

S U M M A R Y

(vide folios A - D)

1	2 Confirmed killed	3 Estimated killed	4 Missing	5 Totals
A Military	7,970,270	205,000	921,845	9,097,115
B Civilian	626,423	70,000	7,118	703,541
C Partisan	26,390	-	10,110	36,500
Total War Casualties (A + B + C)	8,623,083	275,000	939,073	9,837,156
D (Genocide victims)	11,972,741	-	20,000	11,992,741
TOTALS A + B + C + D	20,595,824	275,000	959,073	21,829,897

Notes:

Col.1. For full figures see folios A - D and folios 1 - 25 therein referred to.

Col.2. For detailed breakdown see folios 1 - 25

Col.3. Figures at A consist of provisional totals for the U.S.A. and the Colonies. U.S. Naval Casualty report is not yet available and the colonial casualties in the Western Hemisphere are not differentiated from total casualties given in folio 22. Figures for B include the following estimates for air raid and battle casualties:

Italy: 50,000
Mediterranean
countries 20,000

MILITARY WAR CASUALTIES
WESTERN HEMISPHERE

Country	Killed	Wounded	Missing	Ps.W.	Totals
1 AUSTRALIA	11,168	16,337	895	7,938	36,338
2 BELGIUM	10,328	-	1,626	-	
3 BRAZIL	1,526	2,791	-	-	
4 BULGARIA	8,337	22,958	9,155	-	40,450
5 CANADA	25,602	53,395	10,336	-	
6/22 COLONIES	5,100 (5,000)		-	-	
7 CZECHOSLOVAKIA	5,158	4,196	-	-	
8 DENMARK	37	74	-	-	
9 FRANCE	295,000	200,000	-	-	
10 GERMANY & AUSTRIA	3,000,000	3,400,000	-	-	
11 GREECE	92,686	-	-	-	
12 HUNGARY	136,000	68,296	-	-	
13 INDIA	29,126	-	-	-	
14 ITALY	81,222	124,110	145,643	-	
15 LUXEMBOURG	3,500	1,000	-	-	
16 NETHERLANDS	6,000	-	-	-	

(9054)

3,710,790

165,653

N.B. Figures in brackets are provisional; vide folio E, col.3.

Figures in left hand column indicate folio nos. of the relevant reports.

* indicates that the report is a certified copy.

	Country	Killed	Wounded	Missing	Ps.W.	Totals
17	NEW ZEALAND	10,788	19,345	-	-	-
18*	NORWAY	5,550	-	-	-	-
19	POLAND	71,143	151,499	420,760	-	-
20*	ROUMANIA	93,232	327,294	332,075	-	-
21	SOUTH AFRICA	7,214	14,627	29	14,554	36,424
22	UNITED KINGDOM	234,475	260,548	2,780	135,009	-
	Women	624	744	18	20	-
	Home Guard	1,206	557	-	-	-
23	U.S.A.	30,248 (200,000)	4,707	530	5,720	-
24	U.S.S.R.	3,500,000	-	-	-	-
25	YUGOSLAVIA	305,000	-	-	-	-
		4,259,480 3,710,790		756,192 165,653		
		7,970,270 (200,000) (5,000)				
		8,175,270		921,845		

(9056)

N.B. Figures in brackets are provisional; vide folio E, col. 3.

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..... CIVILIAN WAR CASUALTIES

..... HEMISPHERE

Country	Killed	Wounded	Missing	Po.W.	Totals.
AUSTRALIA					
BELGIUM	14,552	23,101	-	-	
BRAZIL	502	-	-	-	
BULGARIA	3,004	1,974	-	-	
CANADA					
COLONIES					
CZECHOSLOVAKIA	887	7,903	-	-	
DENMARK					
FRANCE	150,000	100,000	-	-	
GERMANY & AUSTRIA	330,000	430,000	-	-	
GREECE			VIDE A		
HUNGARY	46,000	-	-	-	
INDIA					
ITALY	(50,000)	-	-	-	
LUXEMBOURG	764	-	-	-	
MEDITERRANEAN	(20,000)	-	-	-	
NETHERLANDS	17,000	-	-	-	

(9054)

562,709

(70,000)

Country	Killed	Wounded	Missing	Ps.W.	Totals
NEW ZEALAND					
NORWAY	1,000	-	-	-	
POLAND			VIDE D		
ROUMANIA	2,119	7,245	7,118	-	
SOUTH AFRICA					
UNITED KINGDOM	60,595	86,182	-	-	
U.S.A.					
U.S.S.R.			VIDE D		
YUGOSLAVIA			VIDE D		
	63,714 562,709 626,423 (70,000)		7,118		
(9056)			N.D. Figures in brackets are provisional; vide folio E col 3		

PARTISAN
CASUALTIES
HEMISPHERE

Country	Killed	Wounded	Missing	P.s.W.	Totals
AUSTRALIA					
BELGIUM	1,459	33,250	-	-	
BRAZIL					
BULGARIA	10,150	22,260	-	49,772	
CANADA					
COLONIES					
CZECHOSLOVAKIA					
DENMARK	700	-	-	-	
FRANCE					
GREECE					
HUNGARY	800	-	-	-	
INDIA					
ITALY	13,281	6,862	10,110	-	
LUXEMBOURG					
NETHERLANDS					
(9054)	26,390		10,110	-	

Country	Killed	Wounded	Missing	Ps.W.	Totals
NEW ZEALAND					
NORWAY			VIDE A		
POLAND			VIDE A		
ROUMANIA					
SOUTH AFRICA					
UNITED KINGDOM					
U.S.A.					
U.S.S.R.			VIDE A		
YUGOSLAVIA			VIDE A		
(9056)					

..GENOCIDE.....CASUALTIES
.....HEMISPHERE

Country	Killed	Wounded	Missing	Ps.W.	Totals
AUSTRALIA					
BELGIUM	16,690	-	-	-	
BRAZIL					
BULGARIA					
CANADA					
COLONIES					
CZECHOSLOVAKIA	29,032	19,606	-	-	
DENMARK	500	-	-	-	
FRANCE	202,000	-	-	-	
PS 1556					
US 716					
GERMANY	275,000	-	-	-	
GREECE	150,000	-	-	-	
HUNGARY	220,000	-	-	-	
INDIA					
ITALY	18,869 +	203	-	-	
LUXEMBOURG	500	-	-	-	
NETHERLANDS	157,000	-	20,000	-	
(9054)	1,069,591		20,000		

Country	Killed	Wounded	Missing	Ps.W.	Totals
NEW ZEALAND					
NORWAY	2,150	-	-	-	
POLAND	6,000,000	-	-	-	
ROUMANIA					
SOUTH AFRICA					
UNITED KINGDOM					
U.S.A.					
U.S.S.R.	3,500,000	-	-	-	
YUGOSLAVIA	1,401,000	-	-	-	
	10,903,150		-		
	1,069,591		20,000		
	11,972,741		20,000		

(9056)

RESTRICTED.

C. 227.
19th September 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

The Provisions of the Draft Peace Treaties
regarding War Criminals.

Suggestions adopted by the Commission on
18th September, 1946.

The United Nations War Crimes Commission has had the opportunity of examining the provisions regarding the apprehension and surrender of war criminals, contained in the Draft Peace Treaties with Italy (Art.38), with Roumania, (Art.6), with Bulgaria, (Art.5), with Hungary (Art.5), and with Finland (Art. 9).

While not expressing an opinion on the problem of the prosecution of nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war, the United Nations War Crimes Commission presents to its Member Governments for consideration its views on the provisions of the Peace Treaties dealing with war criminals.

The Draft Treaties lay upon the ex-enemy governments a duty to take "the necessary steps" to ensure the apprehension and surrender for trial of the persons concerned. In the opinion of the United Nations War Crimes Commission, the general expression "to take the necessary steps" might seem to leave the task of apprehension and surrender of the war criminals in practice to the discretion of the ex-enemy governments.

Considering that the provisions regarding war criminals in the five Peace Treaties will, at least to a certain extent, create a precedent for future arrangements, particularly for those with Germany and Japan, the United Nations War Crimes Commission is of the opinion that it would be most valuable if the Articles of the Draft Peace Treaties, which are quoted above, could be supplemented in such a way as to take account of the following points:

1. The provisions of Art.38 of the Draft Peace Treaty with Italy (and the corresponding provisions of the four other treaties) might well be made applicable notwithstanding any proceedings or prosecution before a court of the ex-enemy country. An express provision to this effect was contained in Art.228 of the Peace Treaty of Versailles.
2. The ex-enemy government should be required to comply with all requests of the United Nations Government concerned relating to the identification, discovery, apprehension, arrest and surrender of the accused persons, and to keep the United Nations Government concerned fully and promptly informed of the manner in which effect is being given to its request.
3. The provisions of paragraph 2 of the respective Articles of the Draft Peace Treaties dealing with the question of witnesses to be made available by the ex-enemy government should be supplemented by a provision corresponding to Art. 230 of the Peace Treaty of Versailles and the ex-enemy government should undertake to disclose and produce any records or documents or other evidence, the production of which may be considered necessary to secure full knowledge of the acts with which

the accused are charged, and to assist in any other way in which assistance may be required.

4. In the opinion of the United Nations War Crimes Commission, there should be some provisions safeguarding the loyal and conscientious collaboration of the officials of the ex-enemy State, who will be responsible for the execution of the provisions of the Treaties. The ex-enemy government should undertake to pass and enforce legislation making it a penal offence:

- (a) to obstruct the execution of the foregoing provisions or to fail to comply with any direction relating thereto;
- (b) to aid or abet a person whose surrender has been demanded in evading apprehension or surrender;
- (c) to destroy or conceal documentary evidence, to impede or obstruct the calling or examination of witnesses;
- (d) to incite another person to resist in any way the provisions concerning the apprehension and surrender of such persons;
- (e) for any ex-enemy official to prosecute or punish any person for having reported to the authorities or agencies of any of the United Nations, any evasion of, or resistance to the foregoing provisions.

5. Under the Draft Treaties any disagreement concerning the application of the provisions will be referred to the Diplomatic Envoys of the Great Powers concerned at the capital of the ex-enemy State.

The Commission suggests that with regard to demands for the apprehension and surrender of accused persons, a difference could be made between the apprehension of accused persons on the one hand and their surrender for trial on the other. While the surrender, in the event of disagreement, should remain dependent on the decision of the Ambassadors, the apprehension of wanted persons by the enemy government should be compulsory, and the latter should not be entitled to leave the accused person at large until the decision of the Ambassadors has been given. The Commission therefore suggests that whenever the surrender of a person is asked for by a United Nations Government, the person concerned should be apprehended and kept in custody until such time as the Ambassadors reach agreement with regard to the difficulty.

The Commission trusts that the above suggestions will be taken into favourable consideration by the governments of the United Nations.

UNITED NATIONS WAR CRIMES COMMISSION.

ERRATUM
C.228

In Doc. C.228, page 2, the 8th line of the last paragraph, (line 20 from the bottom), the word "aggressive" should read "aggrieved", the sentence to read as follows:

" But even before the Pact of Paris, punishments were inflicted, or at least intended by the aggrieved nations, against those who had inflicted on them the evil of aggressive war. "

UNITED NATIONS WAR CRIMES COMMISSION

Further Notes on the Punishment of War Criminals
under International Law.

By

Lord Wright

The present paper, which is a supplement to the author's article "War Crimes under International Law", published in (62) The Law Quarterly Review, January 1946, pp.40 et seq. is circulated by the Secretariat for the convenience of Members.

About the end of last year I wrote an article on War Crimes under International Law, which was published last January in London, in the Law Quarterly Review. It was written at a time before the Tribunal, now operating in Tokyo, was established, but though it dealt specifically with the Charter of the Nuremberg Tribunal, it dealt with general principles common both to that charter and to the charter of the Tokyo Tribunal, which seem to me to embody existing international law on the subject. Since then, with further experience and reflection, I have seen no reason to change the views which I expressed but I have thought it not without interest to add some supplementary observations and to deal with some difficulties and objections which have occurred to me as a result of subsequent consideration.

It seems to me that a fundamental fallacy of the opponents, whom appear to be vigorous and numerous, of the scheme outlined in these charters is the attempt to obliterate the distinction between just and unjust war. That distinction was well-established for many generations from mediaeval times and was treated as flowing from natural law which I think has never meant more than the innate sense of right and wrong possessed by all decent-minded human beings. It was sometimes supported by the precepts of the universal Church. But, at a later period, there was introduced a concept of the sovereignty of the individual state and that was carried in the 17th and 18th centuries to some lengths. In more recent times, and particularly in the end of the last century and in the beginning of this century, the doctrine of sovereignty was used to nullify this distinction between the justice or injustice of war. It was said that it was part of the sovereignty of every nation to wage war for any purpose, and in any manner, however atrocious, which appeared to it to be desirable to achieve the purpose of overcoming the opposing power. This may well appear to the moralist a diabolical idea, but there may be some who think it proof of the strength and validity of law that it refuses to find sanctions to correct and punish the most atrocious conduct. Such a mental or moral attitude may even perhaps be sometimes discerned in the views and arguments put forward by those who say that there is no distinction between just and unjust war. It would be easy to find very strenuous opposition to that view, for instance, if I may refer to some of the greatest writers on International Law of the present generation, I should point to authorities like Professor Kelsen, Professor Lauterpacht, Professor Goodhart, Professor Quincy Wright and many other authorities. One of the troubles of arriving at a definition of International Law Rules is that writers in their study, often removed from the realities of life, have expressed so many diverse views, which cannot be reconciled that the student may turn away in disgust and say that there is no law at all, but International Law does not depend upon the irresponsible views of theoretical writers. It is to be found rather in International

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declarations, conventions, treaties, and practices of the nations, to say nothing of the moral consensus of human beings in the world, and the decisions of competent courts.

I have quoted more than once the language of the Fourth Hague Convention of 1907 which bases the law squarely on the moral sentiment and the belief in justice and in the humane conduct of mankind. The language of the Preamble states as its fundamental basis, the principle that the civil populations of the belligerents remain under the protection of the laws of war derived from the principles of morality and humane conduct: to this I would add the treaties or conventions which emanate from these principles, as evidencing what these usages, laws, and practices are. Human nature revolts at the idea that it does not matter whether a war is just or unjust but the issue has been clarified and made precise by various International Treaties and conventions preceding and following the Hague Convention to which I have referred. On the study of these, it cannot in my opinion, be said that on this matter International Law is left fluid or uncertain. I refer, in particular, to the Pact of Paris of 1928, which has rendered obsolete a great many conflicting opinions delivered by writers on International Law. The Pact of Paris was a solemn treaty (that must never be forgotten); it is none the worse because its language is clear and uncompromising; entered into by sixty-one nations including all the belligerents in the war just ended and these nations categorically and precisely renounced war as an instrument of policy. Aggressive war is an instrument of policy not an instrument of self-defence; any nation which initiates an aggressive war is thus violating an International Rule embodied in a treaty, a treaty binding within the nations that were parties to it, which also had the result of making war an evil and forbidden thing. Those leaders who were responsible in their several nations for violating that law and for bringing about the evil thing were thus as responsible in International law as would be those violating one of the particular laws of war, which are now so familiar, and have been embodied in the various International Conventions and are evidenced by the instances of the punishment of those who have committed such offences in the last war. That part of International Law is recognised to be clear and precise in attributing responsibility to particular individuals.

International Law becomes a definite and positive reality, both in its character and its consequences, when competent courts acting under it try individuals and sentence them to punishments which are executed by competent authorities. It is said, however, although that may be true of particular violations of the rules of war, there are no such instances of the trial or conviction, of people who have offended against the law laid down in the Pact of Paris. But even before the Pact of Paris, punishments were inflicted, or at least intended by the aggressive nations, against those who had inflicted on them the evil of aggressive war. I refer to the banishment of Napoleon, first to Elba and then to St. Helena, for the aggressive wars which he had initiated. In the same way in 1918, at the end of the war, it was intended to take proceedings against the German ex-Kaiser and that intention was embodied in Article 227 of the Treaty of Versailles. It is true that plain language was evaded by the somewhat theoretical language which was there used. The treaty proclaimed that the ex-Kaiser should be arraigned for a supreme offence against International morality and the sanctity of treaties and provided for this trial by an especially appointed tribunal of the allied and associated powers. That trial was never held because the Dutch Government refused to surrender the accused man to the allies, he having found shelter in Holland. Rather than start a fresh war, the allies abandoned their intention, just as they abandoned their intention to try the various war criminals themselves and left them to be tried by the Leipzig Court, with the consequences that are so well-known, but the principle that an unjust war, or war of aggression, is unlawful, was clearly recognised by these two instances and indeed was recognised in the various provisions of the Treaty of

Versailles, which provided for reparations; liability to make reparation is proper to illegality. I think, therefore, that there are clear precedents for the rule that it is an unlawful act (se crime) to start and wage an aggressive war. It has indeed been long held by humanity that he who does such a thing is guilty of a supreme offence. In the words of the poet "he shuts the gates of mercy on mankind". The world would indeed be shocked, if, those who are responsible for the evils and atrocities either in the war in the Far East, or in the war in Europe, should escape scot-free, especially in view of the treaties which they were instrumental in breaking and of the general condemnation of humanity.

I think the difficulty which so many people feel about the system of punishing war criminals is due to the failure to appreciate that there is such a system as that of military courts for the punishment of war criminals. The nature and the jurisdiction on such courts have long been established in International Law and the law which they enforce is the law of war crimes. This has now been largely systemized and codified in Conventions, the object of which is to prevent or punish atrocious and inhumane conduct on the part of the belligerents. The appropriate court for the punishment of offences of that sort is the military court. This is a court which is established by the order of the Commander-in-Chief, generally at the end of war, but, in appropriate cases, during its progress. The Commander-in-Chief is authorized by International Law, not only to establish such a court but to determine its constitution, to appoint its members, to prescribe the rules of law which it is to apply and to revise its decisions. This is a wide power which is vested in the Commander-in-Chief. It will be noticed that it is a power to be exercised by the victorious side, as is generally inevitable, especially in the conditions now existing, and, to that extent, may be said to suffer from the disadvantage of possibly being one-sided, but it is an impartial judicial court which is lawfully established and the judges are trusted to act judicially and to do what is right and according to law, subject only to the revising discretion of the appointing commander. This is the system which has been and is being widely applied at the end of this war by the victorious nations in punishing war criminals. The power may be abused but, in my experience and observation, the judges have shown themselves anxious, perhaps over-anxious, to act within the appropriate rules of war and to deliver impartial justice. It only leads to confusion to treat such a court as if it were bound by the methods and procedure and law of the ordinary common law, or civil law court. It is a special court, administering the special law which it is formed to administer. It functions before the eyes of the whole world. It may be said *securus judicet orbis terrarum*.

In much the same way, though the analogy is not precisely complete, the Prize Courts, which are usually established during a naval war, are partial in the sense that they are created and their judges appointed by one side; but all the same they generally act judicially and apply the laws of Prize and the procedure customary in prize cases which are markedly distinct and different from the laws administered in the ordinary courts. Such courts have been appointed from time to time for centuries. Their jurisdiction does not generally extend to personal punishment, such as death or imprisonment, but it does extend to the penalty of confiscation of the offenders' property; in their case, the jurisdiction depends on the property having been captured at sea and brought into the custody of the prize court of the opposing belligerent forces. The Prize Court too, like the military court, is not, as a rule, a standing court but is instituted from time to time during, or at the end of the war, as circumstances

require and by a special commission. When it is clearly understood that the law of war crimes is a law of its own kind, established by generations of usage and International Conventions, many of the difficulties and criticisms which are heard now would seem to be inappropriate and fallacious. What, however, that law must achieve is the execution of justice according to law. This law of war crimes is of course something different from martial law, which is the law exercisable by an army against its own members for breaches of discipline and the like. Although the rules of the law of war crimes are different in many respects from those of the ordinary civil or criminal courts of peace, a military court is bound by its own law, that is, by the rules of International law which have been established and which are now well-known, admittedly at least in the case of what I call the war crimes stricto sensu, or conventional war crimes. The difficulty which has been recently felt in some quarters has referred to the prosecution before such courts of the governing authorities of the conquered state for acts such as initiating or waging an unjust war. At the basis, however, of that class of charges is the distinction which, as I have already pointed out, some have sought to obliterate, between just and unjust or aggressive war and I cannot help but think that many of those who have discussed this problem have gone back to earlier pronouncements antecedent to the Pact of Paris, and the numerous other Conventions which are familiar to all students of International Law, some of which have expressly referred to the initiation or waging of unjust war as a crime, as indeed it is in the strict sense of that word. But whether it is called a crime, or not, the substantial point is that it is a breach of the specific and binding treaty between practically all the nations of the world, the express object and terms of which were to outlaw war. I regard these international agreements as declaratory of the existing law and as giving it a positive place of status. It is true that the treaty as such only binds the nations which are parties to it but, if it renders the waging of unjust war a crime, then, on familiar principles, the agents in the particular states who are responsible under the constitutional system prevailing in that state for leading the nation into war, cannot escape personal and individual liability for what they have done. In that respect, this is a liability independent of, and additional to, the liability of the treaty breaking nation. The principle of individual liability has always been recognised in military courts. It is apparent in the ordinary war crimes, that those who do the acts are personally liable and equally there is no logical or moral justification for applying any different rule in the case of the more generalized crimes chargeable against the leaders of the unjust belligerent nation. The Pact is not a scrap of paper. Indeed its effect has been recognised in the sanctions applied under it in the cases of China and Abyssinia. I have already referred to the principle of the sovereignty of nations and I fully accept the importance of maintaining the freedom of independent sovereign states; but that is a freedom which must be regulated by the like freedom of other independent states who are entitled to resist unlawful aggressions against their own freedom and independence and when the aggressive state goes beyond its own boundary and its own domestic affairs in order to interfere with the freedom and independence of other sovereign states, so that the latter are entitled to resist and punish the aggressor, it is clear to me that the doctrine of the independent sovereignty of the wrongdoer no longer applies and equally that the concept of sovereignty cannot be invoked to protect those members of the aggressor state who are personally guilty of leading the nation into the criminal courses which involve the trouble. To my mind, it is immaterial that, from the point of view of the aggressor state, the conduct of these men can be described as being acts of state, whatever that may mean. That concept of acts of states is submerged in and is incumbent with the concept of international crime and individual responsibility of international

prisoners. Some advocates of the doctrine of sovereignty have gone so far as to say that every act of a military commander, or indeed of a soldier, which involves infringement of the laws of war, is an act of state and cannot be proceeded against even though the delinquent has been captured and has fallen into the hands of the other belligerent state. This is indeed a *reductio ad absurdum* of the doctrine of the act of state. I can find no real authority for any such theory. It has indeed been put forward by certain writers on International Law, but it does not seem to me to be capable of being regarded as a principle of law; it is merely the arbitrary enunciation of an abstract political dogma. Professor Lauterpacht, has cited instances from early writers on the laws of war, including Grotius, who have stated quite plainly the principle of responsibility of those who have infringed those laws if they fall into the hands of the injured state, and, so far as practice goes, such offences have been and are being, constantly punished under the judgements of military courts. It would be idle to multiply instances but, as I write this today, I cannot help calling to mind hundreds of trials, convictions, and executions of Germans or Japanese for war crimes. It has never seriously or effectually been treated as a defence to charges of that character that what the criminal was doing was an act of state, or one which could not be proceeded against by a military court or any court without the consent of his own nation. If there were any validity in such a defence, it must have been raised and must have succeeded time and again. It was indeed set up at the end of the first Great War when the Germans contended that the various criminals who were charged could only be proceeded against either in the German Courts or with the consent of the Germans. We know what happened in the Leipzig Tribunal and the futility of these proceedings; most of us would regret the weakness of the allies in abandoning by way of concession and departure from the express terms of the Versailles Treaty their right to try and punish the war criminals. The question of consent, is, however, of minor importance, considering that it generally happens, if there is an armistice, that there will be included in its terms, expressly or by implication, a term that the victorious nation is to be entitled to punish the war criminals which fall into its custody.

So it was in the Versailles Treaty; no doubt some express term continuing the right to punish is necessary in a treaty of peace because generally the right to try and punish war criminals ceases with the restoration of peace, but I think the idea that the belligerent state is not entitled to punish the war criminals, or is not entitled to punish them without the consent of their own people, is fallacious and without authority. Such an idea is no more than a balloon set up by a vanquished nation which seeks to avoid, for itself and its servants, the just penalty of their misdeeds. The fallacy of these ideas can, I think, best be tested by applying to them what I call the ordinary individual war crimes within, say the Hague Convention. There the individual responsibility of the wrongdoer is so much clearer in a practical and physical sense, that it seems impossible to treat such acts as being acts of state. It is, however, more plausible to describe the decisions of a monarch, or a prime minister and the members of his cabinet, arriving at a decision to initiate an unjust and aggressive war as acts of state because of the old superstition that the crime ceases to be a crime because done on a large scale with political motives and as an act of policy. The very language of the Kellogg-Briand Pact uses the phrase "renouncing war as an instrument of policy", which seems to be expressly directed against this superstition which has long since been condemned by moralists or humane writers, for instance, one finds the phrase "necessity the tyrant's plea" and indeed there is almost no crime, however atrocious or however immense in its operation, which might not be described as an act of policy. It seems to me that the whole aim of International Law, in recent times, has been to give a definite and positive shape to the

to the moral concepts, which, in some quarters and in some periods, have been thought to fluid and indefinite to deserve the name of positive law. To achieve that has been the aim of the conventions of the earlier years of this century and of such a treaty as the Kellogg-Briand Pact. Long before the initiation of this war, either in Europe or the Far East, the positive law which I have been propounding, was established. As I have said, many of the arguments which are still heard, though less constantly and insistently now, against the views were stated before the Pact of Paris. It is indeed time to go back to Grotius and his followers for the fundamental principles.

The strongest argument against the punishment of the war criminals either major or minor, is that men have not been punished previously for the particular offence.

That argument completely fails as regards the minor criminals, those who are accused of war crimes *stricto sensu*, but it needs further consideration in the case of what I call the major criminals, such as monarchs, prime ministers, cabinet ministers, or the like, even though there are precedents which I have already re-referred to. Thus there is the case of Napoleon who was punished for what we call a major crime though by executive instead of judicial act and the case of Kaiser Wilhelm II, who was marked down for trial though, as I have observed, the trial never took place because the allies had not, and could not, obtain custody of the accused. These are, in any event, precedents but, as I have attempted to show, the law is clear enough and responsible statesmen cannot pretend to be ignorant of what the law is, especially since the Kellogg-Briand Pact, which is now nearly twenty years old. I can understand the statesmen and the generals asserting that there had so often been immunity allowed to such conduct that they were entitled to speculate on similar immunity when their time came. No doubt they said to themselves that they were certain to succeed; but they did not succeed and that possibility ought to have presented itself to their minds, and have led them to consider what their position might be if that happened. What is quite clear is that when they started the war, they were or should have been fully aware that they were committing a crime both at ordinary law and at International Law and they were really banking on what they thought was the absence of an efficient machinery to punish the crime. If they had thought at all during the years in which they prepared for war and for the crime, they could not have failed to realize the enormity of their purpose and acts. The form in which the argument is sometimes put is that no man should be punished for an offence as to which he could not know at the time when he committed it that it was a punishable offence. I find it impossible to apply that idea to the question relating to these men. Of the criminality of their conduct, there could be no doubt, and equally, it must have been apparent to them, beyond a doubt, that they were guilty of such criminality. Even if I were wrong in my view that the positive law announcing the crime and defining the criminality was in existence at all times material, at least the criminality of wholesale murder and the like was apparent and all that was lacking was some precise enunciation of positive law and punishment; that defect could in my opinion be made good by subsequent declaration and clarification of the particular breach, of law and the punishment. If it were necessary, I could go further and say that the definition of a clear and atrocious moral offence as being also an offence of positive law can be lawfully made by the competent court or legislature. This indeed is

the normal method of developing international law which extends its boundaries on the principle of analogy just as the common law has done. Even where the law is codified, courts have to clear up ambiguities and fill up gaps. But, as I think the law was in existence, nothing more is needed. Murder, I repeat, is the killing of a human being without justification, either by ordinary law or by international law of war, is a crime whatever the scale on which it is perpetrated or designed, and the motive which actuates the murder. The murderer may have his selfish reasons such as to get rid of a rival in love, or to get rid of some man who stands in the way of his ambition. There, the motive is present and is singular and individual. It cannot be different because the murders are multiplied by hundreds, thousands, or millions, as it is when the slaughter is due to the initiation of an unjust or aggressive war, or where the motive is what may be described as political, which means to satisfy the greed of individuals or a nation, or to satisfy the ambition of an individual, or a clique, or a nation. The character of murder is not changed by the scale on which it is perpetrated, nor by the fact that the murderer does not, with his own hand, commit the deed, but does so by enlisting the agency of thousands, or even millions, of co-adjutors or instruments nor because the motive may from a particular point of view be described as patriotic. To my mind, a clearer analysis of ideas ought to demonstrate the fallacy of attributing a sanctity or immunity to crimes on the ground that they are political. The truth is that what is then being substituted for justice and right conduct is simply what I call power politics; power is substituted for right and that is a substitution which has been condemned by right thinkers through the history of the law. It is true that the dark forces often prevail and power is treated as the only thing to be considered. It is clearly the object of the ordinary law of civilized countries to drive out the predominance of power and substitute right, the same principle applies in the dealings of nations inter se. I have often been puzzled why so much of the writing on International Law should sometimes show, or appear to show, an opposite tendency, and to remove international affairs into a sphere in which ideas of right and wrong disappear.

I have written these few observations for the special purpose of emphasising my opinion that the difference between a war of aggression and a just war is fundamental and that the attempts to obscure it in comparatively recent times ought to fail, and have failed. I have sought to refute some misleading conclusions, as I regard the, from a fallacious idea of the extent of the doctrine of sovereignty. In particular, I wish to protest against the idea that the doctrine of the sovereignty offers a shield of immunity in the case of acts of unlawful aggression. Sovereignty is not the same as autocratic, arbitrary power. It is a limited or regulated doctrine which cannot be extended beyond its proper limits, which are primarily the limits of the sovereign state's own boundaries. I have wished also to protest against an illegitimate application of the idea of acts of state; that concept I think does not justify the commission by nations or individuals of crimes or other unlawful acts, particularly, in the realm of International Law. There is indeed a somewhat close, though not complete or exact parallel between a defence based on the allegation that the act was an act of state and the defence of superior orders which, I think it is now clearly established, cannot apply to the commission of a crime at least as a defence though in some cases it may serve by way of extenuation.

The ideas which I have been attempting to combat are sometimes describes as legalistic but, in my way of thinking, they have no sound basis in juristic ideas but are the product of political thinking, or perhaps I would rather say, political dogmas or prejudices. In short I do not agree that a crime is to be excused by describing it as political. That again, is not a juristic concept, the definition of what is political and what is not political is not capable of precise determination. A crime like murder, and indeed any other crime does not change its character because some people may say that it is political. The character of the crime depends on what it is in its essential character and is not changed because it may be loosely characterized by some persons as being political.

These brief observations which I have written during the course of the Nuremberg trial, make no pretention to being exhaustive or comprehensive, but, such as they are, I have thought they might be of some help in clarifying questions which are often made to appear to be complex and obscure.

CONFIDENTIAL.

DOC. C. 229

23rd September, 1946.

CONSTITUTION OF THE UNITED NATIONS WAR CRIMES COMMISSION

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

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

The Lord Chancellor (in the Chair)

Australia - Rt.Hon.S.M.Bruce Lord Atkin	New Zealand - Mr.W.Jordan.
Belgium - Vicomte de de Lantsheere General de Baer	Norway - M.Colban
Canada - Rt.Hon Vincent Massey	Poland - Count Raczynski Professor Glaser
China - Dr.Wellington Koo Dr.Liang Yuen-Li.	Union of South Africa - Mr.Jones
Czechoslovakia - M.Lobkowitz Dr.Bohumil Ecer	United Kingdom - The Lord Chancellor Mr.George Hall Sir Cecil Hurst
Greece M.Aghnides M.Stavropoulos	United States - Mr.Winant
India - Sir Samuel Ranganadhan	Yugoslavia - Mr.Yevtić M.Milanovitch
Luxembourg - M.Clasen	French Committee of National Liberation - M.Viénot Professor Cassin
Netherlands - Jonkheer Michiels van Verduynen Dr.de Moor	

ESTABLISHMENT OF THE COMMISSION.

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

Before the meeting proceeded to this business he wished to make one preliminary remark. The Soviet Government were, he understood, in principle in agreement with the establishment of the Commission and with the general

objects which it was to serve. There were, however, one or two points still outstanding which had unfortunately prevented their being represented at the meeting. The Lord Chancellor felt that, while it was right that he should inform the meeting of this, it need not prevent their taking steps to establish the Commission.

He explained that, as would have been apparent from the statements of His Majesty's Government and the United States Government of the 7th October, 1942, it was proposed that the Commission should serve two primary purposes:-

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

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

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

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

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

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

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

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

He proposed that the meeting should take a decision to set up the Commission forthwith but that the question of the possible expansion

of the scope of its investigations and functions should be reserved for future consideration.

This was unanimously agreed.

HEADQUARTERS OF THE COMMISSION.

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

PANELS

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

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

CHAIRMANSHIP

The LORD CHANCELLOR said that His Majesty's Government in the United Kingdom had originally proposed that it should be left to the Commission to settle the question of chairmanship at its first meeting. The Soviet Government, however, had proposed that the chairmanship might suitably be held in rotation by the representatives of the United Kingdom, United States, Union of Soviet Socialist Republics and China. He invited the views of the meeting upon this question.

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

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

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

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

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

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

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

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

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

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

PROCEDURE.

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

SECRETARIAT.

The LORD CHANCELLOR said that His Majesty's Government in the United Kingdom would be prepared to find a British Secretary-General for the Commission, if, in view of the headquarters of the Commission being in London, this were considered appropriate by the other Governments concerned. There being no dissent, the Lord Chancellor announced that His Majesty's Government in the United Kingdom had in mind for the post Mr. Mackinnon Wood, who, before the war, had been a member of the legal section of the Secretariat of the League of Nations.

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

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

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

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

This was agreed.

EXPENSES.

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

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

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

PREMISES.

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

TECHNICAL COMMITTEE (+)

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

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

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

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

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

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

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

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

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

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

This proposal was agreed.

RESOLUTION.

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

The meeting agreed to this proposal and the resolution was adopted.

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

The LORD CHANCELLOR agreed.

COMMUNIQUE

A communiqué for issue to the press was also agreed.

Annex I

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

The Committee should have the following task:-

- (1) The Committee decides, having regard to the evidence produced, which enemy aliens are to be placed on the lists of names of persons, whose surrender by the enemy will be demanded at the time of the capitulation or after..
- (2) The Committee decides which national courts are competent for the trial of enemy aliens, when courts of more than one country claim competence. Differences regarding competence of this character can originate if the same persons have committed crimes on the territory of or against nationals of more than one Allied Country or if a crime has been committed partly on the territory of one country and partly on that of another.
- (3) The Committee shall make proposals regarding the question for which court and according to which procedure the prominent criminals (Hitler, Himmler & etc) shall be tried.

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

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

A P P E N D I X

DECISION TO DISPENSE WITH THE INDEPENDENT TECHNICAL COMMITTEE.

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

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

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

(+) See footnote on page 5.

To be attached to C227

UNITED NATIONS WAR CRIMES COMMISSION

These Minutes of the meeting, on October 20th, 1943, at the Foreign Office, at which it was resolved to create a United Nations War Crimes Commission, are circulated for information at the request of members of the Commission.

September 24, 1946.

To be attached to C227

UNITED NATIONS WAR CRIMES COMMISSION

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September 24, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Doc.C.230.
5th October, 1946.

PROPOSALS FOR THE SUPERVISION OF GERMAN COURTS.

(By Monsieur de Baer)

In War Crimes News Digest No:XV, it may be noted that the trial of 16 former prison-warders of the Wolfenbüttel prison had begun before a Brunswick Landsgericht. These men were accused of ill-treating prisoners, most of whom were of foreign nationalities; among them there were Belgian "Nacht und Nebel" prisoners. Again, in War Crimes News Digest No:XVI page 3, there is a paragraph concerning the leniency of German courts in respect of war criminals. This time the Landsgericht at Stuttgart is mentioned in respect of the trial of a German major charged with the execution of three air force men four days before Germany's surrender. The major was merely sentenced to four years' imprisonment, but there is here some doubt as to whether the airmen were Allies or Germans.

According to Article III(1(d)) of the Control Council, each occupying authority has the right to have war criminals tried by an appropriate tribunal, and when the accused are Germans who have committed crimes against other Germans or stateless persons, this tribunal may be a German court.

If the above-mentioned News Digest reports are true, then it seems that German courts are now being charged with trying Germans who are accused of having committed crimes against allied nationals, and this is contrary to Law No:10.

Surely, there is no reason why more and more cases should not go to German courts and I believe that this Commission has no objection to the extension of the jurisdiction of German courts to Germans who have committed war crimes against allied nationals. This may lessen the burden of the Allied military courts in Occupied Germany and, moreover, it may give the German judiciary an opportunity of proving that they have discarded the methods that were used at Leipzig after the first world war and that they are coming round to sound, democratic ideas of justice.

Also, it may well be that these German courts are at present carrying out their duty impartially and in a most satisfactory way; however, we should not overlook the fact that there is, nevertheless, a danger of the repetition of the Leipzig trials:

- 1) They may be too lenient towards the accused, either by acquitting the guilty or imposing penalties which are too light in proportion to the crimes.
- 2) Some German courts may even penalize Germans for having shown pro-allied feelings by acting mercifully or showing consideration to allied prisoners (according to one unconfirmed report there has been such a case recently).
- 3) Some German courts may penalize Germans for informing against other Germans who are guilty of war crimes. In this respect we should not forget the extraordinary WANDT case. (WANDT was a Socialist who had in 1919 written a book entitled "Etappe Gent" describing the revolting behaviour of German officers in Belgium. In 1923 he was arrested for an unknown reason, and sentenced after a secret trial by the Leipzig court, to six years' penal servitude. In 1926, the reasons for the sentence were disclosed: WANDT had harmed the Germans by making known to the Belgian authorities the names of four Belgian separatists who, during World War I, had co-operated with the Germans and might have given Germany valuable help in the event of another German occupation of Belgium. This was considered as treason. Thus as early

as 1923, under the Weimar Government, a German Court of Justice was considering the eventuality of another war and another occupation of Belgium. If there had been some kind of control over German justice at that time such a sentence could not have been delivered. ("The Treatment of War Crimes and Crimes Incidental to the War" by Judex, March 1945).

4) Finally, as it is obviously the German prison administration which will be charged with the task of carrying out these sentences, imposed by German courts, there is some danger that persons although convicted, may be allowed to escape. We have not forgotten the case of the Llandoverly Castle, where the two U-boat officers who were sentenced, were allowed to escape with the complicity of their jailers.

In view of what precedes, it seems advisable that some control should be exercised on the activity of the German courts, and in view of the mission with which this Commission has been charged, it seems that its duty towards Governments which are represented on it requires it to report upon the manner in which the German courts are meting out justice to the war criminals. Perhaps it would even be proper for this Commission to inspect from time to time the German courts so that the reports sent from the Commission will be based on the personal knowledge of at least one of its members.

To achieve this end several things are needed:-

1) A complete knowledge of what is happening in Germany; the Commission should be notified in detail of all the trials of war criminals that are taking place before German courts. At present we have no complete knowledge of what is going on there. Therefore, we should request the occupying authorities to give us the necessary information.

2) We should appoint someone to check the results of each one of these proceedings by examining the records and comparing them with the charges brought before the Commission, when the accused was placed on its lists. On occasion it may be necessary to ask National Offices to produce their complete dossier, and perhaps call upon them to give their comments on the result of the trial.

3) We should consider asking, from time to time, one or other of our members to go to Germany to investigate the work of the German courts and of the German prison administration and ascertain that those who have been sentenced are actually made to serve their time in proper prisons. In this connection, I think it would be a good plan for various members to undertake this duty in rotation, so that each member will have a chance of seeing the position for himself. This is a work, which, in the interests of justice, should continue for a long time and even if the Commission winds up its task, provision should be made for the continuation of such supervision.

DOC. C. 231.
10th October 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

REPORT BY COMMITTEE I.

PROCEDURE REGARDING PERSONS LISTED AS SUSPECTS.

In the last Meetings of Committee I the question of procedure regarding persons listed as Suspects was considered in the light of past experience.

The Committee took note of the fact that the original intention of the Commission, when deciding to classify certain persons and units as "Suspects", as set forth in Doc. C. 82, of 12th March, 1945, had fallen into abeyance so far as the military authorities are concerned, and that in actual practice no distinction now seemed to be made between persons listed as War Criminals, and those listed as Suspects, the latter being surrendered on demand in the same way as the former. The Committee thought this practice undesirable, especially in view of the fact that in accordance with the original intention persons listed as Suspects should have been simply detained, and surrendered only when the National Offices concerned have forwarded further evidence direct to the holding authorities which satisfies them that persons should, in fact, be surrendered.

While taking into account the desirability of not diminishing the value of the present lists of Suspects and the difficulty with which the military authorities have been confronted in that they did not know the evidence which had to be investigated before surrender was possible, as well as the fact that now so much more evidence is available to National Offices, and that national investigating teams are given every facility, the Committee is of opinion that the Commission's practice with regard to listing of Suspects should be very much tightened up.

Therefore, the Committee, while holding that no retroactive decision would be advisable, proposed that future cases in which, in the past, persons would have been classified as Suspects should be adjourned, and the National Offices concerned asked for further investigation and information; exception should be made only in certain types of cases where it would seem desirable to emphasise the distinction by listing certain categories of persons as Suspects, i.e., in cases where members of concentration camps staff, the Gestapo or named persons of military units are concerned.

This exception would apply to persons whose responsibility for war crimes committed en masse is self-evident, and against whom sufficient formal evidence could only be collected by the National Offices after the suspected persons were apprehended and/or the principal accused and enemy witnesses interrogated.

Such persons would be listed as Suspects on the ground that sufficient prima facie evidence has been established as to the connection between their official position or membership of organisations mentioned

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above and the crimes committed.

The tightening up of the lists of Suspects will naturally involve an even closer scrutiny of the charges against persons accused: considering the time that has elapsed since investigation facilities were given, there is at present no reason why cases, where sufficient evidence to constitute a good prima facie charge has not been collected, should be placed on the Commission lists.

UNITED NATIONS WAR CRIMES COMMISSION

Recommendation by Committee III regarding the publication
of enactments dealing with war crimes (*)

- I. Committee III decided in its meeting held on 30th October, 1946, (Committee III Minutes No. 22/46) to recommend to the Commission to publish a volume containing the texts of international, conventional, municipal and occupational provisions dealing with war crimes. The volume would be a necessary and useful corollary to the Law Reports published by the Commission. It would be a mine of information for the international and for the criminal lawyer, and for the student of international affairs in general.
- II. It is proposed that the publication should be in the English language, and that a French edition should be envisaged for a later date, in the same way as it has been decided, on principle, that the Law Reports should also be eventually produced in French.
- III. The publication should generally be restricted to a reproduction, in English - and later in French - of the actual texts of the enactments and, where necessary, of the text of other provisions of municipal law which are referred to in the special enactments dealing with war crimes. In cases where, as in the United States of America, the actual executive orders can only be understood in connection with their common law background, a short reference to the latter will probably be unavoidable.
- IV. It appears to be necessary to commence the preparatory work without delay. It will be seen from Doc. Misc. 49, that the collection at present available to the Commission is far from complete. In addition to the conventions and enactments enumerated in Doc. Misc. 49, and the Regulations contained in Doc. Misc. 51., there exist to-day similar enactments in other countries, both allied and former enemy.

Special provisions regarding the prosecution of war criminals have also been enacted in Norway, in Greece and in the Netherlands East Indies. There are in existence special provisions regarding war criminals in the Soviet Union, in Yugoslavia, in Bulgaria, in Hungary, in Finland and probably also in other countries.

Enactments by the German authorities in the different zones and Länder of Germany fall also within the scope of the proposed publication.
- V. If these recommendations are accepted by the Commission, it will be the task of the Legal Secretariat to try to get the material not yet available, both from Member Governments and from other sources.
- VI. Committee III therefore recommends:
 - (a) That the Commission adopt the proposal set out in the preceding paragraphs of this paper.
 - (b) That the Secretariat be charged with the task of commencing the preparatory work without delay.
 - (c) That the publication should, if necessary, take place by instalments (in case the material relating to some countries should not be available within a reasonable time.)
 - (d) That also with regard to this publication, the rule should be observed that the consent of the representative of any member government will be necessary as far as the enactments of the respective member country are concerned

(*) The preliminary discussions of this proposal are contained in Committee III Minutes No. 22/46 and in Doc. III/60. A list of the documents so far collected is contained in Doc. Misc. No. 49. To the list, should now be added the Regulations which were circulated in Doc. Misc. 51.

- (e) That further points relating to this publication should be dealt with by the Special Committee for Legal Publications which was appointed by the Commission in its meeting held on 23rd October 1946, (M. 115).

UNITED NATIONS WAR CRIMES COMMISSION.

Third Supplement

to the

Synopsis

of Trial Reports

(Doc. C. 204)

Since the circulation of the Second Supplement, (Doc.C.222), the reports summarised in this paper have been received by the United Nations War Crimes Commission, up to the 31st October, 1946. (*)

II. British Cases.

105) Trial of Adam Doerr and Wilhelm Reinhardt, civilians.
Date & Place of Trial: 15th March 1946 at Recklinghausen.
Charge: Committing a war crime in that they at Leeheim, near Darmstadt, Germany, on 26th August 1944, in violation of the laws and usages of war, did ill-treat a member of the Royal Air Force.
Verdict: Both guilty.
Sentences: Doerr, Imprisonment for 5 years, Reinhardt, Imprisonment for 2 years.
Sentences confirmed.

106) Trial of Ernesto Gottardi and Alessandro Tormene, members of the Italian Fascist Federation.
Date & Place of Trial: 8-9th February 1946 at Bologna.
Charge: Committing a war crime in that they at Grezzana, Verona, Italy, on 12th November 1943, in violation of the laws and usages of war, were concerned in the killing of a British Army Officer.
Verdict: Gottardi, Guilty.
Tormene, Not Guilty.
Sentence: Death by shooting.
Confirmed, but sentence commuted to one of imprisonment for life.

107) Trial of Heinrich Greffe, civilian.
Date & Place of Trial: 21st February 1946 at Brunswick
before a court consisting of 4 British officers and 1 officer of the Polish forces.
Charge: Committing a war crime in that he at Watzum, between the years 1940 and 1945, when Burgermeister of the Gemeinde of Watzum, in violation of the laws and usages of war, ill-treated Polish nationals, being foreign workers in the said Gemeinde.

(*) The following documents contain lists of trial reports received:
C.204, C.268, C.222 and the present paper.

Verdict: Guilty.
Sentence: Imprisonment for 18 months.
Sentence confirmed.

108) Trial of Winrich Voss.

Date & Place of Trial: 9th April 1946 at Hamburg before a court consisting of 2 British Officers and 1 Polish Officer.
Charge: Committing a war crime in that he at Beringstedt, in or about the month of November 1940, in violation of the laws and usages of war, ill-treated a Polish national.

Verdict: Guilty.
Sentence: Imprisonment for 2 years.
Sentence reduced to imprisonment for 6 months.

109) Trial of Gerhard Schrapp, civilian.

Date & Place of Trial: 12th March 1946 at Holzminden, before a court consisting of 4 British officers and 1 Polish officer.

Charge: Committing a war crime in that he at Allersheim, between the years 1942 and 1945, in violation of the laws and usages of war, did ill-treat a number of unknown Polish nationals.

Verdict: Guilty.
Sentence: Imprisonment for 8 years.
Findings confirmed, but 3 years remitted from sentence.

110) Trial of Paul Gerhard Herbers, civilian.

Date & Place of Trial: 22nd and 23rd April 1946 at Bochum.

Charge: Committing a war crime in that he, near Bochum, Germany, on the 24th March 1945, in violation of the laws and usages of war, ill-treated an unknown British airman.

Verdict: Guilty.
Sentence: Imprisonment for 9 months.
Sentence confirmed.

111) Trial of Franz Haase, civilian.

Date & Place of Trial: 8th April 1946 at Hamburg before a court consisting of 2 British and 1 Polish officers.

Charge: Committing a war crime in that he at Schlutup, between the years 1941 and 1945, when foreman in a munition factory, in violation of the laws and usages of war, did ill-treat Polish nations working in the same factory.

Verdict: Guilty. (Special finding).
Sentence: Imprisonment for 6 months.
Findings confirmed, but sentence remitted.

112) Trial of Gustav Meyer, civilian.

Date & Place of Trial: 15th April 1946 at Recklinghausen before a court consisting of 4 British and 1 Polish officers.

Charge: Committing a war crime in that he at Osterfeldt, between the years 1944 and 1945, when camp leader of a foreign workers camp, in violation of the laws and usages of war ill-treated Polish nationals,

Verdict: Not Guilty.

113) Trial of August Gaus, civilian.

Date & Place of Trial: 27-28 February 1946 at Brunswick before a court consisting of 1 Polish and 4 British officers.

Charge: Committing a war crime in that he at Brunswick, between 1942 and 1945 when guard at factory Bussingnag in violation of the laws and usages of war, did ill-treat Polish nationals, foreign workers employed in the said factory.

Verdict: Guilty.

Sentence: Imprisonment for 3 years.
Findings confirmed, but one year's imprisonment remitted from the sentence.

114) Trial of Walter Bey, Unteroffizier.

Date & Place of Trial: 13th February 1946 at Verden before a court consisting of 4 British officers and 1 Polish officer.

Charge: Committing a war crime in that he at Sandbostel in or about the month of November 1944 in violation of the laws and usages of war, did kill an unknown Polish officer, Prisoner of war.

Verdict: Guilty.

Sentence: Imprisonment for life.
Findings confirmed, but sentence commuted to imprisonment for 10 years.

115) Trial of Alois Kurzeja, civilian.

Date & Place of Trial: 23rd February 1946 at Brunswick before a court consisting of 4 British officers and 1 Polish officer.

Charge: Committing a war crime in that he at Salzdahlum, Germany, between the years 1941 and 1945 in violation of the laws and usages of war, illtreated Polish nationals.

Verdict: Guilty, with the exception that he illtreated only one Polish national.

Sentence: Imprisonment for 56 days.

116) Trial of Otto Hauschildt, civilian.

Date & Place of Trial: 13th March 1946 at Hamburg before a court consisting of 2 British officers and 1 Polish officer.

Charge: Committing a war crime in that he at Quarntstedt, between the years 1941 and 1945, in violation of the laws and usages of war, did ill-treat Polish nationals.

Verdict: Guilty.

Sentence: Imprisonment for two years. Sentence reduced to 18 months.

117) Trial of Johann Lesker, civilian.

Date & Place of Trial: 12th March 1946 at Hamburg before a court consisting of two British officers and one Polish officer.

Charge: Committing a war crime in that he at Seedorf, between 1943 and 1944, in violation of the laws and usages of war, illtreated three Polish nationals. (3 separate charges).

Verdict: Guilty.

Sentence: Imprisonment for 6 months.
Sentence confirmed, but 3 months' imprisonment remitted.

- 118) Trial against Edwin Bruno Haase, civilian.
Date & Place of Trial: 11th March 1946 at Hamburg before a court consisting of 2 British officers and 1 Polish officer.
Charge: Committing a war crime in that he at Seedorf in August 1943 and in August 1944, in violation of the laws and usages of war, did illtreat two Polish nationals. (2 separate charges)
Verdict: Guilty on both charges.
Sentence: Imprisonment for one year.
Findings confirmed, but sentence remitted.
- 119) Trial of Nikolaus von Falkenhorst, a German national formerly Generaloberst in the German Army.
Date & Place of Trial: 29th July - 2nd August 1946 at Brunswick before a court consisting of 5 British officers and 1 officer of the Norwegian forces.
Charge: Committing a war crime in that he at Oslo, Norway, in violation of the laws and usages of war:
(1) incited members of the forces under his command to give and accept no quarter to Allied service personnel taking part in Commando operations and further, after capture, to kill any persons having taken part in these operations.
(2) Handing over to the Security Service two British officers and six other ranks who had taken part in Commando operations, with the result that the said prisoners were killed.
(3) Being concerned in the killing of 14 British prisoners of war.
(4) Handing over to the S.S. 9 British prisoners of war, commandos, with the result that they were killed.
(5) Handing over to the S.S. a British seaman, PoW, who had taken part in a commando operation, with the result that he was killed.
(6) Handing over to the S.S. 7 British PoW who had taken part in commando operations, with the result that they were killed.
(7) Further order inciting forces under his command to give and accept no quarter to Allied service personnel taking part in Commando raids and to kill any Allied personnel captured during these operations.
(8) Handing over to the S.S. 1 Norwegian naval officer and 5 Norwegian naval ratings, and one Royal Navy rating, prisoners of war, with the result that the said prisoners of war were killed.
(9) Ordering troops under his command to deprive certain Allied PoW of their rights as prisoners of war, under the Geneva Convention.
Verdict: Not guilty of charges Nos. 2 and 5.
Guilty of charges Nos. 1, 3, 4, 6, 7, 8 and 9.
Sentence: Death by shooting.
- 120) Trial of Karl-Heinz Moehle,
Date & Place of Trial: 15th-16th October 1946 at Hamburg.
Charge: Committing a war crime in that he at Kiel between Sept. 1942 and May 1945 when senior officer of 5th U-Boat Flotilla in violation of the laws and usages of war gave orders to commanding officers of U-boats who were due to leave on war patrols that they were to destroy ships and their crews.
Verdict: Guilty.
Sentence: Imprisonment for 5 years.

IV. United States Trials.

51-J. Trial of Tsuchiya, Tatsuo,

Date & Place of Trial: Yokohama, Honshu, Japan, 18th December, 1945.

Charge: Between November 1942 and November 1944 at Tokyo Area PoW camp, did commit cruel, inhuman and brutal atrocities all in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment for life, with hard labour.
Sentence approved.

52-J. Trial of Yuri, Kei,

Date & Place of Trial: 27th December 1945 at Yokohama, Honshu, Japan.

Charge: Between 1 August 1943 and 31 May 1944 at POW Camp, 17-B, Omuta, Japan, did commit cruel and brutal atrocities, permit men under his command to commit cruel and brutal atrocities against three Americans.

Verdict: Guilty.

Sentence: Death by hanging.
Sentence approved.

53-J. Trial of Furushima, Chotaro.

Date & Place of Trial: 28th December 1945 at Yokohama, Honshu, Japan.

Charge: Between 29th May 1944 and 2nd September 1945 at Nagoya Area POW Camp, 1-D, Kamecka, Gifu, Honshu, Japan, did abuse, mistreat and commit other offences, against five Americans.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for life.
Sentence approved.

54-J. Trial of Honda, Hiroji.

Date & Place of Trial: 18th January 1946 at Yokohama, Japan.

Charge: In that he, between 16th April 1943 and 26th February 1945 at PoW Camps 1-B, Yumoto and 2-B, Yoshinamura, Honshu, Japan, did commit cruel and brutal atrocities and permit his men to commit cruel and brutal atrocities, against four persons, one of whom was Dutch.

Verdict: Guilty.

Sentence: Imprisonment for 20 years, with hard labour.
Sentence confirmed.

55-J. Trial of Ishida, Kitaro.

Date & Place of Trial: 31st January 1946 at Yokohama, Honshu, Japan.

Charge: Between 1 October 1943 and 1 September 1945 at Hirohata PoW Camp, Osaka Area, Honshu, Japan, did commit cruel and brutal atrocities in violation of the laws and customs of war, against 35 American nationals.

Verdict: Guilty.

Sentence: Imprisonment for 30 years with hard labour.
Sentence confirmed.

56-J. Trial of Aona, Shigero.

Date & Place of Trial: 6th February 1946, at Yokonama, Honshu, Japan.

Charge: Between 1 December 1942 and 22 August 1943 at Jakodate Main PoW camp, Hakodate, Hokkaido, Japan, did fail to discharge his duty as medical officer and permitted members of his medical staff to commit cruel and brutal atrocities against 8 British subjects.

Verdict: Guilty.

Sentence: Imprisonment for 10 years, with hard labour. Sentence approved.

57-J. Trial of Sakamoto, Yuichi.

Date & Place of Trial: 13th February 1946 at Yokohama, Honshu, Japan.

Charge: between 1 January 1943 and 1 September 1945 at PoW Camp Fukuoka 1, Fukuoka, Kyushu, Japan, did commit cruel and brutal atrocities and failed to discharge his duty as Commanding Officer in that he permitted members of his command to commit cruel and brutal atrocities, against 3 American subjects.

Verdict: Guilty.

Sentence: Imprisonment for life with hard labour. Sentence approved.

58-J. Trial of Odeishi, Shigemaru.

Date & Place of Trial: 9th February 1946 at Yokohama, Honshu, Japan.

Charge: Between 1 Dec. 1944 and 30th August 1945, at Fukuoka Area Branch Camp 23, Kyushu, Japan, did commit cruel and brutal atrocities in violation of the laws and customs of war, against 13 American subjects.

Verdict: Guilty.

Sentence: Imprisonment for 10 years with hard labour. Sentence approved.

59-J. Trial of Okada, Niyoroku.

Date & Place of Trial: 4th March 1946 at Yokohama, Honshu, Japan.

Charge: Between 6 April 1945 and 1 September 1945 at Nagoya Area PoW camp 2-B, Naruma, Honshu, did commit cruel and brutal atrocities against 10 American subjects.

Verdict: Guilty.

Sentence: Imprisonment for 50 years with hard labour. Sentence approved.

60-J. Trial of Sakagami, Motoichi and 3 others.

Date & Place of Trial: 23rd February 1946 at Yokohama, Honshu, Japan.

Charge: Between 1 March 1945 and 30 August 1945 the accused did, at Fukuoka Area Branch Camp, 23, Kyushu, Japan, commit cruel, inhuman and brutal atrocities in violation of the laws and customs of war against 5 American subjects.

Verdict: Guilty, 3. Not Guilty, 1.

Sentences: Imprisonment for 6 years with hard labour, 1.
" " 2 " " " " " " , 2.
Sentences approved.

61-J. Trial of Kimura, Ryunsuko and 5 others.

Date & Place of Trial: 15th March 1946 at Yokohama, Japan.
Charge: Between 28 August 1943 and 31 August 1943 at Tanagawa Branch PoW camp 4, Osaka Area, did commit cruel and inhuman atrocities all in violation of the laws and customs of war against an American subject.
Verdict: Guilty, 4. Not Guilty, 1.
Sentences: Imprisonment for 10 years with hard labour, 4. Sentences approved.

62-J. Trial of Rikitaki, Yaichi.

Date & Place of Trial: 7th March 1946 at Yokohama, Honshu, Japan.
Charge: At Prisoner of War Camp 3, Fukuoka, from 1st March to the time of the Japanese Surrender, did compel sick prisoners to work, resulting in the death of approximately 150, and force prisoners of war to work during bombing raids, the names of 37 American and 1 British subject being quoted specifically.
Verdict: Guilty.
Sentence: Imprisonment for 15 years. Sentence approved.

63-J. Trial of Akamatsu, Shigeo.

Date & Place of Trial: 30th March 1946 at Yokohama, Japan.
Charge: Between 28 November 1944 and 15 August 1945 at Chyeyama Branch Prisoner of War camp, Osaka Area, Honshu, Japan, did commit cruel, inhuman and brutal atrocities in violation of the laws and customs of war, against 8 American subjects.
Verdict: Guilty.
Sentence: Imprisonment for 25 years. Sentence approved.

64-J. Trial of Toyama, Fusao.

Date & Place of Trial: 25 March 1946 at Yokohama, Japan.
Charge: Between 4 August 1944 and 1 September 1945 at Nagoya Area PoW Camp 2-B, Narumi, Honshu, did commit cruel and brutal atrocities in violation of the laws and customs of War, against five American subjects.
Verdict: Guilty.
Sentence: Imprisonment for 30 years with hard labour. Sentence approved.

65-J. Trial of Motoyashiki, Shinichi.

Date & Place of Trial: 21 March 1946 at Yokohama, Japan.
Charge: Between 1 November 1943 and 15 August 1945 at Hirohata, PoW Camp, Osaka Area, Honshu, did commit cruel, inhuman and brutal atrocities in violation of the Laws and Customs of War, against 9 American subjects.
Verdict: Guilty.
Sentence: Imprisonment for 20 years with hard labour. Sentence approved.

66-J. Trial of Sakakibara Yasutaka.

Date & Place of Trial: 4 April 1946 at Yokohama, Japan.
Charge: Between 19 December 1944 and 15 August 1945 at Hakodate Main Prisoner of War Camp, Hakodate and Bihai, Hokkaido, Japan, did commit cruel and brutal atrocities in violation of the laws and customs of war, against an American victim.
Verdict: Not Guilty.

67-J. Trial of Inai, Kiyoshi.

Date & Place of Trial: 17 April 1946 at Yokohama, Japan.
Charge: Between 29 March 1943 and 29 March 1944 at Hakodate Main PoW Camp, the accused, a medical orderly at said camp, did commit cruel, inhuman and brutal atrocities in violation of the laws and customs of war, against one American and two British subjects.
Verdict: Guilty.
Sentence: Imprisonment for 5 years with hard labour.
Sentence approved.

68-J. Trial of Tsujino, Akiyoshi.

Date & Place of Trial: 22 April 1946 at Yokohama, Japan.
Charge: Between 1 October 1943 and 20 September 1945 at Hirohata PoW Camp, Osaka Area, Honshu, did commit cruel, inhuman and brutal atrocities and other offenses against American Prisoners of War, in violation of the Laws and Customs of War.
Verdict: Guilty.
Sentence: Imprisonment for 30 years with hard labour.
Sentence approved.

69-J. Trial of Shimode Ryoichi.

Date & Place of Trial: 29 April 1946 at Yokohama, Japan.
Charge: Between 1 May 1944 and 15 August 1945 at Nagoya Area PoW Camp 1, Kamioka, Honshu, Japan, did wilfully and unlawfully commit cruel, inhuman and brutal atrocities and other offences against American prisoners of war in violation of the laws and customs of war.
Verdict: Guilty.
Sentence: Imprisonment for 20 years with hard labour
Sentence approved.

70-J. Trial of Yamauchi, Kunimitsu.

Date & Place of Trial: 3th April 1946, at Yokohama, Japan.
Charge: Between 10 August 1943 and 1 September 1945, the accused, employed by the Mitsui Mining Company and working under the direction of the Armed Forces of Japan as an interpreter at the Mikawa Mine and at PoW Camp 17, Omuta, Fukuoka, Kyushu, Japan, did commit cruel and brutal atrocities against certain prisoners of war at said camp, in violation of the laws and customs of war, and in particular against four members of the United States Armed Forces.
Verdict: Guilty.
Sentence: Imprisonment for 40 years with hard labour.
Sentence approved.

71-J. Trial of Yamada, Tomio.

Date & Place of Trial: 13th May 1946, at Yokohama, Japan.
Charge: Between 25 November 1942 and 15 May 1945 at Umeda Bonsho PoW Camp, Osaka Area, Honshu, Japan, the accused a civilian employee of the Armed Forces of Japan, did wilfully and unlawfully commit cruel, inhuman and brutal acts and atrocities against 13 American prisoners of war, in violation of the laws and customs of war.
Verdict: Guilty.
Sentence: Imprisonment for life with hard labour.
Sentence approved.

72-J. Trial of Fukuhara, Isao,

Date & Place of Trial: 29th January 1946 at Yokohama, Honshu.

Charge: Between 1 May 1944 and 1 Sept. 1945 at PoW Camp 17-B, Omuta, Fukucka, Kyushu, Japan, did commit cruel and brutal atrocities and permitted members of his command to commit cruel and brutal atrocities against 21 American, 1 Australian and 1 British subject, in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Death by hanging. Sentence approved.

73-J. Trial of Ishige, Michiharu and two others.

Date & Place of Trial: Yokohama, Honshu, 11th April 1946.

Charge: Between 17 May 1943 and 4 June 1945 at PoW Det. Camp 5, Kawasaki, Tokyo Area, did willfully and unlawfully commit cruel, brutal and inhuman atrocities against certain Allied PoW, all in violation of the laws and customs of war.

Verdict: All three guilty.

Sentences: Imprisonment for 35 years with hard labour, 1.
" " 25 " " " " , 1.
" " 15 " " " " , 1.

Sentences approved.

74-J. Trial of Watanabe, Sadao and 4 others.

Date & Place of Trial: 26th June 1946 at Yokohama, Honshu.

Charge: Between 1 Dec 1942 and 31 May 1945, did beat, mistreat and abuse American and Allied Prisoners of war in violation of the laws and customs of war.

Verdict: All Guilty.

Sentences: Imprisonment with hard labour for 30 years, 1.
" " " " " 25 " , 1.
" " " " " 15 " , 2.
" " " " " 5 " , 1.

75-J. Trial of Minora Kato and 5 others.

Date & Place of Trial: 8th August 1946, at the High

Commissioner's Residence, Manila, Philippine Islands.

Charge: Murder, cruelty and torture, other offences against civilians at Dumanjug, Cobu Province, P.I. from about 14 May 1944 to about 19 May 1944.

Verdict: Not Guilty, 1.

Charges dismissed, accused insane, 1.

Charges dismissed, insufficient evidence, 1.

Guilty, 3.

Sentences: Death by hanging, 1,

Imprisonment for life, 2.

76-J. Trial of Massfuji Hamamoto.

Date & Place of Trial: 22nd July 1946 at the High Commissioner's Residence, Manila, Philippine Islands.

Charge: Murder, cruelty and torture of civilians at or near Buenavista, Guimaras Island, P.I., during the months of May, June, July and December 1944 and January 1945.

Verdict: Guilty.

Sentence: Imprisonment for life, with hard labour.

77-J Trial of Kikuchi, Jutaro and Mabuchi Masaak.

Date & Place of Trial: 5th April 1946, at Yokohama, Honshu.

Charge: That on or about 26 May 1946 at Hyoshi, Chosei Province, Honshu, the accused did willfully and unlawfully commit wanton and inhuman atrocities against the dead body of a civilian American PoW in violation of the laws and customs of war.

Verdict: Both guilty.

Sentences: Mabuchi, Death by hanging.
Kikuchi, Imprisonment for 25 years.
Sentence approved.

78-J Trial of Kakuta, Hajime.

Date & Place of Trial: 26 April 1946 at Yokohama, Honshu.

Charge: Between 18 January 1943 and 5 June 1944 at Sakurajima PoW sub-camp, Osaka Area, Honshu, the accused did commit cruel, inhuman and brutal acts, atrocities and other offences against certain American and British prisoners of war, in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for 30 years.
Sentence approved.

79-J Trial of Abe, Tatsuo.

Date & Place of Trial: 2 May 1946 at Yokohama, Honshu, Japan.

Charge: Between December 1943 and August 1946 at PoW Camp 3, Kokuro, Fukuoka, Kyushu, Japan, the accused did commit cruel, inhuman and brutal atrocities and other offences against certain Allied prisoners of war confined at the aforesaid camp all in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for 1 year.
Sentence approved.

80-J Trial of Mantini, Unosuke.

Date & Place of Trial: 8 May 1946 at Yokohama, Honshu, Japan.

Charge: Between 1 May 1944 and 1 Sept. 1945 at Nagoya PoW camp 1, Kamioka, Honshu, the accused did commit cruel and brutal acts, atrocities and other offences against certain American and Allied PoW in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment for life with hard labour.
Sentence approved.

81-J Trial of Hosatani, Yuhei and 4 others.

Date & Place of Trial: 1 July 1946 at Yokohama, Honshu, Japan.

Charge: Between 15 January 1942 and 15 August 1945 the accused personnel of the Hiroshima PoW Camp Branch 1, Zentsuji, Shikoku, did commit cruel, inhuman and brutal acts and other offences against American and Allied prisoners of war in violation of the laws and customs of war.

Verdict: All guilty.

Sentences: Imprisonment for life with hard labour, 1.
" " 40 years " " " , 1.
" " 10 " " " " , 1.
" " 5 " " " " , 1.
" " 1 " " " " , 1.

82-J Trial of Yoshio Makizawa.

Date & Place of Trial: 6th May 1946 at Shanghai, China.

Charge: That on or about 19 Oct 1944, while a Major in the Japanese Imperial Army, he did, at Taihoku, Formosa, wilfully and unlawfully commit cruel, inhuman and brutal atrocities and other offences against an American PoW, in violation of the Laws and Customs of War.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for 30 years.
Sentence approved.

83-J Trial of Kunitada Mukoyama and two others.

Date & Place of Trial: 13th April 1946 at Shanghai, China.

Charge: That between 28 February and 15 April 1944, at the Japanese Gendarmerie Station in Shanghai, they did wilfully and unlawfully commit cruel, inhuman and brutal atrocities against certain citizens of the Commonwealth of the Philippine Islands, owing allegiance to the United States of America, in violation of the laws and customs of war.

Verdict: All three guilty.

Sentences: Imprisonment for 27 years, 1,
" " 22 " 1,
" " 20 " 1.

Findings confirmed, but sentences commuted to 18, 15 and 12 years respectively.

84-J Trial of Eisaku Murakami and 3 others.

Date & Place of Trial: 9th May 1946 at Yokohama, Japan.

Charge: Violations of the laws of war in that they, acting jointly and in pursuance of a common intent, did at or near Kamata-ku, Tokyo, on or about 28 April 1946, wrongfully, to the prejudice of the security of the occupying forces and in violation of the laws of war, assault two members of the United States Army and of the occupying forces, by hitting them about the head and body with clubs, sticks and their fists.

Verdict: Guilty, 4.

Sentences: Imprisonment with hard labour for life, 1.
" " " " " 20 years, 3.

85-J Trial of Hirate, Kaichi.

Date & Place of Trial: 14 January 1946 at Yokohama, Japan.

Charge: Between 12 Jan 1943 and 1 Sept 1945 at Hakodate 1st Branch camp, Hokkaido, Japan, did commit cruel and brutal atrocities and did permit members of his command to commit cruel and brutal atrocities against American and Allied PoW.

Verdict: Guilty.

Sentence: Death by hanging.

86-J Trial of Kanayama, Nubuo and 2 others.

Date & Place of Trial: 5 May 1946 at Yokohama, Japan.

Charge: That between 1 July 1944 and 2 Sept. 1945, the accused did at Hiroshima PoW camp, Yamaguchi, Honshu, commit cruel and brutal atrocities in violation of the laws and customs of war.

Verdict: All guilty.

Sentences: Imprisonment with hard labour for 20 years, 1.
" " " " " 15 " , 2.

87-J Trial of Takeuchi, Huoshi and 7 others.

Date & Place of Trial: 28 March 1946 at Yokohama, Japan.

Charge: Between 1 Sept. 1942 and 15 August 1945, they did, at Tokyo Area PoW Branch Camp 1, Honshu, commit cruel and brutal atrocities and other offences against prisoners of war, in violation of the laws and customs of war.

Verdict: All eight found guilty.

Sentences: Imprisonment for 30 years, with hard labour, 1,
 " " 22 " " " " 1,
 " " 16 " " " " 2,
 " " 8 " " " " 1,
 " " 7 " " " " 1,
 " " 5 " " " " 1,
 " " 2 " " " " 1.

88-J Trial of Shiba, Tsutome.

Date & Place of Trial: 8 April 1946 at Yokohama.

Charge: Between 1 Sept. 1943 and 20 January 1945 at Hamodate Main PoW camp, Hokkaido, Japan, did commit and permit members of his command to commit, cruel, brutal and inhuman atrocities in violation of the laws and customs of war, against 2 American and 9 British prisoners of war.

Verdict: Guilty.

Sentence: Imprisonment for 5 years with hard labour.

89-J Trial of Ikegami, Uichi.

Date & Place of Trial: 2 May 1946 at Yokohama, Japan.

Charge: Between 15 October 1943 and 15 April 1944, at PoW camp 18-B, Kyushu, Japan, the accused did commit and permit members of his command to commit cruel and brutal atrocities in violation of the laws and customs of war against 3 American prisoners of war.

Verdict: Guilty.

Sentence: Death by hanging.

90-J Trial of Ikeda, Yoshiyuki and 2 others.

Date & Place of Trial: 10 May 1946 at Yokohama, Honshu, Japan.

Charge: Between 1 June 1943 and 1 Sept. at Kukuoka Area PoW camp 4, Kyushu, the accused did wilfully and unlawfully commit cruel, inhuman and brutal atrocities and other offences against certain American and Allied Prisoners of war, in violation of the laws and customs of war.

Verdict: All three guilty.

Sentences: Imprisonment with hard labour for 15 years, 3.

91-J Trial of Aoki, Shoichiro.

Date & Place of Trial: 24 May 1946 at Yokohama, Japan.

Charge: Between 1 Dec. 1944 and 1 June 1945 at Umeda Bunsho PoW camp, Honshu, the accused, a civilian guard at the camp did wilfully and unlawfully commit cruel inhuman and brutal atrocities and other offences against American prisoners of war in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for 30 years.

92-J Trial of Nagakura, Seizo.

Date & Place of Trial: 10 May 1946 at Yokohama, Japan.

Charge: Between 1 Oct. 1943 and 1 Sept. 1945 the accused, a corporal in the Imperial Japanese Army, did at PoW camp 3, Kyushu, Japan, wilfully and unlawfully commit cruel, inhuman and brutal atrocities and other offences against American and Allied prisoners of war in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for 40 years.

93-J Trial of Danno, Kazuo.

Date & Place of Trial: 20 May 1946 at Yokohama, Honshu.

Charge: Between 1 May 1945 and 30 August 1945, the accused a first lieutenant in the Imperial Japanese Army, and medical officer at Fukuoka Area Branch PoW camp 23, Kyushu, Japan, did wilfully and unlawfully commit and permit persons under his supervision to commit cruel, inhuman and brutal atrocities against American prisoners of war in violation of the laws and customs of war.

Verdict: Not Guilty.

94-J Trial of Kawasaki, Iwao.

Date & Place of Trial: 12 June 1946 at Yokohama, Honshu.

Charge: Between 1 February 1944 and 1 September 1945 the accused, then Sgt. in the Imp. Japanese Army, did, at PoW camp 3, Kokuro, Kyushu, Japan, commit cruel, inhuman and brutal atrocities and other offences against certain American and Allied PoW in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for 20 years.

95-J Trial of Hirata, Takeharu.

Date & Place of Trial: 12 June 1946 at Yokohama.

Charge: Between 11 January 1945 and 11 June 1945, at Fukuoka PoW camp 23, Kyushu, Japan, the accused, then a Lt. in the Imp. Japanese Army did commit and permit members of his command to commit cruel, inhuman and brutal atrocities and other offences against certain American prisoners of war in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment for 20 years with hard labour.

96-J Trial of Akamatsu, Toranoshin.

Date & Place of Trial: 29 May 1946 at Yokohama, Honshu.

Charge: Between 1 January 1943 and 30 April 1945 at Yodogawa PoW camp, Osaka Area, Honshu, the accused, then a guard at said camp, did wilfully and unlawfully commit cruel, inhuman and brutal atrocities and other offences against certain American PoW in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for life.

97-J Trial of Kameoka, Yoshio,

Date & Place of Trial: 15 June 1946 at Yokohama, Japan.

Charge: Between 19 April 1944 and 1 Sept. 1945 at Osaka Area PoW camp 11, Narumi, Honshu, the accused, then a civilian interpreter at said camp, did wilfully and unlawfully commit cruel and brutal acts, atrocities and other offences against certain American prisoners of war in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for life.

98-J Trial of Fukunaga, Takeo.

Date & Place of Trial: 25th June 1946 at Yokohama, Honshu.

Charge: Between 1 October 1944 and 31 March 1945 at Hiroshima PoW Branch camp 6, Honshu, the accused, a civilian medical orderly at said camp, did commit cruel and brutal acts against certain American and Allied Prisoners of War in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for two years.

99-J Trial of Araki, Kuniichi.

Date & Place of Trial: 12 June 1946 at Yokohama, Japan.

Charge: Between 20 March 1943 and 10 February 1945 at Hakodate First Branch PoW camp, Hokkaido, the accused, then s/sgt. and member of medical staff, did commit cruel and brutal acts and other offences in violation of the laws and customs of war, against 4 British and 3 Dutch prisoners of war.

Verdict: Guilty.

Sentence: Death by hanging.

100-J Trial of Mineno, Genji.

Date & Place of Trial: 25 June 1946 at Yokohama, Japan.

Charge: Between 1 Feb. 1943 and 1 Sept. 1946 at PoW camp 3, Kyushu, the accused, then a civilian guard, did wilfully and unlawfully commit cruel, inhuman and brutal atrocities and other offences against certain American and Allied PoW in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for 20 years.

101-J Trial of Okazaki, Isojiro.

Date & Place of Trial: 2nd July 1946 at Yokohama, Japan.

Charge: Between 1 February 1945 and 16 May 1945 at Yodogawa PoW camp Osaka Area, Honshu, the accused, then a Superior Private, did commit offences in violation of the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for 2 years.

102-J Trial of Kawakami, Harushige and Shimodaira, Nazuo.

Date & Place of Trial: 10 July 1946 at Yokohama, Honshu.

Charge: Between 1 Aug 1943 and 31 May 1945, at and near Tokyo Area PoW Detached Camp 5, both of the accused then civilian employees of the Nippon Kokan Kaibushiki Kaisha, employed to guard PoW held captive at said camp by the Armed forces of Japan, did violate the laws and customs of war.

Verdict: Both accused found guilty.

Sentences: Imprisonment for 12 years, with hard labour, 1.
" " 10 " " " " 1.

103-J Trial of Kimura, Yasushi.

Date & Place of Trial: 20 July 1946 at Yokohama.
 Charge: Between 10 April 1944 and 30 August 1945 at and near Omori POW camp, Tokyo Area, the accused, then a civil guard, did violate the laws and customs of war.
 Verdict: Guilty.
 Sentence: Imprisonment with hard labour for 5 years.

104-J Trial of Shigeru Sawada and 3 others.

Date & Place of Trial: 27 Feb. - 15 April 1946 at Shanghai.
 Charge: Denial of status of prisoners of war to eight Doolittle Fliers, three of whom were illegally executed at Shanghai, China, on 15 October 1942.
 Verdict: All four found guilty.
 Sentences: Imprisonment for 9 years, 1.
 " " 5 " , 3.

105-J Trial of Yoshio Nakano and 3 others.

Date & Place of Trial: 6 - 9 June 1946 at Shanghai, China.
 Charge: Torture of American Prisoners of War at Taihoku, Formosa, on 30 May 1945.
 Verdict: All four found guilty.
 Sentences: Imprisonment for life, 1,
 " " 30 years, 2,
 " " 25 " , 1.
 Sentences approved.

106-J. Trial of Jitsuo Date and 7 others.

Date & Place of Trial: 1 - 22 July 1946 at Shanghai, China.
 Charge: Illegal trial and execution of 14 American POW at Taihoku, Formosa on 19 June 1945.
 Verdict: Guilty, 8.
 Sentences: Death, 2,
 Imprisonment for life, 2,
 " " 40 years, 1,
 " " 30 " , 2,
 " " 20 " , 1.

107-J Trial of Seichi Onishi and 2 others.

Date & Place of Trial: 22 August 1946 at Manila, Philippine Is.
 Charge: Murder, torture, assault and mistreatment of civilians at or near Dumanjug and Toledo, Cebu Province, P.I., on or about 7 April and 1 October 1944.
 Verdict: Not Guilty, 2.
 Guilty, 1.
 Sentence: Imprisonment for life.

108-J Trial of Lt. Gen. Shiyoku Kou, Imperial Japanese Army. (Koh, Ko)

Date & Place of Trial: 14 March 1946 at Manila, P.I.
 Charge: Between 9 March 1944 and 6 January 1945, while charged with the supervision, welfare, etc. of all nationals of the United States, its allies and dependencies held by the Imperial Japanese Government as prisoners of war, did wilfully and unlawfully disregard, neglect and fail to discharge his duties of command by permitting and sanctioning the commission of brutal atrocities and other high crimes against said POW and non-combatant civilian internees; and he thereby violated the laws of war.
 Verdict: Guilty.
 Sentence: Death by hanging.
 Sentence confirmed.

109-J Trial of Murakami, Takuji and 12 others.

Date & Place of Trial: 21 June - 31 August 1946 at Yokohama.
 Charge: Between 25 April 1943 and 15 August 1945, the accused at the Hiroshima POW Branch Camp 2, or at the Hiroshima POW Despatch Camp 3, did violate the laws and customs of war, their victims being a number of Dutch and Australian prisoners of war.

Verdict: All 13 found guilty.

Sentences: Death by hanging, 2,
 Imprisonment with hard labour for 40 years, 1,
 " " " " 35 " 1,
 " " " " 20 " 1,
 " " " " 15 " 2,
 " " " " 6 " 1,
 " " " " 5 " 3,
 " " " " 3 " 1,
 " " " " 1 " 1.

110-J Trial of W/O Tomono Shundo, Kempei Tai,

Date & Place of Trial: 28th March 1946 at Singapore.
 Charge: Execution of two United States airmen at Saigon in July 1945.

Verdict: Guilty.

Sentence: Death by hanging.
 Sentence executed 23 May 1946.

111-J Trial of Major Mabuchi Setsu, Major Nakamura Kinji of the Medical Corps, and two others.

Date & Place of Trial: 7th June 1946 at Singapore.
 Charge: Killing of an unknown United States airman at Saigon, F.I.O., in June 1945, by injecting novocain into the jugular vein.

Verdict: Guilty.

Sentences: Death by hanging, 4.

112-J Trial of Lt. Kuwahata Tsugio and Sgt. Maj. Murakami Isai.

Date & Place of Trial: 1 June 1946 at Singapore.
 Charge: Killing by beheading two United States airmen at Saigon, F.I.O. in June 1945.

Verdict: Guilty.

Sentences: Each to suffer one year's rigorous imprisonment.

113-J Trial of Major Mizeuani Tatao.

Date & Place of Trial: 13 May 1946 at Singapore.
 Charge: (1) Responsible as Branch Commander for the death of about 600 American, Dutch and Australian prisoners of war while working on the Burma-Siam Railway.
 (2) Killing by shooting of a British prisoner of war.
 (3) Torture of a Burmese.

Verdict: Guilty.

Sentence: Death by hanging.

114-J Trial of Capt. Uyeno Massakaru and Capt. Yamazaki Kaname, Medical Corps.

Date & Place of Trial: 17th April 1946 at Rangoon.
 Charge: As Commanding Officer and Medical Officer of the New Law Courts Jail Annex, Rangoon, Burma, in 1944, they were responsible for the ill-treatment and neglect causing the deaths of five allied prisoners of war.

Verdict: Uyeno, Guilty. Yamazaki, Acquittal.

Sentence: Death by hanging.
 Sentence executed 19 June 1946.

115-J Trial of Capt. Nagahara Kenzo and 3 others.

Date & Place of Trial: 2 May 1946 at Rangoon.

Charge: As Commanding Officer, Medical Officer, Second in Command and Guard, respectively, in the New Law Courts Jail, Rangoon, they were responsible for the mal-treatment of Allied prisoners of war causing the deaths of 11 prisoners of war.

Verdict: Not guilty: 2,

Guilty: 2.

Sentences: Imprisonment for 4 years, 1.

" " 2 " 1.

Sentences approved.

116-J Trial of Capt. Tazumi Motozo and 3 others.

Date & Place of Trial: 6 June 1946 at Rangoon.

Charge: As staff of Rangoon Central Jail from March 1944 to May 1945, they were concerned with the ill-treatment resulting in the death of at least 17 United States airmen, prisoners of war.

Verdict: Guilty, 4.

Sentences: Death by hanging, 1,

Imprisonment for 15 years, 1,

" " 7 " 1,

" " 3 " 1.

117-J Trial of Sgt. Maj. Ikeda Kumejiro.

Date & Place of Trial: 21 June 1946 at Rangoon.

Charge: As Medical Sergeant Major at Rangoon Central Jail from November 1943 to February 1944 he was responsible for the death of five United States airmen by failing to render proper medical attention.

Verdict: Not Guilty.

118-J Trial of Sentaro Yamaguchi and 3 others.

Date & Place of Trial: 5th Sept. 1946 at Manila, P.I.

Charge: Murder of prisoners of war at or near Samarinda, Borneo, in February 1945.

Verdict: Guilty, 3.

1 unable to stand trial due to illness.

Sentences: Death by musketry, 3.

VIII. French cases.

-18-

59) Trial of Jean Lorenz Bauhofer.

Date & Place of Trial: Permanent Military Tribunal at Dijon,
21st June, 1946.
Charge: Murder, torture and illegal arrest and confinement
committed against French citizens.
Verdict: Guilty.
Sentence: Death. Appeal lodged by Bauhofer.

60) 2nd Trial of Kurt Peter Blindauer,

Date & Place of Trial: 9th July 1946 before a Permanent Military
Tribunal at Toulouse.
Charge: Co-operation with the Gestapo; illegal arrest and
confinement of French citizens; torturing persons
so arrested and confined.
Verdict: Guilty.
Sentence: Death.

61) Trial of Reinhard Kurt Schneider.

Date & Place of Trial: 17th July 1946 before a Permanent Military
Tribunal at Toulouse.
Charge: Attempted murder of a French citizen.
Verdict: Not Guilty.

62) Trial of Martin Karl Reinhold Hannig, Walter Beier and Werner Hellig.

Date & Place of Trial: 25th July 1946 before a Permanent Military
Tribunal at Bordeaux
Charge: As to Hannig and Beier, complicity in the murder of
French prisoners of war.
As to Hellig, murder of these prisoners of war.
Verdict: All guilty, but with extenuating circumstances in
favour of Beier and Hellig.
Sentence: As to Hannig, Penal Servitude for life.
As to Beier, Penal Servitude for 12 years.
As to Hellig, Penal Servitude for 5 years.

63) Trial of Oscar Geiger.

Date & Place of Trial: 22nd August 1946, before a Permanent
Military Tribunal at Dijon.
Charge: Pillage and sequestration committed against French
civilians.
Verdict: Guilty, but with extenuating circumstances.
Sentence: Forced Labour for 10 years.

64) Trial of Adolf Hoffmann.

Date & Place of Trial: 30th August 1946 before a Permanent
Military Tribunal at Lyon.
Charge: Wilful striking and wounding of a French civilian.
Verdict: Guilty.
Sentence: Imprisonment for two years.

IX. Greek Cases.

1) Trial of Italian Lt. Giovanni Ravalli and Bulgarian Lt. Anton Kaltcheff.

Date & Place of Trial: 15th February 1946 before the Special
War Crimes Court of Athens,
Charge: (1) Organising the Bulgarian Comitatus whose aim was
the Bulgarianisation of West Macedonia,
(2) Directing and procuring arms, ammunition and money
to Bulgarian Comitadjis of West Macedonia.
(3) Illtreatment, torture, unlawful imprisonment and
deportation of civilians.
(4) Terrorism, (5) Rape, (6) Murders, Massacres.
(7) Pillage, (8) Wanton destruction of property.
Verdict: Guilty.
Sentences: Imprisonment for life.

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Tribunal at Toulouse.
Charge: Co-operation with the Gestapo; illegal arrest and
confinement of French citizens; torturing persons
so arrested and confined.
Verdict: Guilty.
Sentence: Death.

61) Trial of Reinhard Kurt Schneider.

Date & Place of Trial: 17th July 1946 before a Permanent Military
Tribunal at Toulouse.
Charge: Attempted murder of a French citizen.
Verdict: Not Guilty.

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Date & Place of Trial: 25th July 1946 before a Permanent Military
Tribunal at Bordeaux
Charge: As to Hannig and Beier, complicity in the murder of
French prisoners of war.
As to Hellig, murder of these prisoners of war.
Verdict: All guilty, but with extenuating circumstances in
favour of Beier and Hellig.
Sentence: As to Hannig, Penal Servitude for life.
As to Beier, Penal Servitude for 12 years.
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(2) Directing and procuring arms, ammunition and money
to Bulgarian Comitadjis of West Macedonia.
(3) Illtreatment, torture, unlawful imprisonment and
deportation of civilians.
(4) Terrorism, (5) Rape, (6) Murders, Massacres.
(7) Pillage, (8) Wanton destruction of property.
Verdict: Guilty.
Sentences: Imprisonment for life.

C.234.
4th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Letter received by Lord Wright from Monsieur M. de Baer.

Dear Lord Wright,

In Detention Circular No.27 you may have noticed that several Key Germans, who had been listed on United Nations War Crimes Commission Lists Nos.7 and 9 have now been arrested and the detaining authorities want instructions as to the disposal of these accused persons.

You will recall that these key men have been listed on the initiative of the Commission because, on account of their position, there was a strong presumption that they had taken part in the making of criminal policy. We hoped at that time that the National Offices would follow our example, and bring definite charges against these persons.

In fact, however, this has not been the case. The National Offices have rightly or wrongly assumed that all these people would be tried by the occupying authorities, before some international or military court, and they have not sent us dossiers which we were counting on having. The position, therefore, is now that these persons have been arrested and are kept in custody on the strength of our lists and that no Government has claimed the right to try them.

We must obviously take some sort of action in respect of these men. The first alternative is that they should be tried by a tribunal in Germany. In this connection we might ask the Subsequent Proceedings Committee what are their intentions concerning these persons.

Failing this it seems to me that two courses of action remain open to us: either we should ourselves formulate a charge showing their responsibility, communicating it to the governments concerned and ask them to send us dossiers if they think fit; or else, we should advise the detaining authorities that no charge has been brought against these persons, and that they can be released, so far as we are concerned.

This last suggestion, however, would in my opinion bring no credit to the work of this Commission and I would therefore be in favour of some more active measure on your part.

Yours sincerely,

(s) M. de Baer.

C. 235.
8th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Establishment of an "International Association of
Democratic Lawyers and Resolutions adopted at its Inaugural
Conference in Paris.

The following letter from the Yugoslav representative on the United Nations War Crimes Commission, dated 2nd November, 1946, contains information on the establishment of the organisation "International Association of Democratic Lawyers". Dr. Zivkovic's letter (I) herewith circulated for the information of members, together with the French text (II) and English translation (III) of the Resolutions adopted by this Organisation at its Paris gathering in October, 1946:

I.

2nd November, 1946.

Dear Lord Wright,

I have just returned from Paris, where I have been attending an important gathering of jurists from 23 countries.

These jurists met at the invitation of the French National Judicial Movement (Mouvement national judiciaire français), and acted as representatives of various national associations of lawyers. Among the representatives there were prominent persons such as Prof. Trainin from the U.S.S.R., Dr. Eser from Czechoslovakia, Mr. Mitchison and Elwyn Jones from the United Kingdom, General Taylor from the U.S.A. was deputed by Mr. Pomeranz, member of the American prosecuting body for the so-called "Subsequent proceedings", and the head of the American delegation was Mr. Martin Popper, Secretary of the National Lawyers Guild from New York. There were representatives of Republican Spain and of many Latin American and Middle East countries. Apart from that leading French personalities attended as observers, such as Prof. Rene Cassin and M. Falco and M. Donnedieu de Vabres, so that the meeting was a very representative one.

The meeting ended in two extremely important decisions.

First it founded a world society of jurists which was called the "International Association of Democratic Lawyers". Professor Cassin was elected President of the Association. The new body will immediately seek recognition from the United Nations Organisation as one of the non-governmental international organisations provided for in Article 71 of the Charter of the United Nations.

/Second

Second, the meeting adopted a Resolution on Crimes against Humanity, a copy of which I am glad to be in a position to attach to this letter. The Resolution is far-reaching in that it recommends that crimes against humanity be regarded as a permanent part of the future International Penal Law, and that they represent the legal guarantee of what is called the "human rights and fundamental freedoms" in Article 55(c) of the Charter of the United Nations. This is recommended as a peace-time measure, covering all the countries of the world.

Third, and in connection with the above, a second Resolution was adopted as to the necessity of trying the nazi industrialists and financiers before another International Military Tribunal, the text of which is also attached to this letter.

Finally, a third Resolution was adopted condemning Franco's regime in Spain and declaring that it was conducting persecutions representing crimes against humanity. Unfortunately I have been unable to get the text of this Resolution, as I had to leave Paris before the text was distributed.

I believe that this new contribution to the improvement of International Law will interest all the members of our Commission, and I should be grateful if you would kindly inform them of my communication.

Yours very sincerely,

(s) R. Zivkovic.

11.

RESOLUTION GENERALE

Le Congrès International qui, sur l'initiative du Mouvement National Judiciaire Français, a réuni à Paris les 24, 25, 26, 27 Octobre 1946, des juristes des Etats-Unis d'Amérique, de l'U.R.S.S. de Grande-Bretagne, de France, de Belgique, de Bulgarie, de Colombie, de Cuba, d'Egypte, d'Espagne, de Grèce, d'Iran, du Luxembourg, du Mexique, de Norvège, des Pays-Bas, de Pologne, de République Argentine, de Roumanie, de Suisse, de Tchécoslovaquie, du Venezuela, de Yougoslavie, pour rechercher les éléments d'un droit commun international sur la "Répression des crimes nazis contre l'humanité" et sur "la protection des libertés démocratiques".

Considérant que l'élaboration d'une paix durable est le but essentiel des démocrates du monde entier, que les juristes démocrates ont le devoir, de toute leur autorité et de toute leur science, d'y concourir.

Considérant que l'avenir de la paix est lié à la disparition du fascisme et au renforcement de la démocratie; que les juristes démocrates doivent chercher les moyens propres à hâter et à parfaire cette disparition et ce renforcement;

Considérant qu'un certain nombre de ces moyens apparaissent à la lumière des présents débats comme étant de droit commun international;

/qu'il

qu'il importe de les faire connaître et de les développer;

Le Congrès a voté les résolutions suivantes:

1°) - REPRESSION DES CRIMES NAZIS CONTRE L'HUMANITE

Considérant que les preuves sont établies de l'extermination systématique par les nazis de nombreux millions de civils innocents:

Considérant que ces assassinats de masse qui peuvent être qualifiés de génocide, constituent par leur nature des crimes internationaux de droit commun, réprimés par toutes les lois pénales préexistantes, dont l'identité définit le droit commun international;

Considérant que l'étendue de la culpabilité de ces crimes contre l'humanité résulte de la publicité de leur préméditation, que le parti nazi constitue de ce chef une organisation à l'activité criminelle, dont toutes les lois pénales préexistantes châtent tous les libres participants, par une deuxième application de droit commun international;

Considérant que le jugement de Nuremberg du 1er Octobre 1946 constitue le premier acte qui est de grande portée, de la justice pénale internationale;

Qu'il convient notamment de mesurer toute l'importance de la condamnation par ce jugement comme "organisations criminelles" des "SS" de la "Gestapo" et "SD" et des 4 échelons supérieurs du "Corps des chefs du parti nazi";

Qu'il convient aussi de saluer les membres éminents des accusations alliées qui ont réuni et présenté devant ce tribunal les documents les plus accablants des crimes nazis;

Considérant que l'agression ou "crime de guerre" commis par l'Allemagne nazie et retenu par le Tribunal de Nuremberg n'a été qu'un moyen de développement de l'entreprise d'extermination, "crime contre l'humanité" poursuivie par essence par le nazisme;

1°) - Sont coupables de crimes contre l'humanité et sont punissables comme tels, ceux qui exterminent ou persécutent un individu ou un groupe d'individus, en raison de leur nationalité, de leur race de leur religion ou de leurs opinions. Ces crimes seront punis même lorsqu'ils seront commis par des individus ou des organisations agissant comme organes de l'Etat ou avec l'encouragement ou la tolérance de l'Etat.

Les crimes contre l'humanité sont indépendants de l'état de guerre.

2°) - Les auteurs des crimes contre l'humanité doivent actuellement être jugés dans l'Etat sur le territoire ou contre les citoyens duquel les crimes ont été commis. Si la répression ne peut pas être exercée par un tribunal national, les coupables doivent être déférés à une juridiction pénale internationale.

L'extradition des criminels est due.

3°) - Il convient que, pour l'avenir, la répression des crimes contre l'humanité s'insère d'urgence dans un code pénal international

/et que

et que soit constituée à bref délai une juridiction pénale internationale.

4°) - Il est nécessaire que les lois répriment les propagandes qui préconisent l'extermination ou la persécution d'un individu ou d'un groupe d'individus, en raison de leur nationalité, de leur race, de leur religion ou de leurs opinions démocratiques.

II - PROTECTION DES LIBERTES DEMOCRATIQUES.

Considérant que la construction d'une paix durable exige le respect des libertés démocratiques essentielles, garanti par un système de sanctions effectives réprimant toute atteinte à la liberté.

1°) Le Congrès constate l'existence d'un droit commun international pour la protection des libertés morales, comprenant la liberté de parole, la liberté de réunion, la liberté de conscience et la liberté de culte.

2°) Le Congrès constate l'existence d'un droit commun international pour la protection des libertés physiques comprenant, d'une part, l'inviolabilité du domicile et le secret de la correspondance, et d'autre part, la liberté de la défense avec la saisine de la justice, l'indépendance du juge et la publicité des débats.

3°) Le Congrès constate l'existence d'un droit commun international pour la protection des libertés civiques, comprenant l'électorat et l'éligibilité sans distinction d'origine ou de croyances.

4°) Le Congrès constate l'existence d'un droit commun international pour la protection de la liberté syndicale et du droit des travailleurs à la sécurité sociale.

R E S O L U T I O N

-----ooOoo-----

Le Congrès International des juristes réunis à Paris, les 24, 25, 26 & 27 Octobre 1946, ayant étudié d'une façon toute particulière la question des crimes contre l'humanité et plus spécialement celle des conséquences juridiques du procès de Nuremberg, demande:

1°) que les chefs industriels qui ont participé à la conspiration du gouvernement nazi tendant à entreprendre une guerre d'agression et à qui incombe par leurs secours financiers et autres moyens économiques, une responsabilité égale à celle des chefs politiques et militaires nazis pour d'innombrables crimes contre l'humanité, soient traduits devant un tribunal comme criminels de guerre;

2°) que la liste de ces criminels soit dressée par un record commun des nations qui ont créé le Tribunal de Nuremberg;

3°) qu'un second tribunal militaire international soit créé conformément aux dispositions de l'accord de Londres devant le quel les industriels et financiers nazis accusés seront poursuivis pour leurs crimes;

4°) que cette résolution soit transmise à tous les membres des nations unies.

III.

TRANSLATION.

GENERAL RESOLUTION.

The International Congress comprising jurists of the U.S.A., the U.S.S.R., Great Britain, France, Belgium, Bulgaria, Colombia, Cuba, Egypt, Spain, Greece, Iran, Luxembourg, Mexico, Norway, the Netherlands, Poland, the Argentine Republic, Roumania, Switzerland, Czechoslovakia, Venezuela, Yugoslavia, which was assembled at Paris on October 24th, 25th, 26th and 27th October, 1946, at the instance of the French National Judicial Association (Mouvement National Judiciaire Francais), to work out the design for a common law of nations for the "punishment of Nazi crimes against humanity" and the "protection of democratic liberties",

Whereas the establishment of a durable peace is the essential aim of democrats throughout the world; and whereas it is the duty of democratic jurists to assist in this object with all the authority and conscience at their disposal;

Whereas the future of peace is linked with the disappearance of Facism and the strengthening of democracy; and

Whereas it is the duty of democratic jurists to discover all the appropriate means for hastening and completing the disappearance of Fascism and the strengthening of democracy;

Whereas some of these means appear, in the light of the present discussions, to be matters of the common law of nations; and whereas it is important to make them generally known and develop them;

has adopted the following resolutions.

1. PUNISHMENT OF NAZI CRIMES AGAINST HUMANITY.

Whereas it has been established by evidence that the Nazis undertook the systematic extermination of many millions of innocent civilians;

Whereas these mass murders, which may be described as genocide, constitute by their very nature crimes under the common law of nations, punishable by all pre-existing penal laws, the identical general principles of which proclaim the existence of a common law of nations,

Whereas the extent of the culpability for these crimes against humanity is manifest from the publicity with which they were planned, and whereas the Nazi Party consequently constitutes a criminal organisation in which all who have freely participated are punishable by all pre-existing penal legislation, and therefore also under the common law of nations;

Whereas the Nuremberg judgment of October 1st, 1946, constitutes the first act of international justice having an extended scope;

/Whereas...

Whereas it is desirable to appreciate the full importance of the condemnation, in that judgment, of the SS., the Gestapo and S.D., and of the four higher groups of the Nazi leadership corps as "criminal organisations";

Whereas it is also desirable to pay a tribute to the eminent members of the Allied prosecuting staffs who collected and submitted documents containing overwhelming proof of the Nazi crimes to the above-mentioned tribunal;

Whereas the aggression or "the crime of war" committed by Nazi Germany and placed on record by the Nuremberg Tribunal was simply a means for the development of the planned extermination - the "crime against humanity" which was the essential policy of Nazism;

(1) Persons who exterminate or persecute an individual or a group of individuals on account of their nationality, their race, their religion, or their opinions, are guilty of crimes against humanity and are punishable as such. These crimes must be punished even if they are committed by individuals or organisations acting as organs of the State or with the encouragement or countenance of the State.

Crimes against humanity are independent of the existence of a state of war.

(2) The perpetrators of crimes against humanity have, at present, to be tried in the State in whose territory, or against whose nationals, the crimes were committed. In cases where their punishment cannot be undertaken by a national tribunal the guilty persons should be sent for trial to an international criminal court.

Extradition of the criminals may be claimed.

(3) It is urgently desirable, in regard to future cases, that the punishment of crimes against humanity should be embodied in an international penal code, and that an international criminal judiciary should be constituted in the near future.

(4) It is essential that there should be laws for the punishment of propaganda advocating the extermination or the persecution of any individual or group of individuals on account of their nationality, their race, their religion or their democratic opinions.

11. PROTECTION OF DEMOCRATIC LIBERTIES.

Whereas the establishment of durable peace requires respect for essential democratic liberties, guaranteed by a system of effective penalties for any attacks upon freedom;

(1) The Congress recognises the existence of a common law of nations for the protection of spiritual liberties, including freedom of speech, freedom of association, freedom of conscience, and freedom of worship;

(2) The Congress recognises the existence of a common law of nations for the protection of physical liberties, including, on the one hand, inviolability of the home, secrecy of correspondence, /and..

and, on the other hand, freedom of defence, with access to the courts, the independence of judges and the publicity of trials.

(3) The Congress recognises the existence of a common law of nations for the protection of civil liberties, including electoral freedom and the eligibility of candidates irrespective of their origin or religion.

(4) The Congress recognises the existence of a common law of nations for the protection of the freedom of trades unions, the rights of the workers and social security.

R E S O L U T I O N

The International Congress of Jurists which met at Paris on October 24th, 25th, 26th and 27th, 1946, having devoted special attention to the question of crimes against humanity and more particularly to the legal consequences of the Nuremberg trial, hereby demands:

1. That the industrial leaders who took part in the conspiracy of the Nazi Government aiming at the launching of a war of aggression and who have, as a consequence of the support which they provided by financial and other economic means, incurred responsibilities equal to those of the political and military Nazi leaders for innumerable crimes against humanity, should be sent before a court for trial as war criminals.

2. That a list of these criminals should be drawn up by agreement between the nations which constituted the Nuremberg Tribunal;

3. That a second international military tribunal should be set up in conformity with the provisions of the London Agreement and that the accused Nazi industrialists and financiers should be tried by it for their crimes.

4. That the present resolution should be transmitted to all the members of the United Nations.

UNITED NATIONS WAR CRIMES COMMISSION.

Statement by Committee III
comparing its general propositions regarding the term
"Crimes against Humanity"
as set out in its report Doc.C.201, with the law applied by the
International Military Tribunal at Nuremberg.

Committee III discussed in its meetings held on 30th
October 1946 (Minutes No.22/46) and 7th November 1946,
(Minutes No.23/46), the bearing of the Nuremberg
Judgment on the term "crimes against humanity". It
adopted unanimously the statement reproduced below,
showing on the left hand side the analysis of the term
by Committee III, as contained in Doc.C.201, and on the
right hand side the comment on these propositions which
is called for by the Nuremberg Judgment.

General Propositions
contained in
Doc. C. 201.

Comment on the General Propositions
in the light of the
Nuremberg Judgment.

1) According to the basic documents (Charter of the International Military Tribunal annexed to the Four-Power Agreement of 8th August 1945, as rectified by the Berlin Protocol of 6th October 1945; the Control Council Law No.10; the Charter of the International Military Tribunal for the Far East), crimes against humanity may consist in the violation

1) The Nuremberg Judgment deals only with the law to be applied by the Tribunal, i.e., the law formulated in the Charter annexed to the Four-Power Agreement of 8th August, 1945.

The Tribunal is also of the opinion that one and the same act may constitute both a war crime in the narrower sense and a crime against humanity.

either of the laws and customs
of war (*)
or of positive municipal provisions of criminal law,
or of the general principles
of criminal law as derived
from the criminal law of all
civilized nations.

(*) Footnote to paragraph 1.

It might be argued that in a purely scientific system, violations of the laws and customs of war should not be included in the term "crimes against humanity", which should be restricted to such offences as do not fall under the term of violations of the laws and customs of war, but the Committee's task is to interpret the basic documents.

Footnote to paragraph 1.

The Tribunal felt that there was this overlapping of the terms "war crime" and "crimes against humanity". It used the term "crime against humanity" also in a narrower sense, comprising only such activities as are not violations of the laws and customs of war, e.g., on p.16943, where the Tribunal, dealing with Germanization, interpreted the expression "crime against humanity" as a term covering criminal denationalisation in areas to which the laws and customs of war did not apply.

2) Under the basic documents there are two different types of crimes against humanity which, with a few exceptions, are subject to the same provisions, namely:

- (a) crimes of the murder type, (murder, extermination, enslavement, deportation and other inhumane acts.) The words "other inhumane acts" may be held to cover only serious crimes of a character similar to murder, extermination, enslavement and deportation - eiusdem generis rule of interpretation;
- (b) persecutions (on political and racial, under the Charter of 8th August 1945, also religious, grounds.)

3) The Charter of the European International Military Tribunal (Art.6) and the Charter of the International Military Tribunal for the Far East (Art.5) start from the basic assumption that the major war criminals committed crimes against humanity acting in the interest of the European Axis Countries, or in the interest of the Japanese war effort ("Far Eastern War Criminals"), as the case may be.

This assumption is not expressed in the local law of Germany, as laid down by the Control Council Law No.10 for criminals other than major war criminals.

4) Under the terms of the Charters of the International Military Tribunals, "crimes against humanity" of the murder type are offences committed against civilian populations.

Crimes against members of belligerent forces are outside the scope of this type of crime; as regards crimes of the persecution type, the Committee assumes that the intention is to exclude also this type of crime, though the wording is not quite clear.

5) "Persecutions" constitute crimes against humanity only if perpetrated on political and racial (under the European Charter also religious) grounds. In the case of the major war criminals, it is a further condition that "persecutions" be in execution of or in connection

2) Though the Nuremberg Judgment does not speak of two different types of crimes against humanity, crimes of the murder type, and persecutions, it remains possible to make a distinction between these two types. This does not imply, however, that practical consequences arise from the distinction.

3) No comment on paragraph 3 is called for.

4) The Tribunal does not distinguish between crimes of the murder type and persecutions. This does not, however, make necessary a modification of paragraph 4.

5) The opinion that the acts be in execution of or in connection with any crime within the jurisdiction of the International Military Tribunal applies, according to the Nuremberg Judgment, to all kinds of crimes against humanity committed by the major German war criminals, and is not restricted to what in

with any crime within the jurisdiction of an International Military Tribunal (i.e. crimes against peace, violations of the laws and customs of war, crimes against humanity of the murder type.)

Doc.C.201 was called persecutions. As far as the major war criminals who were tried at Nuremberg were concerned, it is now established that the connection with the war is necessary in both types of crimes against humanity.

This rule is, however, restricted to cases falling under the Charter of the International Military Tribunal. It does not apply in the case of other than the "major war criminals", particularly in the cases to be adjudicated upon under the Control Council Law No.10, the corresponding provision of which does not contain the words "in execution of or in connection with any crime within the jurisdiction of the Tribunal". (See Doc.C.237, paragraph XXVII).

6) Isolated offences do not fall within the notion. As a rule systematic mass action, particularly if it can be shown to be authoritative, will be necessary to transform a common crime, punishable merely under municipal law, into a crime against humanity which thus becomes also the concern of International Law. Only crimes which either by their magnitude and savagery or by their great number or by the fact that a similar pattern is applied at different times and places, endanger the international community or shock the conscience of mankind, warrant intervention by States other than that on whose territory the crimes have been committed, or whose subjects have become their victims.

6) As the Judgment deals only with the major war criminals, the statement contained in paragraph 6 is not affected.

7) It is irrelevant whether a crime against humanity has been committed before or during the war.

7) As far as the German major war criminals are concerned, the statement that it is irrelevant whether a crime against humanity has been committed before or during the war, though based on the express provision to the same effect contained in the Charter, must be considerably qualified in view of the Nuremberg Judgment. Although in theory it remains irrelevant whether a crime against humanity was committed before or during the war, in practice it is difficult to establish the connection between what is alleged to be a crime against humanity and a crime within the jurisdiction of the Tribunal, if the act was committed before the war.

On the other hand, if the commission of an inhumane act charged in the Indictment took place during the war, its connection with the war has been assumed by the Tribunal. Inhumane acts committed in Austria after the occupation by Germany, are to be considered crimes against humanity because of their connection with the occupation of Austria, which was an act of aggression and therefore a crime against peace. Inhumane acts committed on Czechoslovak territory after the occupation of the so-called Sudeten territory, are, in the light of the Nuremberg Judgment, either crimes against humanity or war crimes in the narrower sense.

As far as crimes against humanity allegedly committed by minor perpetrators are concerned, the Judgment does not necessarily mean that the Commission should regard them as crimes against humanity only, if they are connected with the war, because this connection is made a condition only in the law to be applied to major war criminals.

8) The nationality of the victims is irrelevant.

8). The Committee's statement that the nationality of the victim is irrelevant, was based on the words of the Charter, "committed against any civilian population". Here again, the proposition remains true in theory, but must, according to the view of the Nuremberg Tribunal, be considerably qualified with regard to acts committed before the war by the German major war criminals in Germany against German nationals. Even with regard to revolting and horrible crimes the connection with aggression or with war crimes in the narrower sense must be proved and where the proof is not satisfactory, they are not considered by the International Military Tribunal as crimes against humanity within the meaning of the Charter.

The restriction applies only as far as the law to be applied to major war criminals is concerned.

9) Not only the ringleaders but also the actual perpetrators of crimes against humanity are criminally responsible.

9) The problem of lesser perpetrators was outside the proceedings before the International Military Tribunal.

10) It is irrelevant whether or not a crime against humanity has been committed in violation of the lex loci.

11) A crime against humanity can be committed by enacting legislation which orders or permits crimes against humanity, e.g. unjustified killing, deportations, racial discrimination, suppression of civil liberties, etc.

10) The irrelevance of the lex loci has been confirmed by the Tribunal.

11) The proposition that a crime against humanity can be committed by enacting legislation which orders or permits crimes against humanity, has been endorsed by the Tribunal as is particularly shown in the case of the defendants Frick and von Neurath.

C.237.
11th November 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

The Bearing of the Nuremberg Judgment
on the Interpretation of the term "Crimes against Humanity"
with special regard to the work of the Commission
and to the provisions of the Control Council Law No.10.

By Egon Schwelb, Legal Officer.

The following report, first circulated on 26th October 1946, as a working paper for Committee III, (Doc.III/62), formed the basis of the discussion in Committee III which lead to the adoption of its statement which has now been circulated as Document C.236.

Committee III decided unanimously to circulate to members of the Commission, in addition to its statement (C.236), also the report prepared for it by the Legal Officer. Paragraph XXVI of this paper is now superseded by the statement contained in Doc. C.236.

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I. Introductory.

In the meeting of Committee III held on 2nd October 1946, (Minutes No.21/46), Committee III charged this writer with preparing a paper analysing the Nuremberg judgment as far as it dealt with crimes against humanity, and to try to set out what bearing the judgment had on the interpretation of the notion of "crimes against humanity", and, consequently, on the charges involving crimes against humanity with which Committee III was dealing.

The present paper is based on the original transcript of pages 16794-17077 of the transcript which was made available to this writer by the British War Crimes Executive. At the time of writing, the part dealing with the sentences on the individual defendants is not yet available.

The numbers in this paper refer to the pages of the official Nuremberg transcript.

II. Earlier discussion of the term "Crimes against Humanity" by Committee III.

The general questions connected with the notion of "crimes against humanity" were discussed by this writer in the paper III/33 of 22nd March 1946. Its conclusions were, with certain amendments, adopted by Committee III in its report Doc.C.201.

As will be seen, the interpretation, by the Nuremberg Tribunal, of the term "crime against humanity", does not fully coincide with the interpretation contained in the papers III/33 and C.201. It will be seen particularly that the International Military Tribunal has interpreted the term in a narrower sense than in the documents quoted. It will also be seen that the International Military Tribunal appears to have attributed more relevance to the Berlin Protocol of 6th October 1945 than this writer did in his note on the Berlin Protocol contained in Doc.C.193.

III. General Attitude of the Tribunal to the Law of the Charter.

The Tribunal has said, (p.16799) that the provisions of Art.6. of the Charter of the International Military Tribunal "are binding upon the Tribunal as the law to be applied to the case".

The Court declared: "The law of the Charter is decisive and binding upon the Tribunal."

The making of the Charter was the exercise of the sovereign legislative power by the countries to which the German Reich unconditionally surrendered; and the undoubted right of these countries to legislate for the occupied territories has been recognised by the civilised world. The Charter is not an arbitrary exercise of power on the part of the victorious nations, but in the view of the Tribunal, as will be shown, it is the expression of international law existing at the time of its creation; and to that extent is itself a contribution to international law. " (p.16871.)

On p.16925, the Tribunal says: "The Tribunal is, of course, bound by the Charter in the definition which it gives both of "war crimes" and "crimes against humanity". "

The Tribunal conceived its task to be the interpretation and application of the law as laid down in the Charter. It did not consider itself to be called upon to make new law (judge-made law) on the one hand, or to examine the legality or otherwise of its constituting Charter on the other, although it did express the opinion that the law as laid down by the Charter was in accordance with the existing international law and in conformity with the law of all nations, (e.g. on p.16880).

IV. The crime against peace as the supreme war crime.

In dealing with Count 1 of the Indictment, (Common Plan or Conspiracy), and Count 2, (Aggressive War; Crimes against Peace), the Tribunal stated (p.16819): "To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.

The first acts of aggression referred to in the Indictment are the seizure of Austria and Czechoslovakia; and the first war of aggression charged in the Indictment is the war against Poland begun on 1st September 1939. "

The Tribunal further stated with regard to aggression against Austria that: "the facts plainly prove that the methods employed to achieve the object were those of an aggressor" (p.16831). The Tribunal also accepted the proposition of the prosecution as to the aggressive character of the seizure of Czechoslovakia (pp.16832-16837). And it stated, on p.16847: "The Tribunal is fully satisfied by the evidence that the war initiated by Germany against Poland on 1st September 1939 was most plainly an aggressive war, which was to develop in due course into a war which embraced almost the whole world, and resulted in the commission of countless crimes, both against the laws and customs of war, and against humanity."

V. Rejection of the charges for conspiracy to commit war crimes and crimes against humanity.

In the statement of the law as to the common plan or conspiracy, the Tribunal said: "Count One, however, charges not only the conspiracy to commit aggressive war, but also to commit war crimes and crimes against humanity. But the Charter does not define as a separate crime any conspiracy except the one to commit acts of aggressive war. Art.6. of the Charter provides:

" Leaders, organisers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

In the opinion of the Tribunal these words do not add a new and separate crime to those already listed. The words are designed to establish the responsibility of persons participating in a common plan. The Tribunal will therefore disregard the charges in Count One that the defendants conspired to commit war crimes and crimes against humanity, and will consider only the common plan to prepare, initiate and wage aggressive war." (p. 16884).

The Tribunal, therefore, dismissed the accusation as far as it charged the defendants with having conspired to commit war crimes and crimes against humanity.

VI. Killing of "useless eaters" as a crime against humanity.

In the part of the Judgment which deals with war crimes and crimes against humanity generally, the Tribunal, after having dealt with the war crime of ordering slave labour, referred to the killing of insane and incurable people as follows: "Reference should also be made to the policy which was in existence in Germany by the summer of 1940, under which all aged, insane, and incurable people, "useless eaters", were transferred to special institutions where they were killed, and their relatives informed that they had died from natural causes. The victims were not confined to German citizens, but included foreign labourers, who were no longer able to work, and were therefore useless to the German war machine. It has been estimated that at least some 275,000 people were killed in this manner in nursing homes, hospital and asylums, which were under the jurisdiction of the defendant Frick, in his capacity as Minister of the Interior. How many foreign workers were included in this total it has been quite impossible to determine." (p.16916/7).

It will be noted that the Tribunal is careful to point out that the victims were not confined to German citizens, but included foreign labourers and that it was quite impossible to determine how many foreign workers were included in the estimated total of people killed.

VII. The persecution of Jews as a crime against humanity.

With respect to the persecution of the Jews, the Tribunal stated that the persecution of the Jews at the hands of the Nazi Government was proved in the greatest detail before the Tribunal. It was a record of consistent and systematic inhumanity on the greatest scale. (p.16917). The Tribunal recalled the anti-Jewish policy as formulated in Point 4 in the Programme of the Nazi Party of 24th February 1920 (p.16918 in connection with p.16801), and continued:

" The Nazi Party preached these doctrines throughout its history. "Der Stuermer" and other publications were allowed to disseminate hatred of the Jews, and in the speeches and public declarations of the Nazi leaders, the Jews were held up to public ridicule and contempt.

With the seizure of power, the persecution of the Jews was intensified. A series of discriminatory laws were passed, which limited the offices and professions permitted to Jews; and restrictions were placed on their family life and their rights of citizenship. By the autumn of 1938, the Nazi policy towards the Jews had reached the stage where it was directed towards the complete exclusion of Jews from German life. Pogroms were organised, which included the burning and demolishing of synagogues, the looting of Jewish businesses, and the arrest of prominent Jewish business men. A collective fine of one billion marks was imposed on the Jews, the seizure of Jewish assets was authorized, and the movement of Jews was restricted by regulations to certain specified districts and hours. The creation of ghettos was carried out on an extensive scale, and by an order of the Security Police, Jews were compelled to wear a yellow star to be worn on the breast and back.

It was contended for the Prosecution that certain aspects of this anti-Semitic policy was connected with the plans for aggressive war. The violent measures taken against the Jews in November 1938 was nominally in retaliation for the killing of an official of the German Embassy in Paris. But the decision to seize Austria and Czechoslovakia had been made a year before. The imposition of a fine of one billion marks was made, and the confiscation of the financial holdings of the Jews was decreed, at a time when German armament expenditure had put the German treasury in difficulties, and when the reduction of expenditure on armaments was being considered. These steps were taken,

VI. Killing of "useless eaters" as a crime against humanity.

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moreover, with the approval of the defendant Goering, who had been given responsibility for economic matters of this kind, and who was the strongest advocate of an extensive rearmament programme notwithstanding the financial difficulties.

It was further said that the connection of the anti-Semitic policy with aggressive war was not limited to economic matters. "

The court then referred to a German Foreign Office circular of 25th January 1939, entitled: "The Jewish Question as a factor in the German Foreign Policy in the year 1938," and then stated:

" The Nazi persecution of Jews in Germany before the war, severe and repressive as it was, cannot compare, however, with the policy pursued during the war in the occupied territories. Originally the policy was similar to that which had been in force inside Germany. Jews were required to register, were forced to live in ghettos, to wear the yellow star, and were used as slave labourers. In the summer of 1941, however, plans were made for the "final solution" of the Jewish question in all of Europe. This "final solution" meant the extermination of the Jews, which early in 1939 Hitler had threatened would be one of the consequences of an outbreak of war, and a special section in the Gestapo under Adolf Eichmann, as head of Section B.4. of the Gestapo, was formed to carry out the policy. "

After describing the atrocities against Jews committed in occupied territories the Court stated on p.16924, the following: "Special groups travelled through Europe to find Jews and subject them to the "final solution". German missions were sent to such satellite countries as Hungary and Bulgaria, to arrange for the shipment of Jews to extermination camps and it is known that by the end of 1944, 400,000 Jews from Hungary had been murdered at Auschwitz. Evidence has also been given of the evacuation of 110,000 Jews from part of Roumania for 'liquidation'. "

VIII. War Crimes and Crimes against Humanity in
"subjugated" territories.

In the chapter dealing with the law relating to war crimes and crimes against humanity, the Tribunal quoted the wording of Article 6(b) and (c) of its Charter, (p.16925) and repeated that the Charter does not define as a separate crime any conspiracy except the one set out in Article 6(a) dealing with crimes against peace. (*)

On pp.26926/7, the Tribunal deals with the plea based on the alleged complete subjugation of some of the occupied countries in the following way: "A further submission was made that Germany was no longer bound by the rules of land warfare in many of the territories occupied during the war, because Germany had completely subjugated those countries and incorporated them into the German Reich, a fact which gave Germany authority to deal with the occupied countries as though they were part of Germany. In the view of the Tribunal it is unnecessary in this case to decide whether this doctrine of subjugation, dependent as it is upon military conquest, has any application where the subjugation is the result of the crime of aggressive war. The doctrine was never considered to be applicable so long as there was an army in the field attempting to restore the occupied countries to their true owners, and in this case, therefore, the doctrine could not apply to any territories occupied after the 1st September 1939. As to the war crimes committed in Bohemia and Moravia, it is a sufficient answer that these territories were never added to the Reich, but a mere protectorate was established over them. "

(*) It may be added that the transcript available to this Secretariat quotes Art.6(c) on page 16925 with the semi-colon between "the war" and "or persecutions" although this semi-colon has, in the English and French texts, been replaced by a comma by the Berlin Protocol of 5th Oct., 1945. On p.16799, on the other hand, the amended text is quoted.

IX. General statement by the Court on the law as to crimes against humanity.

As to crimes against humanity in general, the opinion of the Court was summed up as follows (p.16927): "With regard to crimes against humanity, there is no doubt whatever that political opponents were murdered in Germany before the war, and that many of them were kept in concentration camps in circumstances of great horror and cruelty. The policy of terror was certainly carried out on a vast scale, and in many cases was organised and systematic. The policy of persecution, repression and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the Government, was most ruthlessly carried out. The persecution of Jews during the same period is established beyond all doubt. To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with any such crime. The Tribunal cannot, therefore, make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter, but from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity; and insofar as the inhumane acts charged in the Indictment, and committed after the beginning of the war did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity.

X. The general statement analyzed.

From the statement quoted verbatim in the preceding paragraph, the following can be seen:

(1) It is clear that the International Military Tribunal does not recognise the distinction between the two types of crimes against humanity which has been suggested by this writer and adopted by Committee III, namely the distinction between crimes against humanity of the murder type and "persecutions". (See Docs. C.201, point 2, (a) and (b).) This is probably due to the interpretation of the Berlin Protocol (C.193), where the semi-colon dividing paragraph (c) of Art.6. of the English and French texts of the Charter has been replaced by a comma. The Berlin Protocol is, however, not quoted in the judgment. The International Military Tribunal appears to have interpreted paragraph (c) (crimes against humanity) as amended in the English and French texts by the Berlin Protocol of 6th October 1945, to the effect that the qualification "in execution of, or in connection with any crime within the jurisdiction of the Tribunal" is applicable not only to what Committee III has been used to call persecutions, but also to crimes of the murder type. In the opinion of the Tribunal all the crimes enumerated in Art.6(c) are crimes against humanity only if they were done in execution of or in connection with a crime against peace or a war crime in the narrower sense. In spite of the positive provision of the Charter that it was irrelevant whether the crimes were committed "before or during the war", the Tribunal declined to make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter.

As will be seen later, this statement does not mean that no crime committed before 1st September 1939 can be a crime against humanity. The Tribunal recognised some crimes committed prior to 1st September 1939 as crimes against humanity in cases where their connection with the crime against peace was established.

(2) The Court stated, on the other hand, that insofar as the inhumane acts charged in the indictment and committed after the beginning of the war did not constitute war crimes, they were all committed in execution of, or in connection with, aggressive war and therefore constitute crimes against humanity.

XI. Application of the general statement to the organisations declared criminal.

The Tribunal drew the conclusion from what had been said in the preceding paragraph, in making its decision on the criminality of the Leadership Corps, the Gestapo and S.D., and the S.S. With regard to the Leadership Corps, the Tribunal stated that the basis of its declaring the group criminal was the participation of the organisation in war crimes and crimes against humanity connected with the war. The group declared criminal could not, therefore, include persons who had ceased to hold the positions prior to the 1st September 1939. (p.16939).

A similar statement is contained in the decision of the Tribunal regarding the criminality of the Gestapo and the S.D. (p.16949) and of the S.S. (p.16950).

XII. Application of the general statement to the S.A.

The opinion of the Court that crimes committed before 1st September 1939 were not crimes against humanity within the meaning of the Charter was also instrumental in the Tribunal's decision regarding the S.A. The Tribunal found (p.16962) that until June 1934, the S.A. was a group composed in a large part of ruffians and bullies who participated in the Nazi outrages of that period. It was not shown, however, that these atrocities were part of a specific plan to wage aggressive war, and the Tribunal therefore could not hold that these activities were criminal under the Charter.

After the purge of 30th June 1934, the S.A. was reduced to the status of a group of unimportant Nazi hangers-on.

Although in specific instances, some units of the S.A. were used, after 1934, for the commission of war crimes and crimes against humanity, it cannot be said that its members generally participated in, or even knew of the criminal acts.

The Tribunal mentioned, however, that S.A. units were among the first in the occupation of Austria in March 1938, that the S.A. supplied many of the men and a large part of the equipment which composed the Sudeten Free Corps of Henlein, although it appeared that the corps was under the jurisdiction of the S.S. during its operation in Czechoslovakia (pp.16961/2). Some S.A. units were used to blow up synagogues in the Jewish pogrom of 10th and 11th November 1938. (p.16962).

XIII. Germanization as a war crime and a crime against humanity.

It may be relevant for the purpose for which this paper is written, to mention that in dealing with the Leadership Corps, the Tribunal, on p.16943, describes the steps taken by the Leadership Corps which relate merely to the consolidation of control of the Nazi Party and which are not criminal under the view of the conspiracy to wage aggressive war and contrasts with them under the heading "criminal activity", actions which are described as follows: "But the Leadership Corps was also used for similar steps in Austria and those parts of Czechoslovakia, Lithuania, Poland, France, Belgium, Luxembourg and Yugoslavia which were incorporated into the Reich and within the Gaus of the Nazi Party. In these territories the machinery of the Leadership Corps was used for their

Germanisation through the elimination of local customs and the detection and arrest of persons who opposed German occupation. This was criminal under Art.6(b) of the Charter in those areas governed by the Hague Rules of Land Warfare and criminal under Art.6(c) of the Charter as to the remainder.

The Leadership Corps played its part in the persecution of the Jews. It was involved in the economic and political discrimination against the Jews, which was put into effect shortly after the Nazis came into power. The Gestapo and SD were instructed to co-ordinate with the Gauleiters and Kreisleiters the measures taken in the pogroms of November 9 and 10 in the year 1938. The Leadership Corps was also used to prevent German public opinion from reacting against the measures taken against the Jews in the East. "

The Germanisation of incorporated territory and persecution of the Jews is also mentioned in the conclusions as to the criminality of the Leadership Corps on p.16938 with the following words: "The Leadership Corps was used for purposes which were criminal under the Charter and involved the Germanisation of incorporated territory, the persecution of the Jews, the administration of the slave labour programme, and the mistreatment of prisoners of war. "

It may also be mentioned that on pp.16942/3, in connection with the Gestapo and the S.D., the Tribunal speaks of "the period with which the Tribunal is primarily concerned", meaning the period after September 1939.

XIV. Pre-1939 activities of the Gestapo and the S.D., Concentration Camps, Persecution of the Churches and the Jews.

Under the heading "Criminal Activity" of the Gestapo and the S.D., the Tribunal mentions also activities before September 1939 in stating, on p.16944: "Originally, one of the primary functions of the Gestapo was the prevention of any political opposition to the Nazi regime, a function which it performed with the assistance of the S.D. The principal weapon used in performing this function was the concentration camp. The Gestapo did not have administrative control over the concentration camps, but, acting through the RSHA, was responsible for the detention of political prisoners in those camps. Gestapo officials were usually responsible for the interrogation of political prisoners at the camps.

The Gestapo and the S.D. also dealt with charges of treason and with questions relating to the press, the Churches and the Jews. As the Nazi programme of Anti-Semitic persecution increased in intensity the role played by these groups became increasingly important. In the early morning of 10 November 1938, Heydrich sent a telegram to all offices of the Gestapo and S.D., "giving instructions for the organisation of the pogroms of that date and instructing them to arrest as many Jews as the prisons could hold "especially rich ones," but to be careful that those arrested were healthy and not too old. By 11 November 1938, 20,000 Jews had been arrested and many were sent to concentration camps. On 24 January 1939, Heydrich, the Chief of the Security Police and S.D., was charged with furthering the emigration and evacuation of Jews from Germany, and on 31 July 1941, with bringing about a complete solution of the Jewish problem in German dominated Europe. A special section of the Gestapo office of the RSHA under Standartenfuhrer Eichmann was set up with responsibility for Jewish matters which employed its own agents to investigate the Jewish problem in occupied territory. Local offices of the Gestapo were used first to supervise the emigration of Jews and later to deport them to the East both from Germany and from the territories occupied during the war. "

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The Tribunal also mentioned that a special detachment from Gestapo headquarters in the RSHA was used to arrange for the deportation of Jews from Axis satellites of Germany for the "final solution".

XV. Pre-1939 activities of the S.S., Germanisation, Persecution of the Jews.

In dealing with the criminal activities of the S.S., the Tribunal says, on p.16953, that S.S. units were active participants of the steps leading up to aggressive war. "The Verfuegungstruppe was used in the occupation of the Sudetenland, of Bohemia and Moravia and of Memel. The Henlein Free Corps was under the jurisdiction of the Reich Fuehrer S.S. for operations in the Sudetenland in 1938 and the Volksdeutsche Mittelstelle financed fifth column activities there.

The S.S. was even a more general participant in the commission of War Crimes and Crimes against Humanity. "

With regard to the part played by the S.S. in the Germanisation of occupied territories and in the persecution of Jews, the following is stated on page 16954: "The Race and Settlement Office of the S.S., together with the Volksdeutsche Mittelstelle were active in carrying out schemes for Germanisation of occupied territories according to the racial principles of the Nazi Party and were involved in the deportation of Jews and other foreign nationals. "

It is pointed out that from 1934 onwards, the S.S. was responsible for the guarding and administration of Concentration Camps, (ibid).

In describing the particularly significant rôle played by the S.S. in the persecution of the Jews, the Tribunal says, on p.16955 that the S.S. was directly involved in the demonstrations of 10th November 1938.

XVI. The Individual Defendants: Goering.

In the verdicts of the Tribunal dealing with the guilt or innocence of individual defendants, there are also many references to crimes against humanity.

Respecting Goering, it is said on p.16973, under the heading "War Crimes and Crimes against Humanity"; "Goering persecuted the Jews, particularly after the November 1938 riots, and not only in Germany where he raised the billion mark fine as stated elsewhere, but in the conquered territories as well." Goering is described as "the creator of the oppressive programme against the Jews and other races at home and abroad." It will be observed that the Court stresses, in both connections, that Goering's crimes were committed not only in Germany, but also in conquered territories.

XVII. Ribbentrop.

Ribbentrop, the Tribunal stated on p.16982, was also responsible for war crimes and crimes against humanity because of his activities with respect to occupied countries and Axis satellites. The Tribunal established that, in September 1942, Ribbentrop ordered the German diplomatic representatives accredited to various Axis satellites to hasten the deportation of Jews to the East. On 17th April 1943, he took part in a conference between Hitler and Horthy on the deportation of Jews from Hungary and informed Horthy that the "Jews must either be exterminated or taken to concentration camps. "

Ribbentrop's activities with regard to Jews of satellite countries in general and of Hungary in particular, are a typical example of crimes against humanity which are not simultaneously war crimes because the victims were not allied subjects, but nationals of the Axis satellite countries.

XVIII. Kaltenbrunner.

In the case of Kaltenbrunner, the Tribunal stated on p.16992, that when he was head of the RSHA, special missions of it scoured the occupied territories and the various Axis satellites, arranging for the deportation of Jews to extermination institutions.

XIX. Frick.

The following statement regarding war crimes and crimes against humanity committed by Frick is on p.17005: "Always rabidly anti-Semitic, Frick drafted, signed and administered many laws designed to eliminate Jews from German life and economy. His work formed the basis of the Nürnberg Decrees, and he was active in enforcing them. Responsible for prohibiting Jews from following various professions, and for confiscating their property, he signed a final decree in 1943, after the mass destruction of Jews in the East, which placed them "outside the law" and handed them over to the Gestapo".

On p.17006 the Tribunal states that though Frick actually exercised little control over Himmler and police matters, he signed the law appointing Himmler Chief of the German police as well as the decree establishing the Gestapo jurisdiction over concentration camps and regulating the execution of orders for protective custody.

The Tribunal further established the following facts as to Frick's activities, (p.17007): "Having created a racial register of persons of German extraction, Frick conferred German citizenship on certain categories of citizens of foreign countries. He is responsible for Germanisation in Austria, Sudetenland, Memel, Danzig, Eastern Territories (West Prussia and Posen) and in the territories of Eupen, Malmedy, and Moresnet. He forced on the citizens of these territories, German law, German courts, German education, German police security and compulsory military service.

During the war, nursing homes, hospitals and asylums in which euthanasia was practiced as described elsewhere in this Judgment, came under Frick's jurisdiction. He had knowledge that insane, sick and aged people, "useless eaters", were being systematically put to death. Complaints of these murders reached him, but he did nothing to stop them."

XX. Streicher.

The case of Streicher is particularly relevant to the subject of this paper. The accused Streicher was indicted on Counts 1 and 4, and was found guilty only on the latter.

Under the heading "Crimes against humanity", the Tribunal says, (p.17008):

" For his twenty-five years of speaking, writing and preaching hatred of the Jews, Streicher was widely known as "Jew-Baiter Number One". In his speeches and articles, week after week, month after month, he infected the German mind with the virus of anti-Semitism, and incited the German people to active persecution. Each issue of "Der Stürmer", which reached a circulation of 600,000 in 1935, was filled with such articles, often lewd and disgusting.

Streicher had charge of the Jewish boycott of 1 April 1933. He advocated the Nuremberg Decrees of 1935. He was responsible for the demolition on August 10, 1938 of the Synagogue in Nuremberg. And on November 10, 1938, he spoke publicly in support of the Jewish pogrom which was taking place at that time.

But it was not only in Germany that this defendant advocated his doctrines. As early as 1938 he began to call for the annihilation of the Jewish race. Twenty-three different articles of "Der Stürmer" between 1938 and 1941 were produced in evidence, in which extermination "root and branch" was preached. Typical of his teachings was a leading article in September 1938 which termed the Jew as a germ and a pest, not a human being, but "a parasite, an enemy, an evil-doer, a disseminator of diseases who must be destroyed in the interest of mankind". Other articles urged that only when world Jewry had been annihilated would the Jewish problem have been solved, and predicted that fifty years hence the Jewish graves "will proclaim that this people of murderers and criminals has after all met its deserved fate." Streicher, in February 1940, published a letter from one of "Der Stürmer's" readers which compared Jews with swarms of locusts which must be exterminated completely. Such was the poison Streicher injected into the minds of thousands of Germans which caused them to follow the National Socialist policy of Jewish persecution and extermination. A leading article of "Der Stürmer" in May 1939, shows clearly his aim:

" A punitive expedition must come against the Jews in Russia. A punitive expedition which will provide the same fate for them that every murderer and criminal must expect. Death sentence and execution. The Jews in Russia must be killed. They must be exterminated root and branch. "

As the war in the early stages proved successful in acquiring more and more territory for the Reich, Streicher even intensified his efforts to incite the Germans against the Jews. In the record are twenty-six articles from "Der Stürmer", published between August 1941 and September 1944, twelve by Streicher's own hand, which demanded annihilation and extermination in unequivocal terms. He wrote and published on December 25, 1941:

" If the danger of the reproduction of that curse of God in the Jewish blood is to finally come to an end, then there is only one way -- the extermination of that people whose father is the devil. "

And in February 1944, his own article stated:

" Whoever does what a Jew does is a scoundrel, a criminal. And he who repeats and wishes to copy him deserves the same fate, annihilation, death. "

With knowledge of the extermination of the Jews in the occupied Eastern Territory, this defendant continued to write and publish his propaganda of death. Testifying in this trial, he vehemently denied any knowledge of mass executions of Jews. But the evidence makes it clear that he continually received current information on the progress of the "final solution". His press photographer was sent to visit the ghettos of the East in the spring of 1943, the time of the destruction of the Warsaw Ghetto. The Jewish newspaper, "Israelitisches Wochenblatt" which Streicher received and read, carried in each issue accounts of Jewish atrocities in the East, and gave figures on the number of Jews who had been deported and killed. For example, issues appearing in the

summer and fall of 1942 reported the death of 72,729 Jews in Warsaw, 17,542 in Lodz, 18,000 in Croatia, 125,000 in Roumania, 14,000 in Latvia, 85,000 in Yugoslavia, 700,000 in all of Poland. In November 1943 Streicher quoted verbatim an article from the "Israelitisches Wochenblatt", which stated that the Jews had virtually disappeared from Europe, and commented "This is not a Jewish lie". In December 1942, referring to an article in the "London Times", about the atrocities, aiming at extermination, Streicher said that Hitler had given warning that the second World War should lead to the destruction of Jewry. In January 1943 he wrote and published an article which said that Hitler's prophecy was being fulfilled, that world Jewry was being extirpated, and that it was wonderful to know that Hitler was freeing the world of its Jewish tormentors.

In the face of the evidence before the Tribunal it is idle for Streicher to suggest that the solution of the Jewish problem which he favoured was strictly limited to the classification of Jews as aliens, and the passing of discriminatory legislation such as the Nuremberg Laws, supplemented if possible by international agreement on the creation of a Jewish State somewhere in the world, to which all Jews should emigrate.

Streicher's incitement to murder and extermination at the time when Jews in the East were being killed under the most horrible conditions clearly constitutes persecution on political and racial grounds in connection with war crimes, as defined by the Charter, and constitutes a crime against humanity."

It appears that in the case of Streicher, the Tribunal included among his activities considered criminal, his speaking, writing and preaching hatred of the Jews for 25 years. It therefore went back to the year 1920. The Tribunal enumerated among his crimes, his part in the Jewish boycott of 1st April 1933, in the advocating of the Nuremberg Laws in 1935, in the demolition of the Nuremberg synagogue in August 1938, and his part in the Jewish pogrom of November, 1938. This would appear to indicate that here the Tribunal included within the notion of crimes against humanity these pre-1939 activities. The Tribunal was, however, careful to point out that it was not only in Germany that this defendant advocated his doctrines and the Tribunal stated that with knowledge of the extermination of the Jews in the occupied Eastern territory, Streicher continued to write and publish his propaganda of death.

This leaves open an interpretation of the Judgment to the effect that only acts committed in connection with crimes against peace or war crimes are crimes against humanity within the meaning of the Charter and that Streicher had been found guilty of Count 4 not for his activities within Germany but for his extension of their scope to the occupied territories and for his call for the annihilation of the Jewish race throughout the world.

The reply by the Tribunal to Streicher's defence that the solution of the Jewish problem which he favoured was strictly limited to the classification of Jews as aliens and the passing of the discriminatory legislation, such as the Nuremberg Laws, also indicates that the Tribunal did not consider Streicher's part, e.g. in the passing of the discriminatory legislation as such to constitute a crime against humanity, but only his incitement to murder and extermination at the time when the Jews in the East were being killed under the most horrible conditions. This incitement to murder and extermination of Jews, the Tribunal declared to be persecution on political and racial grounds in connection with war crimes.

XXI. Funk.

In the case of the defendant Funk, the Judgment states, on p.17014, that Funk, in his capacity as Under-Secretary in the Ministry of Propaganda and Vice-Chairman of the Reich Chamber of Culture, had participated in the early Nazi programme of economic discrimination against Jews. The Judgment continues: "On 12 November 1938, after the pogroms of November, he attended a meeting held under the chairmanship of Goering to discuss the solution of the Jewish problem and proposed a decree providing for the banning of Jews from all business activities, which Goering issued the same day under the authority of the Four Year Plan. Funk has testified that he was shocked at the outbreaks of November 10, but on November 15, he made a speech describing these outbreaks as a "violent explosion of the disgust of the German people, because of the criminal Jewish attack against the German people", and saying that the elimination of the Jews from economic life followed logically their elimination from political life."

The Judgment then proceeded in describing Funk's criminal activities in and after 1942.

The wording of the Judgment indicated that Funk's pre-1939 activities were also considered criminal.

It may be mentioned in this connection, that it is stated on p.17015 that Funk was responsible for the seizure of the gold reserves of the Czechoslovak National Bank. This seizure took place some months before September 1939.

XXII. Von Schirach.

The defendant von Schirach was found guilty only of crimes against humanity. The Tribunal stated on p.17037: "As has already been seen, Austria was occupied pursuant to a common plan of aggression. Its occupation is, therefore, a "crime within the jurisdiction of the Tribunal" as that term is used in Art.6(c) of the Charter. As a result, "murder, extermination, enslavement, deportation and other inhumane acts" and "persecutions on political, racial or religious grounds" in connection with this occupation constitute a Crime against Humanity under that Article.

As Gauleiter of Vienna, von Schirach came under the Sauckel decree dated April 6, 1942, making the Gauleiters Sauckel's plenipotentiaries for manpower with authority to supervise the utilization and treatment of manpower within their Gaus. Sauckel's directives provided that the forced labourers were to be fed, sheltered and treated so as to exploit them to the highest possible degree at the lowest possible expense.

When von Schirach became Gauleiter of Vienna the deportation of the Jews had already been begun, and only 60,000 out of Vienna's original 190,000 Jews remained. On 2 October 1940, he attended a conference at Hitler's office and told Frank that he had 50,000 Jews in Vienna which the General Government would have to take over from him. On 3 December 1940, von Schirach received a letter from Lammers stating that after the receipt of the reports made by von Schirach, Hitler had decided to deport the 60,000 Jews still remaining in Vienna to the General Government because of the housing shortage in Vienna. The deportation of the Jews from Vienna was then begun and continued until the early fall of 1942. On 15 September 1942, von Schirach made a speech in which he defended his action in having driven "tens of thousands upon tens of thousands of Jews into the Ghetto of the East" as "contributing to European culture".

While the Jews were being deported from Vienna reports, addressed to him in his official capacity, were received in von Schirach's office from the office of the Chief of the Security Police and S.D. which contained a description of the activities of Einsatzgruppen in exterminating Jews. Many of these reports were initialed by one of von Schirach's principal deputies. On 30 June 1944, von Schirach's office also received a letter from Kaltenbrunner informing him that a shipment of 12,000 Jews was on its way to Vienna for essential war work and that all those who were incapable of work would have to be kept in readiness for "special action".

The Tribunal finds that von Schirach, while he did not originate the policy of deporting Jews from Vienna, participated in this deportation after he had become Gauleiter of Vienna. He knew that the best the Jews could hope for was a miserable existence in the Ghettoes of the East. Bulletins describing the Jewish extermination were in his office. "

Schirach was in this connection charged only with crimes committed during the war against persons who were not allied nationals. (Austrian Jews). The crimes for which he was sentenced are therefore also clear examples of crimes against humanity which are not simultaneously war crimes in the narrower sense.

XXIII Seyss-Inquart.

In giving the reasons for its Judgment on Seyss-Inquart, the Tribunal distinguished between his "activities in Austria" (p.17052) and his "criminal activities in Poland and the Netherlands" (p.17053). Under the first heading, ("Activities in Austria"), the Tribunal said: "As Reichs Governor of Austria, Seyss-Inquart instituted a programme of confiscating Jewish property. Under his regime Jews were forced to emigrate, were sent to concentration camps and were subject to pogroms. At the end of his regime he co-operated with the Security Police and S.D. in the deportation of Jews from Austria to the East. While he was Governor of Austria, political opponents of the Nazis were sent to concentration camps by the Gestapo, mistreated and often killed."

The insertion of this paragraph under the heading "Activities in Austria" as distinguished from "criminal activities", seems to indicate that the Tribunal was of the opinion that the acts committed by Seyss-Inquart, while in Austria, were not criminal from the point of view of crimes against humanity, under Art.6(c) of the Charter. This interpretation would, however, not be in line with the attitude taken by the Tribunal in the case of von Schirach, where, as stated in the preceding paragraph of this paper, the Tribunal described the occupation of Austria as a crime within the jurisdiction of the Tribunal and persecutions on political, racial or religious grounds committed in connection with this occupation as constituting a crime against humanity under the Article. Under the heading "Activities in Austria", the Tribunal described also Seyss-Inquart's part in the German aggression against Austria, and the part taken by him in the dismemberment of Czechoslovakia, both of which lead to his being found guilty also on Count 2, (Crimes against Peace), and were, therefore, certainly considered by the Tribunal to be criminal. Not too much reliance can, therefore, be placed on the omission of the word "criminal" in the heading of the appropriate paragraph dealing with Seyss-Inquart's activities in Austria.

The case of Seyss-Inquart's activities in Austria can, of course, be distinguished from the case of von Schirach in that the latter became Reichsstatthalter in Austria after September 1939, while Seyss-Inquart left Austria at the beginning of the war for Poland and the Netherlands.

XXIV. von Neurath.

In the case of von Neurath, the Tribunal, under the heading "Criminal Activities in Czechoslovakia", stated, inter alia, the following, (p.17064): "As Reichs Protector, von Neurath instituted an administration in Bohemia and Moravia similar to that in effect in Germany. The free press, political parties and trade unions were abolished. All groups which might serve as opposition were outlawed. Czechoslovakian industry was worked into the structure of German war production, and exploited for the German war effort. Nazi anti-Semitic policies and laws were also introduced. Jews were barred from leading positions in Government and business.

In August 1939, von Neurath issued a proclamation warning against any acts of sabotage and stating that "the responsibility for all acts of sabotage is attributed not only to individual perpetrators but to the entire Czech population."

This indicates that acts committed before 1st September, 1939, in Czechoslovakia, were considered criminal as war crimes and/or crimes against humanity.

XXV. Summary of the judgment respecting crimes against humanity.

The International Military Tribunal, in interpreting the notion of crimes against humanity, lays particular stress on the provision of its Charter, according to which an act in order to come within the notion of a crime against humanity, must have been committed in execution of or in connection with any crime within the jurisdiction of the Tribunal which means that it must be closely connected either with a crime against peace or a war crime in the narrower sense. Therefore the Tribunal has declined (supra IX) to make a general declaration that acts committed before 1939 were crimes against humanity within the meaning of the Charter.

In applying this general principle, the Tribunal is particularly reluctant to acknowledge as crimes against humanity acts committed in Germany against Germans before 1st September 1939.

This represents, however, only the general view of the Tribunal and did not prevent it from treating as crimes against humanity acts committed by individual defendants against German nationals before 1st September 1939, if the particular circumstances of the case appeared to warrant this attitude. The case of the defendant Streicher is here in point, but even in his case the causal nexus between his activities and the crimes committed on occupied allied territory and against non-German nationals has been pointed out and the most that can be said of him is that he was found guilty also of crimes against humanity committed before 1st September 1939 in Germany against German nationals.

In the case of none of the defendants was the position such as would have lead to his conviction only of crimes committed in Germany against Germans before 1st September 1939.

The restrictive interpretation placed on the term "crimes against humanity" as far as German nationals as victims were concerned, was not applied by the Tribunal in the case of victims of other than German nationality. With respect to crimes committed before 1st September 1939, against Austrian nationals, the Tribunal established their connection with the annexation of Austria, which is a crime against peace, and came therefore to the conclusion that they were within the terms of Art.6(c) of the Charter. This is particularly shown by the above quoted reasoning in the case of Baldur von Schirach and, with less precision, in the case of the defendant Seyss-Inquart.

With regard to inhumane acts charged in the indictment and committed after 1st September 1939, the Tribunal made the far reaching statement quoted supra IX, from p.16927, that insofar as they did not constitute war crimes they were all committed in execution of, or in connection with, aggressive war and therefore constituted crimes against humanity.

This is particularly illustrated in the case of the defendant Ribbentrop and his activities with respect to Axis satellites.

From the statement on p.16943, quoted supra XIII, it will be seen that the Tribunal treats the notion of crimes against humanity as a kind of subsidiary provision to be applied when a particular area where a crime was committed, is not governed by the Hague Rules of Land Warfare. Germanisation is, therefore, considered as criminal under Art.6(b) in those areas governed by the Hague Regulations and a crime under Art.6(c) as to the remainder.

In general, the following may be said with respect to the interpretation of the term "crime against humanity" by the Tribunal: Before the promulgation of the decision it was assumed in many quarters that a crime against humanity was a novel type of international crime and that the provisions containing sanctions against it were equally applicable in times of war and of peace, that they protected the human rights of inhabitants of all countries, "of any civilian population", against anybody, including their own states and governments, and that the notion expressed the superiority of International Law over domestic or municipal law. According to the interpretation given to the term by the International Military Tribunal, this is not so.

As interpreted in the Nuremberg Judgment, the term has a considerably narrower connotation. It is, as it were, a kind of by-product of war, applicable only in time of war or in connection with war and destined primarily, if not exclusively, to protect the inhabitants of foreign countries against crimes committed, in connection with an aggressive war, by the authorities and organs of the aggressor state. It serves to cover cases not covered by norms belonging to the traditional "laws and customs of war". It is nothing but a particular type of war crime, a kind of clausula generalis, the purpose of which it is to make sure that inhumane acts violating general principles of the laws of all civilised nations committed in connection with war, should not go unpunished.

XXVI. Comparison of the interpretation by the Tribunal with the "General Propositions" adopted by Committee III (Doc.C.201). (*)

(1) Paragraph 1 of the "General Propositions" has been endorsed by the Tribunal. The Tribunal is also of the opinion that one and the same act may constitute both a war crime in the narrower sense and a crime against humanity; the Tribunal is, however, also conscious of the fact that this overlapping of the two terms does not make the application of the law easier and in the sentence dealing with Germanisation, quoted from p.16943, in paragraphs XIII and XXV of this paper, the term crime against humanity was interpreted as a term covering criminal denationalisation in areas to which the laws and customs of war did not apply. Reference is made to the footnote on page 2 of Doc.C.201, where Committee III also expressed its opinion that in a purely scientific system, violations of the laws and customs of war should not be included in the term "crimes against humanity", which should be restricted to such offences as do not fall under the term of "Violations of the Laws and Customs of War."

(*) As is stated in the Introduction of this paper, this paragraph is now superseded by the statement by Committee III circulated as Doc.C.236.

- (2) The Tribunal has not acted upon the division of crimes against humanity into the two types of: (1) crimes of the murder type and (2) persecutions. It recognises only one notion of crimes against humanity and applies to all acts falling under this notion the qualification that the act must have been committed in execution of or in connection with a crime against peace or a war crime in the narrower sense.
- (3) No modification of point 3 of Doc.C.201 appears necessary.
- (4) From the fact that the Tribunal does not distinguish between crimes of the murder type and persecutions, it follows that crimes against members of belligerent forces are entirely outside the scope of crimes against humanity.
- (5) The condition that the acts be in execution of or in connection with any crime within the jurisdiction of the International Military Tribunal applies according to the Nuremberg judgment to all kinds of crimes against humanity, and is not restricted to what Committee III called "persecutions". The Tribunal does not seem to admit the possibility that one set of facts may constitute a crime against humanity because of its connection with another crime against humanity.
- (6) The decision of the Nuremberg Tribunal has no bearing at all either by way of confirmation or by way of repudiation on the limitations of the term "crimes against humanity" attempted by Committee III to the following effect:
- " Isolated offences do not fall within the notion. As a rule systematic mass action, particularly if it can be shown to be authoritative, will be necessary to transform a common crime, punishable merely under municipal law, into a crime against humanity which thus becomes also the concern of International Law. Only crimes which either by their magnitude and savagery or by their great number or by the fact that a similar pattern is applied at different times and places, endanger the international community or shock the conscience of mankind, warrant intervention by States other than that on whose territory the crimes have been committed, or whose subjects have been their victims. "
- In the case of the Nuremberg defendants, it was the basic assumption that their acts were not isolated offences, but that they were the organisers of crimes against humanity in very great numbers. The correctness or otherwise of the definition suggested by Committee III will therefore have to be decided in the trials of persons, not major war criminals, accused of committing crimes against humanity before municipal (occupation, military) courts.
- (7) The statement contained in Doc.C.201 that it is irrelevant whether a crime against humanity has been committed before or during the war, though based on the express provision to the same effect contained in the Charter, must be considerably qualified in view of the Nuremberg judgment; although in theory it remains irrelevant whether a crime against humanity was committed before or during the war, in practice it is difficult to establish connection between what is alleged to be a crime against humanity and a crime within the jurisdiction of the Tribunal if the act was committed before the war.
- (8) Committee III has stated that the nationality of the victim is irrelevant. This assumption was based on the words of the Charter "committed against any civilian population". Here again, the proposition remains true in theory, but must, according to the view of the Nuremberg Tribunal, be considerably qualified with regard to acts committed before

the war in Germany against German nationals. Even with regard to revolting and horrible crimes, the connection with the aggression or with war crimes must be proved and where proof is not satisfactory, they are not considered by the International Military Tribunal as crimes against humanity within the meaning of the Charter.

(9) The problem of lesser perpetrators was outside the proceedings before the International Military Tribunal.

(10) The irrelevance of the lex loci has been confirmed by the Tribunal.

(11) The proposition that a crime against humanity can be committed by enacting legislation which orders or permits crimes against humanity, has been endorsed by the Tribunal, as is particularly shown in the cases of the defendants Frick and Neurath.

XXVII. The Authority of the Nuremberg Judgment.

The problem arises whether the attitude of the International Military Tribunal with regard to the notion of crimes against humanity (and for that matter, its interpretation of the law in general) is binding for the decision of other cases to be tried either before the International Military Tribunal itself, (if such subsequent trials should take place, which, I understand, seems hardly probable at present), or by other courts be it the International Military Tribunal for the Far East, or municipal, occupational or military tribunals of other United Nations or Axis Powers.

The Tribunal has expressed its opinion that the making of the Charter was an exercise of the sovereign legislative power by the countries to which the German Reich unconditionally surrendered; the undoubted right of these countries to legislate for the occupied territories has now been recognised by the civilised world, (p.16871). From this it appears that the Tribunal considers itself to be not an organ of the international community at large, as, e.g., the Permanent Court of Arbitration, the Permanent Court of International Justice or the International Court of Justice. The Tribunal allots to itself a considerably lesser standing, namely the standing of an occupational court having jurisdiction over Germany and German nationals. This classification of the International Military Tribunal not as a court of the international community of nations, but as a local court for Germany, is, generally speaking, in accordance with some of the provisions of the Four-Power Agreement of 8th August 1945, and of the Charter annexed to it.

Article 1 of the Agreement provides for the establishment of an International Military Tribunal "after consultation with the Control Council for Germany."

Art.22 of the Charter provides, inter alia, that the first meetings of the members of the Tribunal and of the Chief Prosecutors shall be held at Berlin in a place to be designated by the Control Council for Germany.

Art.28 of the Charter provides that the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

Art.29 of the Charter provides for the sentences to be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences, but may not increase the severity thereof. Under Art.29, the Control Council for Germany has also the right to contact the Committee of Prosecutors with a view to a re-trial of defendants on the discovery of fresh evidence.

Under Art.30 of the Charter, the expenses of the Tribunal and of the trials shall be charged by the Signatories against the funds allotted for maintenance of the Control Council for Germany.

These provisions in their totality point in the direction of considering the International Military Tribunal as an organ of the present government of the territory of Germany as a condominium of the four Powers, which is called upon to apply law flowing from the Control Council for Germany, as the organ in which supreme authority over Germany and the Germans is vested at the present time.

There are, on the other hand, features in the Four-Power Agreement and in the Charter annexed to it, according to the International Military Tribunal a higher status, transcending the boundaries of Germany and of the local legal order of one country. These features are:

- (a) The provision of Art.6. of the Charter, according to which the jurisdiction of the Tribunal is not restricted to German major war criminals, but, in theory at least, comprises also the right to try and punish the major war criminals of all the European Axis Countries.
- (b) The provision of Art.5. of the Agreement giving any Government of the United Nations the right to adhere to the Agreement, a right of which the following 19 States have availed themselves: Greece, Denmark, Yugoslavia, the Netherlands, Czechoslovakia, Poland, Belgium, Ethiopia, Australia, Honduras, Norway, Panama, Luxemburg, Haiti, New Zealand, India, Venezuela, Uruguay and Paraguay.

If the opinion is correct that the International Military Tribunal is a municipal (occupational) court for Germany, it is clear that its decision cannot possibly lay down law binding on the courts of other countries, whether or not the laws of these countries are based on the system of binding precedent, and the decision is therefore for other courts only of persuasive authority, which means that any other courts may follow the Nuremberg interpretation, if it considers it correct, and may disagree with it, if it considers it incorrect.

The position would not be otherwise if the Tribunal were a court of the international community, as, e.g., an International Court of Justice under its San Francisco Statute. In Art.59 of the Statute of the International Court of Justice, it is laid down (as it was in Art. 59 of the Statute of the Permanent Court of International Justice), that the decision of the court has no binding force except between the parties in respect of that particular case.

This general rule applies, of course, only to the extent to which there is no express provision to the contrary in the Charter. The latter is the case with respect to decisions of the Tribunal with regard to criminal organisations; in such cases

the criminal nature of the group or organisation is, under Art.10 of the Charter, considered proved and shall not be questioned in national, military or occupational courts of any Signatory, (Great Britain, France, the United States of America and the U.S.S.R.). Apart from this particular aspect, the decision of the International Military Tribunal ius facit inter partes only.

This is not to say that the decision of the Tribunal is not bound to influence any Court throughout the world, which will be faced with similar facts. He would be a bold judge of any national, occupational or military court who would decline to be guided by the reasoned judgment of a court composed of four eminent members of the legal profession of the four Great Powers, arrived at after a trial, unique in history,

backed by the authority not only of the four Signatories, but also of nineteen "adherent" states, always provided that the facts - and the law to be applied - are the same. That the latter is not the case as far as crimes against humanity to be tried under the Control Council Law No.10 are concerned, will be shown in the following paragraph XXVII of this paper.

XXVII. The Nuremberg decision and the Control Council Law No.10.

The Control Council Law No.10, published in the Official Gazette of the Control Council for Germany, No.3., p.50, (see also Military Government Gazette, Germany, British Zone of Control, No.5. p.46; Documents Series of the Research Office No.15 bis, and this writer's commentary in Doc.Misc.No.9.), has been promulgated by the Control Council "in order to give effect to the terms of the Moscow Declaration of 30th October 1943, the London Agreement of 8th August 1945, and the Charter issued pursuant thereto."

Art.I. of the Law No.10 ordains that, inter alia, the London Agreement is made an integral part of this law. Art.II provides that each of the following acts is recognised as a crime and enumerates under (a), crimes against peace, under (b) war crimes, under (c), crimes against humanity, and under (d), membership in a category of a criminal group or organisation declared criminal by the International Military Tribunal.

We are here concerned with crimes against humanity. The respective provision of Law No.10 reads as follows:

" (c) Crimes against Humanity: Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds, whether or not in violation of the domestic laws of the country where perpetrated. "

If we compare the definition of "Crimes against Humanity" under Law No.10 with the definition of crimes against humanity in the Charter, we find the following differences:

- (1) The definition of Law No.10 begins with the words "Atrocities and offences, including but not limited to" These words are not contained in the Charter. This means that the enumeration in the Charter is exhaustive, in Law No.10 exemplary. This difference does not amount to too much, because the words used in the Charter, "or other inhumane acts", are so wide that the enumeration is, in practice, also only exemplary.
- (2) Among the acts enumerated in Law No.10 are the following, which are not enumerated in the Charter, namely: "imprisonment, torture and rape".
- (3) The word "and" before "other inhumane acts" is replaced in Law No.10 by the word "or". This again indicates that the intention of the makers of Law No.10 was to give it a wider scope, although the practical effect of this alteration should not be too great.
- (4) The words "before or during the war" are omitted in Law No.10. It is submitted that this alteration has no practical importance because from other provisions of Law No.10 it is quite clear that Law No.10 too applies to crimes committed both before and during the war. One of the provisions bearing this out is Art.II(5) of Law No.10

regarding the Statutes of Limitation. (See para. XI of Doc. Misc. 9).

The omission of the words "before or during the war" may have the reason that the legislators intended that the provisions should cover not only acts committed before and during the war, but also acts committed after the war.

(5) Law No. 10 does not contain the words "in execution of or in connection with any crime within the jurisdiction of the Tribunal". This, of course, is the most fundamental and most striking difference between the Charter and Law No. 10, particularly in view of the great importance attributed by the International Military Tribunal to these very words. From this difference between the text of the Charter and the text of Law No. 10, it follows that this important qualification of the term "Crime against Humanity", as understood by the International Military Tribunal, is entirely inapplicable in proceedings under Law No. 10. Contrary to what was said by the International Military Tribunal with regard to the law to be applied by the International Military Tribunal on p. 16927 (quoted supra IX), it is not necessary under Law No. 10 to prove that acts, to fall under the notion of crime against humanity within the meaning of Law No. 10, must have been in execution of, or in connection with a crime against peace or a war crime in the narrower sense.

The effect of this fundamental difference between the Charter on the one hand, and Law No. 10 on the other, makes the whole jurisprudence evolved by the International Military Tribunal with a view to restricting crimes against humanity to those closely connected with the war, irrelevant for the courts which are dealing or will be dealing with crimes against humanity under Law No. 10.

It seems, on first sight, to be rather startling that the law applied to the major war criminals who were tried under the Charter, should be less comprehensive and therefore less severe than the law applied to not-so-high-ranking perpetrators. To this objection it may be replied:

(a) That it is only a theoretical and doctrinal one, because the major war criminals were caught in the net of the law in spite of the qualification contained in Art. 6(c) of the Charter.

(b) That the striking difference in the texts of the Charter on the one hand, and of Law No. 10 on the other, does not permit of any other interpretation. There remains one difficulty in the interpretation of Law No. 10. Art. I makes the London Charter an integral part of the Law. Art. II contains, as shown, provisions respecting, inter alia, crimes against humanity, which differ from the London Charter. Which provision is to prevail? I submit that Art. II is the operative provision, the quoted part of Article I only incorporating the provisions regarding major war criminals in the local law of Germany. The guilt, or innocence of persons other than the major war criminals, is, in my view, governed by Article II.

I understand that a Carrying-out-Law to the Control Council Law No. 10 has been prepared by the British authorities for the British zone. It may be that the statement of the law, as contained in this paragraph will have to be supplemented or qualified when the text of the Carrying-out-Law for the British zone is available.

XXIX. The different approach of a Criminal Court on the one hand and of the United Nations War Crimes Commission on the other.

In considering the judgment of the International Military Tribunal in its bearing on the activities of the Commission, it should be borne in mind that the approach of the International Military Tribunal and, for that matter, of any other court administering penal law, to certain facts and their legal relevance, must necessarily be different from the approach to the same facts by the United Nations War Crimes Commission. While the International Military Tribunal as a court of law has had to establish, and did actually establish, whether a certain fact is proved "beyond reasonable doubt" (cf. the acquittal of Schacht, (p.17022) and the acquittal of Papen (p.17051)), the Commission has only to decide whether there is a prima facie case against a certain person or a group of persons.

The Commission has further to consider that the law to be applied to "crimes against humanity" by national, occupational or military courts need not necessarily be the same as the law which was applied by the Nuremberg Tribunal. With regard to Germany, it has been shown in paragraph XXVIII supra that the law laid down by the Control Council differs from the law of the Charter.

Streicher had charge of the Jewish boycott of 1 April 1933. He advocated the Nuremberg Decrees of 1935. He was responsible for the demolition on August 10, 1938 of the Synagogue in Nuremberg. And on November 10, 1938, he spoke publicly in support of the Jewish pogrom which was taking place at that time.

But it was not only in Germany that this defendant advocated his doctrines. As early as 1938 he began to call for the annihilation of the Jewish race. Twenty-three different articles of "Der Stürmer" between 1938 and 1941 were produced in evidence, in which extermination "root and branch" was preached. Typical of his teachings was a leading article in September 1938 which termed the Jew as a germ and a pest, not a human being, but "a parasite, an enemy, an evil-doer, a disseminator of diseases who must be destroyed in the interest of mankind". Other articles urged that only when world Jewry had been annihilated would the Jewish problem have been solved, and predicted that fifty years hence the Jewish graves "will proclaim that this people of murderers and criminals has after all met its deserved fate." Streicher, in February 1940, published a letter from one of "Der Stürmer's" readers which compared Jews with swarms of locusts which must be exterminated completely. Such was the poison Streicher injected into the minds of thousands of Germans which caused them to follow the National Socialist policy of Jewish persecution and extermination. A leading article of "Der Stürmer" in May 1939, shows clearly his aim:

" A punitive expedition must come against the Jews in Russia. A punitive expedition which will provide the same fate for them that every murderer and criminal must expect. Death sentence and execution. The Jews in Russia must be killed. They must be exterminated root and branch. "

As the war in the early stages proved successful in acquiring more and more territory for the Reich, Streicher even intensified his efforts to incite the Germans against the Jews. In the record are twenty-six articles from "Der Stürmer", published between August 1941 and September 1944, twelve by Streicher's own hand, which demanded annihilation and extermination in unequivocal terms. He wrote and published on December 25, 1941:

" If the danger of the reproduction of that curse of God in the Jewish blood is to finally come to an end, then there is only one way -- the extermination of that people whose father is the devil. "

And in February 1944, his own article stated:

" Whoever does what a Jew does is a scoundrel, a criminal. And he who repeats and wishes to copy him deserves the same fate, annihilation, death. "

With knowledge of the extermination of the Jews in the occupied Eastern Territory, this defendant continued to write and publish his propaganda of death. Testifying in this trial, he vehemently denied any knowledge of mass executions of Jews. But the evidence makes it clear that he continually received current information on the progress of the "final solution". His press photographer was sent to visit the ghettos of the East in the spring of 1943, the time of the destruction of the Warsaw Ghetto. The Jewish newspaper, "Israelitisches Wochenblatt" which Streicher received and read, carried in each issue accounts of Jewish atrocities in the East, and gave figures on the number of Jews who had been deported and killed. For example, issues appearing in the

summer and fall of 1942 reported the death of 72,729 Jews in Warsaw, 17,542 in Lodz, 18,000 in Croatia; 125,000 in Roumania, 14,000 in Latvia, 85,000 in Yugoslavia, 700,000 in all of Poland. In November 1943 Streicher quoted verbatim an article from the "Israelitisches Wochenblatt", which stated that the Jews had virtually disappeared from Europe, and commented "This is not a Jewish lie". In December 1942, referring to an article in the "London Times", about the atrocities, aiming at extermination, Streicher said that Hitler had given warning that the second World War should lead to the destruction of Jewry. In January 1943 he wrote and published an article which said that Hitler's prophecy was being fulfilled, that world Jewry was being extirpated, and that it was wonderful to know that Hitler was freeing the world of its Jewish tormentors.

In the face of the evidence before the Tribunal it is idle for Streicher to suggest that the solution of the Jewish problem which he favoured was strictly limited to the classification of Jews as aliens, and the passing of discriminatory legislation such as the Nurnberg Laws, supplemented if possible by international agreement on the creation of a Jewish State somewhere in the world, to which all Jews should emigrate.

Streicher's incitement to murder and extermination at the time when Jews in the East were being killed under the most horrible conditions clearly constitutes persecution on political and racial grounds in connection with war crimes, as defined by the Charter, and constitutes a crime against humanity."

It appears that in the case of Streicher, the Tribunal included among his activities considered criminal, his speaking, writing and preaching hatred of the Jews for 25 years. It therefore went back to the year 1920. The Tribunal enumerated among his crimes, his part in the Jewish boycott of 1st April 1933, in the advocating of the Nuremberg Laws in 1935, in the demolition of the Nuremberg synagogue in August 1938, and his part in the Jewish pogrom of November, 1938. This would appear to indicate that here the Tribunal included within the notion of crimes against humanity these pre-1939 activities. The Tribunal was, however, careful to point out that it was not only in Germany that this defendant advocated his doctrines and the Tribunal stated that with knowledge of the extermination of the Jews in the occupied Eastern territory, Streicher continued to write and publish his propaganda of death.

This leaves open an interpretation of the Judgment to the effect that only acts committed in connection with crimes against peace or war crimes are crimes against humanity within the meaning of the Charter and that Streicher had been found guilty of Count 4 not for his activities within Germany but for his extension of their scope to the occupied territories and for his call for the annihilation of the Jewish race throughout the world.

The reply by the Tribunal to Streicher's defence that the solution of the Jewish problem which he favoured was strictly limited to the classification of Jews as aliens and the passing of the discriminatory legislation, such as the Nuremberg Laws, also indicates that the Tribunal did not consider Streicher's part, e.g. in the passing of the discriminatory legislation as such to constitute a crime against humanity, but only his incitement to murder and extermination at the time when the Jews in the East were being killed under the most horrible conditions. This incitement to murder and extermination of Jews, the Tribunal declared to be persecution on political and racial grounds in connection with war crimes.

C. 238.
30th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Fourth Supplement

to the

Synopsis

of Trial Reports.

(Doc. C. 204)

Since the circulation of the Third Supplement, (Doc.C.233) the reports summarised in this paper have been received by the United Nations War Crimes Commission, up to the 30th November, 1946.

The following documents contain lists of trial reports received: C.204, C.208, C.222, C.233 and the present paper.

I. International Trials:

- 2) Transcript of the trial of the major Far Eastern War Criminals, from 3 May 1946-24th September 1946, with additional papers from the International Military Tribunal for the Far East.

II. British Trials:

121. Trial of Giulio Giulietti and Bruno Franconi.

Date & Place of Trial: 17-18 April 1946 at Milan.

Charge: (1) Committing a war crime in that they at San Michele on 6th November 1943, in violation of the laws and usages of war, were concerned with others in the killing of an unknown escaped Indian PoW.

(2) Giulietti: Committing a War crime in that he at San Michele, on or about 6 November 1943, in violation of the laws and usages of war, was concerned with others in the killing of an unknown escaped British PoW.

Verdict: (1) Giulietti and Franconi not guilty.

(2) Giulietti Guilty.

Sentence: Imprisonment for 2 years.

Sentence confirmed.

122. Trial of Franz Kotulan, a German national.

Date & Place of Trial: 31 May - 1 June 1946 at Leibnitz, Austria.

Charge: Committing a war crime in that he at Weinburg, on or about 14 May 1942, in violation of the laws and usages of war, did kill a New Zealand corporal, a prisoner of war.

Verdict: Guilty.

Sentence: Imprisonment for 5 years.

Sentence confirmed.

123. Trial of Corrado Sorcetti and Giuseppe Cornacchia, Italian nationals.

Date & Place of Trial: 7 June 1946, at Ancona.

Charge: Committing a war crime in that they in the neighbourhood of Coriconi in the Amandola Commune, Italy, on or about 2 May 1944, in violation of the laws and usages of war, were concerned in the killing of an unknown escaped British PoW.

Verdict: Sorcetti: Not Guilty. (No case).
Cornacchia Guilty.

Sentence: Death by shooting.
Findings confirmed, but sentence commuted to one of imprisonment for life.

IV. United States Trials.

119-J. Trial of Genji Matsuda and Jeichi Kuwashima, Japanese.

Date & Place of Trial: 5 - 13 September 1946 at Shanghai.

Charge: Failure to treat American PoW confined in Mukden, Manchuria PoW camp in accordance with Geneva PoW Convention, between December 1942 and August 1945.

Verdict: Both Guilty.

Sentences: Death, 1.
Imprisonment for 7 years, 1.

120-J. Trial of Toyozo Morita.

Date & Place of Trial: 13 May 1946 at Manila, P.I.

Charge: Murder and attempted murder of civilians near Davao City, P.I., on or about 9 May 1945.

Verdict: Guilty.

Sentence: Imprisonment for life.
Disapproved by Commanding General, AFWESPAC.
Rehearing ordered.

121-J. Trial of Takeki Yamamoto and 5 others.

Date & Place of Trial: 16 September 1946 at Manila, P.I.

Charge: Murder, other assaults and mistreatments of civilians at Dumaguete and Siaton, P.I., during the period from on or about 7 August 1944 to on or about 23 November 1944.

Verdict: All six found guilty.

Sentences: Death by hanging: 5,
Death by shooting: 1.

122-J. Trial of Kiyoshi Nishikawa.

Date & Place of Trial: 16 September 1946 at Manila, P.I.

Charge: Murder, cruelty and torture of civilians at or near Bago and Silay, P.I., during the period from on or about 27 March 1943 to on or about 1 Jan. 45.

Verdict: Guilty.

Sentence: Death by hanging.

123-J. Trial of Duenas, Juan Muna, Guamanian.

Date & Place of Trial: 28 Dec., 1944 at Headquarters, Island Command, Guam.

Charge: Murder (2 specifications)

Verdict: Guilty.

Sentence: Imprisonment for life.
Sentence approved.

- 124-J. Trial of Guerrero, Pedro Sablan Leon, Saipanese.
Date & Place of Trial: 2 July 1945 at Guam.
Charge: Assault and Battery (11 specifications).
Verdict: Guilty (all specifications).
Sentence: Imprisonment for 5 years and 6 months.
Sentence approved.
- 125-J. Trial of Villagomez, Jose P. - Saipanese.
Date & Place of Trial: 26 Feb., 1945 at Hq, Island Cmd, Guam.
Charge: Murder.
Verdict: Guilty.
Sentence: Imprisonment for 10 years.
Sentence approved.
- 126-J. Trial of Cruz, Miguel A. - Guamanian.
Date & Place of Trial: 22 March 1945 at Hq., Island Cmd, Guam.
Charge: Assault (2 specifications).
Verdict: Guilty (both specifications).
Sentence: Imprisonment for one year.
Sentence approved.
- 127-J. Trial of Sablan, Nicolas T. - Saipanese.
Date & Place of Trial: 30 March 1946 at Hq, Island Cmd., Guam.
Charge: (1) Assault (4 specifications)
(2) Assault with intent to commit rape (2 specifications)
Verdict: Guilty.
Sentence: Imprisonment for 10 years.
- 128-J. Trial of Kobayashi, Matsukichi, - Japanese.
Date & Place of Trial: 10 April 1945, Hq., Island Cmd., Guam.
Charge: Murder.
Verdict: Guilty.
Sentence: Imprisonment for life.
Sentence approved.
- 129-J. Trial of Camacho, Antonio and Reyes, Juan, - Saipanese.
Date & Place of Trial: 27 April 1945 at Hq. Island Cmd., Guam.
Charge: Murder, early part of 1942.
Verdict: Both guilty.
Sentences: Death by hanging, 2.
Findings confirmed but sentences commuted to imprisonment for life.
- 130-J. Trial of Borja, Manual Tudela, - Guamanian.
Date & Place of Trial: 9 May 1945, Hq., Island Cmd., Guam.
Charge: (1) Murder,
(2) Assault.
Verdict: Guilty, (both charges).
Sentence: Death by hanging.
Sentence commuted to imprisonment for life.
- 131-J. Trial of Pangelinan, Henry S. - Saipanese.
Date & Place of Trial: 23 May 1945 at Hq., Island Cmd., Guam.
Charge: (1) Assault (3 specifications)
(2) Assault and Battery (2 specifications)
Verdict: Guilty.
Sentence: Imprisonment for 2 years.
Sentence approved.

- 132-J. Trial of Aguon, Mariano Tydingeo - Guamanian.
Date & Place of Trial: 9 June 1945 at Hq., Island Cmd., Guam.
Charge: Sex perversion.
Verdict: Guilty.
Sentence: Imprisonment for 3 years.
Sentence approved.
- 133-J. Trial of Shinohara, Samuel T. - Japanese.
Date & Place of Trial: 28 July 1945 at Hq., Island Cmd., Guam.
Charge: (1) Treason,
(2) Theft,
(3) Assault and Battery,
(4) Taking a female for the purpose of prostitution
(2 specifications).
Additional Charges:
(1) Treason.
(2) Assault and Battery (2 specifications)
(3) Desecration of the flag
Verdict: Guilty on 5 charges.
Not guilty of Charge (2) and additional charge(3).
Sentence: Death by hanging.
- 134-J. Trial of Crisostomo, Luis. C. - Saipanese.
Date & Place of Trial: 1 Aug. 1945 at Hq., Island Cmd., Guam.
Charge: (1) Murder,
(2) Assault (13 specifications).
Verdict: Guilty on all charges.
Sentence: Death by hanging.
Findings approved, but sentence commuted to
imprisonment for life.
- 135-J. Trial of Shoji Koju, and Takahashi, Kiyoshi, both Japanese
Date & Place of Trial: 30 Aug., 1945 at Hq., Island Cmd., Guam.
Charge: Murder (2 specifications).
Verdict: Both guilty.
Sentences: Death by hanging.
- 136-J. Trial of Hosokawa, Akiyoshi, Japanese.
Date & Place of Trial: 12 Sept., 1945 at Hq., Island Cmd., Guam.
Charge: Assault and Battery (2 specifications).
Verdict: Guilty.
Sentence: Imprisonment for 12 months.
Sentence approved.
- 137-J. Trial of Kawachi, Kanzo - Japanese.
Date & Place of Trial: 17 Sept. 1945 at Hq., Island Cmd., Guam.
Charge: Assault and Battery (14 specifications).
Verdict: Guilty (all specifications).
Sentence: Imprisonment for 6 years and 6 months.
Findings and sentence approved.
- 137-J. Trial of Miwa, Kyomon - Japanese.
Date & Place of Trial: 20 Sept., 1945 at Hq., Island Cmd., Guam.
Charge: Assault and Battery.
Verdict: Guilty.
Sentence: Imprisonment for 6 months.
Sentence approved.

139-J. Trial of Cabrera, Jose C. - Saipanese.

Date & Place of Trial: 26 Sept., 1945 at Hq., Island Cmd., Guam.
Charge: Assault and Battery (11 Specifications).
Verdict: Guilty (all specifications).
Sentence: Imprisonment for 5 years and 6 months.
Sentence approved.

140-J. Trial of Ogawa, Hirose - Japanese.

Date & Place of Trial: 12 Oct., 1945 at Hq., Island Cmd., Guam.
Charge: Assault and Battery.
Verdict: Guilty.
Sentence: Imprisonment for 3 years and 6 months.
Sentence approved.

141-J. Trial of Quintanilla, Domingo S., - Rotanese.

Date & Place of Trial: 15 Oct., 1945 at Hq., Island Cmd., Guam.
Charge: Assault and Battery (8 Specifications).
Verdict: Guilty (all specifications).
Sentence: Imprisonment for 4 years.
Sentence approved.

142-J. Trial of Mendiola, Fritz Angocio, - Rotanese.

Date & Place of Trial: 18 Oct., 1945 at Hq., Island Cmd., Guam.
Charge: Assault and Battery (14 specifications).
Verdict: Guilty.
Sentence: Imprisonment for 5 years and 6 months.
Sentence approved.

143-J. Trial of Villagomez, Jose P. - Saipanese.

Date & Place of Trial: 22 Oct., 1945 at Hq., Island Cmd., Guam.
Charge: Assault and Battery (7 specifications).
Verdict: Guilty (all specifications).
Sentence: Imprisonment for 3 years.
Sentence approved.

144-J. Trial of Sablan, Francisco P. - Saipanese.

Date & Place of Trial: 29 Oct., 1945 at Hq., Island Cmd., Guam.
Charge: Assault and battery (24 specifications).
Verdict: Guilty (all specifications).
Sentence: Imprisonment for 6 years.
Sentence approved.

145-J. Trial of Villagomez, Juan - Guamanian.

Date & Place of Trial: 31 Oct. 1945 at Hq., Island Cmd., Guam.
Charge: (1) Murder.
(2) Assault and Battery (4 specifications).
Verdict: Guilty on both charges.
Sentence: Imprisonment for 5 years.
Sentence approved.

146-J. Trial of Colonel Chiseto Oishi, and 9 other members of the Japanese forces.

Date & Place of Trial: 21 Nov., 1945 at U.S. Naval Air Base,
Kwajalein Island, Marshall Islands.
Charge: (1) Murder.
(2) Conspiracy to commit murder.
Verdict: All found guilty.
Sentences: Death by hanging, 6,
Imprisonment for life, 2,
Imprisonment for 20 years, 2.

- 147-J. Trial of Sakaibara, Shigematzu, Rear Admiral, and 2 others of the Japanese Navy.
 Date & Place of Trial: 21 Dec., 1945 at U.S. Naval Air Base, Kwajalein Island, Marshall Islands.
 Charge: (1) Murder.
 (2) Murder (2 specifications against Sakaibara).
 Verdict: 1, (Lt. Ito) Suicide - nolle prosequi.
 Guilty, 2.
 Sentences: Death by hanging.
- 148-J. Trial of Igawa, Tadao, Japanese.
 Date & Place of Trial: 8 Feb., 1946 at Hq., Island Cmd., Guam.
 Charge: Murder.
 Verdict: Guilty.
 Sentence: Death by hanging.
- 149-J. Trial of Kawasaki, Susami and 2 other members of the Japanese Navy.
 Date & Place of Trial: 11 April 1946 at Guam.
 Charge: Murder, (2 specifications).
 Verdict: Not Guilty, 1.
 Guilty, 2.
 Sentences: Death by hanging, 1.
 " " shooting, 1.
- 150-J. Trial of Abe, Kose, Vice Admiral and 2 other members of the Japanese Navy.
 Date & Place of Trial: 15 May 1946, at Guam.
 Charge: Murder of 9 American POW, names unknown.
 Verdict: All 3 found guilty.
 Sentences: Death by hanging, 1,
 Imprisonment for 10 years, 1,
 " " 5 " 1.
- 151-J. Trial of Isono, Meguru and Nakajima, Noboru, both captains in the Japanese Army.
 Date & Place of Trial: 3 June 1946 at Guam.
 Charge: Murder.
 Verdict: Isono, not guilty,
 Nakajima, guilty.
 Sentence: Death by hanging.
- 152-J. Trial of Lt. Col. Kikuji Ito and 3 others of the Japanese Army.
 Date & Place of Trial: 19 June 1946 at Guam.
 Charge: Murder.
 Verdict: All four found guilty.
 Sentences: Death by hanging, 1,
 Imprisonment for life, 1,
 " " 25 years, 1,
 " " 10 " , 1.
- 153-J. Trial of Kato, Takemune, Colonel, and 4 others of the Japanese Army.
 Date & Place of Trial: 12 July 1946 at Guam.
 Charge: (1) Murder (1 specification)
 (2) Neglect of duty in violation of the laws and customs of war. (2 specifications against Kato)
 Verdict: All guilty. (Kato not guilty of second charge).
 Sentences: Imprisonment for life, 2,
 " " 15 years, 2,
 " " 10 " , 1.
 Sentences approved.

- 154-J. Trial of Lt.Gen.Yoshio Tachibana, Vice Admiral Kunizo Mori and 12 other members of the Japanese forces.
 Date & Place of Trial: 15 August 1946 at Guam.
 Charges: (1) Murder (6 specifications)
 (2) Violation of the laws and customs of war (8 specifications)
 Charges 1 and 2 include allegations of cannibalism.
 (3) Neglect of duty in violation of the laws and customs of war (24 specifications).
 Verdict: 1 found not guilty.
 13 found guilty on one or more charges.
 Sentences: Death by hanging, 3,
 Imprisonment for life, 2,
 " " 20 years, 1,
 " " 15 " 2,
 " " 10 " 1,
 " " 8 " 1,
 " " 5 " 3.
- 155-J. Trial of Masayoshi Takano, Japanese.
 Date & Place of Trial: 16 Oct., 1946 at Guam.
 Charge: Murder of a prisoner of war.
 Verdict: Guilty.
 Sentence: Imprisonment for 9 years.
- 156-J. Trial of Toshiro Takizawa, Japanese.
 Date & Place of Trial: 5 June 1946 at Manila, P.I.
 Charge: Wilful and unlawful burning of the town of San Pablo, Laguna Province, P.I. on or about 25 March 1945.
 Verdict: Not Guilty.
- 157-J. Trial of Toshimi Kumai, Japanese.
 Date & Place of Trial: 8 July 1946 at Manila, P.I.
 Charge: Murder, cruelty and torture of civilians at or near Despojols, and at or near Lucena, P.I., during the months of November and December 1943.
 Verdict: Guilty.
 Sentence: Imprisonment with hard labour for 25 years.
 Sentence approved.
- 158-J. Trial of Yuzuru Nakajima, Japanese.
 Date & Place of Trial: 2 Oct., 1946 at Manila, P.I.
 Charge: Murder, cruelty and torture of civilians at or near Bacolod, P.I. in or about April and May 1944.
 Verdict: Guilty.
 Sentence: Imprisonment for 5 years.
- 159-J. Trial of Tansaku Takahashi, Japanese.
 Date & Place of Trial: 19 September 1946 at Manila, P.I.
 Charge: Murder, cruelty and torture of civilians at Murcia, and Talisay, P.I. between 2 May 1943 and 7 May 1944.
 Verdict: Guilty.
 Sentence: Death by musketry.

160-J. Trial of Shiozawa, Mamoru, Japanese.

Date & Place of Trial: 28 August 1946 at Honshu, Yokohama.

Charge: Between 11 November 1942 and 15 September 1945 at Tokyo Area PoW camps, branch 2-B and 24-D, Kawasaki, Honshu, the accused, a civilian guard serving with the armed forces of Japan, did violate the laws and customs of war.

Verdict: Guilty.

Sentence: Imprisonment with hard labour for 20 years.

VIII. French Cases.

65. Trial of Wilhelm Wippermann.

Date & Place of Trial: 6th September 1946 before the Permanent Military Tribunal at Rennes.

Charge: Complicity in wilful striking and wounding of French civilians.

Verdict: Guilty.

Sentence: Imprisonment for 2 years.

C. 239.
5th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Yugoslav-Italian charges of
Crimes against Humanity.

Report by Committee III.

- I. Committee I has been examining a considerable number of charges brought by the Yugoslav National Office against certain Italian nationals. These charges include Charges Nos. 1323, 1462, 3296, 4031, 4032, 4033, 4034, 4035, 4036 and 4037. Of these charges, the Charges Nos. 1462 and 4037 deal with the same facts.
- The charges mentioned were referred to Committee III by Committee I, the terms of reference being that Committee III should give its opinion as to whether or not the alleged crimes should be considered as crimes against humanity, and for what reasons.
- II. The facts of the cases referred to Committee III are reproduced in Docs. III/32, III/45 and III/56. The Yugoslav representative on the United Nations War Crimes Commission, Dr. R. ZIVKOVIC, supplemented the charges by two memoranda, which are contained in Docs. III/57 and III/59.
- III. In the meeting of Committee III held on 2nd October, 1946, (Committee III Minutes No. 20/46), Dr. Zivkovic proposed that the consideration of the case No. 1323 (annex to Doc. III/32) should be adjourned, because it was not directly connected with the other cases enumerated above. This was agreed to by Committee III and this report deals accordingly with all the cases mentioned in paragraph I of this paper, with the exception of the Charge No. 1323, on which a special report will be prepared in due course.
- IV. From the following report, it will be seen that the individual charges brought by the Yugoslav National Office, and dealt with in this report, deal in some cases with a considerable number of different sets of facts. On some of such sets of facts, or "counts", the information so far produced by the Yugoslav National Office was not considered sufficient and the decision on some counts has accordingly also been adjourned until additional information is forthcoming.
- V. In presenting the report, Committee III states:
- (1) That it is not concerned with the question whether the persons charged by the Yugoslav government should be listed by the Commission at the instance of the Yugoslav government.
 - (2) That it is not concerned with the question whether the persons should be extradited or handed over to the Yugoslav government.
 - (3) That it is not concerned with the guilt of each individual accused.

The only question on which Committee III has to give its opinion is whether the facts set out in the Yugoslav charges constitute crimes against humanity and if so, to give the reasons. The task of Committee III is therefore restricted to a reply to this theoretical legal question only.

Considering the charges referred to it from this restricted angle, Committee III makes the observations contained in the following paragraphs of this paper.

Committee III dealt first with the individual charges and the counts forming them stating in the course of the analysis of the individual cases and charges, whether, in its opinion, the facts alleged constituted crimes under common law (general principles of penal law) and reserving until a later stage, consideration of the question whether these crimes were on such a scale or of such a character as to warrant their qualification as crimes against humanity (see paragraphs XIV - XVI infra). The conclusions reached on each count are summarized in paragraphs VI - XIII below.

VI. Case No. 3296 (Doc. III/45).

This charge contains eight different counts, with which Committee III dealt as follows:-

Count 1.

The decision was adjourned until the Yugoslav National Office could supply further information.

Counts 2 and 3.

Provided that the acts alleged were not committed in the course of military operations, they constitute in the Committee's opinion, crimes.

Count 4.

In the Committee's opinion, the facts dealt with in paragraph 1 of Count 4, constitute crimes.

The second paragraph of Count 4 (regarding the killing of Kamilo Stepancio) was adjourned until the Yugoslav National Office will have supplied information regarding the question why the victim had been killed.

Counts 5, 6 and 7.

The facts alleged constitute crimes. Attention is drawn to the Committee's opinion which will be explained later, (paragraph XVIII) that these crimes do not, however, constitute crimes against humanity.

Count 8.

The Committee is of the opinion that the torture and the shooting without trial referred to in the charge, constitute crimes.

VII. Case No. 4031.

Counts 1 and 2.

are, according to the statement by Dr. Zivković, important as illustrations of a pattern, but are not charges in themselves.

Count 3.

The Committee is of the opinion that the burning down of the house, allegedly as a reprisal, and the shooting, constitute crimes. The Committee does not, however, regard the mere arrest of two students and two other men, in itself, as a crime.

Counts 4 and 5.

The shooting of captured partisans without trial alleged in the charge, constitute, prima facie, a crime.

Count 6.

The Committee is of the opinion that the wanton destruction by fire of the house, as it is alleged in the charge, constitutes a crime.

Count 7.

This count consists of three different sets of facts described in three paragraphs.

Paragraphs 1 and 3 of count 7 were adjourned.

As to paragraph 2, which contains the charge of shooting civilians arrested for violation of a curfew while allegedly trying to escape, the Committee considers that there is a reasonable suspicion of a crime having been committed.

Count 8.

This count concerns the shooting of a captured partisan while allegedly trying to escape. The Committee considers this charge as a prima facie case of a crime.

VIII. Case No. 4032.

This charge concerns the pillaging of villages, setting fire to houses and the murder and deportation of persons. The Committee decided that a prima facie case of a crime had been made out.

The crime of pillage does not, however, in the Committee's view, constitute a crime against humanity.

IX. Case No. 4033.

In the Committee's opinion, both Counts of this case constitute crimes, (shooting of hostages in Count 1, and shooting of three women under the pretence that they attempted to escape in Count 2).

X. Case No. 4034.

Counts 1 to 5 of this charge refer to:

Count 1.

Imprisonment of 45 men and deportation to concentration camps in Germany.

Count 2.

The so-called "mopping up" action, in the course of which persons were arrested, one of them hanged, the others released, and the village pillaged. The hanging took place without trial.

Count 3.

The torture and capture of partisans, taking some of them to a house, stripping some of them and torturing them to death.

Count 4.

The hanging of four men without trial.

Count 5.

The pillaging of a village, setting houses on fire, killing people, including women and children.

The Committee considered that with regard to all five counts, a prima facie case of a crime had been made out.

The charge preferred in Count 6 of the same case was abandoned by Dr. Zivković.

XI. Case No. 4035.

Count 1.

The Yugoslav representative pointed out that the offences alleged to have been committed under Count 1 (and also Counts 7, 8, 9 and 13) were committed arbitrarily. The Committee came to the conclusion that the shooting alleged under Count 1 constitutes a prima facie case of a crime.

Count 2.

The Yugoslav representative abandoned this Count.

Count 3.

Here the Committee came to the same conclusion as in respect of Count 1.

Count 4.

The Yugoslav representative abandoned Count 4.

Count 5.

The Committee adjourned this count on the suggestion of the Yugoslav representative.

Count 6.

This Count was abandoned by the Yugoslav representative as far as the alleged robbery was concerned. The shooting however constitutes, in the Committee's opinion, a prima facie case of a crime.

Counts 7, 8 and 9.

The same applies to the shooting alleged under Counts 7, 8 and 9.

Count 10.

The Yugoslav representative explained that by internment in Germany, internment in a concentration camp was meant. The Committee came therefore to the conclusion that as far as deportations to concentration camps were concerned, a prima facie case of a crime had been made out.

Counts 11 and 12.

As far as the deportations to concentration camps alleged under these counts are concerned, the Committee found a prima facie case of a crime.

Count 13.

The same applies to the facts alleged under Count 13 as far as the shooting of the victim is concerned.

Count 14.

With regard to the alleged beating and torture of the victims, the Committee finds a prima facie case of a crime.

XII. Case No. 4036.

The Yugoslav representative abandoned the charge of wrongful arrest. As regards the detaining without food of 12 people and their transference to a prison in order to be sent to a concentration camp, the Committee found a prima facie case established.

The case was adjourned as far as the committing of a crime by ordering forced labour was alleged.

XIII. Case No. 4037.

Here the Committee dealt with the Counts reproduced in paragraph I on page 11 of Doc.III/56 in the following way:

Count 1.

The Committee adjourned the consideration of this case and asked the Yugoslav National Office to furnish the text of the regulations which were in force in the occupied Yugoslav region of Ljubljana.

Count 2.

Here the Committee arrived at the opinion that the shooting of the prisoner Furlan during an alleged attempt to escape constitutes a crime.

Counts 3, 4 and 5.

The Yugoslav representative explained that apart from the charge of killing a partisan, the facts described under these counts were brought forward to illustrate the general atmosphere and did not purport to allege that they were crimes in themselves.

The decision on the charge in count 4, regarding the killing of a partisan names Sasa, was adjourned, to enable the Yugoslav National Office to furnish further information on the circumstances of the killing.

Count 6.

The consideration of this count was adjourned, the Yugoslav National Office promising to give further information respecting the circumstances of the killing of the three partisans.

Counts 7, 8, 9, 10 and 11.

The Yugoslav representative declared that the facts contained in these points were recorded only for illustration of the general atmosphere.

Count 12.

The Yugoslav representative supplemented the charge by stating that the homes of the killed partisans had been set on fire deliberately and without military necessity and certainly not in the course of fighting. Thereupon the Committee decided that this wanton destruction of property constituted a crime.

Count 13.

The Committee came to the conclusion that the shooting of a young man for shouting communist slogans, and slogans advocating the freedom of Slovenia, made out a prima facie case of a crime, both in the event of his having been shot without trial, and in the event of a trial having been held, because the punishment would in any case have been excessive.

Count 14.

The Committee came to the conclusion that a prima facie case of a crime committed by the wanton destruction of two houses had been made out.

Count 15.

sub-para. 1. The Commission is of the opinion that a crime has been committed by sending to concentration camps persons for being relatives of men who had left their homes to join the partisans.

sub-para. 2. This case was adjourned until further information would be forthcoming.

The case was adjourned as far as the committing of a crime by ordering forced labour was alleged.

XIII. Case No. 4037.

Here the Committee dealt with the Counts reproduced in paragraph I on page 11 of Doc.III/56 in the following way:

Count 1.

The Committee adjourned the consideration of this case and asked the Yugoslav National Office to furnish the text of the regulations which were in force in the occupied Yugoslav region of Ljubljana.

Count 2.

Here the Committee arrived at the opinion that the shooting of the prisoner Furlan during an alleged attempt to escape constitutes a crime.

Counts 3, 4 and 5.

The Yugoslav representative explained that apart from the charge of killing a partisan, the facts described under these counts were brought forward to illustrate the general atmosphere and did not purport to allege that they were crimes in themselves.

The decision on the charge in count 4, regarding the killing of a partisan names Sasa, was adjourned, to enable the Yugoslav National Office to furnish further information on the circumstances of the killing.

Count 6.

The consideration of this count was adjourned, the Yugoslav National Office promising to give further information respecting the circumstances of the killing of the three partisans.

Counts 7, 8, 9, 10 and 11.

The Yugoslav representative declared that the facts contained in these points were recorded only for illustration of the general atmosphere.

Count 12.

The Yugoslav representative supplemented the charge by stating that the homes of the killed partisans had been set on fire deliberately and without military necessity and certainly not in the course of fighting. Thereupon the Committee decided that this wanton destruction of property constituted a crime.

Count 13.

The Committee came to the conclusion that the shooting of a young man for shouting communist slogans, and slogans advocating the freedom of Slovenia, made out a prima facie case of a crime, both in the event of his having been shot without trial, and in the event of a trial having been held, because the punishment would in any case have been excessive.

Count 14.

The Committee came to the conclusion that a prima facie case of a crime committed by the wanton destruction of two houses had been made out.

Count 15.

sub-para. 1. The Commission is of the opinion that a crime has been committed by sending to concentration camps persons for being relatives of men who had left their homes to join the partisans.

sub-para. 2. This case was adjourned until further information would be forthcoming.

Counts 16 and 17.

The Committee arrived at the same opinion as with respect to Count 15, sub-para.1., namely that it constitutes a crime to intern persons for no other reason than that of being relatives of youths who had joined the partisans.

Count 18.

The decision on this count was adjourned.

With regard to the Counts contained in case No.4037, (Doc.III/56, part II), the opinion of the Committee is as follows:

Count 1.

The Committee arrived at the opinion that a prima facie case of a crime had been established with regard to the killing of a man while allegedly attempting to escape. The wanton destruction of 81 buildings also constitutes a crime.

Count 2.

This case was adjourned for the same reasons as count 1 of part I and the Yugoslav National Office was asked to provide the text of the provisions valid in Ljubljana province.

- XIV. The Committee took note of the two papers, III/57 and III/59, presented by the Yugoslav representative and particularly of the speech made by Mussolini in Gorizia on 31st July 1942. On this occasion, Mussolini, in unambiguous terms, announced that he had given the order to change radically the methods of dealing with Italian citizens of Yugoslav race. Mussolini spoke of the "inflexibility of Roman law" from which allegedly followed that those who refused to give up their dreams "should know that they would be completely annihilated and that their property would literally be razed to the ground". Mussolini referred to an alleged fact that after one barbaric tribe had tried to attack the Romans three times, Caesar gave the order to annihilate all the males of that population. It goes without saying that the term "barbaric tribe" was intended to refer to the population of Yugoslav origin, living in the Julian March.

In this speech, therefore, the then dictator of Italy not only clearly admitted but even boasted that all the crimes, not only against the life and liberty of Italian citizens of Yugoslav race, but also against their property, which would be committed, had been ordered and instigated by him, as the then supreme representative of the Italian executive power.

The Committee considers Mussolini's speech particularly relevant, because of the opinion which it has expressed in its preliminary report containing "General Propositions" defining the term crimes against humanity (Doc.C.201).

Reference to the "General Propositions" and their application to the present case will be made in paragraph XVI of this paper.

- XV. From the individual Yugoslav charges, as analysed above, in connection with the speech by Mussolini, it appears that a great number of examples of crimes have been established, including acts of murder, extermination, deportation and other inhumane acts committed against the civilian population, and persecutions on political and racial grounds. The Committee particularly points out that prima facie cases have been made out for:

shooting of prisoners while allegedly trying to escape are contained in Charge 4031, Counts 3, 7,(para.2) and 8; in Charge 4033, Count 2; in Charge 4037, para.I, Count 2 and para.II, Count 1(1);

shooting of hostages, Case 4033, Count 1;

internment under inhumane conditions, Case No.4036, Count I(1);
No.4037, Part I, Nos. 15(1), 16 and 17.

torture, Case No.3296, Counts 3 and 7; Case No.4034, Count 3;
Case No.4035, Count 14;

deportation to concentration camps - case No.3296, Count 4(1);
Case No.4034, Count 1; Case No.4035, Counts 10, 11 and 12;
Case No.4036; Case No.4037, Counts 15 (1) and 16;

murder and attempted murder, case No.3296, Count 8; Case No.
4035, Counts 1, 3, 6, 7, 8, 9, 13; Case No.4037, Count 13.

wanton destruction of property, Case No.4031, Counts 3(2) and
6; Case No.4037, Counts 12 and 14; Case 4037(1), Counts 12
and 14, and (II), Count 1;

execution without trial, Case No.4031, Counts 4 and 5; and
Case No.4034, Counts 2 and 4;

different other inhumane acts, Case No.4032; Case No.4034,
Counts 2 and 5.

XVI. Committee III has submitted to the Commission, on 30th May 1946, a paper called "General Propositions defining the term 'Crimes against Humanity'", (Doc.C.201), and among the general propositions, the Committee stated, in paragraph 6, the following:

" Isolated offences do not fall within the notion. As a rule, systematic mass action, particularly if it can be shown to be authoritative, will be necessary to transform a common crime, punishable merely under municipal law, into a crime against humanity which thus becomes also the concern of International Law. Only crimes which either by their magnitude and savagery or by their great number or by the fact that a similar pattern is applied at different times and places, endanger the international community or shock the conscience of mankind, warrant intervention by States other than that on whose territory the crimes have been committed, or whose subjects have become their victims. "

The authoritative character of the crimes alleged by the Yugoslav National Office, was considered by the Committee to have been established particularly by the speech delivered by Mussolini, quoted in Doc.III/59 and referred to in paragraph XIV of this paper.

In examining the whole mass of information which has been presented to the Committee by the Yugoslav representative, the Committee has taken into consideration the number, magnitude and savagery of the inhumane acts described in the preceding paragraphs of this paper; the fact that a similar pattern emerges at different times and places; and that the systematic mass action was authoritative. Taking all this into account, the Committee reached the conclusion that these individual common crimes, punishable normally under municipal law, should be regarded as crimes against humanity, which thus become the concern of International Law.

XVII. The International Military Tribunal at Nuremberg, in its judgment against the major German war criminals, stated on page 16927 of the official transcript (quoted in Doc.III/62, para.IX, p.6), the following:

shooting of hostages, Case 4033, Count 1;

internment under inhumane conditions, Case No.4036, Count I(1);
No.4037, Part I, Nos. 15(1), 16 and 17.

torture, Case No.3296, Counts 3 and 7; Case No.4034, Count 3;
Case No.4035, Count 14;

deportation to concentration camps - case No.3296, Count 4(1);
Case No.4034, Count 1; Case No.4035, Counts 10, 11 and 12;
Case No.4036; Case No.4037, Counts 15 (1) and 16;

murder and attempted murder, case No.3296, Count 8; Case No.
4035, Counts 1, 3, 6, 7, 8, 9, 13; Case No.4037, Count 13.

wanton destruction of property, Case No.4031, Counts 3(2) and
6; Case No.4037, Counts 12 and 14; Case 4037(1), Counts 12
and 14, and (II), Count 1;

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Case No.4034, Counts 2 and 4;

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- XVII. The International Military Tribunal at Nuremberg, in its judgment against the major German war criminals, stated on page 16927 of the official transcript (quoted in Doc.III/62, para.IX, p.6), the following:

" To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with any such crime. The Tribunal cannot, therefore, make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter, but from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity; and insofar as the inhumane acts charged in the Indictment, and committed after the beginning of the war did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity".

The International Military Tribunal, in making a distinction between crimes committed before 1st September 1939 and crimes committed after that date, applied to the defendants who were before it the provisions of Article 6(c) of the Charter of the International Military Tribunal, according to which a crime to be a crime against humanity within the meaning of Article 6(c) of the Charter, i.e., a crime against humanity committed by one of the major war criminals, must be "in execution of, or in connection with, any crime within the jurisdiction of the Tribunal"

For the purpose of deciding whether the particular crimes committed by Italians, which are the subject of this report, fall under the notion of crimes against humanity, it is, in the present circumstances, not necessary for Committee III to express an opinion on the question whether this distinction between crimes committed before 1st September 1939 and crimes committed after that date, applies also to crimes committed by other persons than the major criminals of the European Axis. Committee III mentions, however, that in its statement, Doc.C.236, and in para.XXVII of the paper C.237, the circulation of which it has arranged, the reasoned opinion has been expressed that this differentiation is restricted to major criminals of the European Axis, judged under the particular positive provisions of the Charter of the International Military Tribunal, and does not apply to other alleged perpetrators of inhumane acts.

In the present case, however, it is clear that the alleged crimes were committed during the war, and were, in the words of the Nuremberg Judgment, "all committed in execution of or in connection with the aggressive war" which Italy joined in 1940 and started waging against Yugoslavia in 1941; so that the crimes described in the foregoing paragraphs of this paper would fall within the notion of crimes against humanity even if the restrictive provisions of the Charter of the International Military Tribunal were to be applied to the case.

XVIII. The statement contained in the preceding paragraphs refer, of course, only to the charges and Counts which are discussed in this paper, and do not refer to those which have been adjourned.

The Committee has not included in its classification as crimes against humanity the allegations which charged individual officers or men with pillage. Here the Committee is of the opinion that the authoritative character of the crime of pillage has not been established and that the crimes in question lack, thus, one of the qualifications which, in the opinion of the Committee, are necessary for the classification of a crime as a crime against humanity.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Giving Information as a War Crime.

Report by Committee III.

In connection with the Czechoslovak Charge No.4210, accusing a certain Leopold Klima of complicity in deportation, committed by having served as an informer to the Gestapo, Committee I asked Committee III for its opinion as to what extent and for what reasons giving information (denunciation) should be regarded as a war crime in International Law.

The relevant information is contained in Docs. III/69, III/71 and III/74. The question was examined by Committee III in its meetings held on 5th December 1946 (Minutes No.26/46), 11th December 1946, (Minutes No. 27/46) and 18th December 1946, (Minutes No.28/46).

In the latter meeting, Committee III adopted the following

REPORT.

- I. The problem whether and to what extent giving information (denunciation; denouncing) is a crime in general, and in particular a war crime in International Law, has become of considerable practical importance during the Second World War in view of the activities of certain criminal organisations of the Axis Powers, particularly the Gestapo and the S.D. The importance attached to the question may be gathered from the fact that several nations have introduced into their municipal criminal law positive provisions dealing with the question. Examples of such provisions are:

the Belgian Law-Decree of 17th December 1942, "Moniteur Belge",
29 December 1942, Article 4;
the Czechoslovak Retribution Decree No.16 of 1945 (Section 11);
the Yugoslav Law of 25th August, 1945 (Section 3); and
the Austrian War Crimes Law of 26th June 1945, (Section 7).

- II. The only reference in conventional International Law to giving information (denunciation; denouncing) is contained in Article 44 of the 4th Hague Convention of 1907, (a provision which has not been accepted by Germany, Japan and Russia). It reads as follows:

" Article 44. A belligerent is forbidden to compel the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence. "

The provision prohibits the use of compulsion in order to extract information from the inhabitants of occupied territory by the occupying authorities. The provision deals only with information regarding the army of the other belligerent or its means of defence; it is not addressed to the persons giving the information, whether members of the occupying forces and authorities, or inhabitants of occupied territory.

- III. The giving of information does not, therefore, in itself, constitute a war crime under the existing provisions of International Law. A person acting as an informer commits a crime only if by giving information he becomes a party to a war crime recognised as such in International Law, e.g., murder and massacre, torture of civilians, internment of civilians under inhumane conditions, forced labour of civilians, compulsory enlistment of soldiers in the armed forces of the occupying Power, etc.
- IV. Participation of a person in a crime committed by others, may take different forms in different municipal legal orders, and also in International Law. The Charter of the International Military Tribunal describes the different participants of a crime or of a common plan or conspiracy to commit a crime, inter alia, as instigators and accomplices (Art. 6. of the Charter of the International Military Tribunal). English Law recognises four different ways of taking part in a felony: (1) a principal in the first degree, (2) a principal in the second degree, (3) an accessory before the fact, (4) an accessory after the fact.

The same categories are, in the main, known also to the Continental criminal codes, which distinguish between the immediate perpetrators and co-perpetrators, instigators and aiders and abettors, dividing the last named category into those who give aid and comfort before the fact and those who do so after the fact.

- V. It is very difficult to lay down general rules as to the circumstances which make an individual case fall under the category of accomplice because every case will have to be judged on its merits. It will always be necessary to examine:

- (a) the act of which the person who has been informed against, is accused,
- (b) the action of the occupying authorities which is reasonably to be expected as a consequence of the information.

With regard to (a): Giving information regarding common law crimes, will, in general, not be considered a war crime even if the consequences for the person informed against be very grave. The same may be said of information regarding the violation of enactments which the occupying Power was entitled, under International Law, to promulgate, e.g., regulations respecting the safety of the occupying forces, food regulations in occupied territory, etc.

Giving information regarding the violation of such occupation ordinances as are obviously illegal and even criminal, will, on the other hand, often be a reason for holding that the informer may be guilty of complicity in a war crime. Such obviously illegal enactments by the occupation authorities are, e.g., provisions ordering the rounding up and deportation of Jews and other inhabitants of occupied territory, provisions introducing compulsory military service of inhabitants of occupied territory in the armed forces of the occupant, or provisions imposing slave labour on the inhabitants of occupied territory.

The test is, however, in the opinion of the Committee, not infallible. There might be circumstances in particular cases, where a denunciation of a person for having violated even a common law or an unimpeachable occupation ordinance, will amount to complicity in a war crime subsequently committed. This will, e.g., be the case when there were left in existence police authorities of the occupied State during the occupation, which would be

able to deal with such information, and the informer nevertheless addresses his information to the occupying authority, (e.g. Gestapo, S.D.) with the intention of causing particularly grievous harm (deportation to a concentration camp) or excessive punishment (death sentence for petty offences) to be inflicted upon the person informed against.

With regard to (b): The action of the occupying authorities of which the information was one of the causes, must, in itself, be criminal, (inhumane treatment of all kinds, e.g. deportation to concentration camps, extermination; punishment for violation of provisions, the enactment of which in itself was criminal; excessive sentences for petty offences).

- VI. To fasten responsibility on the informer for the war crime subsequently committed, it will always be necessary to establish the mens rea or dolus malus of the informer, i.e. his knowledge that his action would lead to the commission of a war crime and his intention to bring about this effect, or his reckless indifference with regard to this effect.

In deciding the question whether this mental element of complicity in the crime is, or is not, established in particular cases, the personality of the accused and of the person informed against will have to be considered. The general situation in the place concerned will be most relevant. It will be possible to assume the informer's guilty knowledge if it was quite clear in the circumstances of the case what reaction was to be expected on the part of the occupying authorities, particularly if from the reaction of the occupying authority in similar cases, a well known pattern has emerged. The informer will, on the other hand, not be responsible for the subsequent actions by the occupying authority if he had reason to believe that the person informed against would be fairly treated or fairly tried.

The responsibility of the informer will, of course, be apparent in cases where he has acted as an agent provocateur or where he knowingly accused a person of acts which the person had not committed.

- VII. As a rule, the information must have been furnished voluntarily in order to make the informer an accomplice in the subsequent war crime. If the informer acted under superior orders, the general rules regarding this plea, now well established, will apply to the case. The fact that the defendant acted pursuant to order of his government or of a superior, shall not free him from responsibility, but may be considered in mitigation of punishment (Art.8 of the Charter of the International Military Tribunal.) The true test is not the existence of the order but whether moral choice was, in fact, possible. (Nuremberg Judgment, Cmd.6964, p.42).

Such mitigating circumstances would clearly not exist in the case of an informer, who acted entirely on his own initiative.

If the pressure brought upon the person giving information was so strong that he could not resist it, then the defence that his will was overborne by compulsion (duress, necessity), would be available to him. This would particularly apply to information given on the part of a person who himself was being tortured or very gravely threatened.

- VIII. The war crime subsequently committed need not necessarily be a direct result of the information given. A person may also become criminally responsible for a subsequent war crime if it is an indirect result of his action, provided his mens rea is established.

- IX. The United Nations War Crimes Commission, when listing a person, is neither in a position, nor called upon, to examine too closely the mental element of a crime with which the person has been charged. It is only the task of the Commission to examine whether a prima facie case has been established. Committee III would like to point out, however,

that in dealing with charges of war crimes allegedly committed by giving information, something more than the mere fact of giving the information and the subsequent action by the occupying authority should be proved in order to establish even a prima facie case and that a charge, in order to lead to the listing of a person, should contain indications both as to the criminality of the subsequent proceedings by the occupying authority, and of the mental element from which alone the guilt of the person giving the information can be derived.

A cautious attitude will recommend itself in view of the fact that the Prosecution in the trial against the major war criminals also proceeded cautiously with regard to informers. In the Judgment of the International Military Tribunal, as pronounced on 30th September 1946, it was stated that the declaration regarding the Gestapo and the S.D. included all local representatives and agents, honorary or otherwise, (p.16949 of the official English transcript; p.75 of the Command Paper Cmd.6964). On the following day, the Tribunal declared that its attention had been drawn to the fact that the Prosecution expressly excluded the honorary informers who were not members of the S.S. In view of that exclusion by the Prosecution, the Tribunal also excluded those persons from the S.D. which was declared criminal. (p.16969 of the official English transcript; p.83 of the Command Paper, Cmd.6964). This part of the Judgment was not, of course, concerned with the guilt of the individual informers but with the question whether honorary informers were, as such, to be included in the criminal group. The incident shows nevertheless that the Prosecution was reluctant to consider giving information as such an activity constituting complicity in a war crime.

- X. In the light of the above considerations, the Committee reached the following conclusion as to the circumstances in which the giving of information can constitute a war crime:

Where the giving of information leads to the committing of a war crime it falls within the notion of complicity in that crime, provided that the general conditions which constitute complicity are present.

16th January, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.COMMITTEE I.SECOND STATISTICAL PROGRESS REPORT

(1st February, 1944, to end of December, 1946)

Annotated by the Secretary to Committee I.

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Shortly after the United Nations War Crimes Commission was created, it recommended to the Governments that National War Crimes Offices be established to investigate in the first instance reports concerning war crimes, and to submit to the Commission in the form requested, charges concerning the offences investigated by them.

In response to the Commission's recommendation, Agencies of this kind have been set up by all Governments, members of the Commission.

In the investigation of war crimes and examinations of charges submitted by the National Offices, the Commission, as an international organisation, decides whether there is a case justifying the arrest and handing over for trial of the accused by the apprehending authorities who are thus not called upon to act upon ex parte statements by a single Government.

The preparation, form of submission and presentation by the National Offices of cases and charges of war crimes have been set forth in Document C.87 (1) (consolidated) of 19th April 1945.

Cases filed with the Commission are, according to the Commission's rules of procedure, examined by Committee I (Committee on Facts and Evidence), in the presence of representatives of the Governments (National Offices), submitting the charges. The Commission then reports to the member Governments cases of war crimes in which there appears to be either prima facie evidence sufficient to justify the apprehension and trial of individuals accused of war crimes, or else sufficient grounds to consider the wanted persons as suspects or material witnesses. This is the second stage of Committee I's work and in this respect the Commission functions in a manner resembling that of a committing magistrate reporting to the Governments names of the individuals accused. This is being done in the form of the Commission's Lists of War Criminals with which also all apprehending authorities concerned are being supplied and thus called upon to take the necessary action.

As to procedure and processing of charge files by Committee I and its Secretariat and preparation of the Commission's Lists of War Criminals, reference is being made to Document I/47, (consolidated) of January 1st, 1946.

The present document covers the statistical aspect only of the very strenuous three years' work of Committee I composed of the following Members and their Deputies:

Chairman:	Monsieur de Baer (Belgium)
Deputy Chairman:	Sir Robert Craigie (United Kingdom).
Members:	(Lord Wright, Chairman of the Commission, (Australia). (Colonel J.V. Hodgson. (Captain Wolff). (U.S.A.). (Colonel R.M. Springer. (Lt. Kintner). (U.S.A.). (Dr. H. Mayr-Harting. (Czechoslovakia).
Secretary:	Dr. J. Litawski, Legal Officer. (Poland).

and, at the earlier stage of its activities, also of:

Sir Cecil Hurst.	(U.K.)
Lord Finlay.	(U.K.)
Mr. J. Oldham (deputy)	(Australia).
Dr. B. Eßer.	(Czechoslovakia).
Dr. de Moor	(Netherlands).

The rules of procedure and legal rulings adopted and established by this Committee, while considering charges and deciding upon the responsibility for war crimes, as well as a survey of war crimes committed during the last war with a commentary on the most important cases submitted by the Governments, will be dealt with in separate documents at a later date.

T A B L E I.

TOTAL NUMBER OF CASES (DOSSIERS) RECEIVED BY THE COMMISSION.

The following figures show the total number of cases (dossiers) decided upon by the Commission, irrespective of the nationality of war criminals charged therein and the Governments (members of the Commission) by which they have been submitted.

<u>Year</u>	<u>Cases (Dossiers).</u>
1944	464
1945	1,726
1946 (to 31 December)	2,512
	<hr/>
	4,702

Note

1. First cases registered by the Commission were received on 1st February, 1944.
2. All cases fall under two categories: (a) individual cases and (b) collective cases, according to whether they include charges against one or more persons or units, and no distinction between these two categories has been made while arriving at the above figures.

The total number of persons and units actually charged and listed by the Commission (Tables II, III and the following) is considerably higher than that of cases (dossiers) submitted. The following figures show the total number of persons and units listed, irrespective of their nationality.

<u>Year</u>	<u>Persons and Units.</u>
1944	762
1945	8,442
1946	12,236
	<hr/>
	21,440

EXPLANATORY NOTE ON TABLES II - VIII.

The following Tables II and III, and consequently also Tables IV-VIII, have been set up on the basis of periodical Lists of War Criminals issued by the Commission and not upon the General Alphabetical Index of names. As all cases received by the Commission are being registered and examined by Committee I according to countries submitting them, the periodical Lists of War Criminals are being prepared accordingly, each of them including all persons or units charged by one country, irrespective of whether any of them might have been also charged by any other country. Some of them, in fact, have been charged several times. Therefore, the figures shown in Tables II and III do not represent the total number of persons and units actually listed in the General Alphabetical Index of War Criminals kept by the Commission. As the publication of such alphabetical and consolidated list (index) must necessarily be deferred until the later stage of the Commission's work, the total number of persons and units actually listed by the Commission to date is not available. Nevertheless, it may be safely assumed that the number of persons and units listed several times in the periodical Lists does not exceed 5% of the total figures in Tables II and III.

While arriving at the figures shown in Tables II-VIII, account has been taken of all changes and alterations in each List as indicated in subsequent Lists.

Repartition of Tables II and III according to individual countries submitting charges and nationality of persons or units charged and listed, is shown in Tables IV-VIII.

Cases which have not been accepted by Committee I, and adjourned cases, are shown in Table X.

TABLE II.

TOTAL NUMBER OF PERSONS CHARGED BY THE GOVERNMENTS
AND LISTED BY THE COMMISSION.

	<u>WAR CRIMINALS</u>	<u>SUSPECTS</u>	<u>MATERIAL</u> <u>WITNESSES</u>	:	<u>TOTAL</u>
Germans	14,366	3,938	998	:	19,302
Japanese +	363	60	17	:	440
Italians	1,010	45	13	:	1,068
Albanians	2	-	-	:	2
Bulgarians	289	4	-	:	293
Hungarians	50	-	-	:	50
Rumanians	4	-	-	:	4
	<hr/>	<hr/>	<hr/>	:	<hr/>
	16,084	4,047	1,028		21,159

+ These figures do not include Japanese listed by the Sub-Commission (TABLE XIII).

Note

1. Additional charges brought against persons once charged by the same Government and listed, are not included. These are shown in TABLE IX.
2. Persons listed as unknown by name are included in the above figures.
3. In cases where the description of a person charged reads: "X.Y. head of or his successor or successors at the material time", each case has been counted as involving one person.
4. In cases where the description of a group of persons charged involves an unspecified number of persons unknown by name and holding similar official positions in a number of unspecified but different places of the same administrative district or region - each group has been counted as a unit (See TABLE III).

TABLE II.

TOTAL NUMBER OF PERSONS CHARGED BY THE GOVERNMENTS
AND LISTED BY THE COMMISSION.

	<u>WAR CRIMINALS</u>	<u>SUSPECTS</u>	<u>MATERIAL WITNESSES</u>	:	<u>TOTAL</u>
Germans	14,366	3,938	998	:	19,302
Japanese +	363	60	17	:	440
Italians	1,010	45	13	:	1,068
Albanians	2	-	-	:	2
Bulgarians	289	4	-	:	293
Hungarians	50	-	-	:	50
Rumanians	4	-	-	:	4
	<hr/>	<hr/>	<hr/>	:	<hr/>
	16,084	4,047	1,028		21,159

+ These figures do not include Japanese listed by the Sub-Commission (TABLE XIII).

Note

1. Additional charges brought against persons once charged by the same Government and listed, are not included. These are shown in TABLE IX.
2. Persons listed as unknown by name are included in the above figures.
3. In cases where the description of a person charged reads: "X.Y. head of or his successor or successors at the material time", each case has been counted as involving one person.
4. In cases where the description of a group of persons charged involves an unspecified number of persons unknown by name and holding similar official positions in a number of unspecified but different places of the same administrative district or region - each group has been counted as a unit (See TABLE III).

T A B L E III.
TOTAL NUMBER OF UNITS CHARGED BY THE GOVERNMENTS
AND LISTED BY THE COMMISSION.

	<u>WAR CRIMINALS</u>	<u>SUSPECTS</u>	<u>MATERIAL</u> <u>WITNESSES</u>	:	<u>TOTAL</u>
Germans	70	184	2	:	256
Japanese	13	12	-	:	25
	—	—	—	:	—
	83	196	2		281

Note.

1. In cases where the description of a group of persons charged involves an unspecified number of persons unknown by name and holding similar official positions in a number of unspecified but different places of the same administrative district or region - each group has been counted as a unit.
2. Additional charges brought against units once charged by the same Government and listed, are not included. These are shown in TABLE IX.
3. The description "Unit" means not only military or para-military units, but also members of civil enemy bodies charged collectively in view of their official position.

TABLE IV.

NUMBER OF PERSONS CHARGED BY THE GOVERNMENTS
AND LISTED BY THE COMMISSION.

GERMANS

	<u>Total</u>	<u>: War Criminals</u>	<u>: Suspects</u>	<u>: Material Witnesses</u>
AUSTRALIA +		: (See United Kingdom)		
BELGIUM	2,978	: 2,055	756	167
CANADA +	30	: 22	1	7
CHINA	-	: -	-	-
CZECHOSLOVAKIA	1,308	: 891	405	12
DENMARK	54	: 43	11	-
FRANCE	8,759	: 6,342	1,957	460
GREECE	131	: 130	-	1
INDIA +		: (See United Kingdom)		
LUXEMBURG	34	: 33	1	-
NETHERLANDS	1,035	: 646	139	250
NEW ZEALAND +		: (See United Kingdom)		
NORWAY	534	: 305	224	5
POLAND	1,136	: 904	230	2
UNITED KINGDOM	1,451	: 1,340 ++	61 +++	50
UNITED STATES	511	: 495	12	4
YUGOSLAVIA	1,271	: 1,096	137	38
COMMISSION ++++	70	: 64	4	2
	<hr/> 12,302	<hr/> 14,366	<hr/> 3,938	<hr/> 998

+ Australian, Indian and New Zealand cases against German war criminals are being submitted through the United Kingdom National Office and have been included in the latter's figures. A number of Canadian cases other than those indicated above have also been submitted through the United Kingdom National Office, and are included in the latter's figures.

++ 148 of these, charged for having committed crimes against non-British nationals in Concentration Camps and the like, have been listed upon United Kingdom cases as they were or are to be tried by British Military Courts in Germany.

+++ 7 of these, have been charged for having committed crimes against non-British nationals.

++++ These persons have been listed by the Commission on its own initiative.

TABLE V.

NUMBER OF PERSONS CHARGED BY THE GOVERNMENTS
AND LISTED BY THE COMMISSION.

J A P A N E S E

	<u>Total</u>	:	<u>War Criminals</u>	<u>Suspects</u>	<u>Material Witnesses</u>
AUSTRALIA	94	:	82	3	9
BELGIUM	-	:	-	-	-
CANADA	-	:	-	-	-
CHINA +	(See : Chungking Lists: TABLE XIII).				
CZECHOSLOVAKIA	-	:	-	-	-
DENMARK	-	:	-	-	-
FRANCE	3	:	3	-	-
GREECE	-	:	-	-	-
INDIA	(Included in United Kingdom figures).				
LUXEMBURG	-	:	-	-	-
NETHERLANDS	-	:	-	-	-
NEW ZEALAND	-	(Included in United Kingdom figures).			
NORWAY	-	:	-	-	-
POLAND	-	:	-	-	-
UNITED KINGDOM ++	120	:	84	28	8
UNITED STATES +++	223	:	194	29	-
YUGOSLAVIA	-	:	-	-	-
COMMISSION	-	:	-	-	-
	<hr/> 440		<hr/> 363	<hr/> 60	<hr/> 17

+ Chinese cases are being listed by the Sub-Commission in Chungking.
(See TABLE XIII).

++ A number of these cases have been submitted by the United Kingdom on behalf
of the Indian and New Zealand National Offices.

+++ In addition to these a number of Japanese war criminals charged by the
United States have been listed by the Sub-Commission in Chungking.