

The Chairman, Lord Wright, said that he appreciated that the case of the Emperor of Japan was one of expediency, but it was not so in the case of Sepp Dietz. Colonel Hodgson's statement raised the question of choice between Czechoslovak municipal criminal law and international criminal law; the practical point however was how to obtain delivery of Sepp Dietz, assuming he was in custody. The apparatus for the surrender of wanted persons could not be taken to apply to offences under municipal law alone.

Dr. Mayr-Harting pointed out further that if Sepp Dietz were not listed as a war criminal, there would be no basis on which to request his surrender by the U.S. military authorities.

The Chairman agreed. He asked how the Czechoslovak Government could apply to the military authorities for Dietz' delivery, if the law of extradition were not applicable. The entire scope of application and reasons governing surrender of war criminals were entirely different from that law.

Dr. Mayr-Harting pointed out that Dietz was a German national and repeated that the only way to obtain his delivery was to list him as a war criminal.

VI. In the meeting of the Commission held on January 30th, 1946, the general question of the jurisdiction of the Commission regarding crimes against humanity was discussed and a substantive motion was put by the Chairman, to the effect that CRIMES AGAINST PEACE AND AGAINST HUMANITY, AS REFERRED TO IN THE FOUR POWER AGREEMENT OF AUGUST 8th, 1945, ARE WAR CRIMES WITHIN THE JURISDICTION OF THE COMMISSION.

The motion was approved by nine votes, with six abstentions and was accordingly carried.

From this it follows that no decision by the Commission on the case of Sepp Dietz and on document C.156 has so far been made.

Further Proceedings in Committee I

VII. Thereupon the case was again discussed by Committee I in its meeting held on 28th February, 1946 (Minutes No.52)

The Committee took note of a report by Committee III on the legal aspects of this case (documents C.156 and 156a) and the subsequent discussion and decision at the Commission's meeting held on 23rd January, 1946 (Minutes No.92).

Captain Wolff referred to the statement made at the meeting of the Commission held on 23rd January, 1946 (see *supra* V) and added: The crime was committed presumably in peacetime on Czechoslovak soil, against Czechoslovak citizens, in violation of Czechoslovak law. Therefore, it was felt that the most practicable way for the Czechoslovak Government to handle the case was to request Dietz's surrender, so that he might be tried in Czechoslovakia before Czechoslovak Courts. An atrocious crime had been committed which called for stern punishment. At the said meeting of the Commission, the view had been expressed that extradition treaties were not applicable, and that the only way for the Czechoslovak Government to obtain delivery of Dietz was to list him as a war criminal. Captain Wolff agreed that the extradition treaties were not applicable to this case, but he did not agree that the only way to obtain Dietz's delivery was to list him as war criminal. Colonel Hodgson felt that the applicable principle was this, that Allies form one side in a war, and that one Ally could surrender an enemy national to another Ally as he saw fit. He felt certain that if a

proper request were made by the Czechoslovak Government, the United States Military Authorities would surrender Dietz, provided of course, that he was in their custody. He appealed to the Czechoslovak representative to withdraw the case, even at this late date, and adopt the course suggested by him. He said his instructions were to vote against listing Sepp Dietz, and it would be greatly regretted if the United States representative were forced into the position of having to object to the list when it came before the Commission. So far, the lists had always been unanimously adopted, and it was earnestly hoped that unanimous adoption would be possible in the future.

Sir Robert Craigie agreed that the course suggested by Captain Wolff would be preferable and expressed the hope that such a procedure would be agreeable to his own Government. In any case he would like to consult his Government as to whether Sepp Dietz would be surrendered by the British authorities in the event of a similar request being made to them.

Dr. Mayr-Harting pointed out that at the Commission meeting referred to above it had already been decided that the Commission is competent to deal with crimes against peace and crimes against humanity. Therefore it was not relevant that his Government could get the accused by other means than that of listing him as a war criminal. In these circumstances he saw no reason why the case should not be considered by the Committee and the accused put on the Commission List. He was prepared to vote on the issue.

Sir Robert Craigie expressed the hope that Dr. Mayr-Harting would not press for the listing of Sepp Dietz by the Commission until after the Nuremberg trial. Meantime Captain Wolff's suggested procedure seemed to offer a practical way round the difficulty.

As Dr. Mayr-Harting asked for a clear decision, the case was finally accepted by three votes to one, H. de Baer, Sir Robert Craigie and Dr. Mayr-Harting voting for and Captain Wolff against. The case was listed under 'A'.

The Present Position

VIII. The name of Sepp Dietz was accordingly inserted into the 28th Commission List of war criminals prepared by Committee I and presented to the Commission in its meeting of 20th March, 1946 (M.101). There the 28th List of war criminals was approved, but the name of Sepp Dietz was deleted from it and reserved for special consideration, discussion and decision by the Commission at a later meeting.

SECRET

C.186.
9th April, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

CROWCASS WANTED AND DETENTION REPORTS.

The Statistics given in the attached pro formas marked "A", "B", and "C" were supplied by CROWCASS at the request of the Secretary General, for information of members.

MATCHES NOTIFIED SINCE NOVEMBER 13.1945.

"A"

WANTING POWER	POSSIBLE					DEFINITE									
	1945		1946		TOTAL	1945		1946		TOTAL	1945		1946		TOTAL
	Nov. +	Dec.	Jan.	Feb.		Nov.	Dec.	Jan.	Febr.		Nov.	Dec.	Jan.	Febr.	
UNITED STATES...	23	17	56	37	97	230	2	4.	10	28	64	108			
BRITAIN ...	2	2	14	13	67	98	5	-	3	3	11	22			
CANADA: ...	1	-	-	2	-	3	2	-	-	-	-	2			
FRANCE ...	16	18	57	25	39	153	3	8	5	12	3	31			
HOLLAND ...	-	-	5	2	1	8	1	1	-	-	-	2			
BELGIUM ...	-	4	4	4	10	22	-	-	-	1	7	8			
NORWAY ...	4	-	1	-	1,	6	3	2	-	-	-	5			
CZECHOSLOVAKIA .	1	2	2	1	2	8	-	1	-	1	3	5			
POLAND ...	-	2	-	3	2	7	1	2	1	-	3	7			
YUGOSLAVIA ...	-	-	-	3	-	3	2	-	-	1	-	3			
LUXEMBOURG ...	-	-	-	-	-	-	-	-	-	-	4	4			
TOTAL.....	47	45	139	90	219	540	19	18	19	46	95	197			

+ NOV.13 - 30.1945

APPENDIX.

"B"

	<u>Wanted</u>	<u>Detained.</u>
Present Totals on	27,381	66,000 approx.
CROSS Lists.		

REPORTS RECEIVED SINCE 1st JANUARY 1946.

From	Wanted	Detained
UNITED STATES	1158	23,592
BRITAIN	310	13,721
CANADA	36	118
FRANCE	1,414	24
BELGIUM	558	-
HOLLAND	336	-
NORWAY	511	-
CZECHOSLOVAKIA	504	17
POLAND	391	-
YUGOSLAVIA	398	-
LUXEMBOURG	38	-
TOTAL	5,654	37,472

Up to 31 March 1946 .

Records of persons wanted by more than one Nation. 224.

"C"

JANUARY 1946

FEBRUARY 1946

MARCH 1946

	<u>Received</u>	<u>Back-log</u>	<u>Received</u>	<u>Back-log</u>	<u>Received</u>	<u>Back-log</u>
WANTED REPORTS	2,368	-	1,135	-	2,293	1,700
DETENTION REPORTS	9,564	-	5,506	-	23,653	10,000
CORRESPONDENCE QUERIES	754	-	885	-	893	-

	<u>Definite</u>	<u>Possible</u>	<u>Definite</u>	<u>Possible</u>	<u>Definite</u>	<u>Possible</u>
MATCHES	19	139	46	90	95	219

	<u>SEARCHES COMPLETED</u>		
	<u>January</u>	<u>February</u>	<u>March</u>
WANTED REPORTS	2,100	1,758	573
DETENTION REPORTS .	7,106	6,157	13,236
MISC. SEARCHES ...	19,700	23,146	61,287

2 Apr. 46.

SECRET

C.187
9th April, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

The Case of Karl Brandt.

With reference to the discussion at the last meeting of the Commission on the case of Dr. Karl Brandt, it is to be noted that Karl Brandt has been listed twice on the Commission's Lists.

Firstly in the Commission List No.10 in June 1945 as Dr. Karl Brandt, SS. Obergruppenführer, Reich Commissioner for Health, former physician to Hitler, on a Commission charge No.11 for mass murder,

secondly on Commission List No.14 of October 1945, as Professor Dr. Karl Brandt, SS Obergruppenführer, Reich Commissioner for Health, Bielitz Stiftung, on Czechoslovak Charge No.1535, for murder, massacres and other crimes.

Going through the CROWCASS lists received up to date by this office, it appears that the above mentioned has been listed by CROWCASS several times, as follows:

- 1) Wanted List No.1 of July 1945, as Dr. Karl Brandt, SS Obersturmbannführer, wanted as a security suspect.
- 2) Wanted List No.4. as Karl Brandt, Sturmbannführer, wanted by United States as a witness in connection with crimes committed at Bielitz.
- 3) Wanted List No.7. as Karl Brandt, SS. Gruppenführer, wanted by United States and also as SS. Sturmbannführer wanted by United States as a witness for crimes committed in Bielitz.
- 4) Wanted List No.10. of February 1946 as Karl Brandt, SS. Obergruppenführer KL Germany, wanted by Czechoslovakia.

From the foregoing, it appears that Dr. Karl Brandt has been listed by CROWCASS only upon one of the charges registered with the Commission, i.e. upon the Czechoslovak charge and not upon the Commission charge.

Note: The DJAG British Army of the Rhine is preparing a case against Brandt and is in possession of a great deal more evidence. Brandt was sent to Nuremberg on the understanding that when his interrogation was complete he should be returned to BAOR. Arrangements have been made for Brandt's return and a conference is to be held to consider how the charges against him and others in his class are to be dealt with.

C. 188.
April 10, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

FORTHCOMING TRIALS

Information has been received from Professor Gros that the three following cases will come before the French Military Tribunal of Toulouse on 16th April 1946:-

1. Adjudant GENZ, Johann - Turkestan Legion
accused of wanton destruction.
2. Adjudant BIERWERTH, Hans, Turkestan Legion
accused of wanton destruction.
3. Sergeants METEL - DICZEK - ACKERMANN
Corporal MAYKOWSKI - Soldier KUEHL and
Lieutenant HELFER, accused of wanton destruction,
murders and looting. This case concerns the destruction
of the village of RIMONT (Ariège) and a dossier was sent
to the Commission about it. (No.1114).

C. 189.
April 12th, 1946

UNITED NATIONS WAR CRIMES COMMISSION

NOTES ON VISITS TO TRIALS AT NUREMBERG AND DACHAU
(March 26th - April 3rd, 1946)

By Lieut.-Colonel H. Wade.

In the first place, I must put on record my sincere gratitude to the authorities of the United States Third Army for the invitation which enabled me to be present at these trials; and to the U.S. Transport Officer at Nuremberg (Lieut. Pitcher), who arranged for my journey from Nuremberg to Dachau, by road, and for my return flight from Munich to London; especially, also, to Colonel Sorley and the officers of the War Crimes Branch of the Third Army at Dachau, who entertained me most hospitably during my stay at that place and afforded me every facility for following the proceedings of the Mauthausen trial.

I must also express my thanks to the British War Crimes Executive in London, which arranged my outward journey to Nuremberg at short notice, and to their representative (Captain Marsh) at Nuremberg who provided me with accommodation there and enabled me to be present at two sittings of the Tribunal.

I. N U R E M B E R G.

Documentation.

In addition to witnessing the trial of the major criminals I was so fortunate as to have a meeting with the Documents Officer, Lieut. Gerard Schafer (address: Room 316, Court House, Nuremberg), with whom I discussed:

- (a) the means of ascertaining the whereabouts of the originals of documents circulated as translations or copies;
- and
- (b) the ultimate disposal of the documents collected at Nuremberg for the trial of the major criminals.

In regard to the first of these points, I learned that, when a doubt arises—as has often happened in the past—as to the whereabouts of the original of some document, of which a copy or translation has been received from SHAEF or from an Allied Intelligence Organisation, application should be made, in principle, to Captain Winick of G 2 Documents USFET. His office, which exercises control of captured documents in United States custody, is in the I.G. Farben Industrie building at Frankfurt. If, however, the wanted document is one that concerns the Nuremberg trial, the situation of the original could be ascertained from the Documents Officer at the address given above. National Offices might do well to apply to the Documents Officer through their liaison officer at Nuremberg, if they have one.

In regard to the second point, Lieut. Schafer informed me that the question of the disposal of the thousands of documents assembled at Nuremberg for the present trial was being carefully studied. A proposal then under consideration was to send copies of them to the Peace Palace, The Hague, and to Washington, and to deposit the originals at the Berlin Documents Centre, known by the number "6899", which functions under Lieut-Colonel Hans Helm of "OMGUS" (Office of the Military Government of Germany, United States), address A.P.O. 742.

II. THE MAUTHAUSEN TRIAL.

This trial opened at Dachau on Friday, March 29th, 1946. The defendants, who numbered 61 (see list of names in Appendix A), were made up of 42 Germans, 3 Czechs, 12 Austrians, 2 Yugoslavs, 1 Hungarian and 1 Rumanian. Of these, 45 belonged to the Waffen SS; one to the Allgemeine SS; 2 to the Berlin SS. Office; their ages ranged from 21 to 63. The list included August Eigruber, ex-Gauleiter of the Upper Danube, who began his career as a Communist and then turned Nazi; and Dr. Krebsbach, the camp physician (who is possibly the same as the "Herr Doktor" referred to in some of the Netherlands charges); and several other camp medical officers.

The tribunal before which these men were tried was a "General Military Court", convened by Lieut.-General Truscott, commanding the Third U.S. Army, in virtue of powers delegated to him by the Commanding General USFET. It consisted of Major-General Prickett, as President, and seven officers of colonel's rank, one of whom was the "legal officer". The prosecution was conducted by Lieut.-Colonel Benson, as "Trial Judge Advocate" (TJA), assisted by several deputy T.J.A.'s. The defence was handled by five American officers, who had been designated for that duty, one civilian American defence counsel, and one German lawyer. (For text of the Order convening the court and lists of Members, Prosecutors and Defence Counsel, see Appendix B.)

The trial was organized, on the administrative side, by Colonel Sorley, head of the Third U.S. Army's War Crimes Branch, which is now stationed at Dachau. Owing to the fact that Mauthausen is in the Russian zone, and thus inaccessible, the proceedings took place at Dachau, in the court house, adjoining the concentration camp of that name, where the trial of the Dachau camp officials had been held in November 1945.

Owing to the large number of witnesses (about 90) and defendants it was expected that the trial would last five or six weeks. The arrangements for a trial, with so large a number of prisoners, visitors and witnesses, must have involved a serious administrative effort, which was no doubt increased by the depletion of staffs and changes of personnel consequent on "re-deployment".

Besides General de Baer and Lieut.-Colonel Wade, who represented the UNWCC, a number of Allied officers were present, including representatives of Czechoslovakia, France, the Netherlands, Poland and the USSR. The

visitors were accommodated in hotels at Munich and Dachau, where every provision had been made for their comfort and convenience.

General Truscott, the convening officer, was present at the opening of the trial and made a short speech to the judges, prosecutors and defence counsel on their task, which, he said, was one of the occupational duties of the United States forces. He emphasized the importance of speed. To the defence counsel he said that they should defend the prisoners in just the same way as if they were defending American citizens.

The indictment charged the accused as "German nationals or persons acting with German nationals" with acting "in pursuance of a common design" to subject persons belonging to 15 Allied countries (enumerated by name), also Turks, stateless persons, non-German nationals and prisoners of war to "killings, beatings, starvation, abuses and indignities" and with aiding, abetting and participating in such actions. The period covered by the alleged crimes was from January 1942 to May 15th, 1945, corresponding to the United States entry into the war. (For text of the Charge see Appendix A.)

The evidence presented at the outset showed that Mauthausen, with its 26 sub-camps, was a "first-class extermination camp", whose regime was characterized by acts of detestable cruelty, such as are already familiar to the Commission from other trials and from the depositions of inmates of many camps. The treatment seems to have been deliberately designed to increase the death rate (which rose in 1944 to 450 per day) to the maximum possible extent. That view is confirmed by the dying confession of Ziereis, the Commandant, which was circulated as (Research) Documents Series No. 21, and which mentioned that Liebehenschel, one of the WVHA officials at Headquarters had objected to the lowness of the mortality rate and had telephoned to the Camp to ask why more prisoners were not being killed.

A point brought out in the evidence was that executions took place, without trial, by a simple order from the political department, the commandant, or other SS authorities. This confirms the view that the term "execution", in Germany, did not, as in most countries, imply that the victim had been tried by any process of law. (Cf. the French Charge against Wagner 2786; and the British deposition, Documents Series No. 29, concerning trials before the German Supreme Military Tribunal.)

Prisoners were put to death by gassing, hanging, shooting, beating, electrocuting, throwing from cliffs into water and drowning, mashing in concrete mixers, freezing and scalding in shower-baths--after which victims were lashed until the blisters burst and the skin came off in strips--being thrown to hungry dogs, death by exposure, beating to death with iron bars, having a red-hot poker put down the throat, injection of magnesium chloride or petrol in the heart, burning or kicking the genitals, kicking to death, burying alive and drowning by the insertion of a hose in the mouth. One famous Czech general had been drowned by having a hose put down his throat. By another method, victims were made to drink quantities of water, after which SS. men jumped on their stomachs as they lay on the ground.

Commander Taylor, of the U.S. Navy, the first witness, a former inmate of Mauthausen, had performed a useful service by remaining in the Camp after its liberation and collecting documents, names of competent witnesses, and material. He told the Court how, at one time, he had worked with a party constructing a new crematorium. As it was a strict rule that the bodies of men who died from non-natural causes must be cremated--so as to prevent enquiries--he was able, for a time, by retarding the work, to prevent

an increase in the killings, which was known to be intended. He himself had been scheduled for execution, but escaped death owing to a false entry in his file, showing him as already liquidated.

Another witness, Dr. Martin, a Czech, had been employed as clerk in charge of the "death books," some of which he had preserved and which were produced in court. He had recorded some 72,000 deaths, but this figure took no account of convoys of prisoners who were exterminated immediately on arrival without being admitted to the camp or given numbers.

Another witness—also a Czech—Dr. Povloha, who had worked under the camp doctor, Krebsbach, told how the latter practised vivisection on hospital inmates, operating on them for diseases which they were not suffering from. An Austrian witness, Dr. Hurden, now Minister of Education, spoke of the conditions under which Ukrainian prisoners were confined in cells, as many as twenty in a cell two metres by three. He had heard American witnesses being "interrogated". A German witness, Dr. Sanner, who had served in the Allgemeine SS before being sent to Mauthausen as a prisoner, described the atrocities committed in the notorious Quarry (the so-called Wiener Graben). Here prisoners were made to carry heavy stones up 170 steps and, when they collapsed at the top, they were made to leap down or were hurled to death over the cliff. Spatzenegger, one of the defendants specially responsible for these crimes, was identified by witnesses.

Points of Interest.

(a) At the very outset defence counsel raised a plea to the Court's jurisdiction, contending that the defendants were prisoners of war and thus only amenable to courts-martial. The Prosecution argued, on the other hand, that the prisoners were not lawful belligerents; and cited, in support, the ruling given on the same point by the court before which the Dachau Concentration Camp trial was held in November 1945. The motion was denied.

(b) Before being called on to plead, the prisoners were asked if they understood the charge. Defence counsel said that they did not, as the term "common design" (see above) was obscure and incapable of definition, and no such crime was known to exist. The Prosecution observed, on the other hand, that the term "common design" was merely descriptive, and needed no legal definition. This argument, it may be observed, in some ways resembles that which arose at the Belsen trial, in connection with "concerted action" (see Law Report No. 1 by Dr. Schwelb). The Court did not at the time give a final ruling on this point, but decided that the trial should proceed. The prisoners were then asked if they had received the indictment, and were told to plead. One man, who persisted that he could not understand the charge, was entered as pleading "Not guilty".

(c) Defence counsel also objected that the indictment was too vague and general, and that it was not clear which of the various crimes enumerated in it (killing, beating, etc.) were charged against individual defendants. This objection, also, was not finally disposed of at the time, but the court ruled that the trial should proceed.

(d) The defence objected to evidence of ill-treatment given by Dr. Hurden, the Austrian witness, on the ground that the indictment specified a number of nationalities, but not Austrians. It was also argued that Austrians were Germans by nationality during the war. The Prosecution contended successfully that Austrians came under the head of "non-Germans".

The motion was denied.

(e) The defence counsel repeatedly objected to evidence describing the general regime of horror in the camp on the ground that it was "inflammatory" and liable to create prejudice, in so far as the acts alleged were not imputed to individual defendants. The Prosecution contended that this evidence was necessary as a background, and that they intended, as the case proceeded, to connect individual defendants with the different crimes alleged. In fact, as mentioned above, during the first four days quite a number of the defendants had been identified by the witnesses as having participated in criminal acts. (Twelve men were identified as guilty of crimes by Dr. Martin, the second witness.)

(f) Commander Taylor, the first United States witness (see above) spoke to me of two British officers, "Flight Lieutenant Spears" and Captain Starr (whose addresses he gave) as having been with him in Mauthausen, and as having made reports, which—he said—had been sent in to the British authorities. (+) Colonel Denson, the Prosecutor, whom I consulted, said that it was too late now to summon additional witnesses (as there were already 90 to be heard), but he would be glad of statements or affidavits by these officers. General de Baer despatched a request in that sense (≠) to the Secretary General of the UNWCC., asking that the statements might be obtained and forwarded to Dachau.

(g) The War Crimes Branch of the Third Army had not, at the time of my visit, received any material concerning Mauthausen from the National Offices of the UNWCC. The prosecuting staff is now engaged in preparing material for a Flossenbergl trial, which is to take place after the present trial and it is to be hoped that any material available will be sent to them.

III. ...

(+) It does not appear that these reports were ever communicated to the Commission, nor are they known to the British J.A.G.

(≠) This request was complied with by the British J.A.G. as regards Captain Starr, and his statement was immediately sent to Colonel Denson, the Trial Judge Advocate (see Appendix C). "Flight Lieutenant Spears" is, however, not known to the British authorities, and it is believed by Captain Starr that he was in reality a "stool pigeon", passing as a British officer.

III.

EFFECTIVENESS OF THE COMMISSION'S LISTS.

(a) The Case of Karl Brandt.

On March 29th, 1946, I met at Dachau a group of British officers who had been sent from England by the Ministry of Supply to interrogate Karl Brandt, former Reich Health Minister, on some technical chemical points, not connected with war crimes. One of them (Major D.C. Evans, C.D.R. 5, Shell Mex House, London) told me that Brandt had been for some time held at "Dustbin" (Frankfurt), but as nobody wanted him, and as room was required, he had been sent to Nuremberg. Not being wanted there, he had been sent to Dachau, where he is now held in P.W.E. (Prisoner of War Enclosure) No. 29, A.P.O. 205, U.S. Army. The authorities at Nuremberg had told Major Evans that Brandt had never been interrogated, that there was "nothing against him" in his file, that nobody had ever charged him, and that it was probable that he would now be released.

I reported the matter to the Secretary General, and it is now established (see Document C.187) that the British J.A.G.'s Office has been preparing a case against Brandt and that he was merely "lent" to Nuremberg on the understanding that he would be returned to B.A.O.R. after being interrogated. Nevertheless, it appears that the authorities at Nuremberg had not been aware that he had been charged as a war criminal, or that he should have been returned to the British zone, instead of being consigned to Dachau.

(b) The Case of Arthur Axmann.

Two days later (March 31st) the Allied-controlled Press in Germany printed an announcement by USFET headquarters concerning a raid carried out by British and American troops, which had broken up a powerful and well-financed Nazi movement, known as "Operation Nursery", headed by Arthur AXMANN, who, it was announced, was now in jail. (Appendix D)

(A later Press report said that Axmann had been taken into custody in mid-December; though whether by the United States or by the British forces is not clear.)

It is pointed out that Arthur AXMANN has been on the UNWCC's List of War Criminals (List 7) for almost a year. It is not known whether he has been at large in the British, French or American zone; but the fact that he was not arrested long ago seems to call for explanation. Taken in conjunction with the case of Brandt, mentioned above, it gives the impression that the UNWCC lists do not always penetrate to the officials who should be acquainted with them and act upon them.

APPENDIX A.

MILITARY GOVERNMENT COURT

(Militärgericht)

CHARGE SHEET

(Anklageschrift)

Dachau, Germany.
(Dachau, Deutschland)

7 March 1946
(7 März 1946)

NAMES OF THE ACCUSED
(Namen der Angeklagten)

Hans Altfuldisch
Stefan Barczay
Willy Bruenning
Karl Billmann
August Blei
Michael Cserny
Ludwig Doerr
Otto Drabek
Hans Diehl
Hans Eisenhoefer
Willy Eckert
Friedrich Entress.
August Eigruher
Heinrich Fitschok
Willy Frey
Rudolf Fiegl
Heinrich Giese
Herbert Grzybowski
Paul Guetzlaff
Johannes Grimm
Georg Goessl
Werner Grahn
Heinrich Haeger
Franz Huber
Walter Hoehler
Hans Hegenscheidt
Wilhelm Henkel
Hans Kreindl
Viktor Kerger
Kaspar Klimowitsch

Franz Kautny
Kurt Keilwitz
Edmund Krebsbach
Anton Kaufmann
Paul Kaiser
Ferdinand Lappert
Josef Leeb
Julius Ludolf
Josef Mayer
Wilhelm Mack
Erich Miessner
Emil Mueller
Wilhelm Mueller
Rudolf Mynsák
Josef Niedermayer
Vinzenn Nohel
Herman Pribyll
Theophil Priebe
Josef Riegler
Adolf Rutka
Thomas Sigmund
Karl Struller
Otto Striegel
Andreas Trum
Leopold Trauner
Willy Jobst
Erich Wasicky
Waldemar Wolter
Adolf Zutter
Viktor Zoller
Hans Spatzenegger,

are hereby charged with the following offences:
(sind hiermit wegen der folgenden strafbaren Handlungen angeklagt:)

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Hans Altfuldisch, etc., [here follow the names of the defendants in the above list], German nationals or persons acting with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses, and indignities, did, at or in the vicinity of the Mauthausen Con-

centration Camp, at Castle Hartheim, and at or in the vicinity of the Mauthausen sub-camps - Ebensee, Gros-Raming, Gunskirchen, Gusen, Hinterbruehl, Lambach, Linz, Loiblpass, Melk, Schwechat, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienne, Wiener-Neudorf, all in Austria - at various and sundry times between January 1, 1942, and May 15, 1945, wilfully, deliberately and wrongfully encourage, aid, abet, and participate in the subjection of Poles, Frenchmen, Greeks, Yugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Turks, British Subjects, stateless persons, Czechs, Chinese Citizens of the United States of America, and other non-German nationals who were then and there in the custody of the then German Reich, and members of the armed forces of nations then at war with the then German Reich who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating many thousands.

(signed) OFFICER PREFERRING CHARGES:

FRANCIS F. FAINTER, Colonel,
Infantry
Army of the United States.

The above charges are referred for trial to the General Military Court appointed by Par. 4, Special Order Number 61, Headquarters Third United States Army, dated 6 March 1946, to be held at Dachau, Germany, on or about 29 March 1946.

By Command of Lieutenant General Truscott:

(signed) THOMAS ROBINSON, Colonel,
Adjutant General Department
Adjutant General.

APPENDIX B.

RESTRICTED

HEADQUARTERS

THIRD UNITED STATES ARMY

APO 403.

SPECIAL ORDERS

6 March 1946

NUMBER 61

EXTRACT

4. Pursuant to authority delegated to the Commanding General, Third United States Army by Commanding General, United States Forces, European Theater, a General Military Court consisting of the following officers is hereby appointed to meet at the time and place designated by the President thereof for the trial of such persons as may be properly brought before it.

DETAIL FOR THE COURT

Major General Fay B. PRICKETT, 04458 4th ARMORED DIVISION
Colonel J.C. RUDELL 04485 GAC HQ THIRD US ARMY
Colonel Garnett H. WILSON 010302 Cav US Zone CONSTABULARY
Colonel John B. SMITH 0212785 FA HQ THIRD US ARMY
Colonel LYMAN D. JUDSON 0118250 FA 61st FA BRIGADE
Colonel Raymond C. CONDER 016131 FA 61st FA BRIGADE
Colonel A.H. ROSENFELD 0212685 Inf HQ USFET (LEGAL OFFICER)
Colonel Carl MARTIN, HQ 9th Inf Div.
Lieut.-Colonel William D. DENSON 0900415 JAGD HQ THIRD US ARMY Trial Judge Advocate
Lieut.-Colonel Albert BARKIN 0321172 Inf HQ THIRD US ARMY Asst TJA
Captain Charles MATHEWS 01182418 FA HQ USFET Asst TJA
Captain Myron N. LANE 0205253 JAGD HQ USFET Asst TJA
2nd Lieut. Paul GUTH 02030857 BI HQ THIRD US ARMY Asst TJA
Lieut.-Colonel Robert W. WILSON 0925319 JAGD HQ USFET Defense Counsel
Major Ernst OEDING 01636416 JAGD HQ THIRD US ARMY Asst Defense Counsel
Captain Francis W. McGUIGAN 01583356 JAGD HQ USFET Asst Defense Counsel
1st Lieut Charles B. DIEBEL 02050767 MAC HQ THIRD US ARMY Asst Defense Counsel
Mr. David P. HERVEY AMERICAN CIVILIAN Asst Defense Counsel
Lieut Patrick W. McMAHON
Mr. Alexander WOLF

The employment of stenographic assistance is authorized.

BY COMMAND OF LIEUTENANT GENERAL TRUSCOTT:

DON E. CARLETON
Brigadier General, US ARMY
Chief of Staff.

THOMAS ROBINSON
Colonel, Adjutant General's Department
Adjutant General.

Headquarters, Third US Army.

(R/G/9/4)

APPENDIX C (1)

HD/JAG/ES/22/621(3B)
RGLW/JW

IN THE MATTER OF GERMAN WAR CRIMES
AND IN THE MATTER OF THE ILL-TREATMENT
OF INMATES AND OF ATROCITIES COMMITTED
IN MAUTHAUSEN CONCENTRATION CAMP.

A F F I D A V I T.

I, No.230430 Captain John Ashford Renshaw STARR, General List, with permanent home address at 31, Eleanor Crescent, Newcastle-under-Lyme, Staffordshire, make oath and say as follows:-

1. I was taken prisoner at DIJON on 18 July, 1943, dressed in civilian clothes. I had been organising a French Resistance Movement in the Jura area of France. Between July 1943 and January 1945 I passed through several prisons and concentration camps and ultimately in January 1945 I found myself at MAUTHAUSEN Concentration Camp. I remained there until the end of April 1945.
2. MAUTHAUSEN was not so much a concentration camp as an extermination camp. It was indeed called by the Germans themselves there 'VERNICHTUNGSLAGER', meaning 'EXTERMINATION CAMP'. The words 'DU KOMMST NIEMALS RAUS', meaning 'YOU WILL NEVER COME OUT', were engraved in stone above the prison gate.
3. During my time there, there were perhaps some 45,000 inmates. These consisted of every conceivable nationality including German criminals. These German criminals were put in charge of the 30 blocks housing the inmates. These German criminal guards had the right of life or death over the inmates. The majority of the people in MAUTHAUSEN had previously been in other concentration camps and had been taken to MAUTHAUSEN with the object of working or starving them to death. The death roll was roughly 500 a day. Of these some 250 might have died from starvation, dysentery, and other illnesses, and the balance met their death in a variety of ways, such as being gassed, beaten to death, thrown over a stone quarry, chewed up by hungry dogs, hanged, shot, and so on. The dead bodies were then consumed in an incinerator. During my time there the inmates were forced to build a second incinerator. Even these two incinerators were insufficient to consume the dead remains, although they were working night and day, and accordingly a huge pit was dug by inmates into which dead bodies were thrown.
4. On a party arriving at MAUTHAUSEN Camp those who were ill were lined up separately and made to undress. At the time I arrived at the camp it was very cold and the sick people were kept in a complete state of nudity for the whole day. Towards the evening these sick people were forced by brutal beatings of truncheons into the shower baths where they were made to take a hot shower. After that they were forced, in the same brutal way, out into the open again and kept there until well into the night, still without any clothes or any means of drying themselves. In the early hours of the morning they were thrust into the showers again and then made to take a cold shower which lasted for about half an hour. They were then again brutally urged out into the open. Many subjected to this treatment collapsed and died. Others would die from the beatings they received while being forced in and out of the showers. Persons who did not declare themselves to be ill were paraded before the camp doctor who marked them on the chest or back with indelible pencil. Those who appeared to the doctor to be reasonably fit were marked with a number on the chest, and those who did not, were marked with the letters 'KL' on the back.

Those marked 'KL' were put through the hot and cold showers in the way I have described and beaten up all through the night and those who were not dead by the morning were frequently finished off with fire axes. I myself have seen these incidents take place exactly as I have stated.

5. There was at MAUTHAUSEN a gas chamber. Every day a party of inmates varying between 100 and 200 were marched into the gas chamber and exterminated.

6. It is impossible to exaggerate the sadistic brutalities of the SS guards. For no reason at all inmates of the camp already in a deplorable physical condition, would be picked upon and beaten or otherwise done to death.

7. I recall on one occasion that the whole camp was paraded and the commandant passed through the lines feeling the arms of the inmates. Those who appeared to him to be sufficiently strong were set aside for working parties, but those whom he decided from the thinness of their arms to be of insufficient strength, were set aside to be liquidated.

8. I have myself seen inmates beaten to death. One such incident occurred in the hut in which I was lodged. One of the inmates, a Jew, was suspected to have spoken to other Jews against the harsh treatment. This came to the ears of the Block Chief who in the presence of the other inmates, beat this Jew to death.

9. The camp was divided into 3 sub-camps, 1, 2 and 3. I was in No. 3 Camp and housed in one of 5 huts. There were about 1,500 in No. 3 Camp in all. Every night the German criminals put over us thrashed us with thongs to make us huddle together more closely to provide sufficient room for us all to lie down. About March 1945 No. 3 Camp was evacuated and some 1,000 other inmates, all sick to the point of death, were moved in to the 5 huts. Every conceivable article was moved out, such as blankets, palliasses and feeding bowls, until absolutely nothing remained. The camp was then locked up and the 1,000 sick inmates abandoned to perish from hunger. The only time that the gates were opened was to collect the dead. I myself have seen inmates who were no more than animated skeletons fighting with each other to obtain a blade of grass to eat.

10. Every conceivable form of brutality was practised by the guards and incidents were so numerous that it is difficult for me to select any one worse than another. Cannibalism was practised. On one occasion a horse was killed and I myself saw inmates consume the raw entrails.

11. The camp was staffed by German SS. I do not know the names of any of these; I never had an opportunity of learning such names. I believe, however, that the name of the commandant was Hauptsturmführer BACHMAYER. Although I do not know any names, it is not unlikely that I might be able to recognise some of them if I were to see them.

12. I remember in April 1945 there was a raid by American Fortresses on the town of LINZ, near MAUTHAUSEN. I saw 3 of the Fortresses brought down by anti-aircraft fire and I saw some of the crews coming down by parachute. Shortly afterwards on the same day I saw 2 American airmen brought into the camp in the following way: the commandant rode in on a horse dragging behind 2 Americans, whose hands were tied together. Again, later, I saw in the camp other American airmen. I myself saw in all half a dozen of the Americans lined up facing the prison wall and I saw the SS beat them up. The last I saw of the American airmen was when they were in a party of inmates about to enter the gas chamber.

13. In April 1945 a number of French, Belgian and Dutch inmates of the camp were evacuated. I was able to assume French nationality and make my way out with the French contingent. I made my way to Switzerland and thence to PARIS.

SWORN by the above named John Ashford Renshaw Starr, at 6 Spring Gardens, in the City of Westminster, this fifth day of April, 1946.) (Signed) J.A.R. Starr.

BEFORE ME

(Signed) H.M. Winocour,
Captain Legal Staff,
Mil. Dept. Office of the Judge Advocate General.

APPENDIX C. (ii)

AFFIDAVIT

I, No.230430 Captain John Ashford Renshaw STARR, General List, with permanent home address at 31 Eleanor Crescent, Newcastle-under-Lyme, Staffordshire, make oath and say as follows:-

1. Further to my affidavit in the matter of Mauthausen concentration camp, of even date. While I was an inmate of Mauthausen, I was told by some other inmates that it had been a practice at the camp to liquidate recaptured prisoners of war. I was told that American and British prisoners of war who had escaped, had on being recaptured, been brought to Mauthausen where they were killed. A common method of killing these recaptured prisoners of war was to make them run up some 80 steps from a quarry, carrying on their shoulders a large and heavy piece of stone and when the prisoners fell exhausted, the S.S. guards used sledge hammers to break the stones on the backs of the prisoners and so killed them. I was told that some 45 American and British prisoners of war were killed by this means.

2. Other methods used to kill inmates were the injection of petrol into their veins, and the use of a device resembling a height measuring stand which, when the top piece was brought to the level of the head of the person being measured, a bullet was automatically fired into the back of the neck.

SWORN by the said John Ashford Renshaw Starr, at 6, Spring Gardens, in the city of Westminster, this fifth day of April, 1946.) (Signed) J.A.R. Starr

BEFORE ME,

(Signed) H.M. Winocour,
Captain Legal Staff,
Mil. Dept. Office of the Judge Advocate General.

APPENDIX D.

EXTRACT FROM "STARS AND STRIPES",
Sunday March 31, 1946.

FRANKFURT, March 31 (Sunday). (A.P.) - A powerful, well-financed subversive attempt by Nazi fanatics to regain power in occupied Germany was smashed by thousands of American and British troops early this morning. . . . The subversive movement was directed against American, British and Russian forces.

"The back of the movement is broken," Brig. Gen. Edwin L. Sibert, American intelligence chief, announced. . . . Those arrested included 200 elite Nazis, comprising an "inner circle," each of whom was a potential candidate for a new German führer. In jail was Arthur AXMANN, head of the Hitler Jugend (Youth Movement) and under-cover leader of the entire anti-Allied conspiracy. . . .

[According to the U.S. controlled "News from Germany" of April 1st, 1946, AXMANN was taken into custody in mid-December, 1945.]

SECRET

C. 190.
April 17th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

NOTICE OF TRIALS.

The following information has been received from the
French National Office:

"Robert WAGNER, ex-Gauleiter of Alsace, and his
accomplices, will be put on trial before the French
Military Tribunal of Strasbourg on 23rd April, 1946".

SECRET

C.191
17th April 1946

UNITED NATIONS WAR CRIMES COMMISSION

Far Eastern and Pacific Sub-Commission - Chungking

First Progress Report

(Dated February 15th 1946)

(1) Examination of cases of Japanese war crimes

Although the Sub-Commission's first (inaugural) meeting took place on November 29, 1944, and five more meetings were held before the middle of June, 1945, cases did not come to the Sub-Commission for examination in appreciable numbers until the Chinese National Office was completely reorganised in July last year. Up to the time of writing, the Sub-Commission has held twenty-one meetings and passed and printed altogether nine lists, containing eleven hundred and eleven names. List No.10, with 88 names, is being printed in Shanghai. Cases listed as "C" by the Sub-Committee on Facts and Evidence have been returned to the National Office for further details.

(2) Apprehension and trial of Japanese war criminals

The Ministry of Military Operations has distributed copies (in Chinese) of the Sub-Commission's Lists to Chinese commanders in various fields and ports, who are making a close check on all Japanese personnel being repatriated. The U.S. Army authorities in China are also working closely with the Chinese officers who are handling the repatriation work. From the Ministry of Military Operations, information was received saying that up to February 10, 1946, one hundred and eleven Japanese war criminals listed by the Sub-Commission had been arrested.

The organisation of military tribunals for the trial of Japanese war criminals has been for some time under the joint consideration of the Ministry of Justice and the Ministry of Military Operations. Orders have already been issued, so we learn, for the establishment of tribunals in Nanking, Wu-Han, Peiping, Shanghai, and other centres in Honan, Shansi, Suiyuan, and Chekiang. But up to the present, no report has been received by the Ministry of Military Operations concerning their actual establishment.

(3) Finance

The Sub-Commission's Finances are entrusted to a Finance Sub-Committee, at present consisting of H.E. The Netherlands Ambassador, M.A.H.J. Lovink; Mr. R.L. Smyth, U.S. Embassy; and Mr. L.H. Lamb, British Embassy, who succeeded Mr. C. Whitmore as Chairman on 1st. November 1945.

Advances for current expenditure are made by the British Embassy, who at the end of each quarter transmit the vouchers to the Foreign Office for presentation to the U.N. War Crimes Commission in London for final settlement. To facilitate local payments, the Sub-Commission have opened an account with the Shang-Ching-Shih branch of the Central Bank in Chungking.

With the exception of mimeograph machine and supplies of stencils ordered from India at a cost of 2,420 rupees, the regular expenses of the

Sub-Commission are in Chinese National currency in respect of remuneration to the personnel and stationery and other incidentals, the amount thus expended from December 1st. 1944 to December 31st, 1945 being CNY1,249,925.

Towards the beginning of 1945 the Sub-Commission were called upon to submit to the London Commission a budget for the financial year April 1st. 1945 to March 31st. 1946. On the recommendation of the Finance Sub-Committee the estimate was calculated in terms of sterling, being the currency in which the London Commission's accounts would be rendered, and the anticipated expenditure on the basis of the exchange rates then current was £2,500. Actually despite the increased costs of operation in conformity with the rising costs of living in Chungking, the Sub-Commission has been able, partly owing to more favourable rates of exchange and partly as the result of economic management, to remain well within the set limit, the expenditure on December 31st. 1945 representing the end of the third quarter being under £700 or considerably less than one third of the total annual estimate. No budget for the next financial year has so far been asked for or compiled.

(Signed)

P.H. Chang.

C.192.
1st May 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Composition of Committees

COMMITTEE I	Chairman:	M. de Baer	- Belgium
FACTS AND EVIDENCE	Deputy		
	Chairmen:	(Sir Robert Craigie - United Kingdom	
		(Captain Wolff - United States	
			- Australia
		Dr. Mayr Harting	- Czechoslovakia
		Secretary	- Dr. J. Litawski
COMMITTEE II	Chairman:		- United States
ENFORCEMENT		Mr. Bridgland	- Australia
		H.E. Dr. Wellington Koo	- China
		Dr. Ečer	- Czechoslovakia
		Professor Gros	- France
		H.E. Mr. Clasen	- Luxembourg
		Commander Mouton	- Netherlands
			- Norway
		Dr. Zivkovic	- Yugoslavia
		Sir Samuel Runganadhan	- India
		Secretary -	
COMMITTEE III	Chairman:	General B. Ečer.	
LEGAL	Deputy		
	Chairman	Dr. Mayr Harting	- Czechoslovakia
		Dr. Liang	- China
		Dr. Schram Nielsen	- Denmark
		M. Stavropoulos	- Greece
		Commander Mouton	- Netherlands
			- Norway
		Dr. Szerer	- Poland
		Sir Robert Craigie	- United Kingdom
		Dr. Zivkovic	- Yugoslavia
		Secretary -	Dr. E. Schwelb

FINANCE COMMITTEE

Chairman: Sir Robert Craigie - United Kingdom
F/O Bridgland - Australia
General Ečer - Czechoslovakia
Mr. Dutt - India
- United States
Mr. S.G. Yorston - Foreign Office
Secretary - Miss Fisher.

FAR EASTERN COMMITTEE

Chairman: H.E. Dr. Wellington Koo - China
Mr. Bridgland - Australia
Rt. Hon. Vincent Massey - Canada
Professor Gros - France
Sir Samuel Runganadhan - India
Commander Mouton - Netherlands
Mr. Burdekin - New Zealand
Sir Robert Craigie - United Kingdom
- United States

EXECUTIVE COMMITTEE

Chairman: Lord Wright - Australia
M. de Baer - Belgium
- United States
H.E. Dr. Wellington Koo - China
General B. Ečer - Czechoslovakia
Dr. Zivkovic - Yugoslavia
Secretary -

PUBLIC RELATIONS COMMITTEE

Chairman: Dr. Zivkovic - Yugoslavia
General B. Ečer - Czechoslovakia
- United States
Secretary - Mr. D. Gibson

COMMITTEE ON DOCUMENTS

Chairman: Professor Gros - France
Commander Mouton - Netherlands
Dr. Szerer - Poland
Sir Robert Craigie - United Kingdom
- United States
Secretary - Lieut.-Colonel Wade

C.193.
1st May, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

The Berlin Protocol of 6th October, 1945.

rectifying the English and French Texts of the
Charter of the International Military Tribunal.

With a Note on this Protocol by Egon Schwelb, Legal Officer.

The Deputy to the United States Commission on the United Nations War Crimes Commission has drawn the Secretariat's attention to the Protocol executed by the Four Allied Powers in Berlin on 6th October 1945, the text of which is reproduced below.

I. Text of the Protocol (U.S. Government Printing Office;
Department of State Publication 2461, Executive Agreement Series 472.)

- " Whereas an Agreement and Charter regarding the Prosecution of War Criminals was signed in London on the 8th August, 1945, in the English, French and Russian languages,
- " And whereas a discrepancy has been found to exist between the originals of Article 6, paragraph (c), of the Charter in the Russian language, on the one hand, and the originals in the English and French languages, on the other, to wit, the semi-colon in Article 6 paragraph (c), of the Charter between the words "war" and "or", as carried in the English and French texts, is a comma in the Russian text,
- " And whereas it is desired to rectify this discrepancy:
- " Now, THEREFORE, the undersigned, signatories of the said Agreement on behalf of their respective Governments,* have agreed that Article 6, paragraph (c), of the Charter in the Russian text is correct, and that the meaning and intention of the Agreement and Charter require that the said semi-colon in the English text should be changed to a comma, and that the French text should be amended to read as follows:
- " c) LES CRIMES CONTRE L'HUMANITE: c'est à dire l'assassinat, l'extermination, la réduction en esclavage, la déportation, et tout autre acte inhumain commis contre toutes populations civiles, avant ou pendant la guerre, ou bien les persécutions pour des motifs politiques, raciaux ou religieux, lorsque ces actes ou persécutions, qu'ils aient constitué ou non une violation du droit interne du pays où ils ont été perpétrés, ont été commis à la suite de tout crime rentrant dans la compétence du Tribunal, ou en liaison avec ce crime.
- " IN WITNESS WHEREOF the Undersigned have signed the present Protocol.

* The American text, as distinguished from the English text, contains here, between the words "Governments" and "have," the clause: "duly authorized thereto".

" DONE in quadruplicate in Berlin this 6th day of October, 1945, each in English, French and Russian, and each text to have equal authenticity.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Robert H. Jackson

FOR THE PROVISIONAL GOVERNMENT OF THE FRENCH REPUBLIC

F. de Menthon

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND

Hartley Shawcross

FOR THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST
REPUBLICS

R. Rudjenko

"

II. Note on the Protocol of 6th October 1945.

1) As appears from the Preamble to the Protocol, a discrepancy has been found to exist between the provisions of the Charter regarding crimes against humanity in the Russian language on the one hand in the English and French languages on the other.

This discrepancy has been solved by the statement that the Russian text is correct and that the meaning and intention of the Agreement and Charter require that the English and French texts should be amended accordingly.

2) The original English text as contained in the Agreement of 8th August 1945, was as follows:

" c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. "

This is the original wording of the French text:

" c) LES CRIMES CONTRE L'HUMANITE: c'est à dire l'assassinat, l'extermination, la réduction en esclavage, la déportation, et tout autre acte inhumain commis contre toutes populations civiles, avant ou pendant la guerre; ou bien les persécutions pour des motifs politiques, raciaux ou religieux, commises à la suite de tout crime rentrant dans la compétence du Tribunal International ou s'y rattachant, que ces persécutions aient constitué ou non une violation du droit interne du pays où elles ont été perpétrées.

3) The original English and French texts created the impression that there were under the agreement, two types of crimes against humanity, subject, in important particulars, to different legal provisions. According to this interpretation, the following two types appeared to exist:

- (a) crimes of the murder type, namely murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population before or during the war,
 - (b) persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the tribunal whether or not in violation of the domestic law of the country where perpetrated.
- 4) The following are the main differences between the two types of crimes against humanity as they could be derived from the original English and French texts:

- (a) The provision regarding crimes of the murder type restricts the notion to acts committed against "any civilian population". It is doubtful whether under the original English and French texts this restriction would have applied also to crimes of the persecution type.
 - (b) Under the original English and French texts persecutions fall under the notion of crimes against humanity only if committed on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal. According to these texts, this restriction does not seem to apply in cases of crimes of the murder type.
 - (c) In the original English and French texts, it appears that crimes of the murder type fall within the notion irrespective of whether they were committed before or during the war. This was not expressly stated as to persecutions although it might have been reasonably implied.
 - (d) In the original English and French texts, persecutions fall under the provisions regarding crimes against humanity, irrespective of whether or not they were committed in violation of the domestic law of the country where perpetrated. This rule does not expressly extend to crimes of the murder type.
- 5) What is now the result of the amendments of the English and French texts brought about by the Protocol of 6th October 1945 and what has been the law under the Russian text from the beginning?

It is submitted that the difference between the two types of crimes against humanity namely crimes of the murder type and crimes of the persecution type, still persists, but that part of the legal differences between the two types, as outlined in the preceeding paragraph (4) of this paper under (a), (b), (c) and (d), have been abolished.

The fact that in the original English and French texts there was a semi-colon between "war" and "or" and that there is now a comma would not, in itself, bring about a fundamental alteration of the law if we had not regard to the whole circumstances, to the treatment of these two punctuation marks by the four great Powers. If the four great Powers have gone out of their way to negotiate an international protocol and to have it drawn up and signed on behalf of their respective governments, it is quite clear that the intention was to make an important alteration in the law as it appeared to be laid down in the English and French texts of the Charter. If there had been no international

discussion and no international protocol on the question of this punctuation mark, and if the comma had been placed between the words "war" and "or" already in the original texts, mainly the same results of interpretation as arrived at under (4) - with the possible exception of (d) - could have been derived from this text. The comma, followed by "or" would, in normal circumstances, suffice to divide the sentence or the sub-paragraph into two parts, with the consequences outlined under (4).

In view of the Preamble and the operative text of the Protocol, however, it appears to be the intention of the Protocol to remove a certain barrier between the first and second part of the sub-paragraph. Having regard to the text as it now stands on the one hand, and to the Protocol on the other, the following appear to be the consequences of the Berlin Protocol:

- (a) The restriction of crimes of the murder type to crimes committed against any civilian population appears to remain restricted to crimes of the murder type because the clause "committed against any civilian population" refers only to the nouns preceding it, namely "murder, extermination, enslavement, deportation and other inhumane acts" and the replacement of the semi-colon by a comma does not affect the position.
- (b) The definition of "persecutions" also remains unchanged by the replacement of the semi-colon by the comma. This means that also under the amended text persecutions must, in order to fall under the provision, be persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the tribunal. These qualifications and conditions are not applicable to crimes of the murder type.
- (c) The qualification "before or during the war" continues expressly to apply to crimes of the murder type only, but may reasonably be extended to persecutions.
- (d) The provision "whether or not in violation of the domestic law of the country where perpetrated" applies now expressly to both types of crimes against humanity. In both cases is it now irrelevant whether or not the crime has been committed in violation of the *lex loci*.

The main alteration, brought about by the Protocol, consists, it is submitted, in the express extension of this rule to crimes of the murder type.

6) It may be added that the Charter of the International Military Tribunal for the Far East (Art.5(c); Doc.C.182) and the English text of the Control Council Law No.10 (Art.II 1(c); Military Government Gazette, No.5. p.46) contain at the appropriate place a comma, and are, therefore, in line with the English and French texts of the European Charter as amended by the Protocol of 6th October 1945 and with its Russian text. In the German translation of Control Council Law No.10 (*ibid*), the provision is divided by a semi-colon.

C. 194.
2nd May 1946.

UNITED NATIONS WAR CRIMES COMMISSION

United Kingdom National Office

The above office has now been transferred to the office of
the Judge Advocate General, 6, Spring Gardens, S.W.1.

C. 194.
2nd May 1946.

UNITED NATIONS WAR CRIMES COMMISSION

United Kingdom National Office

The above office has now been transferred to the office of
the Judge Advocate General, 6, Spring Gardens, S.W.1.

C.195.
14th May, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

CROWCASS
Statistics to 30th April, 1946 inclusive

MATCHES NOTIFIED SINCE 13th NOVEMBER 1945

WANTING POWER	POSSIBLE.						DEFINITE.					
	1945			1946			1945			1946		
	Nov.	Dec.	Jan.	Feb.	Mar.	April.	Nov.	Dec.	Jan.	Feb.	Mar.	April.
United States	23	17	56	37	97	103	2	4	10	28	64	96
Great Britain	2	2	14	13	67	31	5		3	3	11	8
Canada	1			2			2					2
France	16	18	57	25	39	69	3	8	5	12	3	26
Holland			5	2	1	3	1	1				8
Belgium		4	4	4	10	10				1	7	5
Czechoslovakia	1	2	2	1	2	8		1		1	3	14
Poland		2		3	2	3	1	2	1		3	11
Yugoslavia				3		4	2			1		1
Luxembourg											4	2
U.N.W.C.C.						26						7
Denmark						1						
Greece												
TOTALS:	47	45	139	90	219	262	19	18	19	46	95	181

	<u>JANUARY</u> <u>1946</u>			<u>FEBRUARY</u> <u>1946</u>			<u>MARCH</u> <u>1946</u>		
	: <u>Received</u>	: <u>Searched</u>	: <u>Back-log</u>	: <u>Received</u>	: <u>Searched</u>	: <u>Back-log</u>	: <u>Received</u>	: <u>Searched</u>	: <u>Back-log</u>
Wanted Reports	: 2,368	: 2,100	: 268	: 1,135	: 1,758	: - - -	: 2,293	: 573	: 1,097
Detention Reports	: 8,316	: 7,106	: 210	: 5,893	: 6,157	: - - -	: 22,790	: 13,236	: 9,290
Miscellaneous Searches	: 19,700			: 23,146			: 61,287		

	<u>APRIL</u> <u>1946</u>			<u>MAY</u> <u>1946</u>			<u>JUNE</u> <u>1946</u>		
	: <u>Received</u>	: <u>Searched</u>	: <u>Back-log</u>	: <u>Received</u>	: <u>Searched</u>	: <u>Back-log</u>	: <u>Received</u>	: <u>Searched</u>	: <u>Back-log</u>
Wanted Reports	: 1,193	: 1,685	: 605						
Detention Reports	: 7,629	: 13,265	: 3,854						
Miscellaneous Searches	: 42,853								

APPENDIX.

	<u>WANTED.</u>	<u>DETAINED.</u>
Present Totals on CROWCASS Lists.	Lists 7-8-9-10 27,381	66,000 approx.

REPORTS RECEIVED SINCE 1st JANUARY 1946.

<u>COUNTRY</u>	<u>WANTED</u>	<u>DETAINED.</u>
United States	1,296	25,575
Great Britain	396	18,974
Canada	36	109
France	1,898	121
Belgium	680	
Holland	476	25
Norway	511	
Czechoslovakia	776	17
Poland	449	
Yugoslavia	400	
Luxembourg	71	6
<u>TOTALS:</u>	<u>6,513</u>	<u>44,827</u>

C.196.
22nd May, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Australian War Crimes Legislation.

With a note on this legislation by E. Schwelb, Legal Officer.

(The material reproduced in this paper has been
received from F/O. Bridgland.)

I. The Commonwealth of Australia War Crimes Act, 1945.
and Relevant Statutory Rules.

1). The War Crimes Act 1945 .
(EXTRACT).

No. 48 of 1945.

An Act to provide for the Trial and Punishment of War Criminals.

(Assented to 11th October, 1945.)

Whereas it is expedient to make provision for the trial and punishment of violations of the laws and usages of war committed during any war in which His Majesty has been engaged since the second day of September, One thousand nine hundred and thirty-nine, against any persons who were at any time resident in Australia or against certain other persons: .

Be it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

1. This Act may be cited as the War Crimes Act 1945
2. ----
3. In this Act, unless the contrary intention appears

"war crime" means:

- (a) a violation of the laws and usages of war; or
- (b) any war crime within the meaning of the instrument of appointment of the Board of Inquiry appointed on the third day of September, one thousand nine hundred and forty-five, under the National Security (Inquiries) Regulations (being Statutory Rules 1941, No. 35, as amended by Statutory Rules 1941, Nos. 74 and 114 and Statutory Rules 1942, No.273,) committed in any place whatsoever, whether within or beyond Australia, during any war.

4. This act shall extend to every Territory of the Commonwealth.
5. (1). The Governor-General may:

- (a) convene military courts for the trial of persons charged with the commission of war crimes;
 - (b) appoint officers to constitute military courts;
 - (c) confirm the finding or finding and sentence of any military court or send back the finding and sentence or either of them for revision;
 - (d) mitigate or remit the punishment or any part of the punishment awarded by any sentence, or commute the punishment for any less punishment to which the offender might have been sentenced by the military court; and
 - (e) suspend the execution or currency of any sentence on such terms and conditions (if any) as the Governor-General determines.
- (2) ----
- (3) ----
- (4) Notwithstanding anything contained in this Act, the Governor-General or any person authorized under this Act to convene military courts may appoint as a member (other than the President) of the court one or more officers of the naval, military or air forces of any Power allied or associated with His Majesty in any war, who are serving under his command or placed at his disposal for the purpose.
- (5) The number of officers appointed in any case under the last preceding sub-section shall not comprise more than half the members of the court, excluding the President.
6. ----
7. A military court shall have power to try persons charged with war crimes committed, at any place whatsoever, whether within or beyond Australia, against any person who was at any time resident in Australia, and for that purpose, subject to any direction by the Governor-General, to sit at any place whatsoever, whether within or beyond Australia.
8. (1) If it appears to an officer authorized under this Act to convene military courts that a person within the limits of his command has, at any place, whether within or beyond those limits, committed a war crime, he may direct that that person, if not already in military custody, shall, pending trial, be taken into and kept in military custody in such manner and in the charge of such military unit as the officer directs.
- (2) The commanding officer of the unit having charge of the person shall be deemed to be the commanding officer of the person for the purposes of all matters preliminary and relating to trial and punishment.
- (3) Nothing in the last preceding sub-section shall authorize the commanding officer to dismiss the charge or deal with the accused summarily for a war crime.
9. (1) At any hearing before a military court the court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the court to be of assistance in proving or disproving the charge, notwithstanding that the statement or document would not be admissible in evidence before a field general court martial.

- (2) Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, evidence given upon any charge relating to that crime against any member of the unit or group may be received as evidence of the responsibility of each member of that unit or group for that crime.
 - (3) A military court shall take judicial notice of the laws and usages of war.
10. Except so far as is inconsistent with this Act, and subject to such exceptions, modifications, adaptations and additions as are prescribed by or under the Defence Act 1903 - 1945 or this Act, the provisions of the Imperial Act known as the Army Act and any Imperial Acts amending or in substitution for it and for the time being in force and the Rules of Procedure made thereunder, in so far as they relate to field general courts-martial and to any matters preliminary or incidental thereto or consequential thereon, in like manner as if military courts were field general courts-martial and the accused were persons subject to military law charged with having committed offences on active service.
11. (1) A person found guilty by a military court of a war crime may be sentenced to and shall be liable to suffer death (either by hanging or by shooting) or imprisonment for life or for any less term; and, in addition or in substitution therefor, either confiscation of property or a fine of any amount, or both.
- (2) Where a war crime consists wholly or partly of the taking, distribution or destruction of property, the court may, in addition to any such sentence, order the restitution so far as practicable of such property, and, in default of complete restitution, award a penalty determined by the court to be equal in value to the property which has been so taken, distributed or destroyed, and not restored.
- (3) Sentence of death shall not be passed on any person by a military court without the concurrence of
- (a) the members of the court - if the court consists of not more than three members; or
 - (b) at least two-thirds of the members of the court - if the court consists of more than three members.
12. The provisions of this Act shall apply in relation to war crimes committed, in any place whatsoever, whether within or beyond Australia, against British subjects or citizens of any Power allied or associated with His Majesty in any war, in like manner as they apply in relation to war crimes committed against persons who were at any time resident in Australia.
13. Every military court shall be auxiliary to, and act in aid of:
- (a) every other military court; and
 - (b) every court of any other part of His Majesty's dominions or of any Power allied or associated with His Majesty in any war, constituted to try persons charged with war crimes where those courts are required to be auxiliary to, and act in aid of, military courts.

2). Instrument of Appointment of 3rd September 1945
referred to in the definition of War Crimes in
Section 3 of the War Crimes Act (Supra 1).

..... For the purposes of the said enquiry:

(b) the expression "war crime" includes the following:-

- (i) Planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.
- (ii) Murder and massacres - systematic terrorism.
- (iii) Putting hostages to death.
- (iv) Torture of civilians.
- (v) Deliberate starvation of civilians.
- (vi) Rape.
- (vii) Abduction of girls and women for the purpose of enforced prostitution.
- (viii) Deportation of civilians.
- (ix) Internment of civilians under inhuman conditions.
- (x) Forced labour of civilians in connection with the military operations of the enemy.
- (xi) Usurpation of sovereignty during military occupation.
- (xii) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
- (xiii) Attempts to denationalize the inhabitants of occupied territory.
- (xiv) Pillage and wholesale looting.
- (xv) Confiscation of property.
- (xvi) Exaction of illegitimate or of exorbitant contributions and requisitions.
- (xvii) Debasement of the currency and issue of spurious currency.
- (xviii) Imposition of collective penalties.
- (xix) Wanton devastation and destruction of property.
- (xx) Deliberate bombardment of undefended places.
- (xxi) Wanton destruction of religious, charitable, educational and historic buildings and monuments.
- (xxii) Destructions of merchant ships and passenger vessels without warning and without provision for the safety of passengers and crew.

- (xxiii) Destruction of fishing boats and of relief ships.
- (xxiv) Deliberate bombardment of hospitals.
- (xxv) Attack and destruction of hospital ships.
- (xxvi) Breach of other rules relating to the Red Cross.
- (xxvii) Use of deleterious and asphyxiating gases.
- (xxviii) Use of explosive or expanding bullets and other inhuman appliances.
- (xxix) Directions to give no quarter.
- (xxx) Ill-treatment of wounded and prisoners of war, including:
 - (a) transportation of prisoners of war under improper conditions;
 - (b) public exhibition or ridicule of prisoners of war; and
 - (c) failure to provide prisoners of war or internees with proper medical care, food or quarters.
- (xxxi) Employment of prisoners of war on unauthorized work.
- (xxxii) Misuse of flags of truce.
- (xxxiii) Poisoning of wells.
- (xxxiv) Cannibalism.
- (xxxv) Mutilation of the dead.

3. Statutory Rules 1945, No.164, as amended by
Statutory Rules 1946, No.30.

Regulations under War Crimes Act, 1945,

I, the Governor General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the War Crimes Act 1945.

Dated this twenty-fifth day of October, 1945.

HENRY
Governor General.

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

2A. The Governor-General or any person authorized under the Act to convene military courts may appoint as a member (other than the President) of the court one or more officers of the naval, military or air forces of the United Kingdom or of any other part of His Majesty's dominions, who are serving under his command or placed at his disposal for the purpose.

11. It shall be the duty of the Court to judge of the weight to be attached to any evidence given in pursuance of section 9 (1) of the Act which would not otherwise be admissible.

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

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

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

17. The accused may within fourteendays of the termination of the Proceedings in Court submit a Petition to the Confirming Officer against the finding or sentence or both provided that he gives notice to the Confirming Officer within 48 hours of such termination of his intention to submit such a petition. The accused shall have no right to submit any Petition otherwise than as aforesaid.

Provided that if such Petition is against the finding it shall be referred by the Confirming Officer, together with the Proceedings of the trial, to the Judge-Advocate-General, or a Deputy Judge-Advocate-General for advice and report thereon.

II. Note on this Legislation.

1. The Australian Statute and the British Royal Warrant.

The Australian War Crimes Act 1945 is, in its substance, very similar to the United Kingdom Royal Warrant of 14th June 1945 by which the British Regulations for the Trial of War Criminals were made. (Army Order 81/1945, as amended by Army Orders 127/1945, 8/1946 and 24/1946; see also Doc.C.131 and Misc. No.13.)

An important formal difference consists, of course, in the fact that while the United Kingdom provisions were made by a Royal Warrant issued under the Royal Prerogative, the corresponding Australian provisions were made by Act of Parliament.

2. The Definition of "War Crime".

The definition of the term "War Crime" contained in the Australian Act differs from that contained in the Royal Warrant. While under the Royal Warrant "war crime" means violation of the laws and usages of war, the term as defined in the Australian Act is wider. In addition to violations of the laws and usages of war, in Australian law the term comprises also all the crimes enumerated in the Instrument of Appointment of 3rd September 1945, which is referred to in the Act and thus elevated to be part of the enactment. From the reproduction of the Document (supra I (2)), it will be seen that the definition contained in the Instrument of Appointment enumerates in the first place "crimes against peace", in the same words as those used in Art.6(a) of the Charter attached to the Four-Power Agreement of 8th August 1945. The effect of

this is that "crimes against peace" form part of the term "war crime" as defined by the Australian statute.

The Australian Act does not, on the other hand, comprise in its definition of "war crime" crimes against humanity within the meaning of Art.6(c) of the Charter of the International Military Tribunal, excepting of course "crimes against humanity" which also fall under the term "violations of the laws and customs of war."

The two groups of war crimes comprised in the Australian definition overlap, because all the crimes enumerated in the Instrument of Appointment under (ii) to (xxxv) are, of course, violations of the laws and usages of war and fall therefore both under (a) and under (b) of the Australian definition.

3. The List of War Crimes.

The war crimes enumerated in the Australian list under (ii) to (xxxiii) are based on the list of war crimes drawn up by the Responsibilities Commission of the Paris Peace Conference in 1919, which has also been adopted as the working list by the United Nations War Crimes Commission. (see Annex I to Doc.C.1.)

There are the following differences between the Australian list and the 1919 Paris List.

In item (xiv) of the Australian list, corresponding to item (xiii) of the 1919 list, to the original word "pillage", the words "and wholesale looting" have been added.

In item (xxx) of the Australian list, which deals with the ill-treatment of wounded and prisoners of war and corresponds to item (xxix) of the Paris list, there were added the following exemplative illustrations:

" including:

- (a) transportation of prisoners of war under improper conditions;
- (b) public exhibition or ridicule of prisoners of war; and
- (c) failure to provide prisoners of war or internees with proper medical care, food or quarters. "

The Australian list contains, under (xxxiv) and (xxxv), the new items of Cannibalism and Mutilation of the dead.

On the other hand, it does not contain the item "indiscriminate mass arrests for the purpose of terrorising the population, whether described as taking of hostages or not", which was added to the list of war crimes by the decision of the United Nations War Crimes Commission on 9th May 1944. (M.17, Doc.C.15(1).)

4. Extent of the application of the Act.

Of particular interest for the Commission and for the international lawyer in general, are those Australian provisions which determine the territorial application of the Act and the extent of the jurisdiction of the Australian Military Courts. The Preamble recites the expediency of making provision for the trial and punishment of violations of the laws and usages of war committed against "any persons who were at any time resident in Australia or against certain other persons". The main basis for the power of Military Courts is, under section 7 of the Act,

that the victim of the alleged crime is, or at any time was a resident of Australia. In this case the place where the crime was committed is irrelevant (arg. "at any place whatsoever, whether within or beyond Australia".)

In addition to the jurisdiction in all cases where the victim is or was at any time an Australian resident, the provisions of the Act apply also to war crimes committed in any place whatsoever, whether within or beyond Australia, against

- (a) British subjects, or
- (b) citizens of any power, allied or associated with His Majesty in any war. (section 12). These are the "certain other persons" of the Preamble.

Under the Act the Australian Military Courts have, therefore, jurisdiction in all cases where the victim had been either resident in Australia or a British or an allied subject.

The jurisdiction of the Australian Military Courts does not extend to crimes committed "against any civilian population", i.e., also against neutrals or enemy subjects, because crimes against other than British and allied nationals are outside the scope of the term "war crime" as defined in the Australian Statute.

5. Mixed Military Courts.

From Section 5(4) of the Act it appears that the Australian legislature has adopted the institution of mixed Military Courts on the same lines as are provided for in Regulation 5, paragraph 3, of the Royal Warrant. The appointing authority is enabled to appoint as a member (other than the President) of the court one or more officers of the naval, military or air forces of any allied or associated Power. The number of officers appointed in this way shall not comprise more than half the members of the court, excluding the President. Under Regulation 8A of the Regulations for the trial of War Criminals, as inserted by Statutory Rule 1946, No. 30, officers of the naval, military or air forces of the United Kingdom or of any other part of the British Commonwealth and Empire, can be appointed members of the military court other than President.

C 197
27th May, 1946

UNITED NATIONS WAR CRIMES COMMISSION

Summary and full text of the Indictment
against 28 political and military leaders of Japan as presented
on Monday, April 29th, 1946, to the International
Military Tribunal for the Far East.

S U M M A R Y.

THE INDICTMENT

The Charter divides the crimes over which the Tribunal is given jurisdiction into three categories; (a) "Crimes Against Peace", (b) "Conventional Crimes" and, (c) "Crimes against Humanity". While this division is followed in the Indictment it will be contended that the basic justification for all of them is the same. It is that breaches of International Law, whether established by custom or treaty, are crimes for which the personal responsibility lies only upon the humbler individuals who actually commit specific breaches of the laws of war. That has always been recognized, but on the same legal principle it lies also upon those in higher position who by their decisions bring about breaches of International Law and Treaties. The time has come to put into action this principle which has been boldly asserted and firmly established. The Indictment involves no new law.

The charges are divided into three Groups.

In each case the charges are laid under the Charter of the Tribunal, which is a restatement of International Law, and in the case of Group Two, also under the domestic laws of the countries concerned including Japan.

Group One: The Charges are laid both under Article 5 (a) and 5 (b) of the Charter. All the counts allege wars both of aggression and in violation of International Law, treaties, agreements and assurances. On the facts of this case it will be contended that the distinction is immaterial. The first five Counts charge conspiracies to wage such wars; the first comprehensively covering the whole plan as one conspiracy, the remaining four dealing separately with various phases of it as it is alleged to have developed.

Counts 6 to 17 inclusive charge the Defendants with the crime of planning and preparing such war separately against each Nation.

Counts 18 to 26 inclusive charge the crime of initiating such wars against certain parties.

Counts 27 to 36 inclusive charge the crime of waging such wars separately against certain parties.

Group Two: The charges of murder are laid under all the paragraphs of Article 5 of the Charter. It will be contended that the intentional killing of a human being without lawful justification is murder by the law of every civilized country including Japan, by whose law even the intention is unnecessary. Lawful belligerency, i.e., fighting a war of defense according to the laws of war, is such a justification, but counts 37 and 38 allege that the belligerency of Japan was unlawful because it was in breach of treaties and aggressive in nature; in Count 37, owing to the absence of a declaration of war, and in Count 38 by reason of breaches of treaties forbidding such aggression. Counts 39 to 43 inclusive apply these contentions to specific instances of murder, in the various surprise attacks made on December 7th-8th 1941.

Count 44 charges a conspiracy to procure or permit wholesale murder of prisoners of war and civilians on land and sea. Counts 45 to 50 inclusive are specific charges of murder in some of the most notorious of such cases, the "Rape of Nanking", and other cities in China. Counts 51 and 52 contain similar charges with regard to attacks on territories of the U.S.S.R. Examples of such wholesale murders during the war which began in December 1941, are too numerous to be made the subject of separate Counts.

It may seem strange to include charges of murder in an Indictment before an International Tribunal. But it is high time, and indeed was so before this began, that the promoters of aggressive, ruthless war, and treaty-breakers should be stripped of the glamour of national heroes, and exposed as what they really are--plain, ordinary murderers.

Group Three: The charges are laid under paragraphs (b) and (c) of Article 5 of the Charter, and it will be contended that paragraph (b) is adequate to cover them all. They allege conspiracy to commit and the actual commission of large numbers of breaches of the laws and customs of war, contained in or proved by the practice of civilized nations and the various Conventions governing the conduct of hostilities, the treatment of prisoners of war, and of persons and property in occupied territories. It appears that those who framed the Conventions never contemplated the possibility of such outrages as are alleged against Japan in the conduct of her wars from 1931 to 1945 and dealt with under the charge of murder in Counts 44 to 52 inclusive.

So far as they are referred to in this group they have to be dealt with under such mild phrases as appear in the Conventions, e.g. "inhumane treatment", failure to respect individual life", etc.

The Defendants named in these Counts are alleged to be responsible for all these atrocities both because they initiated the policies which led to them, sometimes directly ordered their commission, and in all cases recklessly neglected the duty which lay upon them to take adequate steps to prevent them, in spite of numerous warnings.

In the Particulars of Breaches under this Group in Appendix D., it is alleged that Japan habitually violated almost every Article of the Conventions, and every known law of war.

There are five Appendices. Appendix A gives, under ten subject-heads, an outline of the story which will be related to the Tribunal with regard mainly to the charges in Group One. Appendix B gives the text of the principal Articles of Treaties which it is alleged that Japan violated in the course of wars which she planned, prepared, initiated and waged between 1931 and 1945. Appendix C. gives a list of assurances similar alleged to have been broken, Appendix D gives an outline of the main laws of war, conventions and assurances alleged to have been violated by Japan in the charges in Group Three, as well as the Particulars of Breaches above mentioned. Appendix E gives as against each individual Defendant particulars of the principal grounds on which he is included in the Indictment, based mainly on the positions which he held and the activities with which he was connected during the period, especially during 1941.

It should be clearly understood that the omission of any name from the Indictment in no sense implies that the individual is exonerated from complicity in the charges, or may not be charged hereafter. For convenience and clarity in presenting the case it was found necessary to limit the numbers in this trial. Many of the principals are already dead. One, General Terauchi, has been omitted solely on the ground that his mental and physical condition makes it impossible to try him. But the Indictment includes the survivors of those who on the evidence at present available, appear to have the major responsibility for most of the phases and activities which contributed to the crimes alleged against Japan.

FULL TEXT OF INDICTMENT

This is the full text of the indictment against 28 military and political leaders of Japan which was presented on Monday, April 29 to the International Military Tribunal for the Far East.

THE UNITED STATES OF AMERICA, THE REPUBLIC OF CHINA, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE UNION OF SOVIET SOCIALIST REPUBLICS, THE COMMONWEALTH OF AUSTRALIA, CANADA, THE REPUBLIC OF FRANCE, THE KINGDOM OF THE NETHERLANDS, NEW ZEALAND, INDIA, AND THE COMMONWEALTH OF THE PHILIPPINES.

- A G A I N S T -

ARAKI, Sadao; DOHIHARA, Kenji; HASHIMOTO, Kingoro; HATA, Shunroku; HIRANUMA, Kiichiro; HIROTA, Koki; HOSHINO, Naoki; ITAGAKI, Seishiro; KAYA, Okinori; KIDO, Koichi; KIMURA, Heitaro; KOISO, Kuniaki; MATSUI, Iwane; MATSUOKA, Yosuke; MINAMI, Jiro; MUTO, Akira; NAGANO, Cammi; OKA, Takasumi; OKAWA, Shumei; OSHIMA, Hiroshi; SATO, Kenryo; SHIGEMITSU, Mamoru; SHIMADA, Shigetaro; SHIRATORI, Toshio; SUZUKI, Teiichi; TOGO, Shigenori; TOJO, Hideki; UMEZU, Yoshijiro.

Defendants.

I N D I C T M E N T

In the years hereinafter referred to in this Indictment the internal and foreign policies of Japan were dominated and directed by a criminal militaristic clique and such policies were the cause of serious world troubles, aggressive wars, and great damage to the interests of peace-loving peoples, as well as the interests of the Japanese peoples themselves.

The mind of the Japanese people was systematically poisoned with harmful ideas of the alleged racial superiority of Japan over other peoples of Asia and even of the whole world. Such parliamentary institutions as existed in Japan were used as implements for widespread aggression, and a system similar to those then established by Hitler and the Nazi party in Germany and by the Fascist party in Italy was introduced. The economic and financial resources of Japan were to a large extent mobilized for war aims, to the detriment of the welfare of the Japanese people.

A conspiracy between the defendants joined in by the rulers of other aggressive countries, namely Nazi Germany and Fascist Italy, was entered into. The main object of this conspiracy was to secure the domination and exploitation by the aggressive States of the rest of the world, and to this end to commit, or encourage the commission of crimes against peace, war crimes, and crimes against humanity as defined in the Charter of this Tribunal, thus threatening and injuring the basic principles of liberty and respect for the human personality.

In the promotion and accomplishment of that scheme, these defendants, taking advantage of their power and their official positions and their own personal prestige and influence, intended to and did plan, prepare, initiate, or wage aggressive war against the United States of America, the Republic of China, The United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the Commonwealth of Australia, Canada, the Republic of France, the Kingdom of the Netherlands, New Zealand, India, the Commonwealth of the Philippines, and other peaceful nations, in violation of international law, as well as in violation of sacred treaty commitments, obligations and assurances; such plan contemplated and carried out the violation of recognized customs and conventions of war by murdering, maiming and

and ill-treating prisoners of war, civilian internees and persons on the high seas, denying them adequate food, shelter, clothing, medical care, or other appropriate attention, forcing them to labour under inhumane conditions, and subjecting them to indignities; exploit to Japan's benefit the manpower and economic resources of the vanquished nations, plundering public and private property, wantonly destroying cities, towns and villages beyond any justification of military necessity; perpetrate mass murder, rape, pillage, brigandage, torture, and other barbaric cruelties upon the helpless civilian population of the over-run countries; increase the influence and control of the military and naval groups over Japanese government officials and agencies; psychologically prepare Japanese public opinion for aggressive warfare by establishing so-called Assistance Societies, teaching nationalistic policies of expansion, disseminating war propaganda, and exercising strict control over the press and radio; set up "puppet" governments in conquered countries; conclude military alliances with Germany and Italy to enhance by military might Japan's programme of expansion.

Therefore, the above named Nations by their undersigned representatives, duly appointed to represent their respective Governments in the investigation of the charges against and the prosecution of the Major War Criminals pursuant to the Potsdam Declaration of the 20th July, 1945, and the Instrument of Surrender of the 2nd September, 1945 and the Charter of the Tribunal hereby accuse as guilty, in the respects hereinafter set forth, of Crimes against Peace, War Crimes, and Crimes against Humanity, and of Common Plans or Conspiracies to commit those Crimes, all as defined in the Charter of the Tribunal, and accordingly name as Defendants in this cause and as indicted on the Counts hereinafter set out in which their names respectively appear, all the above-named individuals.

GROUP ONE: CRIMES AGAINST PEACE.

The following counts charge Crimes against Peace, being acts for which it is charged that the persons named and each of them are individually responsible in accordance with Article 5 and particularly Article 5 (a) and (b) of the Charter of the International Military Tribunal for the Far East, and in accordance with International Law, or either of them.

C O U N T 1.

All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organizers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan.

The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein and bordering thereon and for that purpose should alone or in combination with other countries having similar objects, or who could be induced or coerced to join therein, wage declared or undeclared war or wars of aggression and war or wars in violation of international law, treaties, agreements and assurances, against any country or countries which might oppose that purpose.

The whole of the Particulars in Appendix A, of the Treaty Articles in Appendix B, and of the Assurances in Appendix C, relate to this Count.

C O U N T 2.

All the Defendants together with divers other persons; between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organizers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy and are responsible for all acts performed by themselves or by any person in execution of such plan.

The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of the provinces of Liaoning, Kirin, Heilungkiang and Jehol, being parts of the Republic of China, either directly or by establishing a separate state under the control of Japan, and for that purpose should wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against the Republic of China.

The whole of the Particulars in Appendix A, the following Treaty Articles in Appendix B: Nos. 1 to 6 inclusive, 8 to 14 inclusive, 22 to 30 inclusive; 32 to 35 inclusive; and the following Assurances in appendix C: Nos. 1 to 3 inclusive, relate to this Count.

C O U N T 3.

All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organizers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan.

The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of the Republic of China, either directly or by establishing a separate state or states under the control of Japan and for that purpose should wage declared or undeclared war or wars of aggression and war or wars in violation of international law, treaties, agreements and assurances, against the Republic of China.

The whole of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 2, relate to this Count.

C O U N T 4.

All the Defendants together with divers other persons, between the 1st January, 1928 and the 2nd September, 1945, participated as leaders, organizers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan.

The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein or bordering thereon, and for that purpose should alone or in combination with other countries having similar objects, or who could be induced or coerced to join therein, wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances against the United States of America, the British Commonwealth of Nations (which expression wherever used in this Indictment includes the United Kingdom of Great Britain and Northern Ireland, the Commonwealth of Australia, Canada, New Zealand, South Africa, India, Burma, the Malay States,

and all other parts of the British Empire not separately represented in the League of Nations), the Republic of France, the Kingdom of The Netherlands, the Republic of China, the Republic of Portugal, the Kingdom of Thailand, the Commonwealth of the Philippines, and the Union of Soviet Socialist Republics, or such of them as might oppose that purpose.

The whole of the Particulars in Appendix A, and of the Treaty Articles in Appendix B and of the Assurances in Appendix C, relate to this Count.

C O U N T 5.

All the Defendants together with divers other persons, between the 1st January, 1928 and the 2nd September, 1945, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan.

The object of such plan or conspiracy was that Germany, Italy and Japan should secure the military, naval, political and economic domination of the whole world, each having special domination in its own sphere, the sphere of Japan covering East Asia, the Pacific and Indian Oceans and all countries and islands therein or bordering thereon, and for that purpose should mutually assist one another to wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against any countries which might oppose that purpose, and particularly against the United States of America, the British Commonwealth of Nations, the Republic of France, the Kingdom of the Netherlands, the Republic of China, the Republic of Portugal, the Kingdom of Thailand, the Commonwealth of the Philippines, and the Union of the Soviet Socialist Republics.

The whole of the Particulars in Appendix A, and of the Treaty Articles in Appendix B, and of the Assurances in Appendix C, relate to this Count.

C O U N T 6.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of China.

The following Sections of the Particulars in Appendix A, Nos. 1 to 6 inclusive, and the same Treaty Articles and Assurances as in Count 2, relate to this Count.

C O U N T 7.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the United States of America.

The following Sections of the Particulars in Appendix A, Nos. 3, 4, 5, 6, 7, 9 and 10; the following Treaty Articles in Appendix B, Nos. 1 to 10 inclusive, 17 to 19 inclusive, 22 to 35, inclusive and 37; and the whole of the Assurances in Appendix C, relate to this Count.

C O U N T 8.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war of violation of international law, treaties, agreements and assurances, against the United Kingdom of Great Britain and Northern Ireland and all parts of the British Commonwealth of Nations not the subject of separate counts in this Indictment.

The following Sections of the Particulars in Appendix A, Nos. 3, 4, 5, 6, 7, 9 and 10; and the following Treaty Articles in Appendix B, Nos. 1, 2, 5, 10 to 19 inclusive, 22 to 30 inclusive, 32 to 35 inclusive, 37 and 38; and the whole of the Assurances in Appendix C, relate to this Count.

C O U N T 9.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Commonwealth of Australia.

The same Sections of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 8, relate to this Count.

C O U N T 10.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against New Zealand.

The same Sections of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 8, relate to this Count.

C O U N T 11.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against Canada.

The same Sections of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 8, relate to this Count.

C O U N T 12.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against India.

The same Sections of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 8, relate to this Count.

C O U N T 13.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Commonwealth of the Philippines.

The same Sections of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 7, relate to this Count.

C O U N T 14.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Kingdom of the Netherlands.

The following Sections of the Particulars in Appendix A, Nos. 3, 4, 5, 6, 7, 9 and 10; the following Treaty Articles in Appendix B, Nos. 1 to 5 inclusive, 10 to 16 inclusive, 20, 22 to 30 inclusive, 32 to 35 inclusive, 37 and 38; and the following Assurances in Appendix C, Nos. 10 to 15, relate to this Count.

C O U N T 15.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of France.

The following Sections of the Particulars in Appendix A, Nos. 2, 3, 4, 5, 6, 7, 9 and 10; the following Treaty Articles in Appendix B, Nos. 1 to 5 inclusive, 10 to 19 inclusive, 22 to 30 inclusive, and 32 to 38 inclusive, and the following Assurances in Appendix C, Nos. 14 and 15, relate to this Count.

C O U N T 16.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances against the Kingdom of Thailand.

The following Sections of the Particulars in Appendix A, Nos. 2, 3, 4, 5, 6, 7, 9 and 10; and the following Treaty Articles in Appendix B, Nos. 3, 4, 5, 10 and 32 to 38 inclusive, relate to this Count.

C O U N T 17.

All the Defendants between the 1st January, 1928 and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Union of Soviet Socialist Republics.

The following Sections of the Particulars in Appendix A, Nos. 1 to 8 inclusive, and the following Treaty Articles in Appendix B, Nos. 1 to 5 inclusive, 10 to 18 inclusive, 32 to 35 inclusive, 39 to 47 inclusive and Assurance No. 13 in Appendix C, relate to this Count.

C O U N T 18.

The defendants ARAKI, DOHIMURA, HASHIMOTO, HIRANUMA, ITAGAKI, KOISO, MINAMI, OKAWA, SHIGEMITSU, TOJO and UMEZU, on or about the 18th September, 1931, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of China.

Section 1 of the Particulars in Appendix A; and the following Treaty Articles in Appendix B, Nos. 1 to 5 inclusive, 11 to 14 inclusive, 22, 23, 25, 30, 40 to 43 inclusive, relate to this Count.

C O U N T 19.

The Defendants ARAKI, DOHIMARA, HASHIMOTO, HATA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KAYA, KIDO, MATSUI, MUTO, SUZUKI, TOJO and UMEZU, on or about the 7th July, 1937, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of China.

Section 2 of the Particulars in Appendix A; the same Treaty Articles as in Count 18 and the following Assurances in Appendix C, Nos. 3, 4 and 5, relate to this Count.

C O U N T 20.

The Defendants DOHIMARA, HIRANUMA, HIROTA, HOSHINO, KAYA, KIDO, KIMURA, MUTO, NAGANO, OKA, OSHIMA, SITO, SHIMADA, SUZUKI, TOGO and TOJO, on or about the 7th December, 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the United States of America.

Section 9 of the Particulars in Appendix A, the following Treaty Articles in Appendix B, Nos. 1 to 9 inclusive; 19, 22 to 30 inclusive, 33, 34 and 37; and the whole of the Assurances in Appendix C, relate to this Count.

C O U N T 21.

The same Defendants as in Count 20 on or about the 7th December, 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Commonwealth of the Philippines.

The same Particulars, Treaty Articles and Assurances as in Count 20, relate to this Count.

C O U N T 22.

The same Defendants as in Count 20, on or about the 7th December, 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the British Commonwealth of Nations.

Section 9 of the Particulars in Appendix A, the following Treaty Articles in Appendix B, Nos. 1 to 5 inclusive, 19, 22 to 30 inclusive, 33 and 37; and the whole of the Assurances in Appendix C, relate to this Count.

C O U N T 23.

The defendants ARAKI, DOHIMARA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KIDO, MATSUOKA, MUTO, NAGANO, SHIGAMITSU and TOJO, on or about the 22nd September, 1940, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of France.

The same Particulars, Treaty Articles and Assurances as in Count 15, relate to this Count.

C O U N T 24.

The same Defendants as in Count 20 on or about the 7th December, 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Kingdom of Thailand.

Section 7 of the Particulars in Appendix A, and the following Treaty Articles in Appendix B, Nos. 1 to 5 inclusive, 33, 34, 36, 37 and 38, relate to this Count.

C O U N T 25.

The Defendants ARAKI, DOHIHARA, HATA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KIDO, MATSUOKA, MATSUI, SHIGEMITSU, SUZUKI and TOGO, during July and August, 1938, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances by attacking the Union of Soviet Socialist Republics in the area of Lake Khasan.

The same Particulars, Treaty Articles and Assurances as in Count 17, relate to this Count.

C O U N T 26.

The Defendants ARAKI, DOHIHARA, HATA, HIRANUMA, ITAGAKI, KIDO, KOISO, MATSUI, MATSUOKA, MUTO, SUZUKI, TOGO, TOJO and UMEZU, during the summer of 1939, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, by attacking the territory of the Mongolian People's Republic in the area of the Khackhin-Gol River.

The same Particulars, Treaty Articles and Assurances as in Count 17, relate to this Count.

C O U N T 27.

All the Defendants between the 18th September, 1931 and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances against the Republic of China.

The same Particulars, Treaty Articles and Assurances as in Count 2, relate to this Count.

C O U N T 28.

All the Defendants between the 7th July, 1937 and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of China.

The same Particulars, Treaty Articles and Assurances as in Count 2, relate to this Count.

C O U N T 29.

All the Defendants between the 7th December, 1941 and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances against the United States of America.

The following Sections of the Particulars in Appendix A, Nos. 4 to 10 inclusive; and the same Treaty Articles and Assurances as in Count 20 relate to this Count.

C O U N T 30.

All the Defendants between the 7th December, 1941, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Commonwealth of the Philippines.

The same Particulars, Treaty Articles and Assurances as in Count 29, relate to this Count.

C O U N T 31.

All the Defendants between the 7th December, 1941 and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the British Commonwealth of Nations.

The following Sections of the Particulars in Appendix A, Nos. 4 to 10 inclusive; and the same Treaty Articles and Assurances as in Count 22, relate to this Count.

C O U N T 32.

All the Defendants between the 7th December, 1941 and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Kingdom of the Netherlands.

The same Particulars, Treaty Articles and Assurances as in Count 14, relate to this Count.

C O U N T 33.

The Defendants ARAKI, DOHIMARA, HIRANUMI, HIROTA, HOSHINO, ITAGAKI, KIDO, MITSUOKA, MUTO, NAGANO, SHIGEMITSU and TOJO, on and after the 22nd September, 1940, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of France.

The same Particulars, Treaty Articles and Assurances as in Count 15, relate to this Count.

C O U N T 34.

All the Defendants between the 7th December, 1941 and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Kingdom of Thailand.

The same Particulars and Treaty Articles as in Count 24, relate to this Count.

C O U N T 35.

The same Defendants as in Count 25, during the summer of 1938, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances against the Union of Soviet Socialist Republics.

The same Particulars, Treaty Articles and Assurances as in Count 17, relate to this Count.

C O U N T 36.

The same Defendants as in Count 26, during the summer of 1939, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances against the Mongolian People's Republic and the Union of Soviet Socialist Republics.

The same Particulars, Treaty Articles and Assurances as in Count 17, relate to this Count.

GROUP TWO: MURDER.

The following Counts charge the crimes of murder, and conspiracy to murder, being acts for which it is charged that the persons named and each of them are individually responsible, being at the same time Crimes against Peace, Conventional War Crimes, and Crimes against Humanity, contrary to all the paragraphs of Article 5 of the said Charter, to International Law, and to the domestic laws of all the countries where committed, including Japan, or to one or more of them.

C O U N T 37.

The Defendants DOHIMURA, HIRANUMA, HIROTA, HOSHINO, KAYA, KIDO, KIMURA, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIMADA, SUZUKI, TOGO and TOJO, together with divers other persons between the 1st June, 1940, and the 8th December, 1941, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan.

The object of such plan or conspiracy was unlawfully to kill and murder the persons described below, by initiating unlawful hostilities against the United States of America, the Commonwealth of the Philippines, the British Commonwealth of Nations, the Kingdom of the Netherlands and the Kingdom of Thailand, and unlawfully ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the said nations or some of them at times when Japan would be at peace with the said nations.

The persons intended to be killed and murdered were all such persons, both members of the armed forces of the said nations and civilians, as might happen to be in the places at the times of such attacks.

The said hostilities and attacks were unlawful because they were breaches of Treaty Article 5 in Appendix B, and the accused and the said armed forces of Japan could not therefore, acquire the rights of lawful belligerents.

The accused and each of them intended that such hostilities should be initiated in breach of such Treaty Article, or were reckless whether such Treaty Article would be violated or not.

C O U N T 38.

The Defendants DOHIMURA, HIRANUMA, HIROTA, HOSHINO, KAYA, KIDO, KIMURA, MATSUOKA, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIMADA, SUZUKI, TOGO and TOJO, together with divers other persons between the 1st June, 1940 and the 8th December, 1941, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan.

The object of such plan or conspiracy was unlawfully to kill and murder the persons described below, by initiating unlawful hostilities against the United States of America, the Commonwealth of the Philippines, the British Commonwealth of Nations, the Kingdom of the Netherlands and the Kingdom of Thailand, and unlawfully ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the said nations or some of them.

The persons intended to be killed and murdered were all such persons, both members of the armed forces of the said nations and civilians, as might happen to be in the places at the times of such attacks.

The said hostilities and attacks were unlawful because they were breaches of Treaty Articles 6, 7, 19, 33, 34, and 36 in Appendix B and the accused and the said armed forces of Japan could not therefore, acquire the rights of lawful belligerents.

The accused and each of them intended that such hostilities should be initiated in breach of such Treaty Articles, or were reckless whether such Treaty Articles or any of them would be violated or not.

C O U N T 39.

The same Defendants as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the United States of America, with which nation Japan was then at peace, at Pearl Harbour, Territory of Hawaii, on the 7th December, 1941, at about 0755 hours (Pearl Harbour time), unlawfully killed and murdered Admiral Kidd and about 4,000 other members of the naval and military forces of the United States of America and certain civilians whose names and number are at present unknown.

C O U N T 40.

The same Defendants as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory and airplanes of the British Commonwealth of Nations, with which nations Japan was then at peace, at Kota Bahru, Kelantan, on the 8th December, 1941, at about 0025 hours (Singapore time), unlawfully killed and murdered certain members of the armed forces of the British Commonwealth of Nations whose names and number are at present unknown.

C O U N T 41.

The same Defendants as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the British Commonwealth of Nations, with which nations Japan was then at peace, at Hong Kong, on the 8th December, 1941, at about 0800 hours (Hong Kong time), unlawfully killed and murdered certain members of the armed forces of the British Commonwealth of Nations, whose names and number are at present unknown.

C O U N T 42.

The same Defendants as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack H.M.S. PETREL, a ship of the British Commonwealth of Nations, with which nations Japan was then at peace, at Shanghai on the 8th December, 1941, at about 0300 hours (Shanghai time), unlawfully killed and murdered three members of the naval forces of the British Commonwealth of Nations, whose names are at present unknown.

C O U N T 43.

The same Defendants as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory of the Commonwealth of the Philippines, with which nation Japan was then at peace, at Davao, on the 8th December, 1941, at about 1000 hours (Manila time) unlawfully killed and murdered certain members of the armed forces of the United States of America and of the armed forces and civilians of the Commonwealth of the Philippines, whose names and number are at present unknown.

C O U N T 44.

All the Defendants together with divers other persons between the 18th September, 1934 and the 2nd September, 1945, participated as leaders, organisers, instigators or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan.

The object of such plan or conspiracy was to procure and permit the murder on a wholesale scale of prisoners of war, members of the armed forces of countries opposed to Japan who might lay down their arms, and civilians, who might be in the power of Japan, on land or sea, in territories occupied by Japan, and crews of ships destroyed by Japanese forces, in ruthless pursuit of victory in the unlawful wars in which Japan was, or would, during the said period be engaged.

C O U N T 45.

The Defendants ARAKI, HASHIMOTO, HATA, HIRANUMA, HIROTA, ITAGAKI, KAYA, KIDO, MATSUI, MUTO, SUZUKI and UMEZU, on the 12th December, 1937, and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Nanking in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered many thousands of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.

C O U N T 46.

The same Defendants as in Count 45, on the 21st October, 1938 and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Canton in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.

C O U N T 47.

The same Defendants as in Count 45, prior to the 27th October, 1938, and on succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Hankow in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.

C O U N T 48.

The Defendants HATA, KIDO, KOISO, SATO, SHIGEMITSU, TOJO and UMEZU, prior to the 18th June, 1944, and on succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Changsha in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered many thousands of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.

C O U N T 49.

The same Defendants as in Count 48, prior to the 8th August, 1944, and on succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Hangyang in the Province of Hunan in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and numbers are at present unknown.

C O U N T 50.

The same Defendants as in Count 48, prior to the 10th November, 1944, and on succeeding days by unlawfully ordering, causing and permitting the armed forces of Japan to attack the Cities of Kweilin and Liuchow in the Province of Kwangsi in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.

C O U N T 51.

The Defendants ARAKI, DOHIMARA, HATA, HIRANUMA, ITAGAKI, KIDO, KOISO, MATSUI, MATSUOKA, MUTO, SUZUKI, TOGO, TOJO and UMEZU, by ordering, causing and permitting the armed forces of Japan to attack the territories of Mongolia and the Union of Soviet Socialist Republics, with which nations Japan was then at peace, in the region of the Khalkhin-Gol River in the summer of 1939, unlawfully killed and murdered certain members of the armed forces of Mongolia and the Union of the Soviet Socialist Republics, whose names and number are at present unknown.

C O U N T 52.(+)

The Defendants ARAKI, DOHIMARA, HATA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KIDO, MATSUOKA, MATSUI, SHIGEMITSU, SUZUKI and TOJO, by ordering, causing and permitting the armed forces of Japan to attack the territory of the Union of Soviet Socialist Republics, with which nation

(+) See Erratum at end.

Japan was then at peace, unlawfully killed and murdered certain members of the armed forces of the Union of Soviet Socialist Republics, whose names and number are at present unknown.

GROUP THREE: CONVENTIONAL WAR CRIMES AND CRIMES AGAINST HUMANITY.

The following Counts charge conventional War Crimes and Crimes against Humanity, being acts for which it is charged that the persons named and each of them are individually responsible, in accordance with Article 5 and particularly Article 5 (b) and (c) of the Charter of the International Military Tribunal for the Far East, and in accordance with International Law, or either of them.

C O U N T 53.

The Defendants, DOHIHARA, HATA, HOSHINO, ITAGAKI, KAYA, KIDO, KIMURA, KOISO, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIGEMITSU, SHIMADA, SUZUKI, TOGO, TOJO and UMEZU, together with divers other persons, between the 7th December, 1941 and the 2nd September, 1945, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan.

The object of such plan or conspiracy was to order, authorise and permit the Commanders-in-Chief of the several Japanese naval and military forces in each of the several theatres of war in which Japan was then engaged, and the officials of the Japanese War Ministry, and the persons in charge of each of the camps and labour units for prisoners of war and civilian internees in territories of or occupied by Japan and the military and civil police of Japan, and their respective subordinates frequently and habitually to commit the breaches of the Laws and Customs of War, as contained in and proved by the Conventions, assurances and practices referred to in Appendix D, against the armed forces of the countries hereinafter named and against many thousands of prisoners of war and civilians then in the power of Japan belonging to the United States of America, the British Commonwealth of Nations, the Republic of France, the Kingdom of the Netherlands, the Commonwealth of the Philippines, the Republic of China, the Republic of Portugal and the Union of Soviet Socialist Republics, and that the Government of Japan should abstain from taking adequate steps in accordance with the said Conventions and assurances and Laws and customs of War, in order to secure observance and prevent breaches thereof.

In the case of the Republic of China, the said plan or conspiracy began on the 18th September, 1931, and the following Defendants participated therein in addition to those above-named: ARAKI, HASHIMOTO, HIRANUMA, HIROTA, MATSUI, MATSUOKA, MINAMI.

C O U N T 54.

The Defendants DOHIHARA, HATA, HOSHINO, ITAGAKI, KAYA, KIDO, KIMURA, KOISO, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIGEMITSU, SHIMADA, SUZUKI, TOGO, TOJO and UMEZU, between the 7th December, 1941 and the 2nd September, 1945, ordered, authorised and permitted the same persons as mentioned in Count 53 to commit the offences therein mentioned and thereby violated the laws of War.

In the case of the Republic of China the said orders, authorities and permissions were given in a period beginning on the 18th September, 1931, and the following Defendants were responsible for the same in addition to those named above: ARAKI, HASHIMOTO, HIRANUMA, HIROTA, MATSUI, MATSUOKA, MINAMI.

C O U N T 55.

The Defendants DOHIHARA, HATA, HOSHINO, ITAGAKI, KAYA, KIDO, KIMURA, KOISO, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIGEMITSU, SHIMADA, SUZUKI, TOGO, TOJO and UMEZU, between the 7th December, 1941 and the 2nd September, 1945, being by virtue of their respective offices responsible for securing the observance of the said Conventions and assurances and the Laws and Customs of War in respect of the armed forces in the countries hereinafter named and in respect of many thousands of prisoners of war and civilians then in the power of Japan belonging to the United States of America, the British Commonwealth of Nations, the Republic of France, the Kingdom of the Netherlands, the Commonwealth of the Philippines, the Republic of China, the Republic of Portugal and the Union of Soviet Socialist Republics, deliberately and recklessly disregarded their legal duty to take adequate steps to secure the observance and prevent breaches thereof, and thereby violated the laws of war.

In the case of the Republic of China, the said offence began on the 18th September, 1931, and the following Defendants were responsible for the same in addition to those named above: ARAKI, HASHIMOTO, HIRANUMA, HIROTA, MATSUI, MATSUOKA, MINAMI.

Wherefore, this Indictment is lodged with the Tribunal, and the charges herein made against the above-named Defendants are hereby presented to the Tribunal.

Joseph B. Keenan

Chief of Counsel, acting on behalf of the
United States of America.

Hsiang Che-Chun

Associate Counsel, acting on behalf of the
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APPENDIX A.

Summarized Particulars showing the principal Matters and Events upon which the Prosecution will rely in support of the several Counts of the Indictment in Group One.

SECTION 1.

MILITARY AGGRESSION IN MANCHURIA.

From January 1st, 1928, onwards there was a plot in the Japanese Army, and particularly in the Kwantung Army, supported by certain civilians, to create an incident in Manchuria, which should form a pretext for Japan to conquer, occupy and exploit that Country as the first step in a scheme of domination which later extended to other parts of China to the territory of the Union of Soviet Socialist Republics, and ultimately to a wider field, aiming to make Japan a dominant power in the World.

The major events in the execution of it were:

About 18th September, 1931: Following a long period of infiltration and consequent friction, Japanese troops blew up a portion of the South Manchurian Railway, falsely accused Chinese troops of doing so, attacked them, and thereafter progressively and rapidly carried out a Military occupation of the Chinese provinces of Liaoning, Kirin, Heilungkiang and Jehol (the north-eastern provinces.)

About 3rd January, 1932: Japanese forces occupied Chinchow in spite of assurance given by their Foreign Office to the United States on 24th November, 1931, that they would not do so.

Beginning about 18th January, 1932, Japanese naval, and later military forces, attacked the Chinese in Shanghai.

About 28th to 29th January, 1932: Japanese bombed Chapei at 12.15 a.m.

About 1st Feb. 1932: Japanese warships shelled Nanking.

During 1932, Japan set up a separate puppet Government in the said Provinces and on 15th September, 1932, officially recognized it.

The Japanese Government which came into power on 13th December, 1931, and all subsequent Japanese Governments adopted, supported and continued this aggression, and its gradual extension over other parts of China.

Japan delivered no declaration of War against China, made no effort to settle the alleged dispute by pacific means, or by mediation or arbitration, rejected on 5th February, 1932, an offer of mediation by the United States, Great Britain and France, refused to adopt the report and recommendations of the Lytton Commission appointed by the League of Nations of which Japan and China were members, or the resolutions of the League, and on 27th March, 1933, resigned from the League.

On 18th April, 1934, Japan announced her absolute opposition to any foreign interference in China other than her own.

On 1st March, 1934, Japan caused Henry Pu Yi to be installed as the nominal ruler of the so-called State of Manchukuo. Nevertheless large Japanese armies continued down to the 2nd September, 1945, to be maintained in these territories, using them as a base for further aggression, and to control, together with Japanese civilians officials, the whole Government, industry and finance thereof.

SECTION 2.

MILITARY AGGRESSION IN THE REST OF CHINA.

Japanese aggression against China entered a new phase on July 7th, 1937, when her army invaded China south of the Great Wall, and her government adopted, supported and continued the aggression. All subsequent Japanese Governments did the same.

Subsequent major events in this phase were:

About 19th to 25th September, 1937, Japanese forces bombed Nanking and Canton, and deliberately killed large numbers of civilians.

About 13th December, 1937, Japanese forces captured Nanking, slaughtered many thousands of civilians and committed other outrages.

During 1940, Japan set up a separate puppet Government in those parts of China (other than the four north-eastern provinces above-mentioned) which she then occupied, claiming to be the "National Government of the Republic of China", and about 30th November, 1940, officially recognized it.

Again Japan delivered no declaration of war on China, made no attempt to settle the alleged dispute by pacific means, or by mediation or arbitration, refused on 25th September, 1937, to participate in the Far Eastern Advisory Committee of the League of Nations, refused on 27th October and again on 12th November, 1937, to attend the Conference held at Brussels of the other signatories to the Nine-Power Treaty of 6th February, 1922, or to discuss its application, refused on 22nd September, 1938, to sit with the League of Nations to mediate her dispute with China, and on 4th November, 1938, declared that the said Nine-Power Treaty was obsolete.

Japan continued her military aggression in China by capturing, among other cities, Hankow on the 27th October, 1938; Chansha on the 18th June, 1944; Hengyang on the 8th August, Kweilin on the 10th November and Liuchow on the 11th November of the same year; and deliberately killed large numbers of civilians and committed other outrages in each of the cities afore-mentioned.

SECTION 3.

ECONOMIC AGGRESSION IN CHINA AND GREATER EAST ASIA.

During the period covered by this Indictment, Japan established a general superiority of rights in favour of her own nationals, which effectively created monopolies in commercial, industrial and financial enterprises, first in Manchuria and later in other parts of China which came under her domination, and exploited those regions not only for the enrichment of Japan and those of her nationals participating in those enterprises, but as part of a scheme to weaken the resistance of China, to exclude other Nations and nationals, and to provide funds and munitions for further aggression.

This plan, as was the intention of some at least of its originators, both on its economic and military side, gradually came to embrace similar designs on the remainder of East Asia and Oceania.

Later it was officially expanded into the "Greater East Asia Co-Prosperity Scheme" (a title designed to cover up a scheme for complete Japanese domination of those areas) and Japan declared that this was the ultimate purpose of the military campaign.

The same organizations as are mentioned in Section 4 hereof were used for the above purposes.

SECTION 4.

METHODS OF CORRUPTION AND COERCION IN CHINA AND OTHER OCCUPIED TERRITORIES.

During the whole period covered by this Indictment, successive

Japanese Governments, through their military and naval commanders and civilian agents in China and other territories which they had occupied or designed to occupy, pursued a systematic policy of weakening the native inhabitants will to resist by atrocities and cruelties, by force and threats of force, by bribery and corruption, by intrigue amongst local politicians and generals, by directly and indirectly encouraging increased production and importation of opium and other narcotics and by promoting the sale and consumption of such drugs among such people. The Japanese Government secretly provided large sums of money, which, together with profits from the government-sponsored traffic in opium and other narcotics and other trading activities in such areas, were used by agents of the Japanese government for all the above-mentioned purposes. At the same time, the Japanese Government was actively participating in the proceedings of the League of Nations Committee on Traffic in Opium and other Dangerous Drugs and, despite her secret activities above-mentioned, professed to the world to be co-operating fully with other member nations in the enforcement of treaties governing traffic in opium and other narcotics to which she was a party.

This participation in an sponsorship of illicit traffic in narcotics was effected through a number of Japanese governmental organizations such as the Manchurian Affairs Board, the China Affairs Board and the Southern Region Affairs Board, which were combined in 1942 to form the Greater East Asia Ministry, and numerous subsidiary organizations and trading companies in the various occupied and so-called independent (puppet) countries which were operated or supervised by senior officers or civilian appointees of the Army and the Navy.

Further, revenue from the above-mentioned traffic in opium and other narcotics was used to finance the preparation for and waging of the wars of aggression set forth in this Indictment and to establish and finance the puppet governments set up by the Japanese Government in the various occupied territories,

SECTION 5.

GENERAL PREPARATION FOR WAR.

With a view to future wars of aggression, and in order to prevent other nations from interference in her war of aggression already in progress against China, Japan from 1st January, 1932, onwards strengthened her naval, military, productive and financial preparations for war. In particular, but without limiting the above allegations:

(a) NAVAL:

About 29th December, 1934, she denounced the Washington Naval Treaty after an unsuccessful attempt to persuade the other Signatories to agree to a common upper limit of global naval tonnage for her own obvious advantage.

About 23rd June, 1936, she refused to adhere to the London Naval Treaty.

On or about 12th February, 1938, she refused to reveal her naval building plans on request by the United States, Britain and France.

At all times she secretly increased her naval strength.

At all times and especially throughout 1941, she made secret naval plans for the surprise attacks which ultimately took place on December 7th-8th, 1941, on Pearl Harbour, Singapore, Hong Kong, Malaya and Shanghai, and for similar attacks on other places in the Pacific and Indian Oceans and on the

territory of the Union of Soviet Socialist Republics.

(b) MILITARY:

Japan continually and progressively increased the size of her army not only as required for her war of aggression against China, but to a larger extent for the purpose of other wars of aggression. On the 6th April, 1939, she passed a general Mobilization Law and thereafter put it into effect.

(c) NAVAL AND MILITARY:

Japan continually and progressively fortified the islands for which she held a mandate from the League of Nations.

Treaty Articles violated : 15, 17, 18, 31.

(d) PRODUCTIVE:

Japan continually and progressively increased her capacity for the production of munitions of war both on her own territory and in territories occupied or controlled by her, to an extent greater than was required for her war of aggression against China, for the purpose of other wars of aggression.

(e) FINANCIAL:

The finance for all the above-mentioned purposes was provided partly through the Budget by taxation, partly by loans, and partly from the profits of the exploitations as described in Section 3 hereof, and particularly of the sale of narcotics as described in Section 4 hereof.

SECTION 6.

THE ORGANIZATION OF JAPANESE POLITICS AND PUBLIC OPINION FOR WAR.

Two provisions incorporated by ordinance or custom in the Japanese constitution gave to the militarists the opportunity of gaining control over the Governments which they seized during the period covered by this Indictment.

The first was that, not only had the Chiefs of Staff and other leaders of the Army and Navy direct access at all times to the Emperor, but they had the right to appoint and withdraw the War and Navy Ministers in any Government. Either of them could thus prevent a Government from being formed, or bring about its fall after it was formed. In May, 1936, this power was further increased by a regulation that the Army and Navy Ministers must be senior Officers on the active list. E.G., the fall of the Yonai Government on 21st July, 1940, and of the Third Konoye Government on the 16th October, 1941, were in fact brought about by the Army; in each case they were succeeded by Governments more subservient to the wishes of the Army.

The second was that, although the Diet had the right to reject a Budget, this did not give them control, because in that case the Budget of the preceding year remained in force.

During this period such free Parliamentary institutions as previously existed were gradually stamped out and a system similar to the Fascist or Nazi model introduced. This took definite shape with the formation on 12th October, 1940, of the Imperial Rule Assistance Association, and later of the Imperial Rule Assistance Political Society.

During this period a vigorous campaign of incitement to expansion

was carried on, in the earlier part of the period by individual writers and speakers, but gradually this came to be organized by Government agencies, which also stamped out free speech and writing by opponents of this policy. A large number of Societies, some secret, was also formed both in the Army and Navy and among civilians, with similar objects. Opposition to this policy was also crushed by assassinations of leading politicians who were not considered sufficiently friendly to it, and by fear and threats of such assassinations. The civil and especially the military police were also used to suppress opposition to the war policy.

The educational systems, civil, military and naval, were used to inculcate a spirit of totalitarianism, aggression, desire for war, cruelty and hatred of potential enemies.

SECTION 7.

COLLABORATION BETWEEN JAPAN, GERMANY, AND ITALY. AGGRESSION AGAINST FRENCH INDO-CHINA AND THAILAND.

Successive Japanese Governments from early in 1936 onwards, cultivated close relations with the totalitarian powers in Europe, Germany and Italy, which harboured similar designs in relation to the rest of the world to those of Japan in relation to East Asia and the Indian and Pacific Oceans.

On November 25th, 1936, they signed the Anti-Comintern Pact with a secret Protocol and a secret Military Treaty, directed ostensibly against the Union of Soviet Socialist Republics and Communism, but actually designed also as a prelude to joint aggressive action in general.

Various countries under the domination of Axis Powers, including the puppet governments of "Manchukuo" and the Nanking Regime in China, were admitted to the Anti-Comintern Pact.

Between the 1st January, 1938 and the 23rd August, 1939, extensive negotiations were conducted between Japan, Germany and Italy, for the establishment of an economic, political and military alliance.

On 26th August, 1939, Japan through her ambassador in Washington, assured the United States of America that she had decided to abandon any further negotiations with Germany and Italy relative to closer relations under the Anti-Comintern Pact.

Negotiations between Japan and Germany for the establishment of an economic, political and military alliance were resumed in July, 1940.

Between 13th August and 22nd September, 1940, after the Armistice in June, 1940, between Germany and the authority later to be known as the Vichy Government of France, subservient to Germany, and after the occupation by Germany of a large part of France, Japan induced and coerced the general government of French Indo-China to enter into agreements with her for military and economic concessions in that country, and especially the northern part thereof. On 22nd September, 1940, notwithstanding agreements signed on the same day, Japanese troops attacked French Indo-Chinese units and were met with strong resistance.

On 27th September, 1940, Japan signed the Tri-Partite Pact with Germany and Italy.

In the early part of 1941, Japan, taking advantage of a boundary dispute raised by Thailand against French Indo-China, purported to act as mediator or arbitrator therein, but actually brought about a settlement unduly favourable to Thailand with a view to obtaining her aid in or submission to future aggression, and at the same time made further demands for military and economic concessions in French Indo-China.

The said settlements were finally concluded on 6th-9th May, 1941.

Commencing in the latter part of February, 1941, Japan and Germany conducted negotiations on the subject of Joint Military Action against Singapore and the territory of other nations.

On 1st July, 1941, Germany, Italy and all Governments subservient to them in other European countries, at the request of Japan, recognized the so-called "National Government of the Republic of China."

On the 12th July, 1940, a Friendship Treaty was signed between Japan and Thailand.

From May to July, 1941, Japan further induced and coerced the general Government of French Indo-China to allow Japanese troops to land, establish naval and air bases, and generally obtain control over Southern French Indo-China. The main purpose on this occasion was to provide bases for aggression directly against the British Commonwealth of Nations and the Dutch East Indies, and indirectly against the United States of America. The said agreements were finally concluded on July 21st and 29th, 1941, on which date Japanese forces landed at Saigon, established naval and air bases and generally took control of French Indo-China.

Throughout the above-mentioned dealings with French Indo-China, Japan used the help of Germany and Italy, by coercion upon the Vichy Government, as well as direct threats of illegal force, to attain her ends.

By the way of reaction of this aggression and threat of further aggression, the United States of America on July 25th, and Great Britain on July 26th, froze the assets of Japan and China under their control, and applied other economic pressure against Japan.

On 25th November, 1941, Japan renewed the Anti-Comintern Pact, with secret clauses.

On or about the 1st December, 1941, Japan invoking the Tri-Partite Pact, requested Germany and Italy to declare war on the United States after the beginning of hostilities, and that a "No separate Peace Treaty" be entered into.

On 5th December, 1941, Japan assured the United States of America that troop movements in French Indo-China were precautionary measures.

On December 7th-8th, 1941, Japan made surprise attacks on territories of the United States of America, the British Commonwealth of Nations, and Thailand, using in the two latter cases, French Indo-China bases.

On the 11th December 1941, Japan, Germany and Italy signed a "No Separate Peace Pact".

On 18th January, 1942, a Military Convention between Japan, Germany and Italy was signed in Berlin.

From 1936 to 1945 close military, naval, economic and diplomatic co-operation and exchange of information were maintained between the above three countries. At the request of Germany, Japan from the beginning of the war on December 7th-8th, 1941, adopted the German Policy of ruthless submarine warfare and the destruction of crews of ships sunk or captured.

By the threatening attitude which Japan maintained from 1939 to 1941 against the United States of America, the British Commonwealth of Nations, the Kingdom of the Netherlands and the Republic of France, and from 1939 to 1945 against the Union of Soviet Socialist Republics, and by her increasing concentration of troops in regions convenient for attacks upon them, she directly assisted Germany and Italy in their wars against those nations, even while she remained nominally neutral.

SECTION 8.

AGGRESSION AGAINST THE SOVIET UNION.

In the course of many years, Japan was continually preparing war and performing acts of aggression against the Soviet Union.

Having failed in her attempts to capture the Soviet Far East in the period between 1918-1922, Japan did not abandon the idea of capturing the Soviet areas situated east of the Lake Baykal.

Since 1928 the Japanese General Staff had been planning a war of aggression against the Union of Soviet Socialist Republics eager to take advantage of a chance to start this war.

An important step in the preparation of a war of aggression against the Union of Soviet Socialist Republics was the occupation of Manchuria in 1931, which as well as Korea was transformed into a military base for attacking the Union of Soviet Socialist Republics in a number of years. Railroads and highways were constructed in Manchuria after 1931 of strategic importance and ran towards the frontier of the Union of Soviet Socialist Republics. The strength of the Kwantung Army had been increased from two divisions in 1931 to fifteen in 1941.

A great number of new airfields, fortified areas, dumps, barracks, sea and river ports destined to serve in the war of aggression against the Union of Soviet Socialist Republics were built.

In Manchuria the war industry developed at a fast rate. Areas adjacent to the Union of Soviet Socialist Republics frontier were being colonized by Japanese reservists with the purpose of strengthening the Kwantung Army at the moment of mobilization. Propaganda in the press, by radio, etc., directed against the Soviet Union, was carried on intensely. On Manchurian territory Japan organized and supported on a large scale elements from Russian emigrants hostile to the Soviet Union and prepared them for hostile acts against the Union of Soviet Socialist Republics. Japan systematically organized armed clashes on the frontier and organized acts of sabotage and terrorist acts on the Chinese Eastern Railroad.

In 1932, Japan twice rejected the proposal of the Union of Soviet Socialist Republics to conclude a non-aggression pact.

In 1938, Japan without declaring war, attacked the territory of the Soviet Union at the Lake Hassan.

In 1939 Japan again, without declaration of war, attacked the territory of the Mongolian People's Republic, an ally of the Union of Soviet Socialist Republics at the Halkin-Gol River (Namanhan), and engaged the Mongolian People's Republic army and its allied Red Army. In both cases Japan pursued the aim of reconnoitering the strength of the Red Army by battle and capturing strategic positions for future war against the Union of Soviet Socialist Republics. Having been repulsed twice and having suffered heavy losses, Japan nevertheless did not stop the preparations for a surprise attack against the Union of Soviet Socialist Republics.

While preparing for the war against the Soviet Union, Japan, during several years, carried on negotiations with Hitlerite Germany and Fascist Italy on a joint aggression. The principal stages in this plot of aggressors, were the conclusion of the so-called Anti-Comintern Pact in 1936 and the signing of the Tri-Partite Pact of Japan, Germany and Italy in 1940, the aim of which was joint aggressive action of these countries against democratic powers, among them the Union of Soviet Socialist Republics.

In March 1941, while being in Berlin for the purpose of plotting

with Hitler about a joint aggression against democratic countries, the defendant Matsuoka was informed by the German government about preparations by the latter for war against the Union of Soviet Socialist Republics. As early as the beginning of July, following a conclusion of the pact of neutrality on behalf of Japan on 13th April, 1941, after the treacherous attack of Germany against the Union of Soviet Socialist Republics, Matsuoka officially declared to the Soviet Ambassador in Tokyo that the principal bases of the Japanese foreign policy was the alliance with Germany and that in case Germany addressed Japan with a request for help, the pact of neutrality with the Union of Soviet Socialist Republics would not present an obstacle for Japan to wage war on the side of Germany. In accordance with this, the governing militarist clique in Japan in the whole course of the war between Germany and the Union of Soviet Socialist Republics was openly hostile towards the Soviet Union; maintained a selected army on the Soviet frontiers and was an organizer of a widespread propaganda against the Soviet Union. Japan actively helped Hitlerite Germany, providing her with information regarding the Union of Soviet Socialist Republics, organized pirate attacks on Soviet merchant shipping in the Far East by closing straits, establishing prohibited zones and special limited waterways.

To render help to Germany, Japan, after Germany's attack against the Union of Soviet Socialist Republics in the summer of 1941, doubled the strength of her army in Manchuria and later on brought the strength of this army to a million men which necessitated maintaining considerable forces in the Far East by the Soviet Union instead of using them in the war against Germany.

In the same summer of 1941, Japan worked out a new plan of a surprise attack against the Union of Soviet Socialist Republics and kept the Kwantung Army fully prepared for such an attack. She was prevented from it, not by the pact of neutrality, which as it may be seen from above, Japan disregarded, but by the successes of the forces of the Union of Soviet Socialist Republics in the war against Germany.

SECTION 9.

JAPAN, THE UNITED STATES OF AMERICA, THE COMMONWEALTH OF THE PHILIPPINES AND THE BRITISH COMMONWEALTH OF NATIONS.

The whole of the other sections of this Appendix are relevant to this Section and are not repeated here.

From 1931 until December, 1941, relations between Japan on the one hand and the United States of America and Great Britain on the other continuously deteriorated because of Japan's aggression in East Asia and duplicity in international negotiations.

The United States of America and Great Britain frequently protested that Japan's military operations were a violation of the provisions of the treaties mentioned in Count 2 hereof, and called the attention of both China and Japan to their obligations thereunder. They also declared that they would not recognize any situation in Manchuria or elsewhere brought about by violations thereof.

Japan in unequivocal terms gave assurances that she had no territorial ambitions in China, that she would respect the open door policy in China. In spite of these assurances she set up a puppet regime in Manchukuo and proceeded to close the door to the United States of America and British trade.

After the consolidation of the Manchurian position Japan continued her aggressive policy in East Asia in spite of assurances that she had no territorial ambitions south of the Great Wall.

The United States and Great Britain endeavoured to convince Japan that her best interests lay in peace, but it was clear from her actions

that she has intended to resort to force to gain neighbouring countries and territories.

During 1935, Japan increased her military and naval strength and undertook limited military activities to extend her domination over China. The United States of America and Great Britain continued to draw Japan's attention to her treaty obligations but this had no effect on her military activities.

In 1936, The United States of America endeavoured to get Japan to agree to the principle of equality in commercial and industrial spheres and not to resort to force to obtain preferential rights. This was also rejected by Japan.

In 1937, Japan declared that the principles of international relationship propounded by the United States of America were consistent with her own, but qualified this by stating that the objectives could only be obtained by an understanding of the particular circumstances of the East. In 1937 Japan commenced further military aggression in China and soon thereafter the United States of America offered her good offices in the dispute and appealed to both parties to refrain from war. This Offer was not accepted by Japan and the appeal had no effect. In the same year Japan refused an invitation to attend the Brussels Conference called under the provisions of the Nine-Power Treaty. On August 26th, 1937, Japanese forces attacked cars belonging to the British Embassy in China, and on December 12th attacked warships belonging to the United States of America and Great Britain on the Yangtze.

At the end of 1938 Japan proclaimed her policy of a new order in East Asia and refused to give any unconditional assurance that the open door policy in China would be maintained.

Thereafter many interferences by Japan and Japanese controlled territories with the rights of the United States of America and British nationals took place and in July, 1939, the United States of America gave notice of termination of the 1911 commercial Treaty with Japan.

In September 1940, after Japan's military alliance with Germany and Italy, the United States of America was forced to place limitations on the export of iron, steel and raw materials to Japan.

In March 1941, conversations between the Japanese ambassador in Washington and the United States Secretary of State took place in an endeavour by the United States to settle outstanding differences and to reach a peaceful settlement. While these were proceeding Japan continued at a feverish pace to prepare for war. At an Imperial Conference on 2nd July, the decision to advance southward, obviously directed against the United States of America, the Kingdom of the Netherlands and the British Commonwealth, was reached. At a further Conference on 6th September, it was decided to open hostilities against the United States of America, Great Britain and the Netherlands in case the requirements of Japan seemed unlikely to be realized by some time during the first part of October. On 1st December, a further Conference definitely decided on war. The decisions of the two last mentioned Conferences were kept secret. On 7th-8th December, 1941, while negotiations were still proceeding, Japan made surprise attacks on territories of the United States of America at Pearl Harbour, of the British Commonwealth of Nations at Singapore, Malaya, Hong Kong and Shanghai, of the Commonwealth of the Philippines, and of Thailand. She delivered no declaration of war, and to the British Commonwealth of Nations or to the Commonwealth of the Philippines, no document of any kind. To the United States of America she delivered, after the attack, a document which did not and was not intended to amount to a declaration of war.

She entirely disregarded all the other Treaty obligations referred to in Counts 7 and 8 hereof.

SECTION 10.

JAPAN, THE KINGDOM OF THE NETHERLANDS AND
THE REPUBLIC OF PORTUGAL.

The Netherlands East Indies and the Portugese portion of the Island of Timor were within the area coveted by Japan and described by her as the "Greater East Asia Co-Prosperity Sphere".

In addition to the general treaties binding Japan not to attack these areas, Treaty Articles Nos. 20 and 21, refer respectively to these nations in terms. Japan also had a treaty with the Netherlands regarding the East Indies which she denounced on the 12th June, 1940, in preparation for aggression against them. At that time the homeland of the Netherlands had been recently and treacherously over-run by Japan's ally, Germany, and the Dutch Government had been compelled to seek refuge in England. Thereafter Japan endeavoured to compel that Government to agree to a new treaty on terms unduly favourable to Japan, but they were unwilling to do so. The preparations of Japan for a general aggressive war in the Far East included an intention to invade the Netherlands East Indies. The occupation by Japan of French Indo-China, completed in July, 1941, and the attacks upon territories of the United States of America and the British Commonwealth of Nations on the 7th-8th December, 1941, were all part of a plan which included an invasion of the Netherlands East Indies. This was specifically one of the decisions of the Japanese Imperial Conference of the 6th September, 1941. Consequently the Netherlands Government immediately after the last mentioned attacks, declared war on Japan in self defence.

On the 11th January, 1942, Japan invaded and thereafter rapidly occupied the Netherlands East Indies.

On 19th February, 1942, Japan, without any pretence of right or of any quarrel with the Republic of Portugal, invaded Portugese Timor, and occupied it for the purpose of carrying on her aggressive war against all the allied nations.

APPENDIX B.

List of Articles of Treaties violated by Japan
and incorporated in Groups One and Two.

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The Convention for the Pacific Settlement of International Disputes,
signed at The Hague 29 July 1899.

The said Convention was signed and ratified by or on behalf of Japan and each of the Nations bringing the charges in this Indictment subject to certain reservations not here material.

1. Article I

"With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences".

2. Article II

"In case of serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers".

The Convention for the Pacific Settlement of International Disputes,
signed at the Hague 18 October 1907.

The said Convention was signed and ratified by or on behalf of Japan and each of the nations bringing the charges in this Indictment with the exception of the United Kingdom and the Union of Soviet Socialist Republics, subject to certain reservations not here material.

3. Article 1.

"With a view to obviating as far as possible recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences".

4. Article 2.

"In case of serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers".

The Hague Convention No. III Relative to the Opening of Hostilities, signed
18 October 1907.

The said Convention was signed and ratified by or on behalf of Japan and each of the nations bringing the charge in this Indictment.

5. Article I.

"The Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war".

Agreement effected by exchange of notes between the United States and Japan,
signed 30 November 1908, declaring their policy in the Far East.

6. "2. The Policy of both Governments, uninfluenced by any aggressive tendencies, is directed to the maintenance of the existing status quo in the region above-mentioned and to the defence of the principle of equal opportunity for commerce and industry in China.

7. 3. They are accordingly firmly resolved reciprocally to respect the territorial possessions belonging to each other in said region.

8. 4. They are also determined to preserve the common interest of all Powers in China by supporting by all pacific means at their disposal the independence and integrity of China and the principle of equal opportunity for commerce and industry of all nations in that Empire.

9. 5. Should any event occur threatening the status quo as above described or the principle of equal opportunity as above defined, it remains for the two Governments to communicate with each other in order to arrive at an understanding as to what measures they may consider it useful to take".

The Convention and Final Protocol for the Suppression of the Abuse of Opium and other Drugs, signed at The Hague, 23 January 1912 and 9 July 1913.

10. The said Convention was signed and ratified by or on behalf of Japan and each of the nations bringing the charges in this Indictment.

The Treaty of Peace between the Allied and Associated Powers and Germany, signed at Versailles, 28 June 1919, known as the Versailles Treaty.

11. Article 10 of the Covenant of the League of Nations.

"The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled".

12. Article 12 of the Covenant of the League of Nations.

"The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council".

13. Article 13 of the Covenant of the League of Nations.

"The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute, the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such award, the Council shall propose what steps should be taken to give effect thereto".

14. Article 15 of the Covenant of the League of Nations.

"If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, The Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such a request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute."

15. Article 22 of the Covenant of the League of Nations.

"Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and

religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above-mentioned in the interest of the indigenous population."

16. Article 23 (c) of the Covenant of the League of Nations.

"Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League.....

(c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children and the traffic in opium and other dangerous drugs.

The Mandate from the League of Nations pursuant to the Versailles Treaty made at Geneva 17 December 1920.

17. Article 3.

"The Mandatory shall see that the slave trade is prohibited and that no forced labour is permitted, except for essential public works and services, and then only for adequate remuneration."

18. Article 4.

"The military training of the natives otherwise than for purposes of internal police and the local defence of the territory shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory."

Treaty between the British Commonwealth of Nations, France, Japan and the United States of America relating to their Insular possessions and Insular Dominions in the Pacific Ocean, 13 December, 1921.

The said Treaty was signed and ratified by the Signatory Powers.

19. Article I.

"The High Contracting Parties agree as between themselves to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean.

If there should develop between any of the High Contracting Parties a controversy arising out of any Pacific question and involving their said rights which is not satisfactorily settled by diplomacy and is likely to affect the harmonious accord now happily subsisting between them, they shall invite the other High Contracting Parties to a joint Conference to which the whole subject will be referred for consideration and adjustment".

Identic Communication made to the Netherlands Government on 4 February 1922 on behalf of the British Commonwealth of Nations and also "mutatis mutandis" on behalf of Japan and the other Powers signatory to the Quadruple Pacific Treaty of 13 December 1921, states that:-

20. The Netherlands not being signatory to the said Treaty, and the Netherlands possessions in the region of the Pacific Ocean therefore not being included in the agreement referred to, His Britannic Majesty's Government, anxious to forestall any conclusion contrary to the spirit of the Treaty, desires to declare that it is firmly resolved to respect the rights of the Netherlands in relation to her insular possessions in the region of the Pacific Ocean.

Identic Communication made to the Portugese Government on 6 February 1922 on behalf of the British Commonwealth of Nations and also "mutatis mutandis" on behalf of Japan and the other Powers signatory to the Quadruple Pacific Treaty of 13 December 1921, states that:-

21. The Portugese not being signatory to the said Treaty, and the Portugese possessions in the region of the Pacific Ocean therefore not being included in the agreement referred to, His Britannic Majesty's Government, anxious to forestall any conclusion contrary to the spirit of the Treaty, desires to declare that it is firmly resolved to respect the rights of Portugal in relation to her insular possessions in the region of the Pacific Ocean.

The Treaty between the United States of America, the British Commonwealth of Nations, Belgium, China, France, Italy, Japan, the Netherlands and Portugal concluded and signed at Washington, 6 February 1922, known as the Nine-Power Treaty.

The said Treaty was signed and ratified by or on behalf of Japan and each of the nations bringing the charges in this Indictment with the exception of the Union of Soviet Socialist Republics.

Article I.

"The Contracting Powers, other than China, agree;-

22. (1) To respect the sovereignty, the independence, and the territorial administrative integrity of China;

23. (2) To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable Government;

24. (3) To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China;

25. (4) To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from countenancing action inimical to the security of such States."

Article II.

26. "The Contracting Powers agree not to enter into any treaty, agreement, arrangement, or understanding, either with one another, or, individually or collectively, with any Power or Powers which would infringe or impair the principles stated in Article I."

Article III.

"With a view to applying more effectually the principles of the Open Door or equality of opportunity in China for the trade and industry of all

nations, the Contracting Powers, other than China, agree that they will not seek, nor support their respective nationals in seeking:-

27. (a) Any arrangement which might purport to establish in favour of their interests any general superiority of rights with respect to commercial or economic development in any ~~designated region of China~~;

28 (b) Any such monopoly or preference as would deprive the nationals of any other Power of the right of undertaking any legitimate trade or industry in China, or of participating with the Chinese Government, or with any local authority, in any category or public enterprise, or which by reason of its scope, duration, or geographical extent is calculated to frustrate the practical application of the principle of equal opportunity.

It is understood that the foregoing stipulations of this Article are not to be so construed as to prohibit the acquisition of such properties or rights as may be necessary to the conduct of a particular commercial, industrial, or financial undertaking, or to the encouragement of invention and research.

China undertakes to be guided by the principles stated in the foregoing stipulations of this Article in dealing with applications for economic rights and privileges from the Governments and nationals of all foreign countries, whether parties to the present Treaty or not".

Article IV

29. "The Contracting Powers agree not to support any agreements by their respective nationals with each other designed to create Spheres of Influence or to provide for the enjoyment of mutually exclusive opportunities in designated parts of Chinese territory".

Article VII

30. "The Contracting Powers agree that, whenever a situation arises which in the opinion of any one of them involves the application of the stipulations of the present Treaty, and renders desirable discussion of such application, there shall be full and frank communication between Contracting Powers concerned."

Treaty between the United States and Japan, signed at Washington
11 February 1922.

The said Treaty was signed and ratified by the Signatory Powers.

Article II.

31. "The United States and its nationals shall receive all benefits of the engagements of Japan defined in Articles 3, 4 and 5 of the aforesaid Mandate, notwithstanding the fact that the United States is not a member of the League of Nations".

The League of Nations Second Opium Conference Convention, signed at Geneva
19 February 1925.

32. The said Convention was signed and ratified by or on behalf of Japan and each of the nations bringing the charges in this Indictment, with the exception of the Union of Soviet Socialist Republics, China, and the United States of America.

Treaty between the President of the United States of America, the President of the German Reich, His Majesty the King of the Belgians, the President of the French Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of

Poland, and the President of the Czechoslovak Republic, concluded and signed at Paris 27 August 1928, known as the Kellogg-Briand Pact and as the Pact of Paris.

The said Treaty was signed and ratified by the Signatory Powers.

Article I.

33. "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another."

Article II.

34. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means".

Declaration of Imperial Japanese Government, 27 June 1929, concerning Article I of the Kellogg-Briand Pact of 27 August 1928.

"The Imperial Government declare that the phraseology "in the names of their respective peoples" appearing in Article I of the Treaty for the Renunciation of War, signed at Paris on 27 August 1928, viewed in the light of the provisions of the Imperial Constitution, is understood to be inapplicable in so far as Japan is concerned".

The Convention relating to Narcotic Drugs, signed at Geneva 13 July 1931.

35. The said Convention was signed and ratified by or on behalf of Japan with a reservation as recorded in the protocol of signature and each of the nations bringing the charges in this Indictment, with the exception of the Union of Soviet Socialist Republics, China, the Commonwealth of Australia and New Zealand.

Treaty between Thailand and Japan concerning the continuance of friendly relations and the mutual respect of each other's territorial integrity, signed at Tokyo, 12 June 1940.

The said Treaty was signed and ratified by the Signatory Powers.

Article I.

36. "The High Contracting Parties shall mutually respect each other's territorial integrity and hereby reaffirm the constant peace and the perpetual friendship existing between them."

Convention respecting the Rights and Duties of Neutral Powers and Persons, in War on Land, signed at The Hague 18 October 1907.

37. Article I.

"The territory of neutral Powers is inviolable."

38. Article II.

"Belligerents are forbidden to move troops or convoys, whether of munitions of war or of supplies, across the territory of a neutral Power".

Treaty of Portsmouth between Russia and Japan, signed 5 September 1905 which established:

Article II (paragraph 3)

39. It is also agreed that in order to avoid all cause of misunderstanding

the two High Contracting Parties will abstain, on the Russo-Korean frontier, from taking any military measures which may menace the security of Russian or Korean territory.

Article III (Parts 1 and 2).

Japan and Russia mutually engage:

40. (1) To evacuate completely and simultaneously Manchuria except the territory affected by the lease of the Liaotung Peninsula, in conformity with the provisions of additional Article I, annexed to Treaty; and

41. (2) To restore entirely and completely to the exclusive administration of China all portions of Manchuria now in the occupation or under the control of the Japanese or Russian troops, with the exception of the territory above mentioned.

Article IV.

42. Japan and Russia reciprocally engage not to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria.

Article VII (paragraph 1).

43. Japan and Russia engage to exploit their respective railways in Manchuria exclusively for commercial and industrial purposes and in no wise for strategic purposes.

Article IX (paragraph 2)

44. Japan and Russia mutually agree not to construct in their respective possessions on the Island of Saghalien or the adjacent islands, any fortifications or other similar military works. They also respectively engage not to take any military measures which may impede the free navigation of the Straits of La Perouse and Tartary.

The Convention on Embodying Basic Rules of the Relations between Japan and the Union of Soviet Socialist Republics, signed 20 January 1925 in Peking.

This Convention was signed and ratified by the Signatory Powers.

Article V.

45. The High Contracting Parties solemnly affirm their desire and intention to live in peace and amity with each other, scrupulously to respect the undoubted right of a State to order its own life within its own jurisdiction in its own way, to refrain and restrain all persons in any governmental service for them, and all organizations in receipt of any financial assistance from them, from any act overt or covert liable in any way whatever to endanger the order and security in any part of the territories of Japan or the Union of Soviet Socialist Republics.

It is further agreed that neither Contracting Party shall permit the presence in the territories under its jurisdiction --(a) of organizations or groups pretending to be the Government for any part of the territories of the other Party, or (b) of alien subjects or citizens who may be found to be actually carrying on political activities for such organizations or groups.

The Neutrality Pact between the Union of Soviet Socialist Republics and Japan, signed 13 April 1941 in Moscow.

This pact was signed and ratified by the Signatory Powers.

Article I.

46. Both Contracting Parties engage to maintain peaceful and friendly relations between themselves and mutually respect the territorial integrity and inviolability of the other Contracting Party.

Article II.

47. If one of the Contracting Parties becomes the object of military action on the part of one or several other Powers, the other Contracting Party will maintain neutrality during the whole period of the conflict.

APPENDIX C.

List of Official Assurances Violated by Japan and incorporated in Group One.

1. 25th September, 1931: That Japan had no territorial designs in Manchuria.
2. 25th November, 1931: That there was no truth in the report of a Japanese advance on Chinchow.
3. 22nd December 1931: That Chinese sovereignty would be accepted and that the open door policy would be maintained.
4. 5th January, 1933: That Japan had no territorial ambitions south of the Great Wall in China.
5. 25th April, 1934: That Japan had no intention whatever of seeking special privileges in China, of encroaching upon the territorial and administrative integrity of China, or of creating difficulties for the bona fide trade of other countries with China.
6. 15th August, 1937: That Japan harboured no territorial designs on China and would spare no efforts in safeguarding foreign interest and rights in China.
7. September, 1937: That Japan had peaceful intentions and a lack of territorial designs in North China.
8. 17th February, 1939: That Japan had no territorial designs in China and that the occupation would not go beyond military necessity.
9. 26th August 1939 : That Japan had decided to abandon any further negotiations with Germany and Italy relative to closer relations under the Anti-Comintern Pact.
10. 15th April 1940 : That Japan desired status quo of the Netherlands East Indies.
11. 16th May, 1940: That Japan had no plans nor purpose to attack the Netherlands East Indies.
12. 24th March, 1941: That under no circumstances would Japan attack the United States of America, Great Britain or the Netherlands East Indies.
13. 8th July, 1941 : That Japan had not so far considered the possibility of fighting the Union of Soviet Socialist Republics.
14. 10th July 1941: That Japan contemplated no action against French Indo-China.
15. 5th December, 1941 : That troop movements in French Indo-China were precautionary measures.

APPENDIX D

Incorporated in Group Three

The Laws and Customs of War are established partly by the practice of civilised nations, and partly by Conventions and Assurances, which are either directly binding upon the parties thereto, or evidence of the established and recognised rules. The Conventions and Assurances hereinafter mentioned in any part of this Appendix will be relied upon as a whole for both purposes, only the most material Articles being quoted herein.

1. The Convention No.4 done at The Hague on the 18th October, 1907, concerning the Laws and Customs of War on Land provides (inter alia) as follows:

"According to the views of the High Contracting Parties, these provisions, the drafting of which has been inspired by the desire to diminish the evils of war, so far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their relations with inhabitants.

It has not, however, been found possible at present to concert stipulations covering all the circumstances which arise in practice;

On the other hand, the High Contracting Parties clearly do not intend that unforeseen cases should, in default of written agreement, be left to the arbitrary opinion of military commanders.

Until a more complete code of the laws of war can be drawn up, the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience."

The Regulations set out in the Annex to the said Convention, which forms part thereof, deal in Section I with Belligerents and Prisoners of War, in Section II with Hostilities and in Section III with Military Authority over Territory of the Hostile State.

Article 4 thereof in Section I provides (inter alia) as follows:

"Prisoners of War are in the power of the hostile Government but not of the individuals or corps who capture them".

Convention No.10 done at the same time and place concerns Maritime War.

The said Conventions were signed and ratified by or on behalf of over forty nations, including Japan and each of the nations bringing the charges in this Indictment, subject to certain reservations not here material, and thus became part or evidence of the Laws and Customs of War.

2. The more complete code of ^{the} Laws of War contemplated by the said Convention is contained, in relation to Prisoners of War, in the International Convention relative to the Treatment of Prisoners of War, done at Geneva, on the 27th July, 1929, (hereinafter called "the Geneva Convention").

Although Japan did not ratify the said Convention, it became bind-

ing upon her for one or more of the following reasons:

- (a) It was signed on the said date by or on behalf of forty-seven nations, including Japan and each of the nations bringing the charges in this Indictment, and ratified by over forty nations, and thus became part or evidence of the Laws and Customs of War.
- (b) A communication dated the 29th January, 1942, signed by TOGO, Shigenori, one of the accused, as Foreign Minister on behalf of Japan, addressed to the Swiss Minister in Tokyo, contained the following statement:

"Although not bound by the Convention relative to the Treatment of Prisoners of War, Japan will apply *mutatis mutandis*, the provisions of that Convention to American prisoners of war."

In a communication dated on or about the 30th January, 1942, addressed to the Argentine Minister in Tokyo by TOGO, Shigenori, one of the accused, as Foreign Minister on behalf of Japan, it is stated:

"The Imperial Government has not yet ratified the Convention of 27th July, 1929, regarding the treatment of prisoners of war. They are not therefore subject to the said Convention. None the less, they will apply *mutatis mutandis* the conditions of that Convention to English, Canadian, Australian and New Zealand prisoners of war in their power. With regard to supply of food and clothing to prisoners of war, they will consider on conditions of reciprocity national and racial customs of the prisoners."

By the said communications or one of them, Japan acceded to the said Convention in accordance with Article 95 thereof, and the state of war then existing gave immediate effect to such accession.

- (c) The said communications constituted assurances to the United States of America, the United Kingdom of Great Britain and Northern Ireland, Canada, Australia and New Zealand, to whose governments the said communications were intended to be, and were repeated by the respective recipients thereof, and in each case to all nations who were at war with Japan.

Except in the said matters there are no provisions of the said Geneva Convention to which the expression "*mutatis mutandis*" could properly be applied.

3. The International Convention for the Amelioration of the Condition of the Wounded and the Sick in Armies in the Field, done at Geneva on the 27th July, 1929, (known as and hereinafter called 'the Red Cross Convention') provides (*inter alia*) as follows:

"Article 26: The Commanders-in-Chief of belligerent armies shall arrange the details for carrying out the preceding articles, as well as for cases not provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention."

Japan was a party to the said Convention, together with over forty other nations, which thus became part or evidence of the Laws and Customs of War. In the above-mentioned communication dated on or about the 29th January, 1942, Japan stated:

"Japan observes strictly the Geneva Convention of 27th July, 1929, relative to the Red Cross, as a state signatory of that Convention".

A communication dated the 13th February, 1942, signed by TOGO, Shigenori, one of the accused, as Foreign Minister on behalf of Japan, addressed to the Swiss Minister in Tokyo, contained the following statement:

"The Imperial Government will apply during the present war, on condition of reciprocity, the provisions relative to the treatment of prisoners of war of the 27th July, 1929, to enemy civilian internees, as far as applicable to them, and provided that labour will not be imposed upon them contrary to their free choice."

The said communication constituted an assurance to all the nations at war with Japan, (who in fact carried out the provisions of the said Convention as applicable to Japanese civilian internees) other than the Republic of China.

The above-mentioned assurances were repeated by the Japanese Foreign Ministry on several occasions, as recently as the 26th May, 1943.

PARTICULARS OF BREACHES

All the offences are breaches of the Laws and Customs of War, in addition to, and as proved in part by, the several Articles of the Conventions and assurances specifically mentioned.

SECTION ONE

Inhumane treatment, contrary in each case to Article 4 of the said Annex to the said Hague Convention and the whole of the said Geneva Convention and to the said assurances. In addition to the inhumane treatment alleged in Sections Two to Six hereof inclusive, which are incorporated in this Section, prisoners of war and civilian internees were murdered, beaten, tortured and otherwise ill-treated, and female prisoners were raped by members of the Japanese forces.

SECTION TWO

Illegal employment of prisoner of war labour, contrary in each case to Article 6 of the said Annex to the said Hague Convention and to Part III of the said Geneva Convention, and to the said assurances. The said employment was illegal in that:

- (a) prisoners of war were employed on work having connection and direct connection with the operations of war.
- (b) prisoners of war were employed on work for which they were physically unsuited, and on work which was unhealthy and dangerous.
- (c) the duration of daily work was excessive, and prisoners were not allowed rests of twenty-four consecutive hours in each week.
- (d) conditions of work were rendered more arduous by disciplinary measures.
- (e) prisoners were kept and compelled to work in unhealthy climates and dangerous zones, and without sufficient food, clothing or boots.

SECTION THREE.

Refusal and failure to maintain prisoners of war, contrary to Article 7 of the said Annex to the said Hague Convention, and Article 4 of Part III, Articles 9- 12 inclusive, of the said Geneva Convention, and to the said assurances.

Owing the differences of national and racial customs, the food and clothing supplied to the Japanese troops were, even when supplied to prisoners of war belonging to the white races, insufficient to maintain them. Adequate food and clothing were not supplied, either in accordance with the said Conventions or the said assurances.

The structural and sanitary condition of the camps and labour detachments failed entirely to comply with the said Articles and was extremely bad, unhealthy and inadequate.

Washing and drinking facilities were inadequate and bad.

SECTION FOUR

Excessive and illegal punishment of prisoners of war, contrary to Article 8 of the said Annex to the said Hague Convention and to Part III, Section V, Chapter 3 of the said Geneva Convention, and to the said assurances:

- (a) Prisoners of war were killed, beaten and tortured without trial or investigation of any kind, for alleged offences;
- (b) such unauthorized punishments were inflicted for alleged offences which, even if proved, were not under the said Conventions offences at all;
- (c) collective punishments were imposed for individual alleged offences;
- (d) prisoners were sentenced to punishment more severe than imprisonment for thirty days for attempting to escape;
- (e) conditions of the trial of prisoners did not conform to those laid down in the said Chapter;
- (f) conditions of imprisonment of prisoners sentenced did not conform to those laid down in the said Chapter.

SECTION FIVE

Mistreatment of the sick and wounded, medical personnel and female nurses, contrary to Articles 3, 14, 15 and 25 of the said Geneva Convention and Articles 1, 9, 10, and 12 of the said Red Cross Convention, and to the said assurances:

- (a) Officers and soldiers who were wounded, or sick, medical personnel, chaplains, and personnel of voluntary aid Societies were not respected or protected, but were murdered, ill-treated and neglected;
- (b) medical personnel, chaplains and personnel of voluntary aid Societies were wrongfully retained in Japanese hands;
- (c) female nurses were raped, murdered and ill-treated.

- (d) camps did not possess infirmaries, and seriously sick prisoners and those requiring important surgical treatment were not admitted to military or civil institutions qualified to treat them;
- (e) monthly medical inspections were not arranged;
- (f) sick and wounded prisoners were transferred although their recovery was prejudiced by their journeys.

SECTION SIX

Humiliation of prisoners of war, and especially officers, contrary to Article 8 of the said Annex to the said Hague Convention, and Articles 2, 3, 18, 21, 22 and 27 of the said Geneva Convention, and to the said assurances:

- (a) Prisoners were deliberately kept and made to work in territories occupied by Japan, for the purpose of exposing them to the insults and curiosity of the inhabitants;
- (b) prisoners in Japan and in occupied territories, including officers, were compelled to work on menial tasks and exposed to public view;
- (c) officer prisoners were placed under control of non-commissioned officers and private soldiers and compelled to salute them, and to work.

SECTION SEVEN

Refusal or failure to collect and transmit information regarding prisoners of war, and replies to enquires on the subject, contrary to Article 14 of the said Annex to the said Hague Convention and to Articles 8 and 77 of the said Geneva Convention, and to the said assurances:

Proper records were not kept, nor information supplied as required by the said Articles, and the most important of such records as were kept were deliberately destroyed.

SECTION EIGHT

Obstructions of the rights of the Protecting Powers, of Red Cross Societies, of prisoners of war and of their representatives, contrary to Article 15 of the said Annex to the said Hague Convention, and to Articles 31, 42, 44, 78 and 86 of the said Geneva Convention, and to the said assurances:

- (a) The representatives of the Protecting Power (Switzerland) were refused or not granted permission to visit camps and access to premises occupied by prisoners;
- (b) when such permission was granted they were not allowed to hold conversation with prisoners without witnesses or at all;
- (c) on such occasions conditions in camps were deceptively prepared to appear better than normal, and prisoners were threatened with punishment if they complained;

- (d) prisoners and their representatives were not allowed to make complaints as to the nature of their work or otherwise, or to correspond freely with the military authorities or the Protecting Power;
- (e) Red Cross parcels and mail were withheld.

SECTION NINE.

Employing poison, contrary to the International Declaration respecting Asphyxiating Gases signed by (inter alia) Japan and China at The Hague on the 29th July, 1899, and to Article 23(a) of the said Annex to the said Hague Convention, and to Article 171 of the Treaty of Versailles:

In the wars of Japan against the Republic of China, poison gas was used. This allegation is confined to that country.

SECTION TEN

Killing enemies who, having laid down their arms or no longer having means of defence, had surrendered at discretion, contrary to Article 23(c) of the said Annex to the said Hague Convention.

SECTION ELEVEN

Destruction of enemy Property, without military justification or necessity, and Pillage, contrary to Article 23(g), 28 and 47 of the said Annex to the said Hague Convention.

SECTION TWELVE

Failure to respect family honour and rights, individual life, private property and religious convictions and worship in occupied territories, and deportation and enslavement of the inhabitants thereof, contrary to Articles 46 of the said Annex to the said Hague Convention and to the Laws and Customs of War:

Large numbers of the inhabitants of such territories were murdered, tortured, raped and otherwise ill-treated, arrested and interned without justification, sent to forced labour, and their property destroyed or confiscated.

SECTION THIRTEEN

Killing survivors of ships sunk by naval action and crews of captured ships, contrary to Article 16 of Hague Convention No. 10 of 1907

SECTION FOURTEEN

Failure to respect military hospital ships, contrary to Article 1 of the last-mentioned Convention, and unlawful use of Japanese Hospital ships, contrary to Articles 6 and 8 thereof.

SECTION FIFTEEN.

Attacks, and specially attacks without due warning, upon neutral ships.

APPENDIX E.

Statement of Individual Responsibility for
Crimes Set Out in the Indictment.

- - -

The statements hereinafter set forth following the name of each individual Defendant constitute matters upon which the Prosecution will rely inter alia as establishing the individual responsibility of the Defendants.

It is charged against each of the Defendants that he used the power and prestige of the position which he held and his personal influence in such a manner that he promoted and carried out the offences set out in each Count of this Indictment in which his name appears.

It is charged against each of the Defendants that during the periods hereinafter set out against his name he was one of those responsible for all the acts and omissions of the various Governments of which he was a member, and of the various civil, military or naval organizations in which he held a position of authority.

It is charged against each of the Defendants, as shown by the numbers given after his name, that he was present at and concurred in the decisions taken at some of the conferences and cabinet meetings held on or about the following dates in 1941, which decisions prepared for and led to unlawful war on 7th/8th December 1941.

1.	25th June, 1941	(Liaison)
2.	26th June, 1941	(Liaison)
3.	27th June, 1941	(Liaison)
4.	28th June, 1941	(Liaison)
5.	30th June, 1941	(Supreme War Council)
6.	2nd July, 1941	(Imperial)
7.	7th August, 1941	(Thought Control Council)
8.	22nd August, 1941	(Cabinet)
9.	6th September, 1941	(Imperial)
10.	17th October, 1941	(Ex-Premiers)
11.	28th November, 1941	(Liaison)
12.	29th November, 1941	(Ex-Premiers)
13.	1st December, 1941	(Imperial)
14.	1st December, 1941	(Cabinet)

ARAKI:

The Defendant ARAKI between 1928 and 1945 was, among other positions held:- Chief of General Affairs Department of the Office of Inspector General of Military Training (1931); Minister of War under INUKAI and SAITO (December 1931 to July 1934); a full General (1933); Member of the Supreme War Council (1934 to 1936); Member of the Cabinet Advisory Council on China (1937); Education Minister under KONOYE and then under HIRANUMA (May 1938 to August 1939); Member of the Cabinet Advisory Council (1940).

DOHIHARA:

The defendant DOHIHARA between 1928 and 1945 was, among other positions held:- Commander of the Special Service Section in Manchuria (September 1931); Mayor of Mukden (September to October 1931; attached to Headquarters, Kwantung Army (1933); Chief Adviser to the North China autonomous Government; Commander-in-Chief Japanese 5th Army Manchuria (1938 to 1940); Supreme War Councillor (1940 to 1943); Inspector General of Military Aviation (1941); full General (April 1941); Commander-in-Chief Eastern Army in Japan (1943); Commander of the 7th Area Army at Singapore (1944 to 1945); Inspector General Military Training (April 1945).

Conferences:- 5.

HASHIMOTO:

The Defendant HASHIMOTO between 1928 and 1945 was, among other positions held:- attached Army General Staff (1933); retired from Army (February 1936); author of "Declarations of HASHIMOTO Kingoro" (1936); re-entered the Army (1937); commanded an Artillery Regiment at the Rape of Nanking (1937); in command of Japanese forces which shelled the Ladybird and the Panay (1937); author of a large number of books, articles in the magazine "Taiyo Dai Nippon" and other publications and public speeches, all advocating aggressive warfare; member of number of societies for the instigation of army control over politics and furtherance of aggressive warfare; promoter of a number of plots designed to remove politicians and officers whom he did not consider sufficiently aggressive; a founder of the I.R.A.A. (1940); elected to the Lower House of the Diet (1942).

HATA:

The Defendant HATA between 1928 and 1945 was, among other positions held:- Divisional Commander in Manchuria (1933); Chief of Army Aviation Department (1935); Commander of the Taiwan Army (1936 to 1937); Inspector General of Military Education and Member of the Supreme War Council (August 1937); a full General (February 1937), Commander-in-Chief of the Expeditionary Force in Central China (February 1938); Member of the Supreme War Council (January 1939); War Minister under ABE (August 1939 to January 1940); Commander-in-Chief of the Expeditionary Force in Central China (July 1940 to 1944); Field Marshal and Member of the Board of Marshals and Admirals (June 1944); Inspector General of Military Education (November 1944).

HIRANUMA:

The Defendant HIRANUMA between 1928 and 1945 was, among other positions held:- Founder of the KOKUHONSHA and President from 1926 to 1936; Vice President of Privy Council (1930 to 1936); President of Privy Council (1936 to 1939); Prime Minister (January to August 1939); Minister without Portfolio under KONOYE and for a time Home Minister and later Vice-Premier (July 1940 to October 1941); Member of Thought Control Council (August 1941); President Privy Council (1945)

Conferences:- 1, 2, 3, 4, 6, 7, 8, 12.

HIROTA:

The Defendant HIROTA between 1928 and 1945 was, among other positions held:- Ambassador to the Union of Soviet Socialist Republics (1930); Foreign Minister (September 1933 to July 1934) under SAITO, and from July 1934 to March 1936 under OKADA, Prime Minister and for a time Foreign Minister concurrently (March 1936 to February 1937); Foreign Minister under KONOYE (June 1937 to May 1938); Member of the Cabinet Advisory Council (1940).

Conferences:- 10, 12.

HOSHINO:

The Defendant HOSHINO between 1928 and 1945 was, among other positions held:- Chief General Affairs Bureau of the Finance Department of the Manchukuo Government (1932); Chief of General Affairs in the Finance Ministry of Manchukuo (1934); Vice Minister Finance in the Manchukuo Government (1936); Chief, General Affairs Bureau in the National Affairs Office of Manchukuo (December 1936); Chief of General Affairs in Manchukuo (July 1938); President of the Planning Board and later Minister without Portfolio under KONOYE (July 1940 to April 1941); Chief Secretary and Minister of State under TOJO (October 16th, 1941 to July 1944); Advisor to Finance Ministry (December 1944).

Conferences:- 11, 14.

ITAGAKI:

The Defendant ITAGAKI between 1928 and 1945 was, among other positions held:- full Colonel Kwantung Army (1929); Major General, Kwantung Army (1932); Vice Chief of Staff, Kwantung Army (1934); Commander 5th Division in China (March 1937); Chief of Staff, Kwantung Army (1936 to 1937); Attached to Headquarters, General Staff (May 1937); War Minister under KONOYE and HIRANUMA from June 1938 to August 1939 and concurrently President of the Manchurian Affairs Bureau of the Cabinet; Chief of Staff, Japanese Army in China (September 1939); full General (July 1941); Commander, Japanese Army in Korea (July 1941 to 1945); Member of Supreme War Council (1943); Commander 7th Area Army in Singapore (April 1945).

KAYA:

The Defendant KAYA between 1928 and 1945 was, among other positions held:- Chief Secretary, Finance Ministry (1934); Minister of Finance (June 1937 to May 1938) under KONOYE; on the Advisory Committee, China Affairs Board (1939); President, North China Development Company (1939 to 1941); Finance Minister under TOJO (June 1941 to February 1944); Director I.R.A.P.S. (1944).

Conferences:- 11, 12, 13, 14.

KIDO:

The Defendant KIDO between 1928 and 1945 was, among other positions held:- Chief Secretary to the Lord Keeper of the Privy Seal (1930); Education Minister under KONOYE (1937); Welfare Minister under KONOYE (1938); Home Minister under HIRANUMA (1939); Lord Keeper of the Privy Seal (1940 to 1945); chief confidential advisor to the Emperor and presided at meetings of Ex-Premiers.

Conferences:- 10, 12.

KIMURA:

The Defendant KIMURA between 1928 and 1945 was, among other positions held:- Chief of Staff, Kwantung Army (1940); Vice War Minister under KONOYE and TOJO (1941 to February 1944); Member Supreme War Council (1943); Commander in Chief Japanese Army, Burma (1944); full General (1945).

KOISO:

The Defendant KOISO between 1928 and 1945 was among other positions held:- Director, Military Affairs Bureau of the War Ministry (1930); Vice War Minister under INUKAI (1932); Chief of Staff, Kwantung Army (1932 to 1934); Commander Japanese Army, Korea (1935 to 1936); full General (1937); Overseas Minister under HIRANUMA (1939) and under YONAI (1940); Governor General Korea (May 1942); Prime Minister (July 1944 to April 1945).

MATSUI:

The Defendant MATSUI between 1928 and 1945 was among other positions held:- Representative of the Japanese Army at the Geneva Conference (1931); Member of the Supreme War Council (March 1933); a full General (1933); a founder of the Greater East Asia Society (1933); Commander-in-Chief, Japanese Forces in Central China (October 1937 to February 1938); Member of the Cabinet Advisory Council (July 1938 to January 1940); Adviser to the Asia Promotion Federation (1940); Adviser to the Greater East Asia Affairs Section of the I.R.A.A. (1943); President of the Greater East Asia Development Society (1944).

MATSUOKA;

The Defendant MATSUOKA between 1928 and 1945 was, among other positions held:- Chief Delegate to the League of Nations Assembly (1933); President of the South Manchurian Railway (1935 to 1939) ; Member of the Cabinet Advisory Council (1940); Foreign Minister under KONOYE (July 1940 to July 1941); author of "Showa Restoration" (1938) and other books and articles and public speeches advocating aggressive warfare.

Conferences:- 1.2.3.4.6.

MINAMI:

The Defendant MINAMI between 1928 and 1945 was, among other positions held:- Commander, Japanese Army, Korea (1929); War Minister under WAKATSUKI (April 1931 to December 1931); Supreme War Councillor (1931 to 1934); Commander in Chief, Kwatung Army (1934 to 1936) ; Governor General of Korea (1936 to 1942); Member of the Privy Council (1942 to 1945); President of the Political Association of Great Japan (1945)

MUTO:

The Defendant MUTO between 1928 and 1945 was ,among other positions held:- Instructor at the Military Staff College (1930 to 1932); Senior Officer of the Military Affairs Bureau of the War Ministry (1935 to 1936); Chief of a section of the General Staff (1937) ; attached Headquarters Staff, Central China Army (August 1937); Colonel, attached to Kwantung Army Headquarters; Chief of the Military Affairs Bureau (October 1939 to April 1942); commanded 2nd Guards Division in Sumatra (1943); Chief of Staff of the 14th Area Army in the Philippines under General Yamashita (October 1944)

Conferences:- 1.2.3.4.6.9.11.13.

NAGANO:

The Defendant NAGANO between 1928 and 1945 was, among other positions held:- Vice Chief, Naval General Staff (1930); Delegate to the Geneva Naval Conference (1931); Member Supreme War Council (1933); full Admiral (1934); Chief Delegate to London Naval Conference (1935); Navy Minister under HIROTA (March 1936 to February 1937); Commander-in-Chief of Combined Fleet (1937); Member of Supreme War Council (1940); Chief of Naval General Staff (April 1941 to February 1944); Supreme Naval Adviser to the Emperor from February 1944.

Conferences:- 1.2.3.4.6.9.11.13.

OKA:

The Defendant OKA between 1928 and 1945 was, among other positions held:- on the Naval General Staff (1930); Section Chief, General and Military Affairs Bureau of the Navy (1938); Chief, General and Military Affairs Bureau of the Navy (October 1940 to August 1944); Vice Admiral (1942); Vice Navy Minister (20 July 1944) under KOISO; Commander-in-Chief Chinkai (Korea) Naval Station (September 1944 to June 1945);

Conferences:- 1.2.3.4.6.9.11.13.

OKAWA:

The Defendant OKAWA between 1928 and 1945 was, among other positions held:- Director General of the East Asia Research Institute of the South Manchurian Railway from 1926; an organizer of the Mukden Incident (September 18th, 1931); author of "A Japanese History Reader" (1935); and books, articles and speeches advocating aggressive war for the expulsion by force of the white races from Asia.

OSHIMA:

The Defendant OSHIMA between 1928 and 1945 was, among other positions held:- Military Attache in Berlin (1936); Ambassador to Germany (October 1938 to October 1939); and again from February 1941 to April 1945.

SATO:

The Defendant SATO between 1928 and 1945 was, among other positions held:- Instructor, Army General Staff College (1935); attached to the Military Affairs Bureau of the War Ministry; Member of the Planning Board (1937 to 1938); Chief of the Military Affairs Section of the Military Affairs Bureau of the War Ministry (February 1941 to April 1942); Major General (October 1941); Chief of Military Affairs Bureau of the War Ministry (April 1942 to December 1944); Lieutenant General (March 1945).

SHIGEMITSU:

The Defendant SHIGEMITSU between 1928 and 1945 was, among other positions held:- Minister to China (1931); Vice Foreign Minister under SAITO and OKADA (1933 to 1936); Ambassador to the Union of Soviet Socialist Republics (November 1936 to November 1938); Ambassador to Great Britain (1938 to June 1941); Ambassador to the Nanking Puppet Government (December 1941 to April 1943); Foreign Minister under TOJO (April 1943 to July 1944) and Foreign Minister and concurrently Minister for Greater East Asia under KOISO (July 1944 to April 1945).

SHIMADA:

The Defendant SHIMADA between 1928 and 1945 was, among other positions held:- Chief of Staff, Combined Fleet (1930); Vice Chief, Naval General Staff (1935 to 1937); Commander of the Second Fleet (December 1937); Commander, China Fleet (May 1940); full Admiral (1940); Navy Minister under TOJO (October 1941); appointed to Supreme War Council (1944); Chief of Naval General Staff (February to July 1944).

Conferences:- 12.13.14.

SHIRATORI:

The Defendant SHIRATORI between 1928 and 1945 was, among other positions held:- Chief of Information Bureau of Foreign Office (1930); Minister to Sweden, Norway, Denmark, Finland (1936); Ambassador to Italy (1939); Advisor, Japanese Foreign Office (1940); author of an article in "Contemporary Japan" pointing out the necessity of a World Conflict to establish the "New Order in Asia" (April 16, 1941); Director I.R.A.P.S. (1943).

SUZUKI:

The Defendant SUZUKI between 1928 and 1945 was, among other positions held:- Member of the Military Affairs Section of the War Ministry (1931); attached to the Bureau of Military Affairs of the War

Department (1933); Official of the Investigation Bureau of the Cabinet (1935); Regimental Commander of the 14th Regiment (1936); Chief of the Political Affairs Division of the China Affairs Board (December 1938 to April 1941); Acting Director General thereof in 1940; President of the Cabinet Planning Board and Minister without Portfolio (April 1941 to October 1943) under KONOYE and TOJO; Cabinet Adviser (November 1943 to September 1944); Director of the I.R.A.A. (1944).

Conferences; - 6, 8, 9, 11, 13, 14.

TOGO:

The Defendant TOGO between 1928 and 1945 was, among other positions held: - Ambassador to Germany (October 1937); Ambassador to the Union of Soviet Socialist Republics (October 1938); Foreign Minister and Minister for Overseas Affairs under TOJO (October 1941 to March 1942); Foreign Minister and Minister of greater East Asia under SUZUKI (April 1945).

Conferences; - 11, 12, 13, 14.

TOJO:

The Defendant TOJO between 1928 and 1945 was, among other positions held: - Head of the First Section of the General Staff (1931 to 1932); Chief of the Investigation Section of the Army Communications School (1932); Commander of the Military Police of the Kwantung Army (1935); Chief of Staff, Kwantung Army (1937) Vice War Minister under KONOYE (May to December 1938); Director General of Military Aviation (1938 to 1939) War Minister under KONOYE (July 1940 to December 1941); full General (October 1940); Prime Minister and War Minister concurrently (December 2, 1941 to July 1944) - during which period he was also, at times, Home Minister, Minister of Munitions, and Chief of General Staff.

Conferences; - 1, 2, 3, 4, 5, 6, 8, 9, 11, 12, 13, 14.

UMEZU:

The Defendant UMEZU between 1928 and 1945 was, among other positions held: - Chief of the General Affairs Department of the War Ministry (1931); Commander of the Japanese Forces in China (1934); Vice War Minister under HIROTA, HAYASHI and KONOYE (March 1936 to May 1938); Commander of the Kwantung Army and Ambassador to Manchukuo (1939 to 1944); full General (1940); Chief of General Staff (July 1944 to 1945).

ERRATUM

COUNT 52

The following Count 52 is substituted for Count 52 as it appears on page 12 of the Indictment:

The Defendants ARAKI, DOHIHARA, HATA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KIDO, MATSUOKA, MATSUI, SHIGEMITSU, SUZUKI and TOJO by ordering, causing and permitting the armed forces of Japan to attack the territory of the Union of Soviet Socialist Republics, with which nation Japan was then at peace, (in the region of Lake Khasan in the months of July and August 1938) unlawfully killed and murdered certain members of the armed forces of the Union of Soviet Socialist Republics, whose names and number are at present unknown.

C.188
24th May, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

New Text Of The Charter Of The International
Military Tribunal For The Far East.

The Charter of the International Military Tribunal for the Far East, annexed to the Special Proclamation of the Supreme Commander for the Allied Powers (Doc. C.182) has been amended by General Orders No.20 dated 26th April, 1946.

The following is the text of the amending Order, signed by command of General MacArthur by Major General Richard J. Marshall.

General Orders No. 1, General Headquarters, Supreme Commander for the Allied Powers, 19 January 1946, subject as below, is superseded. The Charter of the International Military Tribunal for the Far East established by Proclamation of the Supreme Commander for the Allied Powers, 19 January 1946, is amended, and as amended, reads as follows:

CHARTER OF THE

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

SECTION I

CONSTITUTION OF TRIBUNAL

ARTICLE 1. Tribunal Established. The International Military Tribunal for the Far East is hereby established for the just and prompt trial and punishment of the major war criminals in the Far East. The permanent seat of the Tribunal is in Tokyo.

ARTICLE 2. Members. The Tribunal shall consist of not less than six members nor more than eleven members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender, India, and the Commonwealth of the Philippines.

ARTICLE 3. Officers and Secretariat.

a. President. The Supreme Commander for the Allied Powers shall appoint a Member to be President of the Tribunal.

b. Secretariat.

- (1) The Secretariat of the Tribunal shall be composed of a General Secretary to be appointed by the Supreme Commander for the Allied Powers and such assistant secretaries, clerks, interpreters, and other personnel as may be necessary.
- (2) The General Secretary shall organize and direct the work of the Secretariat.

- (3) The Secretariat shall receive all documents addressed to the Tribunal, maintain the records of the Tribunal, provide necessary clerical services to the Tribunal and its members, and perform such other duties as may be designated by the Tribunal.

ARTICLE 4. Convening and Quorum, Voting, and Absence.

a. Convening and Quorum. When as many as six members of the Tribunal are present, they may convene the Tribunal in formal session. The presence of a majority of all members shall be necessary to constitute a quorum.

b. Voting. All decisions and judgements of this Tribunal, including convictions and sentences, shall be by a majority vote of those members of the Tribunal present. In case the votes are evenly divided, the vote of the President shall be decisive.

c. Absence. If a member at any time is absent and afterwards is able to be present, he shall take part in all subsequent proceedings; unless he declares in open court that he is disqualified by reason of insufficient familiarity with the proceedings which took place in his absence.

SECTION II

JURISDICTION AND GENERAL PROVISIONS

ARTICLE 5. Jurisdiction Over Persons and Offences. The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offences which include Crimes against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

a. Crimes against Peace: Namely, the planning, preparation initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

b. Conventional War Crimes: Namely, violations of the laws or customs of war;

c. Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are re-sponsible for all acts performed by any person in execution of such plan.

ARTICLE 6. Responsibility of Accused. Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

ARTICLE 7. Rules of Procedure. The Tribunal may draft and amend rules of procedure consistent with the fundamental provisions of this Charter.

ARTICLE 8. Counsel.

a. Chief of Counsel. The Chief of Counsel designated by the Supreme Commander for the Allied Powers is responsible for the investigation and prosecution of charges against war criminals within the jurisdiction of this Tribunal and will render such legal assistance to the Supreme Commander as is appropriate.

b. Associate Counsel. Any United Nation with which Japan has been at war may appoint an Associate Counsel to assist the Chief of Counsel.

SECTION III

FAIR TRIAL FOR ACCUSED

ARTICLE 9. Procedure for Fair Trial. In order to insure fair trial for the accused the following procedure shall be followed:

a. Indictment. The indictment shall consist of a plain, concise, and adequate statement of each offence charged. Each accused shall be furnished, in adequate time for defence, a copy of the indictment, including any amendment, and of this Charter, in a language understood by the accused.

b. Language. The trial and related proceedings shall be conducted in English and in the language of the accused. Translations of documents and other papers shall be provided as needed and requested.

c. Counsel for Accused. Each accused shall have the right to be represented by counsel of his own selection, subject to the disapproval of such counsel at any time by the Tribunal. The accused shall file with the General Secretary of the Tribunal the name of his counsel. If an accused is not represented by counsel and in open court requests the appointment of counsel, the Tribunal shall designate counsel for him. In the absence of such request the Tribunal may appoint counsel for an accused if in its judgment such appointment is necessary to provide for a fair trial.

d. Evidence for Defence. An accused shall have the right, through himself or through his counsel (but not through both), to conduct his defence, including the right to examine any witness, subject to such reasonable restrictions as the Tribunal may determine.

e. Production of Evidence for the Defence. An accused may apply in writing to the Tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located. It shall also state the facts proposed to be proved by the witness or the document and the relevancy of such facts to the defence. If the Tribunal grants the application the Tribunal shall be given such aid in obtaining production of the evidence as the circumstances require.

ARTICLE 10. Applications and Motions before Trial. All motions, applications, or other requests addressed to the Tribunal prior to the commencement of trial shall be made in writing and filed with the General Secretary of the Tribunal for action by the Tribunal.

SECTION IV

POWERS OF TRIBUNAL AND CONDUCT OF TRIAL

ARTICLE 11. Powers. The Tribunal shall have the power:

a. To summon witnesses to the trial, to require them to attend and testify, and to question them.

b. To interrogate each accused and to permit comment on his refusal to answer any question.

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

d. To require of each witness an oath, affirmation, or such declaration as is customary in the country of the witness, and to administer oaths.

e. To appoint officers for the carrying out of any task designated by the Tribunal, including the power to have evidence taken on commission.

ARTICLE 12. Conduct of Trial. The Tribunal shall:

a. Confine the trial strictly to an expeditious hearing of the issues raised by the charges.

b. Take strict measures to prevent any action which would cause any unreasonable delay and rule out irrelevant issues and statements of any kind whatsoever.

c. Provide for the maintenance of order at the trial and deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any accused or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.

d. Determine the mental and physical capacity of any accused to proceed to trial.

ARTICLE 13. Evidence.

a. Admissibility. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value. All purported admissions or statements of the accused are admissible.

b. Relevance. The Tribunal may require to be informed of the nature of any evidence before it is offered in order to rule upon the relevance.

c. Specific evidence admissible. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

- (1) A document, regardless of its security classification and without proof of its issuance or signature, which appears to the Tribunal to have been signed or issued by any officer, department, agency or member of the armed forces of any government.
- (2) A report which appears to the Tribunal to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person who appears to the Tribunal to have personal knowledge of the matters contained in the report.
- (3) An affidavit, deposition or other signed statement.
- (4) A diary, letter or other document, including sworn or unsworn statements, which appear to the Tribunal to contain information relating to the charge.

- (5) A copy of a document or other secondary evidence of its contents, if the original is not immediately available.

d. Judicial Notice. The Tribunal shall neither require proof of facts of common knowledge, nor of the authenticity of official government documents and reports of any nation nor of the proceedings, records, and findings of military or other agencies of any of the United Nations.

e. Records, Exhibits, and Documents. The transcript of the proceedings, and exhibits and documents submitted to the Tribunal, will be filed with the General Secretary of the Tribunal and will constitute part of the Record.

ARTICLE 14. Place of Trial. The first trial will be held at Tokyo, and any subsequent trials will be held at such places as the Tribunal decides.

ARTICLE 15. Course of Trial Proceedings. The proceedings at the Trial will take the following course:

- a. The indictment will be read in court unless the reading is waived by all accused.
- b. The Tribunal will ask each accused whether he pleads "guilty" or "not guilty".
- c. The prosecution and each accused (by counsel only, if represented) may make concise opening statement.
- d. The prosecution and defence may offer evidence, and the admissibility of the same shall be determined by the Tribunal.
- e. The prosecution and each accused (by counsel only, if represented) may examine each witness and each accused who gives testimony.
- f. Accused (by counsel only, if represented) may address the Tribunal.
- g. The prosecution may address the Tribunal.
- h. The Tribunal will deliver judgment and pronounce sentence.

SECTION V

JUDGMENT AND SENTENCE

ARTICLE 16. Penalty. The Tribunal shall have the power to impose upon an accused, on conviction, death, or such other punishment as shall be determined by it to be just.

ARTICLE 17. Judgment and Review. The judgment will be announced in open court and will give the reasons on which it is based. The record of the trial will be transmitted directly to the Supreme Commander for the Allied Powers for his action. Sentence will be carried out in accordance with the Order of the Supreme Commander for the Allied Powers, who may at any time reduce or otherwise alter the sentence, except to increase its severity.

C.199.
24th May, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Sample of annotated summary trial report.

The following annotated summary of the Trial against the captain and the crew of the German submarine 852, who sunk the Greek Steamship PELEUS and fired and threw hand grenades on the survivors, was prepared by the Legal Officer, E. Schwelb, for circulation to the members as a sample of the proposed summaries of war crimes trials, the production of which was discussed in the Commission meeting of 15th May 1946, M.105.

This paper is based on the transcript of the proceedings of the United Kingdom Military Court held at Hamburg from the 17th to the 20th October 1945.

Papers giving a preliminary information on this case were circulated in the Trial and Law Reports Series under Nos. 5 (November 1945) and 10 (January 1946).

The contents of the paper are:

- A. Summary of the proceedings and facts of the case,
- B. Notes on the case.

A. SUMMARY OF THE PROCEEDINGS AND FACTS OF THE CASE.

I. The Court.

The court was a British Military Court convened under the Royal Warrant of 14th June 1945, Army Order 81/1945, by which Regulations for the trial of War Criminals were issued. It consisted of a British Brigadier as President, two officers of the British Army, two officers of the Royal Navy and two officers of the Royal Hellenic Navy as members.

II. The Charge.

The prisoners were:

Kapitänleutnant HEINZ ECK,
Leutnant zur See AUGUST HOFFMANN,
Marine Stabsarzt WALTER WEISSPENNIG,
Kapitänleutnant (Ing) HANS RICHARD LENZ,
Gefreiter SCHWENDER.

They were charged jointly with the following crime:

"Committing a war crime in that you in the Atlantic Ocean on the night of 13th/14th March 1944 when Captain and members of the crew of Unterseeboot 852 which had sunk the steamship "Peleus" in violation of the laws and usages of war were concerned in the killing of members of the crew of the said steamship, Allied nationals, by firing and throwing grenades at them."

It was submitted on behalf of the defence that the charge may be read in two different ways, namely that the phrase "in violation of the laws and usages of war" qualified either the word "sunk" or the word "concerned" and what followed it. The first interpretation means that the steamship "Peleus" was sunk in violation of the laws and usages of war. The second construction means that the killing of members of the crew was in violation of the laws and usages of war.

It was made clear at the outset by the prosecution that the phrase "in violation of the laws and usages of war" qualifies the words that follow it, and not the words that precede it, or in other words, that the prisoners are not accused of having violated the laws and usages of war by sinking the merchantman, but only by firing and throwing grenades on the survivors of the sunken ship.

III. The Opening of the case by the Prosecutor.

The Peleus was a Greek ship chartered by the British Ministry of War Transport. The crew consisted of a variety of nationalities; there were 18 Greeks, 8 British seamen, one seaman from Aden, two Egyptians, three Chinese, a Russian, a Chilean and a Pole on board.

On the 13th March 1944, the ship was sunk in the middle of the Atlantic Ocean by the German submarine No. 852, commanded by the first accused, Heinz ECK. Apparently the majority of the members of the crew of the Peleus got into the water and got to two rafts and wreckage that was floating about. The submarine surfaced, called over one of the members of the crew who was interrogated as to the name of the ship, where she was bound and other information.

The submarine then proceeded to open fire on the survivors in the water and on the rafts with a machine-gun or machine-guns and also threw hand grenades on the survivors, with the result that all of the crew in the water were killed or died of their wounds, except for three, namely the Greek first officer, a Greek seaman and a British seaman. These men remained in the water for over 25 days, were then picked up by a Portuguese steam ship and taken into port.

Later in the year, a U-boat was attacked from the air on the East Coast of Africa and was compelled to beach. Her log was found, and in it there was a note that on the 13th March 1944, she had torpedoed a boat in the approximate position in which the SS Peleus was torpedoed. That U-boat was the U-boat No. 852 commanded by the accused Eck and among its crew were the other four accused, three of them being officers, including the medical officer, and one an NCO.

Five members of the crew of the U-boat made statements to the effect that they saw the four accused members of the crew firing the machine gun and throwing grenades in the direction of the rafts which were floating about in the water.

IV. Evidence for the Prosecution.

The prosecution put in the affidavits by the three survivors of the crew of the Peleus and called five members of the crew of the U-boat as witnesses.

On the application of the prosecution, arrangements were made for the names of these German witnesses, giving evidence for the prosecution, not to be published by the Press.

The facts as appearing on this evidence were that the accused captain of the U-boat, ECK, had ordered the shooting and throwing of hand grenades at the rafts and the floating wreckage and that the accused, Lt. HOFFMANN, Oberstabsarzt WEISSPENNIG and Gefreiter SCHWENDER had done the actual shooting and throwing of grenades, ordered by ECK. The fifth accused, Kapitän-Leutnant Engineer LENZ appears to have behaved in the following way: (a) on the one hand, when he had heard that the captain had decided to eliminate all traces of the sinking, he approached the captain and informed him that he was not in agreement with this order. Eck replied that he was nevertheless determined to eliminate all traces of the sinking. LENZ then went below to note the survivors' statements in writing and did not take part in the shooting and throwing of grenades. (b) Later on, LENZ went on the bridge and noticed the accused Schwender with a machine gun in his hand. He saw that Schwender was about to fire his machine gun at the target and thereupon he, (LENZ) took the machine gun from Schwender's hand and fired it himself in the general direction of the target indicated. He did this because he considered that Schwender, long known to him as one of the most unsatisfactory ratings in their boat, was unworthy to carry out such an order.

V. Outline of the Defence.

The defence on behalf of Heinz ECK was based on the submission that he, as the commander of the U-boat, acted not out of cruelty or revenge but that he decided to eliminate all traces of the sinking. The defence was based on the consideration that the elimination of the traces of the Polus was operationally necessary in order to save the U-boat.

The other accused relied mainly on the plea of superior order. In addition to counsel of the individual accused, the German Professor of criminal and international law, Wegner, acted as counsel for all the defendants.

In elaborating the defence of operational necessity, Professor Wegner pointed out that submarine commanders have long been in an unfortunate position. When the submarine was a comparatively new weapon, the Washington Convention wanted to treat the commanders of submarines in certain cases as pirates. This, however, was never ratified by the countries concerned which were meanwhile matured by experience.

With regard to the plea of superior order, Professor Wegner said that he stuck "to the good old English principles" laid down by the "Caroline case", according to which, he submitted, it has been a well-established rule of international law that the individual forming part of a public force and acting under authority of his own Government is not to be held answerable as a private trespasser or malfactor, that what such an individual does was a public act, done by such a person in H.M. service acting in obedience to superior orders and that the responsibility, if any, rests with H.M. Government. Superior command, as excluding personal responsibility, has, Professor Wegner said, also been recognised in the treatment of prisoners of war since the Conventions of 1929. He further invoked an alleged statement by Mr. Justice Jackson.

Whatever may be the merits of the modern conception of war crimes, it must not be permitted to obscure old and sound principles of criminal law and procedure. Professor Wegner further referred to the great principle expressed by the Latin phrase Nullum crimen sine lege, nulla poena sine lege.

VI. Evidence by the accused Heinz Eck, Commander of the Submarine.

The accused, Heinz ECK, during examination and cross examination, did not plead that, when ordering the shooting at the rafts and the wreckage, he had acted on superior order.

His orders were that, when operating in the South Atlantic, he was to be concealed as far as possible because great numbers of U-boats had been sunk in that particular region. He manoeuvred the boat on the spot of the sinking, ordered small arms on deck to prevent danger to the boat by the survivors, as he had heard of cases where this had actually happened. He formed the decision to destroy all pieces of wreckage and rafts and gave the order to open fire on the floating rafts. He thought that the rafts were a danger to him because firstly they would show to aeroplanes the exact spot of the sinking and secondly because rafts at that time of the war, as was well known, could be provided with modern signalling communication. When he opened fire there were no human beings to be seen on the rafts. He also ordered hand grenades to attack, after he had realised that by mere machine gun fire the raft did not sink. He thought that the survivors had jumped out of the rafts. He further admitted that the Leading Engineer, LENZ objected to the order. Lenz said he did not agree with it, but he, Eck, told him that despite everything, he thought it right and proper to destroy all traces.

It was clear to him that the possibility of saving the survivors' lives disappeared. He could not take the survivors on board the U-boat because it was against his orders. He was under the impression that the mood on board was rather depressing. He himself was in the same mood; on account of that he said to the crew that with a heavy heart he had finally made the decision to destroy the remainder of the sunken ship.

ECK referred to an alleged incident regarding the boat "Hartenstein", of which he had been told by two officers. After that boat had saved the lives of many survivors, it was located by an aeroplane. The boat showed the Red Cross sign and one of the survivors, a flying officer, had, with a signal lamp, given some signals to the aeroplane not to attack the boat because of the survivors being on board, including women. The plane left, and after a time it returned and attacked the boat, which was forced to unload the survivors again, in order to dive, and it survived only with some damage. This case, which he had been told about before the beginning of his voyage showed him that on the enemy side military reasons came before human reasons, before saving the lives of the survivors. For that reason, he thought his measures justified.

The firing went on for about five hours.

In his address to the crew, he said: "If we are influenced by too much sympathy, we must also think of our wives and children who at home die also as victims of air attack".

To the prosecutor's question: "Sympathy about the wreckage?", Eck said it was quite clear to him that the survivors would also die. Eck realised that they would die as a result of his shooting. He gave the order to shoot to Hoffmann, Weisspfennig and Schwender, but not to Lenz.

Eck's description of the Hartenstein incident was, in the main, confirmed by an English witness, a solicitor serving as a temporary civil servant at the Admiralty. He confirmed that, as a result of the incident, the German U-boat Command issued instructions as follows:

"No attempt of any kind should be made at rescuing members of ships sunk, and this includes picking up persons in the water and putting them in lifeboats, righting capsized lifeboats and handing over food and water. Rescue runs counter to the rudimentary demands of warfare for the destruction of enemy ships and crews. Orders for bringing Captains and Chief Engineers still apply. Rescue the shipwrecked only if their statements will be of importance for your boat. Be harsh, having in mind that the enemy takes no regard of women and children in his bombing attacks of German cities."

VII. Examination of the Defence Witness, Captain Schnee.

This officer, a member of the German U-boat command, who had sunk about 30 allied ships and received the Oak Leaf of the Iron Cross, described the instructions he had given to Eck before Eck left. He pointed out to him that the situation in this particular zone was very difficult for the Germans. In the months prior to the happening all boats of this type had been lost. The German U-boat command explained the destruction of these boats in that particular zone by two reasons, the first being that this particular type of U-boat was the biggest of the German U-boat fleet and consequently the heaviest and slowest, and therefore the most vulnerable. The second reason was that there was strong aircraft cover between the area of Freetown and Ascension. These air bases were in connection with aircraft carriers and so they were able to chase submarines until they could destroy them. Once the presence of the boat was detected in these waters, then aircraft defence had the opportunity to follow it up with all its power and to destroy it. Traces of the sunken ship would be recognisable for the next few days and could be recognised by a plane. To the question whether it would not have been more advisable for Eck, instead of wasting time in destroying the wreckage, to take advantage of the night and leave the spot of the sinking, Schnee thought that in the best possible conditions the boat could only cover a distance of about 150 sea-miles during the night, a distance which is of no importance for air reconnaissance. During the course of the cross-examination of Schnee, the following discussion took place between Col. Halse, the Prosecuting officer, the Judge Advocate and the witness:

Col. Halse: As an experienced U-boat commander, what would you have done if you were in Eck's position on the night of the 13th March?

A. I do not know this case well enough to give an answer.

The Judge Advocate: Come; you can do a little better than that. You know the circumstances of this case, do you not? You have been giving evidence about them?

Q: You have dealt in great detail with the propriety of leaving the site of the sinking have you not?

Q: You were asked what would you have done if you had been the Commander of U-852 and had just sunk the "Pelorus"? A. It is very difficult for me to give an answer to that.

Q: Would you try? A. Now that the war is over I cannot possibly put myself in such a difficult position as Captain Eck was at that time.

Q: The fact that the war is over has not deprived you of your imagination has it? Just answer yes or no. A. No.

Q: What would you have done if you had been in Eck's position? A. I would under all circumstances have tried my best to save lives, as that is a measure which was taken by all U-boat commanders but when I hear of this case, then I can only explain it as this, that Captain Eck through the terrific experience he had been through, lost his nerves.

Q: Does that mean that you would not have done what Captain Eck did if you had kept your nerve? A. I would not have done it.

Q: Did B.D.U. (The German U-boat command) approve of the killing of survivors? A. No, it did not approve, not at the time when I was a member of the staff of B.D.U.

Q: You were on the staff of B.D.U. in March 1944? A. Yes.

Q: Were orders issued that survivors were not to be killed? A. It was not necessary because this order had already been issued at the outbreak of war.

VIII. Examination of the four other accused.

The accused HOFFMANN, during his examination, mainly relied on the order given by the Commandant.

The accused WEISSPFENNIG also referred to the order but admitted that in the German navy there were regulations about the conduct of medical officers which forbade medical officers using weapons for offensive purposes. Weisspfennig disregarded this regulation because he got an order from the commandant. He did not know whether his regulations provided that he could refuse to obey an order which is against the Geneva Convention. He knew what the Geneva Convention was and realised that one of the reasons why he was given protection as a doctor was because he was a non-combatant. He realised that there were survivors. He did not consider the use of the machine gun in this particular case as an offensive action.

The accused LENZ, during his examination, repeated his curious explanation that he took over the firing from Schwender because he did not want a human being to be hit by bullets fired by a soldier whom he considered bad.

The accused SCHWENDER said that, under orders, he fired at the wreckage, but not at human beings.

IX. Closing address by Professor Wegner.

Professor Wegner recalled the decision by the German Supreme Court in the case of the Llandovery Castle and submitted that the principle on which the German Supreme Court had acted in that case could not be followed today. Too much had happened since, the psychology of a whole nation, not to say of the world, changed meanwhile. The legal difference between the situation of the Leipzig trials after the last war and the present situation was that now the accused were not before a German court and the defence did not exactly know what laws were going to be applied to their acts.

Counsel quoted Renault who, in an essay published in 1915, emphasised that one has to distinguish between a man being politically responsible and a criminal being guilty of a crime. If we mix up criminal and political responsibility we become ourselves guilty of very dangerous confusion and injustice. We cannot call any man a war criminal without his doing wrong and being guilty according to a law enacted before his deed. And as to the wrong, we have to consider that in war acts which otherwise would be crimes are, in most cases, justified by international law. Many rules of international law are rather vague and uncertain. Can we make up our minds to find an individual guilty of having violated a rule of international law, if the States themselves have always quarrelled about that rule, its meaning and bearing, if they have never really recognised it in anything that might be called a common practice and hardly know anything precise concerning it. If the States do not know, how can the individual know?

Professor Wegner further referred to statements by the American Professor Charles G. Fenwick, who, when dealing with the charges against the German army for devastation in 1917 resulting from the partial retreat of the German troops, had said: "Owing, however, to the conditional character of the prohibitions of the law, it is difficult in these cases

as in others, to determine whether the act of destruction was in violation of technical law, even in cases where it appeared to the sufferers to be wholly arbitrary and malicious".

The Professor went on to say that the decision of the German Supreme Court in the case of the "Llandovery Castle" was treated in Germany as treason and people having taken part in it, or having defended it, were treated as traitors. He alleged that a similar tendency against which he had always fought in his books and essays was always very strong in some quarters of English and American jurisprudence and especially in that part of it which was represented by Austin and his school. Most modern writers of that school of thought openly teach, in Professor Wegner's view, outspoken National jurisprudence, discarding divine as well as public international law. It is by such tendencies that since the second half of the last century, the way has been paved for the national socialist contention that there be no universal truth and law, but that, instead of it, the will and command of the nation have the supreme and absolute and totalitarian value, claiming an individual's whole and undivided loyalty. If a heresy like this prevails among so many famous lawyers of almost every country, the individual must be excused to some extent for a confusion in his conception as to right and wrong.

Professor Wegner stated that Gardner's contention that English law does not admit a plea of superior command has been refuted by many writers. He quoted the pre-1944 text of the British Manual of Military Law and also referred to the "Caroline" case and stated that ever since this "case" it had been a well established rule in International law that the individual forming part of a public force and acting under the authority of his Government, is not to be held responsible as a private trespasser or malfactor. Superior command, as excluding personal responsibility has, according to Professor Wegner, also been recognised in the treatment of prisoners of war.

Referring to American papers published during the second world war suggesting that there was a most important difference between the imperial German Government of 1914-1918 and the National Socialist rulers of 1939, the professor pointed out that the average German people are to a very large extent excused for their unfortunate mistaking of revolutionary violence and political ruse and swindle for something like national leadership. The national socialist administration had been recognised by foreign Powers. The fear emanating from the Hitler government was almost irresistible and absolutely dominating in Germany. The foreign Powers, including Great Britain and the U.S.A. had no such excuse for recognising the Hitler administration.

War criminals could only be convicted of such crimes as are crimes according to penal law, the penal code of their country, that was in the present case the German criminal code of 1871 and only such punishment may be inflicted as is provided by that law.

X. The Closing Address of the other Defending Counsel.

The advocates defending the accused Hoffmann, Weisspfennig and Schwender distinguished the crime of Schwender from that of the others because Schwender had neither purposely nor carelessly nor by chance killed anybody. If Schwender would be punished, thousands of soldiers would have to be punished, who, on orders, have shot at non-living targets.

As to Hoffmann and Weisspfennig, counsel pleaded superior order and further that the offences had not been proved. It was for the court to decide whether there was in their minds either a dolus directus or a dolus eventualis or a careless offence. He pointed out that in case they are found guilty it must be examined whether they are to be punished for

murder, for manslaughter or for involuntary killing. They are not guilty as a superior order lifts the criminal responsibility from them. Paragraph (section) 47 of the Militärstrafgesetzbuch, to which the accused were subject at the time of the act and which applies to them even today as long as they are prisoners of war, says: "If a penal law is violated by the execution of an order in service, the commanding superior is alone responsible for same. However, the obeying subordinate meets punishment for participating if it was known to him that the order referred to an action which involved a criminal purpose".

Regarding the culpability of a soldier, one must distinguish between the cases in which the subordinate knew the illegality of the order and such in which he did not know it. Only in the former case one can speak of a responsibility of the obeying subordinate; but also in such case the British Military Law will not hold the imprisoned enemy responsible, as is shown in Article 443 Land Warfare, (pre-1944 text). The advocate referred to the decision of the German Reichsgericht in the case of the "Dover Castle" which is distinguishable from the case of the "Llandovery Castle". In the "Dover Castle" case, the Reichsgericht acted on the principle that the commanding superior alone is responsible and that the subordinate can only be punished if he was aware of the illegality of the order. Counsel submitted that the British Government had acquiesced in this decision and thus not objected to the principle. In the "Llandovery Castle" case, the Reichsgericht established the fact that the accused knew that the execution of the order was criminal. In the "Dover Castle" case, the accused were not aware of that and were therefore acquitted.

Another defending officer referred also to the United States Rules of Land Warfare, 1914, according to which, he submitted, obedience to superior orders was a good defence.

The amendment of paragraph 447 of the British Manual (Amendment No. 34, notified in Army Orders for April, 1944), was, in counsel's view, not valid for several reasons. He referred to the "Zamora" case (/1916/ 2 A.C. 77.) where it was stated that the prize court administers international law and not municipal law and although it may be bound by the acts of the Imperial legislature, it is not bound by Executive Orders of the King in Council. If that is so, then a fortiori this court is not bound by an amendment published by the War Office, and further this amendment is merely a statement of one writer on the subject to International law. Counsel referred to Wheaton, 1944 Edition, where it is stated on page 586: "Common sense indicates that it must be very difficult for officers or men to know when they are committing war crimes and that in any case they act under immediate dread of punishment if they decline to obey orders, so that justice, on the whole, tends to the view that war crimes must not be charged on individuals".

With regard to the 1944 amendment of the British Manual, counsel was asked by the Judge Advocate whether he challenged the accuracy of the following: "The question, however, is governed by the major principle that members of the Armed forces are bound to obey lawful orders only and that they cannot, therefore, escape liability if, in obedience to a command, they commit acts which both violate unchallenged rules of Warfare and outrage the general sentiment of humanity". Counsel stated that he was not prepared to challenge that.

XI. The Closing Address by the Prosecutor.

The prosecutor based his case on the decision of the German Supreme Court in the case of the "Llandovery Castle" where it had been said: "The firing on boats was an offence against the law of nations. In war on land the killing of unarmed enemies is not allowed. Compare the Regulations as to war on land, paragraph 23. Similarly in war at sea the killing of shipwrecked persons who have taken refuge in lifeboats is forbidden."

As to the maxim of nullum crimen sine lege, nulla poena sine lege, the prosecutor submitted that it is only applicable to municipal and state law, and could never be applicable to international law.

The plea of superior order did, in any case, on the facts, not apply to Eck and Lenz, but there could be no defence of superior order for Hoffmann, Weisspfennig and Schwender either, because the order which was given by Eck was an illegal order and the German Supreme Court had decided in the case of the "Llandovery Castle" that the two members of the crew of the U-boat who were acting under the orders of their commander, committed a war crime in firing at the boat, because they were doing something which was illegal, and that court decided that if an order is given which is, in itself, illegal, there can be no defence of superior order.

With regard to Eck, the prosecutor stated that in his submission, he must be guilty of the charges preferred. Eck admitted in evidence that he knew there must be survivors on the rafts. The prosecutor suggested that that was cold-blooded murder.

Hoffmann admitted that he threw hand grenades. It was established by one of the affidavits that one of the persons who dies on board those rafts was hit by a hand grenade. Subject to the court's decision, on superior order, the prosecutor submitted that the case against Hoffmann was fully proved.

In the case of Weisspfennig, the prosecutor pointed out that his case was made the worse by reason of the fact that he was of the medical profession and had no right to bear arms at all, except against savages and persons who were not in the same position as white men who fought in his war.

With regard to Lenz, the prosecutor pointed out that this was a man who first objected to the order and then deliberately fired in the direction of a human form which was stated to have been on some wreckage. How he could plead that he acted under superior orders was beyond the prosecutor's comprehension.

As to Schwender, the only rating involved, there was no doubt that he did fire in the direction of the wreckage and that he must have known that they were firing on human targets.

No legal ruling was required in this case as to whether it was murder or manslaughter. These accused were charged with killing of survivors of the ship in violation of the laws and usages of war, as accepted by decent nations all over the world.

XII. Summing up by the Judge Advocate.

The Judge Advocate stated at the very outset that the court should be in no way embarrassed by the alleged complications of International Law which, it has been suggested, surround such a case as this. It is a fundamental usage of war that the killing of unarmed enemies is forbidden as a result of the experience of civilised nations through many centuries. To fire so as to kill helpless survivors of a torpedoed ship is a grave breach against the law of nations. The right to punish persons who break such rules of war has clearly been recognised for many many years. Whatever may be said by those who are interested for or against the so-called Leipzig Trials, no one as far as the Judge Advocate knows has ever challenged the accuracy of the principle which is expressed in the judgment of the Supreme Court of Germany in the "Llandovery Castle" case. The Judge Advocate's advice to the court was that it was entitled to take the statement of the principle contained in the Leipzig judgment as the starting point of its investigation of this case.

About the defence of operational necessity the Judge Advocate stated: "The question whether or not any belligerent is entitled to kill an unarmed person for the purpose of saving his own life has been the subject of much discussion. It may be that circumstances can arise - it is not necessary to imagine them - in which such a killing might be justified. But the court had to consider this case on the facts which have emerged from the evidence of Eck. He cruised about the side of this sinking for five hours, he refrained from using the speed to get away as quickly as he could, he preferred to go round shooting, as he says, at wreckage by means of machine guns." The Judge Advocate asked the court whether it thought or did not think that the shooting of a machine gun on substantial pieces of wreckage and rafts would be an effective way of destroying every trace of the sinking. He asked whether it was not clearly obvious that in any event, a patch of oil would have been left which would have been an indication to any aircraft that a ship had recently been sunk. He went on to say: "Do you or do you not think that a submarine commander who was really and primarily concerned with saving his crew and his boat would have done as Captain Schnee, who was called for the defence, said he would have done, namely have removed himself and his boat at the highest possible speed at the earliest possible moment for the greatest possible distance?"

Eck does not rely on the defence of superior order. He stands before the court taking upon himself the sole responsibility of the command which he issued.

With regard to the defence of superior order, the Judge Advocate said: "The duty to obey is limited to the observance of orders which are lawful. There can be no duty to obey that which is not a lawful order. The fact that a rule of warfare has been violated in pursuance of an order of a belligerent government or of an individual belligerent commander does not deprive the act in question of its character as a war crime, neither does it confer upon the perpetrator immunity from punishment by the injured belligerent."

The Judge Advocate added: "It is quite obvious that no sailor and no soldier can carry with him a library of international law, or have immediate access to a professor in that subject who can tell him whether or not a particular command is a lawful one. If this were a case which involved the careful consideration of questions of international law as to whether or not the command to fire at helpless survivors struggling in the water was lawful, you might well think it would not be fair to hold any of the subordinate accused in this case responsible for what they are alleged to have done; but is it not fairly obvious to you that if in fact the carrying out of Eck's command involved the killing of these helpless survivors, it was not a lawful command, and that it must have been obvious to the most rudimentary intelligence that it was not a lawful command, and that those who did that shooting are not to be excused for doing it upon the ground of superior orders?"

The Maxim "Nulla Poena sine lege" and the principle that is expressed has nothing whatever to do with this case. It refers only to municipal or domestic law of a particular State and the court should not be embarrassed by it in its considerations."

XIII. The Verdict.

The five accused were found guilty of the charge.

XIV. The Sentence.

After counsel for the defence had pleaded in mitigation on behalf of the accused and some of them had also called witnesses, the following findings and sentences of the court were pronounced on 20th October, 1945, subject to confirmation:

ECK, HOFFMANN, WEISSPFENNIG were sentenced to suffer death by shooting. LENZ was sentenced to imprisonment for life, SCHWENDER was sentenced to suffer imprisonment for 15 years.

The sentences were confirmed by the Commander-in-Chief, British Army of the Rhine, on 12th November 1945, and the sentences of death imposed on Kapitänleutnant HEINZ ECK, Marine Oberstabsarzt WALTER WEISSPFENNIG, and Leutnant zur See AUGUST HOFFMANN, were put into execution at Hamburg on 30th November 1945.

B. NOTE ON THE CASE.

The decision of the Military Court in the present case is of course, no precedent in the Anglo-American sense of the word and it is consequently no authority, binding or otherwise, on the law on which it proceeded and which it expressly or impliedly laid down. The reporting of decisions like the present and the commenting upon them is, nevertheless, warranted by the fact that, although the findings and sentences of a Military Court trying war criminals, do not lay down rules of law in an authoritative way, they are illustrations of actual state practice in a field which is one of the most important in the whole province of International Law.

Part 1. Questions of Jurisdiction and Procedure.

I. Jurisdiction of the Court in British Municipal Law.

As far as British municipal law goes, the jurisdiction of the Court was based on the Royal Warrant dated 14th June 1945, Army Order 81/1945, which in its turn is based on the royal prerogative; the right to set up military courts and to invest them with jurisdiction to try war crimes is ancillary to the prerogative of the British Crown to wage war.

Regulation 2 of the Royal Warrant gives to certain senior officers power to convene Military Courts for the trial of persons charged with having committed war crimes. A war crime is defined as a violation of the laws and usages of war, committed during any war in which Britain has been or may be engaged at any time since the 2nd September 1939. For the jurisdiction of the Military Court it is irrelevant whether the alleged crime has been committed within or without the limits of the command of the convening officer (Regulation 4). Under Regulation 6, the accused is not entitled to offer any special plea to the jurisdiction of the Court.

The constitutionality and legality of the Royal Warrant have so far not been challenged in any British superior court, as have its American counterparts, orders of the American Executive Authorities appointing Military Commissions for the Trial of War Criminals under the law of the United States. The latter have been reviewed by the Supreme Court of the United States on writs of Habeas Corpus and Certiorari in ex parte Richard Quirin and others (1942); and on writs of Habeas Corpus, Prohibition and Certiorari in re Yamashita and in re Hotta (1946). The fact that no attempt at challenging the decisions of the Military Courts before the ordinary courts of the land has so far been made in Britain, is probably due to the rules of British law barring enemy aliens access to the courts.

It may be mentioned that provisions similar to those contained in the Royal Warrant have in the Commonwealth of Australia been made by Act of Parliament (War Crimes Act 1945, No.48 of 1945.)

II. Jurisdiction of the Court in International Law.

The crew of the Pelagos, i.e. the victims of the crime, consisted of 18 Greeks, 8 British seamen, 1 seaman from Aden, 2 Egyptians, 3 Chinese, a Russian, a Chilean and a Pole. There were, therefore, 9 British subjects among the victims, (8 British seamen and one seaman from Aden), and in order to establish British jurisdiction in this case it is, therefore, not necessary to have recourse to the fact that nationals of other allied

States (Greece, China, the Soviet Union and Poland) were among the victims and to the still more general question of the universality of jurisdiction over war crimes.

The crime had been committed on the high seas which could be considered an additional ground for the jurisdiction of the court.

Finally, by the Declaration regarding the Defeat of Germany and the assumption of supreme authority with respect to Germany, made in Berlin on the 5th June 1945, the four Allied Powers occupying Germany have assumed supreme authority with respect to Germany, including all the powers possessed by the German government and any State, municipal or local government or authority. The jurisdiction of the British court, sitting in the British zone could, therefore, also be based on the fact that after the debellatio of Germany, the allied Powers have been also the local sovereigns of Germany.

III. A Mixed British - Greek Court.

The fact that a Greek ship and 18 Greek nationals were involved as the victims of the crime was obviously the reason for the convening officer to appoint, as members of the Court, two officers of the Royal Hellenic Navy.

The inclusion of these two Greek officers was based on Regulation 5, paragraph 3, of the Royal Warrant of June 1945, which reads as follows:

" Notwithstanding anything in these Regulations the Convening Officer may, in a case where he considers it desirable so to do, appoint as a member of the court, but not as President, one or more officers of an Allied Force serving under his command or placed at his disposal for the purpose, provided that the number of such officers so appointed shall not comprise more than half the members of the Court, excluding the President. "

Technically, a mixed court constituted under Regulation 5, paragraph 3 of the Royal Warrant, remains, of course, a British municipal court.

IV. Rules of Procedure and Rules of Evidence.

The trial was conducted under the rules of procedure as specified in the Royal Warrant. These are roughly the rules of procedure laid down in the British Army Act and in the Order in Council made under it, (Rules of Procedure, 1926).

Section 128 of the British Army Act provides that the rules of evidence to be adopted in proceedings before courts martial shall be the same as those which are valid in civil courts in England. By civil courts is meant a court of ordinary criminal jurisdiction in England, including a court of summary jurisdiction. (Rules of Procedure, B.R. and O. 1926, No. 989, Rule 73C.)

The Royal Warrant, however, contains a number of alterations of the general rules of procedure applicable to trials by Field General Courts Martial. Under Regulation 8 (1) the Court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the court to be of assistance in proving or disproving the charge, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a Field General Court Martial.

Applying this provision, the Court admitted, inter alia, evidence consisting of affidavits made by the three survivors of the crew of the *Peleus*. The affidavit of one of the survivors, a British seaman, contained a paragraph stating what the third officer, who later died, had told the deponent during the time he nursed him. One of the defending officers objected by saying that while the Regulations did permit affidavits which would not be admissible under the normal rules of evidence, there was nothing in the Regulations which says that an affidavit which also includes a statement from a third party may be introduced.

The Judge Advocate, in summing up the discussion on this point, said that it was quite clear that in a Court which was bound by the ordinary English law this evidence could not be admitted; but for convenience and in view of the practical difficulties of obtaining evidence in cases such as this, this Court was granted a discretion to accept statements of this kind if it was so disposed. The only question was, whether in the exercise of its discretion the Court thought it right to receive this statement.

The Court decided to admit the statement.

It may be added that "without prejudice to the generality of the provision" of Regulation 8 (1) as reproduced above, the Royal Warrant goes on providing for some particular instances, among others under (a) that if any witness is dead or is unable to attend or to give evidence or is, in the opinion of the Court, unable so to attend without undue delay, the Court may receive secondary evidence of statements made by or attributable to such witness.

Part 2. Questions of Substantive Law.

The legal points raised by the defence may be summarised under the following headings:

- (I) The absence of mens rea of the accused.
- (II) The maxim nulla poena sine lege.
- (III) The defence of operational necessity.
- (IV) The defence of superior order.

I. The absence of Mens Rea.

The defence submitted that many rules of International Law are rather vague and uncertain and that an individual could not be found guilty of having violated a rule of International Law if the States themselves have always quarrelled about that rule, its meaning and bearing and if they have never really recognised it in anything that might be called a "common practice".

One of the defending counsel alleged that tendencies, according to him very strong also in some quarters of English and American jurisprudence, had paved the way for the National Socialist contention that there be no universal truth and law but that instead of it the will and command of the nation have the supreme and absolute and totalitarian value, and claim an individual's whole and undivided loyalty. The National Socialist administration had been recognised by foreign Powers, the fear emanating from the Hitler régime was almost irresistible and absolutely dominating in Germany. The foreign Powers, including Great Britain and the United States of America had no such excuses for recognising the Hitler administration.

The Judge Advocate ruled on this plea that if this were a case which involved the careful consideration of questions of International Law, as to whether or not the command to fire at helpless survivors struggling in the water was lawful, the Court might well think it would not be fair to hold any of the sub-ordinate accused in this case responsible for what they are alleged to have done. In the present case, however, it must have been obvious to the most rudimentary intelligence that it was not a lawful command.

II. The defence of nulla poena sine lege.

The defence submitted, though perhaps not in so many words, that the acts committed by the defendants were not crimes according to the law to which the accused were subject at the time when the crime was committed. The prosecutor submitted as to the maxim "nullum crimen sine lege, nulla poena sine lege" that it is only applicable to municipal and State law and could never be applicable to International Law.

The Judge Advocate, in summing up, also ruled that the maxim "nulla poena sine lege" and the principle that it expressed had nothing whatever to do with this case. It referred only to municipal or domestic law of a particular State and the Court should not be embarrassed by it in its considerations.

It is submitted, with great respect, that this ruling was not necessary for the decision. As will be shown below, when the defences of operational necessity and superior order will be examined, the acts committed by the accused were punishable at the time they were committed, both in International Law and even in German municipal law as laid down by the German Supreme Court in the case of the "Llandovery Castle". It was, therefore, not necessary for the decision to discard the maxim altogether for the province of International Law.

III. The defence of operational necessity.

The Commander of the U-boat did not plead to have acted on superior orders. His defence was that he thought that the floating rafts were a danger to him because firstly they would show an aeroplane the exact spot of the sinking and secondly because rafts at that time of the war could be provided with modern signalling communications. The position of U-boats was very precarious particularly in that part of the Atlantic where the incident occurred. ECK thought therefore his measure justified. It was clear to him that as a result of his shooting at the rafts, the survivors would also die.

The Judge Advocate ruled that the question whether or no any belligerent is entitled to kill an unarmed person for the purpose of saving his own life did not arise in the present case. It may be, he said, that circumstances could arise in which such a killing might be justified. On the facts which have emerged in the present case, however, the Judge Advocate asked the Court whether it thought or did not think that the shooting with a machine gun at substantial pieces of wreckage and rafts would be an effective way of destroying every trace of the sinking. A submarine commander who was really and primarily concerned with saving his crew and his boat would have removed himself and his boat at the highest possible speed at the earliest possible moment for the greatest possible distance.

The case is, therefore, no decision on the question whether or to what extent operational necessity legalises acts of cruelty such as shooting at helpless survivors of a sunken ship because on the facts of the case this behaviour was not operationally necessary, i.e. the operational aim, the saving of ship and crew, could have been achieved more effectively without such acts of cruelty.

IV. The plea of superior order.

1). The reference to the "Caroline" case.

The defence relied on what they called the "Caroline" case, alleging that ever since then, meaning since this "case", it had been a well established rule of International Law that the individual forming part of a public force and acting under the authority of his Government is not to be held responsible as a private trespasser or malfactor. No pronouncement on this particular alleged authority has been made by the Judge Advocate in his summing up. Nevertheless it may be useful to examine the proposition submitted by the defence in more detail.

(a) At the outset it should be pointed out that the "Caroline" case is no "case" in the meaning of the decision of a court, at all, but a mere diplomatic incident. Insofar as court proceedings were involved in the "Caroline" incident, they would rather establish a principle contrary to that claimed by the defence, as will be shown below.

(b) In 1837, during the Canadian Rebellion, several hundreds of insurgents got hold of Navy Island on the Canadian side of the river Niagara and chartered a vessel, the "Caroline", to carry supplies from the American side of the river to Navy Island and from there to the insurgents on the mainland of Canada. The Canadian Government, informed of the impending danger, sent across the Niagara a British force which obtained possession of the "Caroline", seized her arms, set her on fire and then sent her adrift down the falls of Niagara. During the attack on the "Caroline", two Americans were killed and several others were wounded. The United States complained of this British violation of her territorial supremacy, but Great Britain asserted that her act was necessary in self preservation since there was not sufficient time to prevent the impending invasion of her territory through application to the United States Government. The latter admitted that the act of Great Britain would have been justified if there had really been necessity in self-defence, but denied that, in fact, such necessity existed at the time. Nevertheless, since Great Britain had apologised for the violation of American territorial supremacy, the United States Government did not insist upon further reparation.

From this it follows that this "Caroline" incident has nothing to do with the individual responsibility of members of armed forces for war crimes, but is an illustration of the doctrine of self-preservation in International Law.

(c) The "Caroline" incident had a sequel known as the 'case of McLeod' which occurred in 1840. McLeod was a member of the British force sent by the Canadian Government in 1837 into the territory of the United States for the purpose of capturing the "Caroline". In 1840 he went on business to the State of New York and was there arrested and indicted for the killing of an American citizen on the occasion of the capture of the "Caroline". At his arrest the British Minister at Washington demanded his release, claiming that the destruction of the "Caroline" was a public act done by persons in Her Majesty's Service, acting in obedience to superior orders and that the responsibility, if any, rested with Her Majesty's Government and could not, according to the usage of nations, be made a ground of legal proceedings against the individuals concerned who were bound to obey the authorities appointed by their own Government. The United States Secretary of State replied that as the matter had passed into the hands of the Courts it was out of the United States Government's power to release McLeod summarily. A writ of Habeas Corpus was applied for on McLeod's behalf, but the courts of the State of New York refused to release him. McLeod had to stand his trial, but he was acquitted on proof of an alibi.*

In a note from the American Secretary of State, however, occurs the following passage: "The Government of the United States entertains no doubt that after the avowal as a public transaction authorized and undertaken by the British authorities, individuals concerned in it ought not to be holden personally responsible in the ordinary tribunals for their participation in it".

(d) It is therefore submitted:

(A) As far as there were actual decisions and proceedings of Courts in the Caroline-McLeod incidents, these decisions of the New York Courts upheld the personal responsibility of McLeod and he was acquitted on the merits of the case, not for reasons of immunity from American jurisdiction, or for taking part in an act of State, or for obeying superior orders.

(B) The diplomatic correspondence in the matter does not concern war crimes. The incidents occurred in the relations between two States that were and remained at all material times at peace, one of them (Great Britain) claiming to have exercised the legally recognised right of self-preservation and the other, the United States, acquiescing in it.

(C) The incident is, if anything, an illustration of the problem of the jurisdictional immunity of armed forces on friendly foreign territory, a problem which has played an important part in the legal development during the second World War. (Compare, e.g. the British Allied Forces Act, 1940, the United States of America (Visiting Forces) Act, 1942 and similar enactments and agreements of the United States, the Soviet Union and British Dominions and Dependencies.)

Nothing can be deduced from the Caroline-McLeod incident for the relationship between belligerents, particularly between a belligerent who is in occupation of enemy territory and the captured armed forces of the conquered belligerent. There does not exist any recognised doctrine in International Law under which the immunities of members of the forces of one belligerent from the jurisdiction of the other could be claimed.

(D) The members of the force that destroyed the "Caroline" were engaged in an enterprise claimed to be legitimate in International Law. The shooting of survivors of a sunken ship, on the other hand, is, as has been established in the "Llandovery Castle" case and in the present case, obviously illegal.

2). The British Manual of Military Law and the plea of superior order.

Until April 1944, Chapter XIV of the British Manual of Military Law contained the much discussed statement (para. 443) that members of the armed forces who commit such violations of the recognised rules of warfare as are ordered by their Government or by their commander, are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to other means of obtaining redress.

This statement was based on the 5th edition of Oppenheim's International Law, Volume II, page 454. Considerable doubts were cast on the correctness of this statement by most writers upon the subject and it was replaced in the 6th edition of Oppenheim by its learned editor, Professor Lauterpacht, by a statement to the effect that the fact that a rule of warfare has been violated in pursuance of an order of a belligerent

government or of an individual belligerent commander does not deprive the act in question of its character as a war crime.

The fallacy of the Oppenheim rule and of the pre-1944 text of the British Manual and the corresponding rule of the United States Rules of Land Warfare (No. 347 of the 1940 text), was exploded in an article by Professor Alexander N. Sack in (60) The Law Quarterly Review (January 1944, p.63). The relevance of the plea of superior order became also the subject of research and critical examination by official and semi-official international bodies which dealt with problems of war crimes during the second world war (United Nations War Crimes Commission; London International Assembly, etc.)

In April 1944, the British Manual was altered to the effect that the sentences just quoted were replaced by the following statement of the Law:

" The fact that a rule of warfare has been violated in pursuance of an order of the belligerent Government or of an individual belligerent commander does not deprive the act in question of its character as a war crime; neither does it, in principle, confer upon the perpetrator immunity from punishment by the injured belligerent. Undoubtedly, a court confronted with the plea of superior orders adduced in justification of a war crime is bound to take into consideration the fact that obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces and that the latter cannot, in conditions of war discipline, be expected to weigh scrupulously the legal merits of the order received. The question, however, is governed by the major principle that members of the armed forces are bound to obey lawful orders only and that they cannot therefore escape liability if, in obedience to a command, they commit acts which both violate unchallenged rules of warfare and outrage the general sentiment of humanity. "

An analogous alteration of the American Field Manual has been brought about by "Change No. 1 to the Rules of Land Warfare" dated 15th November 1944.

An objection was raised to the application of the law as stated in the amendment to the British Manual of Military Law and the decision of the British Privy Council in the Zamora case was invoked where it had been stated that a British Prize Court administers International Law and not municipal law and although it may be bound by acts of the legislature, it is not bound by executive orders of the King in Council. If that be so, then, it was said, a fortiori, the Court is not bound by an amendment published by the War Office.

This objection was not referred to by the Judge Advocate in his summing up, but it was implied in his direction to the Court that this plea is not well founded.

The British Manual of Military Law is, of course, not a legislative instrument; it is no source of law at all like a statutory or prerogative order or a decision of a court, but is only a publication informative of the law. It has, therefore no formal binding power on its own account, but has to be either accepted or rejected on its merits, i.e. according to whether or not in the opinion of the Court it states the law correctly. A problem similar to that which arose in the Zamora case, namely whether a Prerogative Order in Council is binding upon a British Court administering International Law, did not, therefore, arise.

If a statement contained in the Manual was, as is stated in the footnote to the British Amendment No. 34, "inconsistent with the view of most writers upon the subject and also with the decision of the German Supreme Court in the case of the Llandovery Castle", there was no obstacle, constitutional, legal or otherwise, to correct the mistake in the statement of law on the one hand, and to proceed on the basis of the law as it thus had been elucidated, on the other.

The Judge Advocate accepted the law as stated in the 1944 amendment to the British Manual and advised the Court accordingly.

Counsel for the defence, asked by the Judge Advocate whether he challenged the accuracy of the statement that the question is governed by the major principle that members of the armed forces are bound to obey lawful orders only, stated that he was not prepared to challenge that.

3). The case of the "Llandovery Castle".

The decision of the German Supreme Court in the case of the hospital ship "Llandovery Castle", rendered in 1921, was much relied upon in the Peleus case both by the prosecutor and by the Judge Advocate. The case of the "Llandovery Castle" was treated not only as an authority for the rejection of the plea of superior order in the case of an order manifestly illegal, but it was treated as an authority, as it were, also on a special rule applicable to the particular facts of the case, namely on the question whether or not the firing on lifeboats is an offence against the Law of Nations.

The facts in both cases were indeed very similar. The commander of the U-boat was not on trial before the German Reichsgericht, which was conducted only against two officers of the crew, whereas the Peleus trial was both against the commander and against the guilty members of the crew. The motive for the illegal command given by the U-boat commander was slightly different in the case of the "Llandovery Castle" where a hospital ship had been sunk and the U-boat commander, Patzig, attempted to eliminate all traces of the sinking in order to conceal his criminal act altogether, while the commander of the U-boat in the Peleus case alleged to have ordered the firing on the rafts out of operational necessity, as discussed above.

The prosecutor in the Peleus trial quoted the German decision in the "Llandovery Castle" case in extenso and the Judge Advocate reminded the Court that it was entitled to take the statement of the principle of International Law which is expressed in the case of the "Llandovery Castle" as the starting point of its investigation of the Peleus case.

The defence attempted to distinguish the Peleus case from the Llandovery Castle case under two different aspects.

On the one hand, it was submitted that during and since the last war there had been a practice on both sides that in certain conditions it might be allowed to attack life boats and survivors in case of emergency. By this alleged practice the usage of war, not to attack life boats under all conditions, had been changed. The defence announced that they would call evidence in order to prove this change of the usages of war and a discussion took place whether evidence about this alleged practice should be admitted. The Judge Advocate advised the Court to allow such evidence as part of the defence, but the plea was not eventually substantiated in the course of the trial and the statement of the alleged change of the usages of war was not borne out by the evidence.

The other attempt to distinguish the Llandevory Castle case was made by the argument that the Llandevory Castle case had been decided by a municipal court applying German municipal law whereas the Peleus case was being decided under International Law. This plea remained, of course, unsuccessful.

V. The Problem of classification of war crimes.

One of the defending counsel submitted that it is necessary to examine whether the accused are to be punished for murder, for manslaughter or for involuntary killing.

The prosecutor replied to that, that there was no legal ruling required in this case as to whether it was murder or manslaughter. The accused were charged with killing, "being concerned in the killing of survivors of the ship in violation of the laws and usages of war."

The Judge Advocate did not expressly deal with this point but he also stressed the fact that the Court was concerned here to decide whether or not there had been a violation of the laws and usages of war. The acts committed by the accused were therefore considered to be crimes, namely war crimes, irrespective of whether in municipal jurisprudence they should correctly be classified either as murder or as manslaughter or as any other offence against life and limb.

VI. The awarding of Punishment.

The Royal Warrant provides in Regulation 9, that a person found guilty by a Military Court of a war crime may be sentenced to any one or more of the following punishments, namely: (1) death, (either by hanging or by shooting), (2) imprisonment for life or for any less term, (3) confiscation, (4) a fine.

In the Peleus case, three of the accused, namely the commander of the U-boat, one of the officers and the medical officer were sentenced to death by shooting, the two latter in spite of their plea of superior order. The ship's engineer was sentenced to imprisonment for life. In his case the Court obviously took into consideration, on the one hand that he did, to a certain extent, oppose the order given by the commander to the other accused, (not to him), and that, on the other hand, he had, without being personally ordered, eventually taken part in the shooting. The fifth accused, the only rating in the deck, was sentenced to 15 years imprisonment, the Court obviously considering the superior order given to him as an extenuating circumstance.

VII. The sinking of merchantmen by submarines.

The Peleus case is interesting not only because of what it actually decided but also because of what was expressly left out from the charge. It was made clear by the Judge Advocate and the prosecutor that the prisoners were not accused of having violated the laws and usages of war by sinking the Peleus but only by firing and throwing hand grenades on the survivors of the sunken ship.

According to the London Protocol relating to the Rules of Submarine Warfare of 6th November 1936 (Cmd. 5302), submarines must, in their action with regard to merchant ships conform to the rules of International Law to which surface vessels are subject. In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed the passengers, crew and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is

assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board. By the end of August 1939, 48 States had adhered to the London Protocol (Higgins and Colombos, *The International Law of the Sea*, 1943, p.420).

The sinking of a merchantman without warning was therefore not an act of legitimate warfare according to conventional International Law, binding on practically all states including Germany. The customary rules of International Law are to the same effect. For the proposition that similar action was considered illegal at least in the early part of the second World War, reference may also be had to the British Reprisals Order in Council S.R.&O. 1939, No.1709, in the Preamble of which it is recited, *inter alia*, that "German forces have in numerous cases sunk merchant vessels, British Allied and neutral, in violation of the rules contained in the Submarine Protocol, 1936, to which Germany is a party". As a retaliatory measure, Great Britain and the United States also employed, since 1942, their submarines for the destruction of enemy merchant vessels carrying supplies and ammunitions of war, but only after all their protests against the barbarous methods adopted by their enemies had proved unavailing. (Higgins-Colombos *l.c.*, p.437.)

Although as shown, the sinking of a merchantman by a submarine without warning and without providing for the security of the passengers and crew was not an act of legitimate warfare, the prisoners in the *Pelous* trial were not charged with this offence. The British authorities, in not making the sinking part of the indictment, were probably guided by a consideration which Professor Lauterpacht has expressed by stating that "there is room for the view that if the victorious belligerent has himself, in pursuance of reprisals, set aside International Law in a particular sphere, he cannot properly make such acts on the part of his opponent a subject for prosecution for a war crime". (*The Law of Nations and the Punishment of War Crimes*, British Year Book of International Law, 1944, p.77.)

There is, therefore, room for doubt whether the Submarine Protocol of 1936, although adhered to by 48 States immediately before the outbreak of the second World War, does at present represent an effective rule of law.