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CONFIDENTIAL.

C 229
A.
(?) O.
Date 23 Sept 46

CONSTITUTION OF THE UNITED NATIONS WAR CRIMES COMMISSION

(Minutes of a Meeting at the Foreign Office on October 20th, 1943.)

A MEETING of Allied and Dominions representatives in London was held in the Foreign Office at 4 p.m. on the 20th October to make arrangements for the establishment of the United Nations Commission for the Investigation of War Crimes. The following were present:

The Lord Chancellor (*in the Chair*).

Australia—
Rt. Hon. S. M. Bruce.
Lord Atkin.

Belgium—
Vicomte de Lantsheere.
General de Baer.

Canada—
Rt. Hon. Vincent Massey.

China—
Dr. Wellington Koo.
Dr. Liang Yuen-Li.

Czechoslovakia—
M. Lobkowitz.
Dr. Bohumil Ecer.

Greece—
M. Aghnides.
M. Stravropoulos.

India—
Sir Samuel Ranganadhan.

Luxemburg—
M. Clasen.

Netherlands—
Jonkheer Michiels van Verduynen.
Dr. de Moor.

New Zealand—
Mr. W. J. Jordan.

Norway—
M. Colban.

Poland—
Count Raczynski.
Professor Glaser.

Union of South Africa—
Mr. Jones.

United Kingdom—
The Lord Chancellor.
Mr. George Hall.
Sir Cecil Hurst.

United States—
Mr. Winant.

Yugoslavia—
M. Yevtic.
M. Milanovitch.

French Committee of National Liberation—
~~M. Yevtic~~ M. Vienot
Professor Cassin.

VIENOT

Establishment of the Commission.

The Lord Chancellor, after explaining that the Secretary of State for Foreign Affairs had asked him to preside over the meeting in his absence, and after thanking those present for attending, recalled the statements which he, on behalf of His Majesty's Government in the United Kingdom, and President Roosevelt, on behalf of the United States Government, had made on the 7th October, 1942, announcing the intention of the Allied Governments to set up a Commission for the Investigation of War Crimes. Discussions had been proceeding since then between the various Allied Governments concerned, and His Majesty's Government in the United Kingdom felt that the time had come when a formal decision to set up the Commission should be taken without further delay.

Before the meeting proceeded to this business he wished to make one preliminary remark. The Soviet Government were, he understood, in principle in agreement with the establishment of the Commission and with the general objects which it was to serve. There were, however, one or two points still outstanding which had unfortunately prevented their being represented at the meeting. The Lord Chancellor felt that, while it was right that he should inform the meeting of this, it need not prevent their taking steps to establish the Commission.

He explained that, as would have been apparent from the statements of His Majesty's Government and the United States Government of the

7th October, 1942, it was proposed that the Commission should serve two primary purposes:—

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

These two activities were essential preliminaries if we were to ensure the just and orderly trial of war criminals, which we were all—in particular the occupied countries, which had suffered so terribly at the enemy's hands—eager to ensure. It seemed important, however, to draw a clear distinction between the preparatory investigatory work of the Commission and the procedure for the eventual trial of war criminals. The latter would represent a later stage and would be a question for decision by the Governments concerned rather than by the proposed Commission.

The Governments concerned would also be specially interested in the treatment of those who might properly be described as the arch criminals. It might well be felt that this was primarily a political question.

The Lord Chancellor then proposed that the meeting should take a formal decision to set up the United Nations Commission for the Investigation of War Crimes.

The Netherlands Ambassador then read a statement of his Government's position, of which a copy is annexed. (Annex I.)

The Czechoslovak Ambassador read a statement to the effect that his Government were in general agreement with the proposals of His Majesty's Government in the United Kingdom.

The Chinese Ambassador said that, while his Government were in full agreement with the proposal to establish the Commission, they wished to make it clear that they reserved the right after the Commission had been set up to raise the question of the period of time which its investigations should cover in so far as war crimes committed in China were concerned. In this connexion Dr. Wellington Koo pointed out that China had suffered the consequences of enemy invasion for a longer period than the other Governments represented at the meeting.

The meeting took note of these statements. With regard to the Netherlands Government's statement, the Lord Chancellor said that His Majesty's Government in the United Kingdom had always held that the trial of Quisling should be the business of the Governments individually concerned. He felt, however, that it might be difficult at the meeting to secure agreement with the Netherlands Government's proposal that the proposed Commission for the Investigation of War Crimes should also be charged with making preparation for the bringing to trial of war criminals.

He proposed that the meeting should take a decision to set up the Commission forthwith but that the question of the possible expansion of the scope of its investigations and functions should be reserved for future consideration.

This was unanimously agreed.

Headquarters of the Commission.

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

Panels.

The Lord Chancellor explained that it was the proposal of His Majesty's Government in the United Kingdom that the Commission should be empowered to set up panels or arrange otherwise, in the light of the wishes of the Governments most closely concerned, for investigations on its behalf so far as these seemed appropriate. He added that he understood—and the Chinese Ambassador confirmed this—that the Chinese Government was in favor of the establishment of a Panel in Chungking. The Soviet Government, on the other hand, did not consider that the circumstances called for the establishment of a Panel in the Union of Soviet Socialist Republics.

The meeting adopted the proposal of His Majesty's Government in the United Kingdom.

Chairmanship.

The Lord Chancellor said that His Majesty's Government in the United Kingdom had originally proposed that it should be left to the Commission to

question of chairmanship at it. However, had proposed that the Commission be composed of representatives of the United Kingdom, the Soviet Socialist Republics and the United States of America upon this question.

The Norwegian Ambassador expressed the opinion that the chairmanship should be considered in the Commission. He felt that until decided, it would be unwise for the Commission to proceed with the question of a large permanent Secretariat. He proposed that, without prejudice, the Commission should be found desirable, the British Government should be appointed Chairman to begin with, and to collect such secretarial staff as might be required.

The Netherlands Ambassador agreed with the British representative. He felt that the British Government, with regard to the question, might be prejudicial to the smaller States should be the object of the work in view of the justice.

The Polish Ambassador said that it was impracticable for the Commission to function if the Chairman would be less able to place the Commission in the hands of the Secretariat. He proposed that the Netherlands Ambassador should be appointed a British Chairman.

M. Viénot agreed with the permanent principle of rotation were to be applied equally to all members.

The Greek Ambassador felt that the proposal for a rotating chairmanship was impracticable.

The United States Ambassador supported the Soviet Government's proposal. He proposed that the British Government should support the proposal for a British Chairman. He had been prepared to support it. He had been prepared to support it. He had been prepared to support it. He had been prepared to support it.

The Chinese Ambassador, while feeling that the Soviet Government had not been represented at the meeting, felt that the decision by the Commission as to the chairmanship should be left to the Commission.

The Czechoslovak Ambassador felt that the chairmanship should be left to the Commission.

The Lord Chancellor said that the chairmanship, if made, would be temporary. He agreed with Dr. Wellington Koo's representative it would be preferable to the Soviet proposal. He felt that, if it was decided at the first meeting, the recruitment of a Secretariat from the Commission should be left to the Commission.

It was agreed that it should be left to the Commission to decide its first Chairman when it met, with regard to the procedure.

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settle the question of chairmanship at its first meeting. The Soviet Government, however, had proposed that the chairmanship might suitably be held in rotation by the representatives of the United Kingdom, United States, Union of Soviet Socialist Republics and China. He invited the views of the meeting upon this question.

The Norwegian Ambassador expressed the view that the question of chairmanship should be considered in relation to that of the Secretariat of the Commission. He felt that until experience had shown what was likely to be needed, it would be unwise for the meeting to commit itself to the establishment of a large permanent Secretariat for the Commission. He was approaching the question not on political but purely on practical grounds. He would propose that, without prejudice to such other arrangements as might subsequently be found desirable, the British representative of the Commission should be appointed Chairman to begin with and that he should be given discretion to collect such secretarial staff as was required.

The Netherlands Ambassador agreed, but in this special case he would wish to see the British representative as Chairman as an act of courtesy to the British Government. With regard to the Soviet Government proposal he felt that then the question might be put why the members of the Commission representing the smaller States should not also hold the chairmanship in rotation as the object of the work in view was not the appliance of power but to further justice.

The Polish Ambassador said that if the chairmanship were held in rotation the practical functioning of the Commission might be rendered more difficult. The Chairman would be less able to direct the proceedings which would in practice be left in the hands of the Secretariat. He therefore declared himself in agreement with the Netherlands Ambassador and in favour of the temporary appointment of a British Chairman.

M. Viénot agreed with the permanent chairmanship of a British Chairman. If the principle of rotation were to be adopted it would follow that the principle should be applied equally to all members of the Commission.

The Greek Ambassador felt that, from the technical point of view, the proposal for a rotating chairmanship might be difficult to work in practice.

The United States Ambassador said that his Government did not object to the Soviet Government's proposal. On the other hand, he had authority to support the proposal for a British Chairman and that personally he would be prepared to support it. He had been instructed to make it clear that if the Commission should wish to elect the United States representatives to be its Chairman, his Government would wish to be consulted first.

The Chinese Ambassador, while not objecting to a British Chairman, felt that, as the Soviet Government had put forward their proposal and as they were not represented at the meeting, it would be preferable to leave the matter to be decided by the Commission as originally proposed by the Lord Chancellor.

The Czechoslovak Ambassador agreed that the question of chairmanship should be left to the Commission to settle.

The Lord Chancellor said that, although the appointment of a British Chairman, if made, would be temporary and without prejudice to final arrangements, he agreed with Dr. Wellington Koo that in the absence of a Soviet representative it would be preferable not to take a decision in conflict with the Soviet proposal. He felt that, if it was left to the Commission to elect its first Chairman at the first meeting, that need not prevent arrangements for the recruitment of a Secretariat from being taken in hand on a preliminary basis forthwith.

It was agreed that it should be left to the Commission to settle the question of its first Chairman when it met, without prejudice to the question of *roulement*.

Procedure.

It was agreed that it should be left to the Commission to settle its own procedure.

Secretariat.

The Lord Chancellor said that His Majesty's Government in the United Kingdom would be prepared to find a British Secretary-General for the Commission if, in view of the headquarters of the Commission being in London, this were considered appropriate by the other Governments concerned. There being

no dissent, the Lord Chancellor announced that His Majesty's Government in the United Kingdom had in mind for the post Mr. Mackinnon Wood, who, before the war, had been a member of the legal section of the Secretariat of the League of Nations.

The Greek Ambassador expressed the opinion that Mr. Mackinnon Wood, who was a man of the highest integrity and intellectual attainment, with good knowledge of languages, would prove a most suitable choice, and this was the general feeling of the meeting.

The Lord Chancellor, having suggested that it would be open to the Secretary-General to receive from the Governments concerned informal suggestions or the appointment of further members of the Secretariat, the Norwegian Ambassador expressed the view that the Secretary-General should at least, at the outset, confine his choice to British subjects. He explained that Governments of the occupied countries of Europe were short of administrative staff and that any proposal for an international Secretariat would mean that the occupied countries would be inadequately represented.

The United States Ambassador said that he would not wish to go on record as supporting the proposal for a purely British Secretariat. He felt that the Soviet Government might have views on the question.

The Lord Chancellor indicated that such a proposal would not necessarily be welcome to His Majesty's Government. He proposed that the meeting should approve the appointment of a British Secretary-General but that the question of further Secretariat should otherwise be left entirely open.

This was agreed.

Expenses.

The meeting agreed to the proposal of His Majesty's Government in the United Kingdom that each member of the Commission and his staff, if any, should be paid by the Government appointing him but that the salary of the Secretary-General and additional secretarial and administrative expenses should be divided equally between the various Governments represented on the Commission.

The meeting took note of a statement by the Luxembourg Chargé d'Affaires, who said that his Government felt that equal division of expenses would all unduly heavy upon the smaller countries and asked whether some means could not be found of making contributions proportionate to the resources of the countries represented.

It was agreed that the arrangements should be subject to the possibility of future adjustment between the Governments concerned.

Premises.

The meeting noted a statement by the Lord Chancellor that His Majesty's Government in the United Kingdom would be prepared to find suitable accommodation for the Commission in the Law Courts, in the Strand.

Technical Committee.

The Lord Chancellor explained that it was felt by His Majesty's Government in the United Kingdom that there might well be a number of questions relating to the trial and punishment of war criminals which would require to be settled but which would fall outside the competence of the proposed Commission. It was accordingly proposed to establish a committee of legal experts to be nominated by those of the various Allied Governments participating in the work of the Commission who desired to be represented on the Committee. The Committee would work concurrently with the Commission and in adequate contact with it. It would be charged with advising the Governments concerned upon matters of a technical nature, such as the sort of tribunals to be employed for the trial of war criminals, the law to be applied, the procedure to be adopted and the rules of evidence to be followed. The function of this Committee would be to formulate recommendations for the guidance of Governments. It would not be empowered to take any decisions which would be binding upon the Governments.

M. de Moor said that he felt that the existence of two bodies might produce friction, and that it was accordingly desirable that the technical committee should be a purely advisory body.

The Norwegian Ambassador said that it had been suggested that a technical committee would be a sub-committee of the Commission. Professor Cassin considered that there must be guidance as to the general principles in its investigations. These general principles must be agreed between the Governments concerned. A Commission could facilitate this.

The United States Ambassador said that his Government was in favour of the establishment of a technical committee, but that before the Commission itself had begun its work it was preferable to establish the Commission first.

The Chinese Ambassador said that his Government was in favour of establishing a technical committee, but that its set up should be deferred.

The High Commissioner for the Commonwealth said that he wished to emphasise the great importance which his Government attached to the establishment of a technical committee on the lines proposed, and to press for its immediate establishment.

Sir Cecil Hurst said that he was satisfied that there was scope for both bodies. An active investigation by the Commission ran the danger of becoming immersed in details of another body more directly representing the Governments. The Commission must, however, be in close contact so as to be kept informed by the technical committee should be appointed.

The Lord Chancellor expressed the opinion that the technical committee had an important function to fulfil and would be needed from the start in the latter's labours. He proposed that it should be desirable to set up in due course, and for the purposes proposed and that they should be empowered to give advice of their representatives upon it, but that the establishment of the committee should be deferred. His proposal was agreed.

Conclusion.

Those present having no other business to discuss, the meeting decided that it might be appropriate for the meeting to communicate to the Soviet Government, through the United Kingdom, such a resolution might expedite the meeting that the Soviet Government would participate in the Commission, and also in that of the technical committee. The meeting agreed to this proposal and the resolution was adopted. Lord Atkin pointed out that the descriptions of the Commission as a "fact-finding Commission" were dangerous. It must be the tribunal which tries the facts; the Commission was engaged in co-operation with that tribunal.

The Lord Chancellor agreed.

Communique.

A communique for issue to the press was also agreed.

Annex I.

The Netherlands Government are of opinion that the Commission should be the organ, which should be entrusted with the execution of the Justice-Convention, to prepare the bringing to trial of the accused. It is supposed that justice will in principle be administered by the national courts.

The Committee should have the following task:

- (1) The Committee decides, having regard to the facts, whether enemy aliens are to be placed on the list of persons whose surrender by the enemy will be demanded, before or after.

(+) For decision to dispense with the Technical Committee, see Appendix.

The Norwegian Ambassador said that it had been his conception that the technical committee would be a sub-committee of the Commission.

Professor Cassin considered that there must be two separate bodies. The Commission would require guidance as to the general principles which it was to follow in its investigations. These general principles must be established by agreement between the Governments concerned. A technical committee separate from the Commission could facilitate this.

The United States Ambassador said that his Government agreed in principle to the establishment of a technical committee, but questioned the need of setting it up before the Commission itself had begun its work. He felt that it would be preferable to establish the Commission first.

The Chinese Ambassador said that his Government also approved the principle of establishing a technical committee, but suggested that its actual setting up should be deferred.

The High Commissioner for the Commonwealth of Australia said that he wished to emphasise the great importance which his Government attached to the establishment of a technical committee on the lines proposed, although he did not wish to press for its immediate establishment.

Sir Cecil Hurst said that he was satisfied that in practice it would be found there was scope for both bodies. An active investigatory Commission, which would run the danger of becoming immersed in detail, would need the help and advice of another body more directly representing the Governments concerned. The Commission would take decisions based also upon political considerations. The two must, however, be in close contact so as to ensure that the principles established by the technical committee should be applicable in practice.

The Lord Chancellor expressed the opinion that the Committee would have an important function to fulfil and would be needed by the Commission at an early stage in the latter's labours. He proposed that the meeting should agree that it would be desirable to set up in due course a technical committee of the kind and for the purposes proposed and that they should give consideration to the choice of their representatives upon it, but that the actual establishment of the committee should be deferred. His proposal was agreed.

tion.

Those present having no other business to propose, the Lord Chancellor stated that it might be appropriate for the meeting to adopt a resolution for communication to the Soviet Government, through His Majesty's Government in the United Kingdom. Such a resolution might express the hope of those present at the meeting that the Soviet Government would participate in the work of the Commission, and also in that of the technical committee, when it had been set up. The meeting agreed to this proposal and the resolution was adopted.

Lord Atkin pointed out that the descriptions of the Commission for Investigation of War Crimes as a "fact-finding Commission" was inaccurate and dangerous. It must be the tribunal which tried the War Criminal which established the facts; the Commission was engaged in collecting material which might be used before that tribunal.

The Lord Chancellor agreed.

niqué.

Communiqué for issue to the press was also agreed.

Annex I.

The Netherlands Government are of opinion that the Fact Finding Commission should be the organ, which should be entrusted within the framework of the Justice Convention, to prepare the bringing to trial of enemy subjects. It is proposed that justice will in principle be administered by the competent courts.

The Committee should have the following task:—

The Committee decides, having regard to the evidence produced, which enemy aliens are to be placed on the lists of names of persons, whose surrender by the enemy will be demanded at the time of the capitulation or after.

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- (2) The Committee decides which national courts are competent for the trial of enemy aliens, when courts of more than one country claim competence. Differences regarding competence of this character originate if the same persons have committed crimes on the territory of or against nationals of more than one Allied Country or if a crime has been committed partly on the territory of one country and partly on that of another.
- (3) The Committee shall make proposals regarding the question for which court and according to which procedure the prominent criminals (Hitler, Himmler, &c.) shall be tried.

It follows that the Fact Finding Committee should not be competent to regard to the bringing to trial of (a) Suspects who are already in the power of Allied authorities. Their surrender (extradition?) to the Allied State which wishes to try them is a matter which should be left to a mutual arrangement between all Allies. Only in cases where difference of competence arises, the Committee should decide. (b) Nationals of Allied States.

The trial of Quislings is a matter which is exclusively left to the National Governments, who can demand their surrender without the intermediary of the Committee. If they are in the power of other Allied authorities, they should be surrendered, if required.

Communiqué.

Annex II.

Arising out of discussions which have been in progress for some time between the Allied Governments concerned, a meeting was held at the Foreign Office on the 20th October, under the chairmanship of the Lord Chancellor, at which representatives of the Governments of Australia, Belgium, Canada, China, Czechoslovakia, Greece, India, Luxemburg, Netherlands, New Zealand, Norway, Poland, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia and of the French Committee of National Liberation agreed upon the final arrangements for the establishment forthwith in London of the United Nations Commission for the Investigation of War Crimes.

DECISION TO DISMISS

As a consequence

Commission to the effect that it was unnecessary for the Technical Committee of Governments represented as the idea of having those Governments.

It was ascertained

objected to the dropping of Crimes Commission the Nations, which dealt

The Commission

capacity with the question of the Technical Committee. to appoint its chief (Committee No. III).

(+) See footnote on

i.

APPENDIX

DECISION TO DISPENSE WITH THE ^{Independent} TECHNICAL COMMITTEE.

As a consequence of the opposition which had arisen within the Commission to the creation of the ^{Independent} Technical Committee, (+) on the ground that it was unnecessary, the United Kingdom Foreign Office agreed that ~~the Technical Committee~~ should be dropped, provided that the other Governments represented on the Commission were favourable to this course, as the idea of having ^{an Independent} Technical Committee had originated with certain of those Governments.

It was ascertained (25th January, 1944) that no member Government objected to the dropping of the Technical Committee (M. 6), and the War Crimes Commission thus became the sole body, representing the United Nations, which dealt with War Crimes.

The Commission decided (M. 7) that it should deal in an advisory capacity with the questions which would have been dealt with by the Technical Committee. Accordingly, when it proceeded on February 1st, 1944, to appoint its chief standing committees, it constituted a Legal Committee (Committee No. III).

(+) See footnote on page

UNITED NATIONS COMMISSION
for the
INVESTIGATION of WAR CRIMES.

NOTES of Unofficial Preliminary Meeting held at 2.30 p.m.
on the 26th October, 1943, at the Royal Courts of Justice, London.

1. REPRESENTATIVES PRESENT:

<u>Nation represented.</u>	<u>Representative.</u>
Australia	Lord Atkin
Belgium	General M. de Baer
China	H.E. Dr. V.K. Wellington Koo
Czechoslovakia	Dr. B. Ecěr
France	Professor René Cassin
Greece	M. C. Stavropoulos
Holland	Dr. J.M. de Moor
India	Sir Samuel Runganadhan
Luxemburg	M. A.J. Clasen
New Zealand	Mr. C.B. Burdekin
Norway	H.E. Dr. Erik Colban
Poland	Professor Stefan Glaser
United Kingdom	Sir Cecil Hurst
United States of America	Mr. J.M. Allison
Yugoslavia	H.E. Vladimir Milanovitch

2. CHAIRMANSHIP:

As this meeting was purely preliminary and unofficial, having for its object the exchange of views, it was agreed that the Chairmanship should be held over until the official meetings began.

3. SECRETARIAT:

The proposed Secretary-General had not yet arrived in the United Kingdom, and the secretarial staff remained to be appointed.

4. OFFICES:

Sir Cecil Hurst described the accommodation which had been

made available in the Royal Courts of Justice, Strand, W.C.2., for the Commission and its Secretariat.

5. DISCUSSION:

Sir Cecil Hurst initiated the general exchange of views. He stated that one of the first questions was, what constituted a War Crime? This had been studied by several bodies in the United Kingdom, and a list of 'War Crimes' had been prepared. (Copies of this list were distributed). General de Baer had also prepared a list on behalf of his Government, and Sir Cecil Hurst thought it was possible that similar lists had been prepared by other Governments. The next question was, whether there should be a list at all? Or should some other principle be applied? E.g. by defining a War Crime as an act which is in violation of the laws of war it might be possible to determine the facts in a particular case and decide whether those facts justified a trial. The Commission, Sir Cecil Hurst thought, must decide what principle to apply.

Dr. Eder referred to such an act as the extermination of a village, which was not a 'war crime', but which President Roosevelt, Mr. Churchill and Mr. Eden had said must be punished. Therefore he thought that a wider conception of 'war crimes' was required. He suggested as a definition 'Axis Crimes', which would include not only crimes as defined by International Law but be wider in its scope. 'War Crime' was a conception of the past, and it had been surpassed by the method of total war.

Lord Atkin said it was important to free oneself from legalistic notions, whereby crimes could only be punished if they fell within the definition of war crimes. That would defeat the whole object of the peoples. The reason for this departure was that the offenders had gone right outside the realm of law. The only way was to prepare a list of offenses for which punishment should be awarded. The Commission should not make it too minute, but deal only with grave offences, of which there were quite enough. He proposed that the Commission should draft its own list. Then came the collection of evidence. The difficulty was to decide according to what law the Commission should proceed. It ought not to be left to the defendants to raise technical objections such as that certain evidence was not the best evidence obtainable. Another, and antecedent question was, what sort of Tribunals were to be established? He thought Tribunals should be determined ad hoc. The Allied Nations should agree to set them up to try cases not according to strict rules of evidence but conscientiously, and acting on any material which might be put before them. He (Lord Atkin) envisaged a Court composed of a Judge, a Soldier, and a representative of the country where the crime was committed. Lord Atkin suggested that the Commission should proceed (1) to prepare a list of crimes, (2) to decide on the Tribunals, and (3) to decide on the nature of the evidence.

Professor Glaser said the question of the kind of Tribunal was vital.

Sir Cecil Hurst pointed out that it was not the task of the Commission to collect evidence in the technical sense of the term, but to obtain information. This information would determine whether 'X' should be put on trial. The question of the form that such information should take and how it should be considered would come later. It was the common policy of the United Nations to suppress War Crimes. In order to follow a common policy, there ought - within reasonable limits - to be uniformity of action. There were some 10-15 Nations represented on the Commission, each with its own system of courts and evidence. For a common policy there must be some sort of assimilation. The United Kingdom Government recognised that the strict rules of evidence as understood in the United Kingdom could not be adhered to before the proposed Tribunals. There was no reason why the

United Nations should not all be at work collecting information about particular individuals. The question of the Tribunals would follow; but he wondered if it need be settled before the information was collected.

Dr. de Moor expressed his agreement with Sir Cecil Hurst.

General de Baer said that the Commission ought not to conduct thorough investigations if the Courts were going to repeat the process. The Commission should examine the case of 'X' superficially to decide whether he should be put on the list of War Criminals. The Commission ought first to decide on the law applicable and then on the Tribunals. If there were to be a Technical Committee, he suggested that it should be a sub-committee of the Commission. The majority of cases ought to be tried by national courts; and in those cases the advice of the technical committee would not be necessary. General de Baer also pointed out the difference between War Crimes and the Crime of War. Was the Commission going to examine the Crime of War as well?

H.E. Dr. Colban supported the suggestion that the Technical Committee should be a sub-committee of the Commission. He thought the Commission should tell the Technical Committee what to do.

Sir Cecil Hurst suggested that it would be as well to dismiss the idea that the Commission could do the work of an omni-national parquet. That would be impossible. The work of a parquet must be done by the National Governments. But the Commission could do this: when a National Government had prepared its dossier the Commission could examine it. This would ensure a reasonable uniformity.

Lord Atkin raised the question of the jurisdiction of national courts. He thought their limited jurisdiction might narrow their powers; and was of opinion that they should have international jurisdiction.

H.E. Dr. Wellington Koo said that the Commission must approach its task from a practical point of view. All war crimes should be punished according to the conscience of humanity. The purpose of the Commission should be to collect information without binding itself to any system of jurisprudence. It would be useful to discuss directives as guides to Governments before they submitted evidence.

Professor Cassin pointed out that a list of alleged war criminals was awaited. One object of the Commission was to organise intercommunication between nations. The Technical Committee had to decide juridical questions; and he would prefer it to be independent. But its work should proceed simultaneously with that of the Commission.

Lord Atkin suggested two practical moves. First, to distribute all the lists already prepared of "War Crimes". Secondly, to ask the several Governments what evidence they had to support the allegations in the White Paper.

Dr. Ecer said that his Government had prepared lists of all criminals, and had prepared laws to deal with them, adopting the principle of 'loi exceptionnelle sans appel'. Dr. Ecer suggested the preparation of a concrete programme of work for the Commission. He supported the proposal that the Technical Committee should be a sub-committee of the Commission. The task of the Commission was to assimilate the action of the Allied Governments in bringing war criminals to justice. As a practical necessity national tribunals were appropriate; but for certain crimes which were international inter-allied courts should be established. He suggested that a definitive programme of work should be drafted by a few members of the Commission; and that the National Governments should be asked to submit their information.

Sir Cecil Hurst said that the term 'Technical Committee' was perhaps a little misleading. He believed that the idea was to have a body which should discuss, not 'technical' questions but large questions of principle which could not be judged in connection with individual cases but only in connection with the cases taken as a whole and should also discuss large questions of policy.

Mr. Burdelin referred to the effect of possible delay upon studying individual cases. One question for the Technical Committee might be to decide the class of case to be sent to the Commission.

Sir Cecil Hurst said that the term 'National Tribunal' covered military as well as civil tribunals. He added that it would be useful if the Commission might know what each Government was doing so that a common policy might be pursued.

Sir Samuel Runganadhan suggested that it was for the Technical Committee to define legal principles.

3. SUB-COMMITTEE:

It was decided that a small sub-committee, whom Sir Cecil Hurst was left to nominate, should sketch out lines of useful work preparatory to the next meeting.

4. NEXT MEETING:

It was agreed that this should be summoned at the discretion of Sir Cecil Hurst, and that prior thereto the lists of War Crimes should be distributed.

5. PRESS NOTICES:

Dr. Ecér inquired whether communiques should not be issued to the Press in future.

6. MINUTES:

It was agreed that notes that had been taken of the discussion should be circulated; but that they should not be treated as formal minutes in view of the unofficial nature of the meeting.

The Meeting closed at 4.40 p.m.

WAR CRIMES

List suggested by Prof. ^{aut} Lamerpacht in the
Course of the proceedings of Sir Arnold
McNair's Commission

1. Grave crimes against person and property committed without any pretence of legal authority or order, i.e. crimes of private lust including murder, manslaughter, infliction of grievous bodily harm, torture, false imprisonment, blackmail, rape, theft and pillage on a large scale.
2. Plunder, infliction of grievous bodily harm, and torture committed under cover of legal authority or in obedience to superior orders.
3. Participation in and execution of judicial sentences clearly contrary to international law and resulting in death, bodily disablement or prolonged deprivation of liberty
4. Ordering of or permitting or participation in massacres of civilian population or prisoners of war
5. Ordering of or permitting or participation in mass executions of hostages.
6. Ordering and execution of measures of enforced prostitution (including sterilization of women by doctors)
7. Ordering of and participation by officials in administrative detention in concentration camps, especially in cases resulting in death or mental or bodily disablement
8. Ordering of and participation by officials in measures of deportation for compulsory labour
9. Ordering ^{and} participation by officials in measures of racial segregation and extermination against the Jewish section of the population
10. Forcing the civilian population to take part in military operations and preparations in a manner calculated to endanger the life of civilians (such as digging trenches in the neighbourhood of military operations or using civilians as a shield for advancing troops)
11. Deprivation of localities and districts of food-stuffs in a manner calculated to expose the civilian population to starvation
12. Bombing of centres of civilian population for the sole purpose of terrorization as in the case of the bombardment of Rotterdam.
13. Bombing or machine-gunning of civilian refugees from the air.
14. Firing on boats with survivors of torpedoed merchant vessels
15. Mis-treatment of Prisoners of War.
16. Using or ordering the use of dumdum bullets and other munitions and weapons prohibited by international law
17. Deliberate attacks upon hospital ships and grave violations of the Geneva Convention on the Treatment of Sick and Wounded.
18. Ordering or permitting refusal of quarter or execution of orders to that effect.

WAR CRIMES

List suggested by Gen. De Baer in the course
of the proceedings of Sir Arnold McNair's
Commission IV 127

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First Category: Acts directly connected with warfare, and contrary
to customs of war

1. Making use of poisoned or otherwise for hidden arms and ammunition, including asphyxiating, poisonous and similar gases or methods
2. Wilful attacks on hospital ships and hospitals.
3. Refusal of quarter
4. Killing of the wounded
5. Wilful prevention of the saving of lives on land or at sea, when such saving was possible
6. Use of civilians or prisoners of war as a screen for troops, or for clearing minefields or removing mines, or for any other work immediately connected with actual fighting.
7. Any other violation of the Hague Convention IV or of the Convention of Washington.

Second Category: Acts not directly connected with warfare and which have caused death, illness, bodily harm or loss of liberty to those to whom they were applied

- A. Crimes committed without order or authority.
Serious crimes against persons punishable by ordinary criminal law, committed without any pretence of legal authority or order, (including, e.g. murder, manslaughter, infliction of grievous bodily harm, torture, false imprisonment, rape etc.)
 - B. Crimes ordered by or committed under order of or with approval of authorities.
1. Common murder - or mass murder of civilians or prisoners of war.
 2. Administrative murder; putting hostages to death
 3. Execution (judicial murder) bodily disablement or prolonged deprivation of liberty ordered by a Court which was either (a) composed of persons some of whom have no authority to sit on it or (b) without jurisdiction as to the person or the act, or (c) imposing a sentence in violation of the law or without due respect for the rights of the defence.
 4. Wilful starvation of populations, excessive removal of food-stuffs or depriving persons of shelter, clothing and/or other means of sustenance.
 5. Compulsory enlistment of civilians or prisoners of war in enemy forces, or in dangerous war work.
 6. Internment or segregation in inhuman conditions
 7. Mass deportation
 8. Abduction of women with the object of prostitution
 9. Abduction of children

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10. Serious ill-treatment or torture of civilians or prisoners of war.

11. Compelling sick or wounded, women, children or old people to a work which is out of proportion to their condition, age or sex

12. Imposing collective punishments.

13. Any other violations of the Geneva Convention of 1929

Third Category: Serious crimes against property

A. Crimes committed without authority or order
Crimes against property under ordinary criminal law
(theft, looting, robbery, arson etc.)

B. Crimes committed under order or with approval of
authorities:-

1. Wanton destruction of property unrelated to military events,
carried out by the occupying authorities, in occupied countries.

2. Plundering or removal of property belonging to the State,
Associations, Churches, schools etc. etc. or private individuals.

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UNITED NATIONS WAR CRIMES COMMISSION

NOTES of a second UNOFFICIAL MEETING held on 2nd December, 1943, at 3 p.m. at the Royal Courts of Justice, London.

Sir Cecil Hurst (United Kingdom) took the chair and expressed the welcome of the Commission to the United States member, Mr. Herbert Pell, who was sitting for the first time. He introduced the Secretary General elect Mr. Hugh McKinnon Wood to the meeting. It was agreed that the Secretary General should arrange to provide the Commission with any necessary staff, who would be the servants of the Commission.

Presenting the Report of the Sub-Committee appointed at the last meeting, the Chairman said it was a purely interim document with a practical object.

Lord Atkin (Australia) having referred to the crimes of the Gestapo in occupied territory, which the Chairman thought fell within the Report, Monsieur Gros (France) said the national law of the aggrieved United Nation would apply to acts which were offences against that law and were committed in conditions which were not such as to render them lawful in virtue of the Laws of War. The Commission ought to deal with the question of the applicable law and questions of conflicts of laws, etc.

A discussion ensued as to how basic legal questions of the kind thus raised should be dealt with, i.e. whether by the Commission's own Sub-Committee or other body appointed by it, or by the so-called "Technical Committee" contemplated at the meeting held at the Foreign Office on 20th October, 1943, which did not yet exist, although members had been appointed on it, or some combination of these methods or combined committee. THE Chairman explained that the Technical Committee had been conceived as a body of persons intimately connected with the formation of government policy (e.g. in the case of the United Kingdom, the Law Officers of the Crown). Fear was expressed that the work of the Commission would constantly be brought to a standstill, if it had to refer legal problems to another body. The Commission was itself a body of lawyers, it was urged, and several members wished to have legal questions considered as they arose by a sub-committee of the Commission, which might be strengthened by adding members such as were contemplated for the Technical Committee, or at any rate by a method guaranteeing close contact between the Commission and the Technical Committee. It was ultimately decided that each member would ascertain and report ~~that~~ attitude of his own government on the subject, and the Chairman undertook to take the matter up with the United Kingdom government. Mr. Pell (U.S.A.) stated ~~the United~~ States had no intention of appointing anyone except himself and his assistant, Professor Preuss.

On consideration of the Sub-Committee's Report, it was decided to make the following amendments:-

Paragraph 8. Omit the final words, namely "and will at the same time avoid any semblance of ex post facto legislation.

/Paragraph 14,

Paragraph 14, sub-paragraph (5). Omit the words "reliable and admissible" before the word "evidence".

Lord Atkin expressed the view that the United Nations should make a declaration determining what acts should be punished as War Crimes. He also considered the 1919 list of War Crimes to be too long: some of the offences contained in it would in his opinion have to be dropped. The Commission, however, considered that for present purposes no change should be made in the list, since Japan and Italy had taken part in drawing it up in its present form, and Germany had not objected to it, and since it was not in any way put forward as a final and definitive list of war crimes.

With the above omissions, the Report was adopted unanimously, not as a definitive pronouncement of the Commission on the matters dealt with or as a document addressed to the governments, but as a starting point and practical basis which would permit immediate commencement of the work of the Commission and as a guide for its Secretariat.

Dr. Wellington Koo (China) observed, and it was agreed, that the Report would not necessarily apply to the Far East, where conditions were different. He recalled the fact that China had suggested that the establishment of "panels" or "branches" of the Commission in that part of the world might be necessary.

The draft form for transmitting cases to the Commission (Annex II to the Report) was approved and at the request of members the Chairman promised that printed copies would be supplied for use by the National Offices.

In this connexion Professor Glaser (Poland) suggested, and it was agreed, that where to give the name and address or other identification of a witness might endanger the witness or his family or persons connected with him, it would be sufficient to describe the witness as "Witness No.-" and register him under that number in the national files.

The Chairman and Secretary General were authorised to take appropriate steps to let the governments know that the Commission was ready to commence work, and to invite the transmission of cases, as soon as possible, to its Secretariat.

It was agreed that, though the Sub-Committee's Report was not a document addressed to the governments, there was no objection to the members of the Commission showing it to the competent organs or departments.

It was left to the Chairman to convene the next meeting of the Commission.

Annex 2

SPECIMEN CASE

CHARGES against GERMAN WAR CRIMINALS

Charge No.

Name, Rank and Unit of Accused	At present unknown believed to be Poston
Offence	Murder
Short Statement of Facts	Accused, believed to be named Poston, was a guard on duty with Commando 88, at Stalag XC, a Prisoners of War Camp in Germany, and on February 13, 1941, killed by shooting, Corporal Menander, No. 803343, of the 30th Hussars, then a British Prisoner of War.

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PARTICULARS OF OFFENCE

Corporal Menander with Sergeant Blacksmith (P.W.No.)
British Camp Leader of Commando 58 was engaged on stable duties.
Working with them were three German civilians. About 7 a.m. on
the morning of February 13, 1941, a dispute arose between the
accused and one of the civilians, named Furster on the subject of
the allocation of the duties. Sergeant Blacksmith intervened and
took Menander to the Lager for breakfast. At this stage the
accused was not present.

The lager is a small house, 6 men sleeping downstairs and
4 men sleeping upstairs. Menander being one of the latter.

About 7.50 a.m. the P/W. were having breakfast in their
respective rooms. The accused entered in a violent temper and
asked Sergeant Blacksmith what was wrong with Menander. Sergeant
Blacksmith answered the guard to the best of his ability that he
should see Menander himself, and that Menander must come down-
stairs, and the guard shouted accordingly.

When Menander came down stairs, the accused asked him what he
had been doing with Furster. "Had he been boxing?" Menander
replied "No" and asked where Furster was. The accused then went
outside and was followed by Menander who thought Furster was there.

Immediately afterwards Sergeant Blacksmith heard Menander
say "Hay, Hay, Poston". This was followed by a shot. Sergeant
Blacksmith rushed outside and saw Menander lying across the out-
side door, face downwards. In his right hand, which was flung out,
was clutched a half eaten bit of bread. Two other P/W. came out
and stepped over Menander with the intention of giving assistance.
As they did so they heard a shout, and on looking up saw the
accused standing about 10 yards away. He was shouting and re-
cocking his rifle. They realised that unless they got back into
the house one of them might get shot. After about five minutes
they came out again, and finding the accused had disappeared, they
carried Menander back inside the room. He lived about ten minutes
from the time of the shot, but was never conscious.

As adopted on 2 December, 1943 C1

WAR CRIMES COMMISSION

REPORT OF THE SUB-COMMITTEE

1. The sub-committee was appointed at the meeting on October 26, for the purpose of preparing a report indicating the lines on which the Commission should approach its task.

2. The functions of the Commission are sufficiently well defined. It is charged with the duty of investigating the war crimes which have been committed by individual members of the enemy forces against nationals of the United Nations and others, and of recommending measures for bringing such persons to justice in suitable cases. In countries which have been occupied by the enemy powers it will also be incumbent on the Commission to deal - so far as may be necessary - with crimes committed by officials and members of the enemy organization, even though such persons are not members of the enemy forces. For these purposes it will be the duty of the Commission, both before and after the cessation of hostilities, to submit lists of war criminals whom it considers should be brought to trial. There should also be submitted in due course a list or lists of persons who have been guilty of atrocious acts against persons of no nationality or against local inhabitants (particularly where such acts have been committed on grounds of race) where the acts have been so heinous that their punishment is the concern of mankind generally (see Declaration of December 17, 1942).

3. The scope of the Commission's task is very large and time pressing. The sub-committee has framed this report with a view to enabling the Commission to get to work as soon as possible.

The adoption of this report will not exclude further tasks being undertaken by the Commission in the future, as the scope of the Commission's work becomes clearer.

4. There is no list of war crimes which is authoritative in the sense that international law forbids any act outside the list being treated as a war crime and obliges every State which recognises the obligatory nature of international law to treat as a war crime every act which figures in the list.

5. After the First World War the Responsibilities Commission of the Paris Peace Conference in 1919 agreed on a list of acts which it considered should be treated as war crimes. Similarly in the course of the present struggle various lists - all excellent in their way - have been drawn up by commissions and committees, both official and unofficial; but, as said above, there is no list of war crimes which is binding on the United Nations.

6. In the opinion of the sub-committee it will be better for the Commission not to attempt to draw up any list of war crimes which will tie the hands of the Governments of the United Nations. If such a list is prepared it may be thought necessary in some countries to give it statutory force so as to ensure that the courts which are given jurisdiction to try war criminals are competent to try such offences. It seems as if the ingenuity of the enemy is even now finding new ways of violating the laws and customs of war and it would be inconvenient that in countries where a list of war crimes has been given statutory force there should have to be new legislation to deal with new crimes which came to light. The Commission should proceed upon the footing that international law recognises the principle that a war crime is a violation of the laws and customs of war, and that no question can be raised as to the right of the United Nations to put on trial as a war criminal in

THE nomination of members of the Commission to serve on the sub-committee was entrusted to Sir Cecil Hurst. He invited Gen. de Boer (Belgium), Mr. Boer (Czechoslovakia), Mr. de Boer (Netherlands) and Mr. Glaser (Poland) to act with him on the sub-committee.

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respect of such violation any hostile offenders may fall into their hands irrespective of the place in which the war crime was committed, nor as to the right of the United Nations to determine the ~~forum~~ before which such war criminal should be brought to justice.

7. It will however be convenient both to the Commission and to the national offices which will prepare the individual cases and transmit them to the Commission that there should be a working list enumerating the various headings under which war crimes should be grouped.

8. This method of procedure will give both the national offices and the officials of the Commission a general guide in dealing with individual war crimes and at the same time will not unduly tie the hands either of the Commission or of the Governments of the United Nations.

It will have the further advantage that it will enable particular acts to be added to the list of those to be treated as war crimes from time to time as circumstances may require, and will at the same time avoid any semblance of ex post facto legislation.

9. The list which the sub-committee recommends should be adopted by the Commission as the working list for the above purpose is the list framed by the Responsibilities Commission of the 1919 Conference. A copy of this list forms Annex I to this report.

10. It will be necessary to add to this list one or two items which seem to be inadequately covered by the language employed in framing the list; just as it may be necessary to disregard certain items - such as No. 21 - as these refer to acts which in the present war the forces of the United Nations have themselves been obliged to commit. In the main, however, the sub-committee believes that the great majority of the acts covered by the lists drawn up during the present war fall within the language of the 1919 list.

11. The list set out in Annex I must not be regarded as a complete list of war crimes. No complete list can be framed. The same difficulty was experienced in 1919 by the Responsibilities Committee as is shown by the following extract from its report:-

"The Commission desires to draw attention to the fact that the offences enumerated and the particulars given in Annex I are not regarded as complete and exhaustive; to these such additions can from time to time be made as may seem necessary".

12. The advantage of working as far as possible on the basis of the 1919 list is that of the present chief Axis powers, Italy and Japan, were parties to its preparation and, so far as your sub-committee is aware, Germany has never questioned the inclusion of any particular item in the list. Furthermore it diminishes the risk of criticism on the ground that the United Nations are inventing new war crimes after the acts have been perpetrated.

13. It will be of assistance to the various national offices concerned with war crimes that there should be an understanding as to the particular points to which attention must be directed when a case is transmitted by the national office to the Commission.

14. In the opinion of the sub-committee the papers sent to the Commission in any particular case should indicate:-

- (1) What is the offence alleged?
- (2) Can the offender be identified?

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- (3) What was the degree of responsibility of the offender having regard to his position?
- (4) Was the offense committed on the offender's own initiative or in obedience to orders, or in carrying out a system or legal disposition?
- (5) What ~~available~~ ~~and~~ ~~admissible~~ evidence is available in support of the charge?
- (6) What will be the probable defense?
- (7) Can the offender be put on trial with a reasonable probability of conviction?

15. The information transmitted to the Commission will in all probability be found to contain gaps which will require to be filled before the offender can be listed for trial. Any such gaps should if possible be notified to the Commission when the case is transmitted. The Commission will probably be in a position to help in collecting the material required to fill any such gap in a case.

16. The sub-committee is satisfied that the work of the Commission will be facilitated if cases transmitted by the various national offices are drawn up on the same plan, and so far as possible in a common form. Annex II contains a specimen (imaginary) case against the guard of a Prisoners of War Camp for killing a Prisoner of War. The sub-committee recommends the adoption provisionally of the form so sketched.

17. The present policy of the Governments of the United Nations will, it seems, result in the majority of the war criminals who are put on trial being brought before a national court and being dealt with in accordance with the law of that court, whether these courts are civil, military, or are specially established for the purpose. In addition to oral evidence by witnesses who can testify in person, these courts will probably have to rely to some considerable extent on written evidence in the form of affidavits or depositions on oath, or written statements not on oath, and also in the case of crimes committed in Prisoners of War camps, on copies of reports by the Protecting Power and by camp leaders and representatives elected by the prisoners of war. It is desirable to make sure that these various categories of sources of information will be admissible in the trial of war criminals.

18. It is desirable that as soon as possible the address of each of the United Nations national offices which will be responsible for the work in connection with war crimes should be filed with the Commission together with the name of the officer in charge and his telephone number.

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ANNEX I.

LIST OF WAR CRIMES

- (i) Murder and massacres - systematic terrorism.
- (ii) Putting hostages to death.
- (iii) Torture of civilians.
- (iv) Deliberate starvation of civilians.
- (v) Rape.
- (vi) Abduction of girls and women for the purpose of enforced prostitution.
- (vii) Deportation of civilians.
- (viii) Internment of civilians under inhuman conditions.
- (ix) Forced labour of civilians in connection with the military operations of the enemy.
- (x) Usurpation of sovereignty during military occupation.
- (xi) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
- (xii) Attempts to denationalise the inhabitants of occupied territory.
- (xiii) Pillage.
- (xiv) Confiscation of property.
- (xv) Exaction of illegitimate or of exorbitant contributions and requisitions.
- (xvi) Debasing of the currency and issue of spurious currency.
- (xvii) Imposition of collective penalties.
- (xviii) Wanton devastation and destruction of property.
- (xix) Deliberate bombardment of undefended places.
- (xx) Wanton destruction of religious, charitable, educational and historic buildings and monuments.
- (xxi) Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers and crew.
- (xxii) Destruction of fishing boats and of relief ships.
- (xxiii) Deliberate bombardment of hospitals.
- (xxiv) Attack and destruction of hospital ships.
- (xxv) Breach of other rules relating to the Red Cross.
- (xxvi) Use of deleterious and asphyxiating gases.
- (xxvii) Use of explosive or expanding bullets and other inhuman appliances.
- (xxviii) Directions to give no quarter.
- (xxix) Ill-treatment of wounded and prisoners of war.
- (xxx) Employment of prisoners of war on unauthorised works.
- (xxxi) Misuse of flags of truce.
- (xxxii) Poisoning of wells.

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SUMMARY OF EVIDENCE IN SUPPORT

1. Sergeant Blacksmith's statement of above facts and other particulars were contained in a letter dated February 28, 1941, addressed to J. Farrer, C.B.M. #3831, British man of confidence, Stalag XC (copy attached)

1944.

2. German Memorandum dated Berlin, 30 April, 1941 (X.W.2/53. S.N.362/0202/2143, Translation #3344) stated that an enquiry had been made by the War Court at Stettin Langfuhr when it had been held that the accused had acted in justified self defence.

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3. The British War Office was not satisfied with the finding of the German Court. It wrote to the Foreign Office pointing out that an inquiry into the shooting was held by the War Court at Stettin, but that it did not appear that Sergeant Blacksmith or any other British P/W had been called to give evidence. It was requested that the Protecting Power be asked to enquire from the German Government whether Sergeant Blacksmith or any other British P/W had been called to give evidence. Comment was made on the finding in relation to Sergeant Blacksmith's statement.

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4. The German reply dated November 7, 1941, stated that at the Court proceedings the depositions of 6 British P/W had been considered. (Blacksmith, Thomson, Warner, James Sidestep, William Sidestep and Plant). It then discussed the comments contained in the British Government's note.

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5. The original German Memoranda are in the possession of the Protecting Power. The original Communications from the Protecting Power covering copies of the reports and the memoranda are in the possession of the Foreign Office.

6. Copies of the documents mentioned above are annexed except those of which copies are not yet available.

7. The following witnesses should on their release be required to make statements and give evidence :-

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CONFIDENTIAL.

UNITED NATIONS WAR CRIMES COMMISSION.

NOTES OF THIRD (unofficial) MEETING HELD ON 4TH JANUARY, 1944.

There were present:-

Sir Cecil Hurst (United Kingdom) who acted as chairman.
Mr. Herbert C. Pell (United States), accompanied by Mr. Lawrence Preuss.
Professor S.A. Glaser (Poland)

Dr. J.M. de Moor (Netherlands)
Monsieur C. Stavropoulos (Greece).
Monsieur F. Dumon (Belgium).
Monsieur Eric Colban (Norway)
Monsieur Victor Bodson (Luxemburg)
Dr. A. Kuhar (Yugoslavia), accompanied by Monsieur Ristic
Monsieur André Gros (France)
Sir Samuel Runganadhan (India)
Dr. V.K. Wellington Koo (China), accompanied by Dr. Y. Liang.
Monsieur B. Ečer (Czechoslovakia).

Commission to hold weekly meetings.

On the proposal of the Chairman, the Commission resolved to meet henceforth every Tuesday at 3.30 p.m., at the Royal Courts of Justice, unless it should be otherwise decided. (300)

Character of the meeting.

On the proposal of the Chairman, it was decided to regard the meetings of the Commission as still unofficial in character. A proposal by Dr. de Moor that the Commission should not in any event wait more than a month before becoming officially constituted was not pressed on the Chairman's undertaking to make clear in the proper quarters that the whole Commission was opposed to any further delay in giving its meetings an official character.

Secretary General's statement

The Chairman asked the Secretary General for a statement as to what had happened since the last meeting. This statement dealt with the matters mentioned in the next notes.

Form for transmitting Cases to the Commission.

The draft prepared for the printer was approved, subject to a modification proposed by Monsieur Colban, whose exact form was to be settled by the Chairman.

Staff and equipment of the Secretariat: relations with the Foreign Office.

The Secretary General reported the progress made, with/

with the help of the Foreign Office, in obtaining necessary equipment and staff for the Secretariat. He suggested that the Commission might agree to appointments on its staff being made on salaries approved by the Foreign Office, since this would be a guarantee that the salaries were reasonable and in accordance with English civil service practice. The staff should, he thought, be kept small until the development of the work was known. The Foreign Office was anxious to help but very desirous of avoiding any appearance of seeking to administer the Commission's affairs. The Commission being an autonomous international organisation, it would be necessary to establish a plan for its financial administration.

The Commission authorised the Secretary General to engage a chief clerk and a shorthand typist on salaries approved by the Foreign Office.

It also agreed to his studying the question of financial administration.

Photographing of the Commission.

The Secretary General reported that the Press were very anxious to photograph the Commission, and that, if this was to be done, the necessary arrangements could best be made through the Ministry of Information.

A member of the Commission pointed out that the appearance in the Press of photographs of the Commission might endanger the safety of persons connected with some of the members, since such photos were certain to come into the hands of the Axis Powers.

It was decided that the Commission should not be photographed and the Secretary General was instructed to write to 'Illustrated' and to 'Life', which had approached him, explaining the reasons for the decision.

Publicity for the Commission's proceedings.

The Secretary General reported that any communiqués to the Press that the Commission might decide to make could most conveniently and effectively be issued through the Ministry of Information. They would of course be issued in the name of the Commission.

A discussion arose as to the degree of publicity which could be given to the Commission's work without danger to the objects for which it existed. The general view was that the Commission needed to work in private, and it was suggested that a communiqué need not be issued after each meeting but only when there was something of interest that could be announced.

The Commission decided that its members should treat its proceedings as confidential.

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It also decided that communiqués to the Press should be approved by the Commission.

Character of the Commission's Minutes.

In order that the members of the Commission might have the greatest possible freedom to express their views, Mr. Pell moved the following resolution: "Motions, amendments and formal proposals shall be recorded by the Secretary but no record shall be kept of the course of the debate."

The resolution was adopted, with the proviso that members were not precluded from having the reasons for their proposals placed on record.

Cases to be treated as confidential documents.

The Chairman expressed the view, to which no objection was made, that Cases transmitted to the Commission would only be open for examination by the Commission and its staff. They would not be communicated to the governments.

Procedure of examination of Cases.

Dr. de Moor raised this subject and, in the course of the general exchange of views which followed, he moved that a sub-committee should be set up to draft formal rules, but he did not press his motion to a decision.

It was agreed that the responsibility for placing names of war criminals on the Commission's list, i.e. on the list of persons whose surrender for trial the Commission recommended the United Nations to demand, lay entirely with the Commission. The possibility of delegating powers in this matter to sub-committees, if there was a great influx of Cases was mentioned.

The functions to be entrusted to the Secretariat in connection with the examination of Cases was also discussed.

H. McKinnon Wood
Secretary General.

CONFIDENTIAL

UNITED NATIONS WAR CRIMES COMMISSION

Notes of Fourth Meeting held on 11th January, 1944.

Those were present:-

Sir Cecil Hurst (United Kingdom) who was in the chair.
Professor S.A. Glaser (Poland)
Dr. de Moor (Netherlands)
Monsieur C. Stavropoulos (Greece)
Mr. C.B. Burdekin (New Zealand)
Monsieur Victor Rodson (Luxemburg)
Dr. Eric Colban (Norway)
Monsieur Milan Ristic (Yugoslavia)
Monsieur F. Dumon (Belgium)
Dr. B. Ečer (Czechoslovakia)
Monsieur André Gros (France)
Mr. Herbert C. Pell (United States) accompanied by Mr. L. Preuss
Dr. Wellington Koo (China) accompanied by Dr. Y. Liang.

Minutes of last (unofficial) meeting.

These Notes were approved, subject to the following corrections:

Insertion in the list of those present of Professor S.A. Glaser, (Poland) whose name had been accidentally omitted.

Insertion of the correct hour of the Commission's regular Tuesday meetings, namely 3.00 p.m.

Final constitution of the Commission.

On the proposal of Mr. Pell, the Commission adopted the following resolution:

"The Commission will consider itself organised for business on Tuesday, January 18th. It considers itself now sufficiently organised to elect officials and adopt rules of procedure."

Election of officers.

The Commission elected Sir Cecil Hurst as Chairman and confirmed appointment of Mr. Hugh McKinnon Wood as Secretary General. (1)

This appointment was originally made at the Diplomatic Conference at the Foreign Office on 20th October, 1943.

/Appointment

Appointment of a sub-committee on rules of procedure.

Dr. Wellington Koo, seconded by Professor Glaser, moved the following resolution which was adopted:

"That a Sub-Committee on Rules and Procedure be appointed immediately with instructions to report at the next meeting. This report may be accepted by a majority of those present".

The following members were appointed to form this sub-committee: Mr. Pell, Monsieur Gros, Dr. Wellington Koo and Lord Atkin, if he were able to serve.

Appointment of a financial sub-committee.

The Chairman having suggested that it would be desirable to set up a sub-committee to consider the numerous questions which arose with regard to the finances of the Commission and their administration, and that this body should have power to co-opt persons having financial experience, particularly as regards the financing of international bodies, Mr. Pell moved the following resolution, which was adopted:

"That the Chairman be authorised to appoint a committee to consider matters of finance having to do with the Commission."

The Chairman appointed Dr. de Moore, Monsieur B. Eder and Monsieur Bodson to constitute this sub-committee.

Agenda of next meeting.

It was agreed that the memorandum dated 17th December, 1943, which had been circulated by Dr. Eder to the members of the Commission should be discussed at the next meeting.

(Signed) H. McKinnon Wood
Secretary General.

Cecil B. Hunter
Jan 18/44

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Confidential

UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF FIFTH MEETING

held on

18th January 1944

There were present:

Sir Cecil Hurst - United Kingdom (Chairman)
Mr. Herbert Pell - United States of America;
accompanied by Mr. Lawrence Preuss.
Lord Atkin - Australia.
Monsieur F. Dumon - Belgium.
Dr. V.K. Wellington Koo - China;
accompanied by Dr. Y. Liang.
Dr. B. Eder - Czechoslovakia;
accompanied by Monsieur Benes.
Monsieur André Gros - France.
M. C. Stavropoulos - Greece.
Monsieur Victor Bodson - Luxembourg.
Dr. J.M. de Moor - Netherlands.
M. C.B. Burdekin - New Zealand.
Dr. Erik Colban - Norway.
Professor Stefan Glaser - Poland.
Monsieur Kuhar - Yugoslavia;
accompanied by Monsieur Milan Ristitch.

APPROVAL OF MINUTES

signed

by the Chairman.

The Minutes of the last meeting were approved *and*

CONFIRMATION OF PREVIOUS PROCEEDINGS

On the motion of Mr. Pell

the following resolution was adopted:

That all elections, resolutions and committee appointments accepted by the Commission at the meeting of January 11th 1944 are hereby confirmed by the Commission at its first completely official meeting.

That the proceedings of the earlier unofficial meetings of 26th October, 2nd December 1943, and 4th January 1944 are likewise confirmed.

The Chairman reported that he had had an opportunity of showing to Mr. Eden, the Secretary of State for Foreign Affairs in the United Kingdom, the decisions reached at the meeting of the Commission on January 11th, and that Mr. Eden was strongly in favour of

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the Commission getting to work forthwith as decided at that meeting.

REPORT OF THE SECRETARY GENERAL

(1) The Secretary General stated that a shorthand-typist had been engaged and that the Minutes and other documents of the Commission could now be reproduced on its own premises.

(2) He also said that an official to act as Chief Clerk had been selected.

The Chairman observed that the Commission was an autonomous body and that it would be proper for the Financial Sub-Committee to consider and fix the salary of all persons receiving an appointment under the Commission, their decisions being confirmed in due course by the Commission.

RULES OF PROCEDURE

Mr. Pell presented the draft Rules of Procedure drawn up by the Sub-Committee on Rules and Procedure, which were read seriatim and commented on by Mr. Pell.

They consisted of four Articles proposed by the Sub-Committee and two special suggested amendments to be voted upon separately.

After certain amendments had been made in the proposed Articles general approval was given to them, and the Secretary General was directed to place the text as amended before the next meeting of the Commission.

In connection with Article 3, Rule 13, according to which members may speak in English or French and any member may ask for a translation, the Chairman suggested that he should be authorized to make arrangements to have an interpreter present, but it was decided to wait for further experience of the working of the Commission before taking this step.

(1) Miss E.M. Sirey

(2) Miss Frances I. Pittendrigh

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(1) Miss E.M. Sirey

(2) Miss Frances I. Pittendrigh

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(1)

It was decided that the first suggested amendment, which was as follows:

Section 3 of Article 1. In addition, in the event of a tie he shall have, as chairman, an additional vote to break the tie; this additional vote shall not be given to any person other than the elected chairman.

should be held over pending further experience of the working of the Commission.

Referring to the opposition which had arisen within the Commission to the creation of the Technical Committee, on the ground that it was unnecessary, the Chairman said he had been requested by the Secretary of State for Foreign Affairs of the United Kingdom to inform the members of the Commission that he and his advisers agreed to the Technical Committee being dropped, but desired to make sure that the Governments represented on the Commission were favourable to this course, as the idea of having a Technical Committee had originated with certain of those Governments. The Chairman pointed out that if the Technical Committee was abandoned, the War Crimes Commission would be the sole body representing the United Nations which dealt with War Crimes.

*Cecil B. Hurst
Jan 25/44*

(1) The second suggested amendment which was as follows:

New Article II. New Article II, changing the numbers of following articles. One or more vice-presidents shall be elected in the same manner provided for the election of the chairman, who in the absence of a chairman shall preside at meetings of the Commission.

was not discussed.

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There were present:

accompanied by
Mr. Lawrence Preuss } Sir Cecil Hurst
Mr. Herbert
Lord Atkin
General M. de
Dr. V.K. Wells
Dr. B. Eder
Monsieur Andre
M. O. Stavropoulos
Monsieur Viot
Dr. J.M. de Ma
Dr. Erik Colbe
Professor Stad
A.L. Dr. W.F. Kuhar

APPROVAL OF MINUTES

dispensed with and the

TECHNICAL COMMITTEE

who were in a position
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in the war crimes commission

No member present r
government. (1) Lord Atk
personally approved, but
Government. A discussion
War Crimes Commission of
no conclusions were adopte
Secretary of State for For

(1) See also below referenc
on his memorandum of 17

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UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF SIXTH MEETING

held on

25th January 1944

There were present:

accompanied by
Mr. Lawrence Preuss

Sir Cecil Hurst (Chairman)	- United Kingdom
Mr. Herbert Pell	- United States of America
Lord Atkin	- Australia
General M. de Baer	- Belgium
accompanied by Monsieur F. Dumon	
Dr. V.K. Wellington Koo	- China
Dr. B. Eder	- Czechoslovakia
Monsieur André Gros	- France
M. O. Stavropoulos	- Greece
Monsieur Victor Bodson	- Luxembourg
Dr. J.M. de Moor	- Netherlands
Dr. Erik Colban	- Norway
Professor Stefan Glaser	- Poland
A.L. Dr. W.F. Kuhr	- Yugoslavia
accompanied by Monsieur Milan Kistitch	

APPROVAL OF MINUTES

On Mr. Pell's motion, reading of the Minutes was dispensed with and the Minutes were signed by the Chairman.

TECHNICAL COMMITTEE

44 The Chairman asked that members of the Commission, who were in a position to do so, would state the attitude of their governments on the question of dropping the idea of a "Technical Committee" ~~and continuing consideration of the problem of War Criminals in the War Crimes Commission.~~

No member present reported any objection on the part of his government. (1) Lord Atkin said that the High Commissioner in London personally approved, but had to refer the question to the Australian Government. A discussion took place regarding the consequences for the War Crimes Commission of the abandonment of the Technical Committee, but no conclusions were adopted. The Chairman said he would inform the Secretary of State for Foreign Affairs in London that there had been no

(1) See also below reference to this subject in Dr. Eder's statement on his memorandum of 17 December 1943.

objections made at the meeting on the part of the governments, and that the question of transfer to the War Crimes Commission of problems originally intended for the Technical Committee was reserved.

FORMAL ADOPTION OF THE RULES

The Rules as circulated were formally adopted.

REPORTS BY THE FINANCIAL SUB-COMMITTEE

Staff Appointments. The Sub-Committee's Report on Staff Appointments (Secretary General's salary, appointments of Miss Pittendrigh and Miss Sirey) was presented by Dr. de Moor, as Chairman of the Sub-Committee, and was approved.

Financial administration. Dr. de Moor presented the Financial Sub-Committee's First Report on the Financial Administration of the Commission.

Discussion of the report was adjourned at Mr. Pell's request in order that he might communicate it to his government and receive its instructions. It was agreed that the words "for example if its budget has to bear the cost of establishing and maintaining an international court" in the last two lines of Page 1 should be deleted from the report.

The Sub-Committee was asked to submit a budget of expenditure covering the period down to 31st March of the current year.

DISCUSSION OF DR. EGER'S MEMORANDUM OF 17th DECEMBER 1943

Dr. Eger moved the following resolutions in substitution for the proposals made at the end of his memorandum:

- 1) A sub-committee shall be founded to consider facts and evidence.
- 2) A sub-committee shall be founded to consider means and methods of enforcement.
- 3) A sub-committee shall be founded to consider legal questions.

He then made the following statement which he requested should be inserted in the Minutes, together with his memorandum which is accordingly to be regarded as annexed to the Minutes.

"I wish to make an introductory and to some extent a supplementary and explanatory statement on both my memorandum of December 17th 1943 and the motions which I have just read.

1. First of all I would like to point out that a part of my memorandum has been realized before this meeting: the Commission has been officially constituted, rules on procedure have been adopted which will be a good basis for our work and a fine technical instrument for the building up the internal organisation of our Commission, and finally the proposal to set up an independent technical committee has been dropped by the British Government. As a consequence of this wise decision of the British Government, the problem of the concentration of the whole work concerning the punishment of war criminals in the hands of our Commission and the question of enlarging the scope of our Commission arose at the last meeting.

I am able to say that the Czechoslovak Minister of Justice and the Czechoslovak acting Minister of Foreign Affairs agree to the idea. But the official attitude of my Government as a whole will be decided in the near future, and I hope to be able to let it be known at the next meeting.

2. The purpose of my motion Number 1. is to facilitate the examination of individual cases submitted by the various Allied Governments and the compiling of lists of war criminals.

The examination of individual cases and the compiling of lists is to be carried out under the authority and responsibility of our Commission. Therefore, the cases and the lists must be carefully prepared for discussion and for final decision by our Commission, which will act in this respect as a body with discretionary power.

It will be a big job, probably a daily job for some members of our Commission. They should form a sub-committee, the task of which would be to do the preparatory work for the Commission. I think that in addition the collaboration of other members of our Commission would be useful, especially in cases submitted by their respective Governments.

3) But lists of alleged criminals without judicial and administrative machinery are useless. We remember that in 1919 the Allies had well-constructed lists of war criminals, perhaps better constructed than would be possible today. But the Allies, in spite of the recommendations of our predecessor, the Commission on War Responsibilities, and even in spite of the provisions of the Peace Treaties, did not establish their own judicial and executive machinery in order to arrest and try the criminals. The result of this mistake is well known. It is our duty, I think, to prepare for the Allied Governments' recommendations, the purpose of which will be to prevent the repetition of the great mistake of 1919.

Let me say in this connection, that inevitably the question will arise how the "joint decision of the Allied Governments" mentioned in the Moscow declaration of November 1st 1943 should be realized. I do not wish to repeat my arguments in favour of a judicial and not a political decision in matters which are exclusively matters of justice, according to the numerous official declarations

and according to the legal conscience of the United Nations.

If Justice is to be done, and not revenge, I cannot imagine any other form of this "joint decision" than a decision to establish a United Nations' Criminal Court for cases which are of an international nature, both in the territorial and in other senses. The sub-committees should discuss this question and prepare for the Commission a resolution which would be the basis of our recommendation to the Allied Governments. There are many other questions of this kind, of course. Our Commission would act in this respect as an advisory body for the Allied Governments. I think that my second motion is justified.

4. It is to be expected that a number of legal questions will arise. There is, for instance, the question what is really a war crime, or rather what crimes do the Allies regard as war crimes. This question is of practical importance for the establishing of lists. Further, there is the important question or problem of the relation between the international and the national criminal law as a basis for the punishment of war criminals; the question of "orders by a superior"; the question of penal responsibility on the part of the heads of the Axis states; the problem of the legal basis for the punishment of crimes committed on stateless persons, and so on. Our recommendations on these questions would be the second part of our advisory activity. Thus the third motion is justified as well.

5. I am sure that the Allied Governments would welcome recommendations from us concerning the means and methods of enforcement and the solution of some big legal problems. These recommendations would be a useful contribution to what Sir Cecil Hurst has called the common policy of the United Nations in regard to the punishment of war criminals. But this advisory work of our Commission would not be of importance only from the practical point of view, and only for the limited purpose of the punishment of war criminals. I am convinced that this work will have far-reaching effects on the building up of the international organisation of the future on the post-war collaboration of the United Nations, and on the development of International Justice as the most effective weapon in the struggle against international anarchy, thus promoting the solution of a problem to which the life work of a great number of the best lawyers, among them our Chairman Sir Cecil Hurst, has been devoted."

A discussion followed as to the respective competence of the proposed sub-committees. It appeared from this discussion that the one dealing with facts and evidence would, in Dr. Eöer's view, be able to consider not merely the facts and evidence in particular cases but also a question mentioned by the Chairman, namely, the general question of organising the examination of cases so as both to ensure careful examination, and to maintain the principle that the decision to put a name on the List must be the decision of the

Commission. Stress was laid on the necessity for close contact between the sub-committees, if three were created, and on the difficulty of strict delimitation of their functions; and it was understood that, as circumstances might require, the Chairman would act as a co-ordinating agency, sub-committees might have joint meetings, and questions might be referred by one of them to another sub-committee. Article III Rule 9 of the Rules would entitle any member of the Commission to attend any meeting of a sub-committee, and the representative of the country transmitting the Case under examination would normally do so if not a member of the sub-committee.

The Chairman considered there were subjects, e.g. the establishment of an international court, for which some governments might want to send special representatives to hear and take part in a sub-committee's deliberations. This was considered to be possible.

On a vote being taken, Dr. Eöer's resolutions were adopted.

APPOINTMENT OF A NOMINATING COMMITTEE

On the motion of Dr. Wellington Koo, the Chairman, Dr. Eöer and Mr. Pell were asked to form a committee to submit proposals as to the size and membership of the new sub-committees, after ascertaining the views of members and the extent to which they would be free to serve on these bodies.

Cecil J. B. Hurst
26/44

ConfidentialUNITED NATIONS WAR CRIMES COMMISSIONRULES

(as approved generally by the Commission
at its Fifth Meeting on 18th January 1944)

Article I. Chairman.

Section 1. The Chairman, elected by a majority of the Commission, shall, unless he designate some other member of the Commission to do so, preside at all meetings.

Section 2. As chairman, he loses none of the privileges of a member of the Commission; he may take part in debate and vote.

Section 3. In the event of these rules, and the amendments or additions to them that may from time to time be adopted, failing to cover a case that may arise, the chairman or presiding officer shall rule, subject to the approval of the Commission, and may instruct the Rules Committee to propose a rule covering the case in question.

Section 4. If for any reason the office of chairman should become permanently vacant a new election must take place within fifteen days.

Article II. Secretary General.

The secretary general shall keep the minutes and records of the Commission and shall communicate them as desired by the members. He shall attend all meetings of the Commission and shall have the right to speak. Further duties may be ordained by the Commission.

The secretary general shall prepare the minutes as soon as possible after each meeting and distribute them to the members of the Commission.

The secretary general shall be elected, and vacancies shall be filled, by the same method as the chairman.

Article III. Rules of procedure.

Rule 1. The Commission shall meet at such times as it may designate; meetings may, with not less than one week's notice, be called by the chairman, or at the written request of one half of the members of the Commission; such request to be addressed to the secretary general.

Rule 2. The order of business at each meeting shall, unless otherwise ordered by the Commission, be as follows:-

1. Reception of new members.

11. Minutes.

III. Report

IV. Unfinished

V. New business

VI. Adjournment

1. New members introduced

2. The secretary general there shall time to communicate unanimously

3. Each through some committee may be discussed

4. Unfinished at the end

5. New

Rule 3. Motion that they may be made translation

Rule 4. The be interrupted shall judge are requested the subject

Rule 5. De Any member before the the vote is previously the voting

Rule 6. The a quorum.

Rule 7. Not taken until for the meeting

Rule 8. Not is present

Rule 9. At or during that meeting of a member

III. Reports of committees.

IV. Unfinished business.

V. New business.

VI. Adjournments.

1. New members shall be received by the chairman and introduced by him to the Commission.

2. The minutes of previous meetings shall be read by the secretary general and after the reading of the minutes of any meeting there shall be given to the members of the Commission ample time to comment and to offer corrections. This reading may be unanimously dispensed with.

3. Each committee shall report through its chairman, or through some person designated by him. Any member of the committee may introduce a minority report. These reports may be discussed by the Commission at the time.

4. Unfinished business is the business that was in hand at the end of the last meeting.

5. New business is any other business.

Rule 3. Motions may be made from the floor; it is preferable that they should be written, and read by the secretary general. A motion to come before the Commission does not need a seconder. Motions may be made in French or in English. Any member may request a translation.

Rule 4. The member having the floor may, with his own consent, be interrupted by pertinent questions. The presiding officer shall judge of their pertinence. The members of the Commission are requested to confine their remarks as much as possible to the subject in hand.

Rule 5. Decisions of the Commission are to be by majority vote. Any member may demand a two-thirds majority on any question before the Commission. This demand may be made at any time before the vote is taken, either at the meeting or by notice previously given to the secretary general. It cannot be made after the voting has begun.

Rule 6. Two-thirds of the members of the Commission shall constitute a quorum.

Rule 7. No vote after the reading of the minutes shall be taken until at least fifteen minutes after the time announced for the meeting.

Rule 8. No meeting shall be called to order until a quorum is present.

Rule 9. Any member of the Commission may at any time either before or during the course of a meeting appoint a substitute who at that meeting or during any part of it shall have all the privileges of a member of the Commission.

/Rule 10.

5/c Fin. 2

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Confidential

24th January 1944.

UNITED NATIONS WAR CRIMES COMMISSION

FINANCIAL SUB-COMMITTEE

Report on Staff Appointments

1. The Secretary General of the Commission was originally chosen by the Diplomatic Meeting of 20th October 1943. He was then engaged by the Foreign Office, with the approval of the Treasury, at a salary of £1,500 per annum.

11. Two appointments have been made under the authorisation given by the Commission on 4th January 1944. The relevant minute reads:

"The Commission authorised the Secretary General to engage a chief clerk and a shorthand typist on salaries approved by the Foreign Office."

(1) Miss E.M. Sirey who is a fully-qualified stenographer, typist and duplicating operator, and

(2) Miss Frances I. Pittendrigh as "Chief Clerk."

The Secretary General informed the Sub-Committee that he hoped these two appointments would suffice for all the work of the Secretariat - other than interpretation and translation (if these become necessary on a substantial scale) and (possibly) technical assistance in examining cases - unless and until the Commission's functions are greatly enlarged.

Miss Sirey has been engaged through the Foreign Office at a salary of £2. 17. 0. per week plus cost-of-living bonus of 15/6d per week, making a total weekly remuneration of £3. 12. 6d. This is in accordance with British Civil Service rates.

The object of Miss Pittendrigh's appointment is to obtain a thoroughly experienced, capable and trustworthy official to act as the Secretary General's chief assistant in all matters concerning the administration and finances of the Commission. She will be at the head of any staff, other than technical staff, which the Commission may engage, and is competent to take the place of the Secretary General in arranging for meetings and recording them, if he should be unable to act himself.

The Foreign Office, with the consent of the Treasury, has approved as reasonable a salary scale for Miss Pittendrigh beginning at £350 per annum and rising by annual increments of £25 to £400 per annum, to which is added the cost-of-living bonus (£40. 9. 0d. per annum). She has so far only been given a general indication of the salary scale in view.

Miss Pittendrigh was employed from 1927 to 1940 in the Legal Section of the Secretariat of the League of Nations, where she had constant experience in secretarial work for international conferences and committees. Her salary on retirement was the equivalent in Swiss francs of £645 per annum. After working in the Censorship Department, reading French and German correspondence, she joined the British Broadcasting Company, European Intelligence, French Section, where she collected and classified information concerning France. She resigned this appointment to join the Commission's staff. Her leaving salary was £340 per annum, but she had been offered promotion to another post on a salary scale of £360 rising by £30 increments to £500.

The Financial Sub-Committee recommends the Commission to approve the above salaries.

S/c Fin. 1 C4

Confidential

24th January 1944.

UNITED NATIONS WAR CRIMES COMMISSIONFinancial Administration of the CommissionFirst Report by the Financial Sub-Committee1:
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201. THE PRESENT SITUATION

The premises occupied by the Commission have been placed at its disposal by the United Kingdom Government in accordance with an undertaking given at the Foreign Office Diplomatic Meeting of 20th October 1943, and pending the organisation of the Commission's finances, the Foreign Office is being so good as to arrange for it to be furnished with the equipment and supplies necessary for its work, has undertaken that any staff engaged "will be regarded for the time being as employed and paid by the Foreign Office," and has promised to advance funds for petty expenses to the Secretary General on the condition of eventual recovery from the Commission of the expenditure incurred.

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2. THE PRINCIPLE TO BE ADOPTED

The Financial Sub-Committee recommends that the finances and administration of the Commission should be managed by the Commission itself, and that the organisation established should, from the outset, be such as to be capable of expansion to meet any tasks entrusted to the Commission without any changes being required in its general structure or financial basis.

3. ALLOCATION OF EXPENSES

In the note of the proceedings of the Diplomatic Meeting of 20th October 1943, which the Foreign Office circulated to the participating governments, this matter is dealt with in a passage reading as follows:

"Expenses.

The meeting agreed to the proposal of His Majesty's Government in the United Kingdom that each member of the Commission and his staff, if any, should be paid by the Government appointing him but that the salary of the Secretary General and additional secretarial and administrative expenses should be divided equally between the various governments represented on the Commission.

The meeting took note of a statement by the Luxemburg Chargé d'Affaires, who said that his Government felt that equal division of expense would fall unduly heavy upon the smaller countries and asked whether some means could not be found of making contributions proportionate to the resources of the countries represented.

It was agreed that the arrangements should be subject to the possibility of future adjustment between the Governments concerned."

According to this passage, the question of the proportion in which the expenses should be shared was not, in the Financial Sub-Committee's opinion, finally settled. So long as the expenses are modest in amount, this question has only minor financial importance even for the smaller countries, and all the governments may wish to emphasise their common interest in the Commission's work by contributing equally; but if the Commission should be involved in heavy expenditure, - ~~for example if its budget had to bear the cost of establishing and maintaining an international court~~ - equal division

of the expenses might prove a serious burden for some of the governments. The Sub-Committee accordingly suggests the adoption of a system under which:

- (a) Up to an amount to be fixed by the Commission, the Commission's annual budget would be payable in equal shares by the governments;
- (b) Any sum in excess of this amount which might be decided to be required for the Commission's work would be payable in accordance with an appropriate scale of allocation, such as is in force for the same reason in other international organisations.

If this suggestion is approved by the Commission, the Financial Sub-Committee will make all necessary studies and enquiries and submit a scheme for giving effect to it.

4. PREPARATION OF A PLAN OF ADMINISTRATION

The above suggestion only relates to allocation of expenses and leaves open all the details of the future administration of the Commission's affairs. The Sub-Committee has already commenced its discussions and will report its conclusions to the Commission as soon as possible.

DRAFT MEMORANDUM BY

Dr. S. O. R.

The German criminals continue their work with greater cruelty than before in the hope that the justice of the Allied Nations will break down before massacres as it did after the First World War, and that in this way massacres will acquire some kind of immunity.

21. I think that the work of our Commission should not be limited only to the examination of denials and to the compilation of lists of criminals. This is a necessary part, of course, but not the most important. Apart from the fact that it is impossible in the actual situation to obtain all the necessary evidence from our countries, I cannot help feeling that the task of our Commission, a body composed of highly qualified lawyers and experts, and presided over by one of the most distinguished international lawyers and an experienced international judge, should not be confined solely to this part of which a body of well trained officials would be sufficient. I am convinced that the efforts that have happened in the occupied countries after October 1944 (the date when the Commission has been announced), and especially the Moscow Declaration of November 1st, 1943, have put before the Commission further tasks which are of great importance and which could only be solved by such an organization as the Commission of N. & S. E. of November 1st, 1943, the Declaration of Dr. de ROGER, and the Letter of December 1st, sent to the members of the Sub-Committee. All these documents mention the problem of the Commission from all aspects and suggest general solutions of general problems and special solutions of special problems.

(a) According to the Moscow Declaration of Nov. 1st, 1943, the actual instrument for the punishment of a great majority of crimes, i.e. crimes committed on the territory of an occupied country, will be the national criminal courts of this country which will try according to its own criminal law. As to this group of crimes the task of our Committee should be to help each Allied Government to bring before its own courts criminals who escaped either to Germany or to other Axis countries or to neutral countries or even to allied countries. The Committee should be empowered to assist and to support the Allied Governments or inter-Allied Commissions in their collaboration in this matter. The charge and the trial is the matter for the national public prosecutors and criminal courts.

(b). According to the Moscow Declaration, the crimes "without particular geographical location" shall be punished by a "joint decision of the Allied Governments". As far as this group of crimes is concerned the task of our Commission would be of a more constructive nature. As for this group of crimes no jurisdiction of an Allied State exists according to the

principle "leaving the right decision about Allied Command Allied Military personnel and public opinion. But we are not solutions. We are the only ones who can solve this grave. The Commission of

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principle "lex delicti commissi" or according to the principle that the State has the right to punish crimes committed abroad on its own citizens, the Commission should, to my mind, elaborate and suggest to the Allied States an Inter-Allied Convention establishing an Inter-Allied Criminal Court or alternatively Allied Military Courts in the occupied Axis countries. This would be the best juridical form of the "joint decision." The idea is strongly supported by public opinion throughout the whole of the free world, especially in the United States and in the Soviet Union. This solution shall be preferred to other solutions, especially to a "political decision" without trial. History has shown that political decisions in matters of justice were disastrous after the First World War. The consequence of a new collapse this time would be more grave. Therefore, I suggest that the examination of the further work of our Commission should be put on the programme of our next meeting.

2. The meeting of Ambassadors held on October 20th, 1943, accepted several proposals which were pointed out in the memorandum of the Foreign Office, among them the following proposal no. 4:

"Chairmanship. H.M. Government in the U.K. would propose that it should be left to the Commission to settle this question at its first meeting."

I understand the difficulties. But on the other hand it is impossible to postpone the settlement of this question without doing harm to the position of the Commission and to its work. The Commission was announced on October 7th 1942. The end of 1943 is approaching and the Commission has not yet held its first official meeting.

Therefore I suggest that at the next meeting a vote of cordial invitation should be sent to the Government of the U.S.S.R. to delegate its representative and to decide to put on the programme of the following meeting the election of the Chairman and the Vice-Chairman.

3. The same meeting of Ambassadors mentioned sub. 2 has accepted under no. 5 the following proposal of the Foreign Office:

"Procedure. In general H.M. Government in the U.K. would propose that it should be left to the Commission to settle its own procedure."

I regard the settlement of procedure as very necessary, especially after the meeting of December 2nd. But procedure means, in my opinion, the whole internal organisation of the work of the Commission. We have a good example in the organisation of the Commission of 1919.

I think that the idea of a Technical Committee as an independent body with the task of treating questions of big policy or of general importance is not wise. Several members are strongly opposed to it. I understand their position and I stressed my own opinion several times in the discussions.

Without repeating my arguments I would say in addition that:

- (a) Members of our Commission are able to answer each legal question concerning the punishment of war criminals;
- (b) Several of our Members worked for a considerable time on this problem in unofficial bodies where they acquired valuable information and experience;
- (c) The public has not heard of a Technical Committee but only of our Commission as an auxiliary instrument of Allied Justice;
- (d) A difficult situation would arise if the big questions that will influence the success or failure of the entire work were entrusted to a "Technical Committee", meanwhile the Commission as the only publicly announced body would bear the whole responsibility in the eyes of the peoples of the United Nations;

- (e) All the members of the Commission are in the confidence of their respective governments. They are in contact with the law officers of their governments and collaborate with them.

This is my personal opinion. The official attitude of my Government will be made known as soon as possible.

Instead of a Technical Committee working independently of our Commission, I proposed at the last meeting a permanent committee. This suggestion was seconded by several members. The same suggestion has been made by M. DEBAYER. Unfortunately no vote was taken. I am still in favour of this proposal and I would complete it by suggesting the election of:

- (a) A permanent Sub-Committee for general questions;
- (b) A Sub-Committee for all questions concerning the Inter-Allied collaboration in order to bring criminals before the national courts of the individual Allied countries;
- (c) A Sub-Committee for all questions concerning the "joint decision" on crimes without particular geographical location" according to the Moscow Declaration.

December 17th 1943.

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Confidential

UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF SEVENTH MEETING

held on

1st February 1944

There were present:

Sir Cecil Hurst (Chairman) - United Kingdom
Mr. Herbert Pell - United States of America
 accompanied by Dr. Lawrence Preuss
Lord Atkin - Australia
Monsieur de Baer - Belgium
Dr. V.K. Wollington Koo - China
 accompanied by Dr. Y. Liang
Dr. B. Eöer - Czechoslovakia
Professor René Cassin - France
 accompanied by Monsieur André Gros
M. C. Stavropoulos - Greece
Sir Samuel Runganadhan - India
Monsieur Victor Bodson - Luxemburg
Dr. J.M. de Moor - Netherlands
Dr. Erik Colban - Norway
 accompanied by Monsieur Finn Hiorthøy
Professor Stefan Glaser - Poland
A.L. Dr. W.T. Kuhar - Yugoslavia
 accompanied by Monsieur Milan Ristitch

APPROVAL OF MINUTES

Reading of the Minutes was dispensed with,
and the Minutes were signed by the Chairman

EFFECT UPON THE FUNCTIONS OF THE
WAR CRIMES COMMISSION OF THE ABANDONMENT
OF THE TECHNICAL COMMITTEE

Speaking on the Minutes, Dr. de Moor said
that the Chairman's statement at the top of Page 2 - "that the question
of transfer to the War Crimes Commission of problems originally in-
tended for the Technical Committee was reserved" - did not correspond
to his impression of the Commission's attitude.

The Chairman, speaking as the representative of the United Kingdom,
made the following statement on this point, which he asked to have
inserted in the Minutes:

"Having now had an opportunity of studying the Declaration read by
Dr. Eöer at the meeting on January 25th 1944, I feel bound to make
a reserve as to some statements made in that Declaration. I am

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not satisfied that in all respects the Declaration presents a correct statement of the present position. I refer, particularly to the last sentence of the first paragraph numbered 1, and to the third sub-paragraph of the paragraph numbered 3.

I feel some doubt as to the functions of the Commission in regard to the matters dealt with in the above two passages, and I feel obliged to put in this reserve because of the importance which I attach to the principle of the common policy."

Some discussion ensued as to how the abandonment of the proposal to set up a Technical Committee affected the work of the Commission: a majority of the members considered that the Commission should deal, in an advisory capacity, with questions which would have been dealt with by the Technical Committee, and several stated this to be the desire of their Governments.

It was ultimately proposed by Lord Atkin and ^{Mr.} Colban, and was agreed, that the Chairman should be invited to inform the Secretary of State for Foreign Affairs in the United Kingdom of this fact, and should ascertain whether it was Mr. Eden's intention to convoke another Foreign Office meeting for the purpose of defining more fully the functions of the Commission; and that for the present the Commission should continue to work on the plan adopted at the meeting on January 25th 1944."

APPOINTMENT OF SUB-COMMITTEES

The Chairman presented the proposals of the Nominating Committee which were accepted, subject to the addition of Mr. André Gros, France, to the Committee on Enforcement. The Sub-Committees were accordingly constituted as follows:-

Sub-Committee on Facts and Evidence

Mr. de Baer (Belgium)
Dr. B. Ečer (Czechoslovakia)
Dr. Lawrence Preuss (United States of America)

Sub-Committee on Enforcement

Dr. V.K. Wellington Koo (China)
Sir Samuel Runganadhan (India)
~~Mr.~~ Dr. Erik Colban (Norway)
Dr. J.M. de Moor (Netherlands)
Mr. Herbert Pell (United States of America)
A.L. Dr. W.K. Kuhar (Yugoslavia)
Lord Atkin (Australia)
Monsieur André Gros (France)

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Sub-Committee on Legal Questions

Dr. Y. Liang (China)
 Dr. B. Ečer (Czechoslovakia)
 M. C. Stavropoulos (Greece)
 Professor Stefan Glaser (Poland)
 Dr. Lawrence Preuss (United States of America) X

It was agreed that the Chairman could, ex-officio, sit on any of the Sub-Committees at any time.

It was decided that the Committee on Facts and Evidence should meet on Wednesday February 9th at 10.30 a.m. and thereafter on each succeeding Wednesday at the same hour unless otherwise decided.

It was agreed that any delegation whose cases were to be discussed by the Sub-Committee at a particular meeting should be notified in advance by the Secretary General, in order that it might send a representative if not already represented on the Sub-Committee.

Professor Glaser asked whether it might not be expedient to authorise the Sub-Committees to co-opt non-members of the Commission to act as assessors, but it was felt better to await experience of the working of the Sub-Committees.

INDISCRETIONS IN THE PRESS

Reference was made to certain references to the Commission's work in the Press. The Chairman said that as his position as Chairman of the Commission was generally known, he had been frequently approached by the Press, and was taking the line that the Commission had a very difficult task which it must be allowed to pursue without constant attention from the newspapers. He thought the better papers would appreciate that the best way to help the Commission was not to talk too much about its work.

LECTURE BY DR. EČER

Dr. Ečer referring to Article III Rule 14 of the Commission's Rules, asked and received the Commission's agreement to his giving a lecture at Birmingham for the League of Nations Union on the Trial of War Criminals.

Cecil B. Hunt
Feb 8/44

UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF EIGHTH MEETING

held on

8th February 1944

There were present:-

Sir Cecil Hurst (Chairman)	- United Kingdom
Mr. Pell	- United States of America
accompanied by Dr. Preuss	
Lord Atkin	- Australia
M. de Baer	- Belgium
Dr. Liang	- China
Dr. Eder	- Czechoslovakia
Professor Cassin	- France
accompanied by M. Gros	
M. Stavropoulos	- Greece
Sir Samuel Runganadhan	- India
M. Bodson	- Luxembourg
Dr. de Moor	- Netherlands
Mr. Burdekin	- New Zealand
Mr. Colban	- Norway
accompanied by M. Hiorthoy	
Professor Glaser	- Poland
Dr. A.L. Kuhar	- Yugoslavia
accompanied by M. Ristitch	

ADOPTION OF THE MINUTES

The Minutes were read and, on Mr. Pell's motion, were signed by the Chairman.

EFFECT OF THE ABANDONMENT OF THE TECHNICAL COMMITTEE
UPON THE FUNCTIONS OF THE WAR CRIMES COMMISSION

With regard to

the passage in the Minutes dealing with the Technical Committee, the Chairman said that he had been in touch with the Foreign Office, and Mr. Eden's advisers were in favour of the Commission proceeding with its work upon the footing that it was now charged with the functions which would have been exercised by the Technical Committee. It was not Mr. Eden's present intention to convoke another meeting at the Foreign Office: he thought it would be sufficient to send a note to each of the Governments of the United Nations on the subject.

In reply to more precise demands expressed the Governments to in regard to ground that Foreign Office

MEMBERSHIP OF

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SECOND REPORT
FINANCIAL

Sub-Committee

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MEMBERSHIP

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In reply to several members who felt there was still need for more precise definition of the Commission's new task, the Chairman expressed the opinion that a certain fluidity would not be a disadvantage, and that if the Commission proceeded to advise the Governments to the best of its ability on the problems which arose in regard to war criminals, it need not fear objections on the ground that it was exceeding its competence. He thought the Foreign Office note to the Governments would be in this sense.

MEMBERSHIP OF THE SUB-COMMITTEE ON ENFORCEMENT

The Chairman suggested that Mr. de Baer should be added to this Sub-Committee. A motion to that effect was moved by Mr. Pell and was adopted.

SECOND REPORT ON FINANCIAL ADMINISTRATION BY THE FINANCIAL SUB-COMMITTEE (Doc. C.5)

Dr. de Moor, Chairman of the Sub-Committee, presented the Report.

On the motion of Mr. Colban, the Commission adopted Part I, which fixed at £1,100 the maximum financial liability to be incurred by the Commission down to 31st March, 1944, other than the charges payable in connection with the Commission's premises, the amount of which it had not been possible to ascertain.

Part II made further proposals regarding the method of allocation of expenses suggested in the Sub-Committee's First Report on Financial Administration. On Mr. Colban's motion, it was decided that the Commission's members should recommend this part of the Report to the Governments for their consideration.

MEMBERSHIP OF THE FINANCIAL SUB-COMMITTEE

Dr. de Moor informed the Commission that the Financial Sub-Committee felt that a representative of one of the richer Governments might, with advantage, be added to the Sub-Committee. At present it consisted entirely of

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representatives of occupied countries which would only be able to make small payments to the Commission's expenses. No resolution was moved.

WORK OF THE SUB-COMMITTEE ON ENFORCEMENT
AND ON LEGAL QUESTIONS

A discussion took place as to whether these bodies should meet at once, or wait until the subjects with which they were concerned had been debated in the Commission. It was resolved that they should meet, and that the members of the Commission and their Governments should send proposals and relevant documents directly to them through the intermediary of the Secretary-General.

In reply to Professor Glaser, the Chairman said there would be no difficulty in arranging ⁱⁿ proper cases for joint meetings of the Sub-Committees on Enforcement and on Legal Questions.

It was decided that the Sub-Committee on Enforcement should meet on next Friday, and subsequent Fridays, at 3.00 p.m. It was understood that the question of an International Court would not for the time being be taken up by it.

The date and hour of meeting of the Sub-Committee on Legal Questions was left to be fixed at the next meeting of the Commission.

Cecil B. Hurst
Jul 15/44

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UNITED NATIONS WAR CRIMES COMMISSION

SECOND REPORT ON FINANCIAL ADMINISTRATION
BY THE FINANCIAL SUB-COMMITTEE

The Sub-Committee has considered further the two questions referred to it by the Commission, and begs to report as follows:

1. Budget for the period ending 31st March 1944

On 25th January last the Sub-Committee was asked to submit "a budget of expenditure" for the period from the establishment of the Commission down to 31st March 1944. This is a period during which the Commission will evidently have to rely on supplies and advances made, subject to reimbursement, by H.M. Government in London, and the Commission's object is simply to fix the maximum liability which it is prepared to incur in this manner during the period.

Owing to the number of British Government departments involved, it has not yet been possible to ascertain the amount of the charge which will be made for the Commission's premises, including rent, cleaning, heating, furniture, telephones etc. The total liability already incurred by the Commission ~~down to 31st March 1944~~ in respect of its staff and of equipment, and printing and stationery furnished by H.M. Stationery Office is as follows:

	£	s	d
Secretary General.			
Passage from New York			
to England (approximate)	50	0	0
Salary (4 months 1 day).....	504	4	0
Chief Clerk. Salary, bonus &			
insurance (2 months 5 days)...	71	3	6
Shorthand Typist. Salary, bonus			
& insurance (10 weeks).....	37	0	0
Supplies & Printing furnished			
by H.M. Stationery Office.....	68	12	3
	<u>£730. 19. 9.</u>		

II. Financial Administration

The Sub-Committee is considering Draft Financial Regulations which have been prepared for it by the Secretary General, but is not yet ready to report to the Commission. Before a complete Draft of the Regulations can be drawn up, it will be necessary for the Commission to take a decision upon the method of allocation of expenses suggested in the report made to it at its last meeting by the Sub-Committee. Further consideration has been given to the details of this method, and the Sub-Committee proposes that the system adopted should be one under which:-

(a) Each Government would in each budgetary period (commencing with the period April 1944 to March 1945) pay what may be called a "basic subscription" of £400 towards the Commission's expenses. If the expenditure for which the Commission think it necessary to budget in a particular budgetary period should be less than the total of all the basic subscriptions, the balance would be paid automatically into the Working Capital Fund, which must be established to protect the Commission against delays or defaults in the payment of contributions, a risk which must be taken into account in establishing the financial system of any international organisation.

(b) Expenditure voted for any budgetary period in excess of the total of the basic subscriptions would be divided according to a scale of allocation drawn up with the consent of the Governments concerned, and taking account of the particular circumstances of each Government.

UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF NINTH MEETING

held on

15th February 1944.

There were present:

Sir Cecil Hurst (Chairman) - United Kingdom
 Mr. Pell - United States of America
 accompanied by Dr. Preuss
 Lord Atkin - Australia
 M. de Baer - Belgium
 accompanied by M. Dumon
 Dr. Liang - China
 Dr. Eöer - Czechoslovakia
 accompanied by M. Benesh
 Professor Cassin - France
 accompanied by M. Gros
 M. Stavropoulos - Greece
 M. Bodson - Luxembourg
 Dr. de Moor - Netherlands
 Mr. Burdekin - New Zealand
 Dr. Colban - Norway
 Professor Glaser - Poland
 Dr. Kuhar - Yugoslavia
 accompanied by M. Ristitch

*Sir Samuel Ranganathan*APPROVAL OF MINUTES

Reading of the Minutes was dispensed with and they were signed by the Chairman.

COMMUNICATION WITH GOVERNMENTS

The Chairman asked the members to ascertain, and let the Secretary-General know, through what official channel the Commission should communicate with them. The person or department to whom the Commission's communications should be addressed might not be the same in all cases.

He also asked whether the members were communicating, or would communicate, with their Governments, regarding the Financial Sub-Committee's suggested method of dividing the expenses of the Commission. This was found to be the case.

Professor Glaser stated that the Polish Government agreed to the suggested "basic contribution" of £400.

FINANCIAL ADMINISTRATION OF THE COMMISSION

Mr. Pell said it would be easier to consult Governments upon a concrete scale of allocation. After some discussion the Financial Sub-Committee was asked to prepare such a scale.

RESOLUTION MOVED BY MR. PELL AS CHAIRMAN OF THE SUB-COMMITTEE ON ENFORCEMENT (C.6.)

Mr. Pell presented the resolution, and a discussion ensued as to the objects to be attained by it, and upon various aspects of the problem of war crimes. Mr. Pell and other members of the Sub-Committee explained that what they needed and sought was sufficient information on the questions put by the resolution to enable them to discharge their task of recommending what measures were required for securing adequate punishment of war crimes, for example, national legislation to fill up gaps, unification of legislation, possibly international action such as establishment of an international court.

One of the questions put in the resolution was omitted, as overlapping with another, and the resolution was adopted in the following form:

"That the members of the Commission are requested to obtain, to the best of their ability, and to transmit to the Sub-Committee on Enforcement, information as to the state of their national law on the following questions, in which the term "war crimes" refers to criminal acts mentioned in the List of War Crimes provisionally adopted by the Commission.

1. Does the criminal law of the country impose some, and, if so, what penalty, for some, and, if so, what war crimes?
2. Is the jurisdiction of the national courts in administering criminal law, in so far as that law punishes war crimes, restricted as to territory or nationality?
3. What is the procedure as to appeals? What courts? And what is the ordinary time before the final appeal, if any, is decided?"

It was resolved that members should endeavour to reply as soon as possible.

EFFECT OF ABANDONMENT OF THE TECHNICAL COMMITTEE UPON THE
FUNCTIONS OF THE WAR CRIMES COMMISSION

Answers from U.S.A., Czechoslovakia, French National Committee.

Mr Pell stated that the U.S. Government accepted the abandonment of the Technical Committee, and the taking over of its duties by the Commission.

The Chairman said a letter in the same sense had been communicated to him by Dr. Ečer. This letter showed the Czechoslovak Government to have decided that:

"The Czechoslovak Government agrees with the proposal that the competence of the United Nations Commission for the Investigation of War Crimes should be extended to all questions which are connected with the problem. The Czechoslovak Government also agrees that the Committee of Experts should be dropped."

Professor Cassin read a letter stating: (translation)

"The French Committee of National Liberation agrees that the creation of the Technical Committee provided for in the British Memorandum of 30 August, 1943, in order to help the Commission, should be abandoned. At the same time, it is understood that all studies of a legal nature, as well as the possibility of making proposals to the Governments, will be entrusted to the Commission itself."

MEETING OF THE SUB-COMMITTEE ON LEGAL QUESTIONS

It was decided

that this body should commence its meetings. After the close of the Commission's session, the members of the Sub-Committee fixed the first meeting for Monday, February 21st, at 3 p.m.

Cecil B. Hurd
Feb 22/44

SECRET

M. 10

UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF TENTH MEETING

held on

22nd February 1944

There were present:

Sir Cecil Hurst (Chairman)	- United Kingdom
Mr. Pell	- United States
accompanied by Professor Preuss	
Lord Atkin	- Australia
M. de Baer	- Belgium
Dr. Liang	- China
Dr. Eder	- Czechoslovakia
accompanied by Dr. Benesh	
M. Gros	- France
M. Stavropoulos	- Greece
M. Bodson	- Luxembourg
Dr. de Moor	- Netherlands
Mr. Burdekin	- New Zealand
M. Colban	- Norway
Professor Glaser	- Poland
M. Kuhar	- Yugoslavia
accompanied by M. Ristitch	

MINUTES

Reading of the Minutes was dispensed with, and they were signed by the Chairman.

COMMITTEES

On the Chairman's proposal, it was decided that the existing sub-committees should henceforth be called "committees."

STAFF

On the Chairman's proposal, the engagement of additional typing assistance was authorised.

FIRST REPORT OF COMMITTEE I (FACTS AND EVIDENCE): PREPARATION AND PRESENTATION OF CASES OF WAR CRIMES

Certain changes were made, and the Secretary-General was instructed to send copies of the amended text⁽¹⁾ to the members of the Commission for the information of their National Offices, or other persons preparing cases for the Commission.

(1) Doc. C 7.(1)

PERPETUATION OF EVIDENCE/AN AUTHENTIC FORM

Referring to the last

paragraph of the above report, the Chairman said it might be possible for H. M. Government to make arrangements, such as were made for the Leipzig trials after the 1914-1918 war, for evidence of witnesses to war crimes to be taken on oath and under conditions enabling its authenticity to be tested, if any of the United Nations, not having machinery of their own for the purpose, would welcome such facilities.

ORGANISATION OF NATIONAL OFFICES

(1)

M. de Baer, Chairman of Committee I,

supported by Professor Preuss, to whom Mr. Pell gave place as representative of the United States Government, proposed that certain information regarding the organisation of existing National Offices should be procured for the information of the members of the Commission. No resolution was adopted, but Professor Preuss asked to be recorded in the Minutes as expressing on behalf of the United States, the desire that information on the points mentioned by M. de Baer should be made available, as it would assist the United States, and possibly other Governments, to establish National Offices on sound lines.

The Chairman said the members whose Governments had set up National Offices would doubtless do their best to comply with this request.

STATEMENT BY THE CHAIRMAN OF COMMITTEE II (ENFORCEMENT)

Mr. Pell,

as Chairman of Committee II, stated that this Committee regarded the consideration of the organisation of an international court as a necessary preliminary to its work, and therefore proposed, with the Commission's permission, to begin discussions on the subject as soon as possible. The Chairman of the Commission said he had been unable to obtain the promise of the Attorney General of the United Kingdom to attend a meeting of the Commission for the purpose of discussing the question, and in these circumstances he could not ask Committee II to wait longer before taking it up.

INFORMATION PUBLISHED BY THE 'MANCHESTER GUARDIAN' ON 19 FEBRUARY 1944.

Mr. Pell called attention to an article in the 'Manchester Guardian' which appeared to be the result of perusal of the Commission's Minutes. He urged that measures must be taken to prevent such leakage of information.

It was decided that the Minutes should be marked Secret instead of Confidential, and the circulation strictly controlled.

LEGISLATION AND ORGANS FOR THE ADMINISTRATION OF CRIMINAL LAW SET UP BY THE AXIS IN OCCUPIED TERRITORY

A resolution was moved by Professor Glaser, as Chairman of Committee III (Legal Questions), with the (1) object of obtaining information for the Commission on the above subject. No formal decision was taken, but it was understood that those members of the Commission who felt able to do so would supply the information.

Cecil M. Hunsell
Feb. 29/44

SECRET

FIRST REPORT

Preparation and

As a result transmitted to should call the

1. In the particular case

- (1) What is
- (2) Can the
- (3) What was
- (4) Was the
- (5) What is
- (6) Any in
- (7) Whether

2. It is should, in addition under which the national crime the accused.

3. It is reasons of so documents transmitted requested at least which the character witnesses shown to the Commission

4. Commission at least four copies on this

5. It is provided in indicating the The object is identified in the Offices. particularly

6. The naval and air etc. should gauge, with stated in the

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07 (1)
February 1944

UNITED NATIONS WAR CRIMES COMMISSION

FIRST REPORT OF COMMITTEE I (FACTS AND EVIDENCE) AS ADOPTED BY THE COMMISSION

Preparation and presentation of cases of war crimes to the Commission

As a result of examining a certain number of cases which have been transmitted to the Commission, Committee I proposes that the Commission should call the attention of the National Offices to the following points:

1. In the opinion of the Commission the papers sent to it in any particular case should state:

- (1) What is the offence alleged?
- (2) Can the offender be identified?
- (3) What was the degree of responsibility of the offender having regard to his position?
- (4) Was the offence committed on the offender's own initiative or in obedience to orders, or in carrying out a system or legal disposition?
- (5) What evidence is available in support of the charge?
- (6) Any indication of the probable defence.
- (7) Whether the case appears to be reasonably complete.

2. It is desirable that in transmitting a charge the National Office should, in addition to specifying the heading in the List of War Crimes under which the charge falls, indicate what provisions, if any, of the national criminal law (whether civil or military) have been infringed by the accused.

3. It is understood that it may in some instances be impossible, for reasons of security, to identify a witness or witnesses by name in the documents transmitted to the Commission, but the National Offices are requested at least to state, in general terms, the evidence or information on which the charge is based; and all necessary information in regard to the witnesses should be available for communication orally to Committee I or to the Commission, if they are requested.

4. Committee I would be grateful if the National Offices would supply at least four copies of each case transmitted to the Commission - carbon copies on thin paper will suffice - in addition to the signed original.

5. It is important that the cases should be marked, in the place provided in the Form, (i.e. "CHARGE No.") with national serial numbers indicating the way in which the charges are filed by the National Offices. The object is to provide a fool-proof method by which the cases can be identified in any correspondence relating to them between the Commission and the Offices. Unless this is done, cases may be confused with one another, particularly where the name of the accused is not known.

6. Titles, whether military or civil, and the names of military, naval and air formations, units, government departments or organisations etc. should not be translated, but should be left in their original language, with or without a translation, in order that they may be correctly stated in the Commission's list of persons charged with war crimes

7. Reference to prisoners of war camps, should show, if possible,

- (a) whether the camp is one for officers or for other ranks,
- (b) the official number or description,
- (c) the country in which the camp is situated and its exact location.

8. In view of the possible death or disappearance of witnesses, or of their geographical dispersal, and of the deliberate destruction of evidence by the Axis in occupied countries, the Commission wishes to call the attention of the National Offices to the necessity of recording at once, while it is still available, evidence of war crimes in an authentic form, with a view not merely to the work of the Commission but also to prosecution for such crimes before the competent tribunals.

Confidential

UNITED NATIONS

RESOLUTION proposed
as Chairman

The United Nations War
International Commission for
can provide the War Crimes
criminal justice establishment
The following information

- 1/ Have the Germans
the country; or
- 2/ have they enforced
- 3/ have they used the
administration of

In describing the system
various countries by the
information on the following

- a/ The criminal code
and the type of punishment
- b/ the code of criminal
organisation that
in particular; the
and the effect of
such measures are
are, the status of
mitted to the account
- c/ the penal system
establishment of

It would also be advisable
text of all the most important
enacted by the occupying

Confidential

C 8
February 21st, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

RESOLUTION proposed by Professor GLASER,
as Chairman of Committee III.

The United Nations War Crimes Commission will be grateful to the International Commission for Penal Reconstruction and Development if it can provide the War Crimes Commission with information on the system of criminal justice established by the Axis in the occupied countries.

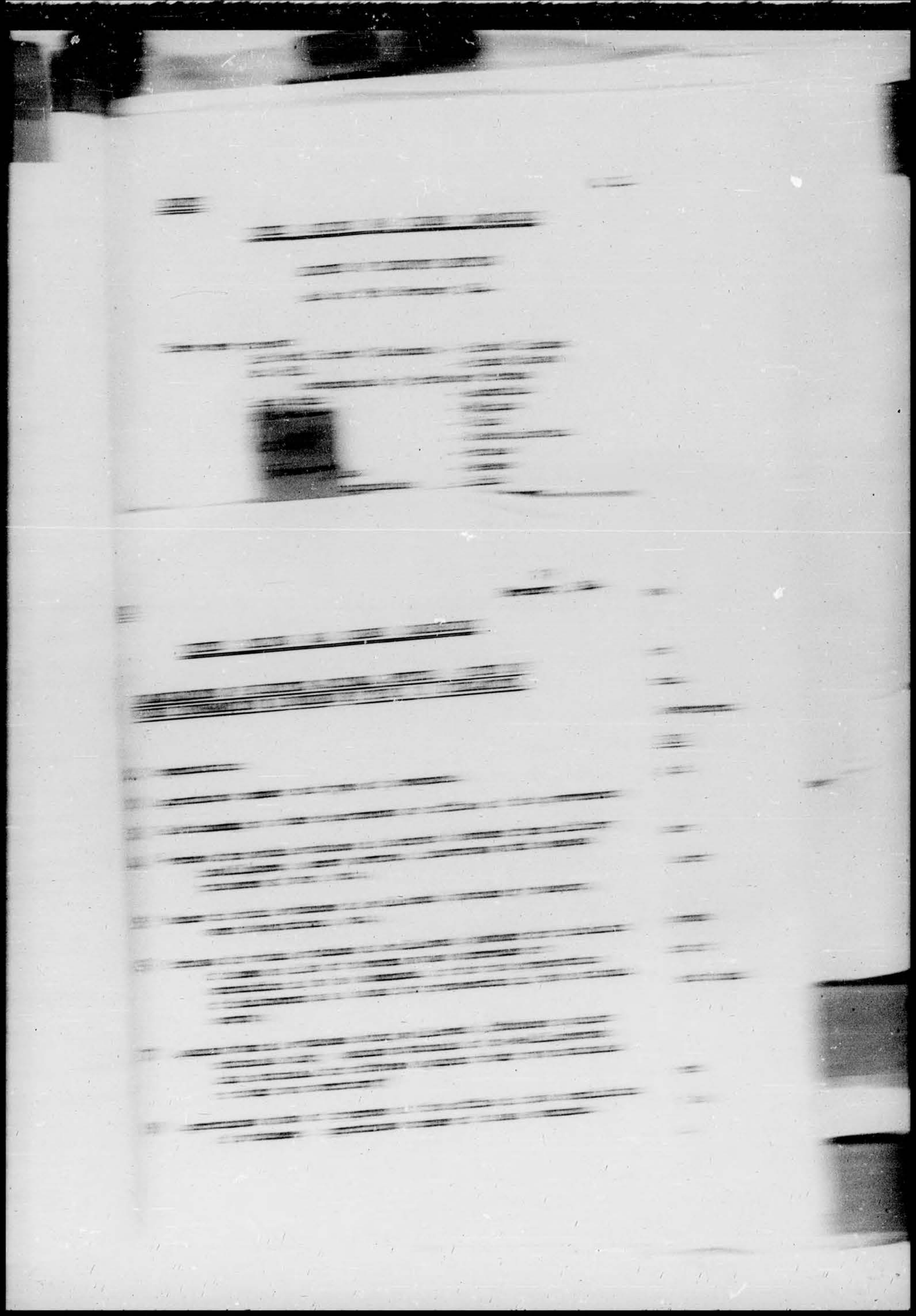
The following information in particular would be valuable:

- 1/ Have the Germans merely extended their own criminal code to the country; or
- 2/ have they enforced a new one; or
- 3/ have they used two jointly, and if so to which spheres of the administration of criminal justice do they apply each code?

In describing the system of criminal justice established in the various countries by the occupying Power, it would be desirable to give information on the following three subjects:

- a/ The criminal code, i.e. the kind of offences that are punished and the type of punishments that are provided for them;
- b/ the code of criminal procedure, i.e. the type of judicial organisation that they have established in the various countries, in particular; the competence of various courts, the procedure and the effect of proclaiming a state of emergency and how often such measures are taken, the status of the police and who they are, the status of the magistrates, the scope of defence permitted to the accused, etc.;
- c/ the penal system, i.e. the administration of prisons and the establishment of concentration camps.

It would also be advisable to append to this report the original text of all the most important legislative and administrative provisions enacted by the occupying Power.



SECRET

M. 11.

UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF ELEVENTH MEETING

held on 29th February 1944.

There were present:

Sir Cecil Hurst (Chairman) - United Kingdom
Mr. Poll - United States

accompanied by Professor Preuss

Lord Atkin

- Australia

M. de Raet

- Belgium

- China

- Czechoslovakia

- France

- Greece

- India

Anganadhan

Hamburg

C 9

February, 1944

UNITED NATIONS WAR CRIMES COMMISSION

ORGANISATION OF EXISTING NATIONAL OFFICES: POINTS ON
WHICH INFORMATION IS DESIRED BY THE U. S. DELEGATION.

- (1) Organization;
- (2) Approximate number and types of personnel;
- (3) Relationship to other departments or offices of the government;
- (4) Sources from which evidence is derived (whether from military intelligence, secret service, interviews with escaped prisoners of war, etc.);
- (5) Manner in which evidence is collected (whether by hearsay, sworn depositions, etc.);
- (6) Purpose for which evidence is collected (whether for inclusion of names on list of persons whose surrender or extradition is to be demanded, or for the preparation of indictments as a basis for prosecution in the national courts);
- (7) Against whom is evidence being collected (offenders against nationals only; against nationals of co-belligerents; Axis nationals for offences against their own nationals on their own territory)?
- (8) Approximate state of progress of the office in the compilation of evidence; approximate number of cases examined.

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SECRET

M. 11.

UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF ELEVENTH MEETING
held on 29th February 1944.

There were present:

Sir Cecil Hurst (Chairman)	- United Kingdom
Mr. Poll	- United States
accompanied by Professor Preuss	
Lord Atkin	- Australia
M. de Baer	- Belgium
Dr. Liang	- China
Dr. Eöer	- Czechoslovakia
M. Gros	- France
M. Stavropoulos	- Greece
Sir Samuel Runganadhan	- India
M. Bodson	- Luxembourg
Dr. de Moor	- Netherlands
M. Colban	- Norway
Professor Glaser	- Poland
Dr. Kuhar	- Yugoslavia
accompanied by M. Ristitch	

MINUTES Reading of the Minutes was dispensed with, and the Minutes were signed by the Chairman.

COMMISSION'S EXPENSES Dr. Liang stated that the Chinese Government accepted the principle of the "basic contribution" of £400 per annum.

M. de Baer made the same statement on behalf of the Belgian Government.

PERMISSION FOR PROFESSOR GLASER TO SPEAK ON THE SUBJECT OF WAR CRIMES

The Commission, under Rule 14, agreed to Professor Glaser speaking in public on the subject of war crimes.

REPORTS ON THE WORK OF COMMITTEES M. de Baer, Mr. Pell and Professor Glaser, as Chairman of Committees I, II and III respectively, gave short accounts of the activities of their committees.

In connection with the report on Committee I, Lord Atkin suggested that it would be interesting to the Commission to receive an account of some of the cases of war crimes which that Committee had examined and found reasonably complete. This was agreed to.

ADMISSION OF OTHER UNITED NATIONS TO MEMBERSHIP OF THE COMMISSION

M. Gros said he had reason to believe that Brazil, which had suffered from war crimes, would like to join the Commission. The same might be true of Mexico and other United Nations, which had also so suffered. By what method could this be done?

/After

After discussion of different methods, the Chairman was asked to discuss the various aspects of the question with the Foreign Office, as the institution which could most easily act in the matter, if action was desirable, and to make a report to the Commission.

Cecil W. Hurst
Mar 7/44

SECRET

M.12.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twelfth Meeting

held on

March 7th 1944

There were present:

Sir Cecil Hurst (Chairman)	- United Kingdom
Mr. Pell	- United States of America
accompanied by Professor Preuss	
Lord Atkin	- Australia
M. de Baer	- Belgium
accompanied by M. Dumon	
Dr. Liang	- China
Dr. Benesh	- Czechoslovakia
M. Gros	- France
M. Stavropoulos	- Greece
Sir Samuel Runganadhan	- India
M. Bodson	- Luxembourg
Dr. de Moor	- Netherlands
Mr. Burdekin	- New Zealand
Mr. Colban	- Norway
Professor Glaser	- Poland
Dr. Kuhar	- Yugoslavia
accompanied by M. Ristitch	

MINUTES

Reading of the Minutes was dispensed with and they were signed by the Chairman.

EXPENSES OF THE COMMISSION

Referring to the entry in the Minutes concerning the Commission's expenses, Dr. Kuhar said he had already informed the Commission that his Government accepted the "basic contribution" of £400, but the fact had not been recorded in the Minutes.

Mr. Colban made a statement to the same effect.

Dr. de Moor and M. Bodson said their respective Governments also accepted the "basic contribution."

ADMISSION OF OTHER UNITED NATIONS TO MEMBERSHIP OF THE COMMISSION

The Chairman said he had asked for the opinion of the Foreign Office, as he had been requested to do at the last meeting, but had not yet received a reply.

WORK OF COMMITTEE I (FACTS AND EVIDENCE)

M. de Baer, Chairman of Committee I, gave an account of the manner in which the Committee

they

was performing its work, and drew conclusions as to the work of the National Offices.

A general discussion followed.

M. Gros said he had objections to the Committee's procedure, which, in view of the importance of its work, he would submit in writing.

WORK OF COMMITTEE II (ENFORCEMENT)

Mr. Pell, Chairman of

Committee II, said the Committee had concluded its preliminary discussion of the question of surrender of war criminals by the Axis Powers. M. de Baer had been appointed reporter to draft provisions which the Commission might recommend for insertion in the armistice terms. The Committee would next take up the question of transfer of war criminals by one United Nation to another.

At Mr. Pell's request, the Chairman promised to approach the Foreign Office on the subject of obtaining copies of the Italian armistice terms for the members of the Commission.

WORK OF COMMITTEE III (LEGAL QUESTIONS)

Professor Glaser, Chairman

of Committee III, said that Committee, after discussion, had appointed reporters for the following questions: definition of war crime (Dr. Eger and Professor Preuss); the plea of obedience to the orders of a superior authority (Dr. Eger and Professor Preuss); the gaps in national legislation (M. Stavropoulos); collective criminal responsibility (Dr. Eger). It had regarded the question of the kind of national courts which should deal with war crimes as one for Committee II, and for the time being was leaving alone the problem of retroactivity of legislation.

DATE OF MEETING OF THE COMMISSION

Mr. Colban suggested that it

might be desirable for the Commission to meet every two weeks only, subject to the Chairman's right to convene a special meeting.

In accordance with this suggestion, it was decided that the Commission's next meeting should be held on Tuesday March 21st at 3 p.m.

H. C. R.

SECRET

C. 9.
8th March 1944

UNITED NATIONS WAR CRIMES COMMISSION

THIRD REPORT BY THE FINANCE COMMITTEE (1)

ON FINANCIAL ORGANISATION

Allocation of expenses not covered by the basic contributions of
member Governments

Under the proposals of the Finance Committee which have been submitted to the Governments and already approved by some of them, (a) each member Government is to pay a "basic contribution" of £400 annually towards the expenses of the year, and (b) if the budget exceeds the total thus payable, the excess is to be divided according to a graduated scale of allocation. The Committee has discussed what this scale should be, and it shows in the attached tables the effect respectively of:

Table A - allocation in the proportions agreed upon for the administrative expenses of the United Nations' Relief and Rehabilitation Administration for the year 1944;

Table B - allocation according to the normal League of Nations (International Labour Organisation) allocation scale as in force in 1939;

Table C - allocation according to the scale in operation under present war conditions for the League of Nations (International Labour Organisation).

The tables include only the 15 Governments which are taking part in the work of the Commission.

The table based on the U.N.R.R.A. scale seems to be the fairest for the following reasons:

(a) It was drawn up as late as the end of last year by a meeting of the United Nations at Atlantic City at which all the Governments had ample time to consider and discuss it before they unanimously adopted it.

(b) The U.N.R.R.A. organisation was set up in November 1943 and is to carry on its work in Europe and in the Far East for only one or two years after the cessation of hostilities

The War Crimes Commission pursuing the investigation of war crimes over the same areas, was created in October 1943, and will be at work for only a limited time after the cessation of hostilities.

(c) U.N.R.R.A. has taken into account the financial difficulties at present experienced in the occupied countries of Europe, as well as their probable financial position during the next two years.

The Finance Committee of the War Crimes Commission has to take a similar situation into account.

(1) Hitherto called Financial Sub-Committee

In adopting the U.N.R.R.A. allocation it is suggested, however, that an equal number of units should be allocated to the United Kingdom and the United States respectively, as is the case under the League of Nations (International Labour Office) scale, and that the number should be 550 each.

There were special reasons for the distinction made in the U.N.R.R.A. allocation which do not apply to the present case.

It should be emphasised that so long as the Commission's expenses remain on a moderate scale, and the amount of the budget borne in shares (basic contributions) is a substantial fraction of the whole, Governments with low allocations under the proposed scale will nevertheless pay substantial percentages of the total budget.

Draft of a Resolution for submission to the Governments.

If the Commission agrees with the above proposal, with or without amendments, the Finance Committee suggests that it should adopt the following Resolution and Annex for transmission to the Governments, whose approval of it will establish the Commission's fiscal system and give it control over its own administration.

RESOLUTION

1. The fiscal year of the United Nations War Crimes Commission shall run from 1 April to 31 March inclusive. Liabilities incurred before 1 April 1944, shall be included in the budget for the year 1944-1945.

2. The Commission shall adopt for each fiscal year a budget covering its estimated expenditure for that year. Upon approval of the budget by the Commission the total amount approved shall be allocated to the member Governments in proportions determined as provided in Annex to this resolution. Each member Government undertakes, subject to the requirements of its constitutional procedure, to contribute to the Commission promptly its share of the expenses so determined. The Commission shall include provision for the creation and maintenance of working capital to enable the Commission to meet its expenses notwithstanding delay in the receipt of contributions.

3. The Commission shall make regulations governing its financial and general administration.

4. This resolution shall be submitted for the approval of the member Governments, which shall be given by a communication in writing to the Commission's Secretary-General, signed by the diplomatic representative in London, or directly by the Government itself.

ANNEX TO THE RESOLUTION

1. The total amount approved by the Commission for the expenses of each fiscal year, in accordance with Paragraph 2 of the Resolution, shall be divided as follows among the member Governments:

(a) Each Government shall pay a basic contribution of £400.

(b) If the amount approved exceeds the total amount of the basic contributions, the excess shall be divided in the proportions shown in the following table:

(Here will be inserted Table A as approved by the Commission)

2. The table set out in Paragraph 1, sub-paragraph (b) is subject to revision at the demand of any Government, in respect of fiscal years subsequent to 1944-1945.

T A B

TABLE A

U.N.R.R.A.
administra
expense
scale

Government

Australia

30

Belgium

20

China

100

Czechoslovakia

20

French Committee of
National Liberation

80

Greece

10

India

80

Luxembourg

1

Netherlands

30

New Zealand

Norway

2

Poland

30

United Kingdom

80

U.S.A.

Yugoslavia

TOTAL

1,5

*Canada
Donor*

(1) Adapted (on the basis of p. Resolution No. 38 of the O p.p. 33-34) in which the c sum voted.

(2) The U.S.A. shares only in isation, but does so in th

TABLES

Allocation according to:-

TABLE A

U.N.R.R.A.
administrative
expenses
scale (1)

TABLE B

League of Nations
(I.L.O.)
normal scale

TABLE C

League of Nations
(I.L.O.)
wartime scale

Government

	30 ✓	23	23
Australia	20 ✓	19	1
Belgium	100 ✓	42	21
China	20 ✓	25	1
Czechoslovakia			40
French Committee of National Liberation	80 ✓	80	1
Greece	10 ✓	7	48
India	80 ✓	49	1
Luxembourg	1 ✓	1	2
Netherlands	30 ✓	24	8
New Zealand	6 ✓	8	2
Norway	6 ✓		1
Poland	20 ✓	32	108
United Kingdom	300 550 ✓	108	108 (2)
U.S.A.	800 550 ✓	108 (2)	1
Yugoslavia	14 ✓	17	
TOTAL	1,517	552	366

hey

Later Canada
Denmark

(1) Adapted (on the basis of payment of 1 unit by Luxembourg) from the table in Resolution No. 38 of the Council (Cmd. 6497 Miscellaneous No. 6 - 1943 - p.p. 33-34) in which the contributions appear as percentages of the total sum voted.

(2) The U.S.A. shares only in the expenses of the International Labour Organisation, but does so in the same proportion as the United Kingdom.

SECRET

M.13.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Thirteenth Meeting
held on
21 March, 1944.

At the request of the Chairman, who was prevented by illness from attending, Mr. Pell (United States of America) took the chair, under Article 1 of the Commission's Rules.

There were also present:

Dr. Preuss, who accompanied Mr. Pell	
Mr. Oldham	- Australia
M. de Baer	- Belgium
Dr. Wellington Koo	- China
accompanied by Dr. Liang	
Dr. Eöer	- Czechoslovakia
M. Burnay	- France
M. Stavropoulos	- Greece
Sir Samuel Runganadhan	- India
M. Bodson	- Luxembourg
Dr. de Moor	- Netherlands
Mr. Burdekin	- New Zealand
Mr. Colban	- Norway
M. Cyprian	- Poland
Dr. Kuhar	- Yugoslavia
accompanied by M. Ristitch	

MINUTES

Reading of the Minutes was dispensed with and they were signed by Mr. Pell.

FINANCE COMMITTEE'S REPORT

The Committee's Chairman, Dr. de Moor, presented the report. He pointed out that the object of the suggested system of allocation was simply to effect an equitable distribution of the Commission's expenses. The Commission approved the report and adopted the proposed resolution. It requested its members to submit the resolution for the approval of their respective Governments, and authorised Dr. de Moor and the Secretary General to prepare a suitable document for this purpose.

WORK OF COMMITTEE I (FACTS AND EVIDENCE)

The Chairman of the Committee, M. de Baer, said it had been Sir Cecil Hurst's intention to make a

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* See C. 9 erroneously inserted before
statement made instead of after them. 10/4/44

statement calling attention to the great importance for the Committee of having the heads of the National Offices - i.e. the persons who had actually prepared the cases - present while the Committee was examining cases of war crimes.

Another point to which Sir Cecil might have called attention was the desirability of supplying the Committee with evidence against the ring-leaders of Axis war crimes, and not merely with evidence against underlings, as was at present almost wholly the case. It might become a question whether the Commission should not be authorised itself to prepare indictments of the ring-leaders. Otherwise the list available for the purposes of the armistice might be disappointing, particularly as in so many instances the identity of the culprit could probably not be ascertained until enemy records were available.

M. de Baer was speaking impromptu, but Committee I was thinking of making a considered report to the Commission.

M. Burnay, who attended in place of M. Gros, read on the latter's behalf the following declaration⁽¹⁾ and asked for its insertion in the Minutes:

"I made emphatic reservations regarding the document concerning the preparation and transmission of cases which Committee I presented to the Commission on March 7th. Since then, at a meeting of the Committee on March 15th, I have repeated my observations, some of which were noted by the Chairman of Committee I.

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I wish to summarise the position which I take in regard to Committee I's first report.

1) After 5 months of existence, barely 60 cases have been transmitted, most of which were incomplete and were placed in Class C. This number is horribly out of proportion with the real facts of German atrocities in Europe.

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For the reasons stated below, there is absolutely no ground for supposing that the Governments will ever be able to increase the number of cases which comply with Committee I's requirements. When at the time of the armistice the Governments call for our list our failure will be manifest.

2) Committee I cross-examines the Governments like a 'juge d'instruction.' In doing so it converts itself into a supranational judge, an attitude which no provision authorises it to adopt. For example, the Committee insists on having witnesses to prove acts attributed to a Gestapo chief although under some legal systems the real crime consists in the mere fact of being a Gestapo member operating in an oppressed territory. The Committee thereby refuses to put on its list a man who for the national judge is already by operation of the law an accused person.

(1) Translation: The French text is filed by the Secretariat.

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Moreover, by assuming the position of a judge, Committee I prevents any case affecting the persons who bear the gravest responsibility from being dealt with, for there are no witnesses to the crimes which the ring-leaders have committed in the form of general orders or decrees.

3) In the case of crimes against prisoners of war, the Committee has found that the culprits are always unknown and cannot be identified unless the German General Staff should hand over its operations orders. Here also the list is empty.

4) The conclusion to be drawn from these observations is that the compilation of a list is not what the realities of the situation require. To draw up a list of war criminals might be a good idea in 1918, since crime had not passed the limits within which individuals can be held responsible. In 1944, when hundreds of thousands of persons have put to death or terrorised millions of other persons, crime has assumed a collective character to which no list of individual criminals can do justice.

Even if the Governments had proof of all the individual crimes, the atrocity of which Germany is guilty is not measured by the sum total of such crimes; it consists in her systematic organisation of crime.

I ask the Commission to examine carefully the path opened by Committee I's first report in order to make sure whether it leads to a solution of the problem of suppressing crime.

I venture to recall that the Commission has before it a draft of articles for insertion in the armistice⁽¹⁾ which provides for the compulsory internment of all Gestapo and S.S. members. Committee II has clearly perceived that individual crime cannot be suppressed except within a framework of assured general security against the organisation of crime.

I ask the Committee to make a provisional report to the Governments on this question as soon as possible.

The public believes that lists are being drawn up now; perhaps the Governments have the same belief. It would be too serious a disappointment for the oppressed peoples to discover, at the moment of Europe's liberation, that the Commission has not fulfilled their hopes. There is still time to say that the method suggested by the Governments is not satisfactory, that a list cannot at present be drawn up.

Finally, it is open to doubt whether a list such as Committee I desires could ever be drawn up. The Germans have exterminated too many witnesses, destroyed too much evidence. But without prejudicing the future, the Commission can seek to discharge its duties by other means. I feel the time has come both to say this to the United Nations Governments and to do it."

M. de Baer pointed out that the Commission had been set up to investigate war crimes, which implied a duty to discriminate between cases. The classification of cases in three lists which it had established did not involve rejection of any charge, and was a practical necessity, if only for the reason that in so many instances the guilty persons were unknown, and without an adequate clue to their identity could not be put on the list presented to the enemy at the time of the armistice. The Committee was favourable to Committee II's proposal to intern the whole Gestapo at the time of the armistice. The question of collective responsibility raised by M. Gros was a grave question of

(1) Note by the Secretary General: This draft has not yet been submitted to the Commission.

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principle which was outside the competence of Committee I.

In the resulting discussion, M. Burnay said M. Gros considered collective responsibility for war crimes should become the basis of the Commission's proceedings; mere membership of the Gestapo was a crime. To this it was objected that individual Gestapo members could not be punished according to their deserts without evidence of particular atrocities they had committed, and Committee I must continue its work. Various members expressed the hope that cases against leading war criminals would be transmitted to the Commission.

COMMITTEES II and III

No reports were made on behalf of these Committees.

TRANSMISSION OF CHARGES AGAINST LEADING WAR CRIMINALS

Dr. de Moor

moved that the National Offices should be requested to send in their most important cases as soon as possible, especially cases involving charges against the arch-criminals and ring-leaders who had signed their names to public proclamations ordering that hostages should be shot, civilians deported to other countries, etc.

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This resolution was adopted.

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MEMBERSHIP OF COMMITTEES I and III

On the proposal of M. de Baer,

Dr. de Moor was elected a member of Committee I.

Mr. Colban was asked if he would consent to become a member of Committee III. He replied that he was too busy to come regularly but would attend when he was able.

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MINUTES OF THE COMMISSION

Some members expressed the wish that the Minutes should record more fully the different points of view expressed in the Commission. The Secretary General promised to take account of these observations.

The next meeting was fixed for 4 April at 3 p.m., unless the Chairman should desire an earlier meeting.

Cecil B. Hurst
April 4/44

C.10.
22 March, 1944.

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UNITED NATIONS WAR CRIMES COMMISSION

RESOLUTION ON FINANCIAL ADMINISTRATION (1)
ADOPTED ON 21 MARCH, 1944, ON THE PROPOSAL OF THE FINANCE COMMITTEE
AND SUBMITTED FOR THE APPROVAL OF THE GOVERNMENTS
REPRESENTED ON THE COMMISSION

Note by the Secretary General

At its meeting of 21 March, 1944, the United Nations War Crimes Commission adopted the following resolution and requested its members to submit it for the approval of their respective Governments.

Resolution

The fiscal year of the United Nations War Crimes Commission shall run from 1 April to 31 March inclusive. Liabilities incurred before 1 April, 1944, shall be included in the budget for the year 1944-1945.

The Commission shall adopt for each ^{fiscal} ~~financial~~ year a budget covering its estimated expenditure for that year. Upon approval of a budget by the Commission the total amount approved shall be allocated to the member Governments in proportions determined as provided in the Annex to this resolution. Each member Government undertakes, subject to the requirements of its constitutional procedure, to contribute to the Commission promptly its share of the expenses determined. They shall include provision for the creation and maintenance of working capital to enable the Commission to meet its expenses notwithstanding delay in the receipt of contributions.

The Commission shall make regulations governing its financial and general administration.

This resolution shall be submitted for the approval of the member Governments, which shall be given by a communication in writing to the Commission's Secretary-General signed by the diplomatic representative in London, or directly by the Government itself.

Annex to the Resolution

The total amount approved by the Commission for the expenses of each fiscal year, in accordance with Paragraph 2 of the Resolution, shall be divided as follows among the member Governments:

- (a) Each Government shall pay a basic contribution of £400;
- (b) If the amount approved exceeds the total amount of the basic contributions, the excess shall be divided in the proportions shown in the following table:

(1) Previously called the "Financial Sub-Committee."

<u>Government</u>	<u>Number of Units</u>
1. Australia	30
2. Belgium	20
3. China	100
4. Czechoslovakia	20
5. French Committee of National Liberation.	80
6. Greece.	10
7. India	80
8. Luxembourg.	1
9. Netherlands	30
10. New Zealand	6
11. Norway.	6
12. Poland.	20
13. United Kingdom	550
14. U.S.A.	550
15. Yugoslavia	14
Total	<u>1,517</u>

2. The table set out in paragraph 1, sub-paragraph (b) is subject to at the demand of any Government, in respect of fiscal years subsequent to 1944-1945.

APPENDIX

A. REPORT OF THE FINANCE COMMITTEE SUBMITTED TO THE COMMISSION ON 21 MARCH, 1944. (Doc. 0.9.)

Allocation of expenses not covered by the basic contributions of member Governments

Under the proposals of the Finance Committee (see B below) which has submitted to the Governments and already approved by some of them, (a) each member Government is to pay a "basic contribution" of £400 annually towards expenses of the year, and (b) if the budget exceeds the total thus payable, the excess is to be divided according to a graduated scale of allocation. The Committee has discussed what this scale should be, and it shows in the attached tables the effect respectively of:

Table A - allocation in the proportions agreed upon for the administrative expenses of the United Nations' Relief and Rehabilitation Administration for the year 1944;

Table B - allocation according to the normal League of Nations (International Labour Organisation) allocation scale as in force in 1939;

Table C - allocation according to the scale in operation under present conditions for the League of Nations (International Labour Organisation).

The tables include only the 15 Governments which are taking part in the work of the Commission.

The table based on the U.N.R.R.A. scale seems to be the fairest for the following reasons:

It was drawn up as late as the meeting of the Nations at Atlantic City at which it was discussed and discussed it before they were adopted.

The U.N.R.R.A. organisation was set up to work in Europe and in the Far East in the wake of hostilities.

The War Crimes Commission pursues its work, was created in October 1944, after the cessation of hostilities.

U.N.R.R.A. has taken into account the position in the occupied countries during the next two years.

The Finance Committee of the War Crimes Commission into account.

adopting the U.N.R.R.A. allocation scale, number of units should be allocated to each State respectively, as is the case with the (Labour Office) scale, and the amount of the contribution.

There were special reasons for the allocation which do not apply to the other States.

It should be emphasised that so far as the moderate scale, and the amount of the contributions is a substantial fraction of the total budget.

Draft of a Resolution for the Commission

(Not printed)

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It was drawn up as late as the end of last year by a meeting of the Nations at Atlantic City at which all the Governments had ample time to and discuss it before they unanimously adopted it.

The U.N.R.R.A. organisation was set up in November 1943 and is to carry work in Europe and in the Far East for only one or two years after the end of hostilities.

The War Crimes Commission pursues the investigation of war crimes over the seas, was created in October 1943, and will be at work for only a limited time after the cessation of hostilities.

U.N.R.R.A. has taken into account the financial difficulties at present faced in the occupied countries of Europe, as well as their probable financial position during the next two years.

The Finance Committee of the War Crimes Commission has to take a similar view into account.

When adopting the U.N.R.R.A. allocation it is suggested, however, that an equal number of units should be allocated to the United Kingdom and the United States respectively, as is the case under the League of Nations (International Labour Office) scale, and that the number should be 550 each.

There were special reasons for the distinction made in the U.N.R.R.A. allocation which do not apply to the present case.

It should be emphasised that so long as the Commission's expenses remain on a moderate scale, and the amount of the budget borne in equal shares (basic contributions) is a substantial fraction of the whole, Governments with low contributions under the proposed scale will nevertheless pay substantial percentages of the total budget.

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TABLES

Allocation according to:-

Government	TABLE A	TABLE B	
	U.N.R.R.A. administrative expenses scale (1)	League of Nations (I.L.O.) normal scale	League of Nations (I.L.O.) wartime
1. Australia	30	23	23
2. Belgium	20	19	19
3. China	100	42	42
4. Czechoslovakia	20	25	25
5. French Committee of National Liberation	80	80	80
6. Greece	10	7	7
7. India	80	49	49
8. Luxembourg	1	1	1
9. Netherlands	30	24	24
10. New Zealand	6	8	8
11. Norway	6	9	9
12. Poland	20	32	32
13. United Kingdom	300	108	108
14. U.S.A.	800	108 (2)	108
15. Yugoslavia	14	17	17
TOTAL	1,517	552	366

(1) Adapted (on the basis of payment of 1 unit by Luxembourg) from the table in Resolution No. 38 of the Council (Cmd. 6497 Miscellaneous No. 6 - 1943) p.p. 33-34) in which the contributions appear as percentages of the total sum voted.

(2) The U.S.A. shares only in the expenses of the International Labour Organisation, but does so in the same proportion as the United Kingdom.

B. RELEVANT EXTRACTS FROM

These proposals are contained in the following reports:

Report of 24 January, 1943

"3. ALLOCATION OF EXPENSES In the Diplomatic meeting of 20 October culminated to the participating Governments passage reading as follows:

'Expenses. The meeting agreed that the Government in the United Kingdom and his staff, if appointed, but that additional secretarial assistance should be divided equally between the Commission.

The meeting took note of the report of the Committee of Affairs, who said that the amount of expense would fall upon the Governments asked whether some means should be found of proportionate to the possibility of future assistance.

According to this passage the expenses should be shared in the opinion, finally settled. In the amount, this question has been discussed with the smaller countries, and all common interest in the Commission but if the Commission should decide on a division of the expenses among the Governments. The Sub-Committee will make a system under which:

(a) Up to an amount to be decided in the annual budget would be payable by the Governments.

(b) Any sum in excess of the amount required for the Commission should be paid with an appropriate scale of contributions on the same reason in other international organisations.

If this suggestion is adopted the Sub-Committee will make a system under which:

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B. RELEVANT EXTRACTS FROM PREVIOUS REPORTS

according to:-

These proposals are contained in the following extracts from the Committee's previous reports:

Report of 24 January, 1944 (Doc. C.4.)"3. ALLOCATION OF EXPENSES

In the note of the proceedings of the Diplomatic meeting of 20 October, 1943, which the Foreign Office circulated to the participating Governments, this matter is dealt with in a passage reading as follows:

'Expenses.

The meeting agreed to the proposal of His Majesty's Government in the United Kingdom that each member of the Commission and his staff, if any, should be paid by the Government appointing him, but that the salary of the Secretary General and additional secretarial and administrative expenses should be divided equally between the various Governments represented on the Commission.

The meeting took note of a statement by the Luxembourg Chargé d'Affaires, who said that his Government felt that equal division of expense would fall unduly heavy upon the smaller countries and asked whether some means could not be found of making contributions proportionate to the resources of the countries represented.

It was agreed that the arrangements should be subject to the possibility of future adjustment between the Governments concerned.'

According to this passage, the question of the proportion in which the expenses should be shared was not, in the Financial Sub-Committee's opinion, finally settled. So long as the expenses are modest in amount, this question has only minor financial importance even for the smaller countries, and all the Governments may wish to emphasise their common interest in the Commission's work by contributing equally; but if the Commission should be involved in heavy expenditure, equal division of the expenses might prove a serious burden for some of the Governments. The Sub-Committee accordingly suggests the adoption of a system under which:

(a) Up to an amount to be fixed by the Commission, the Commission's annual budget would be payable in equal shares by the Governments;

(b) Any sum in excess of this amount which might be decided to be required for the Commission's work would be payable in accordance with an appropriate scale of allocation, such as is in force for the same reason in other international organisations.

If this suggestion is approved by the Commission, the Financial Sub-Committee will make all necessary studies and enquiries and submit a scheme for giving effect to it."

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Report of 7 February, 1944 (Doc. C.5)

"II. FINANCIAL ADMINISTRATION"

The Sub-Committee is considering Draft Financial Regulations which have been prepared for it by the Secretary General, but not yet ready to report to the Commission. Before a complete Draft of the Regulations can be drawn up, it will be necessary for the Commission to take a decision upon the method of all of expenses suggested in the report made to it at its last meeting by the Sub-Committee. Further consideration has been given to details of this method, and the Sub-Committee proposes that the system adopted should be one under which:-

(a) Each Government would in each budgetary period (commencing with the period April 1944 to March 1945) pay what may be called a "basic subscription" of £400 towards the Commission's expenses. If the expenditure for which the Commission think it necessary to budget in a particular budgetary period should be less than the total of all the basic subscriptions, the balance would be paid automatically into the Working Capital Fund, which must be established to protect the Commission against delays or default in the payment of contributions, a risk which must be taken into account in establishing the financial system of any international organisation.

(b) Expenditure voted for any budgetary period in excess of the total of the basic subscriptions would be divided according to a scale of allocation drawn up with the consent of the Governments concerned, and taking account of the particular circumstances of each Government."

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UNITED NATIONS WAR CRIMES

Minutes of Fourteenth

held on

4 April, 1944

Chairman - Sir Cecil Hurst

There were also present:

Mr. Pell
accompanied by Dr.
Mr. Oldham
M. de Baer
Dr. Liang
Dr. Eöer
Dr. Cassin
accompanied by M.
Sir Samuel Runganadhan
accompanied by Sir
M. Bodson
Dr. de Moor
Dr. Glaser
M. Ristitch

MINUTES

Reading of the Minutes

signed by the Chairman.

PROCEDURE IN COMMITTEES: POSITION
PART IN THE PROCEEDINGS WITHOUT
COMMITTEES

Mr. Pell consulted the Commission who had not been elected the right to "appear" before it under Article III, Rule 11, of the Charter to vote.

After a discussion in which one hand that to allow such procedure in principle since responsibility rested with its members, and the other presented certain advantages,

SECRETUNITED NATIONS WAR CRIMES COMMISSION

Minutes of Fourteenth Meeting

held on

4 April, 1944

Chairman - Sir Cecil Hurst (United Kingdom)

There were also present:

Mr. Pell	- United States of America
accompanied by Dr. Preuss	
Mr. Oldham	- Australia
M. de Baer	- Belgium
Dr. Liang	- China
Dr. Eöer	- Czechoslovakia
Dr. Cassin	- France
accompanied by M. Burnay	
Sir Samuel Runganadhan	- India
accompanied by Sir David Meek	
M. Bodson	- Luxembourg
Dr. de Moor	- Netherlands
Dr. Glaser	- Poland
M. Ristitch	- Yugoslavia

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Reading of the Minutes was dispensed with and they were signed by the Chairman.

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PROCEDURE IN COMMITTEES: POSITION OF COMMISSION MEMBERS TAKING PART IN THE PROCEEDINGS WITHOUT HAVING BEEN ELECTED TO THE COMMITTEES

Mr. Pell consulted the Commission on a question which had arisen in Committee II, namely, whether members of the Commission who had not been elected to a Committee, but exercised the right to "appear" before it and "take part in its discussions" under Article III, Rule 11, of the Commission's Rules, were entitled to vote.

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After a discussion in which it was urged, inter alia, on the one hand that to allow such persons to vote was contrary to principle since responsibility for the Committee's recommendations rested with its members, and on the other hand that to do so presented certain advantages, the Commission accepted its

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Chairman's opinion that Rules 10 and 11 as they stood gave the persons in question the fullest right to take part in the discussions and make suggestions, but did not permit them to vote. This decision was taken on the understanding that the views of members attending a Committee, but not forming part of it, would be brought to the Commission's attention in the Committee's reports if they so requested.

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WORK OF THE COMMITTEES

Committee I had not met since the Commission's last meeting.

The Chairmen of Committees II and III gave brief accounts of the subjects they were discussing. The Committees had no reports or motions ready for the Commission.

DISCUSSION OF M. GROS' STATEMENT

The Chairman referred to the important statement read by M. Burnay, on behalf of M. Gros, at the Commission's last meeting, and said that he, too, was beginning to doubt whether, if the Commission continued to be confined within the limits fixed for it at its creation, it could satisfy the expectations which the speeches of leading statesmen had caused the public to found on its work.

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Several members expressed themselves in the same sense. Listing of individual war criminals was hampered by the difficulty of getting evidence and had so far failed to touch those guilty of the gravest crimes. It was inadequate as a system of action for the Commission. Principles and methods must be established which would give more comprehensive results. Reference was made to the certainty that the Axis Powers' outrages would continue until their defeat, and there was said to be grave danger of similar criminal activities after their defeat. It was asked whether the Commission could not take measures to prevent such continuance of crime, as well as to punish crimes after they had been committed.

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The following resolution was adopted on the proposal of the

Chairman:

"The Commission requests Committee III to take into consideration the declaration read by M. Burnay at the Commission's meeting of 19 March and to report to it whether any, and if so, what, recommendations should be submitted to the United Nations for overcoming the difficulties set forth in this declaration."

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The following further resolution was adopted on the motion

of M. Burnay:

"In order that the information may be available for fixing the responsibility for war crimes, the Commission requests that governments whose territories have been occupied by the enemy will as soon as possible cause lists to be made of all enemy civil and military persons in authority in each occupied district since 1939, such as Gauleiter, Governors, Chiefs of the S.S. and Gestapo, with as complete particulars as possible regarding these persons' identity."

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The next meeting was fixed for 18 April at 3 p.m.

Cecil M. Hunt
April 28/44

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UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Fifteenth Meeting

held on

25th April, 1944

Chairman - Sir Cecil HURST (United Kingdom)

There were also present:

Mr. PELL	- United States of America
accompanied by Mr. PREUSS	
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
Mr. WELLINGTON KOO	- China
accompanied by Dr. LIANG	
Dr. EGER	- Czechoslovakia
M. GROS	- France
M. STAVROPOULOS	- Greece
Sir David MEEK	- India
M. BLUM	- Luxembourg
Dr. de MOOR	- Netherlands
Mr. BURDEKIN	- New Zealand
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia
accompanied by M. RISTITCH	

MINUTES

Reading of the Minutes was dispensed with and they were signed by the Chairman.

ESTABLISHMENT OF A FAR EASTERN PANEL OR BRANCH OF THE COMMISSION: PROPOSAL BY THE CHINESE REPRESENTATIVE

Mr. WELLINGTON KOO submitted the following proposal: (1)

"Recalling that the creation of a Far Eastern Panel of the War Crimes Commission was contemplated from the outset; and

Considering that the increasingly large number of war crimes committed by the Japanese in the Far East require early investigation and examination by the common action of the United Nations concerned;

It is proposed that the War Crimes Commission take up immediately the question of the establishment of the Far Eastern Panel or Branch and appoint a special committee to consider and report on the subject."

Mr. Wellington Koo said that if the seat of the Commission was in London, branches would be needed elsewhere.

branches would be needed elsewhere. The Chinese Government had approved the establishment of a panel in Chungking. It was unnecessary to go into the matter of principle as he thought it had generally been accepted. But the Chinese Government was anxious to have a Far Eastern panel established as soon as possible. A great body of evidence in the Chinese cases had already been collected, and while the Commission could continue to discuss general principles regarding its work as a whole, he urged the immediate appointment of a sub-committee to consider the practical steps for the establishment of the panel as soon as possible.

As regards the seat of the panel, he thought Chungking would be most convenient. It was the wartime capital, communications were good and the United Nations had diplomatic representatives there.

As regards scope, it had been clearly expressed in the memorandum of the Foreign Office in March 1943 that local panels should enjoy the greatest possible degree of autonomous action and prestige consistent with the central and co-ordinating functions of the headquarters of the Commission. The Commission would adopt general principles, but in so far as local conditions were different some modifications might be found necessary. Local panels should be able to exercise discretionary power to make modifications provided these were not in contradiction with the general principles approved by the Commission."

The Chinese panel in Chungking. principle as he thought difficulty in accepting a Far Eastern body of evidence, and while the ple he urged the consider the practical
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Mr. Wellington Koo said that if the seat of the Commission was in London, branches would be needed elsewhere. The Chinese Government had approved the establishment of a panel in Chungking. It was unnecessary to go into the matter of principle as he thought it was one which the Commission would find no difficulty in accepting. But the Chinese Government was anxious to have a Far Eastern panel established as soon as possible. A great body of evidence in the Chinese cases had already been collected, and while the Commission could continue to discuss the principle he urged the immediate establishment of a sub-committee to consider the practical aspects.

As regards the seat of the panel, he thought Chungking would be most convenient. It was the capital, communications were good and the United Nations had diplomatic representatives there.

As regards scope, the principle of setting up local panels had been clearly expressed in the original note from the Foreign Office. Local panels should enjoy the greatest possible prestige. The Commission would adopt general principles but in so far as local conditions might be different some modifications might be found necessary. Local panels should be able to exercise discretionary power to make modifications provided these were not in contradiction with the general principles approved by the Commission.

Mr. PELL said the number of American cases of crimes against civilians was very large. The United States was more directly interested in war crimes committed in the Far East than in those committed in Europe. He had no objection to the idea of a Far Eastern panel. It was part of the original conception of the Commission's work to have a fairly independent agency to deal with Far Eastern cases. Identification presented more difficulties in the case of Japanese than in that of Germans. He supported the proposal for a subsidiary agency.

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Mr. COLBAN supported the idea of constituting a sub-committee to report. He suggested the following points to be considered by the sub-committee: (1) Membership: The sub-committee should include representatives of the Governments most interested in Far Eastern problems, but no Government not at war with Japan should be represented. (2) Tasks of the panel: The panel must have a certain latitude. He thought the sub-committee might investigate the question of the appointment of three committees, similar to those in London. Committee I would of course be necessary but the sub-committee might consider whether the tasks of Committees II and III should be split up. (3) Seat of the panel: He himself was perfectly satisfied to leave this matter to the Chinese Ambassador. (4) Finance: As was the case for the Commission, the personal expenses of members should be supported by the Governments, administrative expenses by the Commission. (5) Unity of work: He thought it would be well if the sub-committee would consider whether the Governments members of the Commission should be requested, in so far as they appoint representatives on the panel, to take special steps to secure that their representatives on the main Commission and on the panel would work on the same lines. The sub-committee might suggest that the Commission should keep the panel informed of the development of the work not only of Committee I but also of Committees II and III.

Dr. de MOOR said that possibly two panels would be necessary because of the great distances between theatres of war in the Far East. The Netherlands Government had not yet been able to set up a commission of investigation. The whole territory of the Netherlands Indies was occupied by the Japanese and information was very difficult to obtain. He supported the proposal to set up a sub-committee. The principles on which panels would have to work would be the same as for the Commission. For the moment he

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agreed that Chungking should be the centre but later on another centre for investigation might be necessary.

The CHAIRMAN said the main principle was the same for both theatres of war but local modifications would be necessary because of different circumstances.

Sir David MEEK said the proposal to set up a sub-committee to consider the whole question and report to the Commission met with no objection on India's part. As far as he knew no national office of investigation had yet been set up by India.

Mr. BURDEKIN had no doubt that the New Zealand Government would be in agreement. New Zealand had so far had very few cases and no special organisation had yet been set up.

The CHAIRMAN said that in the Far East there was much greater difficulty in collecting evidence. There had been greater maltreatment of prisoners but evidence was difficult to obtain because of the refusal of the Japanese to allow visits to the camps by representatives of the protecting power. The sub-committee would no doubt be able to leave a free hand to each country to make its own arrangements regarding its national office.

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M. GROS said France had not enough cases to send to the Commission. After the liberation of Indo-China the situation would be different. France was extremely interested in principle but until Indo-China was liberated she would not be able to send any cases for presentation to the Commission.

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Mr. PREUSS said appropriate instructions would have to be issued to the military and naval authorities for the collecting of evidence.

"Dr. Wellington Koo said that of course each country was free to make arrangements about its own national office. As regards the language difficulty, help could no doubt be got from the staffs of the Embassies in Chungking. For example, the British Embassy had on its staff members who were familiar with the Chinese language."

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~~Embassy in Chungking.~~

The CHAIRMAN said that, as regards the composition of the committee, each of the countries interested in or participating in military operations in the Far East should be represented on the sub-committee. These were: United States of America, Australia, China, France, Great Britain, India, Netherlands and New Zealand. As regards finance, the setting up of the panel must affect the finances of the Commission, because of the need for constant communications between the two bodies.

Mr. COLBAN said the committee would be a standing one and Mr. WELLINGTON KOO said that contact would be maintained between the Committee and the Commission.

Mr. PELL moved that a sub-committee, on which all members participating in the Far Eastern war should be represented, should be set up to prepare a report on the matters mentioned in the Chinese Ambassador's proposal. He suggested that its members should be appointed by the Chairman.

The motion was carried unanimously.

FINANCE COMMITTEE

Mr. PELL moved that a member of the Finance Committee to replace Mr. Bodson should be appointed by the Chairman.

COMPOSITION OF COMMITTEES II AND III

Mr. PELL proposed that Sir Cecil Hurst should be appointed a member of Committees II and III, and Dr. EGER proposed Mr. Pell as a member of Committee III. Both propositions were agreed to.

FUTURE WORK OF THE COMMISSION

The CHAIRMAN said that the business for the next meeting would be the discussion of M. de Baer's proposals as Chairman

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of Committee I (Docs. G.12 and G.14), and that although the Commission had contemplated meeting only once a fortnight he proposed that the next meeting should be held on May 2nd.

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Mr. COLBAN said the Commission's main object was to get through the work of the committees; the representatives were here to do practical work and must not deviate from that task and constitute themselves a kind of legal faculty.

The next meeting was fixed for Tuesday, May 2nd, 1944.

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UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Sixteenth Meeting

held on

May 2, 1944

Chairman - Sir Cecil HURST (United Kingdom)

There were also present:

Mr. PELL	- United States of America
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
accompanied by M. DUMON	
Dr. LIANG	- China
Dr. BENESH	- Czechoslovakia
M. GROS	- France
M. STAVROPOULOS	- Greece
M. BLUM	- Luxembourg
Dr. de MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia
accompanied by M. RISTITCH	

Rt. Hon. Sir Donald SOMERVELL (Attorney General of the
United Kingdom),
Sir William MALKIN (Legal Adviser to the British Foreign
Office),
assisted at the meeting.

MINUTES

Reading of the Minutes of the last meeting was waived and they were signed by the Chairman.

PROPOSALS BY M. DE BAER, CHAIRMAN OF COMMITTEE I (Facts and Evidence). Documents C.12 and C.14).

The CHAIRMAN said the meeting was in a sense a special one as its chief object was to discuss, with the assistance of the distinguished guests, certain proposals which were made by the Chairman of Committee I in his personal capacity, but were the result of his experience as Chairman of Committee I, and might have a considerable effect upon the Commission's work.

M. de Baer presented the proposals contained in Documents C.12 and C.14, and called attention to the reasons for them set out in these Documents.

DOCUMENT C.12

The CHAIRMAN asked the Commission to deal first with Document C.12 which proposed:

"That any member of the War Crimes Commission shall be entitled to bring before Committee I the case of any person accused of a war crime irrespective of the nationality of the victim or the place where the crime was committed."

The Chairman said the Commission had been set up to deal with crimes against United Nations nationals. He understood M. de Baer, to mean that it should now recommend the governments to agree to the suggested extension of its activity.

There was general agreement that an alteration of the Commission's terms of reference was involved and that this would require the consent of the governments.

Sir Donald SOMERVELL thought the Commission's competence was not wholly limited to crimes against United Nations nationals or on United Nations territory. A crime against a member of the French Foreign Legion would fall within it. He thought it might be better to alter M. de Baer's text and to say that evidence of war crimes should not be excluded from the Commission's consideration for the sole reason that it related to crimes on Italian soil against Italians, or crimes on Danish soil against Danes. He was not authorised to speak for the United Kingdom Government, but the mention of Italian and Danish victims in the Moscow Declaration indicated that such an attitude might be acceptable to the United Kingdom and other United Nations governments.

M. MILANOVITCH said a large number of Yugoslavs who had suffered from war crimes and whose case he would have to raise, were Italian subjects.

M. GROS saw no legal objection to dealing with the new sort of cases and it might be interesting to investigate them, but

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there was the practical objection that it would be shocking for the Commission to be considering German crimes against Italians at a time when the French, as M. Cassin had pointed out, had been prevented from punishing Italians for crimes against Frenchmen.

The CHAIRMAN said there was no question of excluding Italian crimes against the French.

Professor GLASER considered a special office within the Commission would be required to bring forward the new kinds of case. The National Offices were too busy.

Sir Donald SOMERVELL said M. de Baer's paper mentioned Hungary and Rumania. His government made a distinction between these countries and Italy and Denmark.

The CHAIRMAN asked if any member was opposed in principle to M. de Baer's proposal.

Dr. de MOOR saw legal objections. What would be the legal basis for the work of the Commission in connection with war crimes committed against Danes: ~~It was for the Danes to punish crimes against Danes. Intervention by the Commission might prove to be either useless or meddling.~~ would not this work be done better by the Danes themselves?

M. de BAER said he had thought the Danes would welcome such intervention.

On the close of the discussion, ~~in view of the concurrence generally expressed with the idea underlying M. de Baer's proposal,~~

the CHAIRMAN undertook to prepare and lay before the Commission at its next meeting the draft of an appropriate recommendation to the Governments of the United Nations.

DOCUMENT C 14

The CHAIRMAN submitted for discussion the various points in this Document which he thought the Commission should consider.

The first, which in his opinion involved no extension of the Commission's terms of reference, was the proposal (pp. 2-3) that the National Offices, and possibly the Commission itself, should seek evidence against leading war criminals in orders and decrees signed by them prescribing acts and practices which were war crimes. Such evidence could be sought in newspapers, official

journals etc. Ought the Commission itself to undertake such research as well as the National Offices? This would involve an increase of staff.

The proposal was accepted by the Commission, although M. COLBAN considered the work could best be done by the National Offices. Professor GLASER expressed the view that the Commission should go further and treat as guilty of war crimes persons in charge of districts in which war crimes are committed, and judges applying illegal laws and regulations.

The CHAIRMAN said he would see if he could arrange for any additional staff which might be necessary to enable the Commission, in collaboration with the National Offices, to undertake this work, and would consult the Finance Committee.

In the next place, the CHAIRMAN called attention to M. de Baer's proposal (p. 4) that immediately on the conclusion of the armistice all persons capable of having any responsibility for war crimes should be taken into custody.

Sir Donald SOMERVELL said such a measure would be facilitated if the names of the persons to be arrested were available. The proposal would have to go to the combined General Staffs.

The CHAIRMAN called his attention to the Commission's resolution of 4 April 1944, asking the National Offices to prepare lists of the names of enemy agents having authority in occupied territory.

As no objection of principle was made, the Chairman asked Committee II to report on how M. de Baer's proposal could be carried out, and to draft recommendations to the governments, which should be limited to what was really practicable.

The Commission then considered the points raised on pp. 6-7 of C.14.

It was agreed that an effort should be made to establish contact with the higher military authorities.

The proposal for a "United Nations Criminal Justice Office" or "United Nations War Crimes Prosecuting Office" excited criticism in the form in which it was presented, and the whole question of creating such an institution, or possibly a mere War Crimes Bureau as part of the military machine to ensure due action by the armies in regard to war crimes, was referred to Committee II which already had schemes for such an institution before it.

During the discussion of the above two points, M. GROS called attention to certain passages in C.14 which he asked should be omitted before circulating the document to the governments and the CHAIRMAN assured him that the Document was not intended to be so circulated.

Finally, the question of "political action" against the highest war criminals (p.6) was mentioned. Sir Donald SOMERVELL gave the Commission to understand that the matter was still under consideration between the governments and that the Commission, while it should not exclude consideration of cases implicating such persons, was not called upon to seek evidence against them.

It was agreed that Committee II should discuss the questions which had been referred to it at its next meeting on Friday, May 5.

*Cecil J. B. Hurst
May 9/44*

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C.12
21 April 1944

UNITED NATIONS WAR CRIMES COMMISSION

EXTENSION OF THE COMMISSION'S COMPETENCE TO WAR CRIMES
NOT COMMITTED AGAINST UNITED NATIONS NATIONALS

PROPOSAL BY THE CHAIRMAN OF COMMITTEE I

1. We have all been shocked by the deportations and shootings of hostages which have been carried out by the Nazis in neutral, co-belligerent, or enemy countries such as Denmark, Hungary, Roumania, Italy, etc. . . . The fact that these people were the victims of Nazi measures goes to prove that they acted against the Germans; in all probability their activity was directed towards helping the Allies. Again, on March 27th, 320 Italians were shot as hostages because 32 Germans had been killed in Rome on the 23rd. Obviously, it is a German General who has signed the order to shoot these innocent people, and his name will be disclosed sooner or later. There is little doubt that this man should be considered as a war criminal. (x)

The question then arises by what body measures for the punishment of these crimes will be designed. It is impracticable, for obvious reasons, to include representatives of enemy countries and even of "co-belligerents" in the War Crimes Commission. No National Office will bring these cases before our Commission, and therefore no voice will be raised to demand punishment for the guilty.

2. Some of the principal criminals have signed Orders or Decrees which are in themselves, criminal, but, because they have not acted within the territory of any one of the United Nations, no National Office will investigate their case. A study of the documentation available points out that there may be some possibility of indicting some of these persons for measures which they have taken in Germany, (E.g. Ministers, Chief of Gestapo, Generals who have signed orders or decrees allowing crimes to be committed in occupied countries.)

It is therefore proposed:

That any member of the War Crimes Commission shall be entitled to bring before Committee I the case of any person accused of a war crime irrespective of the nationality of the victim or the place where the crime was committed.

N.B. - It is needless to say that the War Crimes Commission will be entitled to reject any case submitted in this way.

(x) Likewise, on 17 April 1944, the B.B.C. announced that 605 hostages had been shot at Trieste for having blown up a cinema for German troops.

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Example:

Name of accused : General von HANNEKEN.
Rank : C. in C. German Forces of Occupation in Denmark.
Date of crime : August to December 1943.
Charges : (1) Murder, systematic terrorism,
(2) Deportation of civilians,
(3) Exactment of illegitimate contributions.

SHORT STATEMENT OF FACTS

About August 30th, 1943, General von HANNEKEN took over complete control of Denmark, and assumed full powers, including the right to inflict all forms of punishment. He decided that offences such as sabotage would be tried by German Courts-Martial with death penalty provided. The system of hostages was also introduced. The order is signed : "HANNEKEN" Pursuant to these measures:

1. Executions took place among which on November 22nd two Danish labourers were executed by the Germans, and on December 3rd five Danes were executed. Notices of the execution giving the names of the victims were posted and appeared in the Press. In respect of these, HANNEKEN approved the execution by refusing to grant pardon;
2. Deportations were carried out : on October 1st one thousand Gestapo men rounded up Jews in Copenhagen : 1600 Jews were arrested, and on October 11th two (or perhaps three) deportation ships had already left Copenhagen for an unknown destination;
3. On December 5th HANNEKEN imposed upon the city of Copenhagen a fine of 2 million Kroner for the shooting of a German soldier. The order was posted on public buildings and published in the Press; it is signed : "HANNEKEN."

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C.14.
25 April 1944.

UNITED NATIONS WAR CRIMES COMMISSION

PROPOSAL BY THE CHAIRMAN OF COMMITTEE I

After an existence of 5 months during which the Commission has been actively engaged in its work - the main body and its divisions sometimes holding as many as five meetings a week - and during which Committee I has been formed with the specific object of "investigation" which was originally the purpose of the Commission itself, some facts appear and it is possible to draw some provisional conclusions.

The facts are the following:

1. The cases which have been brought by the National Offices to the Commission are comparatively few;
2. Most of the cases brought are relatively unimportant; they do not concern persons in a high position of responsibility or crimes of an outstandingly sensational nature;
3. The tempo at which the cases are being brought does not encourage us to hope that, in the near future, the Commission will be in a position to deal with a large number of cases. All this is likely to create some disappointment when the time comes for the Commission to give an account of its work.

It is not that Committee I has not loyally tried to carry out its mission as set up in the various speeches and statements which we consider to be our terms of reference. It is not either that the National Offices are indifferent to the progress of our work (some have forwarded a number of cases, whereas others have forwarded fewer charges, but they are more complete).

The great obstacle is the difficulty of obtaining circumstantial evidence from abroad: it is easy to understand that, as the elements of each case have to be forwarded to this country by underground methods and as there are so many other more pressing matters, evidence upon war crimes is slow to come over.

The question then is: what remedies are there to this situation?

As has been said many times, it is impossible for this Commission to undertake the "investigation" of all the war crimes which have been committed: apart from the fact that the Commission has neither the machinery, the equipment nor the staff, there is no body which has the legal means to do this at present. We therefore depend entirely upon the National Offices for all that concerns the preliminary "fact finding."

The dossiers which we have now at hand can be grouped into two categories:

- (1) The dossiers in which we have, together with some evidence about the crime, the reasonably complete identity of the accused, and (2) the dossiers in which we have little or no indication of his identity.

As to the first category: there is not the slightest doubt that the dossiers which have been submitted are only a small proportion of those which could be submitted. It seems that hitherto the National Offices have restricted themselves to sending us only "crimes" in the popular conception of that word, and the consequence is that (although in some cases not only the actual perpetrator but also the immediate superior who ordered the crime is the object of a dossier), the person in whom the crime really originated is not mentioned. We are referring specially to those German lawyers who, in the tranquillity of their study, have conceived those measures which have afforded others the possibility to unleash their savage instincts with impunity and covered in advance those unspeakable acts under a cloak of legality.

There are many accused in respect of whom a dossier could be easily constituted by means of one single document which would be a complete proof in itself. We shall give a few examples taken among many:

- (a) a decree providing excessive penalties for unimportant or inexistent transgressions;
- (b) decrees providing the death penalty for acts of sabotage;
- (c) decrees making the criminal nature of an act depend upon the nationality, race or religion of the person who did the act (e.g. decrees upon the pollution of the "Herren-volk," etc ...);
- (d) a decree providing capital punishment for mere omissions, such as failing to report to the Police the existence of arms or weapons of which one may have had no knowledge;
- (e) decrees providing capital punishment for the relatives of persons such as fugitives, or saboteurs, when the Germans have been incapable of laying hands on the accused themselves;
- (f) the signature of a decree by which all artistic property belonging either to the State or to churches or to private persons is subject to confiscation;
- (g) a person in authority who after having threatened to execute hostages has carried out his threat and publishes the names of those he has had executed;
- (h) notices signed by a commanding officer or an administrator announcing that he has imposed a collective fine upon a city in punishment for the shooting of a German;
- (i) decrees or notices ordering deportations;

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- (j) decrees ordering compulsory enlistment of Allied nationals in the German army (cfr. in Alsace - according to a B.B.C. broadcast on 17 April 1944);

and so on.

If the United Nations fail to indict those who have signed these decrees or orders, which are at the root of the evil, then it can again be said that justice strikes "according to whether you are powerful or wretched ..." A parody of justice of that kind should be avoided at all costs.

There is little doubt that if some research work is conducted on these lines a quantity of dossiers can be made available for the Commission in the near future. The attention of the National Offices should be once more drawn in this direction.

However, as the punishment of crime is the concern of the United Nations as a whole, it may be proper for us, if the National Offices fail to send us those cases, to examine whether the Commission should not itself assume this part of the work. (N.B. - This will obviously mean, as well as an increase of our staff, that for some members or persons their work on this Commission may become a whole time job.)

In the second category of dossiers the identity of the accused is either completely or partly unknown and there is often no indication of his rank, unit or position. In some cases the perpetrators have been provided with assumed names, in others (torturers in Gestapo chambers) they were masked. If the number of dossiers of this kind sent in is not much larger this is merely because some National Offices do not think it worth while to send us dossiers when little or nothing is known about the accused and the chances of laying hands on him are so slight. The massacre of Lidice is believed to come under this category and also the lethal chambers of Eastern Poland.

In view of the difficulties involved it has been proposed in cases such as these to apply the law of Moses, reprisals, - or alternately collective responsibility, and to execute in cold blood, after the war, so many Germans as they have executed Allies

Solutions which are so far removed from democratic conceptions may, however, not carry much weight or be the best suited to bring us a lasting peace. Moreover, it is impossible to visualize the United Nations putting such a policy into actual practice.

On the other hand it is imperative that the responsible people be punished and therefore some other means should be suggested. To this effect the following suggestion is tentatively proposed. It is impossible that major crimes (such as Lidice, etc ...) have been perpetrated without the knowledge and consent of responsible persons who are in charge or in command. One of the first things we should do is therefore to obtain as clear as possible a view of the civil and military organisation in each one of the occupied countries, since the beginning of the war, together with the names and identity of the persons who are responsible for each sector or district. Moreover, in view of the fact that when the Germans retreat from the Western European countries they are likely to carry out the same policy of scorched-earth as they

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have done in Russia and in Italy, it is necessary that we be provided also with the names of officers who will be in command in the various army groups at least as far down as the commandants of regiments. The measure which is suggested is placing into custody immediately after the armistice all persons (civil and military) who are susceptible of carrying some responsibility in the atrocities which have been committed. After their arrest their names should be broadcast and, possibly, their photos widely published in all the occupied countries in order to allow possible victims to lodge complaints against them. Those against whom, after a reasonable time, no complaints have been lodged should be released whereas the charges brought against the others should be immediately investigated. Thus without resorting to the repellent notion of collective responsibility we can achieve the purpose of justice by a perfectly admissible "mesure de sûreté." Any refusal to co-operate with the investigation officials, by making complementary investigation necessary, would automatically provoke a prolongation of the "mesure de sûreté."

This may be a bold and unprecedented measure. Far from depriving the Germans from natural guides who might help them into obtaining a more healthy outlook, this measure will allow the healthy part of the German population to find their own way more easily, under allied guidance. Moreover, it is in the interest of the safety of the occupying Forces: those who will resist any allied endeavour to pacify the country will be found less among the ordinary public than among the leading classes; it is these people who will find it most difficult to accept the defeat; by segregating them for a time we may make our own task of occupation easier. (x)

Does this mean that from now on National Offices should be discouraged from sending incomplete cases to the Commission? No, on the contrary. We believe that it should be for this Commission to obtain and centralise such information as would allow us to locate responsibility where National Offices are individually unable to do so. (xx)

We will then have a number of dossiers which will be half-ready, and which can be completed either as the liberation of occupied countries proceeds, or else soon after the Armistice (see hereafter no. 4).

(x) It is also possible that if, when the time comes, the German army in full retreat on all fronts are warned that any scorched-earth policy will meet with drastic punishment, this warning may have a preventive action (cfr. the warning which was issued by President Wilson in October 1918 to the Germans against devastating the industries, the coal mines and even the orchards in the North of France.)

(xx) Obtaining such information may become even more important when the United Nations are occupying Germany: it may then become necessary to institute a body of persons to collect and investigate German records. Such persons should of course be familiar with the German language.

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There are other suggestions which could be usefully discussed.

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1. We are at this moment working in a watertight compartment. The necessity for us to know what kind of occupation the United Nations are visualizing for Germany has already been stressed in our meetings. There may be a United Nations' Occupation Board but there may also be a division of Germany into zones of occupation. If we are to prepare a scheme we should have some idea of the general framework within which it will have to fit.

2. In the same way when we make suggestions for the inclusion into the Armistice of some terms concerning retribution for war crimes it would be most valuable for our Commission to obtain some indication, either of the lines upon which we could usefully work (together with what has been already done) or else, that our collaboration in this field is not needed or desired.

3. Some sort of liaison with the supreme command may also be necessary, for the first measures will surely be taken by the military and it is upon those measures that may depend the ultimate success or fiasco of the whole scheme. (Perhaps a United Nations' Adviser on criminal matters to the High Command.) Failing this, some military advice or discussions with the military as to the practical possibility of carrying out any scheme which we may have in view would also be of the greatest value for us.

The lack of success with which "Amgot" has met in Italy in respect of the punishment of war criminals, and the criticisms which have been directed in the Press against the lack of policy of that organisation incline us to hope that the apprehension of war criminals will not be one of its activities.

Incidentally the muddle to which has led the question of punishment in Italy and which has already caused much disappointment is a lesson that a policy on entirely different lines should be followed when it comes to dealing with the Germans.

4. It may be necessary, in the near future, to suggest the creation of another body charged with new duties, more directly concerned with prosecution.

In 1918 the Allies were expressly prevented by Article 6 of the Armistice from prosecuting anyone. This time we will not be prevented, but, as we have no prosecuting machinery ready, the result is likely to be exactly the same: valuable time will be lost which the Germans will use to build up obstacles. Therefore we must have some machinery ready to operate, at the moment of the Armistice, and the necessary men ready to step in and take charge.

If, when the Armistice comes, chaos, thanks to which most criminals will escape, is to be avoided, some United Nations organisation must be instituted in Germany (United Nations Criminal Justice Office - or: United Nations War Crimes Prosecuting Office) charged with the following duties: (a) finding the war criminals, (b) arresting them and keeping them in preventive custody, (c) taking down their statements (denial or admission of guilt, indication of perpetrator or partners in crime, line of defence, names of witnesses for the defence, etc.....), (d) eventually maybe making a summary investigation on those statements, and finding the witnesses, (e) forwarding the accused

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together with his dossier to the place or country where the trial is to be held, (f) maybe: completing the half-ready cases mentioned above on page 4.

The Office would act as a sort of judicial agency to which the Courts of all Allied countries could apply to obtain persons accused, witness evidence, or any information on war crimes. It goes without saying that the Office, although working in conjunction with the various armies of occupation, should have its own staff, agents, etc ..., and that the necessary executive powers should be vested in it. One man should be at its head, fully responsible. If necessary he might work under the authority of the War Crimes Commission, but it should be his show, and if anything goes wrong, the blame should be his. If, in 1920 some individual (instead of various anonymous diplomatic commissions) had been responsible for the punishment of war crimes, it might not have ended in a fiasco.

The suggestions in this paper should, in the idea of the Committee, apply not only to Germany but also to the liberated territories of the Allies. In respect of these territories however this régime should be restricted to the transitional period only, i.e. until the governments of those countries have resumed the actual administration of the land. (x)

5. May we be allowed once more to point out that any scheme for the punishment of war criminals is unlikely to succeed without the sincere co-operation of all the great Allies, and namely U.S.S.R., and that new efforts should be made to secure the co-operation of the U.S.S.R.

6. It should also be borne in mind that after the Armistice changes of nationality of war criminals should not be recognised. The Commission has been told that some preparations have been made to confer a neutral nationality upon some enemy persons, and upon allied persons who have worked for the enemy; counter-measures should be framed in time.

7. Political action. Caution should be used in dealing with criminals politically:

If it is contemplated to punish some enemy leaders by political rather than judicial action, the consequences of such action should be carefully measured: if such punishment is death,

(x) It is likely that the transitional period will be very short; it is also likely that there will be little scope for any such Office to operate in Allied countries, for German war criminals, rather than remain in liberated countries to face the wrath of their victims, will almost certainly flee to their homeland together with their retreating armies.

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and is inflicted soon after the Armistice, (x) there is less objection than if it is mere exile (cfr. Napoleon). But if the main criminals, who are responsible for the waging of war as well as for having taken part in the most heinous crimes (annihilation of the Jewish race, deportations, policy of terrorism) are merely to be exiled, it will be morally impossible for any court to inflict a more severe punishment (death) upon persons accused of lesser atrocities or who have merely acted upon order of those major criminals. Many of us consider political action as undesirable altogether, and would prefer judicial action, but, if for reasons of expediency it is impossible to do otherwise, political action should be exceptional, and restricted to cases such as Hitler, Hiro Hito, and others such as Mussolini who are in fact, if not in name, heads of states.

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(x) In an unspectacular way, preferably by hanging: there is no reason to make the execution of these people other than ignominious. Moreover it is more difficult to make a hero out of a man who was obscurely hanged than out of a man who was shot and who may even have been allowed to give the theatrical order of "Fire" at his own execution.