court may before the work of taking evidence has been finally completed taken an intermediate decision in respect of any criminal act which appears to be proven establishing the guilt of the accused. Such decisions - taken in conformity with the procedure prescribed for the passing of sentences - shall be taken by a People's Court only in cases where the accused is under arrest and it seems probable that the trial cannot be concluded in respect of all the acts included in the indictment before the expiration of the maximum period (6 months) of arrest. Intermediate decisions must be motivated by the People's Court.

The previous (preventive) arrest of an accused person cannot be prolonged on the basis of an intermediate decision, unless it is to be presumed that the sentence to be passed in the case in question will inflict on the accused a punishment of not less than one (1) year's imprisonment.

There is no appeal against an intermediate decision (finding).

A People's Court may pass the sentence to be pronounced in such a case without regard to the intermediate decision.

Section 49

After the taking of evidence has been concluded the council in question shall withdraw for the purpose of taking its decision. The discussion for that purpose shall be behind closed doors, only the People's Judges, the head judge and



the recorder of proceedings being present.

At this discussion the head judge shall sum up the results of the trial and shall offer expert information respecting the provisions of laws or Orders respectively that are to be applied and respecting the kinds of - and measure of - the penalties that may be inflicted. The head judge is required to submit a fully motivated opinion also on the question as to what criminal acts the evidence produced at the trial seems to prove the accused to have committed. He is forbidden however to express any opinion as to which kind or measure of penalty he would himself inflict as a judge administering justice.

The Council shall first decide what criminal act or acts the accused may be proved to have committed.

The order of voting shall be determined by the respective ages of the People's Judges, the oldest voting first and the youngest voting last. The head judge has no vote.

After a decision has been taken on the question of guilt the head judge shall once more offer the People's Judges information as to what kinds and what measure - of penalties may be inflicted for the criminal acts already determined as committed. The People's Judges shall vote - in the order specified above - respecting the kind(form) and measure of penalty to be inflicted.

Should the majority of three votes(opinions) of the like tenor required for the taking of a decision not be forthcoming, the head judge is authorised to endorse the opinion of two People's Judges in agreement on the question(casting vote). Except in such cases the head judge is not entitled to vote.

No minutes need be recorded of the voting, unless the head judge thinks it necessary to do so.

The sentence shall be drafted by the head judge in conformity with the legal measures in force.

#### Section 50

In the event of the head judge feeling convinced that the People's Judges have taken their decision in a manner contravening essential provisions of the laws or of the present Order in Council and of there being no appeal against the decision, the head judge may address to the Supreme Council of People's Courts on behalf of the accused fully motivated representations placed in a sealed envelope. The head judge may not make public any such resolve taken by him and the representations made by him shall not have the effect of delaying further procedure.

#### Section 51

Sentences inflicted by a People's Court or the Supreme Council of People's Courts shall be pronounced by them "IN THE NAME OF THE HUNGARIAN PEOPLE"

#### Section 52.

Apart from the cases enumerated in the Criminal Procedure Regulations, the sentence proper(that prescribing the penalty inflicted) when it has become valid in law(final) must be communicated to the People's Office of Public Prosecutions (People's Attorney's Office) to the Central Criminal Record Office, to the municipal (parish) authorities to those jurisdiction the place of residence of the person sentenced thereby belongs, to the Central(Election)Committee and to the Housing Office.

#### Appeals

#### Section 53

Against a sentence of a People's Court inflicting the death penalty, the confiscation of the accused's entire property, forfeit of office, imprisonment for a term exceeding three years or a fine exceeding 20,000 pengő in amount, an appeal may be made by the person thus sentenced to the Supreme Council of People's Courts(N.O.T.)

An application for legal address filed by a person sentenced - in whatever form or terms such application may be made - is to be regarded as an appeal.

Apart from the procedure described in Section 6 of the present Order in Council, the counsel for the defence is not entitled to file an independent appeal.

A People's Public Prosecutor may appeal in all cases either against the acquittal of the accused or for the infliction of a severer penalty. An appeal filed by a People's Public Prosecutor may lead to a modification of the sentence in favour of the person sentenced.

A People's Public Prosecutor is entitled to join the appeal made by a person who has been sentenced by protesting himself against the sentence as not sufficiently severe (Section 29 of Act X of 1928).

In other respects appeals are subject to the provision of Section 388 of the Criminal Procedure Regulations.

#### Chief People's Public Prosecutor

(Attorney)

#### Section 54

The Chief People's Public Prosecutor or his Deputy shall conduct the prosecution before the Supreme Council of People's Courts.

Only persons qualified by examination as judges or lawyers may be Chief People's Public Prosecutor or Deputies of the same: these functionaries shall be appointed by the Government on the proposal of the Minister of Justice.

The Chief People's Public Prosecutor shall receive the emoluments due to judges and public prosecutors in Grade 1 of Group III, his Deputies those due to judges and public prosecutors in Grade I of Group II: unless they are in receipt of higher salaries due to them as holding other offices in the public service.

Sections 24, 25 and 26 of the present Order in Council are to be duly applied to the Chief People's Public Prosecutor and his Deputies.

#### Section 55

The Chief People's Public Prosecutor may withdraw any appeal or agreement to an appeal filed by a People's Public Prosecutor.

The legal statutes relating to the Chief Public Prosecutor and his Deputy are to be duly applied to the Chief People's Public Prosecutor and his Deputies.

#### Supreme Council of People's Courts

(N.O.T.)

#### Section 56

The sentences (findings) of People's Courts against which applications for legal redress have been made shall be referred for re-consideration to the Supreme Council of People's Courts.

The proceedings of the Supreme Council of People's Courts shall be taken by Councils of five members each, the number of such Councils to be determined by the Minister of Justice.

The seat of the Supreme Council of People's Courts shall be at all times that of the Government.

#### Section 57

The central management of each of the political Parties enumerated in Section 39 of the present Order in Council shall delegate to sit on each of the Councils to be formed as permanent Member thereof, a person with a clean



record(paragraph 3, of Section 39) who has qualified by examination as judge or lawyer. The Minister of Justice shall entrust one of the Members of each Council so constituted to act as President(head judge) of the Council.

Each several political Party shall nominate a supernumerary Member irrespective of the number of Councils.

The Parties are not entitled to withdraw the mandates of the members and supernumerary members nominated as Members of a Council.

During the term of office of the Council the members and supernumerary members designated to act as Presidents(head judges) shall receive emoluments corresponding to those due to judges and public prosecutors in Grade I of Group III, unless they are as public servants in receipt of higher emoluments.

Ordinary and supernumerary members may not engage in any other profession(occupation)yielding earnings.

In respect of the taking of an oath by the members and supernumerary members the provisions of Section 45 are to be applied, the oath(vow) in these cases to be administered by the President of the Supreme Council of People's Courts.

#### Section 58

The Supreme Council of People's Courts shall be under the direction of a President appointed by the Minister of Justice. His emoluments shall be as provided in paragraph 4 of Section 57.

The President shall be responsible for all agenda incidental to the administration of the Supreme Council of People's Courts(calling in of supernumerary members distribution of cases, acceleration of procedure, etc.)

#### Section 59

The recorder(clerk) of the Supreme Council of People's Courts shall be a judge or clerk of a court of law attached to the Council by order of the Minister of Justice.

#### Section 60

With respect to the procedure in cases brought before the Supreme Council of People's Courts the provisions of Section 33 of Act X of 1928 are to be duly applied, the Council being, however, entitled to take <sup>the</sup> evidence itself or to request at its discretion any court of law to take the evidence. An accused person under previous(preventive)arrest need not be summoned to appear at the discussion of his case or during the recording of the evidence, unless the Council so ordains. The accused and the counsel for the defence must however be informed of the discussion(trial of his case) and of the taking of evidence, though the fact that such notification has not been made cannot serve as ground for the procedure to be repeated.

#### Section 61

The decision of the Council respecting the representations(report)submitted by a head judge(Section 50) shall be taken in secret session(behind closed doors)

The Council shall take one or other of the following decisions:-

1. to take no account of the representations, or
2. to ordain the production of proofs and for the purpose of taking the evidence -
  - (a) to fix a time for the trial, or
  - (b) delegate a Member of the Council, or
  - (c) to request a court of law to do so, or
3. to quash the sentence of the People's Court and refer the case for re-trial either to the same People's Court or to another People's Court designated by it, or

4. to amend the sentence of the People's Court, in favour of the accused.

In the cases specified in sub-points(b) and (c) of Point 2 the Council shall, after evidence has been taken, decide in full session.

#### Section 62

In the matter of an appeal filed by an accused person(defendant) or of the decision of a People's Public Prosecutor to join such appeal the Supreme Council of People's Courts shall decide as provided in Article II of Chapter XX of the Criminal Procedure Regulations.

The Supreme Council of People's Courts shall subject to re-consideration the whole of a sentence referred to its decision by the filing of an appeal.

#### Re-trial Section 63

After a sentence has become valid in law application may be made for re-trial.

In respect of a re-trial Chapter XXI of the Criminal Procedure Regulations are to be duly applied, it being postulated hereby, however, that there may be no re-trial aimed at prejudicing the position of a person who has been sentenced within two years of the sentence becoming valid in law.

#### Sundry Provisions Section 64

Unless the present Order in Council warrants other measures, Act XXXIII of 1896 and the laws and ordinances respectively supplementing the same must be duly applied.

#### Section 65

The procedure to be followed in carrying into effect the confiscation of property under the present Order in Council shall be determined by Ordinance of the Minister of Finance.

#### Section 66

Questions of procedure and organisation arising during the carrying into effect of the present order in Council shall be adjusted by Ordinance of the Minister of Justice.

#### Section 67

A People's Public Prosecutor may issue for the purpose of presentation to the local Housing Office a certificate showing that the person requesting the issue of the same is not having proceedings taken against him before the People's Court.

#### Section 68

The present Order in Council shall come into force immediately on publication.

(Signed) Bela Dalnoki Miklos

Prime Minister.

Debrecen, January 25th, 1945.

#### Annex II of ACT VII of 1945

#### Order in Council No. 1440/M. E. ex 1945 of the Provisional National Government

(of the Amendment and Supplementation of Order in Council No. 81/M. E. ex 1945 issued in re Jurisdiction by People's Courts).



In re the amendment and supplementation of Order in Council No. 81/M.E. ex 1945 (of Jurisdiction by People's Courts) issued by them by virtue of the powers vested in them on December 22nd, 1944, by the Provisional National Assembly, the Provisional National Government ordain as follows:-

Section 1

Section 3 of Order in Council No. 81/M.E. ex 1945 shall become invalid and shall be replaced by the following provisions:-

The kinds (forms) of penalties inflictible by a People's Court shall be:-

1. sentence of death;
2. forced labour;
3. penal servitude;
4. imprisonment;
5. fines
6. confiscation of property;
7. forfeiture of office or prohibition to engage in one's occupation (profession)
8. suspension of exercise of political rights.

The penalties enumerated sub-points 1 - 4 of the foregoing paragraph shall be principal (primary) penalties or punishments; those enumerated sub-points 5 - 8 being subsidiary (secondary) penalties; the latter may be applied (enforced) in the event of their application not being ordained by the legal statute relating to the criminal act in question. The application of the secondary penalty specified in point 8 shall be obligatory in all cases in which the accused person is condemned. Several secondary penalties may be applied (enforced) against one and the same person sentenced.

Death sentences by hanging or shooting must be executed in enclosed places, though not to the exclusion of the public.

Forced labour may be inflicted for life or for an indefinite period. In the latter case the legal statutes relating to compulsory labour in public works prisons (penitentiaries) must be enforced in respect of the term and the conditions governing eventual release. Persons sentenced to forced labour must be placed in labour camps. The detailed regulations relating to the carrying out of such sentences shall be drafted by the Minister of Justice in agreement with the Minister of the Interior.

In the matter of inflicting, commuting and collecting fines the provisions of Act X of 1928 are to be duly applied.

A People's Court may stipulate the confiscation of a specified quota of the property or of certain items of the property instead of the total property of a person sentenced.

A sentence pronouncing confiscation of property must for the purpose of its being carried into effect be communicated to the inland revenue office territorially competent to act, which shall proceed as provided by Ordinance of the Minister of Finance.

A person sentenced to forfeiture of office shall lose the post held by him in the public service. He shall not forfeit his claim to a pension or his pension or bounty allowance, unless the People's Court expressly includes in its sentence a stipulation to that effect. The claim to pension allowances of the dependents of a person who has been sentenced may be maintained intact by a People's Court; in that case, when determining the amount of pension allowances claimable, the person sentenced must be regarded as subject to the same criteria as a person deceased on the day on which the sentence became valid in law. Forfeiture of office may be pronounced also in the case of a private employee holding a leading position. The pronouncement of this sentence shall not prevent the person thus sentenced from filling in the future a non-leading position in some private employment.

A person who has been sentenced to forfeiture of office may not subsequently - as provided by the stipulation to be made in its sentence by the People's Court - be employed in a public office or in a leading post in private employment at all or at least not for a specified period of time.

A person forbidden to engage in his occupation (profession) may not within a period of five years continue to engage in that occupation (profession) / the locality or localities expressly banned by the sentence of the People's Court.

The pronouncement of forfeiture of office or of a prohibition to engage in an occupation involves also the consequences specified in Points 3 and 4 of Section 55 of the Criminal Code -- the term for which those consequences are to be in force being determined in its sentence by the Court.

Where a criminal action involved the person suffering or his legal assign(s) in a critical situation, a People's Court may in its sentence require the person sentenced for such criminal act, if the owner of adequate means or the receiver of a sufficient income, to restore the undisputed loss or losses in a quota thereof; any claim in civil law exceeding the amount thereof may be recovered by ordinary legal process.

## Section 2

Section 5 of Order in Council No. 81/M.E. ex 1945 shall lose its validity and be replaced by the following provisions:-

Regarding the infliction of penalties the regulations hereinafter following shall be in force:-

A death sentence may be inflicted in cases in respect of which the death penalty is prescribed for the criminal act in question by the criminal laws or the present Order in Council and where the death penalty is the only sentence proportionate to the objective gravity of the criminal act and to the degree of the subjective guilt of the accused. The provisions of Section 32 of the Criminal Code may not be applied in procedure before a People's Court.

Where the present Order in Council determines various forms of punishment by imprisonment as applicable to any particular act, the most severe form of punishment by imprisonment determined as applicable to the act must be inflicted for the longest term permissible or a sentence of approximately such severity must be pronounced, in the event of the aggravating circumstances preponderating numerically or in respect of their relative importance (Section 90 of Criminal Code).

The shortest term of the mildest form of punishment by imprisonment applicable to the act in question which has been fixed in the present Order in Council must be actually or approximately applied in the event of the extenuating circumstances preponderating numerically or in respect of their relative importance. (Section 91 of Criminal Code)

If the extenuating circumstances of of such importance or so numerous that even the shortest term of the mildest form of punishment determined as applicable to the act in question which has been fixed in the present Order in Council would be disproportionately severe, the shortest term of the mildest form of punishment determined in the Criminal Code may be inflicted. A milder form of punishment may not be applied simply by reference to Section 92 of the Criminal Code.

Penal servitude may be inflicted instead of forced labour only in cases where the accused persons are by reason of their age or state of health unfitted for forced labour.

## Section 3

Section 7 of Order in Council No. 81/M.E. ex 1945 shall lose its validity and be replaced by the following provisions:-

The right of granting a pardon (reprieve) may not be exercised only in respect of a sentence of death and only if appealed for by the condemned person or the counsel for the defence -- except in the case of a general amnesty. A sentence of death may be commuted by reprieve to forced labour for life or, in the case of physical unfitness, to confinement for life in a convict prison.

The right of granting a pardon (reprieve) is reserved for the Supreme National Council.

Decisions of the Supreme National Council are taken on the basis of proposals



made by the Minister of Justice. The Minister of Justice shall submit his proposals in cases of appeal for a reprieve within two days of his receiving the papers relating to the case in question; and the Supreme National Council shall decide respecting an appeal for a reprieve within five days of the receipt of the appeal.

If the Supreme Council of People's Courts unanimously finds itself unable to recommend a condemned person as deserving a reprieve, it shall itself within its own jurisdiction and without forwarding the same for consideration to any other quorum reject his appeal for a pardon.

#### Section 4

Section 8 of Order in Council No.81/M.E. ex 1945 shall lose its validity and be replaced by the following provisions:-

With respect to any postponement of the carrying into effect of a sentence of imprisonment the provisions of Section 507 and of Paragraph 1 of Section 508 of the Criminal Procedure Regulations must be applied. The provisions of Paragraph 2 of Section 508 and Section 509 of the Criminal Procedure Regulations may not be applied. The right of deciding in the matter of a postponement shall rest with the Minister of Justice.

An interruption of the carrying into effect of a sentence of imprisonment may be ordained only in the event of a re-trial (Section 453 of the Criminal Procedure Regulations) and only by a People's Court. Sections 468 and 513 of the Criminal Procedure Regulations may not be applied.

#### Section 5

Paragraph 2 of Section 9 of Order in Council No.81/M.E. ex 1945 shall become invalid and be replaced by the following provisions:-

The period of prescription of political crimes (criminal acts) committed in the year 1919 and subsequently which resulted in loss of life, as well as of those criminal acts committed by way of the Press, the factual substance of which is determined in the present Order in Council - acts the punishment of which was impeded by the regime then in power - shall begin as from December 21st, 1944.

#### Section 6

Point 5 of Section 11 of Order in Council No.81/M.E. ex 1945 shall be replaced by a provision stipulating that those persons too are to be regarded as war criminals who -

5. In respect of their treatment of the inhabitants of occupied territories or of prisoners of war committed flagrant breaches of the rules of international law relating to war or who, abusing the power entrusted to them, behaved cruelly to the inhabitants of re-incorporated territories or who, in general, either at home or abroad, instigated, committed or took part in unlawful executions or torture of human beings.

Point 6 of Section 11 of Order in Council No.81/M.E. ex 1945 shall be supplemented by the provision that those persons too are to be regarded as war criminals who -

6. in print (in a writing multiplied in any manner whatsoever), in speeches delivered before assemblies or by broadcasting for any length of time engaged in a continuous and permanent activity calculated to seriously influence public opinion in favour of the country entering the war or an intensification of hostilities and to lead that public opinion into a course of action detrimental to the country's interests.

#### Section 7

Section 12 of Order in Council No.81/M.E. ex 1945 shall become invalid and be replaced by the following provisions:-

The following penalties may be inflicted as primary (chief) penalties for the acts enumerated in Points 1-6 of Section 11:-

- a) sentence of death, or
- b) forced labour for life - in cases of physical unfitness confinement for life in a convict prison - or,
- c) forced labour, the shortest term of which may not be less than ten years, - in cases of physical unfitness confinement in a convict prison for a term of 10-15 years.

#### Section 8

Point 1 of Section 13 of Order in Council No.81/M.E. ex 1945 shall be supplemented as follows: as a war criminal coming under this Point shall be regarded also a person who agitated in the manner specified therein in favour of entering the war.

Point 7 of Section 13 of Order in Council No.81/M.E. ex 1945 shall be supplemented as follows: as a war criminal shall be regarded also a person who

7. in any form whatsoever displayed or displays, furthered or furthers, an activity calculated to obstruct or undermine the post-war peace or co-operation of the peoples or to become the source of an international ~~scandal~~

#### Section 9.

Section 14 of Order in Council No.81/M.E. ex 1945 shall become invalid and be replaced by the following provisions:-

The following penalties may be inflicted as primary(chief) penalties for the acts enumerated in Points 1-7 of Section 13:-

- a) sentence of death, or
- b) forced labour for life - in cases of physical unfitness confinement for life in a convict prison -, or
- c) forced labour, the shortest term of which may not be less than five years - in cases of physical unfitness confinement in a convict prison for a term of 5-15 years, or
- d) imprisonment for a term of 5-10 years.

#### Section 10

Section 15 of Order in Council No.81/M.E. ex 1945 shall be supplemented by three additional Points(4,5 and 6), stipulating that those persons too are to be regarded as guilty of anti-democratic crimes who -

4. in print(in a writing multiplied in any manner whatsoever), in speeches delivered before assemblies(public speeches) or in broadcasting for any length of time engaged in a continuous and permanent activity calculated to seriously influence public opinion either for the purpose of propagating and strengthening fascist and anti-democratic tendencies or with the object of arousing or keeping alive racial or denominational(religious) hatred and to lead that public opinion into a course of action detrimental to the country's interests);

5. acted as informer to any official organ, party or social organisation serving the objects of fascist or anti-democratic endeavours or of the persecution of certain sections(classes) of society or supplied such with data;

6. by exploiting for their own ends the instruments of power of the fascist and anti-democratic régime committed criminal acts against public morality, property of personal liberty.

#### Section 11

Section 16 of Order in Council No.81/M.E. ex 1945 shall become invalid and be replaced by the following provisions:-



Unless some other legal statute prescribes the application to the act in question of a severer penalty, the following penalties may be inflicted as primary (chief) penalties for the acts enumerated in Point 1-6 of Section 15:-

- a) forced labour, the term of which may not be less than five years - in cases of physical unfitness confinement in a convict prison for a term of 5-10 years, or
- b) imprisonment for a term of 5-10 years.

#### Section 12

Section 17 of Order in Council No.81/M.E. ex 1945 shall become invalid and be replaced by the following provisions:-

As guilty of a crime against the people (an anti-democratic crime) shall be regarded also persons who -

1. made no attempt to prevent the committal of any of the acts specified in Point 2 of Section 15, though they had it in their power in the sphere of activity entrusted to them by law to do so;
2. without any coercive measures having been taken either directly or indirectly to compel them to do so, joined as members the Volksbund organised in Hungary by the Germans or accepted offices in any fascist or anti-democratic party, organisation or formation or as members of such functioned actively;
3. (the cases specified in point 6 of Section 11 and in point 4 of Section 15 respectively excepted) in print (in a writing multiplied in any manner whatsoever), before assemblies, by broadcasting or in any other way publicly agitated in favour of the introduction of measures injurious to the people or anti-democratic in character or spoke or wrote in favour of such after they had been taken;
4. without being coerced into doing so contributed to further propaganda aimed against the people or anti-democratic in character;
5. by their conduct prevented the expression of any anti-fascist (anti-<sup>anti-</sup>"Arrow Cross", <sup>anti-</sup>German, anti-war) opinion.
6. in respect of any of the acts enumerated in Section 11, 13 and 15 or in the present Section - the case specified in Section 378 of the Criminal Code being excepted - were guilty of compounding a felony as specified in Section 374 or Section 375 of the Criminal Code;
7. though having knowledge of someone having been guilty of or taken part in an execution or torture connected with (resulting from) an act coming under Point 5 of Section 11, fails to immediately report (denounce) that person to the authorities.

#### Section 13

Section 18 of Order in Council No.81/M.E. ex 1945 shall become invalid and shall be replaced by the following provision:-

Unless some other legal statute prescribes the application to the act in question of a severer penalty, imprisonment, for a term of 2-5 years may be inflicted as primary (chief) penalty for the acts specified in Points 1-7 of Section 17.

#### Section 15

Section 21 of Order in Council No.81/M.E. ex 1945 . shall become invalid and shall be replaced by the following provisions:-

In respect of the criminal acts enumerated in the closing paragraph of Section 20 - in the absence of the connection referred to therein - a People's Court shall not have jurisdiction, unless the act in question is of a political character.

Should there be a divergence between the opinion of the public prosecutor's



department competent to act under the Criminal Procedure Regulations and the People's Office of Public Prosecutions respectively as to whether the act in question is of a political character or not, the decision shall rest with the Chief Public Prosecutor.

#### Section 15

Section 22 of Order in Council No. 81/M.E. ex 1945 shall become invalid and shall be replaced by the following provisions:-

People's Courts shall also take proceedings in criminal cases of juvenile offenders.

Should a juvenile offender have committed the act in question after the completion of his fifteenth<sup>th</sup> year, the penalties enumerated in Section 3 may also be inflicted over and above the measures specified in Article IV of Chapter II of the Criminal Procedure Regulations. Nevertheless, sentence of death may only be passed if the juvenile offender concerned had at the time the act in question was committed, already completed his sixteenth year.

The secondary penalties enumerated in points 5-7 of Section 3 may be applied also in the case of juvenile offenders who have not yet completed their fifteenth year.

In proceedings before a People's Court no recourse may be had to reprimand and release on trial when dealing with a juvenile offender.

#### Section 16

The provisions of the present Order in Council contained in the foregoing Sections must be applied retrospectively also in those cases still under consideration in which no final judgment (valid in law) have been passed when the present Order in Council comes into force.

#### Section 17

Section 33 of Order in Council No. 81/M.E. ex 1945 shall be supplemented by the provisions that a People's Court too may ordain a previous (preventive) arrest and that a previous arrest may be extended on more than one occasion.

#### Section 18

In Budapest only one People's Court shall function, its jurisdiction to extend to the spheres of jurisdiction of the Budapest Criminal Court and the Pest District Court.

#### Section 19

Sections 39 and 41 of Order in Council No. 81/M.E. ex 1945 shall become invalid and shall be replaced by the following provisions:-

Local organisations of the people's Court Council shall comprise six members.

The local organisations of the five political Parties (Independent Smallholder Party, Hungarian Communist Party, National Peasant Party, Bourgeois Democratic Party, Social Democratic Party) united in the Hungarian National Independent Front and the local organisation of the Trade Unions Council shall - within eight days of the coming into force of the present Order in Council - nominate one Ordinary and two Supernumerary Members each to sit on each of the Councils the organisation of which has been ordained by the Minister of Justice. A People's Court Council shall be formed of the Ordinary Members nominated for the purpose. In the event of any Ordinary Member of a People's Court Council being prevented from attending sittings of his Council, the head judge shall call in the first of the Supernumerary Members on the list of that Party (Trade Union) of which the person prevented from attending is a Member. In the event of the said Supernumerary Member too being prevented from attending, the Supernumerary Member second on the respective list of nominees shall be called up, while in the event of his being prevented too a new nomination must be made.

No one may function as a People's Judge who had been sentenced for a crime, for an offence committed for lust of profit or for any act of a fascist character. In applying the present Order in Council persons sentenced for anti-fascist acts or for any of the acts specified in the so-called Jewish Laws must not be considered as "not having clean records".

When making nominations, declarations of the Members and Supernumerary Members thus delegated must be submitted in which, in full cognizance of their responsibility under criminal law they state that they are persons possessing clean records as interpreted in terms of the foregoing paragraph.

In the event of any of the political Parties amalgamated in the Hungarian National Independence Front not functioning actively at the seat of a People's Court, the vacant offices of Ordinary and Supernumerary Members shall be filled by the head judge, by drawing lots, from among the 5 persons recommended by each of the Parties functioning actively.

Persons nominated as Members or Supernumerary Members may not refuse to accept office.

The term of office of Members and Supernumerary Members shall be three months, but is renewable.

#### Section 20

Section 49 of Order in Council No.81/M.E. ex 1945 shall be amended as follows: the head judge may not express an opinion as to whether the committal of a criminal act is proven or not, unless requested to do so by at least one Member of the Council, while in the event of an equality of votes the head judge shall also vote (Section 49 Paragraphs 2 and 6)

#### Section 21

Section 53 of Order in Council No.81/M.E. ex 1945 shall become invalid and shall be replaced by the following provisions:-

Against a sentence of a People's Court the People's Public Prosecutor may appeal against the sentence passed (for greater severity to be applied). On the basis of an appeal filed by a People's Public Prosecutor a sentence may be modified also in favour of the person sentenced.

A person sentenced by a People's Court is not entitled to appeal at all in the event of his being declared guilty of any of the acts coming under Points 1-6 of Section 11, and may only appeal in other cases against a sentence of death or of imprisonment for a term exceeding five years.

An application for legal redress filed by a person sentenced - in whatever form or terms such application may be made is to be regarded as an appeal.

Apart from the procedure described in Section 6, the Counsel for the Defence may file an appeal only with the consent of the person who has been sentenced. And appeals made by the Counsel for the Defence are subject to the same restrictions as those made by a person who has been sentenced.

The Chief People's Public Prosecutor may join in an appeal made by a person who has been sentenced with the object of securing a severer sentence (Section 29 of Act X of 1928)

The closing Paragraph of Section 388 of the Criminal Procedure Regulations may not be applied in proceedings before a People's Court.

In the event of an appeal being filed against a judgment pronouncing the death sentence the People's Court concerned shall within eight days of the passing of the judgment submit the case to the Supreme Council of People's Courts. The motivation of a judgment of the kind must be presented orally on the occasion of the pronouncement of the sentence, and the judgment must be put in writing within three days. The Supreme Council shall within three days of the receipt of the papers fix a date as early as possible for the discussion of the case and take steps to have the evidence supplemented.



Where the present Section precludes an appeal against a sentence of death and the People's Court, proceeding as defined in Section 497 of the Criminal Procedure Regulations, decides that the condemned person does not deserve to be pardoned(rerieved), the death sentence must be executed within two hours.

In cases coming under the foregoing Paragraph the sentence must be put in writing immediately, together with a brief motivation thereof.

#### Section 22

The penalty for those deliberate criminal acts subject in terms of Sections 20 and 21 of Order in Council No.81/M.E. ex 1945 to the jurisdiction of a People's Court for which the criminal laws prescribe punishment by confinement(as first class misdemeanor) shall be imprisonment for a term corresponding to the term of confinement prescribed by law.

#### Section 23

If there are serious grounds for fearing that a person whom there is every reason to suspect of a crime coming within the jurisdiction of a People's Court will be alienating or hiding his property or of values belonging thereto frustrate the carrying into effect of the confiscation of his property, the People's Office of Public Prosecution shall ordain the attachment of his movables or the distraint respectively both of his personal and his real estate.

No appeal can be made against the ordaining of an attachment or distraint.

Rights acquired after the opening of criminal proceedings cannot be enforced against the Treasury in respect of property or items of property which has(have) been subjected to attachment or distraint; provided that the People's Court subsequently confiscated the property or items of property in question.

In other respects attachments and distraints respectively are subject to the application in due form of the provisions of the Criminal Procedure Regulations.

#### Section 24

Head judges of People's Courts and People's Public Prosecutors shall receive additional fees to be appointed by the Minister of Justice.

#### Section 25

The validity of the proceedings of People's Courts formed prior to the coming into force of the present Order in Council shall not be prejudiced by the circumstance that it(the said activity) was not in keeping with the provisions of Section 39 of Order in Council No.81/M.E. ex 1945: but the number of Members of Councils already functioning must within 8 days of the coming into force of the present Order in Council be raised to 6, as provided in Section 19.

#### Section 26

People's Courts shall without delay return to the Chairman of the respective Investigation Committee(for inquiring into past records) all matters referred to them - together with the decision taken by the respective Committee - prior to the coming into force of Order in Council No.1080/M.E.ex 1945.

Proceedings before the Budapest People's Court relating to appeals against decisions(findings) of Investigation Committees shall be taken as provided in the Regulations relating to procedure in Courts of Law.

#### Section 27

The present Order in Council comes into force on May 1st,1945.

Budapest,  
April 27th, 1945.

(signed) Béla Miklós

Prime Minister.



Annex III of Act VII of 1945

Order in Council No. 5900/M.E. ex  
1945 of the Provisional National  
Government

in re the supplementation of the regulations relating to proceedings against accused persons who are absent before People's Courts and to the conduct of public prosecution.

By virtue of the powers vested in them on December 22nd, 1944, by the Provisional National Assembly, the Ministry (Government) ordain as follows:-

1) (1) of Order in Council No. 81/M.E. ex 1945 (of the Jurisdiction of People's Courts Hungarian Gazette No. 3) is supplemented by the following provisions:-

Where according to the data of the trial the accused has been guilty of committing an act for the punishment of which the Legal Statutes now in force prescribe the death penalty, the absence of the accused shall not impede the infliction of the death penalty and the determination of the corresponding secondary penalties. Against a sentence of death passed in the absence of the accused no appeal may be filed at the time of the pronouncement of the sentence and that part of the sentence prescribing a fine or the confiscation of property respectively may be carried into effect. The accused must be brought before the People's Court immediately after he has reported himself or been taken into custody. The People's Court shall cross examine (give a hearing to) the accused at a public trial and shall decide in accordance with the result of such cross examination whether the death sentence shall be upheld or whether a new trial is to be ordained as provided in paragraphs 460-462 of the Criminal Procedure Regulations. Should the People's Court decide to uphold the death sentence, its judgment must be pronounced publicly without delay in the presence of the accused. The procedure to follow the pronouncement of the judgment is subject to the same regulations as in the case of the judgment passed on the basis of the trial held in the presence of the accused.

2) (24) of Order in Council No. 81/M.E. ex 1945 is herewith supplemented by the following provisions:-

The Minister of Justice may in certain cases entrust with the performance of the duties of Public Prosecutor also persons not members of the organisation of Public Prosecutors. A Public Prosecutor thus delegated shall within the sphere of activity entrusted to him enjoy the same rights as a Public Prosecutor proper (by profession). The fees payable to a Public Prosecutor thus delegated ad hoc shall be determined by the Minister of Justice in agreement with the Minister of Finance.

c) The present Order in Council comes into force on the day of its publication: its provisions must be applied also in those cases in progress in which no final decision has been taken by a court of first instance.

Budapest, August 1st, 1945.

(Signed) Béla Miklós

Prime Minister.

\*Annex IV of Act VII of 1945

Order in Council No. 6750/M.E.  
of 1945 of the Provisional  
National Government

(of the More Effectual Ensuring of the Office Discipline - Efficiency - of Public Officials).

By virtue of the powers vested in them on December 22nd, 1944, by the Provisional National Assembly, the Ministry (Government) ordain as follows:-

1) (15) of Order in Council No. 81/M.E. ex 1945 (10) of Order in Council No. 1440/M.E. ex 1945) is herewith supplemented by a new Point (7) branding as guilty of an anti-democratic crime -

7. that public official who deliberately commits a serious breach of his official duty and in particular fails to comply with the lawful service instructions of his superiors or mala fide carries them into effect <sup>at</sup> an inopportune moment or not in the prescribed manner, if his action seriously endangers the uninterrupted execution of the measures of the democratic Government or serves to materially impede the re-organisation of the country in a popular and democratic spirit.

2) Criminal proceedings for a criminal act specified in (1) can be instituted only on the basis of a denunciation made by the competent Minister. The previous (preventive) arrest of any accused person is subject to the consent (approval) of the competent Minister.

3) (16) of Order in Council No. 1440/M.E. ex 1945 may not be applied to any of the acts specified in (1)

The present Order in Council comes into force on the day of its publication.

Budapest, August 16th, 1945

(Signed) Béla Miklós

Prime Minister.

3rd March, 1947.

## BULGARIAN WAR CRIMES LEGISLATION

The following English translations of three Bulgarian War Crimes enactments (Decree No. 22 of October 6th, 1944, and two amendments) have been made available to the Secretariat by the United Kingdom Foreign Office.

## I.

## L A W - D E C R E E

for the trial by a People's Court those who were guilty of involving Bulgaria in the World War against the Allied Nation and of the crimes connected with the War.

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Art. 1. A People's Court shall be instituted for the trial of those who have committed criminal acts, as provided by this Law:

- a/. ministers of the Governments during the period January 1, 1941 to September 9, 1944;
- b/. deputies of the 25th Regular National Assembly and,
- c/. other civilians and army men.

Art. 2. The following persons shall be punished by a strict limited term or life imprisonment or by death and by a fine up to five million leva:

1. The persons who, after January 1, 1941, have exposed the safety of the State or have put in danger the interests of the nation, either by concluding international treaties with belligerent countries or by taking a decision to declare war and to wage war.
2. The leading personalities who, after June 22, 1941, have ordered actions violating the declared neutrality towards the Union of the Soviet Socialist Republics and in this way have aggravated the international position of Bulgaria.
3. The leading personalities who, in connection with the declaration of war and carrying it on against England and the United States of America, have not fulfilled their official duties and have failed to take appropriate measures in due time for the protection of the people and State against moral and material damages.
4. The persons who, within the country or abroad, from January 1, 1941 to September 9, 1944, by their actions, writings, speeches and otherwise, have contributed actively and essentially to the commission or execution of the above acts. +)
5. The persons who, after January 1st, 1941, within the old boundaries of the country, in Macedonia, Thrace or elsewhere, have taken advantage of their connections with the Administration or with the belligerent states, or of their official position in order to secure unlawful enjoyment of property benefits for themselves or for others.
6. The persons who have been in the service of Germany and her Allies and who, by discharging their duties, have contributed actively and essentially to the carrying out of the policy of these States to the detriment of the interests of the Bulgarian people.

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+ ) See amendment by Decree No. 49 of 1944 below under (II)



7. The persons who, during the same period, dispatched Bulgarian troops to Yugoslavia and Greece in order to pursue the National Armies of Liberation in these countries, as well as those leading army men who, by their acts or by their inactivity have been the cause of endangering our troops.

8. The persons who, within the country or abroad, in connection with the foreign or home policy carried on by the Governments after January 1, 1941, have ordered, encouraged or committed murders, heavy physical injuries, fires, robberies, pillages and tortures.

9. The persons who have served and have handed over willingly to the Police, Gendarmery and Army such information which had reference to the safety or important interests of the partisans or of the other fighters for national liberties.

10. Examining magistrates, public prosecutors and judges who, during the preliminary or court inquiry or by pronounced sentences, have displayed obvious partiality and have greatly exceeded their rights with the purpose of supporting the terror, lawlessness and violence to which the people were subjected.

Art.3. Those who have concealed or helped the escape of a person, about whom they knew, or judging from circumstantial evidence should have presumed, to have committed some of the crimes under this Law, shall be punished in the ordinary courts from five to fifteen years strict imprisonment; husband, wife, ascendant and descendant relatives, brother and sister are excluded from penalty.

Art.4. Those guilty of having committed crimes under this Law shall be deprived temporarily or for ever of the rights provided in Art.30 of the Penal Law. The Court shall resolve that the whole or part of the property of the condemned be confiscated for the benefit of the State treasury. The death of the person who has committed an act under this Law and which occurred before or after he had been indicated, shall not prevent the initiation and the conclusion of the prosecution and the passing of a sentence, in accordance with the preceding paragraph.

Art.5. The Ministerial Council, upon the report of the Minister of Justice, shall appoint a Chief People's Prosecutor and the required number of prosecutors. The Chief People's Prosecutor and the prosecutors, with the greatest possible urgency, shall collect the indictment evidence, bring the indictment against the accused, determine the bail, draw up the indictment act and maintain the indictment before the Court.

Art.6. The People's Court shall consist of: a/people's judges Bulgarian citizens of legal age belonging to both sexes, elected by the district committees of the Fatherland Front; b/ judges appointed by the country. Each district committee of the Fatherland Front shall elect thirty people's judges among the best citizens of towns and villages. +)

Art.7. The distribution of the People's Courts shall be made by the Minister of Justice, observing the following rules:

a/. One or more courts of thirteen members each shall be constituted for the trial of ministers and deputies; four of the judges shall be appointed, and the others would be those who had been indicated by the district committees. These courts shall hold sittings in Sofia. The senior judge among the appointed ones shall be the Chairman of the Court. +)

b/. For each district, courts shall be constituted whose number shall correspond to the number of the accused, and which shall consist of one appointed judge, as President, and four judges indicated by the respective district committee. These courts shall hold sittings in the district centres or, when the Minister finds it appropriate, in some of the county centres of the district.

c/. In case any of the appointed judges shall be prevented from taking part in the work of the Court, the Minister of Justice shall replace him by another.

Art.8. The indictment shall be forwarded to the respective Court which in turn shall hand copies of it to the accused. The latter shall be able to make their objections and to show evidence in their favour within seven days after the receipt of the copies.

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+) See amendment by Decree No.49 of 1944, below under(II)

The People's Prosecutor shall demand the delivery of the accused military persons from the War Minister.

Art.9. The Court shall fix the date of the hearing the case with the least delay. The court inquiry shall be carried out by the Court whose members shall act freely and according to their own judgment and conscience. Should some of the accused be absent, the hearing of the case shall take place in their absence.

Each accused is entitled to two defenders at most.

The Court shall clear out the law suits brought before it not later than 1st January, 1945. ++)

Art.10. After the conclusion of the court inquiry, the hearing of the prosecution, the defence and the last word of the accused, the Court shall pass sentence, motivated and subject to, no appeal or approval. The sentences shall be carried out without delay by the public prosecutors of the district courts.

Art.11. The People's Prosecutor shall issue orders for any disability and lien on the properties of the accused.

Art.12. Within a period of fifteen days from the day of the notice, the heirs of the persons affected by Art.4. III. of the present Law should declare before the People's Prosecutor the properties of the deceased. Third persons who own in their name or on any ground whatsoever hold in their possession properties of the accused under this Law, should declare them before the People's Prosecutor within a period of seven days from the day of the publication in the Official Gazette of a notice about it.

Art.13. Whoever shall not fulfill the obligation under the previous article or shall give incomplete and untrue information thereof shall be punished by the regular courts to strict imprisonment and shall be fined up to one million leva. The concealed properties shall be confiscated.

Art.14. All expropriations and establishment of ownership rights on properties of persons condemned by virtue of this Law, effected after June 1, 1944, shall by right be null and void as against the State.

Art.15. All properties transferred after January 1, 1941, to the wife, ascendant and descendant relatives, brothers, sisters, or descendant of the relatives shall be considered as belonging to the accused until the contrary shall be proved. The same shall refer to the properties acquired after the above date by the wife and minor descendant relatives except the properties acquired by rights of heirship.

Art.16. The present Law-Decree shall be enforced from the day of its publication in the Official Gazette.

Published by Decree No.22 in the Official Gazette, Number 219, of October 6, 1944 - Sofia.

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++) See amendment by Decree No.2 of 1945 under (III) below.

L A W - D E C R E E

for the amendment and supplementing of the Law-Decree for the trial by a People's Court of those who were guilty of involving Bulgaria in the World War against the Allied Nations, and of the crimes connected with the War.

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1. In Art.2, point 4 shall become point 10, and the period at the end shall be replaced by a comma, and the following words shall be added: "as well as to the persecution of the Jews".

Points 5 to 10 shall become respectively points 4 to 9.

2. The following words shall be added to Art.6, II: "Should in some district, the Courts, constituted in proportion to the number of the accused persons, be insufficient, the Minister of Justice shall be able to request the respective District Fatherland Front Committee to select an additional number of people's judges."

3. Art.7 letter "a" shall be changed as follows: "One or more Courts of thirteen members each shall be constituted for the trial of the regents, ministers, deputies, court advisers and high ranking clergymen and military persons; four of the judges are taken from those who are appointed, and the others - from those indicated by the district committees. These Courts shall hold sittings in Sofia. The senior of the appointed judges shall act as Chairman of the Court."

Published by Decree No.49 in the  
Official Gazette, Number 261, of  
November 24, 1944. - Sofia.



L A W - D E C R E E

for the amendment of the Law-Decree for the trial by a People's Court of those who were guilty of involving Bulgaria in the World War against the Allied Nations, and of the crimes connected with the War.

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Single paragraph: In Art. 9. al. IV, the words : "January 1, 1945 shall be replaced by the words: " March 31, 1945."

Published by Decree No.2 in the  
Official Gazette, Number 9, of  
January 12, 1945. Sofia.

Misc. 77  
February 27, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

TRIAL OF RUDOLF HOESS

The following letter has been received from Colonel MUSZKAT, Commissioner for Poland, and is circulated to Members for their information.

"Dear Colonel Ledingham:

I have been requested by my Government to inform the members of the United Nations War Crimes Commission that the trial of the former Commandant of Auschwitz concentration camp, Rudolf Hoess, will begin in Warsaw on March 11th, 1947, and it is expected to continue for several weeks.

If any of the countries represented on the Commission wish to send observers to this trial, it is requested that they should communicate with the Polish Embassy, so that the necessary arrangements may be made.

Yours sincerely,

(Signed) Marian MUSZKAT,  
Colonel."

UNITED NATIONS WAR CRIMES COMMISSION.

February 28th 1947.

TRIALS IN THE BRITISH ZONE OF GERMANY.

The Commission has been informed regarding the following trials:

RHEINE AIRFIELD CASE.

Heinz STELLPFLUG,  
August HACKETHAL,  
Karl HENKELHAUSEN,  
Friedrich HOCKSTAETTER,  
Franz SCHMITT,  
Walter KLOEPZIG.

The above named German nationals will be tried by Military Court on charges of committing sundry war crimes, namely, being jointly concerned in the killing of certain captured Royal Air Force, Empire and American airmen, prisoners of war.

This important war crimes trial will take place in the Garrison Theatre Osnabruck on March 7th, 1947 at 10.30 hrs.

NOAILLES CASE.

Helmut KNOCHEN.  
Hans KIEFFER,  
Richard SCHNUR,  
Otto ILGENFRITZ,  
Karl HAUG,  
Fritz HILDEMAN.

The above named German nationals are to be tried as alleged war criminals by Military Court at the Zoological Gardens Hall, 30.A. Hubertus Allee, Wuppertal, on Friday March 7th 1947 at 10.30 hrs.

The accused are charged with committing a war crime in that they near NOAILLES, Oise, France on or about August 9th, 1944, in violation of the laws and usages of war, were concerned in the killing of British parachute troops who were prisoners of war.

SCHANDELAH CASE.

The SCHANDELAH Labour War Crimes Trial in which the former Managers and Camp staff of the notorious SCHANDELAH Labour Camp were tried on charges of committing war crimes, namely, ill-treatment and killing of Allied nationals working for the Steineel Co. Ltd., at Schandelah between May, 1944 and April, 1945, was completed at BRUNSWICK on February 3rd 1947.

The findings and sentences passed on the nine former Managers and Staff of the Company and of the camp were as follows:-

Solms	WITTIG.	Guilty.	Death by hanging.
Hans	OHLEN.	Guilty.	10 years imprisonment.
Otto	HEFTER.	Not guilty.	Acquitted.

OVER.....



SCHANDELAH CASE (Cont)

Freidrich	EBSEN.	Guilty.	Death by hanging.
Karl	TRUSCHEL.	Guilty.	Death by hanging.
Erich	JAHN.	Not guilty.	Acquitted.
Johann	HEITZ.	Guilty.	Death by hanging.
Arthur	GROSSE.	Guilty.	Death by hanging.
Herbert	SCHIEFFELBEIN.	Guilty.	2 years imprisonment.

Jacob HAMM, another accused died on the night of 27/28 December, 1946 after a medical operation.

Witnesses for the prosecution came from Belgium, France and parts of Germany. Over 30 witnesses for the Defence were summoned to the hearing.

The trial opened on January 2nd, 1947, and was presided over by Lt. Col. E.C. Vander Kiste, a Permanent President of War Crimes Courts. The Judge Advocate was Mr. R.G.Dew, Barrister at Law.

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UNITED NATIONS WAR CRIMES COMMISSION

MISC. NO. 79

4th March, 1947

ORDINANCE REGULATING THE TRIAL OF MEMBERS  
OF CRIMINAL ORGANISATIONS IN THE BRITISH  
ZONE OF CONTROL IN GERMANY.

( ORDINANCE NO. 69 )

In the meeting of the Commission held on 29th January, 1947, M.122, the Secretariat undertook to circulate, as soon as it becomes available, the text of the Ordinance regulating the trial of members of criminal organisations promulgated for the British Zone of Control in Germany.

By the courtesy of Sir Alfred Brown, LL.D., Legal Adviser to the Control Office for Germany and Austria, a copy of Ordinance No. 69, in poster form, has been made available to the Secretariat. The Ordinance has not yet been published in the "Military Government Gazette" the last number of which (No. 15) contains only the Ordinances up to and including No. 68. It is possible that the text of Ordinance No. 69, which is herewith circulated for the information of members, will be amended before promulgation in the Military Government Gazette.

MILITARY GOVERNMENT - GERMANY

BRITISH ZONE OF CONTROL

ORDINANCE NO. 69.

Trial of Members of Criminal Organisations

WHEREAS by Article 10 of the Charter of the International Military Tribunal annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis signed at London on 8th August, 1945, by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics, it is provided (i) that in cases where a group or organization is declared criminal by the said Tribunal the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein

before national military or occupation courts and (ii) that in any such case the criminal nature of the group or organization is considered proved and shall not be questioned;

AND WHEREAS the International Military Tribunal set up under the said Charter at the first trial, held at Nuremberg, has declared to be criminal the members and officials of the groups and organizations(hereinafter called "the said Criminal Organizations") as set out in the First Schedule annexed hereto:-

NOW IT IS HEREBY ORDERED AS FOLLOWS:-

#### ARTICLE I

##### Establishment of German Tribunals of First Instance

1. German Tribunals of first instance(hereinafter called Spruchkammern) will be established for the trial and punishment of members of the said Criminal Organizations;
2. The number of the Spruchkammern will be determined by the Central Legal Office for the British Zone.

#### ARTICLE II

##### Establishment of a Zonal German Tribunal of Second Instance

3. A Zonal German Tribunal of Second Instance will be established to hear and determine appeals by the Prosecution and by the accused persons from the Spruchkammern on questions of Law. This Tribunal will consist of a number of Senates(hereinafter called Spruchsenate).The number of such Spruchsenate shall be determined by the Central Legal Office.

#### ARTICLE III

##### Composition of the Spruchkammern and Spruchsenate.

4. Each of the Spruchkammern will be composed of a Chairman who must be qualified to hold judicial office and two Lay Assessors. ite
5. Each of the Spruchsenate will be composed of a Chairman, who must be a Judge and two members, who must be qualified to hold Judicial Office.
6. The Chairman of the Spruchkammern and all members of the Spruchsenate will be nominated by the Central Legal Office in consultation with the highest legal administrative authority(Oberste Justizverwaltung) in each Land. The two Lay Assessors on each Spruchkammer will be nominated by the appropriate Land Government.
7. No former member of the N.S.D.A.P. nor any person who has held office in any affiliated organization thereof may be Chairman or member of the Spruchkammern or Spruchsenate.

#### ARTICLE IV

##### Prosecution and Charge

8. The preparation of cases against members of the said Criminal Organisations and the prosecution thereof shall be the responsibility of the Central Legal Office.
9. The accused persons will be charged with having been a member of a criminal organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, as specified in the Second Schedule to this Ordinance.



## ARTICLE V

### Penalties

10. Any person found guilty will be liable to any or all of the following penalties:-

- (a) imprisonment (Gefängnisstrafe) for a term not exceeding 10 years;
- (b) forfeiture of property; (c) fine.

## ARTICLE VI

### Mitigating Circumstances.

11. The Tribunals may take into account mitigating circumstances when determining the sentence to be awarded.

## ARTICLE VII

### Issue of Regulations

12. The Central Legal Office shall issue such regulations or orders as may be necessary or expedient for carrying this Ordinance into effect, including directions as to the maximum sentences to be imposed in relation to any rank or appointment held in any of the said criminal organizations, provided that in no cases shall any sentence of imprisonment exceed the maximum laid down in Article V hereof.

## ARTICLE VIII

### Effective Date

13. This Ordinance shall become effective on the 31st December, 1946.

BY ORDER OF MILITARY GOVERNMENT.

## FIRST SCHEDULE

### Group A: Leadership Corps

(i) Reichsleiter; (ii) Gauleiter; (iii) Kreisleiter; (iv) Ortsgruppenleiter; (v) Amtsleiter who were heads of offices on the staffs of the Reichsleitung, Gauleitung, or Kreisleitung. Those members holding the positions enumerated above who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, or who were personally implicated as members of the organization in the commission of such acts (excluding, however, those persons who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such acts).

This group does not include persons who had ceased to hold the positions enumerated above before first September, 1939.

### Group B: Gestapo and Sicherheitsdienst des Reichsführers SS (commonly known as the S.D.)

(i) All executive and administrative officials of Amt IV of the Reichssicherheitshauptamt (R.S.H.A.);

(ii) All executive and administrative officials concerned with Gestapo administration in department of the R.S.H.A. other than Amt IV;

(iii) Local Gestapo officials who served inside and outside Germany including members of the Frontier Police (but excluding members of the Border and Customs protection and members of the Secret Field Police who do not fall within subparagraphs (i) and (ii) above) unless they were employed by the Gestapo for purely clerical, stenographic, janitorial or similar unofficial tasks;

(iv) All officials of Amt III, VI and VII of the R.S.H.A.;

(v) All other members (Angehörige) of the S.D. including all local representatives and agents, honorary or otherwise but excluding honorary informers who were not members of the SS and members of the Abwehr who were transferred to the S.D.

Those members holding the positions enumerated above who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, or who were personally implicated as members of the organization in the commission of such acts (excluding, however those persons who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such acts).

This group does not include persons who had ceased to hold the positions enumerated above before first September, 1939.

Group C: S.S.

(i) Members (Mitglieder) of the S.S. including members of the Allgemeine S. Waffen-S.S. and S.S.-Totenkopfverbände (but excluding members of the S.S. Riding Units);

(ii) members of the different police forces who were members of the S.S.

Those persons who had been officially accepted as members of the S.S. as enumerated above who remained members of the organizations with knowledge that they were being used for the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, or who were personally implicated as members of such organizations in the commission of such acts (excluding, however, those persons who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such acts).

This group does not include persons who had ceased to belong to the organizations enumerated above before first September, 1939.

SECOND SCHEDULE

The Acts declared criminal by Article 6 of the Charter of the International Military Tribunal are:-

(a) Crimes against peace: namely, 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) War Crimes: namely, 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 persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane 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 within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.



Misc. 80  
March 5th, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

Proposals for a Priority List of War Criminals

by the Chairman of Committee I.

For some time I have been perturbed by the almost impossible task which faces the appropriate authorities in Germany and elsewhere, in tracing and apprehending all the accused who are listed by this Commission. In Committee I we have been accepting, as accused, persons against whom there exists a prima facie case of a war crime, but in many cases the war crime in question was not necessarily of a very heinous nature, and this practice has made our lists somewhat bulky.

I am fully aware that Governments must be left completely free to bring all their cases before the Commission, since it is most important that the picture of Nazi crimes, which is built up by the Commission, should be as complete as possible. For these reasons I consider that the present practice should continue unrestricted.

But the result is that the present list of war criminals issued by the Commission are too voluminous for the occupying authorities to handle; while the lists serve their full purpose in respect of surrender, they are of little practical effect for purposes of apprehension.

I would, therefore, like to suggest that a review should be made of all the cases which have been considered by Committee I, with a view to compiling a short list of war criminals, who are accused of having committed crimes of a truly grave nature, about which there is adequate first-hand evidence, while the identity of the criminal is well substantiated. Without this last element the tracing authorities will not have much chance of finding them.

I have recently discussed this matter with Colonel Draper of the Control Commission, and I asked him if it would be possible to make use of the German Police for **tracking** down a number of criminals short-listed by this Commission. The Kripo - the German Criminal Police - are a very efficient organisation; they have a system of entering the names and particulars of the ordinary domestic criminals in a Kripo book, which is circularised from Kripo Headquarters to every branch office, not only in the British zone, but in all other zones of Germany. Every tiny police station in Germany receives a copy of the particulars and the Kripo keep a regular check on the local inns and hotels, as well as on the inhabitants.

I understand, however, that the Kripo are already over-worked and under-staffed, owing to the amount of domestic crime (black market, fascist movement etc) and also because of the lack of officers who are not tainted with Nazi-ism. It is certain that if this Commission were to ask the Control Commission for permission to use the Kripo in the search for the odd 20,000 persons listed as criminals by the United Nations War Crimes Commission, the Control Commission would be unwilling to over-burden that organisation with such a huge amount of additional work, lest the administration of ordinary criminal justice in Germany be seriously delayed. They would, however, probably agree to trace a small number of accused, whose apprehension was considered to be a matter of priority.

Some members may wonder whether, in these circumstances it would not be better to recast the work of Committee I. The reason why I feel that Committee I should continue its work as in the past is that it may well be that criminals who are not on the priority list may, by chance, fall into the hands of the authorities, and provisions must exist for such



persons to be surrendered and tried. Moreover, the lists of suspects and witnesses should not be discontinued.

While leaving the work of Committee I to continue as it has done to date, I would like to put forward the following suggestions for the consideration of the Commission (and in this connection, I might add that I am personally willing to undertake any extra work which this may require):-

1. That National Offices should be asked to review their cases and specify which ones they consider to be of a really heinous nature and justifying priority treatment.
2. These cases should then be re-considered by Committee I, bearing in mind that the identification should be sufficient to give a reasonable chance of detention, and a new priority list of war criminals, wanted by all the states represented on the Commission, should then be issued.
3. This Commission should then ask the Control Commission for permission to use the organisation of the Kripo in the search for these men.
4. Eventually, further priority lists could be issued.

UNITED NATIONS WAR CRIMES COMMISSION.  
Progress report of War Crimes trials from data available on March 1st 1947.

MISC. 81.

March 10th 1947.

	Cases tried.	Accused Involved.	Death.	Imprisonment	Acquittal.	Remarks.
EUROPE: Countries whose reports comprise war criminals only.						
UNITED STATES: UNFET) UNMT )	174	838	233	481	124	as at 21.2.47.
BRITISH: BMOR MIF & BTA	194	653	149	309	196	as at 28.2.47.
FRANCE:	9	193	95	92	6	as at 1.1.47.
GREECE:	2	4	2	2	-	as at 31.1.47.
NORWAY:	-	16	11	5	-	as at 16.10.46.
YUGOSLAVIA:	3	47	34	13	-	as at 1.1.47.
TOTAL		1751	524	902	325	
EUROPE: Countries whose reports show war criminals and collabo- rators combined.						
CZECHOSLOVAKIA:	-	18496	362	13969	4165	as at 31.10.46.
POLAND:		4593	631	1840	2122	as at 1.7.46.
TOTAL		23089	993	15809	6287	
FAR EAST:						
UNITED STATES:	-	482	138	296	48	as at 21.2.47.
BRITISH:	203	680	231	368	81	as at 23.2.47.
AUSTRALIAN:	229	725	140	754	221	as at 1.2.47.
NETHERLANDS EAST INDIES:	30	35	16	19	-	as at 1.3.47
TOTAL		1922	525	1000	350	

19th March, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

NORWEGIAN WAR CRIMES LEGISLATION

(This English translation of the Norwegian law of December 12th, 1946 (No.14), was made available to the Secretariat by the Representative of Norway on the Commission, Mr. J. Aars-Rynning. A further document, explanatory to the present one, will be circulated in the near future).

The Norwegian Law on the Punishment of Foreign War Criminals

The following law was passed by the Storting on December 12th, 1946 (No.14), and sanctioned by the King on December 13th, 1946. The law was promulgated in No.44, of the "Norsk Lovtidend" (Norwegian Law Gazette) on December 31st, 1946.

§ 1.

Acts which, by reason of their character, come within the scope of Norwegian criminal legislation are punishable, according to Norwegian law, if they were committed in violation of the laws and customs of war by enemy citizens or other aliens who were in enemy service or under enemy orders, and if the said acts were committed in Norway or were directed against Norwegian citizens or Norwegian interests. In accordance with the terms of the Civil Criminal Code § 12, paragraph 4, with which should be read § 13, paragraphs 1 and 3, the above provision applies also to acts committed abroad to the prejudice of Allied legal rights or of rights which, as laid down by Royal proclamation, are deemed to be equivalent thereto.

§ 2.

Confiscation of property, requisitioning, imposition of contributions, illegal imposition of fines, and any other form of economic gain illegally acquired by force or threat of force, are deemed to be crimes against the Civil Criminal Code, § 267 and § 268, paragraph 3.

§ 3.

In the case of crimes referred to in § 1 above, the sentence of imprisonment may be doubled, and penal servitude may in all such cases be substituted for imprisonment. The collection of fines from a convicted defendant or his heirs is subject to the rules laid down in the Decree of December 15th, 1944, on the punishment of traitors.

A life sentence or capital punishment may be inflicted in all cases where:

- a. the act caused grave bodily injury, grave suffering, prolonged deprivation of freedom, or extensive damage to property;



- b. the act resulted in death, even though this outcome was not intended;
- c. chapters 21, 22, and 25 of the Civil Criminal Code were repeatedly violated; or
- d. particularly aggravating circumstances were present.

Fines may be imposed in addition to capital punishment or imprisonment. As regards the collection of fines from a convicted defendant or his heirs, the provisions of the Decrees concerning the punishment and financial liability of traitors are applicable.<sup>(\*)</sup>

§ 4

The attempted commission of any crime referred to in § 1 of the present law is subject to the same punishment as an accomplished act. Complicity is likewise punishable.

§ 5

Necessity and superior order cannot be pleaded in exculpation of any crime referred to in § 1 of the present law. The court may, however, take the circumstances into account and may impose a sentence less than the minimum laid down for the crime in question or may impose a milder form of punishment. In particularly extenuating circumstances the punishment may be entirely remitted.

§ 6

In deciding whether cases concerning crimes referred to in § 1 of the present law are to be dealt with by the Court of Appeal (Lagmannsrett) or by the County Courts (Herredsrett) or Town Courts (Byrett), the power to increase punishment which is provided in § 3 of the present law should not be taken into consideration.

§ 7

The present law shall come into force forthwith.

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(\*) As is stated in the explanatory memorandum to the present law, issued by the Ministry of Justice and Police, this point was the only amendment proposed by the Ministry in their recommendation to the Storting for the supersession of the Provisional Decree of 4th May, 1945, by a formal Act of Parliament.

UNITED NATIONS WAR CRIMES COMMISSION.

Detention, Arrest and Handing Over of War Criminals in Austria.

(Note by the Secretary to Committee III)

- I. In Doc. Misc. No. 65, the provisions enacted by the Four Powers occupying Austria as far as they relate to the treatment of war criminals, have been circulated and annotated. In the quoted document, reference was made particularly to Art. V, paragraph 7 of the Four-Power Agreement dated Vienna, 28th June 1946.

Under this Agreement, the tracing, arrest and handing over of war criminals comes under the so-called reserve powers of the Allied Commission. In particular the Four-Power Agreement distinguishes between persons wanted by one of the four Powers or by the International Military Tribunal on the one hand, and persons wanted by other United Nations. In the case of persons wanted by one of the four Powers or by the International Military Tribunal, for war crimes or crimes against humanity, no condition is laid down for the tracing, arrest and handing over of such persons. In the case of persons wanted by other United Nations for war crimes or crimes against humanity, it is laid down that they will be traced, arrested and handed over if they are included in the lists of the United Nations War Crimes Commission.

- II. On 23rd December 1946, the Allied Council for Austria gave to the Austrian Minister of Justice more detailed instructions as to the detention, arrest and handing over of war criminals. The letter from the Allied Council to the Austrian Minister of Justice has been published in No. 13 of the Gazette of the Allied Commission for Austria, item 13. It reads as follows:

" 13. Detention, Arrest and Handing Over of War Criminals.

The Allied Council approved the following letter to be sent to the Minister of Justice:

1. The Austrian Government will be notified concerning the measures which it is necessary to take in regard to the persons you asked about in your letter.

2. The Austrian Government must submit regularly to the Allied Council, lists of all arrested war criminals. In regard to each person mentioned in the list submitted by the Austrian Government, it is necessary to be guided by the following general principles:

(a) If this person is looked for by an organization acting on behalf of the Four Powers, or by one of the Four Powers, the Austrian Government will have to submit to the Allied Council any information concerning the guilt of the given person which is at the disposal of the Austrian Government. The Allied Council may then give the Austrian authorities an order about his arrest and his immediate delivery to the authorities of the Government which are looking for him. If within the period of two meetings of the Allied Council following the day of the receipt of the information by the Allied Secretariat there is no decision by the Allied Council, then the High Commissioner of the zone where the war criminal is, may give an order for his arrest.

(b) If the person is sought by any other member of the United Nations, and if he is also included in the list of the United Nations Commission on War Criminals, the measures indicated in sub-paragraph (a) will apply to him.

(c) If the person does not fall under the two preceding sub-paragraphs, but comes within the jurisdiction of the Austrian Government, the latter will have the authority to try him with the reservation that the proceedings and the punishment will be subject to the control of the Allied Council.

3. Supplemental information concerning special cases mentioned in your letter will be sent to you.

Vienna, 23rd December, 1946."

As will be seen from paragraph 2(b) of the Allied Council letter, the inclusion of persons in the list of the United Nations War Crimes Commission is again stated as a condition for the handing over of persons to an Allied State other than one of the four occupying Powers.

III. In No.1 (14) of the Gazette of the Allied Commission for Austria, there is published an instruction sent by the Executive Committee on behalf of the Allied Council to the Federal Chancellor for Austria on 31st January 1947 concerning the disposal of 17 war criminals, two of them being listed on the Commission's list, and 15 not listed. The letter to the Federal Chancellor reads as follows:

" 9. Disposal of 17 War Criminals.

The Executive Committee, on behalf of the Allied Council, sent the following letter to the Federal Chancellor:

With reference to the letter of the Minister of Justice of 20th July 1946 (No. 20.886/46) addressed to the Chairman of the Allied Council for Austria and to the Allied Council's instructions in reply (SECA/702), the Allied Council directs that you be informed as follows:

Two of the individuals listed, namely Ignaz Hans Berger and Josef Kunert, are wanted by the Czechoslovak Government and their names appear in the list of the United Nations Commission on War Criminals.

The Allied Council directs that those individuals be handed over as soon as possible to the Czechoslovak Government for prosecution, as provided in the Allied Council's letter under reference. The Allied Council will inform the Czechoslovak Government of this.

Concerning the other 15 persons mentioned in the letter, who are detained by the Austrian authorities on charges of war crimes, you are advised that those individuals are not at present included in the United Nations War Criminals List. However, the Allied Council has no objections to decisions by the Austrian authorities that these persons be extradited to the interested countries as contemplated in the letter of 20th July 1946, but in each case it is necessary promptly to notify the Allied Council.

Vienna, 31st January, 1947."



1st April, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

NORWEGIAN WAR CRIMES LEGISLATION

(The following material, relating to and explaining the Norwegian Law of December 13th, 1946 (No. 14) (already circulated in Misc. No. 82), has been furnished by the Norwegian Representative on the Commission, Mr. J. Aars-Rynning).

EXPLANATORY MEMORANDUM

In proposing this Law to the Storting, the Ministry of Justice and Police made the following statement:

"Acting in accordance with § 17 of the Norwegian Constitution<sup>(\*)</sup> and the resolution adopted by the Storting at Elverum on April 9th, 1940, the Government in London on May 4th, 1945, promulgated a Provisional Decree (Provisorisk Anordning) on the punishment of foreign war criminals.

The Provisional Decree reads as follows: ...."

(The Decree has the same wording as the Law by which it has been superseded (see Misc. No. 82) apart from the provision regarding the imposition of fines in § 3 (see footnote on p. 2 of Misc. No. 82) which was first introduced by the new Law)

The Ministry issued the following statement in explanation of their recommendation regarding the Provisional Decree:

- I. A war crime in the widest sense of the term is, according to international law, any hostile or harmful act committed by a belligerents' soldiers or civilians which can legally be punished by the other side. This wide conception of the term, which has not taken root in common usage, is unfortunate and misleading. The term includes not only misdeeds which every civilised belligerent must regard as deplorable and try to counteract, e.g. plunder, atrocities, the use of poison or forbidden weapons, etc, but also acts which, far from being criminal in the usual sense of the word, are on the contrary to be regarded, from a patriotic point of view, as noble and highly moral, as e.g. acts of sabotage undertaken by the population of the occupied territory.

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(\*) "The King may make or repeal regulations concerning commerce, customs, trade and industry, and police; they must not, however, be at variance with the Constitution or the laws passed by the Storting".

As regards the essential differences between the various categories of war crimes, it has become the practice to distinguish between four groups of such crimes:

1. violations of the laws and customs of war, committed by members of the armed forces or by other persons attached to these forces,
2. military acts committed by persons not belonging to the armed forces or by those who, according to international law, belong to the same category (non-belligerents),
3. espionage and war treason,
4. marauding.

Only crimes of group 1 are considered as war crimes in the strict sense of the word and are to be discussed in this connection. Such offences as are mentioned in groups 2 - 4 might happen in connection with the liberation of Norway in the event of more wide-spread military operations taking place. However, as far as such violations are concerned, it may be taken for granted that they are already sufficiently covered by Chapters 8 and 10 of the Military Criminal Code.

As mentioned above, war crimes in the strict sense of the word (group 1) consist of violations of the "laws and customs of war". As to these acts, the description "criminal" is fully appropriate. The moral valuation is here independent of whether the act is considered from the enemy's point of view or from that of the delinquent's own countrymen. This view has been expressed in various treaties, but most clearly in the Geneva Convention of 1929, dealing with the sick and wounded. The signatories to the treaty solemnly promise therein to initiate appropriate legislation with a view to avoiding violations of the Convention in war time, if their present national criminal legislation does not cover such acts (Art. 29). Analogous regulations are to be found in Articles 1 and 3 of the Hague Convention IV regarding the laws and customs of land warfare.

The violations of the laws and customs of war are primarily a breach of specific treaty provisions regarding warfare, particularly the Hague Convention IV with its appended regulations for land warfare (Hague Regulations). Among further treaties which limit the belligerents' freedom of action, the two Geneva Conventions of 1929, dealing with the treatment respectively of prisoners of war and of the sick and wounded, are particularly important. Those international customs of war that have taken root and have been commonly recognised in the relations between states should be regarded as supplementary to the international laws laid down in treaties. Land, sea and air warfare have, however, in no way been exhaustively regulated by treaties or by recognised customs of international law. In the absence of explicit regulations, one has, according to the Hague Regulations IV, to resort to "the principles of the law of nations, derived from the usages established among civilised peoples, from the laws of humanity, and from the dictates of the public conscience".

It appears from the above that doubt may sometimes prevail as to whether an act is to be regarded as a war crime. One must not, however, exaggerate the difficulties that may arise in this connection. It may be taken for granted that whenever the question of prosecution arises in practice, the case will leave no doubt in that respect.

As an illustration of the question, a list of the most prominent war crimes is given below. The list was worked out for the use of the peace conference in 1919, and is now, if possible, even more topical, and has accordingly been accepted as a basis for the United Nations War Crimes Commission. (The list is quoted in full in the original text of the explanatory memorandum).

International law asserts that violations of the laws and customs of war are crimes and are punishable as such. In other words, the authority to prosecute has been sanctioned by international law and comes into effect as soon as a state of war exists. As a result there is no question of punishment with retroactive effect in this respect, even though the provisions of the national criminal code applicable to war criminals may have to be promulgated after the crime was committed. International law does not set out any detailed regulations on procedure or on the substantive law regarding the prosecution of war criminals. This has been left to national legislation, subject to the limitations which follow from commonly recognized basic principles of civilised justice. International law sanctions capital punishment and any other form of punishment not at variance with it.

- II. The reckless brutality that characterised the Axis Powers' methods of waging war and their excessive use of power in occupied territories, had the effect, early in the war, of making the punishment of war criminals a predominant question in Allied countries. Public opinion was voiced, and with the experience of the previous war in mind, a public demand arose that this time the war criminals should not escape their well-deserved punishment. Already on October 25th, 1941, Winston Churchill declared that the punishment of war criminals was one of "the main war aims of the Allied countries". On September 8th, 1942, he declared in the House of Commons among other things .....(Quotation).

Similar ideas were voiced on various occasions by other Allied statesmen.

A solemn declaration on the punishment of war criminals was made on January 13th, 1942, by the governments of those Allied countries whose territories had been occupied by the Axis powers (St. James's Declaration quoted).

The clearest and most weighty proof of the Allied unshakable determination to call the war criminals to account is given in the Moscow Declaration of November 1st, 1943, which includes the following passages: (Quotation)

An important link in the preparation for dealing with the war criminals is the work that is being carried out by the United Nations War Crimes Commission. The Commission was set up in accordance with a resolution adopted at a Foreign Office meeting of the diplomatic representatives of most of the Allied countries which took place on October 20th, 1943. Norway has been represented in the Commission by Ambassador E. Colban, assisted by a special office under the Ministry of Justice, as far as the investigation side of the work is concerned. The main task of the Commission is the listing of war criminals who have been charged by the countries on whose territory or against whose citizens the crimes have been committed. The condition for listing is that prima facie evidence can be supplied to show that the suspected person is guilty of war crimes. The lists are intended to furnish the basis for security measures, imprisonment, surrender of war criminals, etc., to be initiated by the Allies when the military resistance of the enemy has been overcome.



Apart from this, the Commission has dealt with questions of a more general juridico-political character connected with problems of war crimes. Thus the Commission has adopted a draft for an inter-Allied convention regarding the surrender of war criminals (and traitors). Further, the Commission has adopted a draft convention on the setting up of an Allied Tribunal to deal with war criminals in whose cases it would be inappropriate to take proceedings in the country where the crimes were perpetrated. The Commission has also initiated various practical steps which are of importance in view of pending investigations, detentions etc., relating to war crimes.

Up till now (May, 1945), Norway has submitted to the Commission over 300 charges against German war criminals whose crimes have been committed in Norway or against Norwegian citizens. All these charges have been accepted and the names of the criminals have been put on the Commission's lists of war criminals. The Norwegian charges concern among others Reichskommissar Terboven and his closest associates, the Generals Falkenhorst Rendulic and Rediess, as well as all members of the German Police in Norway who are known to be guilty of having committed torture or other crimes, or who must be regarded as responsible for such offences. Those who initiated the plans for, and carried out, the destruction in Finnmark have all been included. The same applies to all superior officers of the German forces stationed there in the autumn of 1944.

III. The situation which will face Norway when dealing with the German war criminals may be assumed to be as follows:

With the cessation of hostilities, the authorities will have in their possession the names (particulars of identity) and preliminary evidence concerning several hundreds of Germans who have officially been listed as guilty of war crimes committed in Norway or against Norwegians. As regards some of those who can be characterised as "travelling specialists in torture for the Gestapo", it may happen that other Allied countries have equally strong or even stronger claims. The same applies to the comparatively few cases so far known, where crimes have been committed against Norwegian prisoners of war or internees in Germany, Poland or other countries outside Norway. The majority, however, have committed their crimes in Norway, so that there is every reason to expect that their trials will be held there.

Obviously it is impossible to predict where the guilty men will be when the collapse comes. The development of the war may be such that the majority of them will at that time still be in Norway. Many, no doubt, will have been transferred to Germany or will have escaped there. And it is possible that some may have tried to find refuge in neutral countries, particularly Sweden.

Whatever the situation in this respect may be, it will not be of any decisive consequence. According to the rulings laid down and the plans fixed - at the Moscow Conference and on other occasions - those war criminals who ought to be tried in Norway will, pursuant to the Allied decision, be surrendered to Norway, there to be called to account for their crimes. It is not likely that exceptions will be made regarding war criminals who have succeeded in escaping to neutral countries. It is hardly likely that toleration will be shown to neutral states, in such cases, if they maintain their right to give asylum, cf. the note of the Allied Big Powers of August, 1943, to the neutral countries.

One must therefore expect and be prepared to see the prosecution and trial of a considerable number of German war criminals in Norway very soon after the liberation. Even if some sort of inter-Allied tribunal

for the punishment of war criminals is to be established - though the prospects for this are not very hopeful - it will not have any noticeable effect in this connection. In the event of such a tribunal being set up, it will only deal with those cases which are not suitable for treatment in any particular Allied country. It is agreed upon and has been repeatedly stressed as a guiding principle that the war criminals should, as far as possible, be tried and punished in the country in which the crimes were committed. Norwegian public opinion entirely agrees with this view.

Consequently it is necessary to take into consideration the question whether Norway is sufficiently prepared to meet the situation as far as procedural and criminal law are concerned.

(a) Regarding the rules of procedure in cases against war criminals to be dealt with by Norwegian courts, any further initiation of legislature is hardly required in addition to what has already been undertaken. The Provisional Decree of February 16th, 1945, has laid down special rules of procedure for cases against traitors. The Act introduces rules of procedure which will expedite and simplify matters by transferring the cases to special judges and special sections of the courts. It is obviously justifiable and expedient that these rules of procedure should be employed in cases against foreign war criminals, particularly as § 1, 1d of the said Decree makes them applicable to cases dealing with "crimes punishable according to criminal clauses covering offences committed during the war by enemy nationals or other foreigners employed by the enemy or under his authority".

(b) As to the already existing provisions of criminal law which can be applied, the situation is as follows:

The Moscow Declaration assumes that the war criminals will be tried and punished "in accordance with the laws of the liberated countries". This assumption is obviously based on the same conception of international law as is maintained above under point I of this memorandum, where it is stated that it has been laid down by international law that violations of the laws and customs of war are crimes and are punishable as such, but that at the same time international law has, with certain limitations, left it to national legislation to fix the extent of the punishment and to set out the more detailed conditions of criminal responsibility.

According to the legal systems of certain Allied countries, the position is said to be that the prosecution of war criminals is based directly on international law. The matter is regarded as being outside national criminal legislation. When the court determines that the offence is, according to international law, to be regarded as a war crime, it decides according to its discretion on an appropriated punishment, up to the death sentence.

Even though the present situation is quite extraordinary and unforeseen, such an interpretation is unfamiliar to the Norwegian conception of law. Norwegian courts can only inflict punishment according to provisions of Norwegian civil or military law. The principle laid down in § 96 of the Constitution<sup>(\*)</sup> must be interpreted in this connection so as to make an arbitrary application of an undefined provision of international law inadmissible. In Norway, international law is not

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(\*) "No one may be convicted except according to law, or be punished except according to judicial sentence".



incorporated into national law as an integral part, as is the case in various foreign legal systems. Before a rule of substantive international law can be applied by Norwegian courts, it must be incorporated into Norwegian national law by a special act. A clear example of this is § 92 of our military criminal code, which fixes the punishment for a typical war crime committed by enemy soldiers. The paragraph is based on the international regulations which are to be found in the Geneva convention of 1929, regarding the treatment of sick and wounded; cf. § 23 f, of the Hague Regulations. The fact that the passing into law of a special criminal clause was regarded as necessary illustrates the point of view expressed above.

There are very few provisions in Norwegian criminal law directly concerned with foreign war criminals. Apart from the clause mentioned above, there is only § 92 of the Military Criminal Code and some provisions in chapter 10 of the same code.

As far as most war crimes are concerned, however, there is no need for special criminal clauses. This applies mainly to the most serious and important crimes. The great majority of the offences which can be punished as war crimes are, in their nature, covered by clauses of the Norwegian civil and military criminal codes already in force, and can, if necessary, be supplemented by criminal clauses from other special laws.

The problem is consequently reduced to the question whether Norwegian criminal law is sufficient to cover the extraordinary situation with which we are faced, whether the forms of punishment laid down by the laws already in force are adequate, whether the established conditions of criminal responsibility can be applied here and how far the definition of the punishable offence befits the crime committed.

1. As regards the question whether the methods and forms of punishment set out in Norwegian criminal law are adequate, it may be said that already at an early stage of the war a considerable extension of the possible degree of punishment was initiated. The amendment made by the Provisional Decree of 22nd January, 1942, to the civil criminal code, chapters 19, 21 and 22 has laid down:

"Crimes committed as long as Norway is in a state of war may be punished by death, according to clauses of the Civil Criminal Code, Chapter 19 (sexual crimes), Chapter 21 (crimes against personal integrity) and Chapter 22 (murder, manslaughter, assault and injury to health), they can be punished by a life sentence".

It appears from the explanatory memorandum that the Provisional Decree aims mainly at those German nationals in the service of the occupational powers who have assaulted, murdered and ill-treated Norwegian patriots.

The Ministry, however, consider that the limited possibilities provided by the Decree of applying the death penalty for the above mentioned crimes are insufficient. The Ministry further take it for granted that in many cases the demand will arise for the application of longer terms of imprisonment than those now authorised. When the Criminal Code of 1902 was promulgated, a situation like the present could naturally not have been foreseen. Consequently the Civil Criminal Code will not suffice when it has to be applied to war crimes which are of a different character from the corresponding criminal acts described in the law.



An examination of war crimes committed in Norway during the occupation, compared with the criminal legislation already in force, leads to the following conclusions as regards desirable changes in the terms of punishment:

- (a) There ought to be an unambiguous provision in the law for the application of the death penalty or life sentence for repeated or particularly flagrant instances of unwarranted deprivation of freedom (as defined by Civil Criminal Code § 223 and § 224).
- (b) The same applies to unpremeditated manslaughter, attempted murder (as defined by Criminal Code § 223) and repeated ill-treatment and torture, even though "considerable bodily injury" has not been inflicted (Civil Criminal Code § 229 and § 232).
- (c) The same applies to particularly flagrant instances of rape and sexual intercourse and perversities with children under 14, even though the conditions specified in § 192, paragraph 4, and § 195, paragraph 3, do not apply.
- (d) The same applies to particularly serious cases of destruction of property, e.g. the burning down of whole cities and villages as reprisals or in furtherance of the "scorched earth policy" (see Civil Criminal Code §§ 148 and 292).
- (e) The same applies to criminal acquisition of property of a particularly extensive character, particularly the total draining of the country's economic resources (see Civil Criminal Code § 266 and onwards).

A contributory argument in favour of an overall expansion of the terms of punishment is the inadequacy of the existing provisions regarding the repetition of crimes. It has been laid down, inter alia, in § 62 of the Criminal Code that:

"If several kinds of crime, each punishable by different terms of imprisonment, have been committed by the same person by one or several acts, the terms of imprisonment passed must exceed the minimum term of the gravest crime, but must in no case exceed its maximum term by more than a half".

It is obvious that the regulation referred to above cannot be applied to war criminals. It was founded on the supposition of a normal social life, where the police and criminal courts are available instantly or very soon afterwards whenever a more serious crime has been committed. This was not the case during the occupation. German perpetrators of violence continued for several years their criminal activity unrestrained. As a result a considerable number of them, making use of their high position, increased their guilt by systematically committing whole series of the most appalling crimes.

It could be specifically laid down that § 62 of the Civil Criminal Code should not apply in trials of foreign war criminals. The Ministry, however, hold in the circumstances that an overall increase of the terms of punishment is a better solution when applied to the most serious war crimes and in cases of repeated offences.

2. A French decree of 28th August, 1944, concerning the punishment of war criminals has, in order to facilitate the incorporation under the French Criminal law of the various categories of war crimes, considered it necessary to give special guidance on this point. Article 2 of the decree reads as follows (quoted in full in the original text)....(\*)

In the Ministry's view, it is hardly necessary for Norway to follow the same procedure as is employed in the French decree except perhaps in some isolated cases. The majority of the crimes mentioned under Nos. 1 - 8 in the second article of the decree quoted above, could without difficulty be included within the scope of settled provisions of Norwegian criminal law. There should be no doubt that an execution carried out as a means of reprisal constitutes murder (§ 244 of the Civil Criminal Code). It is equally clear that the employment of prisoners of war or civilians as living buffers against enemy forces can be classified as murder, manslaughter, inflicting bodily injury, etc. Collective fines (contrary to the Hague Regulations), requisitioning, confiscation and the like must be regarded as theft. Any employment of prisoners of war or civilians contrary to the regulations of international law, illegal conscription for forced labour, internment, deportation, etc., are to be regarded as illegal deprivation of freedom.

Thus it is hardly necessary for Norway to initiate new criminal legislation. It ought to be left to the criminal courts to pass adequate sentence based on the already existing penal clauses and taking into consideration the special circumstances of war. There is little reason to think that this would cause unsurmountable difficulties. It can be assumed that the prosecution of war criminals will primarily comprise those who have held leading positions or have taken an active part in murder, manslaughter, torture, ill-treatment, illegal deprivation of freedom, plunder and indiscriminate destruction of property. In such cases there will rarely be any doubt that they can be covered by provisions of criminal law which allow for sufficiently severe sentences. Certain war crimes of an economic nature which have been a part of the systematic exploitation of the country, form a separate group as far as the terms of punishment are concerned. Acts like the excessive issue of currency notes, unreasonable fixing of prices, irresponsible exploitation of clearing agreements, etc., can hardly be assimilated with any particular crime already defined and covered by the law. If criminal prosecution against those individually responsible in this connection should arise, it is deemed necessary to give certain instructions to those administering the law. Those regulations, however, should be given a very comprehensive though general form, considering the very different economic transactions which may arise in this connection.

The general provisions in the first part of the Civil Criminal Code are, according to § 1 of that Code, applicable to all criminal acts unless otherwise stipulated. As a rule the same provisions should apply to foreign war criminals. There are, however, some isolated cases where special directions are deemed necessary:

#### Superior orders.

It is to be expected that defendants will frequently plead having acted solely on superior orders without having had the chance of considering whether or not his act was permissible according to international law and whether it constituted an act of "lawful warfare".

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(\*) See Document Series, No. 26.



The question of the legal consequences of an act committed on superior orders has been widely discussed. As to the attitude of international law, it may be taken for granted that the fact that the act was committed under superior orders is not eo ipso exculpatory. This question must be decided by the national legislation.

In Norwegian Civil Criminal Law no general provisions have been made as to the plea of superior orders, but a special clause has been provided in § 24 of the Military Criminal Code which reads:

"The plea of superior orders in the course of duty - if the subordinate does not exceed the order - is exculpatory unless he knew or could reasonable be expected to have known that he, by executing the order, was a party to an act at variance with the law. In any case the court has the right to inflict a punishment below the fixed minimum or a more lenient form of punishment".

The Civil Criminal Code has no corresponding provision. Consequently the principle of the said law is that the general provisions of chapter 5 concerning "the possible reasons for a mitigation of punishment" are applicable to persons whose acts have been determined or influenced by an order. Chapter 5 comprises various provisions which can be applied to such cases. The most general of them is § 58, which in the case of several people being involved, provides the right to reduce the punishment for those whose complicity has mainly been caused by their subordinate or dependant position. § 56, paragraph 1, deals with the plea of having acted under pressure or in self-defence. Superior orders will, in many cases, give the subordinate justifiable reason to believe that the act was in accordance with the law, which fact may cause exemption from punishment or mitigation thereof, cf. §§ 42 and 75.

In connection with the prosecution of war criminals by Norwegian courts, resort will have to be made to the principles laid down in the Civil Criminal Code. § 24 of the Military Criminal Code cannot be applied.

In short, it has been laid down in the Civil Criminal Code that a superior order is not eo ipso exculpatory. It may, however, be taken into consideration and may lead to a mitigation of punishment. In reality there is no objection to this provision and it does not differ much from the solution which has been internationally accepted - among others by the United Nations War Crimes Commission. In order, however, to avoid unnecessary arguing, the Ministry are of the opinion that this provision should be clearly and unambiguously laid down as a separate provision. At the same time it is deemed advisable to allow for a complete exemption from punishment under particularly extenuating circumstances.

#### Necessity.

The question as to the legal consequences of acts dictated by necessity is closely connected with the preceding problem. If a defendant pleads superior orders, he will also have - and with justification - the alternative plea of necessity; i.e. he may claim that, although he knew the act was unlawful, it was an act of emergency, since, if he had not committed it, he would have been exposed to the severest disciplinary punishment.



§ 47 of the Civil Criminal Code provides that "no one can be punished for an act undertaken in order to save life or property when the circumstances justify his regarding the peril as extremely grave in comparison with the damage caused by his act". In short, according to this clause, an act is regarded as legally justifiable when performed as a necessity.

Naturally there is a certain limit as to the extent one can intrude on other people's legal rights in order to further one's own interests.

It is commonly accepted that there can never be a question of sacrificing someone else's life in order to save one's own. In the case of minor bodily injuries inflicted on others in the attempt of saving one's own life, or by sacrificing somebody else's property for the same purpose, however, the conflicting interests concerned may be taken into consideration.

The Ministry are of the opinion that the exclusion of arguments based on this provision of § 47 is fully supported and justified by the special character of war crimes. It cannot possibly be admitted as a defence that a German soldier or policeman has ill-treated Norwegian civilians, devastated and burned Norwegian property, etc. in order to save himself from criminal or disciplinary punishment. There may, however, be important reasons for the mitigation of, or even complete exemption from, punishment.

The above-mentioned reasons lead to the conclusion that the provisions as regards necessity should be of the same character as mentioned earlier in connection with the plea of superior orders. Provisions covering both the plea of superior orders and the plea of necessity can easily be combined and drawn up in one common provision.

Based on the preceding guiding principles, the Ministry have worked out a draft for a Provisional Decree on the punishment of foreign war criminals. As to the further details of the proposal, the Ministry refer to the special notes given below under Section IV.

#### IV. Notes on the Individual Provisions of the Draft.

##### § 1.

The paragraph begins by laying down that the Decree only applies to war crimes in se, cf. Section I. The expression "the laws and customs of war" is used in the wider sense comprising the whole body of international law regarding warfare, i.e. apart from the Hague Regulations and other specific conventional regulations; it includes the rules and precepts laid down by usage and commonly accepted principles of international law. It is to be expected that the question whether an act is at variance with the laws and customs of war or is a "lawful act of war" will in many cases give rise to doubt. The question has to be decided independently by the courts which have the advantage of being able to consult the legal practise of other Allied countries.

The individuals to whom the Decree applies are "enemy citizens or other foreigners employed by the enemy or those who have been under enemy authority". The expression is in conformity with that used in § 1, 1d, of the Provisional Decree of 16th February, 1945, concerning the legal procedure against traitors. The Decree has mainly in mind the persons employed by the German civil administration, the military and the police. The Decree also applies to German civilians who have been admitted to Norway during the occupation and who have used their special status in a criminal way. The same applies to foreigners,

regardless of nationality, who have voluntarily entered the country in order to work in German public or private enterprises. Foreign slave labourers and Allied prisoners of war or internees naturally do not come under the Decree.

The general provisions as to the applicability of Norwegian criminal law have been laid down in §§ 12-14 of the Civil Criminal Code. As to the geographical limitations, the Decree is much more comprehensive than the criminal legislation of many other countries, e.g. that of Great Britain. Norwegian criminal law is thus to a great extent adaptable to criminal acts committed by foreigners abroad. Atrocities perpetrated against Norwegian prisoners of war or internees in Germany are in general covered by § 12, 4a of the Civil Criminal Code. The same applies to more serious crimes in the economic field. Consequently it does not involve a considerable extension when § 1 of the Decree makes Norwegian Criminal law applicable to war crimes committed against Norwegian interests, regardless of the fact that they were committed abroad.

It may be desirable to leave open the possibility of exceptional cases of war crimes committed abroad against foreigners being prosecuted in Norway, e.g. cases against members of the Gestapo who have been detained in Norway but who previously have been active in Poland, Czechoslovakia, etc. As to such cases Norwegian criminal laws need not be more extensive than are the provisions laid down in the Civil Criminal Code. The trial of such criminals should, for reasons of international policy, only be made in accordance with special agreement with the powers concerned. It has been found advisable to include special provisions in the Decree in this respect in order to make it clear that the judicial competence of the court in regard to war crimes committed abroad has not been internationally limited by the wording in the first point of the paragraph. The provision laid down in § 13, point 2, of the Civil Criminal Code, is not applicable to war crimes and has thus been omitted.

In referring to legal rights which are equal to Allied legal rights, one has particularly had in mind:

- (a) Danish citizens and their economic interests, and,
- (b) neutral citizens in Norwegian or other Allied armed forces or employed in other Allied war work.

## § 2.

The above-mentioned French Decree of 28th August, 1944, - apart from giving a series of legal interpretations - has chosen to enumerate those provisions of the Civil and Military Criminal Codes which are expected to be of immediate importance. The Ministry hold that little is gained by this procedure as such enumeration can never be exhaustive. The French text itself clearly admits that this had not been the case.

The German economic exploitation of Norway stands in this respect in a class by itself. Its scale and the forms in which it has been carried out lie in some respects so far beyond the usual conception of criminal law that it is difficult or even impossible to regard the different acts as being within the scope of existing provisions of the Civil or Military Criminal Codes. In order to amend this deficiency the Ministry consider it necessary to lay down a special provision which covers every kind of German exploitation in Norway performed by force or threat thereof; cf. the more detailed notes under Section IIIB, 2 above.



§ 3.

This paragraph authorizes the court to inflict a more severe set of penalties, where considered necessary, in punishment of war crimes; cf. the more detailed explanation given under Section IIIb, 1, above.

The criminal legislation passed by the Norwegian Government in London during the war has introduced penal servitude as a new form of punishment in addition to the former alternatives of imprisonment and confinement. Penal servitude was first introduced by the Provisional Decree of 3rd October, 1941, as an amendment to the Military and Civil Criminal Codes. A corresponding provision has later been adopted in the Provisional Decree of 15th December, 1944, dealing with traitors. More detailed provisions as to the forms of penal servitude have not yet been passed. The possibility of exploiting the labour of convicted war criminals under freer conditions must be regarded as being as desirable as it is in the case of convicted traitors. The Ministry, therefore, consider a supplementary provision to this effect necessary.

On the whole it is not deemed practicable to impose fines on war criminals. Exceptional cases may, however, arise, particularly if the convicted person has property or heirs in Norway. A special amendment to this effect is not considered necessary. According to the general regulations in Section II of the Provisional Decree of 3rd September, 1943, fines can now be imposed in addition to death sentence, imprisonment, etc. As to the collection of such fines, the regulations laid down in the Provisional Decree of 15th December, 1944, regarding traitors should be applied.

Point 2 of the paragraph enumerates cases where a life sentence or capital punishment can be applied. These provisions are very comprehensive, and, supplemented by the authority to impose death sentence derived from the Provisional Decree of 22nd January, 1942, they can be expected to provide for death sentence in every conceivable case where this could be desired.

The provision under § 3a, regarding the extensive destruction of property, has in mind particularly the devastation carried out by the Germans during their withdrawal from Finnmark. The wording has been taken from § 148 of the Civil Criminal Code, which, together with § 291 and onwards, are to be applied to the above-mentioned circumstances,

The provisions of § 3b provide against the rather rare cases where continuous ill-treatment has compelled the victim to commit suicide. The same must apply to cases where the mere threat of torture has had the same result.

§ 4.

The paragraph does not necessitate any special notes.

§ 5.

Reference can here be made to the comments made under IIIb, 3.

For the further clarification of the position, reference is made to the following proposal adopted by the London International Assembly of 21st May, 1943: (Points 1 - 3 quoted).



In § 3b of the proposal of the London International Assembly, it is particularly the Gestapo, the S.S. and the S.A. which have been borne in mind when organisations have been mentioned. There is no doubt that members of these organisations will be regarded as being in an unusual position: it is among them that the bulk of the most atrocious war criminals are to be found, though one should avoid declaring them distinctly and in so many words as outlaws.

The paragraph should naturally not be taken to mean that circumstances resulting from superior orders cannot be exculpatory. If the superior order has given the subordinate justifiable reason to believe that the actual circumstances of the act were other than they were, exculpation may be the consequence (cf. § 42 of the Civil Criminal Code).

§ 6.

As a rule, all cases concerning crimes which can be punished by more than five years of imprisonment are dealt with by the "Lagmannsrett" (one of the five courts of appeal, covering five different districts of Norway); cf. § 19 of the law of criminal procedure. If the right to increase punishment which is given in § 3 of the Draft of the Provisional Decree were viewed in the light of that rule, the judicial competence of the "Herredsrettene" (County Courts) and "Byrettene" (Town Courts) would be considerably restricted. There should be no justification for such restriction although it is to be expected that the bulk of the cases against war criminals will be prosecuted by the "Lagmannsrett".

In their recommendation to the Storting for the supersession of this Provisional Decree by a formal Act of Parliament, the Ministry set out further arguments:

The imposition of capital punishment on war criminals and traitors was sanctioned by the Storting in a law passed on 6th July, 1945.

It was the intention of the Ministry, when proposing the Decree of 4th May, 1945, that it should be given retroactive effect. The question whether a retroactive effect is at variance with the Constitution has been brought before the Supreme Court. In the plenary session of 27th February, 1946, - in the case against Karl Hans Hermann Klinge (No. 1764/N.G./30) - the Court ruled by nine votes to four that the retroactivity of the Provisional Decree could not be regarded as being at variance with § 97 of the Constitution, (\*) as the matter was regarded as being outside the field which this paragraph of the Constitution was intended to cover. The individual reasons of the majority were not exactly the same. There was, however, a unanimity of opinion as to the fact that the convicted person - who was sentenced to death on a charge of a series of grave instances of torture - was guilty of war crimes by having violated the laws and customs of war and the laws of humanity, crimes which at the time of their perpetration could, according to international law, be submitted to the severest forms of punishment. The majority of the judges did not find it necessary to decide whether the Norwegian courts, according to the provision in § 96 of the Constitution, are legally authorised to convict a war criminal in direct application of international law, as the Decree of 4th May, 1945, confirms the same provisions already sanctioned by

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(\*) "No law may be given retroactive effect".

international law, existing at the time of the perpetration of the crimes. They were satisfied that the main effect of the Decree was to vest the Norwegian courts with the authority to make use of the right of punishment already in existence under international law. Reference was moreover made to the fact that it was considered to be unreasonable that § 97 of the Constitution, which was enacted for the protection of the community, should be pleaded by alien intruders, citizens of a state which had assaulted this community with the intention of subjugating it, and, in pursuit of this end, had used the most reckless and brutal means. To admit such a plea would be a violation of the high principles which are the foundation of § 97 of the Constitution and the claim for justice which it supports. (\*)

As the question whether the retroactive application of the Decree is at variance with the Constitution has now been solved, the Ministry consider that the Decree should be superseded by an Act of Parliament and beg to propose such a law. The Attorney General has declared that he has no objections to the Decree being submitted to the Storting in its present form. Apart from the additional provision in § 3 of the Decree, the clauses of the proposed law have been given the same wording as the Provisional Decree. As the proposed law must be regarded as supplementary to our criminal legislation already in force, it is held that it should not be presented as a law with temporary duration only.

As was mentioned in the notes to § 3 of the Ministry's explanatory memorandum to the Provisional Decree, it may prove expedient to impose fines in addition to prison or the death sentence. The imposition of such fines has not been provided for in Section II of the Decree of 3rd September, 1943, which amends and supplements Chapter 2 of the Civil Criminal Code of 22nd May, 1902. The Ministry propose the repealing of the said Decree and its supersession by a new law amending § 27 of the Civil Criminal Code. It has been the intention that provisions for the imposition of fines in addition to prison or the death sentence should be incorporated into the various provisions of criminal law where deemed necessary.

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(\*) For a fuller account of this trial see Trial and Law Report Series, No. 30.

# UNITED NATIONS WAR CRIME COMMISSION

MISC. 85

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON APRIL 1ST, 1947.

April 9th, 1947.

	<u>Cases tried</u>	<u>Accused involved</u>	<u>Death</u>	<u>Imprisonment</u>	<u>Acquitted</u>	<u>Remarks</u>
Europe: Countries whose reports comprise War Criminals only.						
United States: USFET)	174	838	233	481	124	as at 14.3.1947
USMET)						
British: BAOR	204	682	159	326	197	as at 1. 4.1947
CMF & BTA						
France:	25	224	103	109	12	as at 1. 2.1947
Greece:	2	4	2	2	-	as at 31.4.1947
Norway:	-	16	11	5	-	as at 16.10.1946
Yugoslavia:	4	68	52	16	-	as at 1.2.1947
T O T A L:	-	1,832	560	939	333	
Europe: Countries whose reports show War Criminals & collaborators combined.						
Czechoslovakia	-	18,496	362	13,969	4,165	as at 31.10.1946
Poland:	-	4,593	631	1,840	2,122	as at 1. 7.1946
T O T A L:	-	23,089	993	15,809	6,287	
Far East:						
United States:	194	483	139	296	48	as at 14.3.1947
British:	217	704	236	384	84	as at 1.4. 1947
Australian:	229	725	140	364	221	as at 1.2.1947
Netherlands East Indies:	31	36	17	19	-	
T O T A L:	671	1,948	532	1,063	353	



UNITED NATIONS WAR CRIMES COMMISSION

April 14th, 1947.

TRIALS IN THE BRITISH ZONE OF GERMANY.

The Commission has been informed regarding the following trials:

HANNOVER AHLEM CASE.

Kurt Adolf KLEBECK  
Otto HARDER  
Hans Hermann Ernst HARDEN  
Wilhelm DAMMANN  
Stephan STREIT.

The above-named German nationals will be tried at Hamburg on April 16th, 1947, on the charge of being concerned in the ill-treatment of Allied National internees of the Concentration Camp at Hannover Ahlem, between November 1944 and April 1945.

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The following cases were tried on April 9th and 10th, 1947; the results have not yet been received.

HANNOVER GESTAPO CASE.

Reinhold BLUENNECKE  
Kurt RASCHE  
Adolf METHFESSEL  
Felix ZIESE  
Karl WOLTERS  
Alfred PEEK  
Wilhelm HEIDORN

The above were tried at BRUNSWICK on April 9th, 1947, on the charge of being concerned in the killing of Allied Nationals, internees and prisoners-of-war at SEELHORST, HANNOVER/DOEHREN, on or about 6th April, 1945.

ROTHENBURGSORT CASE.

Jochim STRUCK  
Paul Friedrich WILHEIMSEN  
Stanislaus PUSTKOWSKI

The above were tried at Hamburg on April 10th, on the charge of being concerned in the ill-treatment of an unknown Allied Airman at Hamburg Rothenburgsort, on or about 20th June, 1944.

SCHNABELHUCK CASE.

Josef GOEDDE.

The above was tried at Hamburg on April 10th, on the charge of being concerned in the ill-treatment of an Allied Airman in the vicinity of Schnabelhuck on 2nd November, 1944.

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Pg 30

Misc. No. 87.  
14th April, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

Polish War Crimes Legislation.

The Polish Minister of Justice has promulgated in the Polish Official Gazette the consolidated text of the Polish Decree of 31st August 1944 concerning the punishment of war criminals and traitors, as amended by subsequent enactments, and, similarly, the consolidated text of the Decree of 22nd January 1946, concerning the Supreme National Tribunal.

English translations of the Minister's proclamations to which the consolidated texts of the laws are scheduled are contained in this paper.

I.

Consolidated text of War Crimes Decree.

Proclamation of the Minister of Justice  
of December 11th, 1946.

(Official Gazette of the Republic of Poland, Warsaw,  
15th December, 1946, No. 69, item 377).

regarding the publication of a consolidated text of the Decree of 31st August 1944, concerning the punishment of fascist-hitlerite criminals guilty of murder and ill-treatment of the civilian population and prisoners of war, and the punishment of traitors to the Polish Nation.

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In accordance with Article 2 of the Decree of 10th December, 1946, concerning the changes in the Decree of 31st August, 1944 (Polish Official Gazette No. 69, item 376), I promulgate in the Schedule attached to this Proclamation the consolidated text of the Decree of 31st August, 1944, concerning the punishment of the fascist-hitlerite criminals guilty of murder and ill-treatment of the civilian population and of prisoners of war, and the punishment of traitors to the Polish Nation (Polish Official Gazette No. 4, item 16), in which also the changes arising out of the Decree of 16th February 1945 (Polish Official Gazette No. 7, item 29) and of the Decree of 10th December, 1946 (Polish Official Gazette No. 69, item 376), have been taken into account, and a consecutive numbering of articles has been applied.

The Minister of Justice:

Henryk Świątkowski.

Schedule to the Proclamation of the Minister of Justice,  
of December 11th, 1946, (item 377).

D E C R E E

Concerning the punishment of fascist-hitlerite criminals guilty  
of murder and ill-treatment of the civilian population and  
of prisoners of war, and the punishment of traitors to  
the Polish Nation.

Article 1.

Any person who, assisting the authorities of the German State,  
or of a State allied with it,

- (1) took part in committing acts of murder against the civilian  
population, members of the armed forces or prisoners of war; or
- (2) by giving information or detaining, acted to the detriment of  
persons wanted or persecuted by the authorities on political,  
national, religious or racial grounds,

is liable to the death penalty.

Article 2.

Any person who, assisting the authorities of the German State,  
or of a State allied with it, acted in any other manner or in any  
other circumstances than those indicated in Article 1 to the detriment  
of the Polish State, or of a Polish corporate body, or of civilians,  
members of the armed forces or prisoners of war,

is liable to imprisonment for a  
period of not less than three  
years, or for life, or to the  
death penalty.

Article 3.

Any person who, taking advantage of the conditions created by the  
war, compelled persons to act under threat of persecution by the  
authorities of the German State, or by a State allied with it, or acted  
in any other manner to the detriment of persons wanted or persecuted  
by the said authorities

is liable to imprisonment for a  
period of not less than three  
years, or for life.

Article 4, Para. 1.

Any person who was a member of a criminal organisation established  
or recognised by the authorities of the German State or of a State  
allied with it, or by a political association which acted in the  
interest of the German State, or a State allied with it,

is liable to imprisonment for a  
period of not less than three  
years, or for life, or to the  
death penalty.



Para. 2.

A criminal organisation in the meaning of Para. 1 is a group or organisation:

- (a) which has as its aims the commission of crimes against peace, war crimes or crimes against humanity; or
- (b) which while having a different aim, tries to attain it through the commission of crimes mentioned under (a).

Para. 3.

Membership of the following organisations especially is considered criminal:

- (a) the German National Socialist Workers' Party (National Sozialistische Deutsche Arbeiter Partei - NSDAP) as regards all leading positions,
- (b) the Security Detachments (Schutzstaffeln - SS),
- (c) the State Secret Police (Geheime Staats-Polizei - Gestapo),
- (d) the Security Service (Sicherheits Dienst - S.D.).

Article 5, para.1.

The fact that an act or omission was caused by a threat, order or command does not exempt from criminal responsibility.

Para.2.

In such a case the Court may mitigate the sentence taking into consideration the circumstances of the perpetrator and the deed.

Article 6.

To inform against or to hand over to the authorities of the German State, or of a State allied with it, persons wanted for a common crime is not punishable, provided the person responsible for giving information or handing over acted in the greater public or private interest.

Article 7.

When sentence is passed for a crime defined in the present Decree, the Court shall pronounce:

- (a) loss of public and civic rights,
- (b) forfeiture of all property of the sentenced person; the ownership of the forfeited property is to be taken over by the Treasury, with the proviso that the rights of third persons are to be safeguarded to an extent not exceeding the value of the forfeited property; the rights, however, arising from intestate succession, from provisions made in a will or from a donation made after the crime has been committed are not to be taken into account; the forfeiture does not apply to objects excluded by law from seizure; all legal acts made with the purpose of saving the property from forfeiture are null and void.

Article 8.

The provisions of Articles 6 and 61 of the Penal Code of 1932 and of Articles 57 and 185 of the Military Penal Code are not applicable to criminal acts defined in the present Decree.

Article 9.

The provisions of the present Decree are applicable to criminal acts committed between September 1st 1939 and May 9th, 1945.

Article 10.

The provisions of the Decree of October 17th, 1946, concerning the abolition of Special Criminal Courts (Polish Official Gazette No. 59, item 324) are applicable to the criminal acts defined in the present Decree.

Article 11.

The provisions of Articles 1 - 9 are also applicable to persons who come under the jurisdiction of Military Courts.

Article 12.

The execution of the present Decree is entrusted to the Ministers of Justice, National Defence and Public Security.

Article 13.

The present Decree comes into force on the day of its publication.

II.

Consolidated text of the Decree concerning the  
Supreme National Tribunal.

Proclamation of the Minister of Justice  
of October 31, 1946

(Official Gazette of the Republic of Poland, Warsaw,  
17th November, 1946, No. 59, item 327.)

regarding the publication of a consolidated text of  
the Decree of 22nd January, 1946, concerning the  
Supreme National Tribunal.

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In accordance with Article 3 of the Decree of 17 October, 1946, concerning the changes in the Decree of 22nd January, 1946, on the establishment of the Supreme National Tribunal (Polish Official Gazette No. 59, item 325), I promulgate in the attached Schedule the consolidated text of the Decree of 22nd January, 1946, concerning the Supreme National Tribunal (Polish Official Gazette, No. 5, item 45), in which the changes arising out of the Decree of 17th October, 1946, have been taken into account, and a consecutive numbering of articles has been secured.

The Minister of Justice:

Henryk Świątkowski.

Schedule to the Proclamation of the Minister of Justice  
of October 31st, 1946, (item 327).

D E C R E E

on the establishment of the Supreme National Tribunal.

By virtue of the Law of 3rd January, 1945, concerning the procedure as to the issuing of decrees with the force of Laws (Polish Official Gazette, No. 1, item 1), the Council of Ministers enacted, with the concurrence of the Praesidium of the National Council, the following:

Article 1.

The Supreme National Tribunal and the Office of the Prosecutor at the Supreme National Tribunal are hereby established. Their seat will be the same as that of the Supreme Court.

Article 2.

1. The Supreme National Tribunal is to consist of the President and the Judges.
2. The Office of the Prosecutor at the Supreme National Tribunal is to consist of the First Prosecutor and other Prosecutors of the Supreme National Tribunal.

Article 3.

1. The President of the Supreme National Tribunal will be the First President of the Supreme Court.
2. The judges, the First Prosecutor and other Prosecutors of the Supreme National Tribunal are to be appointed by the Praesidium of the National Council on the recommendation of the Minister of Justice, from among persons possessing judicial qualifications.
3. The performance of judicial functions at the ordinary courts will not prevent the performing of judicial functions at the Supreme National Tribunal.
4. The performance of prosecuting functions at the ordinary Courts will not prevent the performing of prosecuting functions at the Supreme National Tribunal.
5. The list of lay-judges will be compiled by the Praesidium of the National Council from among the deputies.
6. The Praesidium of the National Council may recall the judges, prosecutors and lay-judges; a professional judge or a lay-judge may be recalled only on the recommendation of the President of the Supreme National Tribunal.
7. Officials of the Secretariat are to be appointed either by the President or by the First Prosecutor of the Supreme National Tribunal.

Article 4.

1. The Supreme National Tribunal will sit in public sessions with three professional judges and four lay-judges and in private sessions with three professional judges and no lay-judges.



2. The sessions of the Supreme National Tribunal are to be presided over by the President of the Supreme National Tribunal or by a judge assigned by him.

3. The votes are to be ascertained by the presiding judge, who will start with the youngest in age and cast the last vote himself.

Article 5.

1. In discharging the functions described in the present Decree, the judges, the first Prosecutor and the other Prosecutors of the Supreme National Tribunal are to have the same rights and duties as the judges, the First Prosecutor and the other Prosecutors of the Supreme Court.

2. In discharging their functions the lay-judges are to be independent and subordinate only to the laws; at the trial, they will have the rights and duties of a professional judge who is a member of the Tribunal.

Article 6.

The following crimes are to be within the jurisdiction of the Supreme National Tribunal:

1. Crimes envisaged by the Decree of 22nd January 1946, concerning the responsibility for the defeat of Poland in September, 1939, and for fascist activities in public life (Polish Official Gazette, No. 5, item 46.)

2. Crimes committed by persons, who, in accordance with the Moscow Declaration signed by the United States, the U.S.S.R. and Great Britain, will be surrendered to the Polish authorities, with the exception of cases which the Prosecutor of the Supreme National Tribunal will transfer to the Prosecutors of the District Courts, taking into account, as far as practicable, their territorial competence.

Article 7.

Cases transferred to a District Court in accordance with Article 6, para.2, are to be tried by a tribunal consisting of as many judges as are envisaged in the Decree of 13th June, 1946, concerning crimes, particularly dangerous in the period of national reconstruction (Polish Official Gazette, No. 30, item 192); the trials are to be conducted in accordance with the provisions of that Decree, with the proviso that Article 11 of the present Decree applies accordingly.

Article 8.

Trials before the Supreme National Tribunal are to be conducted in accordance with the provisions of the Code of Criminal Procedure, unless the provisions of the present Decree determine otherwise.

Article 9.

1. In cases coming within the jurisdiction of the Supreme National Tribunal, the Prosecutor of the Supreme National Tribunal may order the arrest of the accused or impose other movement restrictions. A complaint against the Prosecutor's decision may be lodged with the Supreme National Tribunal.

2. Investigation of crimes may be conducted by the Prosecutor of the Supreme National Tribunal directly, or through the Prosecutors of District Courts, the public security authorities, or the militiamen; or some parts of the investigation may be entrusted by him to the juges d'instruction or to the County Court judges.

2. The sessions of the Supreme National Tribunal are to be presided over by the President of the Supreme National Tribunal or by a judge assigned by him.

3. The votes are to be ascertained by the presiding judge, who will start with the youngest in age and cast the last vote himself.

Article 5.

1. In discharging the functions described in the present Decree, the judges, the first Prosecutor and the other Prosecutors of the Supreme National Tribunal are to have the same rights and duties as the judges, the First Prosecutor and the other Prosecutors of the Supreme Court.

2. In discharging their functions the lay-judges are to be independent and subordinate only to the laws; at the trial, they will have the rights and duties of a professional judge who is a member of the Tribunal.

Article 6.

The following crimes are to be within the jurisdiction of the Supreme National Tribunal:

1. Crimes envisaged by the Decree of 22nd January 1946, concerning the responsibility for the defeat of Poland in September, 1939, and for fascist activities in public life (Polish Official Gazette, No. 5, item 46.)

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3. At the instance of the Prosecutor of the Supreme National Tribunal an enquiry can be conducted. The examining magistrate to whom the motion has been submitted by the Prosecutor of the Supreme National Tribunal shall have jurisdiction to conduct the enquiry.

4. The provisions of Articles 164, paras. 1, 169, 171 and 172, of the Code of Criminal Procedure, and those concerning the rights to object to the indictment shall not apply.

Article 10.

In order to make the impending penalty of confiscation or fine effective, the Prosecutor of the Supreme National Tribunal may seize during the investigation the whole or part of the accused's property. An appeal against the Prosecutor's decision may be lodged with the Supreme National Tribunal.

Article 11.

Any records taken during the preliminary investigation and any public or private documents may be read at the trial.

Article 12.

1. At the trial, the defendant must appear with counsel. If he does not appoint one, the President of the Supreme National Tribunal is to appoint a counsel ex officio from among the advocates residing in Poland.

2. Any Polish citizen may be appointed counsel by the defendant; if, however, the latter seeks to appoint counsel from among persons not mentioned in Article 86 of the Code of Criminal Procedure such an appointment must be authorised by the President of the Supreme National Tribunal.

3. Any person appointed counsel ex officio is entitled to a remuneration for the duties performed and the loss of time involved; the amount is to be fixed according to the discretion of the Supreme National Tribunal.

Article 13.

1. The fact that the person to be indicted has not been apprehended is no bar to lodging the indictment and to holding the trial in his absence. The judgment will not be regarded as having been given in absentia.

2. In cases envisaged in para. 1:

(a) the accused's father, mother, guardian, husband, wife, children, brothers or sisters shall have the right to appoint counsel;

(b) any trial concluded by a valid sentence may be re-opened in favour of the person found guilty if new facts and fresh evidence, previously unknown to the Tribunal, are submitted, provided that they establish either in themselves or in conjunction with other facts or evidence, that he is not guilty or has been sentenced for a crime graver than that which he actually committed.

Article 14.

1. The judgment of the Tribunal must always be prepared in writing giving the reasons on which it is based.



2. The sentence can be pronounced only after the judgment and its reasons have been finally drafted. The time limit envisaged in Article 367 of the Code of Criminal Procedure is 7 days.

Article 15.

1. The judgments and decisions of the Supreme National Tribunal are to be final.
2. The person sentenced shall have the right to appeal for mercy to the President of the National Council. In cases where sentence of death is passed the President of the Supreme National Tribunal shall transmit the files of the case immediately to the Minister of Justice who in turn shall submit them for decision, together with the opinion of the Supreme National Tribunal to the President of the National Council.

Article 16.

Sentences and decisions of the Supreme National Tribunal are to be carried out by the Prosecutor of the District Court on the request of the Prosecutor of the Supreme National Tribunal.

Article 17.

On the re-opening of a trial in which the sentence was passed by the Supreme National Tribunal, only that Tribunal may come to a decision.

Article 18.

The execution of the present Decree is entrusted to the Ministers of Justice and of Public Security.

Article 19.

The present Decree comes into force on the day of its publication.

(Translation by Dr. J. Litawski, Legal Officer.)

Misc. 88

April 21, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

CORRESPONDENCE AND DISCUSSIONS

between

THE UNITED NATIONS AND THE

UNITED NATIONS WAR CRIMES COMMISSION

on the Secretariat Level

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1. Note from the Acting Secretary General of the United Nations to the Secretary General of the United Nations War Crimes Commission, Colonel G. A. Ledingham dated 22 July 1946

New York. 22 July 1946.

"The Acting Secretary-General of the United Nations presents his compliments to the Secretary-General of the United Nations War Crimes Commission and has the honour to inform him that in accordance with the Resolution of the Commission on Human Rights, adopted by the Economic and Social Council on the 21st June, 1946, he has been requested to make arrangements for:

"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;"

(Document E/56/Rev.2 Par.4(c) ).

The Acting Secretary-General would be grateful, therefore, if any information and records in the possession of the War Crimes Commission could be made available to him."

2. Letter from Colonel Ledingham to the Acting Secretary-General of the United Nations dated 1 August 1946.

London. August 1st, 1946.

"Sir:

I have the honour to acknowledge with thanks, receipt of your letter dated 22nd July, relating to the collection and publication of information concerning human rights arising from trials of War Criminals. For your information, I beg to acquaint you in general terms with the class of material which this Commission has collected, the type of research work and the examination of charges it has been engaged on since its formation.

1) The United Nations War Crimes Commission has, since its establishment in 1943, been collecting information on crimes committed before and during the second world war, inter alia against human rights, and fundamental freedoms, including crimes emanating from racial, religious and political discrimination.

Until the liberation of the European Continent, the material collected by the appropriate department of this Commission (Research Office) was based on documents and information then available. After the occupation of Europe by the United Nations, this collection of material has been continued from the enormous mass of documentary material and evidence which then became accessible.

2. Since its establishment, the Commission has dealt with and examined, charges brought by its member governments involving approximately 18,500 accused.

3) At the same time, the United Nations War Crimes Commission made a number of recommendations to its member governments relating to the substance and procedure of the retributive action of the United Nations. Many of these recommendations have, in one form or

the other, been given effect to by the Allied Powers.

4) When, by the Four-Power Agreement of 8th August, 1945 and the attached Charter, the International Military Tribunal was established, the United Nations War Crimes Commission made the problems involved in the Charter the subject of careful studies through its competent Committee. It was particularly the notion of crimes against humanity as defined in Article 6(c) of the Charter of the International Military Tribunal which was examined particularly thoroughly in the course of these investigations.

5) When the retributive action of the allied nations actually began, namely, when the International Military Tribunals at Nuremberg and Tokyo, as well as the municipal and occupation courts of its member governments, started to function and trials of war criminals were actually being conducted on a considerable scale, the United Nations War Crimes Commission made arrangements for the collection and examination of all these trials. It has, at the time of writing, collected approximately 250 transcripts, records and reports of war crimes trials conducted by the courts of its member governments, in addition to the material concerning the Nuremberg and Tokyo trials.

The Commission has received a considerable number of trial reports inter alia of British, United States, French, Canadian, Australian, Polish and Czechoslovak courts. The appropriate Committee of the Commission and the Commission's legal staff have been examining this material.

6) The Commission is publishing Law Reports of Trials of War Criminals containing summaries of the trials and a comment on each case prepared by the Secretariat. The first volume of this series will appear shortly.

7) In addition, the Commission is sponsoring the publication of full reports of selected trials through a British legal publisher's firm.

I am instructed to inform you that the United Nations War Crimes Commission is prepared to give the Economic and Social Council of the United Nations every assistance in implementing the Resolution of the 21st June, 1946, mentioned in your letter of 22nd July, 1946, and to make available all the material and documents at its disposal. It would however be advisable to make arrangements regarding the most fitting and convenient procedure to be adopted for the examination of the great amount of material which is available.

It is suggested, that if a representative of the Commission on Human Rights could come to London, the whole matter could then be fully discussed and the material and documents referred to examined.

I am to add, that the Chairman of this Commission would welcome the opportunity to establish contact with the Secretary-General of the United Nations, who I understand, is at present in Europe. If a meeting could be arranged before his return to the United States, it would be possible to discuss this and other matters of common interest.

I have the honour to be  
Sir  
Your obedient Servant,

Sgd. G.A. Ledingham, Colonel,  
Secretary-General."



3. Note on an interview between Mr. Trygve Lie, Secretary-General, United Nations, the Chairman (Lord Wright) and the Secretary-General (Colonel Ledingham), United Nations War Crimes Commission, at the Foreign Office on Thursday, 8th August, 1946 at 12 noon.

London, August 8th, 1946.

"The question arose out of two letters, one from the Acting Secretary-General of the United Nations to the Secretary General of the United Nations War Crimes Commission dated 22 July 1946, and a reply from the Secretary General of the United Nations War Crimes Commission to the Acting Secretary-General of the United Nations dated 1 August 1946, relating to the Committee on Human Rights.

The Chairman pointed out that there was a natural desire that the United Nations and the United Nations War Crimes Commission should, to a certain extent, and in a particular sphere, co-operate because the main object of the United Nations War Crimes Commission was to eliminate or reduce the risk of war or to insure the proper conduct of war if war could not be avoided. The United Nations War Crimes Commission in the course of its operations had accumulated a great mass of information about war crimes of the second world war and was proceeding to publish law reports of the more important war trials and also had in its possession a mass of advisory opinions which it had expressed in connection with these matters. All that mass of material which was accumulated at the offices of the Commission, would be placed at the disposal of any representative of the United Nations who thought fit to come and inspect and use it. The whole matter was of a somewhat technical character and the Chairman suggested that the practical course at the present moment was to arrange in the future for a meeting between the expert and professional officers of both bodies in order to confer and agree upon the best method of co-operation.

It was pointed out that Dr. Liang who, it was understood, was Director of the Division of the Development and Codification of International Law in the Legal Department of the United Nations and would be in Paris for some time in connection with the Peace Conference. It was suggested that he might at some time in the future, come over and discuss matters at the Commission.

The Economic and Social Council of the United Nations was interested in the human rights aspect of the trials of war criminals and the material and advice available in the Commission might well be useful to that Council and its Committee on Human Rights.

Mr. Trygve Lie was in accord with this general statement of the position and it was left that arrangements should be made for a discussion between the representatives of the two bodies to bring about a meeting."

4. Letter from Mr. Trygve Lie to Colonel Ledingham dated 17th September, 1946.

New York. September 17th, 1946.

"Sir:

I have the honour to acknowledge the receipt of the very informative letter which you addressed to the Acting Secretary-General on 1 August, relating to the collection and publication of information concerning human rights arising from the trials of

war criminals, and I wish to thank you for your kindness in sending this information. I also appreciate the offer of the United Nations War Crimes Commission to give the Economic and Social Council of the United Nations every assistance in implementing the Council's Resolution of 21 June 1946, and to make available all the material and documents at the disposal of the Commission.

I assume from your letter that it would be quite impossible for you to send any appreciable part of this material to New York, although I imagine that any material which you actually publish, for example, the proposed series of law reports of the trials, could be sent here. In so far as the great bulk of the material is concerned, it would probably be necessary for the United Nations to have it examined in London by a representative of the Secretariat or of the Commission on Human Rights. It has not yet been possible to find a member of the United Nations Secretariat who could be sent to London for this purpose. I am, however, giving the matter my attention and will communicate with you in this connection later.

I note your suggestion that a representative of the Commission on Human Rights might come to London for the purpose of discussing the whole matter. Do you have in mind merely a preliminary discussion on the methods of dealing with the material, or are you suggesting that the discussion and examination of the material might take place at the same time? If you have in mind the first alternative, I might be able to arrange for the sending of a representative of the Secretariat to London in the near future.

I was very glad to have the opportunity of meeting Lord Wright when I was in London, and I am most grateful for your cooperation in all the questions where our two fields of work coincide.

I have the honour to be, Sir,

Your obedient servant,

Sgd. Trygve Lie,  
Secretary-General."

5. Letter from Dr. Egon Schwelb, Legal Officer, United Nations War Crimes Commission to Mr. M. Perez-Guerrero, Director, Division of Coordination and Liaison, Department of Economic and Social Affairs, United Nations Secretariat, dated 27th September, 1946.

London. 27th September 1946.

"Dear Sir:

From the "Report of the Secretary General on the Work of the Organisation" (Document No. 4/65, dated 30th June 1946, p.53) I gather that a special Division of the United Nations Secretariat has been established "to deal with substantive and constitutional aspects of relationships with specialised agencies". As legal adviser to the United Nations War Crimes Commission I venture to address to you the following request for information which should enable me to advise my Commission on further steps to be taken in order to assure effective co-ordination of its activities with those of the competent Departments of the United Nations and to develop the necessary technical and administrative liaison.



This letter is written in order to initiate consultation at Secretariat level (Document A/65 p 24).

Following a letter from the Acting Secretary-General of the United Nations to the Secretary-General of the United Nations War Crimes Commission (your reference number 102 C) dated 22nd July 1946, and the reply to his letter by the Secretary-General of the United Nations War Crimes Commission, dated 1st August 1946, (copies of this correspondence are enclosed for your convenience) a meeting took place in London on 8th August 1946 between Mr. Trygve Lie on the one hand and Lord Wright, Chairman, and Colonel G.A. Ledingham, Secretary General, of the United Nations War Crimes Commission, on the other. During this interview both Mr. Trygve Lie and Lord Wright were sympathetic to the idea that some contact, at present at the Secretariat level, should be entered into between the United Nations and the United Nations War Crimes Commission. The correspondence of July 22nd and August 1st shows that, though the terms of reference of the United Nations War Crimes Commission are comparatively narrow, there is a considerable sphere in which the work of the Commission can and will be of use to different organs of the United Nations. The Commission has expressed in its letter of August 1st, to which reference is made, its readiness to give the Economic and Social Council of the United Nations every assistance and to make available all the material and documents at its disposal.

Apart from the desirability of making arrangements regarding the most fitting and convenient procedure to be adopted for the examination of the great amount of material which is available, it appears to me that it is also necessary to put the collaboration between the United Nations and the United Nations War Crimes Commission on a proper constitutional and administrative basis. I am therefore considering advising the Secretary General of my Commission, and eventually the Commission itself, as to the possibilities of entering into relations with the United Nations either as a specialised agency or in some other way. It is my opinion that the United Nations War Crimes Commission is a specialised agency, within the meaning of Article 57 of the Charter of the United Nations, and that it should therefore be brought into relationship with the United Nations in accordance with the provisions of Article 63. The United Nations War Crimes Commission is an International Organisation, which has, at present, 17 member states. It has been established by Diplomatic Protocol of October 20th, 1943, and is recognised by His Majesty's Government in the United Kingdom as an International Organisation within the meaning of the Diplomatic Privileges (Extension) Act, 1944, having the legal capacities of a body corporate (Order in Council, Statutory Rules and Orders, 1945, No. 1211). The United Nations War Crimes Commission is an agency having "wide international responsibilities" in one or more of the fields enumerated in Article 57 of the Charter of the United Nations. It operates, through its central body in London and its Far Eastern Sub-Commission, both in Europe and in the Far East. The term "wide international responsibilities" is used in the Charter to distinguish agencies of a world-wide character from inter-governmental agencies of a regional character like the Inter-American System, including inter-American specialised agencies, the Arab League, and so on. It is my opinion that the terms of reference of the Commission fall within the definition contained in Article 57 which speaks of "responsibilities in economic, social, cultural, educational, health, and related fields". The problem of the repression of war crimes belongs to the "social" field within the wide meaning attached to this term in the Charter of the United Nations. (With regard to details of this question reference is made to the enclosed Study).

In addition, the Economic and Social Council is not, under the Charter, precluded from negotiating at its discretion agreements bringing other types of inter-governmental agencies than "specialised agencies" into relationship with the Organisation.



(Report of the Rapporteur of Committee II/3 at the San Francisco Conference adopted both by the Report of the Executive Committee (PC/EX/113/Rev.1) p.102, and of the Preparatory Commission (PC/20 p.40) ).

It is, therefore, the purpose of this letter to enquire whether you would be prepared to enter into preliminary consultations at the Secretariat level with a view to clearing the ground for an agreement between the United Nations and the United Nations War Crimes Commission similar to the agreements which either have been concluded or are being negotiated between the United Nations and other specialised agencies, as mentioned in the quoted report, Document No. A/65, on pages 21 et seq. In this connection I would be much obliged if you could supply me, for purposes of information, with copies of the agreements or draft agreements which have been concluded or are being negotiated between the United Nations and several specialised agencies.

I should like to add that there is a second subject which, in due course, ought to be discussed between the two organisations. That part of the Commission's activities which is connected with the prosecution of war criminals, the collection of material, the listing of accused persons and assistance in the preparation of trials, will necessarily come to an end when the retributive action of the United Nations in Europe and in the Far East will be concluded. There will, however, remain some parts of the Commission's functions, for instance those relating to the recording of facts and trials, its research and its publication of law reports, which will have to be continued when the main task of the Commission is finished. It would, in my opinion, be adequate if those remaining activities of the Commission, along with its files and archives, were, at the appropriate time, taken over by the United Nations.

You would, therefore, greatly oblige me by giving me the information asked for in this letter and by letting me know the opinion of the United Nations Secretariat on the questions raised. On receiving your reply I would draw up a report on the subject for submission to the appropriate authorities of this Commission who would, eventually, take up the matter on a higher level.

I remain,  
Yours faithfully,

Sgd. Egon Schwelb, Dr. Jur.LL.B.  
Legal Officer".

6. Study on the connection between the Terms of Reference and Activities of the United Nations War Crimes Commission and the Purposes of the United Nations, dated 27 September 1946 (Annex of letter from Dr. Schwelb to Mr. Perez-Guerrero of the same date).

London, September 27th, 1946.

1. Under the Agreement regarding the establishment of the Commission of October 20th, 1943, as supplemented by the subsequent decision (January 25th, 1944 and February 1st, 1944) to vest in the Commission also the jurisdiction of the Technical Committee of Lawyers whose establishment was originally intended, the terms of reference of the former are now as follows:-

- (i) To investigate and record the evidence of war crimes, identifying where possible the individual responsible.

(ii) To report to the Governments concerned cases in which it appears that adequate evidence might be expected to be forthcoming.

(iii) To act as a Committee of Legal Experts charged with advising the Governments concerned upon matters of a technical nature, such as the sort of tribunals to be employed in the trial of war criminals, the law to be applied, the procedure to be adopted and the rules of evidence to be followed.

The function of the Commission under (iii) is to formulate recommendations for the guidance of Governments, but it is - in its capacity of an Expert Committee - not empowered to take any decisions which would be binding upon the Governments.

Crimes against peace and against humanity, as referred to in the Four-Power Agreement of 8th August, 1945, are war crimes within the jurisdiction of the Commission (decision of January 30th, 1946).

2. According to the Preamble to the Charter of the United Nations, the peoples of the United Nations are determined, inter alia, "to re-affirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained".

Under Article 1 (1) one of the purposes of the United Nations is to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.

It is further the purpose of the United Nations (Article 1(3)) to achieve international co-operation, inter alia, for promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. The promotion of universal respect for and observance of human rights and fundamental freedoms for all is, in addition to Article 1(3) of the Charter, also stressed in Articles 13(1)(b), 55(c), 62(2), 68, 73, 76(c) of the Charter.

Under Article 13(1)(a) of the Charter, the General Assembly is to initiate studies and make recommendations for the purpose, inter alia, of encouraging the progressive development of international law and its codification.

3. There are three ways in which the functions of the United Nations War Crimes Commission would seem to touch upon those of the United Nations, namely (a) the maintenance of international peace and the suppression of acts of aggression and other breaches of the peace, (b) the development and safeguarding of human rights and fundamental freedoms, and (c) the development and codification of international law.

Regarding (a): The close connection between the maintenance of peace on the one hand and the problem of the repression of war crimes, in the wider sense, on the other, is illustrated, inter alia, by Article 6(a) of the Charter of the International Military Tribunal, annexed to the Four-Power Agreement of 8th August 1945, which deals with crimes against peace, namely 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. The Four-Power Agreement was not only adhered to by 15



members of the United Nations in their individual capacity (in addition to the four Signatories), but it was also taken note of in the Resolution passed by the United Nations General Assembly on 13th February, 1946, regarding the surrender of war criminals.

Regarding (b): The connection between the terms of reference of the United Nations War Crimes Commission and that purpose of the United Nations which relates to the protection and development of human rights is also underlined by the Charter of the International Military Tribunal (see *supra*, (a)), which, in its Article 6(c), deals with crimes against humanity and enumerates among this type of crime inhumane acts committed against any civilian population and persecution on political, racial or religious grounds, whether or not in violation of the domestic law of the country where perpetrated. This definition has also been taken note of in the Resolution, passed by the United Nations General Assembly on 13th February 1946, to which reference has been made above.

Regarding (c): Through a number of recommendations to its member Governments the Commission has, in its advisory capacity (*supra*, 1(iii)), considerably influenced the development of international law in such questions as jurisdiction, extradition, belligerent occupation, personal responsibility for acts of State, the criminality of aggressive war and the protection of human rights of civil populations against violations by their own Governments.

The law-reporting activities of the Commission are a mine of information on State practice regarding the repression of crimes against peace, war crimes and crimes against humanity, and a necessary preliminary to the development and codification of these branches of international law.

4. The definition of war crimes in the wider sense, which includes crimes against peace and crimes against humanity, and which has therefore a direct bearing on the purposes of the United Nations is outlined in Article 1, paragraphs 1 and 3 of the Charter, has been endorsed, *inter alia*, by the Four Powers occupying Germany in introducing appropriate provisions into the local law of occupied Germany by the Control Council Law No. 10. It was applied when the International Military Tribunal for the Far East (Article 5) was established. It has been embodied in a number of legislative instruments of different members of the United Nations; e.g. by the American authorities in making provision for Military Commissions in the Pacific Theatre of Operations, by the Commonwealth of Australia in its Statute No. 48 of 1945, by the Kingdom of Denmark in its Act of Parliament of 12th July 1946, and others. The conception of crimes against peace and crimes against humanity as types of crime closely connected with war crimes in the narrower sense has found its place in the Draft Peace Treaties prepared by the Foreign Ministers of the four Great Powers for the Paris Peace Conference (Draft Peace Treaty with Italy (Article 38), with Roumania (Article 6), with Bulgaria (Article 5), with Hungary (Article 5), with Finland (Article 9)).

It is therefore submitted that the United Nations War Crimes Commission is an inter-governmental agency assisting in the task of the prevention and removal of threats to the peace, in the task of promoting respect for human rights and fundamental freedoms, and contributing to the development of international law. "

NOTE: A copy of the letter to Mr. Perez-Guerrero and a copy of the "Study" were also sent to Mr. Ivan Kerno, Assistant Secretary General in charge of Legal Affairs.



7. Letter from Colonel Ledingham to Mr. Trygve Lie, dated 11 October, 1946.

London, October 11th, 1946.

"Sir:

I have the honour to acknowledge the receipt of your letter of the 17th September 1946, reference 704-1-1/JHP, relating to collaboration between the Commission on Human Rights and the United Nations War Crimes Commission. You indicate in your letter that either a member of the United Nations Secretariat or a representative of the Commission on Human Rights might come to London for the purpose of discussing the whole matter. This reply has been the subject of discussion and approved by Lord Wright and other members of the Commission.

I fully share the opinion conveyed in your letter that it would be preferable to restrict the purpose of such a visit to a preliminary discussion on the methods of dealing with the material. The examination of the material itself and the preparation from it of a summary of the information concerning human rights obtained from the trials of war criminals, would require some time after the general scope and the method to be applied had been discussed and agreed upon.

The Commission would therefore welcome a visit of either a member of the Secretariat or of a representative of the Commission on Human Rights for the purpose of the preliminary discussion referred to above.

I am, moreover, convinced that such preliminary discussions could be usefully prepared by way of correspondence. This Secretariat is, of course, fully informed concerning the general task of the Commission on Human Rights set up by the Economic and Social Council, and the indication which the Economic and Social Council conveyed to the Secretary General in respect of the arrangements to be made by him, at least as far as this information can be gathered from the United Nations papers available in this country. It would nevertheless be useful if, in advance of the visit, a collection of the papers, records and publications relating to the task of the Commission on Human Rights and its preparatory work, so far as it has been completed, could be forwarded to this Secretariat together with an outline of the manner in which the work connected with the trials of war criminals could be integrated with the larger programme of the work of the Commission on Human Rights. This Secretariat would then, perhaps, be in a position not only to prepare the preliminary talks appropriately but also to make some preparation for the actual work to be undertaken.

The Secretariat of the United Nations War Crimes Commission could forward to you in advance some of its internal documents and records concerning e.g. the studies made and research undertaken in connection with crimes against humanity within the meaning of recent basic International documents, the Charter of the (European) International Military Tribunal, the Law No. 10 issued by the Control Council for Germany, and the Charter of the International Military Tribunal of the Far East.

I take this opportunity of drawing your attention to a letter with annexed "study" which Dr. Schwelb, Legal Officer of this Commission, wrote to the Head of the Special Division of Relationships with Specialised Agencies on 27th September 1946, copies of which I enclose for your convenience. The purpose of Dr. Schwelb's letter was two-fold:-

(a) To initiate consultations on steps to be taken in order to ensure effective co-ordination of the activities of this Commission with those of the competent departments of the United Nations, not only in regard to the problem of Human Rights, but also to all matters where our two fields of work coincide and to develop the necessary technical and administrative liaison between the two bodies.

(b) To prepare arrangements for the time when the retributive action of the United Nations will be concluded and this organisation will be wound up, with a view to its remaining activities, together with its files and archives, being taken over by the United Nations. For the details of such proposals I would refer you to the enclosed copy of the letter referred to above.

I have the honour to be, Sir,

Your obedient servant,

Sgd. G. A. Ledingham, Colonel,  
Secretary General."

8. Letter from Mr. Perez-Guerrero to Dr. Schwelb dated 21 October, 1946.

New York, 21 October, 1946.

"Dear Sir:

I thank you for your letter of 27 September which I have given my most careful consideration. I share your views, and would consider it most desirable to establish close cooperation between the United Nations and the United Nations War Crimes Commission. However, it would appear that the Commission does not fall within the category of Specialized Agencies as provided for in Article 57 of the Charter. Our cooperation does not have to be affected by that consideration.

The suggestion contained in your letter to have the research work of the War Crimes Commission taken over by the United Nations when the prosecution activities of the Commission come to an end appears most desirable.

Professor J. Humphrey, who is Director of the Division of Human Rights of the Secretariat of the United Nations, expects to be in London in December and could then discuss the matter with you.

On the other hand our legal Department has a direct interest in the work of your Commission, and we are referring your letter to it.

In answer to your request for copies of the Draft Agreements negotiated between the United Nations and Specialized Agencies, I am sending you herewith, for your information, a copy of Journal No. 29 of the Economic and Social Council where you will find on pages 487 494 and 502, the text of the Agreements negotiated by the Council with the International Labour Organisation, the Food and Agriculture Organization, and the United Nations Educational, Scientific and Cultural Organization.

Yours faithfully,

Sgd. M. Perez-Guerrero,  
Director of the Division of Coordination & Liaison, Department  
of Economic and Social Affairs.

9. Letter from Dr. Schwelb to Mr. Perez-Guerrero dated 31 October, 1946.

London. October 31st, 1946.

"Dear Sir:

I have to thank you for your letter of the 21st October.

I am authorized to state on behalf of Lord Wright, Chairman of the Commission, and Colonel Ledingham, Secretary General, that we shall be glad to welcome Professor J. Humphrey, Director of the Division of Human Rights, when he comes to London in December, and to discuss the matters dealt with in your letter, with him.

I also thank you for referring my letter to the Legal Department of the Secretariat of the United Nations.

I note that you state that the United Nations War Crimes Commission does not fall within the category of a Specialised Agency within the meaning of Article 57 of the Charter, and I concur in the opinion that the co-operation between our two organisations need not be affected by that consideration. However, you would oblige me by letting me know the reason why this Commission is not considered to be a Specialised Agency. I ask for your explanation, not in order to dispute that point, but to enable me to give to the Chairman and to the members of the Commission a full report on the question.

Yours faithfully,

Sgd. Egon Schwelb,  
Legal Officer".

10. Letter from Mr. Trygve Lie to Colonel Ledingham dated 8 November, 1946.

New York. 8 November 1946.

"Sir:

I have the honour to acknowledge the receipt of your letter of 11 October relating to collaboration between the Commission on Human Rights and the United Nations War Crimes Commission.

Professor John P. Humphrey, who is the director of the Division of Human Rights, will be in London for a few days in December and will discuss with you methods of dealing with the material concerning Human Rights that has been collected by your Commission. Professor Humphrey will let you know the exact date of his proposed visit later. In the meantime, I should very much appreciate your letting me have, for the use of the Division of Human Rights, the documents and records referred to in the fifth paragraph of your letter. While I would like to have this material as soon as possible, it will not be necessary to send it by airmail.

The Secretariat has not yet been able to do any considerable work in implementation of the resolution of the Economic and Social Council of 21 June, which relates to "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". Under these circumstances, I have no material here that would help you in preparing for the preliminary talks with Professor Humphrey in London. I take it from your letter that you have a copy of the resolution of the 21 June of the Economic and Social Council.

I note your reference to Mr. Schwelb's letter of 27 September, a copy of which you enclosed. The questions raised in this letter are discussed in Mr. Perez-Guerrero's letter of 21 October.

I have the honour to be, Sir,

Your obedient servant,

Sgd. Trygve Lie,  
Secretary General."

11. Letter from Mr. Perez-Guerrero to Dr. Schwelb dated 12 November, 1946.

New York. 12 November 1946.

"Dear Mr. Schwelb:

I thank you for your letter of 31 October.

In answer to your request for the reasons why the United Nations War Crimes Commission is not considered to be a specialised agency, may I state that our Legal Department concurs with my opinion that the Commission cannot be considered to have "wide international responsibilities as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields," as provided for in Article 57 of the United Nations Charter. The history of Article 57 in effect shows that the expression "specialised agencies" was intended to refer to such international organisations as the International Labour Organisation and the Food and Agriculture Organisation, which have been set up to operate permanently in one of the major social or economic fields.

Yours faithfully,

Sgd. M. Perez-Guerrero, Director,  
Division of Coordination and Liaison  
Department of Economic and Social  
Affairs".

12. Letter from Colonel Ledingham to Mr. Trygve Lie dated 15 November, 1946.

London. November 15th, 1946.

"Sir:

I have the honour to refer to your letter of the 8th November 1946, reference 704-1-1/JPH, relating to the assistance which can be given by this Commission to the Commission on Human Rights of the Economic and Social Council.

It has already been stated in the letter of 31st October, 1946, by which this Secretariat replied to Mr. Perez-Guerrero's letter

of 21st October, 1946, that we shall be glad to welcome in London Professor John P. Humphrey, the Director of the Division on Human Rights, and to discuss with him the matters raised in our correspondence, particularly the question of Human Rights.

According to your wish, I have pleasure in enclosing two copies each of the papers of the Commission enumerated below, and I should like to add that all the documents enclosed are only working papers and preparatory material, and do not represent resolutions formally adopted by the United Nations War Crimes Commission as such.

I should also like to point out that both the research work and the discussions regarding the notion of crimes against humanity and its bearing on the protection of human rights and fundamental freedoms, are being continued and that a more comprehensive document will be produced soon. The working papers which I am sending with this letter have naturally been prepared for purposes different from the tasks of the Commission on Human Rights, namely as guidance for the Commission's day to day work in deciding on individual charges. The document which is being prepared will attempt to elaborate more fully the relationship between adjudicating upon "crimes against humanity" and the protection of human rights, particularly the question of protecting the civilian population against "crimes against humanity committed by its own government authorities and the superiority of International Law over municipal law and the restriction on national sovereignty which is implied in the notion."

The following are the documents enclosed.

- III/35 containing material for the preparation of a definition of "crimes against humanity".
- C.201 containing the "general propositions" defining the term "crimes against humanity" under the basic documents which have been adopted by the Legal Committee, (Committee III).
- III/59 Memorandum regarding crimes against humanity, perpetrated against Italian citizens of Yugoslav race, presented by the Yugoslav representative on the United Nations War Crimes Commission.
- III/62 Report on the bearing of the Nuremberg Judgment on the interpretation of the term "crimes against humanity". This paper has eventually also been circulated as Commission Document C.237.
- III/64 Study on the Criminal Organisations in the Nuremberg Judgment.
- III/66 Draft Statement comparing the "general propositions" contained in document C.201 (supra) with the law as laid down in the Nuremberg Judgment. This document has also been circulated as Commission Document C.236.

I have the honour to be, Sir,

Your obedient servant,

Sgd. G. A. Ledingham, Colonel,  
Secretary General."

13. Telegram from Mr. Vladimir Fabry, Executive Officer, Legal Department, United Nations, dated 16 November 1946.

"PLEASE INFORM ME WHICH GOVERNMENTS ADHERED TO LONDON AGREEMENT OF 8 AUGUST 1945".

Sgd. Fabry,  
U.N. Legal.

14. Telegram from Colonel Ledingham to Mr. Fabry dated 18 November, 1946.

London. 18 November 1946.

"YOUR TELEGRAM GBW 3152/M 52 OF 16 NOVEMBER STOP ACCORDING TO STATEMENT CONTAINED IN NUREMBERG JUDGMENT FOLLOWING GOVERNMENTS HAVE ADHERED TO LONDON AGREEMENT:-

GREECE, DENMARK, YUGOSLAVIA, NETHERLANDS,  
CZECHOSLOVAKIA, POLAND, BELGIUM, ETHIOPIA,  
AUSTRALIA, HONDURAS, NORWAY, PANAMA,  
LUXEMBOURG, HAITI, NEW ZEALAND, INDIA,  
VENEZUELA, URUGUAY, PARAGUAY STOP

Sgd. SECRETARY GENERAL,  
UNITED NATIONS WAR CRIMES COMMISSION."

15. Letter from Professor John P. Humphrey, Director, Division on Human Rights to Colonel Ledingham, dated 19 November, 1946.

New York. 19 November 1946

"Sir:

In his letter of 8 November 1946, the Secretary-General of the United Nations informed you that I would be in London for a few days in December when I would discuss with you methods of dealing with the material concerning human rights that has been collected by your Commission.

It appears now that, because of the weight of responsibilities connected with the organisation of this Division and in connection with the meetings of the General Assembly, it will be quite impossible for me to go to London.

Under these circumstances, I am asking M. Emile Giraud, recently one of the legal advisers at the League of Nations and now the Chief of the Research Section in the Division of Human Rights, to carry on these discussions with you. M. Giraud will be in charge of a study which the Secretariat has been instructed to make in this matter.

M. Giraud is now in Geneva but will be leaving for New York towards the end of December. I have asked him to let you know the exact date of his arrival in London.

I have the honour to be, Sir,  
Your obedient Servant,

Sgd. John P. Humphrey,  
Director, Division of Human Rights".



16. Letter from Mr. Perez-Guerrero to Dr. Schwelb dated 19 November, 1946.

New York. 19 November 1946.

"Dear Mr. Schwelb:

In my letter of 21 October, I stated that Professor John P. Humphrey, the Director of the Division of Human Rights, expected to be in London in November when he could discuss with you the question of methods of coordinating the activities of the United Nations War Crimes Commission with those of the United Nations.

It appears now that Professor Humphrey will be unable to go to London but he tells me that M. Emile Giraud, the Chief of the Research Section in the Division of Human Rights, will be calling on Colonel Ledingham late in December or early in January, for the purpose of discussing methods of dealing with the material concerning human rights that has been collected by your Commission.

I am taking advantage of Mr. Giraud's visit to ask him also to discuss with you the question of cooperation between the United Nations War Crimes Commission and the United Nations. M. Giraud will let Colonel Ledingham know the exact date of his arrival in London.

Yours faithfully,

Sgd. H. Perez-Guerrero, Director,  
Division of Coordination and Liaison,  
Department of Economic and Social Affairs."

17. Letter from Dr. Schwelb to Mr. Perez-Guerrero dated 21st November, 1946.

London. 21 November 1946.

"Dear Mr. Perez-Guerrero:

I am obliged for your letter of the 12th November where you give the reasons for your opinion, in which the Legal Department of the United Nations concurs, that the United Nations War Crimes Commission cannot be considered a Specialised Agency as provided in Article 57 of the United Nations Charter.

Already in my letter of the 27th September 1946, I have pointed out that the Economic and Social Council is not, under the Charter, precluded from negotiating, at its discretion, agreements bringing types of inter-governmental agencies, other than "specialized agencies" into relationship with the Organisation, and I quoted as an authority for this proposition the report of the Rapporteur of Committee II/3 at the San Francisco Conference, adopted both by the Report of the Executive Committee to the Preparatory Commission, (p.102) and the Report of the Preparatory Commission, (p.40).

As you have not referred in your replies of the 1st October and 12th November to this particular aspect, I write to enquire whether the Division of Co-ordination and Liaison of the Department of Economic and Social Affairs is envisaging arrangements and if so what arrangements, with such other inter-governmental agencies as are not specialised agencies in the technical sense, on the lines of paragraphs 2 and 4 of Section 5 of Chapter III of the Report of the Preparatory Commission, particularly in view of your opinion that our co-operation does not have to be affected by the

consideration that the United Nations War Crimes Commission is not a specialised agency.

Yours sincerely,

Sgd. Egon Schwelb,  
Legal Officer.

18. Letter from Mr. Fabry to Colonel Ledingham dated 30 November, 1946.

New York, 30 November 1946.

"Dear Sir:

Thank you for your letter of 18 November 1946.

I received your telegram containing the names of all governments which have adhered to the London Agreement of 8 August 1945, and I greatly appreciate your kindness in furnishing this information. This data was needed by the Members of Committee Six relative to their discussion on the Development and Codification of International Law and your telegram was most helpful.

Thanking you, I am,

Yours very truly,

Sgd. Vladimir Fabry,  
Executive Officer,  
Legal Department,  
United Nations."

19. Letter from Mr. Trygve Lie to Colonel Ledingham dated 11 December, 1946.

New York, 11 December 1946.

"Sir:

I have the honour to acknowledge the receipt of your letter of 15 November 1946 and to thank you for the papers enclosed therewith. I note that these are merely working papers and preparatory material and do not, therefore, represent resolutions formally adopted by the War Crimes Commission as such.

I also note that both the research work and the discussions regarding the concept of crimes against humanity and the bearing of that concept on the protection of human rights and fundamental freedoms are being continued and that a more comprehensive document will be produced soon. I should be very grateful if I could have a copy of this document when it is ready.

I assume that, by this time, you will have received the letter which the Director of the Division of Human Rights addressed to you on 19 November, in which he said that it would be impossible for him to go to London but that M. Emile Giraud, the chief of the Research Section of the Division of Human Rights, would call on you in London for the purpose of discussing various matters raised in our previous correspondence.

I have the honour to be, Sir,  
Your obedient Servant,

Sgd. Trygve Lie,  
Secretary General."

20. Letter from Mr. Perez-Guerrero to Dr. Schwelb dated 13 December, 1946.

New York, 13 December 1946.

"Dear Mr. Schwelb:

Thank you for your letter of 21 November 1946, with respect to which I should like to make the following observations:

The Economic and Social Council has so far proceeded to develop formal relationships with two categories of organisations which are specifically provided for in the Charter of the United Nations. The first category, provided for under Article 57, refers to specialised agencies, and the second, under Article 71, to non-governmental organisations. The United Nations War Crimes Commission does not fall within either category, but belongs rather in a category, along with many other important organisations, which in a way is situated between the two already mentioned. There is a gap in the Charter in that respect which, as you see, has already been anticipated at the San Francisco Conference and is recorded in the Report of the Rapporteur of Committee II/3 and further discussed at the Preparatory Commission of the United Nations.

We expect that at an early session, the Economic and Social Council will take up this question of relations with inter-governmental organisations other than specialised agencies and will give directives to the Secretary-General thereon.

In the meantime, we shall develop working relations with most of those organisations and among them with the United Nations War Crimes Commission whose cooperation we would greatly appreciate.

We are indeed very glad to have had an exchange of views on this matter, which I am sure will produce fruitful results.

I suppose that Mr. Giraud will visit you very soon and that you will be able to devise the best means for practical collaboration between the United Nations and your Organisation.

Sincerely yours,

Sgd. M. Perez-Guerrero,  
Director, Division of Coordination and Liaison."

21. Letter from Dr. Ivan Krno, Assistant Secretary-General, Legal Department to Dr. Schwelb dated 19 December 1946.

TRANSLATION

New York, December 19, 1946.

"Dear Doctor:

I come back to your letter of September 27th 1946, the substance of which was settled and replied to by the Director of the Division for the Development and Codification of International Law. In the meantime the General Assembly of the United Nations has at the proposal of the Legal Committee adopted the resolution which I herewith enclose.

I hope that by this the opportunities of collaboration between your Organisation and the United Nations will be enhanced.

With cordial greetings,  
Sgd. I. Krno,

Assistant Secretary-General of the  
United Nations.

1 encl. (circulated as Commission Doc.  
Hisc.66 dated 2 January, 1947)



22. Letter from Dr. Schwelb to Dr. Krno dated 31 December 1946.

London, December 31, 1946.

"Dear Mr. Assistant Secretary-General:

I am much obliged for your letter of 19th December 1946, to which you have kindly enclosed a copy of Doc. A/236 (Affirmation of the principles of International Law recognised by the Charter of the Nuremberg Tribunal), which has, in the meantime been adopted by the General Assembly.

I am sure, this Commission will be pleased to give to the organs of the United Nations every assistance which may be helpful in carrying out the Resolution. The same applies mutatis mutandis to the related subject of the crime of GENOCIDE on which, I understand, a Resolution has also been passed by the General Assembly in December, 1946.

In your letter of December 19th you write that a reply to my letter of September 27th 1946, has been sent by the Director of the Department for the Development and Codification of International Law. I venture to say that I have not received a letter from the Director of the Department mentioned.

I did, however, receive a reply from Mr. M. Perez-Guerrero Director of the Division of Coordination and Liaison, Department of Economic and Social Affairs, who mentioned, inter alia, that the Legal Department had a direct interest in the work of this Commission and that he was referring my letter to it.

Yours sincerely,

Sgd. Egon Schwelb,  
Legal Officer."

23. Note on the meeting between the representative of the Secretariat of the United Nations and members of the Secretariat of the United Nations War Crimes Commission held on 2 and 3 January, 1947.

Present: From the Secretariat of the United Nations:

Professor Emile Giraud.

From the Secretariat of the United Nations War Crimes Commission.

Lieut. Colonel H.H. Wade (Research Department)  
Dr. E. Schwelb, (Legal Department)  
Dr. J. Litawski (Department: Facts, Evidence and Enforcement).

Meeting on 2nd January, at 10.30 a.m.

The members of the United Nations War Crimes Commission Secretariat expressed the regret of Colonel Ledingham, Secretary-General, at being unable to attend, because he had to leave for Germany, together with Lord Wright, the Chairman of the United Nations War Crimes Commission.

Professor GIRAUD explained that his mission was only one of information and that he could only express personal opinions, not committing the Secretariat of the United Nations.

Members of the UNWCC Secretariat observed that they were also in the same position.

The meeting then proceeded to discuss the following questions:

1. Co-operation of the UNWCC with the Commission on Human Rights,

having regard to the Resolution of the Economic and Social Council of 21st January 1946, particularly point (c) - (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).

The representatives of the UNWCC Secretariat referred to the correspondence with Mr. Trygve Lie, Secretary General of the United Nations, on the subject and to the Docs. III/33, C.201, III/59, III/62, (C.237), III/64 and III/66 (C.236), which had been sent both to Mr. Trygve Lie and to Professor Giraud. In their opinion, the problem in which the Commission on Human Rights appeared to be interested was the protection granted under the London Charter of 8th August 1945, and similar basic documents, to civilian populations, particularly against infractions of human rights by their own authorities, e.g., inhuman acts committed by the German Government against German nationals, crimes committed by the Italian Government against the Slovene minority in Italy, etc. The papers so far communicated to Mr. Trygve Lie had been prepared for internal use in the day-to-day work of the Commission and not with any special intention of elaborating the protection of Human Rights. Both the Commission and its Secretariat were engaged on further research into this question and the representatives of the UNWCC asked Professor Giraud to enquire whether their interpretation of the Resolution of the Economic and Social Council was correct in order that they should know that they were proceeding on the lines intended by the Commission on Human Rights.

Professor GIRAUD replied that his personal impression was that that was so, but he had no positive information on this point and would report to the United Nations Secretariat.

2. Co-operation between the UNWCC and the United Nations in connection with the different actions undertaken by the United Nations, concerning the codification and development of International Law.

In this respect, the representatives of the UNWCC referred to two lines of action taken during the last meeting of the General Assembly of the United Nations, namely:

- (a) the Affirmation of the principles of International Law recognised by the Charter of the International Military Tribunal (Doc. A/236).
- (b) the Resolution on Genocide (Doc. A/BUR/50) and subsequent documents.

With regard to (a) the representatives of the UNWCC Secretariat referred to a letter dated 19th December 1946, received by Dr. Schwelb from Dr. KERNO, Assistant Secretary-General in charge of the Legal Department, expressing the opinion that this Resolution will enhance the possibility of co-operation between the two organisations.

The UNWCC Secretariat representatives stated that the War Crimes Commission and its Secretariat would no doubt be glad to give to the United Nations authorities any assistance in implementing the Resolution regarding the affirmation of the Nuremberg principles. They thought that having dealt with the problems involved for many years, having, therefore, great practical experience in this field, and having

for a long time examined the theoretical questions involved, their assistance could be helpful. While the London Charter of the 8th August, 1945, and other documents based on it, e.g., the Far Eastern Charter and the Control Council Law for Germany, No. 10, distinguished between (a) crimes against peace, (b) war crimes in the narrower sense, and (c) crimes against humanity, the Resolution proposed in Doc. A/236 and adopted by the General Assembly, introduced a different term "crimes against the security of mankind" in place of "crimes against humanity".

The UNWCC Secretariat had not yet received the papers preceding A/236, and they could not express an opinion—not knowing what connotation the words "offences against the security of mankind" were intended to have—except that, if possible, the now well-established terminology of the London Agreement should be adhered to.

Dr. SCHWELB also referred to the Resolution regarding the extradition and punishment of War Criminals adopted by the General Assembly on 13th February, 1946, where the General Assembly had taken note of the definition of war crimes and crimes against peace and against humanity, contained in the Charter of the International Military Tribunal, dated 8th August, 1945.

Regarding (b), the UNWCC representatives mentioned that a preliminary discussion of the term "crimes against humanity", having regard, *inter alia*, to the United Nations papers concerning the Genocide resolution, had recently taken place in the UNWCC and would be continued on 15th January, 1947. The notion of "Genocide" covered a great part of the scope of "crimes against humanity" as defined in the London Charter of 8th August 1945. (Article 6(c).) Although the adoption of a Resolution calling attention to this particular aspect of the notion of crimes against humanity might be very useful, before legislative instruments or international protocols on the question were drafted it should be considered whether special provisions regarding Genocide should be recommended, or whether it was not preferable to adhere to the more general term and conception of crimes against humanity, which covers persecutions, not only on racial grounds, but also political and religious persecutions and inhumane acts of all kinds.

Here also, the representatives of the UNWCC Secretariat were sure that the War Crimes Commission would give to the United Nations any assistance desired.

Professor GIRAUD replied that he would report to the United Nations authorities on what had been said.

### 3. Constitutional and procedural questions.

- (a) The constitutional relationship between the United Nations and the UNWCC.

Professor GIRAUD stated that according to the opinion held by the Legal Department of the United Nations Secretariat, the UNWCC could not be considered as a "specialised agency" within the meaning of Article 57 of the United Nations Charter. It is, nevertheless, an intergovernmental agency and the relations between such an agency and the United Nations might—as noted in Mr. Perez Guerrero's letter to Dr. Schwelb of the 13th December 1946—be placed on a special footing. Seeing that the Economic and Social Council is likely soon to take up the question of relations with intergovernmental organisations other than specialised agencies, the meeting reviewed various points that need to be considered in this connection.



Professor GIRAUD stated that in any case these points could be settled in a practical way with or without an express agreement. In this connection the agreement between the United Nations and F.A.O. was taken as a guide for the discussion.

(a) Reciprocal representation.

The representatives of the UNWCC Secretariat expressed the opinion that a permanent representation of the UNWCC with the main organs of the United Nations would probably be neither practicable, nor necessary. Professor Giraud thought that the Commission should be invited to meetings of such organs as were dealing with matters concerning the jurisdiction of the War Crimes Commission, and it would be then for the Commission to decide when and in which cases they would avail themselves of the opportunity of attending the meetings. In his personal opinion, the UNWCC should, for example, be invited to the meeting of the Commission on Human Rights, which is to take place at the end of January 1947, and to the discussions concerning the codification of international law, particularly the questions of international criminal law applied in the Nuremberg proceedings.

Professor GIRAUD further expressed the opinion that such representation should be reciprocal and that the UNWCC should invite the United Nations to such of its meetings as dealt with questions of general interest to the United Nations.

(b) Proposal of agenda items.

No action appeared to be needed.

(c) Recommendations of the United Nations.

This also called for no remark, it being beyond doubt that the UNWCC would act upon any recommendations on the part of the United Nations, falling within their terms of reference.

(d) Exchange of information and documents.

Here the representatives of the Secretariat of the UNWCC explained that the present position was not very satisfactory. It was only if they chanced to learn from Press reports or from such publications as the United Nations Weekly Bulletin, that certain items of great interest to the UNWCC were being dealt with by an organ of the United Nations that they were in a position to ask the Documents and Sales Division of the United Nations Secretariat for the papers in question. They were grateful that in all such cases their requests had been promptly complied with, but it would be preferable if any documents and minutes which are of interest to the Commission could be sent to its Secretariat automatically. Certain matters falling within the sphere of the Legal Department (e.g., codification relating to the repression of International Crimes) and of the Commission on Human Rights are of interest to the UNWCC. The same could perhaps apply to some matters connected with disarmament and the prohibition of the use of atomic energy.

Professor GIRAUD said that he would recommend to the authorities of the United Nations to take appropriate steps to ensure that all papers and minutes relevant to the Commission should be sent to its Secretariat automatically.

The UNWCC Secretariat would arrange on its part that relevant documents and publications which might be of interest to the Secretariat of the United Nations, would be sent to the Secretariat in several copies.

Moreover, Professor Giraud asked whether it would be possible for the United Nations to have material of interest to them microfilmed.

The representatives of the UNWCC replied that in their opinion there would certainly not be any obstacle to that on the part of the UNWCC. They added, however, that this would probably be necessary only in exceptional cases as the more important trials are being published in "Law Reports of Trials of War Criminals", selected and prepared by the UNWCC (Volume I of the English Edition will be ready for distribution in a very few days). A verbatim report of the Nuremberg trial is being printed by the British Stationery Office. These two publications, together would probably reduce the necessity of microfilming to such trials as will not be reported by the Commission.

Professor Giraud also raised the question of attaching a United Nations official to the UNWCC Headquarters, either temporarily or permanently, in order to study the UNWCC documentation.

The members of the UNWCC Secretariat were convinced that no obstacles would be raised and all possible facilities would be accorded.

(e) Assistance to the Security Council.

This called for no comment; the UNWCC would give any assistance in its power, as it has done for example, in connection with enquiries which were made concerning German War Criminals in Spain.

(f), (g), (h), Assistance to the Trusteeship Council, Non self-governing territories; Relationship with the International Court of Justice.

These questions will probably not arise in connection with the UNWCC.

(i) Headquarters and Regional Offices.

This question does not arise either, as London is the seat of the Commission and will certainly remain so until it is wound up.

(j) Personnel arrangements.

In this connection Professor Giraud raised the question of diplomatic privileges of the organisation, its members and its staff. Dr. Schwelb explained that the UNWCC and its staff were enjoying diplomatic privileges within the framework of the United Kingdom Diplomatic Privileges (Extension) Act of 1944 - a statute which discriminated against the British members of the staff, preventing the tax exemptions from being extended to them. In 1946, the U.K. Diplomatic Privileges (Extension) Act of 1946 was passed; it abolished the necessity for discriminating against British subjects, but the British Government had given an assurance to Parliament that it would not actually extend to enlarged privileges to such international organisations as are not in connection with the United Nations.

When the problems of common personnel standards, salary scales, pension rights, etc. were discussed, the members of the UNWCC Secretariat said that they did not intend to burden the UNWCC, which was a small organisation, with additional financial responsibilities. They were also not interested in machinery for the settlement of disputes (Administrative tribunal). They would, of course, appreciate it if they could eventually be included in a general scheme relating to a unified international civil service.

The provisions regarding the interchange of personnel are not, at present, of practical interest; personnel questions may arise in connection with the taking over by the United Nations of part of the work of the UNWCC. This will be discussed later(+).

Professor Giraud said that he would report on all these questions.

(k), (l). Statistical services. Administrative and technical services.

No arrangement in this respect appears necessary.

(m) Budgetary and financial arrangements.

Here the representatives of the UNWCC Secretariat pointed out that the UNWCC was budgeting independently and that as long as the Commission was in existence, no arrangement of a financial nature was, in their view, necessary.

(n) Financing of special services.

Here the representatives of the UNWCC remarked that this problem would hardly arise. Professor Giraud replied that if the case should arise, it would be dealt with ad hoc.

(o) Inter-agency agreements.

No comment appeared necessary.

(p) Liaison.

In this case what has been said concerning reciprocal representation and exchange of documents, is applicable, mutatis mutandis. There is no doubt that adequate liaison will be established as a consequence of the preceding correspondence and of the present discussions.

It was considered by the members of the UNWCC Secretariat that a formal agreement embodying the matters discussed above, would be of general advantage.

The meeting was thereupon adjourned until 3.0 p.m.

The meeting was resumed on 2nd January at 3.0 p.m., and continued on 3rd January, at 3.0 p.m.

Arrangements for the Continuation of some activities of the Commission after the conclusion of its main activities.

The meeting was continued on 2nd January 1947 at 3.0 p.m., and the question was discussed of the arrangements for the continuation of those activities of the Commission which it would be necessary to continue after the conclusion of its main activities and its consequent winding up.

(a) Collection and Publication of Records of Trials: Law Reports.

The members of the UNWCC Secretariat informed Professor Giraud that according to the Commission's terms of reference, one of its tasks was the recording of war crimes. In this connection the Commission had started the preparation and publication of Law Reports of the Trials of War Criminals, one volume of which was already

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(+) See page 26 et seq.



printed and would be available in a few days.

One day the prosecutions would cease, but the transcripts of trials would continue to come in for a considerable time afterwards, and the reports on them would have to be prepared. If this was not done, one of the chief aims of the Allied nations in insisting on the punishment of war criminals, a question so important for the future, would be impaired, and it therefore seemed necessary that, after the winding up of the Commission, some other body should take over that part of its work.

Professor GIRAUD asked whether positive proposals in this respect were being considered.

The UNWCC Secretariat representatives replied that the problem was in a preliminary stage and that in their view only two possibilities were available:

- (a) either that the United Nations should take over this work, or
- (b) that a special international bureau should be created, ad hoc, when the Commission was being wound up.

Professor GIRAUD said that he agreed; and that, in his opinion, it seemed preferable that the United Nations should take it over.

(b) Collection and Publication of International Treaties and Municipal Enactments concerning war crimes.

The representatives of the UNWCC Secretariat informed Professor Giraud that the Commission was preparing a publication containing all International Treaties and municipal enactments of Allied, ex-enemy and satellite states, connected with war crimes and analogous offences. This publication would probably be complete at the time when the Commission was wound up. In case this work was not completed, at that time, it would also have to be taken over and finished by another organisation.

Professor GIRAUD agreed, and pointed out that this work would probably include legislative enactments affecting the future as well as those concerned with the past.

Dr. SCHWELB agreed that provisions which have already been envisaged declaring the use of atomic energy unlawful would also fall within the range of this publication; the same applied to future provisions for the criminal protection of human rights etc.

(c) Analysis with a view to a publication of a report on the activities of the Committee on Facts and Evidence (Recording of all decisions by Committee I illustrative of the application of International Law.

The members of the UNWCC Secretariat pointed out that the Commission had listed some 20,000 persons after their cases had been examined by the competent Committee (Committee on Facts and Evidence). There were hundreds of these cases in which legal issues had had to be discussed and rulings established. It was very desirable that all these decisions of Committee I should be recorded for the use of International lawyers and historians, in order to preserve the value of the work done by Committee I during the past years. This was not precisely the same kind of work as the Law Reports, since it did not concern rulings by courts, but by the Commission itself.

This compilation had not yet been begun and in view of the small staff of the Commission, it could not be undertaken in addition to the Commission's day-to-day work, and it would therefore not be completed when the Commission was wound up.

In the same way, also the recommendations and opinions by the Commission's Legal Committee should be prepared for publication and future record.

(d) Preparation of a comprehensive report of the activities of the Commission since 1943.

All present agreed that the preparation and production of a comprehensive report on the work of the Commission could be done only by the Commission itself and could not be undertaken by a different body after the liquidation of the Commission. The research and publication mentioned under (c) would, however, form a kind of supplement to this general report.

Professor GIRAUD observed that the material mentioned under 5(a), (b) and (c) constituted basic material for future codifications of International Law, in the matter of the repression of international crimes.

The meeting then proceeded to discuss the question of

The Archives of the Commission.

Professor GIRAUD raised the question of the custody of the archives of the UNWCC in case the Commission were wound up, and said that in this case the United Nations would be disposed to assume this custody.

Members of the UNWCC Secretariat took due note of this observation.

The discussions were concluded on 3rd January 1947 at 6.30 p.m.

Professor GIRAUD, who was returning to Geneva on 4th January, asked the Secretariat of the UNWCC to send a copy each of the present note to Professor John P. Humphrey, Director, Division on Human Rights, and Mr. Perez-Guerrero, Director, Division of Co-ordination and Liaison.

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The meeting then proceeded to discuss the question of

The Archives of the Commission.

Professor GIRAUD raised the question of the custody of the archives of the UNWOC in case the Commission were wound up, and said that in this case the United Nations would be disposed to assume this custody.

Members of the UNWOC Secretariat took due note of this observation.

The discussions were concluded on 3rd January 1947 at 6.30 p.m.

Professor GIRAUD, who was returning to Geneva on 4th January, asked the Secretariat of the UNWOC to send a copy each of the present note to Professor John P. Humphrey, Director, Division on Human Rights, and Mr. Perez-Guerrero, Director, Division of Co-ordination and Liaison.



24. Letter from Dr. Yuen-Li Liang, Director, Division of the Development and Codification of International Law to Dr. Schwelb, dated January 13th, 1947.

New York, January 13th, 1947.

Dear Dr. Schwelb,

I regret that due to some misunderstanding I did not have an opportunity to study your letter of 27 December (+) 1946 until now, and therefore was unable to send you a reply at an earlier date.

I fully concur in the statement of Mr. Perez-Guerrero to the effect that the Legal Department has a direct interest in the United Nations War Crimes Commission. It is my sincere wish for the Legal Department to maintain close contact with the United Nations War Crimes Commission. My former association with the War Crimes Commission convinces me all the more keenly that such contact will be of great usefulness to the work which I have now in hand.

I feel sure that we shall be fully appreciative of any assistance which the United Nations War Crimes Commission may give in connection with the affirmation of the principles of international law recognized by the Charter of the Nuremberg Tribunal, and other related matters.

I also feel certain that the Legal Department will find of great value the documents and records of the United Nations War Crimes Commission. As you will recall, the Secretary-General, in his letter of 8 November 1946 addressed to Colonel G. A. Ledingham, D.S.O., M.C., already discussed the possibility of transferring these documents and records to the United Nations.

Yours sincerely,

Sgd. Yuen-Li Liang,  
Director, Division of the Development  
and Codification of International Law.

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(+) Note: This should read: 27 September, 1946.

25. Letter from Dr. Schwelb to Dr. Liang, dated 3 February, 1947.

London, 3rd February, 1947.

Dear Dr. Liang,

I am much obliged for your letter of the 13th January in which you refer to my previous letter of the 27th September 1946. It has already been expressed, both by the Secretary General of this Commission, Colonel G.A. Ledingham, and by myself, in the previous correspondence, that this Commission will be glad to give to all the organs of the United Nations, every assistance which may be helpful.

The papers which the Secretary General of the United Nations, Mr. Trygve Lie, mentioned in his letter of the 8th November 1946,