

Mr. PELL said that he had instructions from his Government whose view was that publicity was undesirable for the Commission which was an advisory body, and that no statement to the Press should be issued by the Commission without the approval of the Governments and Army authorities, nor should it touch on the persecution of races. He would be unable to participate in the issue of statements outside those limits.

The CHAIRMAN observed that the statement in question would be subject to the British censorship.

Mr. COLBAN thought that if it kept within the bounds indicated by the Chairman the statement would not conflict with the United States point of view.

#### FINANCES OF THE COMMISSION

The Secretary General stated that "basic contributions" had been received from Czechoslovakia and the Netherlands.

#### REPORTS OF COMMITTEE CHAIRMEN

M. de BAER, Chairman of Committee I, produced a table containing statistics regarding the number of cases which Committee I had classified as B.1 down to August 1st. It was decided that the table should be circulated to members of the Commission with a covering note by the Chairman, asking that members would draw Governments' attention to the table and emphasising certain facts which it revealed.

Mr. PELL and Dr. GLASER reported progress on behalf of their respective Committees.

#### DRAFT RECOMMENDATION REGARDING THE S.A., S.S. AND GESTAPO (Doc. C.35).

Dr. ECER presented the recommendation.

A discussion followed in which doubt was expressed as to whether the recommendation added anything to those already made in Doc. C.35 regarding the organisations in question. Some members also asked whether it was wise for the Commission to pronounce itself upon the controversial subject of ex post facto legislation. It was decided

that as regards procedure should be regulated by the national legislatures, and that such legislation should be enacted, and final approval given by the foreigners contrary to that if there was to be a change it would have to be made. It was argued that the previous recommendation was of little value for its recommendation would be of little value.

As regards the fear that certain members might be treated as undesirable members of the membership, whereas some members were not.

It was decided

(a) Paragraph 1 of the Commission's new

"1. Each member on the basis of his own legislation of the State of the German Reich as members of the Commission."

"Each member of the Commission who has been a member of the German Reich or who has been a member of the German Reich."

(b) M. Gros and

Mr. COLBAN

ground that he

made in Doc. C.35.

that as regards proceedings in national courts, this matter was regulated by the national law. Some countries could and had enacted such legislation. In others there was a constitutional bar to its enactment, and finally some countries considered its application to foreigners contrary to international law. It was suggested, however, that if there was to be an interallied court, a rule on the subject would have to be laid down for its guidance. On the other hand, it was argued that the recommendation dealt with punishment, whereas the previous recommendations dealt with internment, and that, apart from its value for the Governments, the first paragraph of the recommendation would serve as a guide to Committee I.

As regards the drafting of the recommendation, some members feared that certain passages had or might be interpreted as having an undesirable restrictive effect. Thus, paragraph 2 spoke of treating membership of the organisations named as henceforth a crime, whereas some members considered it to be a crime already.

It was decided that:

- (a) Paragraph 1 would be circulated for consideration at the Commission's next meeting in the following amended form:

"1. Each of the United Nations has the right, either on the basis of its present criminal law or on the basis of new legislation, to punish its own nationals who became members of the Sturmabteilungen (S.A.), Schutzstaffeln (S.S.) or Geheime Staatspolizei (Gestapo), irrespective of their rank as members and of the territories in which they served.

"Each of the United Nations has also the right to punish German or foreign members of the above-mentioned organisations who have committed crimes in their territories."

- (b) M. Gros and Dr. Eöer should agree upon a text of paragraph 2.

Mr. COLBAN abstained from voting for this decision on the ground that he considered the recommendation to duplicate that made in Doc. C.31 and to be therefore unnecessary.

*Cecil B. Hurst*  
*Aug 8/44*



SECRET

C.35  
24 July, 1944

SECRET

UNITED NATIONS WAR CRIMES COMMISSION

DRAFT RECOMMENDATION REGARDING THE STURMABTEILUNGEN (S.A.),  
SCHUTZSTAFFELN (SS) AND GEHEIME STAATSPOLIZEI (GESTAPO)

Presented by Committee III.

Committee III submits to the Commission the following  
conclusions

- (a) to be voted as a guiding rule for the work of the Commission and its Committees, and
- (b) to be forwarded to the Governments as legal advice and as a recommendation of the Commission.

1. Each of the United Nations has the right to punish its own nationals who became members of the Sturmabteilungen (S.A.), Schutzstaffeln (SS) or Geheime Staatspolizei (Gestapo), irrespective of their rank as members and of the territories in which they served, and either on the basis of its present criminal law or on the basis of new legislation.

Each of the United Nations has also the right to punish Germans or foreigners who in its territory served as members of the above mentioned organisations and committed crimes there.

2. The United Nations authorities in occupied Germany and her satellite States are authorised by International Law to take any measure admissible by the International Law in order to ensure the safety of their Armies and to maintain public order and peace.

The character and activity of the S.A., SS., and Gestapo are such that in accordance with this principle, it would be justifiable for the United Nations authorities, among other measures, to disband these organisations, intern their members, make membership in them henceforth a crime and punish it as such.

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UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-seventh Meeting

held on

8 August 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL	- United States of America
accompanied by Lt. Col. HODGSON	
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
Dr. LIANG	- China
M. GROS	- France
M. STAVROPOULOS	- Greece
Mr. DUTT	- India
Dr. de MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia

MINUTES OF LAST MEETING

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

RECOMMENDATION REGARDING ARMISTICES GRANTED TO GERMANY'S EUROPEAN SATELLITES

At M. MILANOVITCH'S request it was resolved to record in the Minutes that, as provided by the Commission's decision of 11 July 1944, the Chairman and M. Milanovitch had drawn up an agreed text of the recommendation to be made to the Governments regarding the armistices with Germany's European satellites, and that this recommendation had been communicated to the members of the Commission for the information of their Governments, in the Document C.34 of 18 July, 1944.

TIME OF MEETING OF COMMITTEE II

It was announced that Committee II would in future meet on Thursdays at 3 p.m.

REPORTS OF COMMITTEE CHAIRMEN

The Chairmen had nothing special to report.



INTERVIEW WITH REPRESENTATIVES OF THE WORLD JEWISH CONGRESS (1)

The CHAIRMAN referred to the discussion at the Commission's last meeting of the desiderata of this organisation, and reported that with Professor Glaser he had received Mr. A.L. Easternman, its Political Secretary, and two other members of this organisation, Mr. F.R. Bienenfeld and Mr. A. Steinberg. He had had to point out that the help the Commission could give them was limited to what could be done within the scope of its primary function, which was the investigation of individual cases of war crime, and did not embrace crimes against the Jews committed on Axis territory. But within those limits he had indicated lines of action along which the World Jewish Congress could assist the Commission and the Commission would be able, at least in part, to satisfy the desires of the Congress. The Congress had collected a mass of information about the campaign of extermination waged against the Jews. Most of this material was now in New York, but it could be put at the disposal of the Commission. He had explained that it was the National Offices which transmitted cases to the Commission and therefore it was by the National Offices that the information which could be provided by the Jewish World Congress should first be considered. Fortunately the material collected by the Congress was classified according to the countries in which particular incidents had occurred. Mr. Easternman said the Congress would place the material it had collected at the disposal of any National Office to which it would be useful. Professor Glaser had explained to Mr. Easternman that the Polish National Office had already instituted a special section to deal with atrocities committed against the Jews in Poland, and was in touch with the Jewish organisations. The Polish National Office would welcome any help the Jewish World Congress could give. There remained, however, according to Mr. Easternman, a considerable quantity of material collected by the World Jewish Congress which he did not think could be utilised by the National Offices, and could

(1) The address of this organisation is Congress House, 55 New Cavendish St. W.I.  
(Telephone Welbeck 1514)

only be utilised, if at all, by the Commission. The Chairman said that he had given no undertaking that the Commission would be able to utilise this information but there might be ways in which it would be possible and desirable to do so. He had in mind the possibility of the Commission's issuing reports dealing with special categories of the atrocities committed by the Axis Powers. One of these reports might well deal with this campaign for the extermination of the Jews as a whole, so as to link together the particular acts committed against the Jews in the various occupied countries and make the public at large more readily understand the situation. The Chairman added that he had been careful to emphasise that scrutiny of the material by non-Jewish sources was essential in the interests of the object the World Jewish Congress had in view. Mr. Easternman had quite understood this.

For the present all he could do was to express the hope that any of the National Offices which had already transmitted to the Commission, or were intending to transmit, cases concerned with crimes committed against Jews would accept any help that was offered them by the Jewish World Congress. He would keep the Commission fully informed as to any further developments that might take place.

He concluded by saying that the Congress appeared to have contact with the U.S.S.R., which might be useful.

M. MILANOVITCH said that about a fifth of the cases of war crime collected by the Yugoslav Government related to Jews, who were treated on the same footing as other Yugoslav nationals. If the World Jewish Congress could help, its help would be welcomed. The real problem, however, was that of finding a legal basis for punishing the Axis persecution of their own Jews within their own territory.

AMENDED TEXT OF PARAGRAPH 1. OF COMMITTEE III'S  
DRAFT RECOMMENDATION REGARDING THE S.A., S.S.  
AND GESTAPO (DOC. C.35(1)).

Several members expressed doubt as to the wisdom of adopting this text.

Dr. LIANG urged that, if not adopted, it should not be rejected in Dr. Eöör's absence, and this was agreed to.

Referring to the other paragraph (para. 2) of Document C.35, M. GROS said he did not want to have the text altered, but simply to have the paragraph considered by and embodied in the report of the sub-committee set up by Committee III to recommend measures for dealing with criminal activities intended to prevent the establishment of a stable peace.

SUGGESTIONS BY COMMITTEE II REGARDING CO-OPERATION  
WITH GENERAL EISENHOWER'S HEADQUARTERS (Doc. C.36)

This document stressed the need for "direct and close co-operation" between the Commission and General Eisenhower's Headquarters, and proposed that the Combined Chiefs of Staff should be approached, through the Foreign Office, with a view to their giving appropriate instructions or authorisation to General Eisenhower regarding the execution of the Commission's existing recommendations for creation of a War Crimes Office and internment of the S.S. and Gestapo, and of a new recommendation for the appointment of a liaison officer for permanent co-operation between the General's Headquarters and the Commission.

The discussion showed all the members of the Commission to be anxious for the fullest possible co-operation with the military headquarters, not merely in Western Europe but in all the fields of operations; but the opinion prevailed that the wisest course would be for the Chairman to endeavour to explore the ground and, if possible, arrange further informal talks between himself, Mr. Pell and M. de Baer, and representatives of S.H.A.E.F. for the purpose of ascertaining to what extent, and in what form, the proposed closer co-operation with General Eisenhower's Headquarters could usefully be sought. The CHAIRMAN said such conversations would also throw light on the question of co-operation with the supreme commands on other fronts.



DRAFT CONVENTION FOR THE SURRENDER OF WAR CRIMINALS  
AND OTHER WAR OFFENDERS (Doc. C.37).

The Chairman of Committee II presented this draft.

M. COLBAN, Colonel HODGSON and Mr. DUTT stated that acceptance of the draft would involve legislation in their respective countries.

Dr. LIANG considered that if not acceptable to all the United Nations, the Convention could nevertheless be useful to those which accepted it.

Dr. de MOOR suggested that the title should be "Convention for the mutual surrender between the United Nations of war criminals and other war offenders."

M. de BAER objected to the substitution by Committee II of the word "surrender" for the word "transfer" which the Committee had originally adopted to show that extradition of the normal character was not intended.

Colonel HODGSON said he had proposed the change, and defended it on the ground that it clearly expressed what was implied e.g. showed that an agent would have to be sent to receive the person to be handed over to the requesting state.

M. COLBAN proposed insertion of the words "or convicted" between the word "alleged" and the word "offender" in all the passages of Articles V and VI in which the phrase "alleged offender" was used.

This amendment was adopted.

M. COLBAN further said that the Norwegian Ministry of Justice had raised the questions whether as regards Article V, second paragraph it would be the law of the requesting state which would determine whether an offence was committed within that state's jurisdiction, and whether the case of an offender who at the moment when the request was made was undergoing trial or investigation for the same offence as that for which the request was made, was covered by Articles V and VI. He had consulted the Secretary General and

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accepted his view that the answer to both questions was affirmative. In Article IV the Ministry of Justice would have preferred that provision should be made for surrender being effected by the decision of a court, but he was instructed not to press this point.

M. de BAER said that the Belgian Government was of opinion that in Article IV the provision I.A. ought to be amended by introducing into it certain safeguards which appeared in the original draft prepared by the five Ministers of Justice and had been omitted by Committee II.

Objection was made to this proposal and it was argued that the text as it stood covered the same ground as the Ministers of Justice text.

M. de BAER said he did not press his proposal but wished it to be mentioned in the Minutes.

The CHAIRMAN having suggested that the draft ought to be presented to the Commission and to the Governments with an explanatory memorandum showing, for example, what were the states to which signature of the Convention was open, and explaining the objects and provisions of the draft, Dr. Liang was asked and agreed to draft and submit such a memorandum to the Commission.

The Commission decided not to meet in the following week, unless specially convened by the Chairman.

*Eric J. B. Hurst*  
*Aug. 22/44*

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SURRENDER BY THE AXIS POWER  
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SECOND NOTE by  
TO THE GOVERNMENTS REPRESENTED

In his first Note on the a draft Article which it was armistice with Germany (Doc War Crimes Commission states

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"for use in the armistice  
"satellites subject on

"(1) substitution of  
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C.34  
18 July 1944

UNITED NATIONS WAR CRIMES COMMISSION

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SURRENDER BY THE AXIS POWERS OF PERSONS WANTED FOR  
TRIAL AS WAR CRIMINALS

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SECOND NOTE by the CHAIRMAN

TO THE GOVERNMENTS REPRESENTED ON THE COMMISSION

In his first Note on this subject submitting to the Governments a draft Article which it was suggested should be inserted in the armistice with Germany (Doc. C.31), the Chairman of the United Nations War Crimes Commission stated that:

"In the Commission's opinion the same text should be suitable for use in the armistice granted to each of Germany's European satellites subject only to:

- "(1) substitution of the name of the State concerned for that of Germany, and
- "(2) insertion in section 2 at (d) of the names of the forces which in that State correspond to the Geheime Staatspolizei (Gestapo) and Schutzstaffel (S.S.)"

The Chairman now begs to place before the Governments the Commission's recommendation that in the armistice with each European satellite the text of section 2 point (d) should make provision for taking and keeping in custody any members or former members of the German Gestapo and S.S. who were found in that country, and also any members of the police forces of that country, whether civil or military, who had served or were still serving as district chiefs in any country occupied by Nazi forces.

As stated in the first Note, different provisions may be necessary in the case of Japan, and the text will be submitted at a later date.

C.36  
24 July 1944

UNITED NATIONS WAR CRIMES COMMISSION

C.35(1)  
4 August 1944

SECRET

UNITED NATIONS WAR CRIMES COMMISSION

PARAGRAPH 1. (AMENDED TEXT) OF COMMITTEE III'S DRAFT  
RECOMMENDATION REGARDING THE S.A., S.S. AND THE GESTAPO  
(DOCUMENT C.35)

"1. Each of the United Nations has the right, either  
"on the basis of its present criminal law or on the basis  
"of new legislation, to punish its own nationals who  
"became members of the Sturmabteilungen (S.A.),  
"Schutzstaffeln (S.S.) or Geheime Staatspolizei (Gestapo),  
"irrespective of their rank as members and of the  
"territories in which they served.

"Each of the United Nations has also the right to  
"punish German or foreign members of the above-mentioned  
"organisations who have committed crimes in their  
"territories."

... the combined Chiefs of Staffs will accept our offer of  
collaboration and that they will give appropriate instructions  
to General Eisenhower. The elaboration of detailed schemes  
would be the task of General Eisenhower's Headquarters and of our  
Commission here in London, but General Eisenhower must have at  
least a general authorisation for the purpose from the combined  
Chiefs of Staffs.

/ In view

SECRET

C.36  
24 July 1944

UNITED NATIONS WAR CRIMES COMMISSION

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SUGGESTIONS BY COMMITTEE II REGARDING  
CO-OPERATION WITH GENERAL EISENHOWER'S HEADQUARTERS

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Certain quarters in London and even some newspapers in London have been informed that the Nazis are preparing a big organisation for the purpose of helping Nazi war criminals to escape. False documents are already being fabricated and other measures being taken for this purpose.

The United Nations War Crimes Commission had realised this danger. We have recommended two measures to the Governments for the purpose of ensuring the arrest of war criminals: firstly the establishment of a War Crimes Office attached to the Commander-in-Chief's Headquarters, and secondly the internment of the S.S. and the Gestapo. But we must realise that the United Nations Governments are not an executive body authorised and able to carry out decisions. An example is the fate of the enquiry concerning the extermination of Jews which the Commission on May 30th asked the Chairman to address to the Foreign Office. Up to date no reply has been received.

The only body capable of action is the Supreme Command of the expeditionary forces in Europe, i.e. General Eisenhower's Headquarters.

We understand that the Chairman of the Commission, together with Mr. Pell and General de Baer, have had informal informative talks about collaboration between the War Crimes Commission and General Eisenhower's Headquarters. We are all convinced that without direct and close collaboration between the Commission and those headquarters the work of the Commission will be a failure.

We understand that there are already liaison officers at General Eisenhower's Headquarters for all kinds of business but there is no liaison officer for the punishment of war criminals. It is believed that the establishment of collaboration between the Commission and General Eisenhower's Headquarters, and especially the establishment of a War Crimes Office, is possible only through the combined Chiefs of Staffs in Washington. We feel confident that the combined Chiefs of Staffs will accept our offer of collaboration and that they will give appropriate instructions to General Eisenhower. The elaboration of detailed schemes would be the task of General Eisenhower's Headquarters and of our Commission here in London, but General Eisenhower must have at least a general authorisation for the purpose from the combined Chiefs of Staffs.

/ In view



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UNITED NATIONS WAR CRIMES

CONVENTION FOR THE SURRENDER

AND OTHER WAR OFFENSES

Draft presented by

(Enumeration of the

Having resolved to conciliate  
of achieving the surrender of  
offenders,

have appointed as their  
(list of Plenipotentiaries)  
Who, having communicated  
and due form, have agreed

Article

The High Contracting Parties  
each other according to the  
the purposes of trial or  
persons found within their  
convicted of war crimes,  
and customs of war, which  
jurisdiction of the request  
its nationals or the army

The High Contracting Parties  
surrender to each other  
hereinafter, for the purpose  
or judgment, all persons  
requesting state who are  
charged with or convicted  
or of an offence committed  
of the enemy or of a  
opportunity afforded  
by hostile occupation

The surrender  
effected notwithstanding  
a political character

In view of the fact that the war is approaching its end and especially in view of recent events in Germany, the Commission asks the Commission to take immediate steps to establish direct and close co-operation with General Eisenhower's Headquarters and to submit through the British Foreign Office to the Chiefs of Staffs the Commission's recommendations concerning

- a) Establishment of a War Crimes Office;
- b) Internment of the S.A., S.S. and Gestapo;
- c) Establishment of permanent collaboration through a liaison officer between the Commission and General Eisenhower's Headquarters.

SECRET

C.37  
25 July 1944

UNITED NATIONS WAR CRIMES COMMISSION

CONVENTION FOR THE SURRENDER OF WAR CRIMINALS

AND OTHER WAR OFFENDERS

Draft presented by Committee II

(Enumeration of the Heads of States)

Having resolved to conclude a Convention with the object of achieving the surrender of war criminals and other war offenders,

have appointed as their Plenipotentiaries the following:  
(list of Plenipotentiaries)

Who, having communicated their full powers, found in good and due form, have agreed on the following provisions:

Article I

The High Contracting Parties mutually agree to surrender to each other according to the procedure hereinafter provided, for the purposes of trial or of execution of sentence or judgment, persons found within their jurisdiction who are charged with or convicted of war crimes, including offences against the laws and customs of war, which were committed either within the jurisdiction of the requesting state or against that state or its nationals or the armed forces of the state.

Article II

The High Contracting Parties further mutually agree to surrender to each other according to the procedure provided hereinafter, for the purposes of trial or of execution of sentence or judgment, all persons, nationals or former nationals, of the requesting state who are within their jurisdiction and are charged with or convicted of giving aid or comfort to the enemy or of an offence committed with the intent to further the cause of the enemy or of an offence committed by means of the power or opportunity afforded by a state of war or armed hostilities or by hostile occupation of territory of the requesting state.

Article III

The surrender provided for by Articles I and II shall be effected notwithstanding any contention that the offence was of a political character.

/ Article IV



#### Article IV

The request for surrender shall be transmitted through diplomatic channel, and shall be executed by the appropriate executive or administrative authorities of the requested state. The person whose surrender is requested under the terms of the Convention shall in no case have recourse to any form of procedure provided in the extradition treaties, laws or regulations of the requested state. The request shall contain in any

1. In the case of an alleged offender:

- A. (1) the identity, nationality (if known) and description of the alleged offender;
- (2) the description of the alleged offence and the maximum penalty which can be inflicted for that offence.

B. The Government requesting surrender shall in every case give written assurances to the Government from whom the surrender is requested to the effect:

- (1) that the trial will be conducted in accordance with legal procedure;
- (2) that judgment or findings and sentence will be pronounced in open court;
- (3) that the alleged offender will be afforded the assistance of counsel both before and during the trial.

2. In the case of a convicted offender:

- (1) the identity, nationality (if known), and description of the convicted offender;
- (2) the description of the offence and the penalty imposed;
- (3) the original or an authenticated copy of the judgment or findings and sentence given by the appropriate court in respect of the offence and in the presence of the offender.

The term "court" as used in this article shall include a military commission or other military tribunal.

#### Article V

The High Contracting Parties may decline to surrender to each other their own nationals and former nationals.

A High Contracting Party may refuse to surrender an alleged offender, if the offence for which his surrender is requested was committed within that Party's jurisdiction.

In all cases where two or more High Contracting Parties request the surrender of the same alleged offender, such person shall be surrendered first to the Government of the State whose national legislation contains the heaviest maximum penalty in respect of the alleged offence regarding which surrender is requested.

Where the maximum penalties in respect of

for which surrender is requested first be effected to the Government of the state requested to effect the surrender.

#### Article V

If at the time when the offender is undergoing investigation by the courts of the requested state or not, which is punishable by a penalty more severe than that for which the surrender is requested, the state may decline to surrender him and the request shall be terminated.

In the event of sentence having been pronounced, the sentence shall be suspended, if the surrender is requested in accordance with the Convention.

A sentence of death shall not be executed if the state requested the surrender of the offender has not agreed to execute the sentence.

When an alleged offender has been sentenced by two or more High Contracting Parties, the state concerned in the request shall, if the offender is not already sentenced by one of the requesting states, be responsible for execution.

The Governments concerned shall allow the transit through their territories of persons who are being surrendered in accordance with the Convention to another High Contracting Party. The surrender is obtained from the state of origin or the territories the person may be accompanied by the person concerned.

The High Contracting Parties of surrender all persons who may serve as proof of the Convention.

The request for a surrender shall be made in accordance with the Convention.



for which surrender is requested are the same, surrender shall first be effected to the Government which first requested the surrender.

#### Article VI

If at the time when the request is made the alleged offender is undergoing investigation or is on trial in the courts of the requested state for a crime, whether a war crime or not, which is punishable with a higher maximum penalty than that for which the surrender is requested, that state may decline to surrender him until the proceedings are terminated.

In the event of sentence of detention in a penal institution having been pronounced, the execution of the sentence shall be suspended, if the surrender of the convicted person is requested in accordance with Articles I or II.

A sentence of death shall however be executed notwithstanding that one or more of the High Contracting Parties have requested the surrender of the offender.

When an alleged offender whose surrender has been requested by two or more High Contracting Parties has been tried and sentenced by their courts, the sentences shall be executed in the states concerned in the order of their dates; provided that, if the offender has been sentenced to death in one of the requesting states, he shall be surrendered to that state for execution.

#### Article VII

The Governments of the High Contracting Parties agree to allow the transit through their territories of persons who are being surrendered by one of the Parties to the present Convention to another Party, on production of a certificate emanating from the Government of the State from whom the surrender is obtained. During the passage through such territories the person who is being surrendered and his escort may be accompanied by officials designated by the Governments concerned.

#### Article VIII

The High Contracting Parties agree to produce at the time of surrender all documents, exhibits, or any other thing which may serve as proof of the alleged offence.

#### Article IX

The requesting state shall bear all costs arising out of a surrender made at its request under the terms of this Convention.

/ Article X

Article X

The present Convention constitutes an exceptional measure and shall not affect the operation of any treaty of extradition between or among the High Contracting Parties except as may be expressly provided by the terms of this Convention.

Article XI

(Denunciation and termination: Text provisionally reserved).

Article XII

The present Convention shall be ratified and the ratifications shall be deposited as soon as possible with ..... who will notify such deposit to all the signatories.

Article XIII

The present Convention shall come into force one month after the date on which it shall have been ratified on behalf of two of the High Contracting Parties. Thereafter it shall take effect in the case of each High Contracting Party one month after the date of the deposit of the ratification on its behalf with .....

In faith whereof etc.

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Chairman: Sir Ce

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Mr. PELL  
accompanied  
Lord WRIGHT  
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M. de BAER  
Dr. WELLINGTON  
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Dr. ECER  
M. GROS  
M. STAVROPOUL  
Mr. DUTT  
M. BODSON  
Dr. de MOOR  
Mr. COLBAN  
accompanied  
Dr. GLASER  
M. MILANOVIT  
accompanied

MINUTES OF LAST MEET

At the request

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SECRET

M.28.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-eighth Meeting

held on

22 August 1944.

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL	- United States of America
accompanied by Lt. Col. HODGSON and Major COWLES	
Lord WRIGHT	- Australia
accompanied by Mr. OLDHAM	
M. de BAER	- Belgium
Dr. WELLINGTON KOO	- China
accompanied by Dr. LIANG	
Dr. ECER	- Czechoslovakia
M. GROS	- France
M. STAVROPOULOS	- Greece
Mr. DUTT	- India
M. BODSON	- Luxembourg
Dr. de MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia
accompanied by M. ZIVKOVIC	

MINUTES OF LAST MEETING

At the request of Mr. DUTT and another member, lines 4 and 5 on page 5 were amended to read as follows:

"Certain members stated that acceptance of the draft would involve legislation in their respective countries. Mr. DUTT said the same might be the case in his country."

At M. MILANOVITCH'S request, the record of his speech on page 3 was replaced by the actual words, which were:

"M. MILANOVITCH said that the large majority of Jewish cases, perhaps four-fifths, were already covered by the Commission's work, as these Jews were subjects of the States represented on the Commission. The cases of the Jews in Yugoslavia, who had always been treated there on an absolutely equal footing with other Yugoslav nationals, would of course be submitted to the Commission together with other Yugoslav cases. If the World Jewish Organisation had any additional data about crimes against the Jews in Yugoslavia, the Yugoslav National Office would very readily receive them.

"The only problem that really remains in abeyance is how to punish the Axis crimes against their own Jews within their own territories. M. Milanovitch thought that the whole Commission would sympathise in these cases too and that something should be done, but the real difficulty was to find the legal basis."



FAR EASTERN AND PACIFIC SUB-COMMISSION

The Secretary General reported that the Indian and French Governments had appointed representatives on the Sub-Commission.

FINANCES OF THE COMMISSION

The Secretary General reported the payment of China's basic contribution for the current fiscal year.

REPORTS OF COMMITTEE CHAIRMEN

It was reported that Committee I had decided to meet both on Tuesday and on Wednesday mornings at 10.30.

The Chairman of Committee II said that body would henceforth meet twice on Thursdays, at 11 a.m. and 3 p.m.

The Chairman of Committee II also reported that the proposal for United Nations Military Tribunals, which had been circulated to all the members of the Commission in the Document II/26(1), was "ordered out" to the Commission to be taken up by it when the Chairman thought fit.

The Chairman of Committee III said that after considering a report by Dr. Liang on the plea of obedience to superior orders, that body had appointed Mr. Hambro and Major Cowles as a sub-committee to investigate the subject further.

MATTERS RAISED BY THE CHAIRMAN

After welcoming the new representative of Australia, Lord Wright, and a new member of the United States delegation, Major Cowles, and stating that the Secretary General would shortly be obliged to be absent for an operation and had made arrangements for carrying on the work during his absence, the CHAIRMAN said he had a number of matters to put to the Commission:

Date for completion of first list of war criminals.

In the first place the war with Germany was plainly reaching a climax and, as the Commission must have a first definitive list of war criminals ready when the armistice was granted, the Chairman suggested the fixing of a date to which it should work. Purely as the result of his personal appreciation of the situation, he suggested 10 November next. This was agreed to.

Looting of art treasures and destruction of monuments.

The Chairman said that the Secretary of the Vaucher Committee, (1) a body appointed by the Allied Ministers of Education, had sought contact with the Commission. It could provide valuable material regarding criminal looting and destruction of art treasures and monuments, and contact with it seemed desirable.

Mr. DUTT pointed out that there was another body with much the same function - the Roberts Committee, which was supported by the United Kingdom and the United States Governments and, as he believed, that of India. The Chairman said the two bodies were trying to work together. Professor GLASER proposed that a letter should be sent to the National Offices pointing out the possibility of getting from the Vaucher Committee information regarding war criminals guilty of looting art treasures or destroying monuments, and it was decided that the Secretary General should do this.

Co-operation with War Office

The Chairman reported that he established contact with the United Kingdom War Office and that a high official of that ministry would attend a meeting of Committee I in order to judge what help it could give.

Co-operation with General Eisenhower's Headquarters

The Chairman also reported that he had not yet been able to see a representative of SHAEF in connection with the proposals for co-operation put forward in Document C.36 (See Minutes of 8 August, 1944, p. 4).

Production by the Commission of reports on different classes of Axis' war crimes, such as crimes directed against Jews as such etc.

Referring to his suggestion at the Commission's last meeting that reports of this kind should be produced with the object of linking together the war crimes of different categories committed by the Axis Powers and making the public at large more readily

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(1) This body is a sub-committee of the Conference of Allied Ministers of Education.

understand the situation, (Minutes of 8 August 1944, p.2), the Chairman asked a general endorsement of this idea from the Commission, while warning it that its execution would cost money. The statements made must be well supported by evidence and the work must be done by persons well qualified both to test the material and present it in an attractive form.

Mr. COBURN said he agreed on the understanding that the reports were related to the Commission's work and not exhaustive historical studies. Other members spoke in favour of the Chairman's proposal, which was adopted.

#### Expansion of the Secretariat

The Chairman asked the Commission to agree to such increase in the staff of the Secretariat as the Finance Committee might approve. Such an increase was necessary, particularly in relation to the work of Committee I and the Chairman's own work. This was agreed.

#### Press Conference

The Chairman stated that the adjourned Press Conference would take place in the following week.

Mr. COBURN said leakages of information were still occurring, as appeared from a letter he had received from a Mr. Laurence Kidd and had sent to the Secretary General.

The Chairman had received a similar letter from the same source. It was, in his opinion, only a repetition of a statement in the newspapers. He regarded the Press Conference which was to be held as the best antidote.

#### Temporary absence of Dr. Wellington Koo and Dr. Liang

The Chairman expressed the Commission's regret at losing the assistance of Dr. Wellington Koo and Dr. Liang during their coming mission to Washington.

Dr. WELLINGTON KOO said his place on the Commission would be taken by Dr. King, Chinese Ambassador to ~~Belgium~~ *the Netherlands*.



MEMORANDUM BY DR. DE MOOR ON THE TASK OF COMMITTEE I, ON  
THE EXPANSION OF THE SECRETARIAT OF THE COMMISSION, AND ON  
THE NECESSITY OF DRAWING UP A MINIMUM PROGRAMME (C.42).

In presenting this memorandum, Dr. de MOOR said that the figures given at the bottom of p. 1 required correction. The number of cases received down to date was 255 and the number of criminals placed on list B.1 was 335. The Chairman's proposal regarding the Secretariat had already covered part of his own proposals. He urged that the Commission should itself prepare "dossiers" against Hitler and other arch-criminals, since the National Offices were apparently not prepared to do so. He also urged that the time had come for settling by a vote the points on which differences of opinion still prevailed. He moved the adoption of the conclusions set out on p.3 of his memorandum.

Dr. de Moor's proposal regarding arch-criminals received support from many members, but no formal decision was taken.

After comments had been made on other points of the memorandum, the proposals on p.3 were examined with the following results:-

Proposal (a) - It was agreed not to circulate Dr. de Moor's memorandum in its present form, copies being already available to the members of the Commission for communication to their National Offices or Governments.

Proposal (b) - 1) Dr. de Moor agreed that the work contemplated should be done by Committee I.

2) It was agreed that the Chairman of the Commission and the Chairmen of Committees I, II and III should form a committee to draw up and submit to the Commission the draft of a report to the member Governments on the progress of the Commission's work. This "progress report" would not merely indicate the results attained but also the matters which the Commission had under consideration, and in general the objects to which it felt it should direct its efforts. Other progress reports might follow.

/ ADOPTION

ADOPTION OF FINANCIAL AND ADMINISTRATIVE REGULATIONS

The draft Regulations drawn up by the Finance Committee (Doc. C.26) were amended by the adoption of certain changes proposed by Mr. Dutt and approved by the Finance Committee (Doc. C.41) and, as so amended, were adopted by the Commission (Doc. ~~C.41~~ <sup>C.45</sup>).

Cecil J B Hurs  
Aug 29 / 44



SECRET

C.45  
26 August, 1944

UNITED NATIONS WAR CRIMES COMMISSION  
FINANCIAL AND ADMINISTRATIVE REGULATIONS

Adopted by the Commission on 22 August, 1944.

General Provision

Article 1

The present regulations are made in execution of the Commission's Resolution on Financial Administration of 21 March, 1944 (hereinafter called the Resolution) and their application is subject to the provisions of that Resolution.

The Budget

Article 2

The Secretary General shall prepare the draft budget for each fiscal year and after submitting it for examination and revision to the Finance Committee (Article 5) shall present it to the Commission with the Committee's report.

Allocation of Expenses

Article 3

After the budget has been adopted by the Commission the Secretary General shall determine and notify to each member Government the amount due from it, and shall request that payment may be made promptly, in accordance with paragraph 2 of the Resolution. Such notification may be made by telegram.

Working Capital Fund

Article 4

1. Until otherwise decided by the Commission, the amount of the working capital to be accumulated in accordance with paragraph 2 of the Resolution shall be £6,000. It shall be administered as a separate fund, known as the "Working Capital Fund" in the manner set out in the following paragraphs.
2. Until the full amount of the fund has been provided, the following rules shall apply :

- i) An amount for working capital shall be included in the budget for each fiscal year.
- ii) If in any fiscal year the sum voted for the Commission's expenses is less than the total amount payable annually as basic contributions under the Resolution, the balance shall be collected as a contribution to working capital, without prejudice to the voting of an additional sum for that purpose.
- iii) Any surplus realised on the budget shall automatically be paid to the Working Capital Fund.

P.T.O.



3. As soon as a contribution is received from a member Government, the Working Capital Fund shall be credited with a part thereof corresponding to the ratio between the amount voted for the fund in the fiscal year in question and the total amount voted for that year.
4.
  - i) The Working Capital Fund may be drawn upon by the Secretary General to meet expenditure which is authorised by the budget of the current year but cannot be met out of the contributions hitherto received. The amounts so withdrawn shall be reported at once to the Finance Committee, and shall be repaid to the Fund as soon as possible.
  - ii) The Commission, by vote of two thirds of its members, may apply part of the working capital for purposes not provided for in the budget. The budget of the next fiscal year shall make provision for the repayment to the fund of the amounts so withdrawn from it.
5. No part of the Working Capital Fund may be repaid to any Government until the Commission's assets are liquidated, except with the assent of all the member Governments.

#### Financial Control

##### Article 5

1. There shall be a Finance Committee of not less than three nor more than five persons appointed by the Commission from among its members. It shall have power to nominate not more than two financial experts to sit as members, but without the right to vote.
2. The Finance Committee shall perform the functions given to it by these Regulations and any other functions relating to the Commission's administration which may be conferred on it by the Commission, and shall supervise the administration of the Commission's affairs, reporting thereon, when necessary, to the Commission.

##### Article 6

The Secretary General is authorised to incur expenditure and to make or authorise payments for the purposes and within the limits fixed by the budget. All payments, as made, shall be appropriated to the proper item of the Budget and a record of such appropriations and of liabilities incurred shall be kept, showing at all times the amount available under each item.

##### Article 7

The amount of all salaries and professional fees shall be fixed by the Commission, or in accordance with rules made by it.

##### Article 8

1. The Commission's bankers shall be Messrs. Barclays Bank Ltd., 19, Fleet Street, E.C.4. It may change them at any time.
2. Payments exceeding £10 shall be by cheques signed by two persons authorised by the Finance Committee.

##### Article 9

1. The Secretary General shall be responsible for keeping the Commission's accounts.

2. The accounts shall be audited annually by the Comptroller and Auditor General of the Public Accounts of the United Kingdom. The first accountancy period shall run from the establishment of the Commission down to 31 March, 1945.

3. The audited accounts, after examination by the Finance Committee, shall be laid before the Commission by the Secretary General, with the Committee's report.

#### Article 10

A fidelity guarantee insurance shall be taken out in respect of each official dealing with the Commission's funds or keeping its accounts.

#### Transitional Provisions

##### Article 11

Pending the entry into force of the Resolution, and the adoption of its first budget, the Commission will from time to time determine the expenditure which the Secretary General is authorised to incur on its behalf.

##### Article 12

1. As soon as possible after the adoption of these Regulations, and in anticipation of the entry into force of the Resolution, the member Governments shall pay to the Secretary General their basic contributions for the fiscal year 1944/1945, subject to subsequent readjustment if the Resolution is not approved by the Governments in its present form. These payments shall be credited to the Working Capital Fund until the amount of £2,000 has been attained.

2. When the Commission, on the advice of the Finance Committee, decides that its financial position justifies its doing so, it will assume responsibility for meeting its expenditure out of the contributions of the member Governments and terminate the existing arrangements with H.M. Foreign Office.

#### Liquidation of Assets

##### Article 13

On the dissolution of the Commission its assets shall be divided among the Governments which are or have been members of the Commission, as nearly as possible in the proportion in which they have contributed to create them.

#### Amendment of the Regulations

##### Article 14

These Regulations may be amended by the Commission; provided always that the proposal to amend any provision, and the text of the amendment proposed, shall be communicated to the Secretary General.

in time to enable him to give at least one clear week's notice to the representative of each member Government, or, if the amendment is proposed at a meeting of the Commission, that the decision shall be taken at the next meeting after notice given by the Secretary General to all representatives of member Governments not present when the amendment was proposed.

Provisional application and final entry  
into force of the Regulations

Article 15

Pending entry into force of the Resolution, these Regulations shall be applied provisionally, so far as is appropriate. They shall enter finally into force at the same time as the Resolution.



SECRET

M.29.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-ninth Meeting  
held on  
29 August 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL - United States of America  
accompanied by Lt. Col. HODGSON and Major COWLES  
Lord WRIGHT - Australia  
accompanied by Mr. OLDHAM  
M. de BAER - Belgium  
Mr. WUNSZ KING - China  
accompanied by Mr. DAO  
Dr. ECER - Czechoslovakia  
M. GROS - France  
M. BODSON - Luxembourg  
Dr. de MOOR - Netherlands  
Mr. COLBAN - Norway  
Dr. GLASER - Poland  
M. MILANOVITCH - Yugoslavia

MINUTES OF LAST MEETING

The Minutes were adopted and signed with the following  
corrections:

Page 4, last line: The words "Ambassador to Belgium" should  
be "Ambassador to the Netherlands".

Page 6, last line: The words "(Doc. G.41(1))" should be  
"(Doc. G.45)".

PREPARATION OF EVIDENCE AGAINST NAZI "ARCH-CRIMINALS"

Dr. de MOOR raised this subject. It was agreed that under  
the supervision of Committee I evidence should be collected for  
the framing of well-considered statements of the charges which can  
be made against Hitler and other arch-criminals. These statements,  
after being submitted to the Commission, would be kept available  
for use at the proper moment.

Mr. COLBAN said he recognised no distinction between arch-  
criminals and the others, but, as the National Offices failed to  
prepare charges against Hitler and other chief Nazi leaders, the  
Commission should collect information which the Governments would  
be able to utilise.

COMMITTEE CHAIRMEN'S REPORTS

The Chairmen of Committees I and II reported progress.

STATEMENTS BY THE CHAIRMAN

The CHAIRMAN brought the following matters before the Commission:-

Interview with Mr. Lambert of the United Kingdom War Office

A number of difficulties had been cleared up in an interview between Committee I and Mr. Lambert, one of the high officials of the War Office who dealt with prisoners-of-war. The prisoners-of-war organisation of that Department was anxious to co-operate in every possible way.

Absence of the Secretary-General

The Chairman had asked the Foreign Office to supply an official to take the Secretary-General's place during the period of about two months for which the latter would be incapacitated by an operation.

Weekly meetings of the Commission

The Chairman proposed, and it was agreed, that for the present the Commission should meet weekly irrespective of the state of its agenda.

Proposal regarding Committee III

The need to make the most of the time which members of the Commission could devote to its work made it desirable, in the Chairman's opinion, to alter the method of dealing with legal questions. At present they were dealt with by Committee III which appointed sub-committees whose reports it had to approve before passing them on to the Commission. Would it not be preferable for the Commission itself to appoint the sub-committees and receive their reports? The Chairman regretted having been unable to consult the Chairman of Committee III and did not ask for a decision at the present meeting.

Interview with Mr. Harvey, Secretary of the "Vaucher" Commission  
(Commission for Protection and Restitution of Cultural Material)

The Chairman had had a second interview with Mr. Harvey who was anxious to co-operate.

Proposal for United Nations Military Tribunals (Doc. II/26(1))

The Chairman promised to bring this subject before the Commission as soon as he thought it could usefully be discussed.

Progress Report

The Chairman announced that a draft was in preparation. No time would be lost in getting it ready for the Commission.

Enlargement of the staff

The Chairman announced that the Finance Committee had approved in principle the incurring of expenditure on the reports contemplated by the Commission and agreed to the immediate appointment of a secretary to assist the Chairman and two typists, at the necessary salaries.

CONVENTION FOR THE SURRENDER OF WAR CRIMINALS AND OTHER WAR OFFENDERS (DOC C. 37) AND EXPLANATORY MEMORANDUM (DOC. C 44)

The Explanatory Memorandum was adopted, subject to the substitution of "Poland" for "France", "some" for "five" and the addition of the word "notably" in the first paragraph.

The draft Convention was also adopted. The following members of the Commission made reservations regarding the attitude of their Governments:-

Colonel HODGSON said that the second sentence of Article IV was probably incompatible with the Constitution of the United States and might oblige the United States to reject the Convention or make a reservation when signing it.

M. de BAER repeated the statement which he had made at the Commission's meeting of 8th August, 1944, to the effect that the Belgian Government wished to see the provision I.A. of Article IV amended by introducing into it certain safeguards which appeared in



the original draft prepared by the Ministers of Justice (1)  
It was decided that the members of the Commission should transmit  
the Draft Convention and Explanatory Memorandum to their respective  
Governments.

Mr. COLBAN expressed the hope that the Chairman would ask  
Mr. Eden to convene the diplomatic meeting necessary for  
negotiating and signing the Convention.

PARAGRAPH 1 (AMENDED TEXT) OF COMMITTEE III'S DRAFT RECOMMENDATION  
REGARDING THE S.A., S.S. AND THE GESTAPO (Doc. C.35(1)).

Dr. ECER gave his reasons for urging the Commission to adopt  
this recommendation, although he was not satisfied with the text as  
it stood. After discussion paragraph 2 was struck out and paragraph  
1 was referred back to Committee III.

*Encl J34 msc  
Snp 6/44*

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- (1) These safeguards are contained in Article 2 of the Ministers' draft, paragraph I.A., and are as follows:
- 3 the indictment or warrant for the arrest of the alleged offender in respect of the alleged offence;
  - 4 summary evidence of the alleged offence and of the alleged offender's intent to further the cause of the enemy or of his having had recourse to the power, opportunity or means afforded by the state of war or the fact of the enemy occupation;
  - 5 the appropriate court before which the alleged offender will be tried.

SECRET

C.47  
4 September, 1944.

UNITED NATIONS WAR CRIMES COMMISSION  
CONVENTION FOR THE SURRENDER OF WAR CRIMINALS AND  
OTHER WAR OFFENDERS

EXPLANATORY MEMORANDUM

The draft "Convention for the surrender of War Criminals and other War Offenders" which the United Nations War Crimes Commission presents to its member Governments is an adaptation of a draft made by the Ministers of Justice of some of those Governments, - notably those of Belgium, Luxembourg, the Netherlands, Norway and Poland. This original draft was brought before the competent committee of the Commission (Committee II) by Dr. de Moor (Netherlands) and was accepted by it as a basis of discussion. The present draft differs from the older draft in certain points, both as regards its purpose and as regards its details.

PURPOSE OF THE DRAFT

The Ministers of Justice draft was intended to operate both between the United Nations themselves and between them and neutral states. The present draft is only intended to provide for the surrender by one of the United Nations to another, of persons accused or convicted of war crimes or other war offences. It is not considered that it would be possible to obtain, or wise to attempt to obtain, adherence of neutrals to any formal general agreement regarding surrender of such persons.

A second difference is that the present draft provides for surrender as the result of an executive or administrative procedure, not a judicial procedure as was the case under the Ministers of Justice draft.

Like the Ministers of Justice draft, the present draft covers nationals of the United Nations who have aided the enemy against their own countries - the so-called Quislings. It distinguishes their case from that of war criminals and deals with it in Article II. The term "other war offenders" in the title and in the pre-amble of the Convention refers to them.

The purpose in view is to make it certain that the United Nations will reciprocally transfer to one another persons in their power who are wanted for trial as war criminals or Quislings, or have already been convicted on such charges, and to secure this result in the simplest possible way, avoiding the complications and delays of normal extradition procedure and, in particular, excluding the possibility of refusing surrender on the ground that the acts charged have the character of political offences. Several, if not all, of the United Nations will require to enact legislation in order to accept the Convention. It was urged by one member of Committee II that, for practical purposes, since the persons wanted would be prisoners of war in the hands of the armed forces of the requested state or refugees present in its territory without legal authorisation, all that was required could be done by executive action and there was no need for complicated treaty provisions. This view was not accepted by the

/ Committee



Committee. Moreover, even if not acceptable to, or not needed by some of the United Nations, the Convention can operate between the other United Nations, and, as stated above, it has been considered desirable by the Ministers of Justice of five of the Governments represented on the Commission.

#### PROVISIONS OF THE DRAFT

Articles I and II provide respectively for the surrender of war criminals and of Quislings.

The description of the offences referred to in Article I as "war crimes, including offences against the laws and customs of war" implies that there are offences which are war crimes without being violations of those laws and customs.

The definition of Quislings in Article II is based on the Ministers of Justice draft.

The expression "execution of sentence or judgment" is a recognition that the offenders in question may be tried by military commissions as well as by civil courts (Cf. Article IV. last paragraph).

Article III is intended to prevent surrender being denied on the ground that the offence was political.

Article IV specifies that surrender is to be effected by the executive or administrative authorities and prescribes how the request for surrender is to be made and the particulars to be given in the request.

Articles V and VI show the cases in which surrender may be refused or postponed; they also provide for the same offender being transferred successively to several states and punished successively by several states, and they regulate these processes.

Article VII regulates transit of surrendered persons through territories of third states which are parties to the Convention.

Article VIII requires production at the time of surrender of documents etc., needed for the trial.

Article IX places all the costs on the requesting state.

The purpose of Article X is to meet in advance possible objections to the Convention on the ground that it may prejudicially affect the operation of extradition treaties. To mark the difference between the Convention and an extradition treaty, it was also at one time proposed to use the word "transfer" instead of the word "surrender" in the title and throughout the text, but the latter word was ultimately preferred, on the ground that its implications were well known.

Article XI. It is proposed that a provision be inserted here under which the Convention will go out of force at a particular date.

Articles XII and XIII need no comment.

The draft is for the members of an ad hoc international commission to operate (with the assistance of the High Commission) through and be for the examination of the case can be taken, the High Commission can examine carefully.

It is for the present time to be decided whether or not yet conclude the Nations tribunal at the same meeting.

#### WHAT IS

It has been decided as between the United States. What parties to the Convention which opens it for a convention which tribunal to try and recommendation for.

Having resolved the surrender of war criminals, have appointed (list of persons) Who, having agreed on the terms of the surrender.

The High Commission according to the execution of sentence are charged with the laws and customs of war and requesting state the state.

The High Commission other according to the execution of sentence or of execution of sentence, of the nationals, of the charged with or of offence committed offence committed war or armed host state.

The surrender notwithstanding a character.



OPENING OF THE DRAFT FOR SIGNATURE

The draft is the work of the Government representatives sitting as members of an advisory body, and not of persons empowered to negotiate an international convention and open it for signature. To bring it into operation (with or without amendments) this further process must be gone through and be followed by the deposit of ratifications. Before these steps can be taken, the competent departments of the Governments may require time to examine carefully the somewhat novel provisions of the draft.

It is for this reason that the Commission is sending the draft at the present time to the Governments represented on it, notwithstanding that it has not yet concluded its examination of the question of setting up a joint United Nations tribunal for the trial of war criminals and that it may be desirable for the same meeting of plenipotentiaries to deal with both schemes.

WHAT STATES MAY BECOME PARTIES TO THE CONVENTION?

It has been said above that the Convention is intended to operate only as between the United Nations, and not as between those states and neutral states. What precisely are the states which should be admitted to become parties to the Convention can only be decided by the meeting of plenipotentiaries which opens it for signature. The same question will arise in regard to any convention which may be drafted to provide some form of joint United Nations tribunal to try war criminals. The Commission reserves the right to make a recommendation regarding this matter at a later date.

CONVENTION FOR THE SURRENDER OF WAR CRIMINALS  
AND OTHER WAR OFFENDERS

(Enumeration of the Heads of States)

Having resolved to conclude a Convention with the object of achieving the surrender of war criminals and other war offenders,  
have appointed as their Plenipotentiaries the following:  
(list of Plenipotentiaries)

Who, having communicated their full powers, found in good and due form,  
have agreed on the following provisions :

Article I

The High Contracting Parties mutually agree to surrender to each other according to the procedure hereinafter provided, for the purposes of trial or of execution of sentence or judgment, persons found within their jurisdiction who are charged with or convicted of war crimes, including offences against the laws and customs of war, which were committed either within the jurisdiction of the requesting state or against that state or its nationals or the armed forces of the state.

Article II

The High Contracting Parties further mutually agree to surrender to each other according to the procedure provided hereinafter, for the purposes of trial or of execution of sentence or judgment, all persons, nationals or former nationals, of the requesting state who are within their jurisdiction and are charged with or convicted of giving aid or comfort to the enemy or of an offence committed with the intent to further the cause of the enemy or of an offence committed by means of the power or opportunity afforded by a state of war or armed hostilities or by hostile occupation of territory of the requesting state.

Article III

The surrender provided for by Articles I and II shall be effected notwithstanding any contention that the offence was of a political character.

/ Article IV

#### Article IV

The request for surrender shall be transmitted through the diplomatic channel, and shall be executed by the appropriate executive or administrative authorities of the requested state. The person whose surrender is requested under the terms of this Convention shall in no case have recourse to any form of judicial procedure provided in the extradition treaties, laws or regulations of the requested state. The request shall contain in any event:

1. In the case of an alleged offender:
  - A. (1) the identity, nationality (if known) and description of the alleged offender;
  - (2) the description of the alleged offence and the maximum penalty which can be inflicted for that offence.
  - B. The Government requesting surrender shall in every case give written assurances to the Government from whom the surrender is requested to the effect:
    - (1) that the trial will be conducted in accordance with legal procedure;
    - (2) that judgment or findings and sentence will be pronounced in open court;
    - (3) that the alleged offender will be afforded the assistance of counsel both before and during the trial.
2. In the case of a convicted offender:
  - (1) the identity, nationality (if known), and description of the convicted offender;
  - (2) the description of the offence and the penalty imposed;
  - (3) the original or an authenticated copy of the judgment or findings and sentence given by the appropriate court in respect of the offence and in the presence of the offender.

The term "court" as used in this article shall include a military commission or other military tribunal.

#### Article V

The High Contracting Parties may decline to surrender to each other their own nationals and former nationals.

A High Contracting Party may refuse to surrender an alleged offender, if the offence for which his surrender is requested was committed within that Party's jurisdiction.

In all cases where two or more High Contracting Parties request the surrender of the same alleged offender, such person shall be surrendered first to the Government of the State whose national legislation contains the heaviest maximum penalty in respect of the alleged offence regarding which surrender is requested.

Where the maximum penalties in respect of the offences

for which surrender is first be effected to the surrender.

If at the time offender is undergoing courts of the request or not, which is pur than that for which may decline to surrender terminated.

In the event of having been pronounced be suspended, if requested in accordance

A sentence of ing that one or more requested the surrender

When an all by two or more sentenced by the the states concerned that, if the of the requesting for execution.

The Government allow the trial are being surrendered Convention to emanating from surrender is territories may be according concerned.

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for which surrender is requested are the same, surrender shall first be effected to the Government which first requested the surrender.

#### Article VI

If at the time when the request is made the alleged offender is undergoing investigation or is on trial in the courts of the requested state for a crime, whether a war crime or not, which is punishable with a higher maximum penalty than that for which the surrender is requested, that state may decline to surrender him until the proceedings are terminated.

In the event of sentence of detention in a penal institution having been pronounced, the execution of the sentence shall be suspended, if the surrender of the convicted person is requested in accordance with Articles I or II.

A sentence of death shall however be executed notwithstanding that one or more of the High Contracting Parties have requested the surrender of the offender.

When an alleged offender whose surrender has been requested by two or more High Contracting Parties has been tried and sentenced by their courts, the sentences shall be executed in the states concerned in the order of their dates; provided that, if the offender has been sentenced to death in one of the requesting states, he shall be surrendered to that state for execution.

#### Article VII

The Governments of the High Contracting Parties agree to allow the transit through their territories of persons who are being surrendered by one of the Parties to the present Convention to another Party, on production of a certificate emanating from the Government of the State from whom the surrender is obtained. During the passage through such territories the person who is being surrendered and his escort may be accompanied by officials designated by the Governments concerned.

#### Article VIII

The High Contracting Parties agree to produce at the time of surrender all documents, exhibits, or any other thing which may serve as proof of the alleged offence.

#### Article IX

The requesting state shall bear all costs arising out of a surrender made at its request under the terms of this Convention.

#### Article X



Article X

The present Convention constitutes an exceptional measure and shall not affect the operation of any treaty of extradition between or among the High Contracting Parties except as may be expressly provided by the terms of this Convention.

Article XI

(Denunciation and termination: Text provisionally reserved).

Article XII

The present Convention shall be ratified and the ratifications shall be deposited as soon as possible with ..... who will notify such deposit to all the signatories.

Article XIII

The present Convention shall come into force one month after the date on which it shall have been ratified on behalf of two of the High Contracting Parties. Thereafter it shall take effect in the case of each High Contracting Party one month after the date of the deposit of the ratification on its behalf with .....

In faith whereof etc.

UNITED NATIONS WAR CRIMINALS COMMISSION

Minutes of Thirtieth

held on

5th September

Chairman: Sir Cecil H.

There were also present

Mr. PELL  
accompanied by Lt.  
Lord WRIGHT  
accompanied by Mr.  
M. de BAER  
Mr. WUNSZ KING  
M. GROS  
M. STAVROPOULOS  
Sir David MEEK  
accompanied by M.  
Dr. de MOOR  
Major SINCLAIR THOM  
Mr. COLBAN  
accompanied by  
Dr. CLASER  
M. MILANOVITCH  
accompanied by

MINUTES OF LAST MEETING

Colonel HODGSON obtained substitution of the following paragraph on page 3.

"Colonel HODGSON stated of Article IV was possibly the United States, particularly effective after the conclusion of the United States in this regard."

It was then agreed to a

THE CHUNGKING SUB-COMMISSION

The CHAIRMAN said that its intention of being representative of the

PROGRESS OF THE COMMITTEE

Mr. PELL said that Commission was held by September 13th.

The CHAIRMAN said that

REVISED

M. 30

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UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Thirtieth Meeting

held on

5th September 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL  
accompanied by Lt. Col. HODGSON and Major COWLES  
Lord WRIGHT  
accompanied by Mr. OLDHAM  
M. de BAER  
- Belgium  
Mr. WUNSZ KING  
- China  
M. GROS  
- France  
M. STAVROPOULOS  
- Greece  
Sir David MEEK  
- India  
accompanied by Mr. DUTT  
Dr. de MOOR  
- Netherlands  
Major SINCLAIR THOMSON  
- New Zealand  
Mr. COLBAN  
- Norway  
accompanied by Mr. Edward HAMBRO  
Dr. GLASER  
- Poland  
M. MILANOVITCH  
- Yugoslavia  
accompanied by M. ZIVKOVIC

MINUTES OF LAST MEETING

Colonel HODGSON obtained the assent of the meeting for the substitution of the following passage in place of the penultimate paragraph on page 3.

"Colonel HODGSON stated that in his opinion the second sentence of Article IV was possibly incompatible with the Constitution of the United States, particularly if the Convention was to be effective after the conclusion of peace. The attitude of the United States in this regard was not expressed."

It was then agreed to adopt the Minutes without their being read.

THE CHUNGKING SUB-COMMISSION

The CHAIRMAN said that the United States Government had announced its intention of being represented on the Chungking Sub-Commission.

PROGRESS OF THE COMMITTEES

Mr. PELL said that Committee II hoped to have its draft ready by September 13th.

The CHAIRMAN said that Committee I was now examining the

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cases on List B.1, with a view to placing them on List A. He suggested that, in order that the Commission might take cognizance of, and assume responsibility for, the Committee's recommendations, M. de Baer should make an oral report on the A. List at the next meeting, but the names would not appear in the Minutes.

This was agreed to.

#### PROGRESS REPORT

The CHAIRMAN explained that the Progress Report, prepared by himself and the Chairmen of Committees, was in draft but was not yet ready. As a fact, it dealt not only with the past, but with the tasks which the Commission hoped to undertake later.

It was agreed that the report should be circulated as soon as possible, and discussed at the next meeting.

#### PROPOSAL FOR UNITED NATIONS MILITARY TRIBUNALS (Docs. II/26(1) and C.46).

The CHAIRMAN questioned the expediency of forwarding the project for a Military Court before the plans for the civil, or "Treaty" court were ready. He agreed that there was need of both courts, though not simultaneously. True, the cases so far submitted could all be tried by national courts, under the "Moscow" system; but there was a class of persons who had directed criminal policies on the high level, or who could not be adequately punished by some national courts, and for them an inter-allied court was needed. These cases would probably not exceed 30 - 50. But a civil court could only be set up by a convention, with consequent delay. This gap could be filled by the Military Court, which could be promptly set up by the Commander-in-Chief. The two courts should be on the same lines, so that cases could be transferred.

Mr. PELL said the idea of a Military Court commended itself to certain states because of their judicial habits. He emphasised that it would not be permanent, and that it could only try cases that were freely submitted to it by an applicant state. It could not oust the jurisdiction of a national court. He



believed a Military Court could start work within two months of the approval of the Governments, whereas the delay inseparable from a civil court, requiring a treaty and ratification, might impose an intolerable strain on the patience of aggrieved peoples. Speed was essential. He maintained that both in Anglo-American and "continental" jurisprudence there were precedents favouring the right of a Commander-in-Chief to set up such a Court. Moreover, in other theatres of war - e.g. the Pacific - the countries most concerned definitely desired to have such a court.

Lord WRIGHT said that at this stage only military courts can do the job effectively and speedily. He could see no practical alternative at this stage. The Supreme Commander should investigate and try cases. The Governments should press this upon the military authorities. The military commander had jurisdiction to punish any war criminals who were in his custody, quite apart from when or where their war crimes were committed. Therefore no treaty was needed.

Mr. COLBAN made a reservation against the views expressed by Lord Wright. He thought that the Governments would need to know more of the nature and conditions of the Military Court and its work; he would prefer that both the projects should be on the same lines and be forwarded together.

M. de BAER and Dr. de MOOR concurred in Mr. Colban's view.

M. MILANOVITCH associated himself with the Chairman's view, and thought there was no need to discuss the theoretical question of the Commander-in-Chief's powers.

M. GROS questioned the value of arguments about "speed": for both courts the agreement of the Governments must be obtained, whether by a treaty or otherwise, because some states on the Continent were not prepared to admit the power of a Commander-in-Chief to set up a military court in their territories, except to try offences against his armies. In any case, there was little possibility of speed, since there would be large numbers of cases

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for trial, and the offenders prepared.

Colonel HODGSON agreed showed that a Commander-in-Chief could set up such a Military Court.

Mr. WUNSZ KING said Military Court unless a person was appointed to fill the gap in functioning.

Sir David MEEK, who thought there was no difference between the two proposals. That was a matter of opinion as to the propriety of the proposal. That the Chairman would meet with approval of the Continental countries. The Chairman would meet with approval of the Continental countries. The Chairman would meet with approval of the Continental countries. The Chairman would meet with approval of the Continental countries.

The CHAIRMAN drew a distinction between the Anglo-American points on this matter and that of the mechanical effect to their views.

The discussion meanwhile he would express his views.

Mr. PELL said

#### DELEGATES LEAVING

The CHAIRMAN said that each country would confer with its own government of their states or

for trial, and the offenders must first be arrested and the cases prepared.

Colonel HODGSON agreed with Mr. Pell that the precedents showed that a Commander-in-Chief possessed the power enabling him to set up such a Military Court.

Mr. WUNSZ KING said he would support the project for a Military Court unless a better plan were proposed, as it was essential to fill the gap before a "Treaty" court could begin functioning.

Sir David MEEK, who supported the proposal, pointed out that there was no difference of opinion regarding the substance of the proposal. That was accepted unanimously, but there was a divergence of opinion as to the procedure which should be adopted. He thought that the Chairman would be able, in consultation with the representatives of the Continental countries, to evolve a procedure which would meet with approval by all. It had been mentioned that the Continental countries had delegated certain powers to the Commander-in-Chief and he thought that, by an exchange of letters, the power to set up military courts in the countries of Europe <sup>could</sup> also be delegated to the Commander-in-Chief if it was held that he did not already possess such powers.

The CHAIRMAN deprecated the view that there was a divergence between the Anglo-American and the continental juridical standpoints on this matter. The issue was mainly one of expediency, that of the mechanism which could best assist the states to give effect to their wishes.

The discussion would be adjourned till September 12th, and meanwhile he would try to find common ground between the different views.

Mr. PELL said he would ask for a vote at the next meeting.

#### DELEGATES LEAVING FOR THE CONTINENT

The CHAIRMAN asked that delegates who were leaving the country would confer with him about the future representation of their states on the Commission.

*Cecil M. B. Hunt*  
*Sept 19/44*



SECRET

M.31.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Thirty-first Meeting

held on

12th September 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL - United States of America  
accompanied by Lt. Col. HODGSON and Major COWLES  
Lord WRIGHT - Australia  
accompanied by Mr. OLDHAM and Lt. Col. CRISP  
M. de BAER - Belgium  
Mr. WUNSZ KING - China  
Dr. ECER - Czechoslovakia  
M. GROS - France  
Mr. DUTT - India  
Dr. de MOOR - Netherlands  
Mr. COLBAN - Norway  
accompanied by Mr. Edward HAMBRO  
M. CYPRIAN - Poland  
M. MILANOVITCH - Yugoslavia

MINUTES OF LAST MEETING

Lord WRIGHT having asked that the text of his remarks should be inserted in the Minutes, and Mr. COLBAN, M. de BAER and Dr. de MOOR having asked, in that case, to append a reservation, it was agreed that the Minutes should be circulated afresh, and approved at the next meeting.

The CHAIRMAN said that M. Bodson had sent apologies for his absence, which was due to his approaching departure from England.

The CHAIRMAN then referred to Dr. Ecer's report on Russian penal law, which he said would assist members in gaining an understanding of the Russian system.

REPORT OF COMMITTEE I

M. de BAER said that the Committee had now reviewed the Dutch, Belgian and Luxembourg cases, but had still to review the French, Polish, Czech and Norwegian cases. He gave oral information concerning the details, types and number of cases accepted for List A.

/ In reply



In reply to questions, he explained that Governments would always be informed if a case were rejected; and would, of course, be free to prosecute a case before their national courts even if the Commission had not placed the war criminal upon the Commission's list.

PROPOSAL FOR UNITED NATIONS MILITARY TRIBUNALS (Docs. II/26(1) & C.46.)

The CHAIRMAN said he had not been able, as he had hoped, to find common ground between the members who had differed at the previous meeting; but he hoped that an agreement would now emerge from the debate.

Mr. PELL observed that the scheme was desired by certain Governments, especially those fighting Japan. He recapitulated the safeguards which the scheme provided for any Government not wishing to avail itself of the Military Court.

Dr. EXER supported the proposal, as - for one thing - it would enable criminals to be tried on the spot, instead of being transported long distances to a national court.

M. GROS submitted a written statement of his point of view.

Translation:

"At the last meeting of the Commission I explained in detail the technical reasons which made me doubt the practical value of the plan advocated by the delegates of the United States, Australia, India and New Zealand. However, as it appears from many of the speeches in the general discussions that some members believe that, if the Commission failed to adopt the scheme for a Military Court to be set up by the Commander-in-Chief, it would be rejecting the only plan by which swift and effective justice could be dispensed, I think it desirable to make the following observations:

- 1) Although the notion of swift justice is found in manuals of military law, "justice" is something that does not admit of qualifying adjectives. The peoples who have suffered by the war desire "justice"; and the crimes have been committed, over a period of six years, by hundreds of thousands of persons. The Commission can hardly believe that the Military Court is going to dispose of these cases in a few weeks, or months. Even if it is thought that the public believes in this notion of swift justice, it would still be the duty of the Commission to make it clear that the object in view is not just to get an awkward problem out of the way in the shortest possible time, but to establish it as a firm precedent in international law, that crimes committed during a war "do not pay".

2) I would next observe that this proposal for a Military Court, to be established by the Commander-in-Chief, has been laid before the Commission without, apparently, any previous consultation with the Commander-in-Chief or his organs. But a Military Court, sitting in Germany, raises problems of inter-Allied co-operation concerning which a little more information would be desirable: for otherwise, the proposal for a Military Court would be a mere gesture, without any practical significance. If Germany is going to be occupied by British, American and Soviet forces, such a tribunal could hardly function unless it included representatives of those three forces. The Commission will not be in a position to make really practical proposals for setting up a Military Court so long as it is without information on these essential points.

3) The numerous discussions on the proposal for a Military Court have shown that some delegates feel an objection, in principle, to the creation of an inter-Allied court of a civil character. In fact, it is clear that the creation of an inter-Allied Military Court would render the subsequent setting up of an international court superfluous, whether one wants it or not. But this problem of the creation of an international court is too important to be settled by an indirect approach. The Commission must give a direct decision on it.

4) In fact, the Commission has reached a point where it has to choose between the methods of awarding punishment for war crimes. There is unanimous agreement as to the competence of the national courts; indeed that view is imposed on us by the Moscow Declaration. But there remain to be considered:

(a) The arch-criminals: for whom the method of punishment will be laid down by the Governments.

(b) The criminals whom the Governments are unable to punish (owing to the lack of national laws), or whom they do not wish to try in their own courts - preferring to send them before an international court.

The Commission is hampered in its investigations by the absence of any indication as to the treatment reserved for the arch-criminals - for the arguments in favour of an international court are strengthened or weakened according as it is decided, or not, to punish these men by an administrative decision of the Governments.

It appears, therefore, that the Commission might submit these parallel schemes:

(a) A scheme for an International Civil Court, which is now ready.

(b) A scheme for an inter-Allied Military Court.

In regard to the latter point, it is desirable that the Governments should be informed as to what is intended with more details than have been given in the purely theoretical statements hitherto submitted to the Commission. The Governments need to know - just as in the case of the civil court - the rules that are to govern the appointment of judges, the law that is to be applied, the penalties that can be awarded, etc.

It seems to me that a great advance in the clarification of these questions would be made if a Memorandum were drawn up to which the Governments could then be invited to assent.

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The Commission should be satisfied that the  
political rights may be decided by a collective decision.  
If the Commission should have recognized the deportations of  
civilians and the execution of "lower grade" were condemned  
to deportation or to a punishment for life (a more serious  
punishment), it might then prove difficult to submit the execution of these  
policies to the judgment of an international court. Would it  
not be necessary to deal with the executive agents in the same  
way as the principals? The choice for the Governments would  
lie between the national courts (if they consider that sentences  
should be passed in respect of individual crimes), and punish-  
ment by a collective administrative decision.

A first step in that direction was made when the Commission  
recommended the immediate internment of the Gestapo and the  
S.S. That is not simply a step designed to facilitate the  
preparation of the prosecutions, but a precautionary police  
measure. The Gestapo and S.S. are akin to the "arch-criminals"  
- who were not further defined at Moscow in the sense that they  
are the implements of the criminal organization; the arch-  
criminals are at the summit, and the others are at the base of  
the edifice. If the Governments decide to punish the former  
by administrative decision, there will be seen to be good  
reason for adopting the same course for the latter.

Lord REID said that Military Courts were international tribunals,  
appointed and administered by a Commander-in-Chief in his area.  
They applied international common law, which was - at any rate  
theoretically - uniform in all countries. Their jurisdiction,  
after the coming of peace, could only be extended by treaty, as had  
been contemplated by the Treaty of Versailles. Many learned authorities  
recognized the power of a Commander-in-Chief to establish such courts,  
and the precedents favored this view. He drew attention especially  
to the paper prepared by Major Charles. There remained the question  
whether the Military Court was the most practical way of dealing with  
cases. There were two practical difficulties for any trial; one must know  
who is the wanted man; and one must have apprehended him. After  
Germany was occupied there would be good opportunities for the  
military authorities to discover and arrest criminals; indeed it  
was difficult to see how this could be done without their aid; and  
the forces included many persons competent for such work. A large  
number of courts would be needed for the trials; but here again the  
forces included sufficient well-qualified officers to provide judges  
for all of them. The Commission had, he believed, rejected the  
idea of an international court, but that system could scarcely

provide for the multiplicity of courts that would be wanted. This need could be met by the Military Courts. For these reasons, both of principle and of practice, he supported the scheme for Military Courts. The draft had gone far in safeguarding the susceptibilities of different nations. The immediate practical problem was to secure the punishment of as many criminals as possible.

Dr. de MOOR said that unfortunately at the last meeting he could not say much about the question of Military Tribunals, as he knew nothing about the opinion of his Government on this subject. Since then he had had the opportunity of seeing one of his Ministers, and could say that his Government's point of view was as follows:

1) In view of the progress of the war, several Allied Nations were convinced that it would be of the greatest importance to set up these tribunals.

2) In these circumstances ~~they~~ <sup>his Government</sup> would certainly not object to the setting up of these tribunals jointly. ~~They~~ <sup>his Government</sup> recognized that there were certain advantages attached to them, although the Netherlands legal system made it difficult, and perhaps even impossible to use them.

3) However, he had to make some reservations:

- (a) as already mentioned the Allied National Tribunals must have the preference, and there should be no interference with their rights;
- (b) it would be necessary to agree about some further details on the constitution and the machinery of the Military Tribunals. For instance, how would they be composed? Would there be a civil President? And more civil judges? And what about the rules of evidence? This was very important, because after all they had to do justice;
- (c) in the third place he must make the reservation that acceptance of the setting up of these inter-Allied Military Tribunals did not mean acceptance of the Anglo-Saxon or American view on International Law on this point;
- (d) the Military inter-Allied Courts must not interfere with the setting up of an International Civil Penal Court.

To sum up: he could vote for the proposal (Dec. II. 26(1)) subject to the above-mentioned reservations

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Mr. COLBAN said it was superfluous to go on discussing whether a Commander-in-Chief had power to try these cases, since it was agreed that he would not do so without being asked to. He had, as yet, no instructions from his Government; but, in his view, if some indications of the organisation and procedure of the Court were added, the scheme would be practical. But, he thought, they should work out plans for both kinds of Court, and offer the Governments the choice.

M. de BAER said he was not opposed to Military Courts, and he agreed with the United States Memorandum that war criminals were the concern of the United Nations as a whole; therefore, the more courts they had, the better. The scheme should, however, provide guarantees regarding the composition of the Courts and the independence of the judges. The latter should include representatives of those countries which had suffered most. They could not simply declare their blind confidence in a Commander-in-Chief, since individuals might be replaced and policies might change. Therefore, on behalf of his Government, he would support the scheme provided that it were amplified in the way he had indicated.

Mr. PELL assured the speakers that he was not seeking to 'sabotage' the 'Treaty' Court, of which he was a convinced advocate. The intelligence of a Commander-in-Chief could surely be relied on to appoint judges belonging to the country concerned, and acquainted with the languages of witnesses. The Committee had not specified the law to be applied by the Military Courts, because the military law already existed, whereas for the 'Treaty' Court no such precedent existed. He did not agree with M. Gros that they ought to consult the Commanders-in-Chief; the Commission was recommending the Governments to give certain instructions to the Commanders-in-Chief.

Mr. DUTT said the suggestion for a Military Court was not revolutionary, and it was not put forward as the only plan. Countries in the East were faced with certain difficulties, and he could not see why they should be denied the means of overcoming them.

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He did not agree that the Military Court was an Anglo-American conception. In his own country there were precedents for it, anterior even to the British connection with India. In regard to the composition of the Courts, and similar points, he felt sure they could trust the intelligence of the Commanders-in-Chief, who would not endanger their reputations by appointing unsuitable judges. He therefore hoped the scheme, which was simply a recommendation to the Governments, would be adopted without a vote.

Mr. WUNSZ KING said he believed the Commission, as a whole, favoured the scheme, though some members had made reservations. He felt that, in the draft, the national courts were sufficiently safeguarded. In China, if they did not wish to employ the Military Court, they would simply refrain from doing so. Certain misgivings might perhaps be allayed by saying specifically in the text that the Military Court was meant to supplement, not to replace, the 'Treaty' Court. In regard to the composition of the Courts, the Chairman had made it clear that both Courts would be on the same lines; this should aid the acceptance of the Military Court, since the principle of the 'Treaty' Court was already accepted. He would support the recommendation.

The CHAIRMAN asked if those members who accepted the principle of the Military Court, but who wished for more details and guarantees, could not agree to regard their votes as an acceptance in principle, it being understood that in a covering letter, which might accompany the recommendation, there would be an explanation that if the idea were acceptable to the Governments, the Commission would be prepared to make recommendations on points of detail. He could indicate, in the covering letter, the reservations made in that day's discussions.

Mr. COLBAN said that he could agree if the conclusions: (a), (b), (c), (d) and (e), alone were to be forwarded together with the "rider" suggested by the Chairman. But he could not accept the "whereas" clauses in the draft.

/ H. de BAER

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M. de BAER said he could accept the Chairman's proposal only if the first paragraph on page 2 of Doc. II.26(1) were omitted.

The CHAIRMAN said that some members accepted the principle but desired guarantees on certain points. Would the authors of the draft (Col. Hodgson and Mr. Dutt) allow him to introduce certain simplifications in the text, or would they prefer that the text should stand, but be accompanied by some explanations in a covering letter?

Mr. PELL said that no members had moved any amendments. They had only made general suggestions. He therefore moved that a vote should be taken, not later than 4.30 p.m. on Tuesday, September 19th.

Mr. OLDHAM said he had asked, at the last meeting, that the discussion of this question should come first on the Agenda. Unfortunately, it had been preceded by M. de Baer's report, which had taken till 3.40 p.m. He now moved that the Commission should meet at 2.30 p.m. on September 19th, and the discussion of this question should begin at 3 p.m. at latest.

M. MILANOVITCH thought it was unnecessary to issue such an "ultimatum"; the arrangements could well be left in the hands of the Chairman.

The CHAIRMAN said he would withdraw his proposal, as it had not been accepted. The Commission would meet at 2.30 p.m. on September 19th, the discussion of this question would begin at 3 p.m. and a vote would be taken not later than 4.30 p.m.

#### STATEMENTS BY THE CHAIRMAN

The CHAIRMAN informed the Commission that he hoped his Government would give him the assistance of a colleague.

The CHAIRMAN also referred to the reports to be prepared by the Commission. The principle of publishing such reports had been accepted by the Commission at the time of the discussion of Dr. de Moor's report. He now explained the scheme in greater

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detail. He had provisionally arranged for three reports, viz:

- (a) Concentration Camps,
- (b) The destruction of villages (e.g. Lidice);
- (c) Executions of hostages.

He had also the following subjects in view, on which no action had yet been taken:

Atrocities against the Jews;  
Deportation of workers;  
Starvation of countries, for the benefit of Germany;  
Prisoner-of-war Camps;  
Methods of the Gestapo and S.S.

He would welcome suggestions for other topics.

The Chairman's proposals met with no objections.

#### PROGRESS REPORT

The CHAIRMAN said that the text had not been submitted for approval because the question of the inter-Allied Tribunals was still unsettled. But he would now circulate the text. It had not been easy to draft, as it was not an expression simply of his own views, but had to take account of different points of view.

*Cecil B. Hurst*  
*Sept 19<sup>th</sup> 1944*



~~SECRET~~

H.32

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Thirty-second Meeting

held on

19th September 1944

Chairman: Sir Cecil HURST - United Kingdom  
accompanied by Lord SCHUSTER -

There were also present

Mr PELL - United States of America  
accompanied by Lt. Col. HODGSON

Lord WRIGHT - Australia  
accompanied by Mr. OLDHAM

Mr. WUNSZ KING - China

Dr. ECER - Czechoslovakia

M. GROS - France

M. STAVROPOULOS - Greece

Sir David MEEK - India  
accompanied by Mr. DUTT

Dr. de MOOR - Netherlands

Sir Cecil DAY - New Zealand

Mr. COLBAN - Norway

accompanied by Mr. Edward HANBRO

Dr. GLASER - Poland

M. MILANOVITCH - Yugoslavia

The MINUTES of the 30th and 31st meetings were adopted subject to the following alterations:

30th meeting: Sir David MEEK's statement on page 4 line 19 -  
for "would" read "could"

31st meeting: M. Gros' statement on page 3, 6th para., second-last line - before the words "to punish" add the words "to try or"; and in the penultimate paragraph, second-last line after the word "judges" add "and their competence". Dr. de Moor's statement, page 5, para. numbered 2), first and second lines, for "they" read "his Government"

The CHAIRMAN informed the Commission that he had obtained the services of Miss Fisher, formerly of the Greffe of the Hague Court, as his Secretary, on terms agreed on by the Finance Committee.

Professor GLASER asked to make the following declaration:

"May I make the following statement, or rather announcement, on behalf of my Government.

"The members of this Commission are aware of the unbelievable cruelties which the Germans have committed in Poland, atrocities without any precedent in the history of mankind. The extermination

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of about 3 million Jews in Poland and of hundreds of thousands of Poles, including, in particular, our intellectuals, is a fact known to all of you today. In the last few days it has been disclosed what has happened in only one of the concentration camps in Poland - at Majdanek, near Lublin - where about one million and a half Poles and Jews were most barbarously tortured to death. On September 15th of this year - that is, a few days ago - our Government received a telegram from Poland informing it about the present state of affairs in the concentration camp in Oswiecim. There are in that camp now 40,000 people of all nationalities, Poles, Belgians, Dutch, Czechs, etc., etc., of whom about 95% are accused of political offences, and only 5% are ordinary criminals. They all have been tortured in a most incredible manner. The Germans have now made it clear that all these victims will be killed before they leave Poland. Our Government is now informing the Governments of the United Nations about this matter in order to consider with them what steps can be taken to prevent the execution of this monstrous plan.

"Bearing in mind this state of affairs our Government will submit to the Commission, in the very near future, information, as detailed as possible, about these acts of mass criminality, and will at the same time ask the Commission in writing to appoint a delegation, composed of competent members of the Commission, to go to Poland and examine the true situation on the spot, to collect trustworthy information, and to secure evidence at the places where these abominable crimes were perpetrated. This information will be of immense value, not only for the trials before the competent courts in the future, but also that public opinion may be aware of the facts before the justice terms for Germany have been established.

"We understand that such an examination of the different places in Poland where these crimes have been committed could start at once, for instance in the district of Lublin, and could continue elsewhere as soon as those places are liberated."

The CHAIRMAN introduced to the Commission Lord Schuster who had come to assist him as a colleague

#### UNITED NATIONS MILITARY TRIBUNALS (Doc II/26(1))

The CHAIRMAN reminded the Commission that, as agreed at the previous meeting, the draft had to be voted upon before 4.30 p.m. He now offered the following observations (which lack of time had prevented him from giving at the last meeting). He did so in his capacity as British representative - not as Chairman. The majority of the members were, he believed, in favour of a Military Court and recognised that it was necessary to fill the inevitable gap before any Treaty Court could be agreed upon and set up. His own view was in favour of the creation of a Military Court on the same lines as the Treaty Court. It had, however, been justly pointed out that a Military Court would also require an agreement;

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for the Commander-in-Chief would not be disposed to move without instructions from the Combined Chiefs of Staff, who would, no doubt, await directions from the Governments. The latter when apprised of the proposal for a Military Court, would require details, and unless these were given, no time would have been saved. The Commission must, therefore, be clear what kind of court they wanted. For instance, the sentences of a Military Court normally required confirmation; but for trials of war criminals, sentences should be final and unappealable. That point needed consideration.

Again, it was unlikely that a Commander-in-Chief could set up a Court which could survive when the system under which he held command had been replaced by some other system, such as Military Government under a Control Commission, for the control of Germany. To enable the Military Court to continue under the new system would require a decision by the Governments. There would in fact be three jurisdictional periods: A "SHAFF" period, a Military Government period, and a Treaty Court period.

The present document would not give the Governments the information they needed. For that reason he would prefer that both projects should be sent together to the Governments, who could then, if they accepted the idea of an Inter-Allied Court, authorize the Commander-in-Chief to create a Military Court on the same general lines as the Treaty Court. In regard to an explanatory note, to be sent with the project, they must remember that Committee II had cut out the provision as to "Superior Orders" and had decided that if that matter were dealt with it should be the subject of a separate recommendation.

Lord WRIGHT considered that point was a question of law and of fact, which a court would naturally decide on its own responsibility.

M. GROS said that, after consulting the French Government, he could state that his remarks at the last meeting represented the French standpoint. Accordingly his Government would support

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a scheme for a Military Court, provided that it showed what was intended regarding the appointments of judges, competence and rules. He moved that a small drafting-committee be formed, with - say - Mr. Pell as Chairman, and two members, to extract from the project for a Treaty Court such clauses as would be applicable to a Military Court. The result would be more authoritative than the present document (II/26(1)) as it now stood.

Mr. PELL thought they could not very well advise the Commander-in-Chief as to Military Law, which, unlike the law to be applied by a Treaty Court, already existed and was recognised. They should now vote on this draft; after that he would gladly participate in the drafting-committee proposed by M. Gros.

Mr. COLBAN observed that there was a difference between a United Nations and a national Military Court. They might well recommend, for instance, that the judges should be of three nationalities, and that at least three of them should have legal training. To offer such suggestions was no reflection on the intelligence of the Commander-in-Chief.

M. MILANOVITCH said that Military Courts were already in being; the only need was to adapt them, so that the States might use them. That involved providing for three points: (1) the judges, (2) the prosecutors, and (3) legislation and penalties.

Mr. COLBAN having explained that he, like Dr. de Moor, could vote for the draft if the first paragraph on page 2 were omitted, the CHAIRMAN said the draft would be voted on by paragraphs.

Page 1. The first, second, third and fourth paragraphs were unanimously adopted. In regard to the fifth paragraph M. COLBAN and M. GROS desired to omit the words "prescribe their composition, power and procedure", for the Commander-in-Chief's powers were in fact limited by what was said later in the draft.

Col. HODGSON and Lord WRIGHT held, on the contrary, that the Commander-in-Chief had discretion to act as stated in the clause, so long as he retained his office

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On a vote being taken, ~~8~~ members voted to maintain the words and 5 for the omission. The words were, therefore, maintained.

Page 2. Mr. COLBAN, supported by M. GROS, moved to omit the first paragraph on page 2, which appeared superfluous, as it was already provided that the Military Court could not try a case except on application by the injured state.

Professor GLASER thought the paragraph was inconsistent with the Moscow Declaration.

Lord WRIGHT and Col. HODGSON considered that there was no inconsistency as the proviso, "upon the following conditions" prevented any uncertainty.

Mr. WUNSZ KING suggested, as a compromise, to insert "without prejudice to the Moscow Declaration". This suggestion, not being accepted, was withdrawn.

On a vote being taken it was decided to omit the paragraph by 7 votes (United Kingdom, France, Netherlands, Poland, Yugoslavia, Norway, Greece) against ~~2~~ <sup>6 Australia</sup> (China, India, New Zealand, Czechoslovakia, United States).

In the second paragraph of page 2 M. GROS moved to omit the last line - "and thereafter in addition to such court or tribunal" - so as to leave open the question of the continuation of the military court after the Treaty Court was set up. He feared that Governments might regard the creation of the Treaty Court as superfluous if the Military Court was to continue in being.

Sir David MEEK and Mr. DUTT pointed out that if the Military Court were not continued, India would have to transfer her cases to the far distant Treaty Court.

Col. HODGSON pointed out that some states which had not ratified the Treaty Court might be glad to go on employing the Military Court.

Mr. COLBAN realised the difficulty of having Treaty Courts available everywhere, and moved as a compromise to insert "if circumstances so require".

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Mr. OLDHAM feared that some Governments, far off in the Pacific, might be perplexed as to the intention of those words.

M. GROS having withdrawn his proposal in favour of Mr. Colban's, a vote was taken; 6 members voted for and 6 against the insertion. The Chairman then gave his casting vote for the retention of the original text, which was, therefore, maintained.

The sub-paragraphs (a), (b), (c), and (d) were then adopted unanimously.

Lord SCHUSTER proposed that sub-paragraph (e) should be omitted as he did not see how a Commander-in-Chief could, in practice, decide how a sentence of imprisonment should be executed. Lord WRIGHT concurred.

On a vote being taken, 8 members voted to suppress the clause, which was, therefore, omitted.

Before a vote was taken on the draft as a whole, Mr. COLBAN said he could only support it subject to it being made clear in the covering note that the Governments would give the Commander-in-Chief directions regarding the competence, composition and procedure of the Military Courts.

The CHAIRMAN preferred that the Commission should vote, first, on the adoption of the amended draft, and, secondly, as to whether the text, when communicated to the Governments, should be accompanied by a Memorandum giving general indications regarding the composition and procedure of Military Courts. If the text were forwarded with a number of individual reservations the Governments would feel that the Commission spoke with an uncertain voice.

Dr. ECER said that only two important reservations concerned the composition of the Courts, and the requirement of national prosecutors. His Government could not accept the Military Courts unless it was clear that they would be mixed courts.

The CHAIRMAN suggested that in order to meet Mr. Colban's difficulty the text should first be voted, and that then M. Gros should move the appointment of a small drafting-committee to select the points on which assurances were needed.



Mr. COLEMAN having agreed, the Commission adopted the amended draft by a unanimous vote.

M. GROS moved the appointment of a small drafting-committee to consider what points in the draft for a Treaty Court should be mentioned in the covering letter to be sent to the Governments with the draft for Military Courts, taking account also of M. Milanovitch's suggestions, and others, concerning composition, competence, law, prosecution and execution.

Mr. PELL feared that procedure would be too difficult without military advisers. The Courts would naturally apply military law, which already existed; it should suffice to report in quite general terms that most of the Committee desired the Military Courts to be mixed courts; and that there was some opposition to these courts being permanent.

M. GROS did not agree that the military Courts would apply military law, as it did not cover a number of cases. They would use international law.

The CHAIRMAN said M. Gros had moved to set up a small committee to consider what points in the draft for a Treaty Court should be mentioned in the covering letter sent to the Governments with the scheme for Military Courts.

That being agreed to, he expressed the hope that the drafting-committee, of which it was agreed that the nomination should be left to him, should begin work at once.

After discussion, it was agreed that the Commission should meet on September 26th to receive the drafting-committee's report on the draft text of the Convention for establishing the Treaty Court.

#### PROGRESS REPORT

Subject to the introduction of some verbal changes in the concluding paragraphs, the draft of the Progress Report was unanimously adopted.

The Commission then adjourned.

SECRET

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RECOMMENDATION  
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Consent with the principle is that, with the exception of no particular geographical apprehension, will crimes were committed of such countries right to such crimes. The recommendation of these principles

It is recognized that a campaign has full all offences against the enemy. It is an army in occupation of military tribunals army on the main and cases are not herein and the rest of these principles such military courts

The United Nations Crimes Court or it recognizes the proposed convention affecting the order deemed necessary interim to try

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*Carol M. Hurst*  
Sept. 26/44

SECRET

C.52(1)  
26 September, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

RECOMMENDATION IN FAVOUR OF THE ESTABLISHMENT BY  
SUPREME MILITARY COMMANDERS OF MIXED MILITARY  
TRIBUNALS FOR THE TRIAL OF WAR CRIMINALS.

Consent with the Moscow Declaration, 1st November, 1943, the principle is accepted by the United Nations War Crimes Commission that, with the exception of major war criminals, whose offences have no particular geographical localization, war criminals, upon apprehension, will be sent back to the countries in which their crimes were committed in order that they may be judged by the courts of such countries. The mentioned countries thus have a paramount right to such criminals and their courts have primary jurisdiction. The recommendation contained herein is made in full recognition of these principles.

It is recognised that a military commander of an army in campaign has full power to constitute military tribunals and to try all offences against or affecting such army or arising out of or incident to the operations of the enemy or persons aiding or assisting the enemy. It is recognised also that a military commander of an army in occupation of enemy territory has full power to constitute military tribunals and to try all cases involving the safety of his army or the maintenance of law and order. Accordingly, such offences and cases are not within the purview of the recommendation contained herein and the recommendation is not to be considered as a limitation of these principles or as a restriction upon the mentioned powers of such military commanders.

The United Nations War Crimes Commission will recommend to the United Nations the creation by convention of a United Nations War Crimes Court or Tribunal, for the trial of war criminals. However, it recognises that delay may occur while its recommendation and the proposed convention are being considered by the United Nations thereby affecting the expeditious trial of cases. Accordingly, it is deemed necessary that some tribunal or tribunals be established in interim to try war criminals.

In case a United Nations War Crimes Court or Tribunal is established by convention it is considered desirable that, in addition thereto, other tribunals be established to try such war criminals as any United Nation may so request, to the end, that every means for the effective prosecution of war criminals are established and maintained, and that no war criminal escapes trial and punishment by reason of the inability to effect a speedy trial.

It appears that the Supreme Commander of co-operating United Nations military forces in each theatre of operations has the power and is entitled to establish military tribunals and prescribe their composition, power and procedure.

It is believed that such military tribunals provide a just and expeditious means for the trial of war criminals pending the establishment of a United Nations War Crimes Court or Tribunal, and thereafter in addition to such court or tribunal.

P.T.O.

*J.B. Hurst*  
*Sep 26/44*



Adopted by the Commis

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criminals to supplement the re-  
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a later date.

## HISTORY

The intention to set up War Crimes was announced by Lord Simon, in a speech in and by President Roosevelt :

The Commission, which is the Crimes Commission, was brought a meeting at the Foreign Office of the Governments of Australia, France, Greece, India, Luxembourg, Poland, South Africa, United Kingdom. Of these Governments all were represented on the Commission.

The function conferred at the meeting was that of investigating the United Nations. It was that such crimes appeared to have been committed by the Governments in order to enforce on the Axis Powers (1943) the Commission held. Once appointed to advise on its task. This Commission was held on December 2nd, 1943, and

This plan was simple to draw up an exhaustive the footing that international law against the laws and customs of the United Nations to crime any hostile offense have been the place in which questioned, and further the forum before which The Commission further the purposes of its own the Responsibilities Commission that the National Office war crimes should be given National Office for the criminals and transmit for the substantiation These National Offices Finally the Chairman Governments that the invite them to transmit sense was addressed to

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C.48(1)  
19 September 1944

UNITED NATIONS WAR CRIMES COMMISSION

PROGRESS REPORT

Adopted by the Commission on 19th September 1944.

This paper is intended to give an outline of the work which the War Crimes Commission has accomplished up to date, an explanation of the need for an inter-allied tribunal for the trial of war criminals to supplement the national tribunals, together with a description of the reports which the Commission proposes to issue at a later date.

HISTORY

The intention to set up a Commission for the Investigation of War Crimes was announced by the Lord Chancellor of the United Kingdom, Lord Simon, in a speech in the House of Lords on 7th October, 1942, and by President Roosevelt in a declaration of the same date.

The Commission, which has assumed the name of United Nations War Crimes Commission, was brought into being on October 20th, 1943, by a meeting at the Foreign Office, London, attended by representatives of the Governments of Australia, Belgium, Canada, China, Czechoslovakia, France, Greece, India, Luxembourg, Netherlands, New Zealand, Norway, Poland, South Africa, United Kingdom, United States, Yugoslavia. Of these Governments all except those of South Africa and Canada are represented on the Commission.

The function conferred on the Commission by the Foreign Office meeting was that of investigating war crimes committed against the United Nations. It was to examine the available evidence and where such crimes appeared to have been committed was to report the perpetrators to the Governments in order that their surrender for trial might be enforced on the Axis Powers. Six days after its creation (October 26th, 1943) the Commission held its first meeting and a sub-committee was at once appointed to advise on the methods to be followed in the discharge of its task. This Committee reported at the Commission's second meeting on December 2nd, 1943, and the plan which it suggested was adopted.

This plan was simple in character. The Commission did not attempt to draw up an exhaustive list of war crimes. It decided to proceed upon the footing that international law regards as a war crime any offence against the laws and customs of war, and that for this reason the right of the United Nations to put on trial as a person who has committed a war crime any hostile offender who might fall into their hands whatever may have been the place in which the war crime was committed cannot be questioned, and further that it was for the United Nations to determine the forum before which the war criminal should be brought to justice. The Commission further decided, however, that it would be convenient for the purposes of its own work to adopt the list of war crimes prepared by the Responsibilities Commission of the Paris Peace Conference 1919, so that the National Offices might know the various headings under which war crimes should be grouped. Each Government was asked to establish a National Office for the work of preparing charges against alleged war criminals and transmitting them with the relevant information and material for the substantiation of the charges for examination by the Commission. These National Offices were to be in close touch with the Commission. Finally the Chairman and Secretary General were authorised to inform the Governments that the Commission was ready to commence work and to invite them to transmit cases as soon as possible. A letter in this sense was addressed to the Governments on 13th December, 1943.



Although the Commission was thus ready to perform its functions by the beginning of December, 1943, no cases of war crimes were transmitted to it until 1st February, 1944. From January 1944, however, it has held regular weekly meetings at which it discussed various aspects of its task. An important result of these discussions was that the Commission's terms of reference were extended to include reporting to and advising the member Governments on legal questions and questions of method and policy. At the Foreign Office meeting it had been contemplated that such matters would be referred to another body of Government representatives entitled the "Technical Committee", and some appointments to this body were made but it was never formally constituted. The United Nations War Crimes Commission became convinced that such a division of labour between two separate bodies would be unfortunate and with the consent of the member Governments the Commission itself assumed the functions of the projected Technical Committee.

The Commission's work thenceforth fell under two heads:- investigation of war crimes with a view to the trial of the authors of these crimes and an examination of questions of law, method and policy. It will be described under these heads in the remainder of this report.

#### INVESTIGATION OF WAR CRIMES

The crimes investigated by the Commission have up to the present time been crimes committed in the European and North African theatres of operations. Their number has been small in comparison with the number of crimes which have been committed in those regions. This is no doubt due to the difficulty of obtaining precise information from Allied territories are still in enemy occupation and while prisoners of war are still in enemy hands. Evidence sufficient to raise a prima facie case against an alleged offender cannot always be expected at the present stage. What the Commission requires is that the material it should show that there is reason to believe that a war crime of reasonable importance has been committed, and that there is good reason to think that the alleged offender, if and when he is put on trial for the offence, will be convicted. It is not, therefore, essential that the name of the accused should be known, if it is reasonably certain that it can and will be obtained in due course; nor is it essential that the evidence should be complete if it is reasonably clear that further evidence can and will be available on the spot when the camp where the crime was committed is liberated.

#### RECOMMENDATIONS SUBMITTED.

The work of Committee II of the Commission (dealing with Enforcement) and of Committee III (Legal Questions) has resulted in the adoption by the Commission of the following recommendations which have been transmitted to the Governments of the United Nations represented in the Commission.

- (a) a Recommendation adopted on May 16th, 1944 (C.21) that the Governments through their national offices should communicate to the Commission lists of the enemy military and civil persons in authority in each occupied district and particulars, so far as known, of war crimes committed in those districts;
- (b) this Recommendation also advocated that the military authorities should put and keep under control all persons whom they found to be or to have been members of the S.S. or the Gestapo.

(c) a later Recommendation provided in the terms of reference of the Axis Powers that found in those countries of those countries served or were country occurred kept under control

(d) a Recommendation of a type of clause in the armistice were wanted of the United Nations

(e) a Recommendation in favour of the Command in the War Crimes Commission

#### TRANSFERS OF WAR CRIMINALS

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- (c) a later Recommendation adopted on July 18th, 1944 (C.34) provided in the case of the states which were satellites of the Axis that members of the German S.S. or the Gestapo found in those countries and the members of the police force of those countries, whether civil or military, who had served or were still serving as district chiefs in any country occupied by Nazi forces should also be put and kept under control;
- (d) a Recommendation adopted on June 13th, 1944 (C.31) as to the type of clause which might with advantage be inserted in the armistice to ensure the surrender of persons who were wanted in connection with war crimes by the Governments of the United Nations;
- (e) a Recommendation adopted on June 13th, 1944 (C.30) in favour of the establishment as part of the Supreme Allied Command in enemy territory of a group or agency to help the War Crimes Commission in its work.

#### TRANSFERS OF WAR CRIMINALS

In order to facilitate the transfer by one of the United Nations of war criminals who are in its custody to another of the United Nations desirous of placing the individual war criminal in question on trial before its national courts, the Commission has framed and is transmitting to the Governments of the United Nations the draft of a treaty for this purpose. The draft is based upon a text which was prepared under the auspices of the Ministers of Justice of some of the United Nations. The draft submitted by the Commission is accompanied by an explanatory memorandum (C.47).

#### EXTRADITION BY NEUTRAL STATES

The Commission has not made any recommendation with regard to war criminals taking refuge in neutral territory. This matter has already formed the object of diplomatic representations by the United Kingdom, United States and Soviet Union.

#### TRIBUNALS FOR THE TRIAL OF WAR CRIMINALS

The principle laid down in the Moscow Declaration that the authors of the German atrocities are to be sent back to the countries where their crimes were committed, there to be tried by the laws and in the courts of those countries, has formed the basis of the work of the Commission. The majority of the cases which have been transmitted to the Commission can and will be brought to trial in the national courts of the United Nations. There is, however, a difference between the legal principles adopted by the Continental countries and those which obtain under the Anglo American system. Under the latter the ordinary courts of the country do not in the absence of special arrangements to the contrary have jurisdiction over the acts of an enemy in time of war; consequently war crimes are not in general cognizable by the ordinary courts: they are dealt with by military tribunals or military commissions. On the Continent the position is different. An act committed by an enemy in time of war is cognizable by the ordinary courts, and an offence charged against an enemy must be dealt with in accordance with the laws enforced by those courts. It follows that a war crime, i.e. a violation of the laws of war only falls within the jurisdiction of such courts if it is also an offence against the law of the country.



The laws of the United Nations on the Continent are not uniform in this respect. In the case of some states the criminal law of the country does not cover all violations of the laws of war. Where that is the case a war crime committed in that country or against one of its nationals, may not constitute a crime and would go unpunished unless some other jurisdiction can be set up competent to deal with the offense.

To meet this situation the Commission is satisfied that an inter-allied tribunal competent to exercise jurisdiction in any case of a violation of the laws of war should be set up. The Commission is now engaged in the preparation for consideration by Governments of a draft treaty or convention for the establishment of such an inter-allied court, and hopes to submit this draft at an early date.

An alternative and more rapid method of setting up such a court would be by an order of the Supreme Commander in the field. A draft recommendation for this purpose is also in course of preparation.

The institution of such an inter-allied tribunal or tribunals would be useful in other cases as well as those where the criminal law of the country may not render a particular war crime punishable at all. There will be cases in some Continental countries where an act which might constitute a serious violation of the laws of war might if dealt with under the ordinary criminal law of the country be subject only to a penalty which would be quite inadequate.

Such a tribunal might also be useful to the Allied Powers for dealing with the authors of some of the atrocities committed by the enemy which were not committed in any one particular country.

Whatever application may be given by the Allied Governments to the passage in the Moscow Declaration that the treatment to be meted out to the authors of war crimes which have no particular geographical location is reserved for a decision of the Allied Powers, there will be some cases where the brutalities committed in countries occupied by the enemy on the Continent of Europe have been directly based upon decrees or ordinances issued by some Minister or functionary in Berlin. The public will not readily understand why the Nazi official at the head of the administration in a particular occupied country is to be put on trial for a war crime such as the issue of a local ordinance ordering the compulsory deportation of a large number of the local inhabitants to Germany to work there, if the Minister or functionary who issued the decree on which the local ordinance was based is not also to be put on trial. For the latter purpose, however, some inter-allied tribunal will be advisable.

#### REPORTS ON SPECIAL CLASSES OF WAR CRIMES

The Commission has in view the preparation of reports on some of the classes of war crimes which have been committed in the course of the present struggle.

Many of the brutalities which have been committed by the enemy cannot be understood if they are regarded as mere criminal acts of individuals or groups of individuals such as have occurred in previous wars. Some of course have this character, but they are not the most characteristic. The special feature which has marked and rendered so horrible the struggle of the Axis Powers for world domination has been the constant recurrence in pursuance of a policy which was dictated by Berlin of crimes of well-marked types, each calculated to secure a particular object or objects and deliberately ordered or encouraged for that purpose. Examples are the campaign against the Jews, the

campaign against the Polish concentration camps, the massacre of villages and other forms of spirit of a population.

The Commission feels of war crimes which the United Nations have the purpose and even produce a policy, if this essential policy is not brought home.

The reports which the Commission has in view to publication at the connection between the individual policy which they express to the public to comprehend the severity which had been shown.

An additional reason of such reports under the correcting the idea which horrors perpetrated by the enemy for propaganda purposes.

The reports would take a readable form which might at large not merely the general the particular application to countries, but also the brought to trial and the

#### FAR EASTERN SUB-COMMISSION

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To cope with the work the Commission has adopted for the establishment of a commission will function. It may eventually be formed in the Far East.

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omitted by the enemy  
ere criminal acts of  
ve occurred in previous  
t they are not the most  
s marked and rendered so  
orld domination has been  
cy which was dictated by  
lculated to secure a  
ordered or encouraged  
against the Jews, the

campaign against the Polish intelligentsia, the horrors of the  
concentration camps, the mass execution of hostages, destruction  
of villages and other forms of terrorism aimed at breaking the  
spirit of a population.

The Commission feels that the policy of systematic punishment  
of war crimes which the United Nations have adopted may fail of its  
purpose and even produce a revulsion of popular feeling in certain  
countries, if this essential fact which is the chief reason for the  
policy is not brought home to the public.

The reports which the Commission has in mind would be prepared with  
a view to publication at the appropriate moment and would show the  
connection between the individual crimes of each type and the common  
policy which they expressed, thereby making it easier for the general  
public to comprehend the justification for and the necessity of the  
severity which had been shown towards their perpetrators.

An additional reason for the preparation and eventual publication  
of such reports under the authority of the Commission is the need for  
correcting the idea which is all too prevalent that the stories of the  
horrors perpetrated by the enemy are untrustworthy exaggerations designed  
for propaganda purposes.

The reports would therefore be framed so as to demonstrate in a  
readable form which might be expected to be of interest to the public  
at large not merely the general policy pursued by the Axis powers, and  
the particular application of that policy in each of the occupied  
countries, but also the facts disclosed in the cases of war crimes  
brought to trial and the punishments inflicted.

#### FAR EASTERN SUB-COMMISSION

The work of the Commission has hitherto been devoted almost  
entirely to war crimes committed in the European and African theatres  
of war, but war has now been in progress for many years between China  
and Japan and for a shorter period between Japan and the Western Powers.

To cope with the war crimes committed by Japan in the Far East,  
the Commission has adopted a proposal made by the Government of China  
for the establishment of a sub-commission at Chungking. This sub-  
commission will function as a branch of the Commission in London.  
It may eventually be found necessary to set up other sub-commissions  
in the Far East.



SECRET

M. 33  
Corrected Text.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Thirty-third Meeting

held on

26th September, 1944.

Chairman: Sir Cecil MURST - United Kingdom

There were also present

Mr. PELL	- United States of America
accompanied by	Lt. Col. HODGSON
Lord WRIGHT	- Australia
accompanied by	Mr. OLDHAM
M. de BAER	- Belgium
Mr. WUNSZ KING	- China
M. GROS	- France
M. STAVROPOULOS	- Greece
Sir David MEEK	- India
accompanied by	Mr. DUTT
Dr. de MOOR	- Netherlands
Sir Cecil DAY	- New Zealand
Mr. COLBAN	- Norway
accompanied by	Mr. Edward HAMBRO
Dr. CYPRIAN	- Poland
M. ZIVKOVIC	- Yugoslavia.

MINUTES OF LAST MEETING

The Minutes of the thirty-second meeting were adopted subject to the following corrections :

Page 5, Line 1 of first paragraph - "6" should be "7", and in Line 2, "5" should be "6". Sixth paragraph, line 3 - "5" should be "6" and "Australia" should be added before "China".

RESIGNATION OF DR. EDER FROM COMMITTEES I AND III

The CHAIRMAN read the following letter from Dr. Eder which it was agreed to insert in the Minutes:

"I beg to inform you that I am handing in my resignation to Committees I and III. I will remain for the time being, a member of the Commission but must inform you that I am considering my resignation even to this.

"My personal decision will not affect the membership of my country to the Commission, which will be decided by my Government itself.

"I regret I shall be unable to attend the meeting this afternoon but beg to inform you that I agree to: a) Convention for the establishment of a United Nations Joint Court (Doc. C.50), and accompanying memorandum (Doc. C.49); b) Recommendation for establishment of Military Tribunals (Doc. C.52) and accompanying memorandum (Doc. C.51), which are on the agenda of this meeting.

"I would ask that this letter be inserted in the minutes of today's meeting."

REPRESENTATION OF YUGOSLAVIA

The CHAIRMAN said that M. Milanovitch had just taken leave of the Commission, before returning to his post at Brussels. He would be replaced in the Commission by M. Zivkovic.

LEAKAGE OF INFORMATION

Mr. COLBAN said that the Norwegian Embassy in Washington had drawn his attention to a newspaper article by a Mr. Kuh, blaming the Commission for its slowness and legalistic tendencies, and for considering arch-criminals, such as Himmler and Hitler, as outside its scope, and also for its unwillingness - ascribed to the attitude of the British and Norwegian members - to investigate crimes against Jews, other than citizens of the United Nations. Mr. Colban said that some rather similar criticisms had been made in the (Russian) Pravda. He observed that he himself had always deprecated legalistic debates. He had, like all the members of the Commission, always considered Hitler, Himmler etc. as war criminals, and in regard to the persecution of the Jews in Germany he had supported the Commission's letter of May 31st, 1944, to the Foreign Office, offering to examine this question also, if the Governments had no other plan.

He had explained these facts to the Norwegian Embassies in Washington and in Moscow and pointed out that the Commission's work was secret, and that for this reason no reply could be given to the press. He had however, given the Embassies confidential information with regard to the Commission's work and the participation of the Norwegian delegate in this work, adding that the Embassies might confidentially bring this information to the knowledge of the State Department and the Commissariat for Foreign Affairs respectively. He added that Mr. Kuh in conversation with a Norwegian official in London had claimed to have obtained his information from two members of the Commission. Mr. Colban feared that this was another and serious case of leakage. We ought all of us to be particularly careful with regard to our documents, so as not to give unauthorized persons an opportunity of seeing them. Nothing was easier than to get an erroneous impression of our work, which only could be fully appreciated by those in possession of full information.



The CHAIRMAN agreed that these leakages were most regrettable, himself had been accused in the Press of saying that the policy of the Governments was not to put Hitler on the list! In regard to the "arch-criminals" he hoped that the Quebec Conference had now taken a decision which would put an end to the Press agitation.

#### PERSECUTION OF JEWS

Lord WRIGHT was of opinion that the persecution of the Jews in Germany was, logically, a war crime, and that the Commission might have to consider extending its definition of war crimes. Perhaps the Foreign Office should be approached again about the letter of May 31st, 1944.

The CHAIRMAN said that at the end of August he had received a letter from the Lord Chancellor which, as he now learned, was intended to convey a reply to the Commission's letter of May 31st. This letter had indicated a desire that the Commission should not interpret its mandate in any narrow spirit, but pointed out the difficulties in the way of including in the Commission's duties the handling of German crimes against Germans in Germany. The Chairman should like to remind the Commission that the vast majority of the crimes committed against the Jews fell within the Commission's terms of reference because they had been carried out in occupied territory such as Poland, or because the victims were non-Germans.

#### ARCH-CRIMINALS

Dr. de MOOR considered that - irrespective of any executive decision by the Governments - the Commission's responsibility for dealing with the arch-criminals was unrestricted. Recently they had decided to collect material about arch-criminals; now the time had come to place them on the list. In regard to the systematic barbarities practised in concentration camps, the guilt could not be limited to the camp officials; the Polish General Office - in the case of camps in Poland - had rightly extended it to the Governor, Dr. Frank. The Commission should now go further and declare the whole German Government responsible for these atrocities.

Dr. CYPRIAN agreed with Dr. de Moor. He could see no objection to putting Hitler on the list, since that did not necessarily involve trying him. If he were put on List A, no one would propose to take him off it.

M. ZIVKOVIC also supported Dr. de Moor's proposal. There were crimes, such as the bombardments of cities, the conscription of workers etc., which would go unpunished unless the highest authorities of the German State were held responsible.

The CHAIRMAN said that the omission of the arch-criminals from the list would not mean that they would go unpunished. The Moscow declaration appeared to envisage their punishment by executive action rather than by judicial trial.

Mr. COLBAN observed that unless the Governments contemplated executing the arch-criminals, the national courts could hardly sentence lesser offenders to death. He thought the arch-criminals should be at the head of the list.

Lord WRIGHT considered that material might be prepared concerning the arch-criminals, not in the form of indictments, but in a separate category.

Sir David MEEK supported everything that Lord Wright had said. He was of the view that our list and our record should be complete, and should include the names of all those who might even possibly be dealt with by authorities on a higher level.

Mr. WUNSZ KING supported Dr. de Moor's proposal. He was most anxious that men like Hirohito<sup>and</sup> Tojo should not go unpunished.

The CHAIRMAN said that no one had opposed Dr. de Moor's proposal. Lieut.-Col. Wade was now engaged in collecting decrees, etc., issued by Nazi ministers, relating to war crimes, not, however, in the form of charges, but as material on which reports or charges could be based.

Dr. de Moor feared that this research might take several weeks. He urged that the whole German Government should be placed on the list, on the basis of the dossiers already prepared. He would move this at the next meeting of Committee I.

M. de BAER said that the decrees, etc., already collected would suffice to put the members of the German Government on the list. The Commission was not bound to wait passively for the national offices to act. They had power to place persons on the list, whether or not a Government had charged them. He shared Lord Wright's opinion that crimes against Jews in Germany constituted war crimes.



Lord WRIGHT agreed with Dr. de Moor that the Commission should not restrict its powers, nor confine itself to a passive role.

The CHAIRMAN observed that the only restriction imposed on the Commission was that of its terms of reference, though no one would oppose a reasonable extension of those limits. He noted a consensus of opinion in the Commission.

M. COLBAN mentioned his previous statement to the effect that the Commission itself should establish acts of accusation against the so-called "Arch-Criminals" (Hitler, Himmler, etc.) without waiting for such steps as the Governments might take under the Moscow Declaration of the 1st November 1943.

Dr. de MOOR made a formal proposal to the same effect. He thought that the members of the Hitler Government during the war were all of them co-responsible for the criminal policy of Germany during the war in flagrant contravention of the rules and customs of war.

The CHAIRMAN explained that the Secretariat General of the Commission has already for some time been collecting information with regard to the activities of the "Arch-Criminals".

After some discussion, in the course of which M. de BAER reminded the Commission that he had made a similar proposal as far back as April 25th 1944, (Doc. C.14, p. 3, paras. 3 & 4), the COMMISSION unanimously decided that the name of these persons shall be included in the lists of war criminals prepared by the Commission without waiting for the initiative of any separate Government in the matter. It was felt that it would not be necessary to compile a voluminous comprehensive documentation concerning each of the persons in question. Their activities were sufficiently well known to warrant the inclusion of their names on the Commission's lists. The opinion of the Commission also seemed in general favourable to the suggestion of Dr. de Moor

that such members of Hitler's Government during the war who had held positions in which they collaborated in the issuing of decrees or instructions of a criminal character, should be included in the lists.

DRAFT CONVENTION FOR THE ESTABLISHMENT OF A UNITED NATIONS  
JOINT COURT (Docs. C.49 and C.50)

The Commission adopted the clauses subject to the following corrections in C.50:

Preamble: line 1 of para. 4, for "Tribunal" read "Court".  
Article 2, line 2, for "elected" read "chosen"  
Article 5, omit the second line of 2. "resulting ... Court".  
Articles 7 and 8 to be transposed  
Article 18, last line of para. (a), read "laws of war  
between the parties thereto"  
Article 13, after "Favour" insert comma  
Mr. PELL, in moving the adoption of the Convention as a whole,

expressed, on behalf of Committee II, his thanks to Mr. Colban and Sir Cecil Hurst for their invaluable aid.

The CHAIRMAN said the Commission would wish to thank Mr. Pell for his assiduous work as Chairman of Committee II.

Mr. WUNSZ KING hoped that the Convention would be accompanied by a report, which would mention - in particular - the question of languages; for if the Court sat in China an official language must be Chinese.

Mr. PELL said that the Committee had agreed that an explanatory report would be necessary, in order to touch on questions such as "superior orders".

It was agreed, after a discussion, that Committee II would meet on 29th September to draft the report; meanwhile the Convention would be forwarded to the members with a note saying that an explanatory report would follow shortly.

RECOMMENDATION FOR ESTABLISHMENT OF MILITARY TRIBUNALS (Doc. C.52)  
AND ACCOMPANYING MEMORANDUM (Doc. C.51)

Mr. OLDHAM moved the adjournment of this question till the next meeting in order that Lord Wright might be present. This was agreed to.

/The



- 7 -

The CHAIRMAN said the question would be taken as early as possible at the next meeting.

REPORT OF COMMITTEE I

M. de BAER reported on the number of cases submitted by each Government which had been placed on List A.

The CHAIRMAN reminded the members that they were entitled to ask for details concerning any case.

The Commission then adjourned.

*Cecil M. B. Hunt*  
*Oct 10*

SECRET

M. 34

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of thirty-fourth Meeting

held on

October 3rd, 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL	- United States of America
accompanied by	Lt.-Col. HODGSON
Lord WRIGHT	- Australia
accompanied by	Mr. OLDHAM
M. de BAER	- Belgium
Mr. WUNSZ KING	- China
Dr. ECER	- Czechoslovakia
M. GROS	- France
M. STAVROPOULOS	- Greece
Sir David MEEK	- India
accompanied by	Mr. DUTT
Dr. de MOOR	- Netherlands
Sir Cecil DAY	- New Zealand
Mr. COLBAN	- Norway
accompanied by	Mr. Edward HAMBERO
Dr. CYPRIAN	- Poland
M. ZIVKOVIC	- Yugoslavia.

MINUTES OF THE 33RD MEETING

It was agreed that a revised text of these Minutes should be circulated, giving effect to alterations asked for by Mr. Colban, Sir David Meek and Mr. Wunsz King.

REPRESENTATION OF LUXEMBOURG

The CHAIRMAN said that Mr. André CLASEN would replace Mr. BODSON as Luxembourg representative on the Commission.

ESTABLISHMENT OF MILITARY TRIBUNALS - DRAFT MEMORANDUM (DOC. C.51)

Sir David MEEK and Mr. DUTT considered that the document should be in the nature of a covering letter to be sent with the main document by individual members, ~~and should not be adopted by the Commission.~~

The CHAIRMAN pointed out that certain members had voted for the main document (C.52(1)) on the understanding that - as proposed by M. GROS - a Memorandum, in the present form, should be prepared by a small drafting committee.



Sir David MEEK having asked to submit a new text it was agreed that the Memorandum should be debated para. by para. and that he should draw attention to points in which his draft differed from Doc. C.51.

PARA. 1 OF THE PREAMBLE

A discussion having arisen on the term "Inter-Allied Tribunal" in line 11, M. de BAER moved to omit the word "Inter-Allied". This proposal was negatived by 5 votes against 4.

Lord WRIGHT moved to insert "Military" in place of "Inter-Allied". This was negatived by 6 votes against 3.

No amendment having been moved to para. 2 of the Preamble, Sir David MEEK moved the omission of the whole Preamble. This was negatived by 6 votes against 3.

Lord WRIGHT said he intended to vote against the Memorandum as a whole, because the Commission, having adopted the Recommendation (C.52(1)) should not now weaken its Resolution by recommendations which were superfluous.

Mr. COLBAN explained that, before voting for the Resolution, he had been given an assurance that members would be enabled to express their wishes for the guidance of the Commander-in-Chief.

M. de BAER considered that it was the part of the Commission to make recommendations.

Mr. WUNSZ KING thought it would be regrettable to go back on the agreement made before the voting on the Recommendation.

The CHAIRMAN having read the passage in question from the Minutes, it was agreed to continue the examination of the Memorandum.

The discussion on the Preamble having been re-opened :

Sir David MEEK moved to say "suggestions" in place of "recommendations" in line 1 of para. 1. This was carried by six votes against 2.

"Sir David MEEK having suggested "desired" or "envisaged" in place of "adopted" in the 4th line of the second paragraph of the Preamble, Mr. WUNSZ KING moved to substitute "of the" for "adopted by the". This was agreed to."

PARA. 1 OF THE MEMORANDUM

Lord WRIGHT was opposed to the wording "highest legal qualifications" which might be differently construed in different countries; moreover military experience might be the more useful qualification; again the provision "conversant with French and English" would hardly be applicable in the Far East.

Mr. PELL moved that the passage should read "some of whom" should possess highest legal qualifications and "be conversant with the laws and customs of war".

Sir David MEEK moved the alternative text in his draft.

Mr. COLBAN proposed as a solution to say "adequate ~~legal~~ qualifications" and to omit all words after qualifications. This proposal was adopted ~~by a majority~~, without opposition.

PARA. 2

Mr. PELL moved to substitute "Each Court to have mixed personnel, and when qualified personnel is available and can be detailed without injury to the respective military services, representation should be afforded to the United Nations of which they are nationals in such proportion as may be advisable".

After discussion, this was adopted.

PARA. 3

Col. HODGSON feared that the draft might appear to conflict with the text of C.52(1) in which it was agreed that the courts could not try "Quislings". He proposed, in place of the first sentence, "that each Tribunal should have jurisdiction to try any enemy nationals accused of offences against the laws and customs of war, subject to the recommendations in Doc. C.52(1)".

This was adopted. The remainder of para. 3 was adopted.

PARA. 4

Col. HODGSON said the text conflicted with Doc. C.52(1) which laid down that the courts could not sit in the territory of one of the United Nations, except by request of its Government.



After discussion, it was agreed to amend the text of para. 4 to read: "For the trial of cases each Tribunal should consist of not less than 5 members".

PARA 5.

Sir David MEEK proposed to substitute para. (e) of his draft for this text. After discussion the paragraph was adopted to read: "The rules of procedure should be consistent with practices which are usual in civilised countries and should be framed by the Appointing Authority".

PARA.6

It was agreed to adopt para. (f) of Sir David Meek's draft, altering the last line to read " prosecute upon the conditions recommended by the Commission in Doc. C.52(1).

PARA. 7 was agreed to.

M. de RAER asked that some mention should be made in the Memorandum of the question of "Superior Orders".

It was proposed to insert that: "in regard to the question of Superior Orders, the Commission desires to draw attention to what it has said on that subject in the document accompanying the draft of a Treaty Court". (C.57).

This was agreed to by 10 votes against 1.

FINAL PARA. ON PAGE 2 OF C.51.

Sir David MEEK moved to omit the para. which was superfluous.

Col. HODGSON agreed, and feared it might be held to imply that the Military Courts would cease to function when the Treaty Court had been set up.

M. GROS thought it would suffice to omit the last 3 lines.

A vote having resulted in a tie (5 against 5) the Chairman gave his casting vote in favour of omitting the para.

ADOPTION OF THE DRAFT AS A WHOLE

On a vote being taken on the draft as a whole, it was adopted by 8 votes to 4.

M. de BAER repeated the grave misgivings which he had already expressed in Committee II concerning the possibility of executing some of the sentences which might be imposed by an Inter-Allied Military Court; though it would obviously be within the power of the Commander-in-Chief to carry out a death sentence, M. de Baer could not see how a life sentence, or a lesser sentence of imprisonment, would be carried out.

The power of the Commander-in-Chief would last only for a few months after the cessation of hostilities, after which he would not only have no power to enforce his decisions; but would cease to exist as such, and M. de Baer could not see that any State would then accept to incarcerate in its prisons those who had been convicted by its Court. There was, as far as he knew, no means of executing a sentence of imprisonment upon a foreigner who had been sentenced abroad by a foreign court, albeit an inter-allied military court. In his own country such action could not be taken without violating the law.

M. de Baer had no doubt that their Indian and American colleagues who had proposed the draft had not overlooked this vital matter; in view of the answer that was given him by Col. Hodgson<sup>(1)</sup> it might well be that the United States would carry out such punishments, but, in respect of his own country (and the same applied to some other European countries), he was afraid that, unless other steps were taken, the action of the proposed inter-allied military courts would be restricted to the death penalty only.

The same did not apply to what had been called the 'Treaty Court'; much as he regretted that they had struck out the provision concerning the State by which the punishment was to be carried out, still it would be possible for the States

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(1) See statement of United States representative annexed to these Minutes.



represented on the diplomatic conference to say which one of them would undertake such execution.

Mr. DUTT said that the authors of the original draft submitted to the Commission (Doc. II/26(1)) had included a provision relating to the execution of sentences but this had been struck out on the proposal of Lord Schuster.

The CHAIRMAN observed that the draft Recommendation (Doc. C.52(1)) had left this point vague. The clause referring to it was struck out on Lord Schuster's proposal.

On Mr. DUTT's proposal it was agreed that in the title of the document to accompany the Recommendation the word "for" should replace "in favour of".

REPORT OF COMMITTEE II (DOC. C.57)

After a discussion it was agreed that the document (C.57) should be given the form of a report to accompany the text of the Draft Convention, i.e., this would be sent to each member for transmission to his own Government. A letter would be sent at the same time by the Chairman to the Secretary of State, expressing the Commission's unanimous request that he would convene a Diplomatic Conference.

*Cecil B. Hurst*

/ ANNEXE -

A N N E X E

Statement by the United States representative  
with reference to M. de Baer's remarks on p.5  
of the Minutes of the 34th Meeting

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There appears in Commission Document M.34, Correction, 11 October 1944, a statement of the Belgian representative, which is based on a letter written by him to the Chairman subsequent to the 34th meeting, and which, without being read to the Commission, was accepted at the 35th meeting, as a basis for amplifying, in the minutes of the 34th meeting, the remarks made by the representative at the 34th meeting. It was assumed, in the absence of any statement to the contrary, that the unknown content of the letter did not purport to state the position or remarks of other representatives, and that it was consistent with their understanding of the substance of the Belgian representative's remarks. However, when Commission Document M.34, Correction, was circulated on 14 October 1944 it appeared that the United States representative's assumption was incorrect. While I remember the substance of the statements made by the Belgian and by the United Kingdom representatives and by Lieutenant Colonel Hodgson, in respect of the sentences of Mixed Military Tribunals, I have no recollection that Lieutenant Colonel Hodgson said that the United States would carry out punishments of imprisonment imposed by Mixed Military Tribunals, a statement susceptible of the meaning that it would carry out all such punishments, irrespective of the nation which referred the cases to trial. While the United States desires to be helpful, it should not be expected to assume such a task, and Lieutenant Colonel Hodgson did not comment upon either its ability or its willingness to carry out sentences. Likewise, while the United States should be expected to carry out any sentences in any cases which it requests tried by Mixed Military Tribunals convened by supreme military commanders, even though this requires the enactment of national legislation, it would seem that its responsibility properly ended at that point.

Lieutenant Colonel Hodgson only pointed out that the execution of sentences of imprisonment could be taken care of administratively by the military authorities and the nations desiring fully to co-operate with them. It may well be that some nations may not desire cases tried by Mixed Military Tribunals, that some nations may not desire to co-operate with the military authorities, or that most or, at least, some nations will have to enact legislation.



SECRET

C.50(1)  
30 September 1944

UNITED NATIONS WAR CRIMES COMMISSION

DRAFT CONVENTION FOR THE ESTABLISHMENT OF A UNITED NATIONS WAR CRIMES  
COURT

(Names of the High Contracting Parties ....)

desirous of ensuring that the perpetrators of war crimes committed by the enemy shall be brought to justice.

Recognising that in general the appropriate tribunals for the trial and punishment of such crimes will be national courts of the United Nations,

Mindful of the possibility that cases may occur in which such crimes cannot be conveniently or effectively punished by a national court,

Have decided to set up an Inter-Allied Court before which the Governments of the United Nations may at their discretion bring to trial persons accused of an offence to which the Convention applies in preference to bringing them before a national court, and

For this purpose have appointed as their plenipotentiaries:-

(names of the plenipotentiaries)

who - having communicated their full powers found in good and due form -

Have agreed as follows:-

ARTICLE 1

1. There shall be established a United Nations War Crimes Court for the trial and punishment of persons charged with the commission of an offence against the laws and customs of war.

2. The jurisdiction of the Court shall extend to the trial and punishment of any person - irrespective of rank or position - who has committed, or attempted to commit, or has ordered, caused, aided, abetted or incited another person to commit, or by his failure to fulfil a duty incumbent upon him has himself committed, an offence against the laws and customs of war.

3. The jurisdiction of the Court as defined above shall extend to offences committed by the members of the armed forces, the civilian authorities or other persons acting under the authority of, or

claim or colour of authority of, or in concert with a  
other political entity engaged in war or armed hostility  
of the High Contracting Parties, or in hostile occupied  
territory of any of the High Contracting Parties.

#### ARTICLE 2

The Judges of the Court and Members of the Court shall  
be chosen in accordance with the following provisions:

- (a) Within thirty days after the coming into force of the  
Convention, each of the High Contracting Parties shall appoint three  
members of the Court. The names of the persons so appointed  
shall be transmitted to His Britannic Majesty's Principal  
Secretary of State for Foreign Affairs in the United Kingdom, who  
shall communicate them forthwith to the other High Contracting  
Parties.
- (b) Within fifteen days after the communication of the names  
to the High Contracting Parties, His Britannic Majesty's  
Principal Secretary of State for Foreign Affairs shall call a conference  
of representatives of the High Contracting Parties to meet in  
London at such time and place as he may direct.
- (c) The conference shall proceed to the election of the  
members of the Court from among the persons named. The election  
shall take place by secret ballot and by such method of voting  
as the conference may determine. The number of judges to be  
elected shall be determined by the conference.
- (d) Any state which becomes a party to the Convention after  
it comes into force, shall appoint three members of the Court  
provided in para. (a). These names shall in the same manner  
be communicated to the other High Contracting Parties.

#### ARTICLE 3

The members of the Court shall be nationals of the  
High Contracting Parties and shall possess the highest legal  
qualifications. They shall be conversant with either  
English or French.

#### ARTICLE 4

The date of the first meeting of the Court shall be  
determined by the conference referred to in Article 2, para. (b) - this  
meeting shall be in London. The Court shall thereupon choose  
its seat, which it may change at any time. The Court  
may decide to meet elsewhere than at its seat.

#### ARTICLE 5

1. In the event of a vacancy among the judges, the Court  
shall proceed to the election of a judge from among the members  
of the Court.
2. In the event of a vacancy among the members of the Court  
appointed by the High Contracting Parties, the member whose  
seat is vacated shall designate his successor.

Judges of the  
administrative function  
nature so long as the

The Court shall  
appoint its Registrar  
that of its Division

Judges of the  
and the Officer appointed  
prosecutions, shall

1. A judge of the  
arrange with the President  
shall take effect.

2. The Court, with  
fourths of the judges  
able adequately to

The Court shall  
procedure of the Court  
authority to amend

1. The responsibility  
Court will in general  
by which the case is

2. The conference  
an officer to whom  
in any case in which  
concerned prefers  
by its own representative

3. This officer  
may think necessary

4. The expenses  
cases entrusted to  
borne by the State

1. For the trial  
Each of the Divisions  
exercise the power



ARTICLE 6

Judges of the Court may not exercise any political or administrative function, or engage in any activity of a professional nature so long as they are judges of the Court.

ARTICLE 7

The Court shall elect its President and Vice-President, appoint its Registrar and otherwise perfect its organisation and that of its Divisions.

ARTICLE 8

Judges of the Court as well as the Registrar of the Court and the Officer appointed under Art. 11, para. 2 to conduct prosecutions, shall enjoy diplomatic privileges and immunities.

ARTICLE 9

1. A judge of the Court who desires to resign his post shall arrange with the President as to the date on which his resignation shall take effect.
2. The Court, with the concurrence of not less than three-fourths of the judges, may retire a judge who has ceased to be able adequately to perform the functions of his office.

ARTICLE 10

The Court shall establish rules for the administration and procedure of the Court and its Divisions. The Court shall have authority to amend or to supplement these rules from time to time.

ARTICLE 11

1. The responsibility for the conduct of prosecutions before the Court will in general rest with the Government of the United Nation by which the case is brought before the Court.
2. The conference referred to in Art. 2, para. (b) shall appoint an officer to whom may be entrusted the conduct of the prosecution in any case in which the Government of the United Nation primarily concerned prefers that the prosecution should not be undertaken by its own representatives.
3. This officer shall be assisted by such staff as the Court may think necessary.
4. The expenses incurred in connection with the prosecution of cases entrusted to the officer appointed by the Court shall be borne by the State which has transmitted the case to the Court.

ARTICLE 12

1. For the trial of cases the Court shall sit in Divisions. Each of the Divisions shall in the trial of cases assigned to it exercise the powers conferred upon the Court.

... shall sit to hear and determine the case.

ARTICLE 13

Every member of the Court shall, at the commencement of his session of the Court which he attends, take an oath in open Court that he will exercise his functions impartially and administer justice without partiality or favor.

ARTICLE 14

The Court shall:

- (a) Order any witness to attend and to examine before it;
- (b) Receive evidence with expert knowledge to give an opinion;
- (c) Receive evidence and testimony of any person, whether or not connected with the case;
- (d) Receive evidence of requests;
- (e) Receive evidence for the purpose of evidence.

ARTICLE 15

... shall sit to hear and determine the case.

... shall sit to hear and determine the case.

... shall sit to hear and determine the case.

... shall sit to hear and determine the case.

... shall sit to hear and determine the case.

Hearings shall be held in public unless the Court directs otherwise.

1. No person shall be convicted of a crime unless he has been found guilty by the Court.
2. No trial of a case shall be held in secret unless the Court directs otherwise.

The Court shall:

- (a) General principles of law, including the laws of war, and the laws of war before and after the outbreak of the war;
- (b) International law, including the principles of international law accepted as law by the Court;
- (c) The principles of law established by the Court from the dicta of its judgments;
- (d) The principles of law established by the Court from the dicta of its judgments;
- (e) Judicial decisions, including the rules of procedure and evidence.

1. The Court shall sit in public unless the Court directs otherwise.
2. Every judgment of the Court shall be pronounced in public.
3. The Court shall sit in public unless the Court directs otherwise.

The Court shall sit in public unless the Court directs otherwise.

Sentences shall be pronounced in public.



ARTICLE 16

Hearings shall be public unless the Court for reasons which it states directs that the hearing shall take place in camera.

ARTICLE 17

1. No person shall be prosecuted before the Court if he has already been convicted or acquitted of the same offence before a Court of one of the High Contracting Parties.

2. No trial or sentence by a Court of an enemy or former enemy state shall bar trial or sentence by the Court. If a sentence has been imposed by a Court of an enemy or former enemy state, the penalty already undergone shall be taken into account in fixing any sentence which may be imposed.

ARTICLE 18

The Court shall apply:

- (a) General international treaties or conventions declaratory of the laws of war, and particular treaties or conventions establishing laws of war between the parties thereto;
- (b) International customs of war, as evidence of a general practice accepted as law;
- (c) The principles of the law of nations, derived from the usages established among civilised peoples, from the laws of humanity, and from the dictates of the public conscience;
- (d) The principles of criminal law generally recognised by civilised nations;
- (e) Judicial decisions as subsidiary means for the determination of the rules of the laws of war.

ARTICLE 19

1. The Court shall sit in private to consider its judgment. The judges shall observe secrecy as to the nature of their deliberations.
2. Every judgment or order shall be pronounced at a public session and shall state the reasons on which it is based.
3. The decisions shall be by a majority of the judges participating.

ARTICLE 20

The Court shall have power to adjudge appropriate punishments including death or any lesser punishment.

ARTICLE 21

Sentences shall be executed as directed by the Court.

ARTICLE 22

The expenses incurred in connection with the establishment and functioning of the Court, the salaries and allowances of the judges and officials of the Court and of their staff, and the cost of sentences imposed by the Court, shall be defrayed by the High Contracting Parties by agreement.

ARTICLE 23

The High Contracting Parties undertake severally to take such measures as may be necessary to give effect to the provisions of the Convention.

ARTICLE 24

The Convention shall be ratified.

The ratifications shall be deposited in London with the Government of the United Kingdom of Great Britain and Northern Ireland.

A procès verbal shall be drawn up recording each ratification and a copy duly certified shall be sent by diplomatic channel to each of the High Contracting Parties.

ARTICLE 25

As soon as the number of ratifications received by the Government of the United Kingdom is deemed by that Government sufficient to justify the establishment of the Court, His Majesty's Principal Secretary of State for Foreign Affairs shall communicate to that effect to the other High Contracting Parties and the Convention shall enter into force on the tenth day after the date of such communication.

ARTICLE 26

Members of the United Nations who are not signatories to the Convention are allowed to adhere to it.

For this purpose they must make their adhesion known to the High Contracting Parties by means of a written notification to the Government of the United Kingdom, and by it communicate to all the other Contracting Parties.

ARTICLE 27

As soon as the President of the Court has notified the Court that it has completed the trial of persons charged before it for offences within its jurisdiction, he shall notify His Majesty's Principal Secretary of State for Foreign Affairs to that effect.

Copies of this notification shall be communicated by the diplomatic channel to all the other High Contracting Parties and shall remain in force until the Court has completed its work. The Convention shall cease to apply.

Unless an agreement between the Contracting Parties to the last paragraph communicated to the Court by him for winding up of

Without prejudice to any sentences at the date fixed at the date of the Convention, the Parties of such after the date of the Convention with incomplete archives or with the winding up of the Convention which may be of the Convention winding up of



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- 7 -

ARTICLE 28

Unless an agreement is arrived at between the High Contracting Parties for the variation of the date referred to in the last paragraph of Article 27, the said date shall be communicated to the President and arrangements shall be made by him for winding up the Court by the said date.

ARTICLE 29

Without prejudice to the validity and the completion of any sentences imposed by the Court which may not have expired at the date fixed for the winding up of the Court, and without prejudice to the distribution between the High Contracting Parties of such expenditure as it may be necessary to incur after the date fixed for the winding up of the Court in connection with uncompleted sentences imposed by the Court, or in connection with the winding up of its affairs or the preservation of its archives or with other matters and subject to any further agreement which may be concluded between the High Contracting Parties, the Convention shall cease to have effect on the date fixed for the winding up of the Court.

connection with the establishment of the salaries and expenses of their staff, and by the Court, shall be determined as may determine.

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shall undertake severally to give effect to the

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ified.

deposited in London with the Government of Great Britain and Ireland, and the Court, shall be certified by the High Contracting Parties.

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ifications deposited in the archives of the Court, shall be certified by the High Contracting Parties, and by it communicated to the other High Contracting Parties, and by it communicated to the other High Contracting Parties, and by it communicated to the other High Contracting Parties.

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who are not signatories to it.

make their adhesions known by a written notification to the Government of Great Britain and Ireland, and by it communicated to the other High Contracting Parties, and by it communicated to the other High Contracting Parties.

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the Court can fix a date for the trial of persons who are under its jurisdiction, he shall be notified by the High Contracting Parties, and by it communicated to the other High Contracting Parties, and by it communicated to the other High Contracting Parties.

shall be communicated by the High Contracting Parties, and by it communicated to the other High Contracting Parties, and by it communicated to the other High Contracting Parties.

SECRET

C.58  
6th October, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

EXPLANATORY MEMORANDUM

TO ACCOMPANY THE DRAFT CONVENTION FOR THE ESTABLISHMENT  
OF A UNITED NATIONS WAR CRIMES COURT

The draft of the Convention is self-explanatory. But, during the discussion of the Draft there emerged from time to time certain points which, in the opinion of the Commission, would require elaboration. A number of these have been settled or clarified in the text of the draft Convention as it gradually took its definite shape. There remain, however, certain matters which, as they have not found their way into the final text, have to be specifically dealt with in this memorandum.

(a) During the preparatory work on the Convention certain drafts were submitted in which a detailed list of war crimes was included in Article 1. The list was not meant to be exhaustive and, after considerable discussion, the Commission found it appropriate not to include a detailed list but to confine itself to the terms of the first paragraph of Article 1 - "an offence against the laws and customs of war". It is considered that this will give the Court the necessary latitude of action to carry out the intention of the Allied Governments as expressed in numerous public statements, notably the Declaration in Moscow dated the 1st November, 1943.

(b) The Commission has considered the question of "Superior Orders". It finally decided to leave out any provision on the subject for the same reason as that for which it left out the detailed list of war crimes. The Commission considers that it is better to leave it to the Court itself in each case to decide what weight should be attached to a plea of superior orders. But the Commission wants to make it clear that its members unanimously agree that in principle this plea does not of itself exonerate the offender.

(c) It will be noted that the only clause in the Convention which deals with the question of languages is Article 3 of the Draft, where it is stated that the members of the Court "shall be conversant with either English or French". The Commission fully realises, however, that in the Far East, for instance, it is to be assumed that the Chinese language will be the one used by witnesses and perhaps by other persons participating in the work of the Court. It is also probable that the Russian language or other Slavonic languages may have to be used in some of the divisions of the Court. In addition, the German language will certainly be the one used in numerous documents and also in pleading before the Court. Obviously, the language question implies the necessity of quite considerable interpreting and translating work. The accused persons will be entitled to have documents translated into a language which they understand and will likewise be entitled to have oral statements interpreted into such language. The Commission has therefore considered it desirable that the Court itself should be left free to establish under Article 10 the necessary rules with regard to the language or languages in the sense that the official languages of the Court shall be English and French and/or any other language of the country in which the Court may sit.



SECRET

C.52(1)  
26 September, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

FOR  
RECOMMENDATION IN FAVOUR OF THE ESTABLISHMENT BY  
SUPREME MILITARY COMMANDERS OF MIXED MILITARY  
TRIBUNALS FOR THE TRIAL OF WAR CRIMINALS.

Consonant with the Moscow Declaration, 1st November, 1943, the principle is accepted by the United Nations War Crimes Commission that, with the exception of major war criminals, whose offences have no particular geographical localization, war criminals, upon apprehension, will be sent back to the countries in which their crimes were committed in order that they may be judged by the courts of such countries. The mentioned countries thus have a paramount right to such criminals and their courts have primary jurisdiction. The recommendation contained herein is made in full recognition of these principles.

It is recognised that a military commander of an army in campaign has full power to constitute military tribunals and to try all offences against or affecting such army or arising out of or incident to the operations of the enemy or persons aiding or assisting the enemy. It is recognised also that a military commander of an army in occupation of enemy territory has full power to constitute military tribunals and to try all cases involving the safety of his army or the maintenance of law and order. Accordingly, such offences and cases are not within the purview of the recommendation contained herein and the recommendation is not to be considered as a limitation of these principles or as a restriction upon the mentioned powers of such military commanders.

The United Nations War Crimes Commission will recommend to the United Nations the creation by convention of a United Nations War Crimes Court or Tribunal, for the trial of war criminals. However, it recognises that delay may occur while its recommendation and the proposed convention are being considered by the United Nations thereby affecting the expeditious trial of cases. Accordingly, it is deemed necessary that some tribunal or tribunals be established in interim to try war criminals.

In case a United Nations War Crimes Court or Tribunal is established by convention it is considered desirable that, in addition thereto, other tribunals be established to try such war criminals as any United Nation may so request, to the end, that every means for the effective prosecution of war criminals are established and maintained, and that no war criminal escapes trial and punishment by reason of the inability to effect a speedy trial.

It appears that the Supreme Commander of co-operating United Nations military forces in each theatre of operations has the power and is entitled to establish military tribunals and prescribe their composition, power and procedure.

It is believed that such military tribunals provide a just and expeditious means for the trial of war criminals pending the establishment of a United Nations War Crimes Court or Tribunal, and thereafter in addition to such court or tribunal.

P.T.O.