

CI - 199

UNITED NATIONS WAR CRIMES COMMISSION

(1)
Report of the Sub-Committee

as adopted on 2nd December, 1945.

1. The sub-committee was appointed at the meeting on October 26, for the purpose of preparing a report indicating the lines on which the Commission should approach its task.
2. The functions of the Commission are sufficiently well defined. It is charged with the duty of investigating the war crimes which have been committed by individual members of the enemy forces against nationals of the United Nations and others, and of recommending measures for bringing such persons to justice in suitable cases. In countries which have been occupied by the enemy powers it will also be incumbent on the Commission to deal - so far as may be necessary - with crimes committed by officials and members of the enemy organisation, even though such persons are not members of the enemy forces. For these purposes it will be the duty of the Commission, both before and after the cessation of hostilities, to submit lists of war criminals whom it considers should be brought to trial. There should also be submitted in due course a list or lists of persons who have been guilty of atrocious acts against persons of no nationality or against local inhabitants (particularly where such acts have been committed on grounds of race) where the acts have been so heinous that their punishment is the concern of mankind generally (see Declaration of December 17, 1942).
3. The scope of the Commission's task is very large and time presses. The sub-committee has framed this report with a view to enabling the Commission to get to work as soon as possible.

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

4. There is no list of war crimes which is authoritative in the sense that international law forbids any act outside the list being treated as a war crime and obliges every State which recognises the obligatory nature of international law to treat as a war crime every act which figures in the list.
5. After the First World War the Responsibilities Commission of the Paris Peace Conference in 1919 agreed on a list of acts which it considered should be treated as war crimes. Similarly in the course of the present struggle various lists - all excellent in their way - have been drawn up by commissions and committees, both official and unofficial; but, as said above, there is no list of war crimes which is binding on the United Nations.
6. In the opinion of the sub-committee it will be better for the Commission not to attempt to draw up any list of war crimes which will tie the hands of the Governments of the United Nations. If such a list is prepared it may be thought necessary in some countries to give it statutory force so as to ensure that the courts which are given jurisdiction to try war criminals are competent to try such offences. It seems as if the ingenuity of the enemy is even now finding new ways of violating the laws and customs of war and it would be inconvenient that in countries where a list of war crimes has been given statutory force there should have to be new legislation to deal with new

(1) NOTE The nomination of members of the Commission to serve on the sub-committee was entrusted to Sir Cecil Hurst. He invited Gen. de Baer (Belgium) Dr. Eder (Czechoslovakia) Dr. de Moor (Netherlands) and Prof. Glaser (Poland) to act with him on the sub-committee.

crimes which come to light. The Commission should proceed upon the footing that international law recognises the principle that a war crime is a violation of the laws and customs of war, and that no question can be raised as to the right of the United Nations to put on trial as a war criminal in respect of such violation any hostile offender who may fall into their hands irrespective of the place in which the war crime was committed, nor as to the right of the United Nations to determine the forum before which such war criminal should be brought to justice.

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

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

It will have the further advantage that it will enable particular acts to be added to the list of those to be treated as war crimes from time to time as circumstances may require.

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX I

LIST OF WAR CRIMES

drawn up by

The Responsibilities Commission of the Paris Peace Conference in 1919

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

ANNEX II

Not reproduced.

C.2.

Confidential

UNITED NATIONS WAR CRIMES COMMISSION

RULES

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

Article I. Chairman.

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

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

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

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

Article II. Secretary General.

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

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

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

Article III. Rules of procedure.

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

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

I. Reception of new members.

II. Minutes.

III. Reports of committees.

IV. Unfinished business.

V. New business.

VI. Adjournments.

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

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

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

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

5. New business is any other business.

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

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

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

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

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

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

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

Rule 10. The Commission may appoint committees to consider any subjects or to perform any service which may appear desirable.

Rule 11. Any member of the Commission can at any time he desires appear before any committee and take part in its discussions.

Rule 12. The minutes shall contain a record of the conclusions reached at each meeting of the Commission. Except individual statements inserted at the request of the member concerned, they shall not contain any record of individual statements made in the course of the discussion.

Rule 13. Delegates may speak in English or in French. Any members present may ask for a translation.

Rule 14. Members of the Commission are requested to refrain from making public statements on subjects under discussion or within the possible powers of the Commission without the express approval of the Commission.

Rule 15. Any election must, on the demand of any member of the Commission, be by secret ballot.

Article IV.

These rules may be added to, repealed in whole or in part or amended by a vote of the Commission to be taken not less than five days after written notice of such proposed changes shall have been sent to each member of the Commission.

24th January 1944.

UNITED NATIONS WAR CRIMES COMMISSION

FINANCIAL SUB-COMMITTEE

Report on Staff Appointments

- I. The Secretary General of the Commission was originally chosen by the Diplomatic Meeting of 20th October 1943. He was then engaged by the Foreign Office, with the approval of the Treasury, at a salary of £1,500 per annum.
- II. Two appointments have been made under the authorisation given by the Commission on 4th January 1944. The relevant minute reads:
- "The Commission authorised the Secretary General to engage a chief clerk and a shorthand typist on salaries approved by the Foreign Office."
- (1) Miss E.M. Sirey who is a fully-qualified stenographer, typist and duplicating operator, and
- (2) Miss Frances I. Pittendrigh as "Chief Clerk."

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

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

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

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

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

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

UNITED NATIONS WAR CRIMES COMMISSION

Financial Administration of the Commission

First Report by the Financial Sub-Committee

I. THE PRESENT SITUATION

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

2. THE PRINCIPLE TO BE ADOPTED

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

3. ALLOCATION OF EXPENSES

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

"Expenses.

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

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

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

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

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

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

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

4. PREPARATION OF A PLAN OF ADMINISTRATION

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

Confidential

C 5

7th February 1944

UNITED NATIONS WAR CRIMES COMMISSION

SECOND REPORT ON FINANCIAL ADMINISTRATION
BY THE FINANCIAL SUB-COMMITTEE

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

1. Budget for the period ending 31st March 1944

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

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

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

Omitting the liability for premises, but including postage and minor purchases of stationery by the Secretary-General, the total liabilities so far incurred by the Commission are under £750. The Sub-Committee has to provide for the possibility that the capacity of the staff to copy documents may have to be increased by engaging more typists and acquiring more machines, if it is decided to have all or most of the cases submitted by the National Offices copied for examination by the members of the competent Sub-Committee, and that it may prove desirable to appoint somebody to help the Secretary-General in examining cases. Additional copying of documents will involve additional purchases of stationery and carbons. It is improbable that many new officials would or could be added to the staff before 31st March, and the Sub-Committee thinks that all possible contingencies would be covered by fixing the maximum liabilities (other than the charge for premises) to be incurred down to 31st March at £1,100. It recommends that no attempt to itemise the additional expenditure should be made. It would seem to fall within the Secretary-General's province to procure the necessary stationery and stamps, and any engagements of staff, or purchases of machines, that might be required could be authorised by the Commission on the advice of the Financial Sub-Committee.

It is desirable that the period down to 31st March, 1944, should be treated as a separate financial period, in order that the Commission's financial or budgetary year may run from 1st April to 31st March, since this is the budgetary period adopted by the majority of the countries represented on the Commission. It would not, however, be convenient for the Governments to deal first with a budget for so short a period and so small a sum, and a little time thereafter have to examine the Commission's budget for the 1944-1945 period. The best course will be to treat the actual amount for which the Commission becomes indebted to H.M. Government in London down to 31st March, 1944, as an item to be reimbursed out of the budget of 1944-1945.

II. Financial Administration

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

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

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

Confidential

C. 6.

February 12th, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

RESOLUTION TO BE MOVED BY MR. PELL
AS CHAIRMAN OF THE SUB-COMMITTEE ON ENFORCEMENT
AT THE COMMISSION'S MEETING OF 15th FEBRUARY, 1944.

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

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

SECRET

C 7 (1)
February 1944

UNITED NATIONS WAR CRIMES COMMISSION

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

Preparation and presentation of cases of war crimes to the Commission

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

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

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

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

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

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

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

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

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

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

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

Confidential

C.8
February 21st, 1944

UNITED NATIONS WAR CRIMES COMMISSION

RESOLUTION proposed by Professor GLASER,
as Chairman of Committee III

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

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

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

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

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

Confidential

C.8
February 21st, 1944

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- 3/ have they used two jointly, and if so to which spheres of the administration of criminal justice do they apply each code?

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

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

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

SECRET

C. 9.
8th March 1944

UNITED NATIONS WAR CRIMES COMMISSION

THIRD REPORT BY THE FINANCE COMMITTEE (1)

ON FINANCIAL ORGANISATION

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

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

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

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

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

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

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

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

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

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

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

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

(1) Hitherto called Financial Sub-Committee.

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

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

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

Draft of a Resolution for submission to the Governments.

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

RESOLUTION

1. The fiscal year of the United Nations War Crimes Commission shall run from 1 April to 31 March inclusive. Liabilities incurred before 1 April 1944, shall be included in the budget for the year 1944-1945.
2. The Commission shall adopt for each fiscal year a budget covering its estimated expenditure for that year. Upon approval of a budget by the Commission the total amount approved shall be allocated to the member Governments in proportions determined as provided in the Annex to this resolution. Each member Government undertakes, subject to the requirements of its constitutional procedure, to contribute to the Commission promptly its share of the expenses so determined. They shall include provision for the creation and maintenance of working capital to enable the Commission to meet its expenses notwithstanding delay in the receipt of contributions.
3. The Commission shall make regulations governing its financial and general administration.
4. This resolution shall be submitted for the approval of the member Governments, which shall be given by a communication in writing to the Commission's Secretary-General, signed by the diplomatic representative in London, or directly by the Government itself.

ANNEX TO THE RESOLUTION

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

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

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

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

TABLES

Allocation according to:-

<u>Government</u>	<u>TABLE A</u> U.N.R.R.A. administrative expenses scale (1)	<u>TABLE B</u> League of Nations (I.L.O.) normal scale	<u>TABLE C</u> League of Nations (I.L.O.) wartime scale
1. Australia	30	23	23
2. Belgium	20	19	1
3. China	100	42	21
4. Czechoslovakia	20	25	1
5. French Committee of National Liberation	80	80	40
6. Greece	10	7	1
7. India	80	49	48
8. Luxembourg	1	1	1
9. Netherlands	30	24	2
10. New Zealand	6	8	8
11. Norway	6	5	2
12. Poland	20	32	1
13. United Kingdom	300	108	108
14. U.S.A.	800	108 (2)	108 (2)
15. Yugoslavia	14	17	1
TOTAL	1,517	552	366

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

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

SECRET

C 9
February, 1944

UNITED NATIONS WAR CRIMES COMMISSION

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

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

SECRET

C.10.
22 March, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

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

Note by the Secretary General

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

Resolution

1. The fiscal year of the United Nations War Crimes Commission shall run from 1 April to 31 March inclusive. Liabilities incurred before 1 April, 1944, shall be included in the budget for the year 1944-1945.
2. The Commission shall adopt for each financial year a budget covering its estimated expenditure for that year. Upon approval of a budget by the Commission the total amount approved shall be allocated to the member Governments in proportions determined as provided in the Annex to this resolution. Each member Government undertakes, subject to the requirements of its constitutional procedure, to contribute to the Commission promptly its share of the expenses so determined. They shall include provision for the creation and maintenance of working capital to enable the Commission to meet its expenses notwithstanding delay in the receipt of contributions.
3. The Commission shall make regulations governing its financial and general administration.
4. This resolution shall be submitted for the approval of the member Governments, which shall be given by a communication in writing to the Commission's Secretary-General signed by the diplomatic representative in London, or directly by the Government itself.

Annex to the Resolution

1. The total amount approved by the Commission for the expenses of each fiscal year, in accordance with Paragraph 2 of the Resolution, shall be divided as follows among the member Governments:
 - (a) Each Government shall pay a basic contribution of £400;
 - (b) If the amount approved exceeds the total amount of the basic contributions, the excess shall be divided in the proportions shown in the following table:

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

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

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

APPENDIX

A. REPORT OF THE FINANCE COMMITTEE SUBMITTED TO THE COMMISSION ON 21 MARCH, 1944. (Doc. C.9.)

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

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

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

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

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

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

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

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

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

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

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

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

Draft of a Resolution for submission to the Governments

(Not reproduced)

TABLES

Allocation according to :-

	<u>TABLE A</u>	<u>TABLE B</u>	<u>TABLE C</u>
<u>Government</u>	U.N.R.R.A. administrative expenses scale (1)	League of Nations (I.L.O.) normal scale	League of Nations (I.L.O.) wartime scale
1. Australia	30	23	23
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6. Greece	10	7	1
7. India	80	49	48
8. Luxembourg	1	1	1
9. Netherlands	30	24	2
10. New Zealand	6	8	8
11. Norway	6	9	2
12. Poland	20	32	1
13. United Kingdom	300	108	108
14. U.S.A.	800	108 (2)	108 (2)
15. Yugoslavia	14	17	1
	<hr/>	<hr/>	<hr/>
TOTAL	1,517	552	366
	<hr/>	<hr/>	<hr/>

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

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

B. RELEVANT EXTRACTS FROM PREVIOUS REPORTS

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

Report of 24 January, 1944 (Doc. C.4.)

"3. ALLOCATION OF EXPENSES

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

'Expenses.

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

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

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

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

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

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

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

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

"II. FINANCIAL ADMINISTRATION"

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

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

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

SECRET

C.11.
6 April 1944

UNITED NATIONS WAR CRIMES COMMISSION

NOTE OF MEETING OF COMMITTEE I AND OTHER MEMBERS OF THE
COMMISSION, ON 5 April, 1944, TO HEAR A STATEMENT BY
LIEUTENANT COLONEL WILLIAM CLARK ON INVESTIGATION OF
WAR CRIMES IN THE FIELD.

In the absence through illness of M. de Baer, Chairman of
Committee I, Sir Cecil Hurst presided.

Colonel Clark, of the United States Army, and a member of the
Judge Advocate's Department in the North African field of operations,
described the manner in which evidence against a German officer
responsible for the killing of a number of Italian civilians (men,
women and children), had been taken, with a view to its use in a
subsequent trial of the officer for a war crime.

General instructions laying down a procedure for such
perpetuation of testimony had been issued by the Chief of the
General Staff in Washington. Colonel Clark had been appointed a
Commissioner, for the purpose of these instructions, by General
Devers, Chief of the General Staff in North Africa. They provided
that the Commissioner should be assisted by two officers with legal
qualifications, one to act as "military counsel" and examine the
witnesses, and the other to protect the interests of the person
against whom evidence was sought. The presence of the latter
during the taking of the evidence was necessary. The evidence
was taken under oath. Evidence from German non-commissioned
officers and men had been taken in Algiers. The Commissioner had
then proceeded to the scene of the execution of the victims, which
was in Italy, and examined local witnesses.

In reply to a question, Colonel Clark said that an attempt to
issue common instructions for the United States and British forces
had failed owing to a technicality; under United States military
law a single Commissioner could administer an oath, whereas under
British military law this required a body of three members.

An exchange of views followed as to the extent to which the
different United Nations were provided with adequate procedure for
perpetuating testimony in a form which would make it admissible at
the trial of war criminals. It appeared that while the position
was not exactly the same for all the United Nations on the Con-
tinent of Europe, all those which were represented had methods which
could be applied, but were hampered by having to operate on foreign
territory.

Summing up the results, Sir Cecil Hurst thought two lines of
advance should be explored. The first would be that of the
conclusion of agreements between the United Kingdom and particular
United Nations' governments operating in London, with a view to
giving the latter any necessary additional powers of action.
Three points arose:-

(a) The desirability and possibility of giving each United Nation power to compel witnesses to attend and give evidence on oath before a competent authority.

(b) Ought the competent authority to have all the powers given to a "juge d'instruction" by the law of the particular United Nation?

(c) The need to ensure the admissibility of the evidence so obtained before the court which tries the case - a matter primarily to be dealt with by the legislation of each United Nation.

The second line of advance to be explored would be that of clarifying and rendering more supple the system of perpetuation of testimony by military commissions or courts of enquiry, e.g. in such matters as the administration of oaths and the limitations on the scope of their activity. This was a matter to be taken up with the Combined Chiefs of General Staff through whatever might prove to be the appropriate channel.

M. Cassin suggested that the agreements made with the United Kingdom should have a reciprocal character, i.e. should give it in the territory of each United Nation the facilities it was granting that nation in its own territory.

It was agreed that Sir Cecil Hurst would endeavour to arrange for a joint meeting of Committees I and III at which representatives of His Majesty's Government would attend, and the question of agreements to increase the facilities for perpetuating testimony would be discussed with them.

SECRET

C.12
21 April 1944

UNITED NATIONS WAR CRIMES COMMISSION

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

PROPOSAL BY THE CHAIRMAN OF COMMITTEE I

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

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

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

It is therefore proposed:

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

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

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

Example:

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

SHORT STATEMENT OF FACTS

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

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

SECRET

C.13.
21 April 1944

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT OF A FAR EASTERN PANEL OR BRANCH
OF THE COMMISSION

Proposal by the Chinese Representative

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

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

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

SECRET

C.14.
25 April 1944.

UNITED NATIONS WAR CRIMES COMMISSION

PROPOSAL BY THE CHAIRMAN OF COMMITTEE I

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

The facts are the following:

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

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

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

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

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

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

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

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

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

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

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

and so on.

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

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

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

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

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

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

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

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

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

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

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

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

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

There are other suggestions which could be usefully discussed.

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

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

3. Some sort of ¹liaison with the supreme command may also be necessary, for the first measures will surely be taken by the military and it is upon those measures that may depend the ultimate success or fiasco of the whole scheme. (Perhaps a United Nations' Adviser on criminal matters to the High Command.) Failing this, some military advice or discussions with the military as to the practical possibility of carrying out any scheme which we may have in view would also be of the greatest value for us.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECRET

C. 15 (1)
9 May 1944.

UNITED NATIONS WAR CRIMES COMMISSION

PROPOSAL BY THE POLISH REPRESENTATIVE FOR
ADDING NEW ITEMS TO THE LIST OF WAR CRIMES

REPORT OF COMMITTEE III
(As amended by the Committee on 8 May 1944.)

Committee III has considered the Polish proposal (Doc. III/3) for adding two new items to the List of War Crimes which was provisionally adopted by the Commission on 2 December, 1943, (Doc.C.1). The first item related to "taking hostages" and the second to the adoption in occupied territory of "procedures aimed at lowering human dignity," many examples of which were quoted from the experience of Poland. The Committee begs to make the following recommendations upon these proposals.

I As regards the first proposal:

The following item should be added to the List of War Crimes:

"Indiscriminate mass arrests for the purpose of terrorising the population, whether described as taking of hostages or not."

II As regards the second proposal:

The following item should be added to the List of War Crimes:

"Acts violating family honour and rights, the lives of individuals, religious convictions and liberty of worship."

The Commission should authorise Committee I to deal with such cases, when submitted to it by the National Offices, in the light of the last paragraph but one of the Preamble of the International Convention concerning the Laws and Customs of War on Land of 18 October, 1907, which reads as follows:

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

SECRET

C.16
4 May, 1944

UNITED NATIONS WAR CRIMES COMMISSION

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

RECOMMENDATION TO BE FORWARDED BY EACH MEMBER OF THE
WAR CRIMES COMMISSION TO HIS OWN GOVERNMENT

Draft prepared by the Chairman of the Commission

At the time when the governments of the United Nations were invited to join in the establishment of the War Crimes Commission, its suggested functions were limited to cases of war crimes committed by the enemy against nationals of the United Nations.

The circumstances of the war have changed considerably since the institution of the Commission. Italy has fallen out of the group of Axis powers, and is now co-operating with the Allies. The enemy policy towards Denmark has changed, and the regime of ruthlessness pursued in other countries is now followed also in Denmark:

These facts are recognised in the Three Power Declaration adopted at Moscow in October, 1943, as to the punishment of war criminals:

The Commission is of opinion that its work should be brought into line with the policy of the Allied Powers as set forth in the Moscow Declaration, and that where evidence is submitted to it of war crimes committed against nationals of the powers mentioned in that Declaration, such cases should not be regarded as lying outside its terms of reference.

The Commission recommends that the Governments of the United Nations should concur in its pursuing its work in future in conformity with the above proposal.

SECRET

C.17(2).
12 May, 1944

UNITED NATIONS WAR CRIMES COMMISSION

MEASURES PROPOSED BY M. DE BAER TO ENSURE
CAPTURE OF WAR CRIMINALS

RECOMMENDATIONS TO THE GOVERNMENTS

Second Draft submitted by Committee II

1. The mere establishment of lists of persons presumably guilty of war crimes, by building up and preparing complete cases and dossiers containing the proof of their guilt, can never suffice completely, - though this was the original basis for our work.
Those Governments in particular, whose territories are completely or almost completely occupied by the enemy lack the machinery, personnel and the necessary information.
Although they may cover a certain number of cases, they can not adequately deal in this way with the mass-criminality now existing in their countries. This first task should, however, be continued, and at the same time other means should be applied.
2. If those who have committed major crimes are not to escape punishment, all persons who have held a responsible position in the occupied countries or in the army or military or police organisations should be available, immediately after the armistice, to be examined upon any crimes which may have been committed in their sector or command.
3. It is particularly necessary that on the conclusion of the armistice the military authorities should put and keep under control all members of the Gestapo.
4. The governments, through their national offices, should compile and have ready lists of all enemy civil and military persons in authority in each occupied district, such as Gauleiter, Governors, Chiefs of the S.S., Gestapo etc., with as complete particulars as possible regarding these persons' identity and some most important crimes committed in the provinces, districts, towns or camps where they are or were in authority. The surrender of these persons from the enemy at the moment of the armistice may be demanded.
5. Analogous measures are recommended as regards other Axis Powers and satellites.

SECRET

C.18
12 May 1944

UNITED NATIONS WAR CRIMES COMMISSION

ARTICLE ON SURRENDER OF WAR CRIMINALS
TO BE INSERTED IN TERMS OF ARMISTICE WITH GERMANY

Draft proposed by Committee II

1. The United Nations may bring to trial before any Tribunal, national or international, all persons accused of crimes connected with, or incidental to, a state of war or hostilities conducted by Germany against any State who is a party to this instrument. This provision shall apply notwithstanding any procedure or prosecution before a Tribunal in Germany or in the territory of any State or political entity acting in alliance or in concert with Germany, irrespective whether such proceedings have ended in a conviction or in an acquittal, provided that if a sentence has been imposed by a national Court of Germany the penalty already undergone shall be taken into account in fixing any sentence which may be imposed;
2. To this effect, "Germany" shall:
 - (a) hand over to the United Nations, within fifteen days subsequent to the time when the demand is made, all persons whose surrender is demanded, either upon the date that this instrument becomes effective or upon any date subsequent thereto;
 - (b) co-operate with the United Nations in all measures necessary to give effect to the obligations recognised in Section 1;
 - (c) co-operate with the United Nations in immediately interning and keeping in custody until such time as the United Nations may otherwise direct all members of the State Police and other similar organisations which may be designated by the United Nations;
3. The right to apprehend the persons referred to in 2 may be exercised:
 - (a) by any central United Nations Agency, military or civil, which may be in control of German territory, or which may be appointed to give effect to the present provisions;
 - (b) by any military or civil authority of any one of the United Nations which may be in control of the whole or part of German territory;

4. Such German authorities as may be allowed by the United Nations to continue or to exercise their functions shall have the duty:
 - (a) to comply immediately with all requests of the said agencies relating to the identification, discovery, apprehension, arrest and delivery of accused persons without regard to their nationality or the law of their country and without any right to examine the case upon its merits. The United Nations Agencies shall be given every facility to supervise the way in which their orders are carried out;
 - (b) to disclose and produce any document exhibit or any other thing the production of which may be considered necessary to ensure the full knowledge of the acts incriminated and the just appreciation of responsibility, to obtain the presence of witnesses and to co-operate in any other way in which such co-operation may be requested;
5. Any German official or person in authority who in any way obstructs the execution of the foregoing provisions or who fails to comply with any direction relating thereto shall be subject to a penalty of imprisonment for a term which shall not exceed twenty years and to payment of a fine or both. The German authorities shall, when requested to do so, provide the United Nations with the names of the officials who are responsible for the execution of the provisions of this instrument;
6. Whoever aids and abets a person whose surrender has been demanded, in evading apprehension, arrest or surrender; Whoever destroys or conceals documentary evidence, impedes or obstructs the calling or the examination of witnesses, or attempts to do so; Whoever incites another to resist in any way the provisions concerning the surrender and the punishment of war criminals; shall be liable to a penalty of imprisonment for a term which shall not exceed twenty years and to payment of a fine or both;
7. Any German official who prosecutes or punishes, or any individual who in any way molests anyone for having reported to the authorities or agencies of the United Nations any evasion of - or resistance to - the foregoing provisions concerning the surrender or punishment of persons accused of crimes specified in Section 1 shall be liable to imprisonment up to twenty years;
8. The Courts of a Member of the United Nations, or any Tribunal instituted by the United Nations shall have jurisdiction to try persons accused of having violated Sections 5, 6 or 7. German Courts shall have no such jurisdiction.

SECRET

C.18
12 May 1944

UNITED NATIONS WAR CRIMES COMMISSION

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 - (c) co-operate with the United Nations in immediately interning and keeping in custody until such time as the United Nations may otherwise direct all members of the State Police and other similar organisations which may be designated by the United Nations;
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SECRET

C.19 (1)
15 May 1944

UNITED NATIONS WAR CRIMES COMMISSION

Report of Dr. Wellington Koo, Chairman of the
Committee on the Establishment of a Far Eastern and Pacific

Sub-Commission

At a meeting held on May 4th, 1944, and attended by the representatives of Australia, China, France, Great Britain, Holland, India, New Zealand, and the United States, the Committee carefully considered the question referred to it of the establishment of a Far Eastern Panel of the Commission to deal with the war crimes committed by the enemy against the United Nations in the war with Japan. The different points involved in the question such as the designation and function of the proposed organ, the scope of its authority, the seat of its establishment, the relation with the Commission in London, the need of close contact between the two bodies, were fully discussed. It was agreed that the branch of the Commission to be established in the Far East should be called "The Far Eastern and Pacific Sub-Commission" of the United Nations War Crimes Commission. The conclusions resulting from the discussion of other points were summarized and unanimously adopted in the following form:-

- "1. That a Far-Eastern and Pacific sub-commission of the Commission be established in Chungking with the function of dealing with war crimes committed by Japan.
- "2. The Sub-Commission may sit at such other place as its work may require.
- "3. Recommendations as to any modification of the principles and rules adopted by the United Nations War Crimes Commission which may be required by special local conditions shall be reported to the Commission for approval.
- "4. Recommendations to the Governments must be made through the War Crimes Commission."

As regards representation on the Sub-Commission, some members stated that as yet their Governments had no cases ready for presentation pending the liberation of their Far Eastern territories from enemy occupation, and some pointed out that the distance separating the different theatres of war in the Far Eastern and Pacific area might make it difficult to present all cases to the Sub-Commission.

The Chinese representative expressed the hope that as many as possible of the Governments directly interested in the Far Eastern and Pacific war would participate in the work of the Sub-Commission in order to obtain the maximum of uniformity in the treatment of Japanese war crimes.

/The question

The question of bringing cases of Japanese war crimes before the War Crimes Commission in London was left open and it was also agreed that the conclusions adopted by the Committee did not preclude the possibility of creating other branches of the Commission.

There was also considered the question of finance for the Sub-Commission, and the Chairman of the Committee was asked to arrange for the Finance Committee, in collaboration with those of the Committee members desiring to attend, to consider it and report to the Commission for its decision. In accordance with this conclusion, I have made the necessary arrangement with the Chairman of the Finance Committee.

SECRET

C.19
15 May 1944

UNITED NATIONS WAR CRIMES COMMISSION

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Committee on the Establishment of a Far Eastern and Pacific
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As regards representation on the Sub-Commission, some members stated that as yet their Governments had no cases ready for presentation pending the liberation of their Far Eastern territories from enemy occupation, and some pointed out that the distance separating the different theatres of war in the Far Eastern and Pacific area might make it difficult to present all cases to the Sub-Commission.

The Chinese representative expressed the hope that as many as possible of the Governments directly interested in the Far Eastern and Pacific war would participate in the work of the Sub-Commission in order to obtain the maximum of uniformity in the treatment of Japanese war crimes.

/The question

The question of bringing cases of Japanese war crimes before the War Crimes Commission in London was left open and it was also agreed that the conclusions adopted by the Committee did not preclude the possibility of creating other branches of the Commission. In respect to these two points, the general opinion seemed to be that it would be best to wait until the Sub-Commission was established and began functioning in order to enable consideration of them in the light of the working experience of the Far Eastern organ.

There was also considered the question of finance for the Sub-Commission, and the Chairman of the Committee was asked to arrange for the Finance Committee, in collaboration with those of the Committee members desiring to attend, to consider it and report to the Commission for its decision. In accordance with this conclusion, I have made the necessary arrangement with the Chairman of the Finance Committee.

SECRET

C.20
16 May, 1944

UNITED NATIONS WAR CRIMES COMMISSION

Scope of the Retributive action of the United Nations.

Resolution proposed by Committee III

The United Nations War Crimes Commission has examined the main allied declarations concerned with the punishment of crimes committed by the enemy, new facts submitted to the Commission and its committees by representatives of various Allied governments and the results of its own work. After this examination, the Commission came to the conclusion that the scope of its work, its methods and principles must be brought into line with the principles expressed in the Allied declarations.

Accordingly the United Nations War Crimes Commission considers it its duty to make suggestions to the United Nations' governments in respect of crimes committed by the enemy and their accomplices in connection with or incidental to the present world war in violation of the criminal laws of the countries invaded or otherwise affected, of the laws and customs of war, of the general principles of criminal law as recognised by civilised nations, or of the laws of humanity and the dictates of the public conscience as provided in the Hague Preamble.

From this general point of view the United Nations War Crimes Commission considers that the following categories of crimes are within the scope of its work :

1. the crimes committed for the purpose of preparing or launching the war, irrespective of the territory where these crimes have been committed;
2. crimes committed in the allied countries and crimes committed against members of the armed forces or civilian citizens of the United Nations abroad, in the air or on the sea, whatever may be the rank of the accused;
3. crimes committed against any person without regard to nationality, stateless persons included, because of race, nationality, religious or political belief, irrespective of where they have been committed;
4. crimes that may be committed in order to prevent the restoration of peace.

UNITED NATIONS ARCHIVES

SECRET

UNITED NATIONS WAR CRIMES COMMISSION

C-21
18 May 1944

MEASURES TO ENSURE CAPTURE OF WAR CRIMINALS

RECOMMENDATIONS TO THE GOVERNMENTS

ADOPTED BY THE WAR CRIMES COMMISSION ON 16 MAY, 1944

1. The mere establishment of lists of persons presumably guilty of war crimes, by building up and preparing complete cases and dossiers containing the proof of their guilt, can never suffice completely - though this was the original basis for the work of the Commission.
Those Governments in particular, whose territories are completely or almost completely occupied by the enemy lack the machinery, personnel and the necessary information.
Although they may cover a certain number of cases, they can not adequately deal in this way with the mass-criminality now existing in their countries. This first task should, however, be continued, and at the same time other means should be applied.
If those who have committed major crimes are not to escape punishment, all persons who have held a responsible position in the occupied countries or in the army or military or police organisations should be available, immediately after the armistice, to be examined upon any crimes which may have been committed in their sector or command.
2. For this purpose the governments, through their national offices, should compile and communicate to the Commission when they think it expedient, lists of all enemy civil and military persons in authority in each occupied district, including Gauleiters, Governors, Chiefs of the S.S., Chiefs of the Gestapo etc., with as complete particulars as possible regarding these persons' identity and some of the more important crimes committed in the provinces, districts, towns or camps where they are or were in authority. The surrender of these persons by the enemy at the moment of the armistice may be demanded.
3. It is particularly necessary that on the conclusion of the armistice the military authorities should put and keep under control all persons whom they find to have been members of the S.S. or the Gestapo.
4. Analogous measures are recommended as regards other Axis Powers and satellites.

SECRET

C.22.
20 May, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT OF A FAR EASTERN AND PACIFIC SUB-COMMISSION

REPORT OF THE FINANCE COMMITTEE

The report of the Committee on the establishment of a Far Eastern and Pacific Sub-Commission which was adopted by the Commission on May 16, provided that the Finance Committee, in collaboration with those of the former committee's members who desired to attend, should consider how this Sub-Commission should be financed.

The Finance Committee, consisting of Dr. de Moor (Chairman), Dr. Eder and Mr. Colban, accordingly held a meeting which was also attended by Dr. Wellington Koo, Sir Cecil Hurst and Mr. Pell. Two alternatives were considered - one that the expenses of the Sub-Commission should be met in the same manner and out of the same budget as those of the Commission, and the other that only Governments directly affected by Japanese war crimes should be required to contribute to them. It was unanimously decided to recommend the first method.⁽¹⁾ Its adoption would be a practical demonstration of the fact that it is the common policy of all the nations represented on the Commission to punish all war crimes, whether committed in the Western or in the Eastern hemisphere. Hesitation might have been felt if the result would be to impose an undue burden on the occupied countries of Europe. But this is not to be anticipated. It can be seen from the appended Table that, under the method adopted by the Commission for dividing its expenses among its members, no member can be liable for more than £4.00 per annum until the annual budget exceeds £6,000, and that after this figure has been attained the contributions due from occupied countries increase so slowly that the Commission's budget would have to reach a high figure before they would become onerous. The expenses to be borne are only those involved in the actual operation of the Sub-Commission itself, for the expenses of representatives sitting on it or attending it, and the cost of preparing and transmitting cases, will fall on the Governments concerned as is the case for the Commission. Dr. Wellington Koo, has moreover, been so good as to say that his Government will endeavour to provide the Sub-Commission with suitable premises free of charge, as the United Kingdom Government is doing for the Commission

(1) Sir David Meek, who was unable to attend the meeting, asked the Secretary-General to state that India approved this method.

APPENDIX

Variation of the contributions of member Governments according to the size of the Commission's budget

	£	£	£	£
Amount of budget	6,000	10,000	30,000	50,000
Excess above basic contributions	none	4,000	24,000	44,000
Size of Unit	none	2.63	15.82	29

	No. of Units	<u>Contributions payable⁽¹⁾</u>			
1. Australia	30	400	478.9	874.6	1,270
2. Belgium	20	"	452.6	716.4	980
3. China	100	"	663.0	1982.0	3,300
4. Czechoslovakia	20	"	452.6	716.4	980
5. French Committee of National Liberation	80	"	610.4	1665.6	2,720
6. Greece	10	"	426.3	558.2	690
7. India	80	"	610.4	1665.6	2,720
8. Luxembourg	1	"	402.63	415.8	429
9. Netherlands	30	"	478.9	874.6	1,270
10. New Zealand	6	"	415.78	494.9	574
11. Norway	6	"	415.78	494.9	574
12. Poland	20	"	452.6	716.4	980
13. United Kingdom	550	"	1846.5	9101.0	16,350
14. U.S.A.	550	"	1846.5	9101.0	16,350
15. Yugoslavia	14	"	436.82	621.5	806
	<u>1,517</u>				

(1) Calculated to two decimal points.

SECRET

C.23(1)
1 June, 1944

UNITED NATIONS WAR CRIMES COMMISSION

SCOPE OF THE RETRIBUTIVE ACTION OF THE UNITED NATIONS

LETTER FROM THE CHAIRMAN OF THE COMMISSION TO THE
RT. HON. ANTHONY EDEN, HIS BRITANNIC MAJESTY'S
PRINCIPAL SECRETARY OF STATE FOR FOREIGN
AFFAIRS IN THE UNITED KINGDOM

31st May 1944

Sir,

At the time when agreement was reached between the Governments of the United Nations for the institution of this Commission, the paramount consideration was the need to establish machinery for bringing to justice members of the enemy forces and officials in the enemy administrations, who had been guilty of violations of the laws and customs of war against members of the Allied forces or against inhabitants of Allied territory temporarily occupied by the enemy.

I have been asked by members of the Commission to inform you that in their view it would now be convenient to know whether it is the desire of the Governments of the United Nations that the activities of the Commission should be restricted to the investigation of war crimes "stricto sensu", of which the victims have been allied individuals.

Technically, a distinction can well be drawn between atrocities committed by the enemy which are violations of the laws and customs of war and those which are not, but it will probably be the general view that the need to exact retribution is as great in the one case as in the other.

A category of enemy atrocities which has deeply affected the public mind, but which does not fall strictly within the definition of war crimes, is undoubtedly the atrocities which have been committed on racial, political or religious grounds in enemy territory.

The publicity which was given to the appointment of the Commission for the Investigation of War Crimes led many people to assume that it would be part of the duties of the Commission to investigate atrocities of this character committed by the enemy in enemy territory as well as in occupied territory. I have been approached on occasions by bodies and individuals desirous of knowing whether they could help the Commission in this part of its work. If some other machinery for dealing with the above category of cases is to be set up, the Commission feels that a public announcement to this effect would be helpful, in order that the public at large may understand that effective steps will be taken to ensure that the authors of these atrocities are brought to justice.

/The Governments

The Governments of the United Nations may already have in view some plan for bringing the authors of these crimes to justice, but if that is not the case, it is right that you should know that the Commission is prepared to take up this work if by so doing it can assist the Governments of the United Nations.

In conclusion, I would say that it is the hope of the Commission that you will take the initiative in promoting any further discussion between the Governments of the United Nations which the suggestions made in this letter may be thought to require.

I am,

etc.

(Sgd.) Cecil J.B. HURST

Chairman.

SECRET

C.23
30 May 1944

UNITED NATIONS WAR CRIMES COMMISSION

SCOPE OF THE RETRIBUTIVE ACTION OF THE UNITED NATIONS

Chairman's Draft of a Letter to Mr. Eden

Sir,

At the time when agreement was reached between the Governments of the United Nations for the institution of this Commission, the paramount consideration was the need to establish machinery for bringing to justice members of the enemy forces and officials in the enemy administrations, who had been guilty of violations of the laws and customs of war against members of the Allied forces or against inhabitants of Allied territory temporarily occupied by the enemy.

I have been asked by members of the Commission to inform you that in their view it would now be convenient to know whether it is the desire of the Governments of the United Nations that the activities of the Commission should be restricted to the investigation of war crimes "stricto sensu", of which the victims have been allied individuals.

Technically, a distinction can well be drawn between atrocities committed by the enemy which are violations of the laws and customs of war and those which are not, but it will probably be the general view that the need to exact retribution is as great in the one case as in the other.

The category of enemy atrocities which has most affected the public mind, but which does not fall strictly within the definition of war crimes, is undoubtedly the atrocities which have been committed on racial, political or religious grounds in enemy territory.

The Governments of the United Nations may already have in view some plan for bringing the authors of these crimes to justice, but if that is not the case, it would probably be convenient that the work of investigating these crimes and of preparing lists of the responsible persons should be undertaken by the Commission. It is therefore right that you should know that the Commission is prepared to take up this task if by so doing it can assist the Governments of the United Nations.

The publicity which was given to the appointment of the Commission for the Investigation of War Crimes led many people to assume that it would be part of the duties of the Commission to investigate atrocities of this character committed by the enemy in enemy territory as well as in occupied territory. I have been approached on occasions by bodies and individuals desirous of knowing whether they could help the Commission in this part of its work. If some other machinery for dealing with the above category of cases is to be set up, the Commission feels that a public announcement to this effect would be helpful, in order that the public at large may understand that effective steps will be taken to ensure that the authors of these atrocities are brought to justice, and that no responsibility in the matter attaches to the Commission.

/In,

In conclusion, I would say that it is the hope of the Commission that you will take the initiative in promoting any further discussion between the Governments of the United Nations which the suggestions made in this letter may be thought to require.

I am,
etc.

SECRET

C.24
30 May, 1944

UNITED NATIONS WAR CRIMES COMMISSION
ESTABLISHMENT IN ENEMY TERRITORY OF WAR CRIMES OFFICES

Draft Report by the Commission

submitted by Committee II

The War Crimes Commission considers that it would be desirable to have an agency to deal with war crimes attached to or established as part of the Commander-in-Chief's Headquarters in each enemy territory. The following recommendations are made regarding this agency, subject to their being found to be practicable by the United Nations Military Authorities.

1. Functions and Powers

The agency is to render the following services to the United Nations which utilise it :

- (i) To identify war criminals named or described by United Nations and ascertain their whereabouts in the enemy territory.
- (ii) To place and keep in custody persons accused of war crimes.
- (iii) To ensure such persons being handed over for trial by the competent courts.
- (iv) To provide a substitute for the normal method of obtaining evidence from abroad by "Commissions rogatoires" (letters of request) since this method cannot successfully be applied to enemy territory. With this object the agency is to be organised for hearing and examining witnesses and experts in the enemy territory, and for making surveys on the spot, under conditions rendering the resulting evidence admissible in the court concerned.
- (v) To issue search warrants.
- (vi) To collect information which might lead to the discovery of other crimes or further evidence.

2. Organisation, Method of Operation, Relationship to the War Crimes Commission

The agency should consist of say 20 lawyers qualified to perform tasks analogous to those of juges d'instruction (examining magistrates), to be assisted by a staff of clerks, and adequate detective or police forces, and have at its disposal the outfit and staff of a modern criminological laboratory. The assistance of the local police and of the occupying forces would also be necessary.

The agency should be an organ of the War Crimes Commission attached to or forming part of Army Headquarters, and operating as part of and through the occupying forces.

3. Method of Establishment.

The Commission feels that it is desirable that the agency should be created by an Order of the Commander-in-Chief or a clause in the armistice terms.

SECRET

C.25
2 June, 1944

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT OF A FAR EASTERN AND PACIFIC SUB-COMMISSION

Draft Letter to the Governments submitted by
the Committee on the Establishment of a Far
Eastern and Pacific Sub-Commission.

Sir,

It has been contemplated from the outset that the execution of the United Nations' policy of punishing war crimes might necessitate the creation, in addition to the main Commission in London, of regional branches or panels for the investigation of such crimes. The United Nations War Crimes Commission has now decided to establish such a branch at Chungking for the investigation of Japanese war crimes under the name of the Far Eastern and Pacific Sub-Commission.

I have been requested by the Commission to bring this decision to the notice of the member Governments which are directly affected by the war with Japan and to give the following further information regarding the Sub-Commission.

2. The United Nations War Crimes Commission has agreed that :
- (i) The Sub-Commission may sit at places other than Chungking as its work may require.
 - (ii) Recommendations for modifications of the principles and rules adopted by the main Commission which may be required by local circumstances shall be reported to the main Commission for approval.
 - (iii) Recommendations to the Governments must be made through the Commission.
 - (iv) The expenses of the Sub-Commission shall be met in the same manner as those of the Commission, that is to say, that each Government will pay the expenses of its representatives and the cost of preparing and transmitting cases to it, and the expenses incurred in the operation of the Sub-Commission itself will be met out of the budget of the main Commission. His Excellency the Chinese Ambassador in London, Dr. Wellington Koo, has been so good as to promise that his Government will provide the Sub-Commission with premises in China as is done in London for the main Commission by His Majesty's Government in the United Kingdom.

The question of bringing Japanese war crimes before the main Commission was left open, but some members envisaged the possibility of their Governments bringing certain cases before the Commission. It was also the view of the Commission that the establishment of the Sub-Commission does not preclude the creation of other branches of the Commission.

3. The first task of the Far Eastern and Pacific Sub-Commission will be to study the numerous Japanese war crimes which some Governments are understood to desire to bring before it - cases evidence of which is in their possession and ready for examination. While some other interested Governments may not at present be in a position yet to transmit cases to the Sub-Commission, it is the hope both of the Chinese Government as expressed by its representative and of the War Crimes Commission as a whole, that as many of those Governments as possible will appoint representatives on the Sub-Commission, and in this manner both demonstrate the common interest of the United Nations in the punishment of war crimes and co-operate in ensuring that all war crimes committed by the same enemy shall be dealt with in accordance with the same principles.

4. If, as is hoped, your Government intends to be represented on the Sub-Commission, the decision and eventually the name of the first representative should be notified to the Chinese Government and to the Secretary-General of the Commission.

5. The Commission has invited the Chinese Government to be so good as to arrange for the organizing meeting of the Sub-Commission at an appropriate time.

6. I beg to request that you will be so good as to bring the foregoing to the attention of your Government.

I am,

Sir,

Your obedient Servant,

Chairman.

SECRET

C.26
5 June, 1944

UNITED NATIONS WAR CRIMES COMMISSION

FINANCIAL AND ADMINISTRATIVE REGULATIONS.

Report by the Finance Committee

Paragraph 3 of the "Resolution on Financial Administration" which was adopted by the Commission on 21 March, 1944, provides:

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

The draft regulations which are submitted herewith to the Commission do not require any commentary. The Committee will be glad to give explanations on any point that may be raised. Attention may be called to the provisions regarding the amount of working capital to be accumulated and the purposes for which it may be used, and (Article 4) to the transitional provisions contained in Articles 12 and 13.

Draft Regulations

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, and if possible within thirty days of receipt of the notification. 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.

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 a 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. Any amount repaid shall be divided among the governments which are then members of the Commission in the proportion in which they have contributed to the creation of the Fund.

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

1. 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.

2. In case of doubt as to whether a particular expenditure is provided for in the budget, the Secretary General may consult the Finance Committee whose decision, if unanimous, shall be final.

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 St., 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 His Britannic Majesty's Accountant and Auditor General, if H.M. Government in the United Kingdom consents. 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.

Staff

Article 11

1. Engagements shall be made by the Secretary General, with the approval of the Commission, and shall be in writing and signed by him or a person authorised to sign on his behalf. They shall be terminable by either the Secretary General or the employee at one month's or one week's notice according as the salary is payable by the week or by the month.
2. All engagements are subject to the terms of these Regulations.
3. Members of the staff must observe secrecy with regard to the proceedings of the Commission. The Commission may, in its discretion, treat a breach of this obligation as justifying immediate dismissal, with one week's or one month's salary, as the case may be, in lieu of notice.
4. The hours of attendance at the office are fixed by the Secretary General. Overtime, if allowable, will be paid only after 44 hours attendance during the current week.
5. Leave of absence may be granted by the Secretary General, subject to the requirements of the Commission's work. A member of the staff is entitled to 18 working days' leave with pay in every 12 months, in addition to any days on which the office is closed. Before granting leave with pay on the ground of ill-health, the Secretary General may require production of a doctor's certificate. After 14 consecutive days' leave on the ground of ill-health has been granted, and in cases of repeated illness of a member of the staff, the Secretary General shall refer the case to the Finance Committee which shall decide whether the services of the person in question shall be retained.

Transitional Provisions

Article 12

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 13

1. As soon as possible after the adoption of these Regulations, and in anticipation of the entry into force of the Resolution, those member governments which are willing to do so 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 14

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

Amendment of the Regulations

Article 15

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 16

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

C.27
8 June, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

ARTICLE TO BE INSERTED IN ARMISTICE TERMS WITH
GERMANY FOR SURRENDER OF PERSONS TO BE PLACED
ON TRIAL BY THE UNITED NATIONS

Chairman's Redraft of text contained in Document C.18.

1. The United Nations may, if they so decide, bring to trial before any Tribunal, national or international, any persons accused of crimes connected with, or incidental to, hostilities conducted by Germany against any one or more of the United Nations. This provision shall apply notwithstanding any procedure or prosecution before a court in Germany or in the territory of any State or political entity acting in alliance or in concert with Germany, irrespective of whether such proceedings have ended in a conviction or in an acquittal, provided that if a sentence has been imposed the penalty already undergone shall be taken into account in fixing any sentence which may be imposed;
2. To this effect, "Germany" shall :
 - (a) take such steps as may be practicable to hand over forthwith to the authorities of the United Nations any persons whose surrender is demanded either at the time when this instrument becomes effective or at some subsequent date;
 - (b) give such assistance as may be required to the authorities of the United Nations in all measures necessary to give effect to the obligations recognised in Section 1;
 - (c) give such assistance as may be required to the authorities of the United Nations in internment forthwith and keeping in custody until such time as the authorities of the United Nations may otherwise direct all members of the State Police (Gestapo) and of the SS;
3. The right to apprehend the persons referred to in Section 2 may be exercised by any Agency, military or civil, acting on behalf of some or all of the United Nations which may be in control of German territory, or which may be appointed to give effect to the present provisions; or by any military or civil authority of any one of the United Nations which may be in control of German territory;
4. Such German authorities as may be allowed by the United Nations to continue or to exercise their functions shall take all such steps as may be practicable :
 - (a) to comply forthwith with all requests of the said agencies and authorities relating to the identification, discovery, apprehension, arrest and delivery of accused persons without regard to their nationality and without any right to examine the case upon its merits. Such agencies and authorities shall be given every facility to supervise the way in which their orders are carried out;

- (b) to disclose and produce any records or documents or any other things the production of which may be considered necessary to ensure the full knowledge of the acts with which the accused are charged and the just appreciation of responsibility, to obtain the presence of witnesses and to co-operate in any other way in which such co-operation may be required;
5. Germany will surrender to the authorities of the United Nations for trial before such tribunal as they may appoint for the purpose :
- (a) any person accused of obstructing the execution of the foregoing provisions or failing to comply with any direction relating thereto. For this purpose the German authorities shall, when requested to do so, provide the United Nations with the names of the officials who are responsible for the execution of the provisions of this instrument;
 - (b) any person accused of aiding and abetting a person whose surrender has been demanded, in evading apprehension, arrest or surrender;
 - (c) any person accused of destroying or concealing documentary evidence, impeding or obstructing the calling or the examination of witnesses, or of attempting to do so;
 - (d) any persons inciting another to resist in any way the provisions concerning the surrender and the punishment of criminals covered by these provisions;
 - (e) any German official accused of prosecuting or punishing or any individual accused of molesting anyone in any way for having reported to the authorities or agencies of the United Nations any evasion of - or resistance to - the foregoing provisions concerning the surrender or punishment of persons accused of crimes covered by these provisions;
6. The offences enumerated in Section 5 shall not be subject to the jurisdiction of German courts.

SECRET

C.28
9 June 1944

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT IN ENEMY TERRITORY OF A WAR CRIMES OFFICE

Note by the Chairman of the Commission

It will be remembered that when Committee No. II was discussing the proposal to set up in enemy territory an agency to assist the work of the Commission (Doc. C.24), it was agreed that no such step could be carried into effect without the concurrence of the military authorities. It was therefore proposed that the subject should be discussed with S.H.A.E.F.

The question has been discussed at an informal and unofficial meeting with some members of the Commander-in-Chief's staff, and it seems probable that the military authorities will agree to the appointment of the proposed agency or group.

The text set out below represents the conclusions reached at the meeting. The text could serve as the basis for a recommendation by the Commission and for a "directive" by the Combined Chiefs of Staff.

When the Allied forces are established in enemy territory, it will be of great assistance to the War Crimes Commission if a group or agency could be attached to, or form part of, the appropriate section of the Supreme Allied Command in order to help the Commission in the task with which it has been entrusted. The institution of such a group or agency would also relieve other branches of the army of many duties connected with the apprehension and collecting of evidence against men who are to be put on trial.

Proceedings against war criminals in territory restored to the control of Allied Governments will in general necessitate some action which must be taken in enemy territory, and must therefore be taken under the general control and direction of the Supreme Allied Command.

Men who are wanted for trial for acts in connection with the war must be identified, and their whereabouts ascertained; they must be arrested, kept in custody and handed over for trial by the competent courts. Evidence must be obtained in a form which will enable it to be used at the trial. Information must be collected as to cases of war crimes of which the perpetrators have not yet been identified.

The above work can only be done by men who are acquainted with the language and the legal system of the country in which the trial will take place.

/The number

The number of men who will be required for this work, their qualifications, and the powers which they will be authorized to exercise are details which can be considered at a later stage. They could be specified in the Order of the Commander-in-Chief which would be issued for the creation of the group or agency proposed above.

Subject to the general control of the Commander-in-Chief which must be safeguarded, the proposed group or agency should be in touch with the War Crimes Commission.

SECRET

C.29

14 June 1944

UNITED NATIONS WAR CRIMES COMMISSION

DECLARATIONS BY UNITED NATIONS GOVERNMENTS AND
LEADERS ON THE SUBJECT OF WAR CRIMES

COLLECTION MADE BY DR EGER
WITH THE HELP OF THE SECRETARY GENERAL

INTRODUCTORY AND EXPLANATORY NOTE

On February 28th Committee III entrusted me with the preparation of a collection of the official Allied declarations on war crimes. In the opinion of the members of the Committee the purpose of this work should be to provide a basis for discussion and recommendations as to what crimes - in view of their own declarations - are to be punished by the Allied retributive and repressive action.

In view of the fact that so far there is in this respect no clear precise and common declaration of the Allied Governments and in view of the fact that some of the numerous Allied declarations are not in harmony, the initiative of Committee III was fully justified. Even from the point of view of the practical work of the Commission and its Committees such a clarification is necessary.

It was impossible, of course, to collect all Allied declarations concerning the punishment of the crimes committed by the Axis, their leaders, armed forces, officials and nationals and their accomplices. This would require a whole book. Thus, I thought that for the purpose of my task a collection of the most important general declarations would be sufficient.

After further consideration I have arranged the collection in chronological order, instead of the arrangement in which it was submitted to Committee III.

DECLARATION ISSUED BY THE POLISH GOVERNMENT AND
THE PROVISIONAL CZECHOSLOVAK GOVERNMENT, NOVEMBER, 1940

"... The hypocrisy of these assertions is most clearly revealed in the lie of German endeavours aiming at the destruction of our two ancient nations The violence and cruelty to which our two nations are being subjected, the expulsions of the native population from large areas of its secular homelands, the banishing of hundreds of thousands of men and women to the interior of Germany as forced labour, mass executions and deportations to concentration camps, the plundering of public and private properties, the extermination of the intellectual class and of all manifestation of the cultural life, the spoliation of the treasures of science and art and the persecution of all religious beliefs - are unparalleled in all human history."

(Times, Nov. 12, 1940)

P.T.O.

STATEMENT BY THE POLISH GOVERNMENT, DECEMBER 1940

"All the measures applied by the German Government against Poland and the Poles, from the first day of the war down to the present time, constitute one long chain of physical violence towards the destruction of the Polish nation.....Certain further regulations issued by the former Government serve the same purpose. One of these, defining those regarded as Poles in the areas incorporated into the Reich, recognizes as non-Polish all the citizens of the Polish Republic inhabiting Silesia, Pomorze, and Gdansk, even though, as the commentary adds, they are of Polish origin. The German authorities are supplying certificates of non-Polish nationality.

"This regulation brutally violates international law, and in particular the Hague Convention of 1907, on the rights and usages of land warfare, which was signed by the German Reich. This regulation is and remains a lawless act, void of all validity in international significance.

"Another regulation, affecting the so-called 'General Government' from January 1st, 1941, imposes on all persons engaged in any form of public service not only the obligation to fulfil their public duties faithfully and conscientiously in obedience to the German administration, but the obligation not to regard themselves bound by any oath of loyalty or service oath or obligation to the Polish State or its organs, or to any political organisation. This regulation also brutally tramples on the rights of the people under international law, and in particular on the principles that an occupying Power is free to carry on only de facto government, and that it must not compel the population of the occupied country to undertake activities directed against their own State. The German Government forget that obligations illegally enforced do not constitute real moral obligations. Violation of Conscience which is even worse than physical terror, is incapable of completely changing the attitude of the solidly massed Polish community."

(Times, 20 Dec. 1940)

DECLARATION BY PRESIDENT ROOSEVELT, 25th OCTOBER 1941

"The practice of executing scores of innocent hostages in reprisal for isolated attacks on Germans in countries temporarily under the Nazi heel revolts a world already injured to suffering and brutality. Civilized peoples long ago adopted the basic principle that no man should be punished for the deed of another. Unable to apprehend the persons involved in these attacks the Nazis characteristically slaughter fifty or a hundred innocent persons. Those who would 'collaborate'...with Hitler or try to appease him cannot ignore this ghastly warning.

"The Nazis might have learned from the last war the impossibility of breaking men's spirit by terrorism. Instead they develop their lebensraum and 'new order', by the display of frightfulness which even they have never approached before. These are the acts of desperate men who know in their hearts that they cannot win. Frightfulness can never bring peace to Europe. It only sows the seeds of hatred which will one day bring fearful retribution."

(Sunday Times, 26 October, 1941)

DECLARATION BY MR. CHURCHILL, 25 DECEMBER, 1941
(Extract)

"His Majesty's Government associate themselves fully with the sentiments of horror and condemnation expressed by the President of the United States upon the Nazi butcheries in France. These cold-blooded executions of innocent people will only recoil upon the savages who order and execute them.

"The butcheries in France are an example of what Hitler's Nazis are doing in many other countries under their yoke. The atrocities in Poland, in Yugoslavia, in Norway, in Holland, in Belgium, and above all behind the German fronts in Russia, surpass anything that has been known since the darkest and most bestial ages of mankind.

"They are but a foretaste of what Hitler would inflict upon the British and American peoples if only he could get the power.

"Retribution for these crimes must henceforward take its place among the major purposes of the war."

(Sunday Times, 26 Oct., 1941)

NOTE SENT BY M. MOLOTOV ON NOVEMBER 27, 1941,
TO ALL GOVERNMENTS WITH WHICH THE U.S.S.R.
HAS DIPLOMATIC RELATIONS (Extract).

"On the instructions of the Government of the Union of Soviet Socialist Republics, I wish to bring to your notice the following:

"The Soviet Government is in possession of many facts about the systematic brutalities and atrocities inflicted by the German Government on Red Army men and commanders who are prisoners of war.

"There have been many recent instances of atrocities which have taken on a specially glaring character, thus once again exposing the German military authorities and the German Government as a gang of cut-throats who ignore all principles of international law and human morality.

"The Soviet Military Command has proof of numerous facts showing that when many Red Army men are taken prisoner, the majority of them being wounded, they are subjected by the German Military Command and military units to brutal torture, punishments and murder.".....

.... "The German Government has flagrantly violated the demands of the Hague Convention which orders that belligerent countries shall give prisoners of war the same rations as are given to their own armies. (Article 7 in the supplement to the 4th Hague Convention, 1907). In consequence of the serious shortage of man-power in the German Army, the Nazis are openly infringing the Hague Convention of 1907, signed by Germany, in their attitude to prisoners of war.

"In their criminal, systematic and deliberate violation of international law, the German militarists and the German Government have gone so far as to force Red Army men, under penalty of clubbing or being shot on the spot, to haul transports and carts, carrying ammunition and other materials to the front, to take ammunition to front-line positions, and so on.

"All this is in direct violation and contravention of the Hague Convention concerning the use of prisoners for work in any way connected with army operations.

"All these facts testify to the existence of the bestial and bloody conditions which reign in the German camps for Soviet prisoners of war, and to the inhuman cruelties of the Hitlerite authorities and the unbearable sufferings which Red Army men and commanders have to experience when they are taken prisoner by the Hitlerite bandits.

"All these facts are an outrageous violation by the German Government of the elementary principles and regulations of international law and of the International Agreement signed by representatives of Germany itself.

"In bringing these horrible facts to the notice of all countries with which the Soviet Union has diplomatic relations, the Soviet Government indignantly protests before the whole world against the barbaric violation by the German Government of the elementary rules of international law.

"The Soviet Government indignantly protests against the brutal attitude of the German authorities towards Red Army prisoners, an attitude which violates the most elementary rules of human morality. It lays all the responsibility for these inhuman actions of the German military and civil authorities on the criminal Hitlerite Government..."

(The Molotov Notes on German Atrocities,
issued on behalf of the U.S.S.R. Embassy
by H.M. Stationery Office, 1942,
pp. 16-20)

NOTE SENT BY V.M. MOLOTOV on January 6th, 1942,
TO ALL GOVERNMENTS WITH WHICH THE U.S.S.R. HAS
DIPLOMATIC RELATIONS (Extract).

..."On the instructions of the Government of the U.S.S.R., I have the honour to bring to your notice the following:

"Units of the Red Army, in the course of their continued successful counter-offensive, have liberated a number of towns and rural localities, which temporarily have been in the hands of the German invaders. This liberation has revealed, and daily continues to reveal, an unprecedented picture of universal robbery, devastation, abominable violence, outrages and massacres perpetrated by the German Fascist invaders against the peaceful population during their offensive, occupation and retreat.

"Abundant documentary material in the possession of the Soviet Government testifies to the fact that the robbing and ruin of the population has been accompanied by widespread bestial outrages and massacres. It has taken place in all districts which have fallen under the heel of the German invaders.

"Irrefutable facts prove that the regime of plunder and bloody terror against the non-combatant population of occupied towns and villages constituted not merely the excesses of individual German officers and soldiers, but a definite system previously planned and encouraged by the German Government and the German High Command, which deliberately foster the most brutal instincts among soldiers and officers in their army....."

DECLARATION BY MR. CHURCHILL, 25 DECEMBER, 1941
(Extract)

"His Majesty's Government associate themselves fully with the sentiments of horror and condemnation expressed by the President of the United States upon the Nazi butcheries in France. These cold-blooded executions of innocent people will only recoil upon the savages who order and execute them.

"The butcheries in France are an example of what Hitler's Nazis are doing in many other countries under their yoke. The atrocities in Poland, in Yugoslavia, in Norway, in Holland, in Belgium, and above all behind the German fronts in Russia, surpass anything that has been known since the darkest and most bestial ages of mankind.

"They are but a foretaste of what Hitler would inflict upon the British and American peoples if only he could get the power.

"Retribution for these crimes must henceforward take its place among the major purposes of the war."

(Sunday Times, 26 Oct., 1941)

NOTE SENT BY N. MOLOTOV ON NOVEMBER 27, 1941,
TO ALL GOVERNMENTS WITH WHICH THE U.S.S.R.
HAS DIPLOMATIC RELATIONS (Extract).

"On the instructions of the Government of the Union of Soviet Socialist Republics, I wish to bring to your notice the following:

"The Soviet Government is in possession of many facts about the systematic brutalities and atrocities inflicted by the German Government on Red Army men and commanders who are prisoners of war.

"There have been many recent instances of atrocities which have taken on a specially glaring character, thus once again exposing the German military authorities and the German Government as a gang of cut-throats who ignore all principles of international law and human morality.

"The Soviet Military Command has proof of numerous facts showing that when many Red Army men are taken prisoner, the majority of them being wounded, they are subjected by the German Military Command and military units to brutal torture, punishments and murder.".....

.... "The German Government has flagrantly violated the demands of the Hague Convention which orders that belligerent countries shall give prisoners of war the same rations as are given to their own armies. (Article 7 in the supplement to the 4th Hague Convention, 1907). In consequence of the serious shortage of man-power in the German Army, the Nazis are openly infringing the Hague Convention of 1907, signed by Germany, in their attitude to prisoners of war.

"In their criminal, systematic and deliberate violation of international law, the German militarists and the German Government have gone so far as to force Red Army men, under penalty of clubbing or being shot on the spot, to haul transports and carts, carrying ammunition and other materials to the front to take ammunition to front-line positions, and so on.

"All this is in direct violation and contravention of the Hague Convention concerning the use of prisoners for work in any way connected with army operations.

"All these facts testify to the existence of the bestial and bloody conditions which reign in the German camps for Soviet prisoners of war, and to the inhuman cruelties of the Hitlerite authorities and the unbearable sufferings which Red Army men and commanders have to experience when they are taken prisoner by the Hitlerite bandits.

"All these facts are an outrageous violation by the German Government of the elementary principles and regulations of international law and of the International Agreement signed by representatives of Germany itself.

"In bringing these horrible facts to the notice of all countries with which the Soviet Union has diplomatic relations, the Soviet Government indignantly protests before the whole world against the barbaric violation by the German Government of the elementary rules of international law.

"The Soviet Government indignantly protests against the brutal attitude of the German authorities towards Red Army prisoners, an attitude which violates the most elementary rules of human morality. It lays all the responsibility for these inhuman actions of the German military and civil authorities on the criminal Hitlerite Government..."

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..."On the instructions of the Government of the U.S.S.R., I have the honour to bring to your notice the following:

"Units of the Red Army, in the course of their continued successful counter-offensive, have liberated a number of towns and rural localities, which temporarily have been in the hands of the German invaders. This liberation has revealed, and daily continues to reveal, an unprecedented picture of universal robbery, devastation, abominable violence, outrages and massacres perpetrated by the German Fascist invaders against the peaceful population during their offensive, occupation and retreat.

"Abundant documentary material in the possession of the Soviet Government testifies to the fact that the robbing and ruin of the population has been accompanied by widespread bestial outrages and massacres. It has taken place in all districts which have fallen under the heel of the German invaders.

"Irrefutable facts prove that the regime of plunder and bloody terror against the non-combatant population of occupied towns and villages constitutes not merely the excesses of individual German officers and soldiers, but a definite system previously planned and encouraged by the German Government and the German High Command, which deliberately foster the most brutal instincts among soldiers and officers in their army.....

....."The Soviet Government and its organs are conducting detailed registration of all these evil crimes of the Hitlerite army. This is demanded by the angered Soviet people who call for vengeance.

"The Soviet Government considers it its duty to bring to the notice of the whole of civilised humanity, of all honest people throughout the world, facts which are characteristic of the monstrous crimes committed by the Hitlerite army against the peaceful people in the territories of the Soviet Union seized by them.

"Wherever the German invaders have passed over Soviet territory they have brought with them destruction and ruin to our towns and villages. Dozens of towns, thousands of villages in the temporarily occupied districts of the U.S.S.R. have been devastated by them and then razed to the ground.

....."The Soviet people will never forgive the atrocities, rape, destruction and mockery which the bestial bands of German invaders have committed and are committing against the peaceful population of our country. They will never forget, nor will they ever forgive, these crimes.

"In reporting all these atrocities committed by the German invaders to all Governments with which the U.S.S.R. has diplomatic agreements, the Soviet Government declares that it lays all the responsibility for these inhuman and rapacious acts committed by the German troops on the criminal Hitlerite Government of Germany.

"The Government of the U.S.S.R. at the same time declares with unshakable confidence that the liberation struggle of the Soviet Union is a struggle for the rights and liberties not only of the peoples of the Soviet Union, but for the rights and liberties of all freedom-loving peoples of the world, and that this war can finish only with the complete destruction of the Hitlerite troops and the complete victory over Hitlerite tyranny."

(Ibidem, pp. 2-16).

DECLARATION OF THE GOVERNMENTS OF THE NINE OCCUPIED
EUROPEAN STATES SIGNED AT ST JAMES'S PALACE ON
13th JANUARY, 1942.

"The undersigned, representing the Government of Belgium, the Government of Czechoslovakia, the Free French National Committee, the Government of Greece, the Government of Luxemburg, the Government of the Netherlands, the Government of Norway, the Government of Poland and the Government of Yugoslavia:

"Whereas Germany, since the beginning of the present conflict which arose out of her policy of aggression, has instituted in the Occupied countries a régime of terror characterised amongst other things by imprisonments, mass expulsion, the execution of hostages and massacres. And whereas these acts of violence are being similarly committed by the Allies and Associates of the Reich and, in certain countries, by the accomplices of the occupying Power.

"And whereas international solidarity is necessary in order to avoid the repression of these acts of violence simply by acts of vengeance on the part of the general public, and in order to satisfy the sense of justice of the civilised world.

"Recalling that international law, and in particular the Convention signed at the Hague in 1907 regarding the laws and customs of land warfare, do not permit belligerents in occupied countries to commit acts of violence against civilians, to disregard the laws in force, or to overthrow national institutions,

- (1) affirm that acts of violence thus inflicted upon the civilian populations have nothing in common with the conceptions of an act of war or of a political crime as understood by civilised nations,
- (2) take note of the declarations made in this respect on the 25th October, 1941, by the President of the United States of America and by the British Prime Minister,
- (3) place among their principal war aims the punishment, through the channel of organised justice, of those guilty of or responsible for these crimes, whether they have ordered them, perpetrated them or participated in them,
- (4) resolve to see it in a spirit of international solidarity that (a) those guilty or responsible, whatever their nationality, are sought out, handed over to justice and judged,
(b) that the sentences pronounced are carried out.

"In faith whereof the undersigned duly authorised to this effect have signed the present Declaration."

("Punishment for War Crimes" by
H.M. Stationery Office for the Inter-
Allied Information Committee, 1942, pp 3-4)

EXTRACTS FROM SPEECHES DELIVERED AT THE ST. JAMES'S
CONFERENCE ON THE OCCASION OF SIGNING THE
ST. JAMES'S DECLARATION

1) Mr. EDEN: "...This false facade has completely failed to conceal the tyranny that lies behind it, the oppression and the brutalities which have everywhere marked the entry of German troops and of the Gestapo into the occupied Countries of Europe"

2) General Wladyslaw SIKORSKI, the Prime Minister of Poland:

"....The full value of the Declaration which we are about to sign will not be revealed until the day of final victory, when the hour of victory has actually sounded, yet it has at this moment an essentially practical significance; on the one hand it serves as a warning to all those who oppress or help to oppress our civil populations by making them clearly understand that there can be no crime without punishment; on the other it gives a gleam of hope and comfort to all those millions of men and women who while still fulfilling their daily tasks in their occupied Fatherland, will henceforward know that punishment awaits the enemy's acts of violence, that there is no suffering without redress"

3) M. PIERLOT, Prime Minister of Belgium: " ... Moreover, people who violate these principles are responsible to common law. In each one of the countries represented here, the perpetrator of such crimes is liable for punishment, whatever his standing or nationality. It is difficult to see why the fact that he belongs to an enemy country should render him immune from punishment. Let us never again forget this: the finest principles, the most firmly established codes run every risk of being ignored unless sanctions are applied. Since time immemorial, man's conscience has disapproved of killing and stealing, and yet, in all the countries which today we call civilised, high roads only became safe when the authority of their ruler became strong enough to seize, in the act, the perpetrators of acts of brigandage, and to have them well and truly hanged.

"Exemplary punishment to fit the greatness of the crime is a satisfaction urgently demanded by the conscience of the oppressed people, by their need for justice as well as their desire for security. The effectiveness of the warning which we are giving today will be all the greater since the premonitory signs of the enemy's defeat will hasten the hour of final reckoning.

"Twice a victim of German barbarity, Belgium is more acutely aware than most nations of the necessity of this decision that we are about to take. I am sure my words will meet with the approval of all my fellow-countrymen when I say that for my country this does not merely mean an empty demonstration but rather an obligation which we have incurred with other nations, a steadfast resolution which will be carried into execution as soon as might is once more in the service of right."

4) M. Jan SRAMEK, Prime Minister of Czechoslovakia:

"The Government of the Czechoslovak Republic heartily supports this declaration in the firm conviction that its signature is endorsed by the whole Czechoslovak Nation. The crimes committed by Germany and her satellites have no counterpart in the history of the world. It is not a question of mere occasional crimes due to the existence of a state of war and the consequent deterioration of normal behaviour which are the deplorable consequences of every war. On the contrary, what is in question is a criminal campaign well thought out and prepared in advance down to the smallest detail, and springing from the spirit of pan-Germanism and Nazi ideology. The German people have been prepared for this campaign many decades. The belief in the superiority of the German race to whom everything is permissible vis-à-vis the other nations: the vain spirit of domination and expansion demanding for Germany supremacy over the whole world; the slogans 'blood and soil' and 'by blood and the sword' - and that always means the blood of others, never German blood - have been impressed upon the German nation by its leaders and have ended by becoming the gospel of the German people. The result of all this is the criminal campaign undertaken on an unlimited scale by Germany in the occupied Countries

"The Czechoslovak Government takes special note of the fact that this declaration brings out the need for international solidarity so that none of the German crimes escapes punishment. In addition, the Declaration clearly lays down that the crimes committed by Germany against the civilian populations cannot be classified either as acts of war or political crimes. The Czechoslovak Government earnestly hopes that this conception of law will become an integral part of the ideology of the whole civilised world and will make it possible - after the war - to search for every culprit, to deliver him to justice, to judge him and to carry out the sentence passed. In the firm hope that justice will triumph I append my signature."

P.T.O.

5) General Charles De GAULLE, President of the Free French National Committee:

"The French National Committee approves all the more the Joint Declaration read to us by General Sikorski In signing this Joint Declaration today, we mean, like all the representatives of occupied countries, to declare solemnly that Germany alone is responsible for the outbreak of this war and that she shares with her allies and accomplices responsibility for all the atrocities that proceed from it. We demonstrate our firm intention to see to it that all the guilty parties and men who are responsible in any way should not be allowed to evade just punishment as did those of the other war.

"But if it is legitimate and necessary to ensure full punishment for crimes committed it is quite as legitimate and necessary to take the essential measures so that a renewal of such crimes should be made impossible. We are certain that the solidarity which unites martyred Europe today will continue to manifest itself tomorrow, when our task will consist in ensuring that Germany will never again be in a position to harm the world."

6) M. Emanuel TSOUDEROS, Prime Minister of Greece:

"....Certainly the rise of the totalitarian systems, the re-shuffling of values, which they have created, their deification of violence and of war, are at the root of present calamities and constitute phenomena whose outstanding characteristic is that they are collective. For this reason the only effective remedy for the evil must be collective also

"It is true that collective madness and passion are powerful incentives indeed, but they do not entirely eliminate in each individual the very real instinct of self-preservation; this instinct can be exploited. Henceforth, butchers, gaolers, and looters of every kind, will no longer be allowed individually to elude their responsibilities on the specious pretext that they are acting under orders from above. A new principle of International Penal Law has come into being"

7) M. Joseph BECH, Minister for Foreign Affairs of Luxembourg:

"Never in the course of history has a reign of terror been prepared and organised with more cynicism and applied with more brutality than that which the Axis Powers are inflicting on the unhappy population of other countries

"President Roosevelt and Mr. Winston Churchill, in their rightful condemnation of such acts, have made themselves the interpreters of the conscience of outraged humanity. Since then the world has learnt with horror the revelation of the systematic massacre of the civil population of Russia.

"The application of the principles laid down in the Declaration submitted for our signatures will prevent the war criminals from evading their just punishment.

"It is useless for the oppressor to try hypocritically to cover his misdeeds with false ^{legal} justifications, for this is only another barbarous development of his philosophic and political conceptions. It will be useless when the day of victory comes for the torturers of our peoples to claim that they only did what they were ordered to do and acted according to their laws. These laws and the application of them are now stigmatised by the Declaration of the Governments of the Occupied Countries as being contrary to law, the moral law as well as national and international law.

"The guilty will be liable to the laws of the countries in which their crimes have been committed. If need be, our national legislative system must be adapted to the aims laid down in our common Declaration and, if necessary, the repression of such crimes must be organised on an international basis"

8) J. MICHELS van VERDUYNEN, Acting Minister for Foreign Affairs of the Netherlands:

"It was natural that in the presence of the rule of terror imposed by Germany and her accomplices on the civil population of the Occupied Countries, the Governments interested should take concerted action to reach a common attitude towards the culprits.

"The understanding between our governments has been rapidly realised, and today we meet in this historic room put at our disposal by our English allies to proceed with the solemn signing of the Declaration we have established. In this Declaration we denounce to the world the brutality of the enemy and we undertake to assure the punishment of the guilty...."

9) M. Terje WOLD, Norwegian Minister of Justice:

"It is, therefore, all the more a crime that the Germans have attempted to devastate our whole community and to enforce upon us their system of lawlessness, violence and cruelty, and the crimes committed by them and the arbitrary and brutal way in which the population is now treated must not go unpunished

"The Norwegian Government welcome this Declaration as an expression of solidarity between all occupied countries, and we find it an important and necessary measure in the defence of our future civilisation. We are willing to do our utmost to co-operate with all the other Allies to ensure that these Nazi criminals - for they are nothing but criminals - shall find retribution whenever and wherever they may be apprehended."

10) Count E. RACZYNSKI, Acting Polish Foreign Minister:

".... But all these wrongs, inflicted on a nation which, united and resolute, was the first to seize arms for the defence of its country and of Europe, must, when the time comes, be made good by Germany. The wrongs committed against the civilian population will be treated as offences against the common law, with all the law's severity. The final victory of the Allies will find its measure in the reparation of the wrongs inflicted, and the punishment of the offences committed, individually or collectively"

11) M. Slobodan YOVANOVIC, Prime Minister of Yugoslavia:

".... The crimes which the Germans, their satellites and the traitor-accomplices have perpetrated against the unfortunate Yugoslav population have no precedent in the history of the civilised world. Nothing can justify these atrocities. They will not be forgotten and the culprits should be certain, from now on that they will have to expiate all their crimes after the day of victory, of which the first glimmers can already be perceived on the horizon darkened by so many sufferings.

"In adhering, by this common Declaration, to the declaration already made by the President of the U.S.A. and the Prime Minister of Great Britain, we place definitely among our principal war aims the just punishment for these crimes...."

Letter from the Chinese Minister, Mr. WUNZ KING: (Concerning the St. James's Declaration)

"The Chinese Government wishes to subscribe to the principles outlined in the Declaration (of St. James's) by which the crimes committed by the enemy occupying authorities are severely condemned and the authors are to be held accountable therefor, as it is also its intention to apply the same principles to the Japanese occupying authorities in China when the time comes."

(Ibidem, pp. 5-14).

NOTE SENT BY M. MOLOTOV ON APRIL 17TH, 1942, TO ALL
GOVERNMENTS WITH WHICH THE U.S.S.R. HAS DIPLOMATIC
RELATIONS:

"On the instructions of the Government of the U.S.S.R. I have the honour to bring the following to your attention :

"The Soviet Government is continually receiving fresh evidence and reports to the effect that the German invaders engage everywhere in plunder and wholesale extermination of the Soviet population, stopping at no crimes, no brutality nor violence on the territories which they have temporarily occupied or still continue to occupy.

"The Soviet Government has already stated that these atrocities do not constitute accidental excess on the part of individual undisciplined army units, individual German officers or soldiers. The Soviet Government has at its disposal documents captured recently from the headquarters of routed German army units which prove that the bloody crimes and atrocities perpetrated by the Nazi army are carried out in accordance with plans of the German Government, carefully elaborated and worked out in detail, and in accordance with orders of the German Command.

"These plans and orders of the German imperialist invaders provide for :

"Universal plunder of the population of our country, in both towns and villages, accompanied by the seizure and shipment to Germany of the personal property of Soviet citizens and the property of the Soviet State;

"Utter destruction of towns and villages from which the Nazis are forced to retreat under the blows of the armed forces of the Soviet Union;

"Seizure by the German army of occupation of land given by the Soviet State in perpetuity for the free use of collective farms, and the settlement of German "managers" and German landowners on the seized land;

"Slave labour and bondage for our workers and peasants under the rule of the German imperialist invaders;

"Forcible abduction for forced labour in Germany of several million Soviet citizens residing in towns and villages, and the illegitimate classing of them as prisoners of war;

"Destruction of Russian national culture and the national culture of the peoples of the Soviet Union, and the forcible Germanisation of Russians, Ukrainians, Byelorussians, Lithuanians, Latvians, Estonians and other peoples of the U.S.S.R.;

"Extermination of the Soviet population, prisoners of war and guerrilla fighters by bloody violence, torture, executions and massacre of Soviet citizens, irrespective of their nationalities, social standing, sex or age.

"With such villainous plans the German Fascist hordes invaded our country. These bad Hitlerite plans found expression in countless orders of the German Command.

"The operations of the Red Army, which in fierce battles stop

by step liberates Soviet towns and villages, districts and regions, have revealed a truly indescribable picture of the Nazi army's systematic realisation, with unparalleled cruelty, of these criminal plans of Hitler, Göring and other rulers of present-day Germany who have worked their way to power.

"The Soviet Government hereby brings to the knowledge of all peoples fresh documents and facts out of the tremendous store at its disposal, which not only confirm the planned character of the atrocities described in the Notes of the Government of the U.S.S.R. of November 27th, 1941 and January 6th, 1942, but also show that the Hitlerite rulers and their accomplices have reached the limit of cruelty and moral degradation in their bloody and criminal attacks on the freedom, welfare, culture and the very life of the Soviet peoples.....

"The order of the Supreme Command of the German Army of January 14th, 1942, issued in the name of Hitler as Commander-in-Chief, reads :

(Paragraph 3): 'Any leniency or humane attitude towards war prisoners is severely deprecated. The German soldier must always let war prisoners understand his superiority... Every delay in resorting to arms against war prisoners is pregnant with danger. The Commander-in-Chief hopes that this order will be fully observed.

"The Soviet Government continues to receive trustworthy information as to the conditions in which Red Army war prisoners are kept in the German-occupied territories of the U.S.S.R., and also far in the German rear and in the European countries occupied by Germany. This information indicates a further deterioration in the régime for Red Army war prisoners, who are kept in especially bad conditions in comparison with those of war prisoners from other countries. Hosts of Soviet war prisoners die of starvation and disease. Red Army men are subjected to a régime of base humiliation and bloody atrocities by the Nazi authorities, who long ago trampled underfoot the most elementary provisions of international law and human morals...

"Despite all this, being true to the principles of humanity and respect for its international obligations, the Soviet Government even in present circumstances does not intend to resort to reprisals against German war prisoners, and continues to abide by the undertaking as regards the régime for war prisoners which the Soviet Union assumed under the Hague Convention of 1907, and which was signed but is now being treacherously violated in all its provisions by Germany.

"At the same time the Soviet Government states that the criminal Nazi rulers and their accomplices guilty of murdering Soviet war prisoners must bear the full weight of responsibility for these monstrous crimes. The interests of all freedom-loving peoples, interests of entire humanity, demand that the gang of wild murderers which is styled the Government of Germany be done away with as soon as possible, and for all.....

"Exposing before the whole world the heinous deeds of the Nazis, expressed in countless crimes of plunder, destruction, devastation, atrocities, outrages, violence and mass murders perpetrated in occupied Soviet districts, and imparting this information to all Governments with which the Soviet Union maintains diplomatic relations, the Government of the Soviet Union, on behalf of the peoples of the Soviet Union, states : Hitler's Government and its accomplices will not escape severe responsibility and deserved punishment for all their unparalleled crimes perpetrated against the peoples of the U.S.S.R. and against all freedom-loving peoples".

(Third Molotoff Note, on German atrocities issued on behalf of the U.S.S.R. Embassy by H.M. Stationery Office, 1942, pp. 2,3,25,26)

DECLARATION OF PRESIDENT DR. BENES ON JUNE 13th 1942 (EXTRACT)

"...I solemnly declare, in the name of the Czechoslovak State, Nation, and Government, that for all that has happened in our country in these days we consider Adolf Hitler and all the members of his Government, without exception, personally responsible. We hold personally responsible all the exponents of the Nazi Party and of the Reich Government on our territory, beginning with Neurath and Daluge on the one hand, and continuing with Frank and Henlein on the other hand, and further, all the leaders of the Gestapo and the SS formations, all the Landrate and leading official German representatives in the Reich German political, police and military administration in our country.

"Germany has in our territory, through the intermediary of all these persons systematically violated and is violating all the principles of international law, she is slaughtering, robbing, and destroying whole villages, killing innocent people, and systematically committing mass murders, not in order lawfully to punish a person guilty of some offence, but in order bestially to sow empty horror round about her. As we are at war with Germany we apply to all these people our military law which prescribes the punishment of death for all these actions. On the first day of our victory we shall have this decision reaffirmed by the competent legal and political body, and mercilessly carried out with all consequences.

"We shall not cease our demands for justice until the above-mentioned culprits, whom we shall either find in our territory, or whose extradition we shall most emphatically demand after agreement with our present Allies, fully receive their well-merited punishment which will be carried out without pardon and without mercy".

(Central European Observer, June 26th, 1942)

DECLARATION OF THE CZECHOSLOVAK GOVERNMENT, 17th JUNE, 1942 (EXTRACT)

"...For all the German crimes committed on Czechoslovak territory or against Czechoslovak citizens personal responsibility must be borne by all those who have committed, instigated, helped, share in or supported them. The following, in particular, are thus personally responsible :

- (1) Adolf Hitler and the members of his Government.
- (2) All the representatives of the German Government and administration and of the Nazi Party in our territory from Henlein, Frank and their associates down to Neurath, Bertsch and Daluge, and all the German official and military representatives in our country such as the Oberlandraete, Landraete, commanders, superior officials and all the members of the German administrative, police, judicial and military apparatus, including the Gestapo, SS and SA detachments and all other German military and police formations.
- (3) All other Germans who aided the culprits, even though only indirectly, or who approved of their deeds".

(Central European Observer, June 26th, 1942, p. 200)

COLLECTIVE NOTE FROM THE 9 SIGNATORIES OF THE ST. JAMES'S
DECLARATION TO THE BRITISH GOVERNMENT DATED 21st JULY 1942 (EXTRACT)

"...The invaders' acts of oppression and terrorism have recently developed to such an extent and assumed such forms as to arouse the fear that as the defeat of the enemy country approaches, the régime of occupation will assume an ever more barbarous and merciless character, not excluding the extermination of whole groups of people. As is made clear in Dr. Goebbels' Berlin speech, on June 15th, 1942, Germany has severed links with the rest of the world. This being so, to rely exclusively on the influence of public opinion would be vain. No sense of responsibility will any longer exercise restraints on the action of the invaders...."

N.B. A similar note was presented to the Government of the U.S.S.R. on July 23rd, 1942 and to the Government of the United States on July 30th.

("Punishment for War Crimes (2)", published by H.M. Stationery Office for the Inter-Allied Information Committee, 1942 pp. 3-4)

PRESIDENT ROOSEVELT'S REPLY DATED 21st AUGUST, 1942, TO THE
COLLECTIVE NOTE OF NINE ALLIED GOVERNMENTS (SIGNATORIES OF THE ST.
JAMES'S DECLARATION) OF JULY 30th, 1942 (EXTRACT)

"...The United Nations are going to win this war. When victory has been achieved, it is the purpose of the Government of the United States, as I know it is the purpose of each of the United Nations, to make appropriate use of the information and evidence in respect to these barbaric crimes of the invaders, in Europe and Asia. It seems only fair that they should have this warning that the time will come when they shall have to stand in courts of law in the very countries which they are now oppressing and answer for their acts."

("Punishment for War Crimes (2)", published by H.M. Stationery Office for the Inter-Allied Information Committee, 1942, p. 9)

STATEMENT BY MR. CHURCHILL IN THE HOUSE OF COMMONS, 8th
SEPTEMBER, 1942

"...I wish most particularly to identify the British Government and the House of Commons with the solemn words which have been lately used by the President of the United States, namely, that those who are guilty of the Nazi crimes will have to stand up before tribunals in every land where their atrocities have been committed in order that an indelible warning may be given to future ages and that successive generations of men may say 'so perish all who do the like again'".

(Parliamentary Debates Vol. 383, No. 100, Col. 97)

REPLY OF THE SOVIET GOVERNMENT DATED 14th OCTOBER, 1942 TO THE NOTE
OF THE NINE GOVERNMENTS OF JULY 23rd, 1942.

"The Soviet Government once more confirms the universal and deliberate character of the bloody crimes of the Hitlerite invaders, which prove that the German Fascist Government and its accomplices, in striving to enslave the peoples of the occupied countries, to destroy their culture and debase their national dignity, have also made it their aim to carry out the direct, physical annihilation of a considerable section of the population of the territories captured by them."

"The Soviet Government at the same time puts on record that neither by their methods of annihilation and crime nor by their incitement to internecine strife, nor by their plunder and starvation, nor by their bloody crimes have the German Fascist succeeded in breaking the will of European peoples to struggle against the invaders for the liberation and restoration of their independent countries

"The Soviet Government is in agreement with the declaration of Mr. Roosevelt, President of the United States of America, made in his speech of October 12th, on the question of punishing the Nazi leaders, concretely responsible for the countless acts of brutality, i.e. that the clique of leaders and their cruel accomplices must be mentioned by name, arrested and tried according to the criminal code

"The Soviet Government considers it essential to hand over without delay to the courts of the special international tribunal, and to punish according to all the severity of the criminal code, any of the leaders of Fascist Germany who in the course of the war have fallen into the hands of states fighting against Hitlerite Germany"

(Punishment for War Crimes (2)", published by H.M. Stationery Office for the Inter-Allied Information Committee, 1942 pp. 5 and 7)

DECLARATION OF PRESIDENT ROOSEVELT ON 7th OCTOBER, 1942 (EXTRACT)

"...I now declare it to be the intention of this Government that the successful close of the war shall include provision for the surrender to the United Nations of war criminals.

"With a view to establishing responsibility of the guilty individuals through the collection and assessment of all available evidence, this Government is prepared to co-operate with the British and other Governments in establishing a United Nations Commission for the Investigation of War Crimes.

"The number of persons eventually found guilty will undoubtedly be extremely small compared to the total of enemy populations. It is not the intention of this Government or Governments associated with it to resort to mass reprisals. It is our intention that just and sure punishment shall be meted out to the ringleaders responsible for the organised murder of thousands of innocent persons and the commission of atrocities which have violated every tenet of the Christian faith".

(Punishment for War Crimes (2)", published by H.M. Stationery Office, for the Inter-Allied Information Committee, pp.9-10).

DECLARATION OF THE LORD CHANCELLOR, VISCOUNT SIMON, ON 7th OCTOBER, 1942 (EXTRACT)

"If this time there is going to be after the victory of the United Nations, due punishment of these abominable war crimes, perpetrated in breach of the laws of war by enemy nationals and for which enemy individuals must be held responsible.....

"...The proposal is to set up with least possible delay a United Nations Commission for the Investigation of War Crimes. The Commission will be composed of nationals of the United Nations, selected by their Governments. The Commission will investigate war crimes committed against nationals of the United Nations recording the testimony available and the Commission will report from time to time to the Governments of these nations cases in which such crimes appear to have been committed, naming and identifying wherever possible the persons responsible.

The Commission should direct its attention in particular to organised atrocities. Atrocities perpetrated by or on the orders of Germany in Occupied France should be included. The investigation should cover war crimes of offenders irrespective of rank, and the aim will be to collect material supported wherever possible by depositions or by other documents, to establish such crimes, especially where they are systematically perpetrated, and to name and identify those responsible for their perpetration

(Parliamentary Debates, House of Lords, Vol. 124, No. 36,
Cols. 581, 582)

STATEMENT BY MR. EDEN IN THE HOUSE OF COMMONS, 17 DECEMBER, 1942
AND DECLARATION OF THE SAME DATE BY THE ALLIED GOVERNMENTS.

In reply to a question asking whether he had "any statement to make regarding the plan of the German Government to deport all Jews from occupied countries to Eastern Europe and there put them to death", Mr. Eden said :

"Yes Sir, I regret to have to inform the House that reliable reports have recently reached His Majesty's Government regarding the barbarous and inhuman treatment to which Jews are being subjected in German-occupied Europe. They have in particular received a note from the Polish Government, which was also communicated to the other United Nations, and which has received wide publicity in the Press. His Majesty's Government in the United Kingdom have as a result been in communication with the United States and Soviet Governments and with the other Allied Governments directly concerned, and I should like to take this opportunity to communicate to the House the text of the following declaration which is being published today at this hour in London, Moscow and Washington :

'The attention of the Governments of Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, the U.S.A., the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and Yugoslavia, and the French Committee of National Liberation, has been drawn to numerous reports from Europe that the German authorities, not content to denying to persons of Jewish race in all the territories over which their barbarous rule has been extended the most elementary human rights, are now carrying into effect Hitler's oft repeated intention to exterminate the Jewish people in Europe. From all the occupied countries Jews are being transported, in conditions of appalling horror and brutality, to Eastern Europe. In Poland, which has been made the principal Nazi slaughterhouse, the ghettos established by the Nazi invaders are being systematically emptied of all Jews except a few highly-skilled workers required for war industries. None of those taken away are ever heard of again. The able-bodied are slowly worked to death in labour camps. The infirm are left to die of exposure and starvation or are deliberately massacred in mass executions. The number of victims of these bloody cruelties is reckoned in many hundreds of thousands of entirely innocent men, women and children.'

The above-mentioned Governments and the French National Committee condemn in the strongest possible terms this bestial policy of cold-blooded extermination. They declare that such events can only strengthen the resolve of all freedom-loving peoples to overthrow the barbarous Hitlerite tyranny. They reaffirm their solemn resolution to ensure that those responsible for these crimes shall not escape

retribution, and to press on with the necessary practical measures to this end." "

(Parliamentary Debates, Vol. 385, No. 17, Cols. 2082-2084)

STATEMENT BY MR. EDEN ON 9th JUNE, 1943 IN ANSWER TO A QUESTION
IN THE HOUSE OF COMMONS

"I am not sure what the hon. member means by hostages. But I am glad of this opportunity of stating publicly that the German military leaders, like the Nazi political leaders, will be liable to punishment for any crimes, for which they can be shown to be responsible, committed against members of the United Nations detained against their will on German or German-occupied territory".

(Parliamentary Debates, Vol. 390, Col 677)

STATEMENT BY PRESIDENT ROOSEVELT BROADCAST ON 28th JULY, 1943 (EXTRACT)

"...The first crack in the Axis has come. The criminal corrupt Fascist régime in Italy is going to pieces. The pirate philosophy of the Fascist and Nazis cannot stand adversity.....

"Mussolini came to the reluctant conclusion that the 'jig was up'; he could see the shadow of the long arm of justice. But he and his Fascist gang will be brought to book and punished for their crimes against humanity. No criminal will be allowed to escape by the expedient of 'resignations'.

"Our terms to Italy are still the same as our terms to Germany and Japan, 'unconditional surrender'. We will have no truck with Fascism in any way, shape or manner. We will permit no vestige of Fascism to remain"

(Daily Express 29th July, 1943, and other daily newspapers)

UNITED KINGDOM DECLARATION PUBLISHED 30th AUGUST, 1943.

"Trustworthy information has reached His Majesty's Government in the United Kingdom regarding crimes committed by the German invaders against the population of Poland ...

"These measures are being carried out with the utmost brutality. Many of the victims are killed on the spot. The rest are segregated. Men from 14 to 50 are taken away to work for Germany. Some children are killed on the spot; others are separated from their parents and either sent to Germany to be brought up as Germans or sold to German settlers or despatched with the women and old men to concentration camps.

"His Majesty's Government reaffirm their resolve to punish the instigators and actual perpetrators of these crimes. They further declare that, so long as such atrocities continue to be committed by the representatives and in the name of Germany, they must be taken into account against the time of the final settlement with Germany.

"Meanwhile the war against Germany will be prosecuted with the utmost vigour until the barbarous Hitlerite tyranny has been finally overthrown".

(Manchester Guardian, 30th August 1943)

DECLARATION ON GERMAN ATROCITIES IN OCCUPIED EUROPE PUBLISHED
BY THE MOSCOW CONFERENCE ON THE 1ST NOVEMBER, 1943.

"The United Kingdom, the United States, and the Soviet Union have received from many quarters evidence of the atrocities, massacres, and cold-blooded mass executions which are being perpetrated by the Hitlerite forces in many of the countries they have overrun and from which they are now being steadily expelled.

"The brutalities of Hitlerite domination are no new thing, and all peoples or territories in their grip have suffered from the worst form of government by terror.

"What is new is that many of these territories are now being redeemed by the advancing armies of the liberating Powers and that, in their desperation, the recoiling Hitlerite Huns are redoubling their ruthless cruelties. This is now evidenced with particular clearness by the monstrous crimes of the Hitlerites on the territory of the Soviet Union which is being liberated from the Hitlerites and on French and Italian territory.

"Accordingly, the aforesaid three Allied Powers, speaking in the interests of the 32 United Nations, hereby solemnly declare and give full warning of their declaration as follows :

"At the time of the granting of any armistice to any Government which may be set up in Germany, those German officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in the above atrocities, massacres, and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the Free Governments which will be erected therein. Lists will be compiled in all possible detail from all these countries, having regard especially to the invaded parts of the Soviet Union, to Poland and Czechoslovakia, to Yugoslavia and Greece, including Crete and other islands, to Norway, Denmark, the Netherlands, Belgium, Luxembourg, France and Italy.

"These Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian or Norwegian hostages or of Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland or in the territories of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged.

"Let those who have hitherto not imbrued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three Allied Powers will pursue them to the uttermost ends of the earth, and will deliver them to the accusers in order that justice may be done.

"The above declaration is without prejudice to the case of the major criminals whose offences have no particular geographical location and who will be punished by a joint decision of the Governments of the Allies".

(Text and official title supplied by the Foreign Office).

DECLARATION OF
BROADCAST BY MARSHAL STALIN, 6th NOVEMBER, 1943.

"... The German invaders have been devastating our land in an effort to undermine the power of our troops. Our advance has revealed, to a greater extent than hitherto, the barbarous, rapacious, character of the Hitlerites. Like medieval barbarians and the hordes of Attila, the German criminals are trampling down fields, setting fire to villages and towns, and destroying industrial enterprise.

"The misdeeds of the Germans display the desperation of doomed men. The more hopeless their position becomes the more they indulge in atrocities and looting. Our people will not forgive the German monsters their atrocious crimes. We shall bring the German criminals to book. We must completely eliminate the aftermath of Fascist depredations in the areas recovered from the invaders. This is a big responsibility for all the people. We can and must solve this difficult task in a short space of time ...

"When Germany collapses the Allied countries will come up against an important problem - the organisation and restoration of the economic and spiritual life of the European peoples. Our policy in this field remains unchanged. Together with our Allies we will have first to liberate the peoples of Europe from the German invaders, and then to co-operate with them in the re-creation of their national states which were dismembered by the Fascists enslavers.....

"Thirdly it is necessary to take measures against those criminals who are responsible for this war. Fourthly, we must establish such an order in Europe as will completely eliminate any possibility of fresh aggression on the part of Germany".

("Manchester Guardian", 8th November, 1943)

SPEECH BY THE LORD CHANCELLOR, VISCOUNT SIMON IN THE HOUSE
OF LORDS, 7th DECEMBER, 1943. (EXTRACT)

"...I intervene at this moment because I wish to state what is the position of the government in this matter

"By way of preface I would urge upon the House two considerations. The first is that in discussing this matter it is very important to keep clearly in mind the distinction between that inner ring of political leaders who must take full responsibility for the awful barbarities of this war, and secondly the large number of people who have been their agents, though in many cases they have no doubt acted themselves with the greatest possible brutality. It is useful to keep that distinction in mind, because I think I can satisfy the House that treatment which might be appropriate in one case would not be appropriate in the other. The other matter I would venture to urge most respectfully on the House, on all who take part in the debate and on all who have given consideration to the matter, is this. From our point of view, the British point of view, we must never fail, however deeply we are tried, and however fundamentally we are moved by the sufferings of others, to do justice according to justice. There must be no mass executions of nameless people merely because there have been frightful mass executions on the other side. We shall never do any good to our own standards to our reputation and to the ultimate reform of the world if whatever we do is not reasonably consistent with justice. Justice, indeed calls for very severe measures....; but whatever happens, do not let us depart from the principle that war criminals shall be dealt with because they were proved to be criminals, and not because they belong to a race led by a maniac and a murderer who had brought this frightful evil upon the world.

P.T.O.

"If first of all, therefore, you can get the evidence against the individual whom you mean to charge, and secondly get hold of the individual who is to be charged, you may be in a position to deal with very considerable numbers of those who in the last four years have perpetrated these villainies... My noble and learned friend (Lord Maugham) argued, I felt with great force, that in the case of the ordinary German soldier, whatever else he is doing, he is shooting under orders as a member of the firing squad. I think there is great force in that; and while I am sure neither my noble friend nor I would suggest for a moment that superior orders are an excuse for any action of manifest barbarity and villainy - neither would I agree to such a proposition: it is not a true proposition - at the same time the thing that really matters most is not the man who carries out the order, but the man who gives it, the man who directs that these shocking barbarities should be perpetrated

"That is what I have to say about what I may call the more ordinary criminal. But I do urge on the House that it is really very necessary to take a rather different view of what I have described as the inner ring of principle political leaders who must take a general responsibility for the barbarities of the war. I do not say exactly where the line should be drawn. But I think it would be intolerable that the Allies should be making arrangements for indicting and punishing and executing men, of lower grade, and yet those who are the principle criminals of the lot should go scathless..... On the other hand, speaking for the moment purely for myself, I question very much whether the ordinary process and formalities of a trial are equally appropriate for the German officer who must be proved to have authorised a particular crime and for those who from the beginning to end are known to all the world, by their own declarations and by their own policy, to have been pursuing this depth of wickedness as part of their ambition"

(Parliamentary Debates, House of Lords, Vol. 130, No. 4,
Cols. 125 - 127, 129 - 130)

DECLARATION BY PRESIDENT ROOSEVELT BROADCAST ON 24th MARCH, 1944

"The United Nations are fighting to make a world in which tyranny and aggression cannot exist; a world in which all persons regardless of race, colour or creed may live in peace, honour and dignity. In the meantime in most of Europe and in parts of Asia the systematic torture and murder of civilians, men, women, and children, by the Nazis and the Japanese continue unabated. In areas subjugated by the aggressors innocent Poles, Czechs, Norwegians, Dutch, Danes, French, Greeks, Russians, Chinese, Filipinos - and many others - are being starved or frozen to death or murdered in cold blood in a campaign of savagery.

"The slaughters of Warsaw, Lidice, Kharkov, and Nanking - the brutal torture and murder by the Japanese, not only of civilians but of our gallant American soldiers and fliers - these are startling examples of what goes on day by day year in year out, wherever the Nazis, and Japs are in military control - free to follow their barbaric purpose. In one of the bloodiest crimes of all history - begun by the Nazis in the day of peace and multiplied by them a hundred times in time of war - the wholesale systematic murder of the Jews of Europe goes on unabated every hour. As a result of the events of the last few days hundreds of thousands of Jews who while living under persecution have at least found a haven from death in Hungary and the Balkans, are now threatened with annihilation as

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Hitler's forces descend more heavily upon these lands. That these innocent people, who have already survived a decade of Hitler's fury, should perish on the very eve of triumph over the barbarism which their persecution symbolizes, should be a major tragedy. It is, therefore, fitting that we should again proclaim our determination that none who participate in these acts of savagery shall go unpunished. The United Nations have made it clear that they will pursue the guilty and deliver them up in order that justice be done. That warning applies not only to the leaders but also to their functionaries and subordinates in Germany and in the satellites countries. All who knowingly take part in the deportation of Jews to their death in Poland or Norwegian and French to their death in Germany are equally guilty with the executioner. All who share the guilt shall share the punishment.

"Hitler is committing these crimes against humanity in the name of the German people. I ask every German and every man everywhere under Nazi domination to show the world by his action that in his heart he does not share these insane criminal desires. Let him hide these pursued victims, help them to get over their borders, and do what he can to save them from the Nazi hangman. I ask him also to keep watch, and to record the evidence that will one day be used to convict the guilty. In the meantime, and until the victory that is now assured is won, the United States will persevere in its efforts to rescue the victims of brutality of the Nazis and the Japs. Insofar as the necessity of military operations permit this Government will use all means at its command to aid the escape of all intended victims of the Nazi and Jap executioner, - regardless of race, or religion or colour. We call upon the free peoples of Europe and Asia temporarily to open their frontiers to all victims of oppression. We shall find havens of refuge for them, and we shall find the means of their maintenance and support until the tyrant is driven from their homelands and they may return.

"In the name of justice and humanity let all freedom-loving people rally to this righteous undertaking".

SPEECH BY MR. CHURCHILL IN THE HOUSE OF COMMONS, 24 MAY, 1944.

"I have repeatedly said that unconditional surrender gives the enemy no rights but relieves us from no duties. Justice will have to be done and retribution will fall upon the wicked and cruel. The miscreants who set out to subjugate first Europe and then then the world must be punished, and so must their agents who, in so many countries, have perpetrated horrible crimes and who must be brought back to face the judgement of the population, very likely in the very scenes of their atrocities".

(Parliamentary Debates, Vol. 400, No. 82, Col. 784)

STATEMENT BY PRESIDENT ROOSEVELT REPORTED FROM WASHINGTON, 12 June 1944.

"In his report to Congress of the steps taken by the United States Government to provide a refuge for the victims of German cruelty, the President today said that the Nazis, in spite of the fact that they faced certain defeat, were determined to complete their 'programme of mass extermination' of minorities. Their programme of systematic persecution was but one manifestation of Hitler's intention to salvage from military defeat a victory for Nazi principles, he stated - 'the very principles which this war must destroy or else we shall have fought in vain'."

(Times, 13th June 1944)

SECRET

C.29(a)
19 June 1944.

UNITED NATIONS WAR CRIMES COMMISSION

DECLARATIONS BY UNITED NATIONS GOVERNMENTS AND
LEADERS ON THE SUBJECT OF WAR CRIMES

COLLECTION MADE BY DR. ECHER
WITH THE HELP OF THE SECRETARY GENERAL

SUPPLEMENT

EXTRACT FROM OFFICIAL TEXT OF PRESIDENT ROOSEVELT'S
STATEMENT OF 12 JUNE 1944

....."This nation is appalled by the systematic persecution of helpless minority groups by the Nazis. To us the unprovoked murder of innocent people simply because of race, religion or political creed is the blackest of all possible crimes. Since the Nazis began this campaign many of our citizens in all walks of life and of all political and religious persuasions have expressed our feeling of repulsion and our anger. It is a matter with respect to which there is and can be no division of opinion amongst us.

"As the hour of the final defeat of the Hitlerite forces draws closer, the fury of their insane desire to wipe out the Jewish race in Europe continues undiminished. This is but one example: many Christian groups also are being murdered. Knowing that they have lost the war, the Nazis are determined to complete their program of mass extermination. This program is but one manifestation of Hitler's aim to salvage from military defeat victory for Nazi principles - the very principles which this war must destroy unless we shall have fought in vain

....."To the Hitlerites, their subordinates and functionaries and satellites, to the German people and to all other peoples under the Nazi yoke, we have made clear our determination to punish all participants in these acts of savagery. In the name of humanity we have called upon them to spare the lives of these innocent people.

"Notwithstanding this government's unremitting efforts, which are continuing, the numbers actually rescued from the jaws of death have been small compared with the numbers still facing extinction in German territory. This is due principally to the fact that our enemies, despite all our appeals and our willingness to find havens of refuge for the oppressed peoples, persist in their fiendish extermination campaign and actively prevent the intended victims from escaping to safety....."

C.29(a)
29 June, 1944

UNITED NATIONS WAR CRIMES COMMISSION

DECLARATIONS BY UNITED NATIONS GOVERNMENTS AND LEADERS ON
THE SUBJECT OF WAR CRIMES.

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SECRET

C.30
15 June, 1944

UNITED NATIONS WAR CRIMES COMMISSION

RECOMMENDATION REGARDING THE ESTABLISHMENT IN
ENEMY TERRITORY OF AN APPROPRIATE AGENCY TO
ASSIST THE COMMISSION IN ITS WORK ADOPTED BY THE
COMMISSION ON JUNE 13TH, 1944.

When the Allied forces are established in enemy territory, it will be of great assistance to the War Crimes Commission if a group or agency could be attached to, or form part of, the appropriate section of the Supreme Allied Command in order to help the Commission in the task with which it has been entrusted. The institution of such a group or agency would also relieve other branches of the army of many duties connected with the apprehension and collecting of evidence against men who are to be put on trial.

Proceedings against war criminals in territory restored to the control of Allied Governments will in general necessitate some action which must be taken in enemy territory, and must therefore be taken under the general control and direction of the Supreme Allied Command.

Men who are wanted for trial for acts in connection with the war must be identified, and their whereabouts ascertained; they must be arrested, kept in custody and handed over for trial by the competent courts. Evidence must be obtained in a form which will enable it to be used at the trial. Information must be collected as to cases of war crimes of which the perpetrators have not yet been identified.

The above work can only be done by men who are acquainted with the language and the legal system of the country in which the trial will take place.

The number of men who will be required for this work, their qualifications, and the powers which they will be authorised to

P.T.O.

exercise are details which can be considered at a later stage. They could be specified in the Order of the Commander-in-Chief which would be issued for the creation of the group or agency proposed above.

Subject to the general control of the Commander-in-Chief which must be safeguarded, the proposed group or agency should be in touch with the War Crimes Commission.

SECRET

C.31
16 June, 1944

UNITED NATIONS WAR CRIMES COMMISSION

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

NOTE by the CHAIRMAN to the GOVERNMENTS REPRESENTED
ON THE COMMISSION

It is the declared policy of the United Nations to require in the armistice granted to each Axis Power that persons wanted in connection with war crimes shall be surrendered to the United Nations by that Power.

The United Nations War Crimes Commission begs to submit herewith to the Governments represented on the Commission the text of a draft armistice article which it considers to contain the provisions necessary for this purpose.

The text now submitted is that of an article for insertion in the armistice with Germany.

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 Staats polizei (Gestapo) and Schutzstaffel (SS).

Recommendations on these points will be made to the Governments by the Commission as soon as possible.

Different provisions may be necessary in the case of Japan, and the text will be submitted at a later date.

DRAFT ARTICLE FOR INSERTION IN THE ARMISTICE WITH GERMANY

1. The United Nations may, if they so decide, bring to trial before any Tribunal, national or international, any persons accused of crimes connected with, or incidental to, hostilities conducted by Germany against any one or more of the United Nations. This provision shall apply notwithstanding any procedure or prosecution before a

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court, military or civil, of Germany or of any State or political entity acting in alliance or in concert with Germany, irrespective of whether such proceedings have ended in a conviction or in an acquittal, provided that if a sentence has been imposed the penalty already undergone shall be taken into account in fixing any sentence which may be imposed;

2. To this effect Germany shall :

- (a) take all necessary steps to hand over forthwith to the authorities of the United Nations any persons whose surrender is demanded either at the time when this instrument becomes effective or at some subsequent date;
- (b) give such assistance as may be required to the authorities of the United Nations in all measures necessary to give effect to the obligations recognised in Section 1;
- (c) forthwith take and keep under control all property, both moveable and immoveable, belonging to persons whose surrender is demanded, and hold it at the disposal of the authorities of the United Nations;
- (d) give such assistance as may be required to the authorities of the United Nations in internment forthwith and keeping in custody until such time as the authorities of the United Nations may otherwise direct, any or all members and former members of the Geheime Staats polizei (Gestapo) and of the Schutzstaffel. (SS);

3. The right to apprehend the persons referred to in Section 2 may be exercised by any Agency, military or civil, acting on behalf of some or all of the United Nations which may be in control of German territory, or which may be appointed to give effect to the present provisions.

4. Such German authorities as may be allowed by the United Nations to continue or to exercise their functions shall take all necessary steps :

- (a) to comply forthwith with all requests of the said agencies and authorities relating to the identification, discovery, apprehension, arrest and delivery of accused persons without regard to their nationality and without any right to examine the case upon its merits. Such agencies and authorities shall be given every facility to supervise the way in which their orders are carried out;
- (b) to disclose and produce any records or documents or any other things the production of which may be considered necessary to ensure the full knowledge of the acts with which the accused are charged and the just appreciation of responsibility, to obtain the presence of witnesses and to assist in any other way in which such assistance may be required;

5. Germany will on demand surrender to the civil or military authorities of the United Nations for trial before such tribunal as the United Nations may appoint for the purpose :

- (a) any person accused of obstructing the execution of the foregoing provisions or failing to comply with any direction relating thereto. For this purpose the German authorities shall, when requested to do so, provide the United Nations with the names of the officials who are responsible for the execution of the provisions of this instrument;

- (b) any persons accused of aiding and abetting a person whose surrender has been demanded, in evading apprehension, arrest or surrender;
 - (c) any person accused of destroying or concealing documentary evidence, impeding or obstructing the calling or the examination of witnesses, or of attempting to do so;
 - (d) any persons inciting another to resist in any way the provisions concerning the surrender and the punishment of criminals covered by these provisions;
 - (e) any German official accused of prosecuting or punishing or any individual accused of molesting anyone in any way for having reported to the authorities or agencies of the United Nations any evasion of - or resistance to - the foregoing provisions concerning the surrender or punishment of persons accused of crimes covered by these provisions.
6. The offences enumerated in Section 5 shall not be subject to the jurisdiction of German courts.

SECRET

C.32
22 June 1944

UNITED NATIONS WAR CRIMES COMMISSION

REPORT ON THE GERMAN STURM-ABTEILUNGEN (S.A.),
SCHUTZ-STAFFELN (S.S.) AND GEHEIME STAATS-POLIZEI (Gestapo)

Drawn up for Committees I and III by Dr. Eöer

PART I - Origin, organisation, purpose and activity.

PART II - Legal conclusions on the questions whether:

- a) membership is a crime;
- b) mens rea on the part of their members is to be presumed;
- c) superior orders are a defence, so far as they are concerned;
- d) collective responsibility;
- e) security measures to be taken.

I N T R O D U C T I O N

This report tries to give a picture of the three most dangerous German organisations which can be regarded as the "hotbed" and main pillars of German Nazism. It is impossible to give a detailed picture. The report must content itself with the main dates, facts, figures and features characterising these organisations. But even in this short form, the picture may be a sufficient basis for certain legal conclusions. A short preliminary note dealing with the relation between the Nazi Party and the German State seemed to me useful as making the function of the three organisations clearer and more comprehensible. The sources I have used are:-

- 1) Organisationsbuch der N.S.D.A.P. (Handbook of the Nazi Party) 1940 Edition, quoted as Org
- 2) Die S.A., Geschichte Arbeit, Zweck und Organization der Sturm-Abteilungen des Führers (The S.A., History, Work, Purpose and Organisation of the Führers Shock Troops) 1938 Edition, written by Dr. Ernst Bayer, quoted as S.A.
- 3) Die S.S., Geschichte, Aufgabe und Organization der Schutz-Staffeln der N.S.D.A.P. (The S.S., History, Task and Organisation of the Security Guards of the Nazi party) 1939 Edition, written by Gunther d'Alquen, quoted as S.S.
- 4) Grundfragen der deutschen Polizei (Fundamental Problems of the German Police) - a collection of speeches and reports made at the constitutive meeting of the Committee for Police Laws, held on October 11th 1936 in Berlin, quoted as Frank.
- 5) Die deutsche Polizei (The German Police) 1941 Edition, written by Dr. Werner Best, S.S. Brigade-Führer, at present Minister of Germany in Denmark, quoted as Best.
- 6) Staats und Verwaltungsrecht im Dritten Reich (State and Administrative Law of the Third Reich) 1935 Edition, written by Dr. Otto Meissner and Dr. George Kaisenberg, quoted as Meissner.
- 7) Certain Allied Government documents.
- 8) Press News, Radio News, articles, memoranda, declarations.

Books 1 - 6 are available at the Wiener Library, 18 Manchester Square. The governmental documents are in part public (for instance "Soviet documents on atrocities"); others are in the hands of the members of our Commission (for instance "the Polish memorandum on Axis measures altering the criminal law and the exercise of criminal jurisdiction in Poland"); others again are secret documents put at my disposal by my Government. All the documents used are reliable.

The first part of the report might have been addressed to Committee I, and the second to Committee III, but I preferred to write one report for both committees, as the second part consists of legal conclusions drawn from the first part. As it is intended for the use of Committee I, I have made the first part more detailed than would have been necessary for Committee III.

P A R T I

ORIGIN, ORGANISATION, PURPOSE, ACTIVITY OF
THE S.A., S.S., AND GESTAPO

1. THE NAZI PARTY AND THE GERMAN STATE

The totalitarian State rejects the idea of a politically "neutral official" says Meissner, page 133. Thus the German totalitarian régime realised a Union between State and the only admissible political Party, the Nazi Party, (National-sozialistische deutsche Arbeiterpartei, abbreviation, N.S.D.A.P. i.e. National Socialist German Labour Party). This Union is probably so complete that the whole State apparatus, civil and military, is "nazified".

The organisation of the Nazi party and the structure of the German State in their various aspects, are so complicated that it is impossible to give a detailed picture in a short report. The apparatus of the State and of the Party is "over-organised" (überorganisiert) and thus difficult to survey. But the main lines can be clearly distinguished. They are the following:-

- 1) Hitler is the personification of the Union between the State and the Party. This personal Union is expressed in the organisation of his service. Hitler has at his disposal three chancelleries:-
 - a) Präsidialkanzlei, i.e. the chancellery of the President in his quality as the Chief of the Reich.
 - b) Reichskanzlei, i.e. chancellery of the Reich in his quality as Chief of the Government.
 - c) Kanzlei des Führers der N.S.D.A.P., i.e. chancellery of the leader of the Nazi party in his quality as Party Leader.

In addition, he is, of course, the supreme commander of the German forces.

- 2) The Union between the Party and the State is further realised by the provision that the deputy of Hitler in his Party leadership, is, at the same time and in virtue of his Party function, a member of the German Government.
- 3) The third link between the Party and the State is realised by the provision that the Gauleiter (a Party Official) is in virtue of his Party function, a high State Official (Oberpräsident or Reichstatthalter, i.e. chief of the State apparatus in a large district). (Meissner, page 135).
- 4) Besides this personal union, there is a union which might be called a de facto union. The Party official is not de jure in virtue of his Party position, a State official, but certain State functions are performed exclusively by members of the Nazi Party and its formations, either completely or in the upper ranks. For instance, the personnel of the Gestapo, i.e. the branch of the police which is entrusted with political tasks and with the struggle against the enemies of the State and of Nazi rule, are exclusively Nazis supplied by the S.S. (see below). The other branches of the police, for instance

the Sicherheits-Polizei (the security police) or Ordnungspolizei, (uniformed police force maintaining order on the streets etc.), are not completely composed of S.S. men but the leading posts are in their hands (for details see below). The S.S. which was originally a Party organisation is today a State organisation (see below).

But the "nazifying" of the whole apparatus is proceeding. The army is more and more "nazified", especially the younger officers and the staff, who are Nazis from the Hitlerjugend, (Hitler Youth). The new civil servants are Nazis and since the famous decision of the Reichstag of April 1942 giving Hitler absolute power even over the German judicial machinery and over the judges, the judges are more and more becoming Nazis and appear at their professional meetings in the uniform of the S.S.

- 5) The Party enjoys special protection. For example, attacks upon it are punished by Sondergerichte (Special Courts) in the same manner as attacks upon the State.

The relation between State and Party is naturally not stable, but is in a state of constant change and development. In general the Party is, at present, the dominant factor. But inside the party there is no unity. There is a constant struggle for power between various Party organisations and groups. But it would be dangerous to build any political calculation on this fact, which is usual in any criminal gang. The Nazis are united by the common bond of crime. There may be an exception here and there but, in general, they form a compact mass of men linked with each other by their crimes.

2. THE STURM-ABTEILUNGEN (S.A.)

(1) The Origin.

The Nazi Party protected its meetings against its political opponents by formations of so-called "Ordner", i.e. male members of the Party whose duty was to maintain order at the Nazi meetings and to remove opponents, if necessary by force. After the famous "Saal-Schlacht" (Hall-battle) in the Münchener Hofbräuhaus (the famous brewery in Munich) in 1921, the "Ordner" were reorganised and named "Sturm-Abteilungen des Führers", (Shock Troops of the Führer). After repeated reorganisations and after having had as leaders successively, Hess, Göring and Pfeffer, Hitler in 1930 assumed command of the S.A. The Chief of Staff was Röhm. The S.A. underwent successive changes of function. Originally a body for the protection of the Party meetings, it became in 1926 the political army of the Nazi Party, and its members became the political soldiers of the Nazi Party (S.A. page 11 and following). The organisation was adapted to this new function (details see below, sub. 2). But the S.A. still were not a permanent body living in barracks. They had their brown uniform when they were "on duty", i.e. in action in the service of the Party.

After 1933 the function of the S.A. changed again. They became a mass organisation with which various old ex-servicemen's organisations, like the "Stahlhelm" were amalgamated, and were thus turned into an organisation for military purposes, namely for the "Steigerung und Erhaltung der Wehrkraft und des Wehrgeistes", strengthening and maintaining soldierlike spirit and ability - (see S.A. p.12).

The number increased. More than 3 million S.A. men were, in 1933, at the disposal of the Party. Hitler realised the strength and the danger when in 1934, Röhm, Chief of Staff of the S.A., revolted. After the suppression of the revolt, with the help of a new, more reliable and more ruthless elite organisation, the S.S. (see below), the S.A. seemed to disappear from the first line of the political scene.

It reappeared again in 1943, the first year of a great crisis of the Nazi régime and the first year of the real danger of invasion. The new Chief of Staff, Schepmann, who succeeded the last Chief of Staff, Lutze, (said to have been killed in a car accident) is reorganising it for a new task: to supply the men for the guerilla war in Germany and German controlled countries and for the underground Nazi partisan movement after the military defeat of Germany (details, see page 11).

The actual number of the S.A. is not exactly known but some reliable conclusions can be based on an article written by Herbert Hahn, in the weekly "Das Reich" of 21st November 1943, under the heading "Die S.A. heute" (The S.A. today). He says, "Two million men today wear the S.A. military badge, instituted by the Führer, and two and a half million men have before active service undergone military training in the S.A." The S.A. military badge is not given to all S.A. men, but the great majority of them have it. It can be assumed that the number of S.A. men who do not yet have this badge is not greater than 500,000 so that the total number can be estimated to be 2,500,000 men. But in addition, 2 million S.A. men are in the army and after their defeat when the army is disbanded, the great majority of these men will be at the disposal of the underground Nazi movement. The problem is a serious one. The conclusion to be drawn from the numerical strength of the S.A. and from their actual training, tasks and activities, will be suggested at the end of this report.

(2) The Organisation

(a) Recruitment of the S.A.

Nobody is forced to become a member of the S.A. Its statutes underline the principle of voluntary membership. The late Chief of Staff of the S.A., Lutze, wrote in his introduction to the book on S.A. by Bayer, that membership of the S.A. is absolutely voluntary. The book itself emphasises the same principle on page 11. The author says that big efforts and big successes are possible only through personal devotion on the basis of voluntary membership (S.A. page 11).

The "Organisationsbuch" of the Nazi Party says: "Membership in the S.A. is in principle a voluntary one", (Org. page 365). The statutes of the S.A. give every member the opportunity of leaving if he thinks he cannot agree with the policy of the S.A., or if he is unable to fulfil the duties imposed upon him by his membership", (Org. page 367).

But when one is a member of the S.A., one is bound to absolute fidelity and unconditional obedience (S.A. page 12 and other passages of this book).

(b) The Units of the S.A.

The S.A. has an organisation like that of the army. The denomination of the units, however, is different and is similar to some extent to the denomination of the S.S. units (see below). The lowest unit is the "Truppe" which may be compared with a platoon. Then follow "Sturm" (company); "Sturmabann" (battalion); "Standarte" (Regiment); "Brigade"; "Gausturm" (a unit between the Brigade and the Division); "Gruppe" (Division). In 1938 there were 24 "Gruppen" (divisions) of the S.A. But the S.A. Troops are not lodged in barracks. They are not "Kaserniert". They have their civil profession and, besides this, are serving in the S.A., like the Home Guards in Great Britain except that the Home Guards are not a Political Party Army.

(c) Ranks and Grades in the S.A.

The privates who are neither non-commissioned nor commissioned Officers, are called "Anwärter", i.e. promising S.A. men, who later become "Sturmmann" and "Obersturmmann".

The non-commissioned Officers are called "Unterführer" and are divided into the following ranks:- Rottenführer, Scharführer, Oberscharführer, Truppführer, Obertruppführer and Haupttruppführer. Grosso modo these ranks correspond to the ranks of non-commissioned officers in the Army.

The Officers are divided into two groups:- Mittleres Führerkorps", i.e. Officers with lower rank, and the "Höheres Führerkorps", i.e. Higher Officers.

To the first group belong - Sturmführer, Obersturmführer, Hauptsturmführer, Sturmabannführer and Obersturmbannführer. These grades correspond to those of the S.S. (see below) and may be compared with the following grades in the Army: Sturmführer - second lieutenant; Obersturmführer - first lieutenant; Hauptsturmführer - captain; Sturmabannführer - so-called "staff captain", a higher grade of captain; Obersturmbannführer - major.

To the second group belong:- Standartenführer (Lieutenant-Colonel), Oberführer (Colonel), Brigadeführer (Brigade General), Gruppenführer (Divisional General), Obergruppenführer (Army General).

(d) The purpose of the S.A.

As stated above, the purpose changed in the course of the development of the Nazi movement.

Originally, the S.A. were men entrusted with the protection of the Party Meetings. In 1923 the whole Nazi organisation was forbidden.

In 1925 the Nazi movement with all its branches, was again allowed. The reorganised S.S. (see below) took over the task of protecting Hitler, other important Party leaders and their meetings, while the S.A. was entrusted with the task of being:-

- (a) an organisation for the "Saalschutz" - protection of Ordinary Party meetings,
- (b) an instrument for propaganda without the character of a military formation (according to the book S.A. page 11).

In the period before the year 1933, the S.A. (die alten Kämpfer) the old fighters were the worst killers. All crimes committed by the Nazis on their political opponents were committed by the S.A. men. The S.A. was really a criminal organisation composed in the main of criminal elements.

During the Nazi "revolution" in 1933, the S.A. carried out the threat of the "long knives", i.e. they massacred the political enemies of the régime. Afterwards this task was taken over by the more ruthless S.S. and Gestapo, (see below).

After the Nazi "revolution" (1933) the S.A. were entrusted with a new task - that of being the organisation for maintaining and strengthening the military spirit and efficiency - but after the revolt of Röhm they remained politically in the background, and were not employed for the genuine Nazi crimes of massacre and extermination. They had secondary, less criminal tasks to fulfil. On the other hand, they became a real mass-organisation with hundreds of thousands of members who enlisted in order to save their economic or social position. In this period, the leading groups of the S.A. represent the criminal class of the S.A. They were old fighters with criminal records from the past.

In 1943 the S.A. reappears on the scene. A new Chief of Staff has been appointed (Scheppmann) and a new task is given to the re-organised S.A., the task of being an instrument of partisan warfare and, after defeat in the war, the instrument of the armed Nazi underground movement.

According to the "Hamburger Fremdenblatt" of October 16th 1943, Scheppmann stated at a meeting (appel) of the "Gruppenführer" of the S.A. (division generals) in Hamburg, that in future the S.A. would play a more important rôle in warfare. This rôle was defined in an article published on May 4th in the whole German Press. It consists of the training of the so-called "Scharfschützen", i.e. snipers. The training began - hundreds of thousands of the S.A. men were trained in military skill and especially as snipers. As early as 1943 some German newspapers reported that 2 million S.A. men had been given this new military training.

The duty of unconditional obedience was stressed by Scheppmann on many occasions. I will quote one of his articles. In the Danziger Vorposten of October 19th 1943, he wrote, under the heading "The Task of the S.A.": "He is an S.A. man by free decision. It is as a free man that he serves his Führer and his people, but he thinks as a soldier and obeys orders blindly".

The S.A. has become, or is meant to become, a mass-organisation for partisan warfare against the Allied armies and the reservoir of forces for post-war Nazi underground banditry. From this point of view, the S.A. is a dangerous organisation, not so much because of the past or present criminal activity of all its members but because of their potential criminal activity and of the criminal record of their leaders.

For this purpose, the co-operation of the S.A. with the Party has been strengthened. In the already quoted article of Herbert Hahn, in the weekly "Das Reich" of November 21st 1943 under the heading "Die S.A. heute" (the S.A. today) the author underlines the necessity of this close co-operation. He writes:-

"As the Chief of Staff constantly informs the Führer and receives orders from him, so in the future, even more than hitherto, the Gruppenführer will collaborate closely with the Gauleiter, the Standartenführer with the Kreisleiter, the Sturmführer with the Ortsgruppenleiter."

Gauleiter, Kreisleiter and Ortsgruppenleiter are Party officials. The Gau is the most important territorial district of the Party organisation. It corresponds to the County in England and is divided into districts called Kreise, Abschnitte and Ortsgruppen.

The author stresses that the S.A. now have and will have after the present war as their main task, the "Wehrerziehung", i.e. military education and training.

And so the S.A. is being reorganised for partisan warfare, mass terrorism and preparation for the third world war.

3. THE SCHÜTZ-STAFFELN (S.S.)

(1) Origin

The protection of the Party meetings was, at the beginning, the job of the S.A. especially after the famous Hall-battle in Munich in 1921. Specially trained and absolutely reliable S.A. men were organised in 1923, in a special formation which was the cream of the S.A.; its élite, (naturally in the Nazi sense). The most ruthless bandits, often criminals, killers and murderers by profession, were chosen from the S.A. to form a special small mobile group of professionals for the protection of the meetings of the Führer and other prominent Party leaders. These guards were called Schütz-Staffeln der N.S.D.A.P., (abbreviation: S.S., i.e. security guards of the Nazi Party). They were disbanded with the whole Nazi movement in 1923.

In 1925, Hitler ordered the re-establishment of the S.S. as small mobile groups (one leader and ten men) with the task of protecting himself and his meetings and a few prominent Nazi leaders and their meetings. Thus the S.S. was created as a personal guard for Hitler and his close followers.

The number of the members was very small - in 1926, only 200 men. Men required for service in the S.S. were very carefully selected. Physical ability, brutality, blind obedience, readiness to carry out every task and order, especially the ability to "erledigen die Feinde" - to liquidate the enemies of Nazism - were the main requirements. The membership was naturally a voluntary one (see details below).

In 1929, Hitler appointed Heinrich Himmler, as leader of the S.S. Himmler had been an experienced killer and murderer from the time when, in Germany, the secret terrorist bands and "Fehlgerichte" (terrorist secret courts), were active.

The number of the S.S. in 1929 was 280. Hitler ordered Himmler to create for the Party an absolutely reliable force of picked men to undertake the protection of the Führer and be absolutely and unconditionally at his disposal - "Unbedingteste Einsatzmöglichkeit" is the phrase used in the German text.

In 1933 the S.S. had 52,000 members and in 1939, 240,000 members. The number at present is probably 250,000 - 300,000 men.

From the beginning, the S.S. was a Party Police, while the S.A. was the Party Army.

After 1933, the S.S. became the "innere Schutz organization des Staates", i.e. the internal security organization of the Nazi State. This means that the S.S. took over the task of the police, as understood, by the Nazis of course (see details below).

(2) Organisation

(a) Recruitment:

Membership of the S.S. is voluntary. (Org. p.418 and S.S. p.23). The method of selection is very severe. The German Press publishes from time to time, appeals for volunteers. The principle of voluntary

service is stressed in these appeals, which can be seen in the Berliner Börsenzeitung 15.12.43, "Der Neue Tag" of January 16th, 1944, or in announcements of the German news agency (Deutsches Nachrichtenbüro) from January 14th 1943, and so on. The volunteers are told that a very severe examination before a special board will take place.

(b) The S.S. Formations

The S.S. troops are organized in three great formations :

- a) Allgemeine S.S. (the General S.S.).
- b) S.S. Totenkopfverbände (the S.S. death's head formations).
- c) Waffen-S.S. (the armed or military S.S.) called before the war S.S. Verfügungstruppen - (S.S. General purposes troops).

There are, in addition, special departments, as for instance, the important department called "Sicherheitsdienst" (S.D.) which has been attached to the Gestapo, (see below).

The distinction between these three formations lies in their function.

(1) The "Allgemeine S.S." is called by the Nazis, "mother of all S.S. formations". The function of the "Allgemeine S.S." was to be the formation responsible for the inner security of the German Reich. (Schutzorganisation des Staates - Security organization of the State). Their task was - the "Unschädlichmachung des inneren Feindes", (to make the internal enemy harmless). After the occupation of foreign territories, the task of the S.S. became a wider one - combat against foreign nations regarded as internal enemies of the German Reich.

The "Allgemeine S.S." are not a permanent military formation, "kaserniert, i.e. in barracks. Only the commanders and staffs of higher Units (from Sturmbann - battalion - upwards) serve full-time like Army Officers. The other members of the "Allgemeine S.S." serve in the S.S. in their free time or when called upon. At other times they pursue their civilian occupations. But a part of the "Allgemeine S.S." is permanently attached to the Gestapo (see below) and serves in the Gestapo as a full-time professional force.

In spite of the fact that the "Allgemeine S.S." are not as a rule permanent formations, their organization is a military one.

The uniform of the S.S. is black, and bears the number of the Standarte (regiment). The arms are a dagger. When in action, the "Allgemeine S.S." is armed with the normal infantry arms.

According to the book on the S.S. (written by Günther d'Alquen, see Introduction), the "Allgemeine S.S." were divided in 1939 into :

- a) 104 Fusstandarten (Infantry Regiments) each consisting of Sturmbanns (battalions). The lower units are - Sturm (Company), Trupp (Platoon), Schar (Squad).

The number of the "Fusstandarten" increased after the occupation of Austria, Memel, Dantzig and Czechoslovakia. The present number of the S.S. Standarten is probably 108.

- b) 19 Reiterstandarten (Cavalry Regiments)
- c) 14 Nachrichten-Sturmbanne (Intelligence Battalions),
9 Pioniersturmbanne (Engineering Battalions), and so on.

The higher Units are territorial units (organization of the "Allgemeine SS" is of territorial character): Abschnitt (district) and Oberabschnitt (upper district)

In 1939 there were 38 Abschnitte and 14 Oberabschnitte.
Examples : S.S. Oberabschnitt Sued-Ost in Breslau (The S.S. upper-district south-east of Breslau) has several Abschnitte (districts),

such as S.S. Abschnitt VI - Breslau, S.S. Abschnitt XXI - Hirschberg, and so on.

The grades in the "Allgemeine S.S." are much the same as in the other S.S. Formations (for instance, Waffen S.S.) and are as shown in the following list. The corresponding grades in the Army are indicated for illustrative purposes. They are not exactly parallel, but are very similar. The English translation does not of course, indicate the corresponding grades in the English Army.

S.S. Reichsführer	- - -	Supreme Commander
S.S. Oberstgruppenführer	-	General-Colonel
S.S. Obergruppenführer	-	Army General
S.S. Gruppenführer	-	Division General
S.S. Brigadeführer	-	Brigade General
S.S. Oberführer	-	Colonel
S.S. Standartenführer	-	Lieutenant-Colonel
S.S. Obersturmbannführer	-	Major
S.S. Sturmbannführer	-	Staff Captain (a rank higher than that of a Captain)
S.S. Hauptsturmführer	-	Captain
S.S. Obersturmführer	-	First Lieutenant
S.S. Sturmführer	-	Second Lieutenant
S.S. Untersturmführer	-	Sub-Lieutenant

Then follow the ranks of what we may call non-commissioned officers, sergeants and so on. (S.S. Obertruppführer, Truppführer, Oberscharführer, Scharführer, Rottenführer, Sturmmann). The private in the S.S. is called an S.S. Mann.

Note: Sometimes the abbreviation "F.S.", appears, or will appear in the dossiers. This means "Freiwillige Schutzstaffel" and is the name of the Nazi military organizations in countries which are not formally annexed by the German Reich, as for instance, Slovakia.

This formation is composed of Germans who are citizens of Slovakia (the so-called "Volksdeutsche") and its function is exactly the same as that of the "Allgemeine S.S.".

Their leaders are trained in the S.S. training camps and the grades are the same as in the S.S.

A special detachment of the S.S. are the E.T. (Einsatz-truppen) mobile formations corresponding to the old S.S. Verfügungstruppen (which are now called Waffen S.S.).

Great numbers of these "Volksdeutsche" are serving in the German S.S. formations as volunteers.

(ii) S.S. Totenkopf-Verbände (the S.S. death's head formations)

This is the second important S.S. formation. They are permanent police troops, black-uniformed like the general S.S. with a special badge - a death's head. The members are professionals. Their functions are :

- a) They are the guards in the concentration camps and prisons.
- b) They are employed by the Gestapo as a uniformed force in various police operations (mass arrest, torture, extermination etc.)
- c) They are the reservoir for the criminal police which take their officials from these death's head S.S. men.

The S.S. - Totenkopfverbände are recruited from members of the "Allgemeine S.S." who volunteer for the S.S. Totenkopfverbände.

These death's head S.S. formations were originally divided into 4 Standarten (regiments) each in one of the big concentration camps, as for instance, S.S. Totenkopf-Standarte Oberbayern in Dachau, or S.S. Totenkopf-Standarte Brandenburg in Oranienburg, and so on. The number of these Standarten increased as the number of concentration camps increased and as the terroristic rule of Germany extended successively to the whole of Europe. The grades and ranks are the same as in the "Allgemeine S.S.".

(iii) Waffen-S.S.

This is the third important S.S. formation. The origin and formation of the Waffen S.S. is described in an article of the "Völkischer Beobachter", the main Nazi Party newspaper, in the number of December 12th, 1943.

The Allgemeine S.S. was given the task of exterminating the internal enemies of the régime. In the case of a war, this task was regarded by the Nazi leaders as so important that the S.S. Units could not fight in the field and could not participate in the task, "das Reich mit der Waffe zu verteidigen" (defend the Reich by arms). Thus, Hitler, preparing for the war since the first moment of his rule, decided in 1933 to create for the purposes of the coming war a special S.S. troop like an army unit, i.e. living in barracks and armed with all modern weapons. The first unit was the S.S. Leibstandarte "Adolf Hitler", Berlin, Commander - Dietrich Sepp, S.S. Obergruppenführer (Army General). Then followed the S.S. Standarte "Deutschland" in Munich, Commander - Steiner, S.S. Standartenführer; and S.S. Standarte "Germania" in Hamburg, Commander - Demmelhuber, S.S. Standartenführer. After the occupation of Austria, the S.S. Standarte "der Führer" was created and garrisoned in Vienna under the command of Keppler. Technical troops were also created. All these troops were called S.S. Verfügungstruppen, abbreviation : S.S.V.T. (S.S. General purposes troops). All 4 Standarten were used in the occupation of Czechoslovakia.

With the beginning of war, these troops were reorganised, their technical equipment improved and enlarged. The number of the regiments was increased and divisions were organized.

The S.S. Standarte "Germania" became the nucleus of the S.S. division, "Wiking". Other S.S. Standarten became the nucleus of other S.S. divisions like S.S. division "Das Reich", or S.S. division "Totenkopf".

The S.S. Leibstandarte "Adolf Hitler" and further the S.S. divisions "Wiking", "Das Reich" and "Totenkopf" received the name - S.S. Panzer Grenadier Divisions".

All the divisions were completely motorised and mechanised and two cavalry regiments were established. The name was changed. Now they are called Waffen S.S. (Armed S.S. or Military S.S.)

The Waffen S.S. are composed of Infantry Divisions, Artillery Regiments, Panzer Divisions, Flak Units, Ambulances etc. Special political and physical qualities are required.

The function of the Waffen S.S. is of a military character. They are the Units used in grave military situations on the battlefields, but at the same time they are used for big operations against

the civil population in the rear of the battlefield, for mass crimes for which soldiers are not reliable enough.

The uniform of the Waffen S.S. is grey with a brown shirt and is similar to the uniform of the Army. The badge "S.S." on the facings distinguishes them from the Army.

They are independent of the Army but in the field, are, of course, subordinate to the German High Command.

The grades in the Waffen S.S. are the same as in the Allgemeine S.S., with the following differences :

The private is called S.S. Schütze (S.S. Rifleman) and the officers have a double title indicating their rank in the S.S. and their military position. As for instance, S.S. Brigadeführer under Generalmajor der Waffen S.S. The first part of the title is the original S.S. grade common with the Allgemeine S.S. and the second part is an army grade. Then follows S.S. Gruppenführer und Generalleutnant der Waffen S.S., S.S. Obergruppenführer under General der Waffen S.S., S.S. Oberstgruppenführer and Generaloberst der Waffen S.S. (General colonel).

In this connection it should be noticed that all S.S. Officers who are serving in a special branch of the S.S. such as the Waffen S.S., or in the Police, have double titles, one indicating their rank in the S.S. which may even be only an honorary rank, and the other indicating their position in their present service formation, as for instance Daluge, S.S. Oberstgruppenführer and Generaloberst der Polizei (General Colonel of the S.S. and General Colonel of the Police).

(iv) Foreign Waffen S.S. Formations

After the occupation of various European countries, the Germans called for volunteers for the S.S. Some recruits were allowed to serve in the German S.S. formations, mostly in the Waffen S.S. Others were organized as special foreign Waffen S.S., i.e. as S.S. Units for military service on the front or in the rear of the front, composed of foreigners with sufficient numbers of German S.S. Officers and non-commissioned officers (so-called Unteroffizieren). Such foreign Waffen S.S. are usually called Legions.

For example - Legion "Estland", Legion "Norwegen", Legion "Flandern", Legion "Wallonia", Legion "Niederlande", "Das Freikorps Dänemark" (the free corps of Denmark), a French Waffen S.S. formation and seven Ukrainian Waffen S.S.

3. Supreme Command of the S.S.

All S.S. formations have one commander in chief who is called S.S. Reichsführer (S.S. Reichsleader). His name is Heinrich Himmler and he is, at the same time, the supreme Chief of Police and Minister of the Interior. He is also chief of the central S.S. departments which together form the so-called S.S. Reichsführung (The S.S. Reichsleadership - a central office with many branches like a Ministry). Some of them deal with "Germanisation" of the occupied countries. It is typical that this task has been entrusted to the S.S. It means terrorising methods.

4. Special S.S. formations or detachments.

There are some special S.S. formations which complete the picture :

S.S. Polizeidivisionen.

In some reports and dossiers the name S.S. Polizei-Division appears. The origin of this formation is as follows : The Police sent their younger members into S.S. training camps in order to give them the training of the Waffen S.S., i.e. military training. After training they did not return to the Police service in the interior of Germany but were organized in so-called S.S. Polizei-Divisionen, i.e. S.S. Police troops for use at the front. Their task was a double one - to fight on the front like the Waffen S.S. and to carry out measures of terrorisation in the rear. The second was probably their main task - hence the denomination S.S. Polizei-Division, - while the task of the Waffen S.S. is, in the first place, to fight on the front and only in the second place to do police service in the rear.

Service in the Waffen S.S. or in the S.S. Polizei-divisions is equal to service in the army, i.e. the members are regarded as fulfilling their military service and participate in various privileges resulting from military service.

S.S. Sicherheitsdienst.

Finally, in some reports and dossiers, the expression "Sicherheitsdienst", in abbreviation S.D. appears. This denotes a department of the S.S. Reichsführung i.e. of the supreme commander of the S.S. Its official name is "Der Sicherheitsdienst des Reichsführers S.S." According to the book on the S.S. written by Günther d'Alquen (see Introduction) the department was created before 1933 as a special service for controlling the enemies of the Nazi movement. Thus it was a Party secret political police. After 1933, the department was brought into collaboration with the "Gestapo" which was created in 1936. Thus both "Gestapo" and S.D. are now secret police detachments, the task of which is the same but the methods are different. The S.D. could be called a special department for political espionage and control not only of non-Nazis but of Nazis as well.

S-Männer (Sicherheits-Männer i.e. Security Men)

One S.S. formation does not appear in the official documents and reports at all. The existence of this formation is, as I have been told, the big secret of the Nazi leaders. From a German refugee, I obtained the following information :

"Before I escaped from Germany in 1938, I received from well informed sources, the inside information that the Nazis had established a special organization called S. Männer, for the purpose of spying on and holding down the S.S., the Gestapo and high party functionaries in order to prevent any palace-revolution or opposition from within. The organization was strictly secret; I was told that the mere intimation of any knowledge of its existence meant certain death. At the same time when I left, the Corps was said to number about 7,000 most thoroughly picked men who wore plain clothes and were commissioned to any task or place no longer than 3 months at the most so as not to make personal friends.

I have no means to verify this information; personally I do not doubt its general correctness".

5. The discipline of the S.S.

The discipline in the S.S. is most severe. An S.S. man is obliged to carry out blindly every order of the Führer or of his superior officer (Org. 418). It is true that this blind obedience is due from every Party member but in the S.S. it is ruthlessly exacted and maintained by severe means. The S.S. man must be a fanatic (S.S. Page 11). He must show to the Führer, a devotion not only unconditional, like other members of the Party, but the "ultra unconditional." He must be the "Instrument der unbedingtesten Einsatzmöglichkeit des Führers" (S.S. Page 11). Membership is a voluntary one but blind obedience must be given without conditions and without exception. These two leading principles - the voluntary membership and absolutely blind obedience - are stressed in all official publications and in the Statutes of the S.S. All the S.S. men must take an oath that they will be blindly obedient and execute without hesitation, all orders given by the Führer or his appointed leaders.

On October 17th, 1939, special S.S. judicial machinery for the S.S. men, and for the police in certain cases, was created. There are now S.S. criminal courts dealing with offences committed by the S.S. men.

6. The Activity of the S.S.

There are innumerable documents on the criminal activity of the S.S. The expressions : S.S. formations or S.S. men, or S.S. Totenkopf formations, S.S. Divisions, S.S. Polizei divisions or S.D. and Gestapo appear in all documents issued by various Allied governments on the German atrocities. They are so terrible that many people refuse to believe them.

But the documents come from various sources and all are unanimous in the point that the S.S. and Gestapo are torturers, killers and murderers, apart from other innumerable crimes. All these documents are unanimous in asserting that these crimes are not isolated acts but systematic acts planned carefully before the occupation of the affected country and executed as part of a systematic policy of terrorism and extermination. Some documents (captured orders issued by high Nazi authorities or evidence of witnesses, or statements of prisoners) show that in special courses of the S.S., the methods of killing, murder and extermination of political enemies and foreign races, especially Jews, were taught.

All this is in accordance with the criminal character and moral insanity of the Nazi leaders from Hitler down to the last Ortsgruppenführer.

The technique of the crimes has been adapted to their mass character: for instance, gas-vans or gas-chambers in the extermination of concentration camps.

The number of the S.S. criminals is, of course, very great but this does not mean that they cease to be punishable.

The number of the "Allgemeine S.S." and of the S.S. in the Gestapo and other Police formations may be estimated at 250,000 or 300,000 men. The number of the S.S. men in the Waffen S.S. may be a million.

The mass character of German activity is a very serious problem, both from the point of view of the punishment of the criminals and from the point of view of the future security of Europe. It is not only a problem of penal retribution but of prevention as well. I deal with this problem in the second part of my report.

Here, I should like to stress the fact that the various S.S. formations are voluntary organizations with criminal purposes, using crimes as a means for their ends, composed of men (and even women) without human feeling, ready to commit any and every crime on their own initiative or on the order of their superior without any regard to law, morality, pity, or human sympathy. Thus they are genuine criminal gangs.

4. THE GEHEIME STAATS-POLIZEI (GESTAPO)

(1) Origin

The task of the police in Germany before 1933 was, like that of the police in other civilized countries, to maintain public order and personal security. Moreover no "German" police existed in the sense of a centralized body exercising its functions through the whole Weimar Republic. The German Republic was a union of more or less autonomous States, and one of the spheres in which this autonomy existed was that of police. Each State maintained its own force. The Nazi State changed the police system completely. It changed, in the first place, the function and the whole conception of the police, and of its purpose and *raison-d'être*.

The leading Nazi ideas on the police and its functions are explained in the books by Frank and Best referred to in the Introduction to this report. Very shortly they are as follows :

a) In the Nazi State the police has to protect not the individual but the "Volks-Gemeinschaft" (the community of the people) embodied in the Nazi State. Provisions in a Constitution protecting individual rights and liberties are an obstacle for the police in the Nazi conception. Personal rights and liberties were suppressed because they conflicted with the Nazi doctrine and conception of the police. (Dr. Reinhard Höhn, University professor and S.S. Obersturmbannführer, deputy chairman of the Commission for Police-Law, in "Frank" page 21).

b) But it is not enough that the individual should be deprived of all protection for his personal rights and liberties. When the interest of the Volksgemeinschaft so requires, the individual must be sacrificed. (Best page 14). The meaning of the word "sacrificed" is clear: imprisoned without lawful cause, tortured, exterminated or liquidated. The individual life has no value. Best went even further. He advocated the idea that the ruling race has the right - moral and divine - to subjugate and even to exterminate foreign races.

c) Consequently Himmler, the Supreme Chief of the German Police, stated, according to the book quoted as "Frank" that, the new Nazi Police came into action after 1933 without any respect to law. Violation of law was for it the rule. "We began by not recognizing in most cases the existence of paragraphs" (Frank page 13). He meant "of laws". And the Nazi Police-Law was elaborated as a system of lawlessness.

d) Thus, Dr. Hans Frank, at the time German Minister of Interior, at present Governor General in Poland, stated on the same occasion as Himmler and Höhn, that Nazi Police-Law is something completely different from the old conception of "law". Nazi Police-Law means, states Frank, the will of the Führer. Thus the circle is closed. It was closed in 1936. In February of that year, a law, or an act or decree, was issued in Prussia creating the instrument of the "ideas" just quoted - the organisation which was to protect the Nazi State masquerading as the community of the people, namely the Geheime Staats-Polizei (Ge-Sta-Po, Gestapo). Originally a Prussian Police formation the Gestapo became an all-powerful police force for the whole of the Reich and of the invaded or occupied territories.

(2) Organisation

The Gestapo is one of the three main branches of the German Police. These branches are :

- a) Die Geheime Staats-Polizei (Secret State Police) or Gestapo
- b) Die Sicherheits-Polizei (Security Police)
- c) Die Ordnungs-Polizei (Police for maintaining order)

The Gestapo has political tasks (see sub. 3). The second branch deals with ordinary crimes. The third maintains public order in the streets, theatres, cinemas etc. and provides the traffic police. In addition there are a number of special police formations in part auxiliary - fire-police, post-police, Stadtwacht (town guard), Landwacht (country guard).

The organisation of the Gestapo is as follows :

a) Recruitment

Membership of the Gestapo is voluntary. Only S.S. men can become members. That means only Germans who have been trained both physically and mentally, in the S.S. Institutions and who have had experience in one of the various S.S. formations.

In the Gestapo the complete union between the S.S. and police is realised. The Gestapo is a police formation composed exclusively of S.S. men, who perform their service either in civilian clothes or in S.S. uniform (black uniform). The uniformed detachments of the Gestapo are its regular executive force. The above mentioned S.D. (Sicherheits-Dienst) an older special S.S. espionage organisation, collaborates with the Gestapo.

The union between the S.S. and the other two branches of the German police is not so close as in the case of the Gestapo. But the leading positions in those branches must be and are in the hands of S.S. men. That means that only an S.S. man with S.S. training in S.S. Schools, training-camps and practice in one of the three S.S. formations can become an officer or official of the Sicherheits - or Ordnungs-Polizei. He has, like an officer of the Waffen S.S., a double title : one part of the title indicates his grade in the S.S., the second his function in the Police. This rule applies to the minor officials as well, as for instance in a title like S.S. Sturmführer and Kriminalkommissar.

The supreme chief of all police forces and formations is Heinrich Himmler, the supreme chief of the S.S. (Reichsführer S.S.) who is at the same time Minister of Interior and member of the Reich-Council for Defence (Reichsverteidigungsrat) and is empowered to issue the so-called Polizeiverordnungen, (Police regulations) having the force of law for the whole German territory and that of the invaded and occupied countries. Thus, the S.S. is in fact the master of the Police.

(3) Task of the Gestapo

In the decree of February 10th, 1936 creating the Gestapo its task is defined as follows :

"The State Secret Police (Geheime Staatspolizei) has the task of investigating and fighting against all movements dangerous to the State in all spheres of State existence, of collecting and exploiting the results of investigations, of reporting to the Government and of keeping other authorities informed on all current issues of importance to them, and providing them with the requisite conclusions".

This wording does not express even remotely the real task and the real power of the Gestapo. The Gestapo is the political brain of the S.S. organization as a whole. It is authorized to use all means and methods without exception in order to protect the Nazi régime. The decisions of the Gestapo cannot be submitted to any examination by a court. No control and no criticism are admitted. The man is nothing, the Gestapo is all. No legal, humanitarian or moral objections can be made to acts of the Gestapo. So have the Nazi leaders proclaimed in innumerable declarations. It is a notorious fact.

(4) Activity of the Gestapo

The Gestapo operates exactly on the lines explained above. The Gestapo is the criminal branch of the German police, criminal in respect of its aims and of its methods. In all documents on German atrocities in the invaded or occupied countries, and on atrocities committed in Germany and in her satellite States on Jews and Anti-Nazis, the Gestapo appears always and without exception among the terroristic organizations like S.S., S.D. etc. which are responsible for tortures, mass murders, extermination and other crimes. Criminological vocabulary has no sufficient words for such crimes. The Gestapo men, like the other S.S. men are, professional torturers, killers and murderers responsible for the suffering and death of millions. The activity of the Gestapo and similar German terroristic and murderer organizations and of all Nazis, even in the Army and in civil administration, has been characterized by the Allied leaders in a clear and impressive manner. I have quoted some of them on pages 11 and 12 of my report on the Retributive action of the United Nations (Doc. III/4) and I refer to this passage.

I sum up the first part of this report as follows :

- a) The spine of the Nazi power apparatus is the S.S. formations.
- b) The purpose and the means of these S.S. formations are of clearly criminal nature.
- c) Their membership is a voluntary one.
- d) They are a danger for the world of the future.

The position of the S.A. is different.

The members of the S.A. from before 1933 and up to June 1934 (Röhmrevolte) must be considered as being in the same category as the S.S. men i.e. torturers, killers and murderers of political opponents and of Jews.

After June 1934 a distinction should be made between the rank and file and the leaders (officers).

The rank and file are to a certain extent - some experts say to a great extent - not criminals but simply political profiteers, some of them even against their will.

It may be a question of fact. One is sure that the criminal of the old S.A., the so-called alte Kämpfer, took over the S.S. But the S.A. could become dangerous if trained and prepared for underground Nazi banditry. The process is not yet finished.

All these facts must be kept in mind. They are the basis of important legal conclusions - important both from the practical and the theoretical point of view which will be set out in the second part of this report.

P A R T I I

LEGAL CONCLUSIONS

(a). IS MEMBERSHIP IN THE S.A., S.S. AND GESTAPO TO BE
REGARDED AND PUNISHED AS A CRIME?

The question whether mere membership in a criminal organisation is or is not a crime, is not a new one. In the 19th century various States were forced to answer a similar question because they were faced with the problem of organised crime. They realised that this cannot be effectively suppressed if the State waits until crimes have been committed by the criminal organisation before it brings the criminal law into action. Legislators were obliged to bring the law into operation in a substantially earlier stage. They took into consideration the fact that formation of a gang of criminals and joining a gang of criminals have the effect of strengthening the criminal propensities of members of the gang and are a valuable support to them. Union among criminals is a dangerous stimulant to the commission of crimes and the great obstacle to effective prevention of crime. Thus the creation and the existence of a societas scelerum is of itself a fact of which criminal legislation must take account.

One of the oldest legislative acts of the 19th century dealing with the problem of organised crime is the British India Act No. 30, enacted on 14 November 1836, and published in the British India Statute Book for 1836. The Act deals with the dangerous Indian criminal organisation known as the Thugs. The full official text of the Act is as follows:

"1. It is hereby enacted that whoever shall be proved to have belonged either before or after the passing of this Act to any gang of thugs either within or without the territories of the East India Company shall be punished with imprisonment for life with hard labour.

2. And it is hereby enacted that every person accused of the offence made punishable by this Act may be tried by any court which would have been competent to try him if his offence had been committed within the zillah⁽¹⁾ wherein that court sits anything to the contrary in any regulation notwithstanding.

3. And it is hereby enacted that no court shall at a trial of any person accused of the offence made punishable by this Act require any futwa⁽²⁾ from any law officer."⁽³⁾

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- (1) ZILLAH is the technical name of the areas into which India was divided for judicial purposes.
- (2) FUTWA was the technical name for such an opinion formally given by the Law Officer.
- (3) LAW OFFICER referred to in the last paragraph was a Mahomedan assessor attached to the Court to give opinions on points of Mahomedan law.

A few words about this Act and its success may be useful in connection with our modern German "Thugs". It is one of the most valuable precedents for the treatment of the criminals who are organised in the S.A., S.S. and Gestapo.

The Thugs were, as I have learned from various sources, a vast and powerful fraternity of murderers who killed under the pretext of religion. They believed themselves to act on the orders of the goddess Kali, when the auspices were favourable for the execution of a murder. The mentality of the Thugs has been admirably described - I am told - in Meadows-Taylor's novel "Confession of a Thug", which shows the total and irremediable moral distortion from which the Thugs were suffering. They did not see that there was anything criminal in their acts. They believed that their acts were covered by the will of the goddess Kali. Substitute Hitler for Kali and you have the criminal mentality of the German Thugs.

The Thugs were carefully prepared for their crimes from youth. Just the same thing happens in Germany in the S.S. Institutions and in the various Institutions for the "education" of the German youth, as for instance, the so-called Ordens-Burgen. Here the German youth are "educated" to be "fanatical animals", as a British War Correspondent described them in his report on their atrocities in Italy.

The Governor General of India, Lord William Bentinck, realised the danger and put Captain Sleeman in charge. The Act of 1836 punishes membership in the fraternity of Thugs with imprisonment for life with hard labour. It is expressly given retrospective force. The reason of this provision is not indicated but can easily be guessed. The Thugs had flourished during the centuries of India's disunity, when there was no legislative and executive power to deal with their crimes. It was a period of what the lawyers call vacuum juris in respect of these crimes. But this circumstance cannot change a crime into a legal act, when the crime is a malum in se, i.e. an act the criminal nature of which is generally recognised as, for instance, the crime of murder. In Germany a vacuum juris and even a denial of justice exists since 1933, not because of Germany's disunity, of course, but because Germany's legislator and supreme master is himself a criminal, who not only approves of crimes and justifies them, (see, for instance, the subsequent legalisation of murders committed by Hitler and his friends on Röhm in June 1934), but orders them to be committed. It would be legalistic narrowness to say that the massacre of Jews and anti-Nazis in Germany is not a crime to be punished because it was the supreme German legislator (himself a criminal) who ordered the massacres.

It is no violation of the principle nullum crimen sine lege when a civilised legislator punishes such crimes retroactively. It is not ex post facto legislation, The crimes were crimes before the Act. This problem is, however, a wider one and should be the subject matter of a special report. The great majority of the Allied States, especially the States at present occupied by Germany, will be forced in the interest of justice to pass retrospective Acts in order to fill up the vacuum juris created by the German invaders and occupants.

The British India Act dealing with the Thugs recognised the impossibility of such a formalistic and legalistic conception of crime and enacted penalties having retrospective effect, showing the Allied legislators a way of dealing in 1939/1944 with the German Thugs.

4-11

It must be noted that the condemnation on the charge of being a member of the Thug organisation in no way excluded condemnation for a particular murder. The Act was a complete success. Within a decade an end was put to the Thuggee. The Act and the prosecution of Thugs, started on the basis of this retrospective Act, were applauded in Great Britain at the time. Similar acts against the German Thugs will be applauded now in the whole world and especially in the liberated countries.

I do not know whether other States who later passed similar Acts, followed the British example. In any case it is very interesting to see that some of these Acts passed at the end of the 19th century, for instance, in France and Austria, and later, after the first world war, in Soviet Russia and finally passed or prepared during the present war in London by various exiled Governments, follow exactly the same lines as the British India Act of November 14, 1836.

A. Czechoslovakia. The Czechoslovak Republic took over the Austrian penal code of 1852 and many special penal laws, among them the Act of May 27, 1885, dealing with crimes committed by means of explosives, the so-called "Sprengstoffgesetz". In Article 5 of this Act the mere fact that several persons form a combination, not for the purpose of committing a particular crime or crimes, which would be a Komplot (conspiracy), but for the purpose of committing crimes by means of explosives, is itself a crime. In the commentaries to this Act the perpetrators are called "members of a gang" (band), and the association was called by the lawyers at the time a gang, or a band. The crime committed by joining such an association was called the "crime of banditry". Banditry consisted only in crimes committed by explosives and thus was not a crime of a general nature, as it is in other countries, e.g. in France (see below).

The Czechoslovak State, by the Act for the Defence of the Republic of March 1, 1923, declared it a punishable offence to be a member of a secret organisation having for its purpose - activity against the State. The offence was a very minor one - a simple misdemeanour punishable with some weeks' imprisonment.

Czechoslovakia, like other new States in Europe, was liberal towards the Germans and too lenient towards Nazi crimes. We are paying the penalty. Taking into account the terrible experiences it has undergone, the Czechoslovak Government in London has now prepared a Bill to be issued as an Act or a Decree when the country is liberated, and dealing with the punishment of Nazi crimes.

Article 2 of this Bill provides:

(1) Whoever at the moment of the growing danger to the Republic⁽¹⁾ became or remained a member of the following organizations: Die Schutz-Staffeln der national-Sozialistischen Arbeiterpartei (S.S.), or the "Die Geheime Staats Polizei" (Gestapo), or of special formations of the S.S. shall be punished, if he has not incurred a more severe penalty, with imprisonment for from 10 to 20 years and, in specially grave cases, with imprisonment for life.

(1) The period of the "growing danger to the Republic" is fixed by Article 16 of the Bill.

(2) The same penalties shall be inflicted upon whoever became or remained an official or commander in the following organisations: Die Sturmabteilungen des Führers (S.A.), National-Sozialistische deutsche Arbeiterpartei (N.S.D.A.P.), Sudetendeutsche Partei (S.D.P)(1) Vlastka, Hlinkova Garda, Levente.

The Act will be retrospective for the following reasons, indicated in the exposé des motifs:

i) The principles nullum crimen sine lege and nulla poena sine lege are fundamental principles of democratic legal culture, the re-establishment of which is one of the purposes of the present war. But these principles, proclaimed at the time as a means of protection of citizens against tyrannical monarchs, may become a protection for Nazi criminals because no normal peace time legislator could foresee all the forms the Nazi crimes were to assume, nor, more particularly, the fact that the crimes would be disguised in legal forms.

ii) The retrospective force of the Act is justified by the certainty that, if the legislator had imagined these acts to be possible, he would have made them crimes in accordance with the legal conscience of the people and of the whole civilised world.

iii) Thus the Act is obliged in the interest of justice to admit exceptions to the principles nullum crimen sine lege and nulla poena sine lege wherever they are in danger of becoming a shelter for crime.

The idea of the vacuum juris filled up by the Nazis with crimes, criminal legislation and administration, is the basis for the retrospective force of the Act.

B. France

Articles 265-268 of the French Penal Code deal with the "Association de malfaiteurs". Garaud, Précis de Droit Criminel, 1934 Edition Sirey, p.1518 and seq. says that the penal code punishes "cette Societas scelerum, préalablement à toute exécution des crimes projetés par le seul fait de son existence et de son organisation, comme crime contre la paix publique." Membership of the criminal gang is a crime in itself.

The Act of December 18, 1893, modified the provisions of the Penal Code in the direction of more severity and greater effectiveness of the law as an instrument against the crime of banditry.

C. Belgium

Similar provisions are, as I was told, to be found in the Belgian Penal Code. The Belgian Government has prepared an Act dealing with the Quislings. It is a retrospective Act because the penalties provided in the present Belgian Penal Code are raised and some new crimes are introduced with retrospective effect, as, for instance, some sorts of political and ideological assistance to the enemy.

(1) The Sudetendeutsche Partei was that of Konrad Herrlein, a disguised Nazi Party before 1938, other organisations mentioned in the Bill are quisling or Hungarian organisations.

D. Luxembourg

The Criminal Code of Luxembourg punishes the men who form or join a criminal association by the Articles 322-326.

E. Norway

A decree of the Norwegian Government in London of January 22, 1942, punishes membership in Norwegian Nazi organisations and similar organisations.

F. Soviet Russia

Article 59, section 3, of the Criminal Code of U.S.S.R. punishes as a crime the formation of and membership in a criminal gang. The Russian criminologists call this crime the "crime of banditry".

I do not know the state of the law in other countries, but the examples I have quoted show that there is a sound legal principle and an effective criminological method available to punish as a crime membership in a criminal gang.

The question remains to be answered whether and to what extent this principle could be applied to the German organisations which are the subject of the report. I think we must make a distinction between the S.S., the Gestapo and the S.A. So far as the S.S. and Gestapo are concerned, I may quote a private memorandum written by George Lelewer, Professor of Criminal Law at the University of Vienna, who was at the same time Procurator General at the Supreme Military Court at Vienna. He sent it to me on 4 April, 1944. The title of the memorandum is: "Is joining the Gestapo or the S.S. punishable?" Professor Lelewer starts with an analysis of the provisions of Austrian criminal law dealing with banditry. And he continues:

"It is generally known that the Gestapo and the S.S. were created to hold down, to rob and, when the régime so wished, to exterminate the populations of the territories controlled by the Germans. Thus Gestapo and S.S. are associations in which the legal elements of the crime of banditry are to be found.

"Whoever joins the Gestapo or the S.S., knows in advance that he is joining an association in which he will be obliged to participate in acts of terrorism. By joining them, therefore, he commits the crime of participating in a gang It must be added that nobody is legally bound to join the Gestapo or the S.S. or to remain in them."

I have nothing to add to the opinion of the eminent Austrian jurist, who is both a professor and a public prosecutor. Part I of this report justifies it fully. The position of the members of the S.A. is a little different, as explained in Part I.

Thus, my first legal conclusion is as follows:

1) The Membership of the S.S. and of the Gestapo may be regarded as a crime according to the general principle of criminal law that any help given to criminals is a crime and according to the positive provisions of criminal codes of some Allied States that membership of a criminal association is in itself a crime.

ii) The Allied States who up to date have not made such membership a crime but intend to do so in the case of both organisations, should take into consideration that giving retrospective force to such a provision is juridically admissible, morally justified and practically badly needed.

iii) Membership of the S.A. up to June 1934 and membership of the leading classes of the S.A. from June 1934 may be regarded as a crime under the same conditions as mentioned sub (i) and (ii).

iv) Membership of the rank and file of the S.A. from June 1934 should not necessarily be regarded as a crime but it is a sufficient reason to take measures of security against them (see Section (e)).

(b) IS MENS REA ON THE PART OF THE MEMBERS OF S.A., S.S.
AND GESTAPO TO BE PRESUMED?

The question is not only theoretical. We must keep in mind the probably high number of Nazi criminals to be tried for crimes committed in connection with the present war and the rule that the prosecutor is obliged to prove the existence of both the mental and the physical constituents of a crime, the mens rea (the guilty mind) and the actus reus (the criminal act).

Mens rea is a psychological constituent. It is the relation between the mind of the accused (his intellect and his will) and the result of his action or omission. Everyone knows that the proof of mens rea is sometimes very difficult and that it is there that the defending counsel has usually his best chance.

The fact that the onus probandi (the burden of proof) rests on the prosecutor is in some cases an undeserved privilege for the accused, and a means of escaping justice. Accordingly, judicial practice and criminal legislation have slowly but logically taken another direction in such clear and evident cases as those with which we are dealing. Professor Kenny in his Outlines of criminal law (Cambridge, 1936) characterizes the evolution in England as follows: "Yet in most cases the law regards the criminal act itself as sufficient prima facie proof of the presence of mens rea. Every adult is presumed to intend the natural consequences of his conduct". (Page 73).

I cannot deal in this report with the whole problem of mens rea and with the role of presumptions in the criminal proceedings. I think that the above-quoted passage from Kenny's book illuminates admirably the question which is the heading of this chapter. It means that the proof of mens rea in some cases is not necessary and that the mens rea may be presumed.

First the personality of the accused is important. It is obvious that the fact that an S.S. man has murdered a Jew must be viewed in a completely different way from that in which murder of his sweetheart by a lover would be regarded. The intention to kill - the guilty mind - is obvious in the first case, but may not be obvious in the second. Thus the proof of this intention in the first case is superfluous, in the second case necessary.

Further, the intention to kill can be presumed on the part of a gangster or on the part of an S.S. man, because of the notorious fact that he has joined voluntarily a criminal association with criminal purposes using criminal means, and requiring blind obedience from the members. Thus he knew what will be the "natural consequences of his conduct", i.e. the consequences of his membership to the criminal association. He knew that he will be ordered to commit crimes which are the "statutory activity" of this organization. Consequently, according to the rule quoted above by Kenny, he must be presumed to intend these crimes and his guilty mind needs no special proof. The fact that he is a member justifies the presumption of guilty mind.

Finally, the guilty mind can be proved by the criminal act itself. Some acts are so obviously criminal that the guilty mind of the perpetrator is without doubt. If somebody shoots down a child in the arms of the mother, or if somebody in cold blood exterminates whole families or whole sections of an innocent population, these acts are "a sufficient prima facie proof of the presence of mens rea". In both cases the presumption of mens rea is a presumptio facti "inferences of fact, the law does not command juries to draw them, but only advises their doing so" (Kenny p. 387). There have been a great number of cases

in the practice of English criminal courts where the presumption of guilty mind on the part of murderers was admitted because of the nature of the act itself.

But this kind of presumption - praesumptiones facti - tends to become praesumptiones juris i.e. inferences of fact which the law commands juries to draw. The evolution of presumptions in connection with changing social conditions is described in Garraud Précis de Droit Criminel Chapter VII, section: Evolution des présomptions dans le procès criminel. I refer to this excellent analysis made by a French criminologist and I would only add that the evolution of English criminal law takes the same direction under the pressure of new facts. As I have repeatedly stated in my reports and in my contributions to the discussions in our Commission and the committees, new facts, the new reality, must be constantly watched by the lawyer and by the legislator. Otherwise they are in danger of producing dead theories and rules.

English criminal legislation, with necessary caution, of course, but resolutely and constantly adapts the law to the needs of the living human being. This evolution of English criminal practice and legislation goes so far that on the one hand "statutory crimes where mens rea is not requisite are steadily increasing both in number and importance" (Kenny p.44), and on the other hand, in cases where mens rea is still required, the judges incline to adopt the view, "that there is a sufficient mens rea wherever there is an intention to do anything that is wrong morally" (underlined by Kenny) even though legally it be quite innocent, both criminally and civilly (Kenny p.54). And he supports the first assertion by examples of statutory crimes not requiring mens rea - crimes with absolute criminal liability - and the second assertion by quoting the opinion of eight judges in the famous case Reg. v. Prince, (see details in Kenny's book, pages 53 and 54). It may be doubtful if we can speak of the "Eclipse of mens rea" (see Stallybras's article quoted by Kenny page 40 footnote 1), but one thing is certain: lawyers and legislators who are not blind to the new facts, to the profound changes of social conditions, are coming to the conclusion that it is right and just to establish the presumption of guilty mind in certain cases and under certain circumstances, and to leave it to the accused to prove his innocence. The burden of proof is removed from the prosecutor to the accused. This course is taken, for instance, in the Defence (General) Regulations 1939, Regulation 91, which deals with offences by Corporations. The text is as follows.

"Where a person convicted of an offence against any of these Regulations is a body corporate, every person who, at the time of the commission of the offence, was a director or officer of the body corporate or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of the offence".

It is a new principle. It is a departure from the presumption of innocence, it is presumption of guilty. I leave apart the ratio legis of this Regulation. I show only that crime, especially such as has resulted from the war, requires new rules. One of these new rules is the presumption of mens rea in cases where practice itself, long before any statutory regulation, has admitted this presumption, either openly or by diminishing the degree of the mens rea required to such extent that it became a moral mens rea, resembling the dolus generalis of the older doctrine.