

UNITED NATIONS WAR CRIMES COMMISSION.

Roumanian Provisions regarding the Prosecution of
War Criminals and persons responsible for the
National Disaster.

The following information on Roumanian legislation is a translation from the book "La Guerre-Crime et Les Criminels de Guerre", by Vespasien V. Pella, Geneva, 1946, page 71.

The Roumanian Decree-Law of April 1945 for the prosecution of war criminals and those responsible for the national disaster, is particularly interesting. It seems in fact, to be an anticipation of the Charter annexed to the Agreement of 8th August 1945 of the Four Great Powers, concerning the suppression of crimes against peace, crimes against the laws and customs of war and crimes against humanity.

From the following texts can be discerned the criteria of guilt.

Article 2 of the Roumanian Law regards, among others, as being "responsible for the disaster of the country by committing war crimes, persons:

- (a) who have decided in favour of the declaration or the continuation of war against the Soviet Union and the other United Nations;
- (b) who have not respected the international rules relating to the waging of war;
- (c) who have submitted prisoners of war and hostages to inhumane treatment;
- (d) who have ordered or have committed acts of terrorism or cruelty, or the suppression of peoples inhabiting the territories on which war has been fought;
- (e) who have ordered or have committed acts of suppression, either collective or individual, in accordance with a political or racial plan;
- (f) who have ordered the carrying out of excessive labour, or the removal and transportation of persons in order to exterminate them;
- (g) who, as commandants, directors, keepers and prison guardians of camps for political prisoners or internees, or for political deportees or detained persons, or of camps for forced labour or of labour gangs, have imposed inhumane treatment upon those who were in their power;
- (h) who, as police officers or officers in charge of enquiries into political or racial questions, by whatever right they were conducted, have committed acts of violence or torture, or have used any other illegal means of constraint;
- (i) who, as procurators and civil or military judges, have aided or intentionally committed acts of terror or of violence;
- (j) who have improperly appropriated private or public belongings in territory where war has been waged. "

Secret.
Restricted.

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29th August 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Bibliography of Legal Literature on the Law of War Crimes and Belligerent
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Third Supplement to the Bibliography

Doc. Misc. No. 19. (K)

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UNITED NATIONS WAR CRIMES COMMISSION

To be attached to:

Doc. Misc. 45.

Please attach as footnote to page 1 of Doc. Misc. 45:

The first and second supplements to the Bibliography of
Legal Literature (Doc. Misc. No. 19) were circulated as
Documents Misc. 24 and Misc. 34.

Misc. No. 46.
4th September, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Note

on the

Report of the Secretary-General of the United Nations
on the Work of the Organisation.

By Egon Schwelb, Legal Officer.

I. Introductory.

On 30th June 1946, the United Nations, New York, published as Document A/65, the report of Mr. Trygve LIE, the Secretary-General, on the work of the United Nations. The Report covers the period until 30th June 1946. It is proposed to give in this paper a survey of those parts of the Report which are of particular interest to the United Nations War Crimes Commission, either

because they touch upon the terms of reference of the United Nations War Crimes Commission, or

because they are of interest to all international organisations other than the United Nations, of which the United Nations War Crimes Commission is one.

A report on the Proceedings of the General Assembly, First Part of First Session, London, 10th January - 14th February 1946, and a Summary of Proceedings of the first meetings of the Security Council, London, 17th January - 16th February 1946, have also been published by H.M. Stationery Office, London.

II. The Work of the Atomic Energy Commission and its bearing on the development of International Criminal Law.

Chapter I, (Political and Security Questions) of the Report, contains on pp. 9 et seq., paragraph E, the report on the activities of the Atomic Energy Commission.

The setting up of the Atomic Energy Commission was decided by the General Assembly on 24th January 1946. According to the Resolution of the General Assembly, the Commission was to be composed of one representative from each of the States represented on the Security Council and Canada when that State was not a member of the Security Council.

The terms of reference of the Atomic Energy Council provide, inter alia:

- (b) for control of Atomic Energy to the extent necessary to ensure its use only for peaceful purposes;
- (c) for the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction;
- (d) for effective safeguards by way of inspection and other means to protect complying States against the hazards of violations and evasions.

The American Plan.

At the first meeting of the Commission, the representative of the United States submitted a United States plan based on the creation of an International Atomic Development Authority. The plan contains the proposal that there must be no veto in the governing body of the Authority. The American representative proposed that once renunciation of the bomb as a weapon has been agreed upon and an adequate system of control put into effective operation, with punishments set up for any violations, manufacture of atomic bombs should stop, and existing bombs should be disposed of under treaty.

The representative of Canada supported the United States proposals, especially that concerning the veto of the permanent members of the Security Council.

The representative of the United Kingdom accepted the United States plan as a basis for consideration and endorsed in particular the emphasis on progressive development of the system of control, and on the necessity for effective punishment of any violation.

The Soviet Plan.

At the second meeting of the Commission, the representative of the USSR made, inter alia, the following propositions: One of the first measures should be a study of the question of the conclusion of an international agreement to forbid the production and use of weapons based upon the use of atomic energy for the purpose of mass destruction. The essentials of such an agreement would include, inter alia,

- (1) The prohibition of the production and use of a weapon based upon the use of atomic energy.
- (2) The destruction of all stocks of atomic energy weapons.
- (3) Any violation of the agreement shall be regarded as a serious threat against humanity.
- (4) Violation of the terms of the agreement shall be severely punished under the domestic legislation of the contracting parties.
- (6) All States (whether Members or not of the United Nations), shall be obliged to fulfil all provisions of the agreement.

The USSR representative proposed the setting up of two committees, the task of one of which would be to prepare recommendations, inter alia, on the following subjects concerning the prevention of the use of atomic energy for the harm of humanity:

- (1) The preparation of a draft international agreement to outlaw weapons based upon the use of atomic energy and to forbid the production and use of such weapons and all similar forms of weapons destined for mass destruction.
- (3) Measures, systems and organisation of control in the use of atomic energy to ensure the observance of the above mentioned conditions for the international agreement to outlaw atomic weapons.
- (4) The elaboration of measures for application against the unlawful use of atomic energy.

The representatives of China, Brazil and Egypt endorsed the United States proposal.

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The representatives of France and the Netherlands believed that the United States and Soviet plans were not incompatible.

The representative of Poland, inter alia, wished to embody the principle of individual responsibility for violations of such international agreements, to provide that these violations be considered breaches of the peace under Art. 39 of the Charter, and to direct that the prohibition of atomic warfare be written into the constitution of Member States.

The representative of Australia thought that the Soviet proposal could be fitted into the general plan outlined by the United States representative.

Establishment of a Working Committee.

The Atomic Energy Commission established a Working Committee composed of one representative from each of the twelve members of the Commission, which is to report regularly and frequently to the Commission on its work.

III. The Commission on Human Rights.

Article 55 of the Charter of the United Nations provides, inter alia, that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." The Charter further provides, in Article 57, that the various specialised agencies, established by inter-governmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields shall be brought into relationship with the United Nations, which shall make recommendations for the co-ordination of their policies and activities (Art. 58.) The responsibility for the discharge of these functions is vested, by Article 60 of the Charter, in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council.

During the course of its first session, the Economic and Social Council adopted resolutions, inter alia, on the following matters:

- (4) Commission on Human Rights,
- (7) Committee on Negotiations with Inter-Governmental Relations,
- (10) Committee on Refugees and Displaced Persons. (Report, p.13.)

In setting up the Commission on Human Rights, the Council decided that the work of the Commission should consist, inter alia, of the preparation of proposals, reports and recommendations on an international bill of rights, international declarations or conventions on civil liberties, and the prevention of discrimination on grounds of race, sex, language, or religion. The Economic and Social Council instructed the Secretary-General to make arrangements for: (a) the compilation and publication of a yearbook on law and usage relating to human rights, the first edition of which should include all declarations and bills on human rights now in force in the various countries; (b) the collection and publication of information on the activities concerning human rights of all organs of the United Nations; (c) the collection and publication of information concerning human rights arising from trials of war criminals, quislings, and traitors, and in particular from the Nuremberg and Tokyo trials; (d) the preparation and publication of a survey of the development of human rights; (e) the collection and publication of plans and declarations on human rights by specialised agencies and non-governmental national and international organisations.

It may be noted that in connection with (c)(supra), the United Nations got into touch with the United Nations War Crimes Commission, (Doc.A.10; see also M.110).

The Council decided that pending the adoption of an international bill of rights, the general principle should be accepted that international treaties involving basic human rights, including to the fullest extent practicable treaties of peace shall conform to the fundamental standards relative to such rights set forth in the Charter of the United Nations.

IV. Specialised Agencies.

In paragraph C. of Chapter II of the Secretary-General's Report, (page 21), it is pointed out that "the multiplicity of international organisations calls for the provision of an effective system for the co-ordination of their activities". Pursuant to directives from the General Assembly, the Economic and Social Council, at its first session in London, began the work of bringing international organisations having wide international responsibilities into relationship with the United Nations.

Appointment of a Committee on Negotiations with Inter-governmental Agencies.

On 16th February 1946, the Economic and Social Council appointed a Committee on Negotiations with Inter-governmental Agencies, and instructed it to enter into negotiations with:

The International Labour Organisation, (I.L.O.)
The United Nations Educational, Scientific and Cultural Organisation, (UNESCO),
The Food and Agriculture Organisation, (FAO)
The International Monetary Fund, and
The International Bank for Reconstruction and Development,

with a view to bringing them into relationship with the United Nations in accordance with Articles 57 and 63 of the Charter.

In the meantime, agreements were negotiated with the ILO, UNESCO and FAO and these agreements were approved by the Economic and Social Council at its second session on 21st June 1946.

At the request of the International Monetary Fund and the International Bank for Reconstruction and Development, it was agreed to postpone the negotiating of agreements with these organisations, inasmuch as they were not at the present time in a position to consider definite agreements with the United Nations in view of the urgent organisational problems, with which they were confronted.

Relationship of Specialised Agencies with the United Nations.

The Negotiating Committee have interpreted the relevant provisions of the Charter as clearly requiring that specialised agencies be brought into relationship with the United Nations as a whole and not with the Economic and Social Council alone. Thus, the possibility is not excluded of specialised agencies having direct relations with other principal organs of the United Nations, where this is clearly to the mutual advantage of the parties concerned. Members of the United Nations having undertaken to carry out decisions of the Security Council for the maintenance of peace and security, "through their action in the appropriate international agencies of which they are members", the draft agreement in each case includes an undertaking on the part of the specialised agency concerned to assist the Security Council, upon its request, in carrying out such decisions. Similarly provisions are included obliging each agency to assist the Trusteeship

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Council in carrying out its functions, and to furnish such information as may be requested by the International Court of Justice.

Reciprocal Representation.

The principle has been accepted that representatives of the United Nations should be invited to attend meetings of the conferences and executive bodies of the agencies and to participate, without vote, in their deliberations. On the other hand, this representation was made reciprocal on the basis of the following arrangements:

- (a) Representatives of the specialised agencies will be invited to participate, without vote, in meetings of the Economic and Social Council and of its commissions, and of the Trusteeship Council, with respect to items on their agenda relating to matters in which the agency has indicated that it has an interest, or which comes within the scope of its activities;
- (b) Representatives of the specialised agencies will be invited to attend meetings of the General Assembly in a consultative capacity and to participate, without vote, in the deliberations of its main Committees when matters which come within the scope of the activities of an agency are under discussion;
- (c) Written statements will be distributed by the United Nations Secretariat whenever a specialised agency so requests.

Proposal of Agenda Items.

The agreements contain also a reciprocal obligation under which the Economic and Social Council or the Trusteeship Council, on the one hand, and the specialised agencies on the other, agree to include in their agenda, items which either body may propose to the other.

Recommendations of the United Nations to the Specialised Agencies.

While many of the provisions which have been written into the draft agreements refer to what may be described as mandatory obligations on the part of the specialised agencies, the United Nations expressly recognises in Article 1 of each agreement the special competence of the agencies within their respective fields of activity as laid down in their basic instruments. Those functions and responsibilities which belong exclusively to the United Nations are nevertheless fully safeguarded. Each draft agreement requires the specialised agency to submit to its policy-making or executive organ all formal recommendations which the United Nations may make to it, to report to the United Nations (in accordance with Article 64 of the Charter) all action taken to give effect to these recommendations, and to enter into consultation with the United Nations upon request. Similarly, in recognition of the responsibility conferred on the General Assembly and on the Economic and Social Council for the co-ordination of the policies and activities of the specialised agencies and those of the United Nations, the specialised agencies specifically undertake to co-operate with the United Nations in whatever measures may be necessary to make such co-ordination fully effective.

Miscellaneous Provisions of the Agreements with Specialised Agencies.

The Draft Agreements between the United Nations and the Specialised Agencies further provide for the exchange of information and documents, for consultation regarding permanent headquarters of the agencies, for statistical and administrative services, for budgetary and financial arrangements and for implementation and revision of agreements.

Personnel Arrangements.

Emphasis was given to the desirability of securing as much uniformity as practicable in matters relating to personnel arrangements. The United Nations and the specialised agencies jointly affirm that the eventual development of a single unified international civil service is desirable. With this end in view, they undertake to develop common personnel standards, methods and arrangements designed to avoid serious discrepancies in terms and conditions of employment, to avoid competition in recruitment of personnel and to facilitate interchange of personnel, when desirable, on either a temporary or permanent basis. Initial steps have been taken at the Secretariat level to give effect to the principles stated in the draft agreements.

Consultation at Secretariat Level.

The members of the Negotiating Committee placed particular emphasis on the necessity for close and continuous consultation at the Secretariat level in order to assure effective co-ordination of activities. The Secretariat of the United Nations has already made substantial progress in developing the necessary technical and administrative liaison.

V. The Problem of Refugees and Displaced Persons in its bearing on the question of war criminals.

The General Assembly resolved, on 12th February 1946, to refer the question of refugees and displaced persons to the Economic and Social Council for examination and report to the second part of the first session of the General Assembly. It recommended that the Council take into consideration the international scope of the problem, certain principles to be considered with regard to the early return of refugees and displaced persons to their countries of origin and the extent of international responsibility for the fate of those who might be considered as unrepatriable. The General Assembly further recommended that, under whatever international arrangements the Economic and Social Council might make for dealing with the problem of refugees and displaced persons, there should be no interference with the surrender and punishment of war criminals, quislings and traitors, in accordance with existing and future conventions and international agreements.

The text of this Resolution has been circulated in Document C.179, part II.

Pursuant to these recommendations, the Economic and Social Council, by a resolution adopted during its first session, established a Special Committee on Refugees and Displaced Persons, to carry out promptly a thorough examination of the problem and to make a report thereon to the Council at its second session.

The Special Committee recommended to the Economic and Social Council, inter alia: to set up an International Refugee Organisation; to draw the attention of all the United Nations and of all appropriate international bodies to the necessity of making available to the Organisation the necessary transport in order to continue the operations of repatriation before the winter sets in and to ensure that the greatest possible number of displaced persons are repatriated before 15th September 1946; to take all practical measures in order that repatriation shall not be impeded through difficulties in transit, reception, absorption and food supplies; to keep in mind the fact that in certain areas a considerable number of refugees and displaced persons are not fully employed and to make arrangements immediately, in areas where it seems necessary, for providing more work for them, pending their repatriation or resettlement; to draw the attention of any international body conducting a census of persons receiving international assistance or protection to the urgency of such a census; and

to furnish the organisation with the text of the document known as the "Moscow Declaration of 1 November 1943" relating to "war criminals", "quislings" and "traitors", and with all other available documents containing authoritative interpretation of the terms "war criminal", "quisling" and "traitor", and with the texts of all future documents relating to the same subject.

Reference is also made to Doc.C.206, where the relevant parts of the Report by the Special Committee on Refugees and Displaced Persons were circulated.

VI. Legal Affairs.

Chapter V of the Secretary General's Report describes, on pp.36 et seq. the work of the Legal Department of the United Nations Secretariat, and refers particularly to the General Convention on Privileges and Immunities, approved by the General Assembly on 13th February 1946, (C), to the Convention to be concluded with the USA (D), and to Agreements with the Swiss authorities providing for the status of the United Nations in Switzerland. Under (J) (Development and codification of International Law), it is pointed out that early steps should be taken to prepare for the implementation of Art.13(1)(a) of the Charter concerning the encouragement of the progressive development of international law and its codification.

A special Division for this purpose was created in the Legal Department, and the first task of the Division was to undertake a study of the possibilities and the method of international legislation and the codification of international law. As a preliminary step it engaged on a survey in the realm of international legislation and codification through informal contacts established with officials of Member governments and with private organisations and persons eminent in international law. The Division will now undertake a programme of work consisting of: (a) making studies concerning the promotion of international legislation in the form of multilateral conventions; (b) examining the possibilities of resuming the process of codification of international law and assisting in promoting conferences on the codification of international law in the future; (c) undertaking research in the work of public and private bodies and serving as a centre of information concerning matters offering possibilities of codification. Also, within the framework of the activities of the United Nations itself, the Division will analyse and record legal principles practised by the principal organs of the United Nations in applying the provisions of the Charter.

It may be mentioned in this connection that Dr. Yuen-li Liang one of the representatives of China on the United Nations War Crimes Commission, and its Committees II and III, has been appointed Director of the Division of the Development and Codification of International Law of the Legal Department of the United Nations Secretariat.

VII. Administrative and Financial Services.

Chapter IX of the Report, (pp.50 et seq.) deals with general questions connected with the administration of the United Nations and its finances. It is pointed out there, and in the Secretary General's introduction, that the task of organising the Secretariat and making the necessary administrative arrangements for the meetings of the several Councils, has occupied much of the time and energy of the executive staff of the Organisation. This task was not eased by the pressure which the world political and economic events imposed upon the United Nations, or by the material conditions in which it had to be undertaken. As a result of these conditions and of the haste in which decisions had to be taken, some mistakes have inevitably been made and results have not always equalled expectations. But every effort has been made to correct mistakes and overcome difficulties, and it is believed that these efforts have not been without avail. Much has been accomplished, though much still remains to be done.

A Special Division of the Secretariat has been established to deal with substantive and constitutional aspects of relationships with specialised agencies.

UNITED NATIONS WAR CRIMES COMMISSION.

Danish Provisions

Regarding

Punishment of War Crimes.

The following translation of an extract from the Danish Act regarding the Punishment of War Crimes of 12th July 1946, has been made available to the Secretariat by the Danish Representative.

" Translation
of
The Danish Act on Punishment of War Crimes.
Assented to by H.M. The King of Denmark
on the 12th July, 1946.

Chapter I.

1. If a non-Danish subject, being in the service of Germany or serving under one of Germany's allies, has infringed the rules and customs of international law governing Occupation and War and has performed, in Denmark or to the detriment of Danish interests, any deed punishable per se in Danish law, an action can be brought against such person in respect of the crime committed and a punishment imposed in a Danish Court in pursuance of this Act.
2. In addition to the instances cited in paragraph 1, persons having committed the following crimes shall be liable to prosecution under this Act: war crimes or crimes against humanity such as murder, maltreatment of civilians, prisoners or seamen, the killing of hostages, looting of public or private property, requisitioning of money or other valuables, violation of the Constitution, imposition of collective punishments, destruction by explosives or otherwise, all in so far as these actions were performed in violation of the rules of international law governing Occupation and War. This Act shall further apply to deportation or other political, racial or religious persecution contrary to principles of Danish law, and further to all actions which, though not specifically cited above, are covered by Article 6 in the Charter of the International Military Tribunal, of the Order issued by the Danish Ministry for Foreign Affairs, Law Journal C. No. 7, dated 13th November 1945.
3. For crimes to which this Act applies, the punishment prescribed in the relevant Statute of Penalties may be increased to imprisonment for any term up to imprisonment for life. Should the case not be covered by any Danish code of penalties hitherto in force, the punishment shall be imprisonment for any term up to imprisonment for life.

The capital punishment, however, may be imposed in the circumstances laid down in Act. No. 259, dated 1st June, 1945, amending the Civil Penal Code, paragraph 8, section 2(*), or, further, in specially aggravating circumstances.

4. The fact that the criminal deed was performed by a person acting under orders or in a subordinate capacity does not exempt the criminal from responsibility, but may be taken into consideration as an extenuating circumstance, and in specially extenuating circumstances the punishment may be waived altogether.

5. When in pursuance of this Act a non-Danish subject is sentenced to a term of imprisonment, the sentence shall include the provision that on completion of his term of imprisonment he shall be deported from Denmark and warned that any illegal return to Denmark will render him liable to punishment.

.....

8. The liability of the criminals, or other legal implications provided by this Act never lapse, and the sentences passed may be carried out at any time.

9. Unless otherwise determined by the above stipulations the regulations in the General Section of the Civil Penal Code shall apply to the crimes to which this Act refers.

Chapter II.

.....

12. In actions brought in pursuance of this Act any appropriate lawyer may be engaged for the defence. An obligation to accept an appointment for the defence rests, however, only on the official Advocates appointed by the Minister of Justice in accordance with the Law on the Administration of Justice, para. 733.

Should the accused desire any particular lawyer as his counsel for the defence, this lawyer should be engaged, unless this is excluded by the provisions of paragraph 1.

.....

(*) The said paragraph provides that capital punishment i.a. may be imposed in case of murder, or torture with a view to provoking a confession; furthermore in some cases of treason in aggravating circumstances and in some cases of arson.

Misc. No. 48.
25th September, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Canadian War Crimes Legislation

(The material reproduced in this paper
has been received from
Mr. H. R. Horne).

The Canadian provisions corresponding to the British Royal Warrant of 14th June, 1945, Army Order 81/1945 (see Document C. 131) and to the Commonwealth of Australia War Crimes Act 1945 (see Document C. 196) have, in the Dominion of Canada been made by an Order in Council 30th August 1945, (The War Crimes Regulations, (Canada)).

The text of these Regulations is reproduced below.

On the 6th August, 1946, the House of Commons of Canada passed a Bill (No. 309; Second Session, Twentieth Parliament, 10 George VI, 1946) which eventually will become The Canadian War Crimes Act (An Act respecting War Crimes). The provisions of this Bill are to the effect that the War Crimes Regulations, Canada, made by the Governor in Council on the 30th August, 1945, are re-enacted. The Act shall be deemed to have come into force on 30th August, 1945; it will, therefore, retrospectively give to the Regulations made by the Governor in Council statutory effect as of the date of the making of the Regulations.

WAR CRIMES REGULATIONS (CANADA).

1. These Regulations may be cited as the War Crimes Regulations (Canada).
2. In these Regulations, unless the context otherwise requires and subject to any express provision to the contrary:
 - (a) "accused" means a person charged with or suspected of the commission of a war crime;
 - (b) "Army Act" means the Army Act of the United Kingdom as made applicable from time to time to members of the Canadian military forces;
 - (c) "convening officer" means an officer authorized to convene a military court under these Regulations;
 - (d) "military court" means a military court constituted and held under these Regulations;
 - (e) "Rules of Procedure" means the Rules of Procedure made pursuant to the Army Act, as made applicable from time to time to members of the Canadian military forces;
 - (f) "war crime" means a violation of the laws or usages of war committed during any war in which Canada has been or may be engaged at any time after the ninth day of September, 1939;
 - (g) other expressions bear the same meaning as they have in the Army Act or Rules of Procedure.
3. The custody, trial and punishment of persons charged with or suspected of war crimes shall, on and after the date hereof, be governed by these Regulations.
4. (1) Any Canadian flag, general or air officer commanding any Canadian forces, wherever such forces may be serving, whether in the field or in occupation of enemy territory or otherwise, and any officer acting for such officer commanding in his absence, and any officer not below the rank of colonel, or its relative rank, whom such officer commanding, or officer acting for him in his absence, may authorize in

writing/

writing in that behalf, shall have power to convene military courts for the trial of persons charged with having committed war crimes and to confirm the findings and sentences of such courts: Provided that no military court shall be convened for the trial of any person for a war crime unless the case has been certified by the Judge Advocate General, or any representative of his appointed by him for that purpose, as approved for trial.

(2) Any authority to convene military courts conferred by an officer commanding or an officer acting for him in his absence under (1) of this Regulation may be addressed to an officer by name or designation of an office and may be made subject to such restrictions, reservations, exceptions and conditions, compatible with these Regulations, as may seem meet to the officer conferring the authority.

(3) An officer having authority to confirm the finding and sentence of a military court may reserve confirmation of the finding and sentence, or of the sentence alone, to any authority superior in rank or appointment to him who is competent to confirm the findings and sentences of the like kind of military court convened under these Regulations.

5. Except as herein otherwise provided expressly or by implication, the provisions of the Army Act and the Rules of Procedure, so far as they relate to field general courts-martial and to any matters preliminary or incidental thereto or consequential thereon, shall apply so far as applicable or practicable to military courts and to any matters preliminary or incidental thereto or consequential thereon in like manner as if military courts were field general courts-martial and the accused were persons subject to military law charged with having committed offences on active service; Provided that

- (a) Sections 49, 51, 54(I) (d) and (7) and 57(2) and (4) and 57A of the Army Act, and Rules of Procedure 3, 34, 35(D), 56, 110, 118(A) and (B), 119(B) and 120(C), (D) and (E) made pursuant thereto shall not apply;
- (b) No departure from any procedural rule or other provision contained in the Army Act or the Rules of Procedure shall affect the jurisdiction of, or the validity of any proceedings by or before, any military court, or of any proceedings preliminary or incidental thereto or consequential thereon, unless in the opinion of the court, or of the confirming authority, substantial injustice has thereby been done to the accused.

6. (1) If it appears to a convening officer that a person then within the limits of his command or otherwise under his control has at any place committed a war crime he may direct that such person if not already in custody shall be taken into and kept in custody pending trial in such manner and in such charge as he may direct.

(2) The commanding officer of any body of naval, military or air forces having charge of an accused shall be deemed to be the commanding officer of the accused for the purposes of all matters preliminary and relating to trial and punishments; Provided that such commanding officer shall have no power to dismiss the charge or deal with the accused summarily for a war crime. He shall without any such preliminary hearing as is referred to in Rule of Procedure 3 either cause a summary of evidence to be taken in accordance with Rule of Procedure 4 or an abstract of evidence to be prepared as the convening officer may direct.

(3) The accused shall not have the right of having a summary taken or of demanding that the evidence at the summary shall be taken on oath or that any witness shall attend for cross-examination at the taking of the summary.

7. (1) A military court shall consist of not less than two or more than six officers in addition to the president, all of whom shall be appointed by name, but no officer, whether sitting as president or as a member, need have held his commission for any special length of time.

(2) If the accused is an officer of the naval, military or air forces of an enemy or ex-enemy power the convening officer should, so far as practicable, but shall be under no obligation to do so, appoint or detail as many officers as possible of equal or superior relative rank to the accused.

(3) If the accused belongs to the naval, military or air forces of an enemy or ex-enemy power, or if Canadian naval, military or air force personnel are in any way affected by the alleged war crime, the convening officer should appoint or detail, if available, at least one naval, military or air force officer as a member of the court, as the case may be.

(4) Notwithstanding anything in these Regulations, where any war crime appears to affect the interest of any Allied power, including any member of the British Commonwealth of Nations, a convening officer may:

- (a) invite one or more officers of the naval, military or air forces of such Allied power to become a member or members of the military court convened to try the person or persons charged with having committed the offence, in which case any officer so invited may sit as a member of the military court;
- (b) appoint as a member of the court one or more officers of an Allied force serving under his command;

Provided that in no case shall the number of such Allied officers on a military court comprise more than half the members of the military court excluding the president.

(5) Any Allied officer sitting as a member of a military court pursuant to (4) (a) or (b) of this Regulation shall be vested with the same rights, duties and powers as an officer of the Canadian forces duly appointed to serve as a member of such a court.

(6) A convening officer may, with the consent of the appropriate naval, military or air force authority, appoint as president or member of a military court, an officer not under his command.

(7) The convening officer shall normally appoint at least one officer having one of the legal qualifications mentioned in Rule of Procedure 93(B) as president or as a member of the court. If no such officer is appointed, and in default of a person deputed to act as judge advocate by the Judge Advocate General, or any representative of his appointed by him for that purpose, the convening officer shall by order appoint a person having one of the said legal qualifications to act as judge advocate at the trial.

8. The accused shall not be entitled to object to the president or any member of the court or the judge advocate or to offer any special plea to the jurisdiction of the court.

9. Counsel may appear on behalf of the prosecutor and accused in like manner as if the military court were a general court-martial, and Rules of Procedure 88 to 93, both inclusive, shall in such cases apply accordingly. In addition to the persons deemed to be properly qualified as counsel under Rule of Procedure 93 any person qualified to appear before the courts of the country of the accused and any person approved by the convening officer shall be deemed to be properly qualified as counsel for the defence.

10. (1) At any hearing before a military court convened under these Regulations the court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the court to be of assistance in proving or disproving the charge, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a field general court-martial, and without prejudice to the generality of the foregoing, in particular:

(2) If the accused is an officer of the naval, military or air forces of an enemy or ex-enemy power the convening officer should, so far as practicable, but shall be under no obligation to do so, appoint or detail as many officers as possible of equal or superior relative rank to the accused.

(3) If the accused belongs to the naval, military or air forces of an enemy or ex-enemy power, or if Canadian naval, military or air force personnel are in any way affected by the alleged war crime, the convening officer should appoint or detail, if available, at least one naval, military or air force officer as a member of the court, as the case may be.

(4) Notwithstanding anything in these Regulations, where any war crime appears to affect the interest of any Allied power, including any member of the British Commonwealth of Nations, a convening officer may:

- (a) invite one or more officers of the naval, military or air forces of such Allied power to become a member or members of the military court convened to try the person or persons charged with having committed the offence, in which case any officer so invited may sit as a member of the military court;
- (b) appoint as a member of the court one or more officers of an Allied force serving under his command;

Provided that in no case shall the number of such Allied officers on a military court comprise more than half the members of the military court excluding the president.

(5) Any Allied officer sitting as a member of a military court pursuant to (4) (a) or (b) of this Regulation shall be vested with the same rights, duties and powers as an officer of the Canadian forces duly appointed to serve as a member of such a court.

(6) A convening officer may, with the consent of the appropriate naval, military or air force authority, appoint as president or member of a military court, an officer not under his command.

(7) The convening officer shall normally appoint at least one officer having one of the legal qualifications mentioned in Rule of Procedure 93(B) as president or as a member of the court. If no such officer is appointed, and in default of a person deputed to act as judge advocate by the Judge Advocate General, or any representative of his appointed by him for that purpose, the convening officer shall by order appoint a person having one of the said legal qualifications to act as judge advocate at the trial.

8. The accused shall not be entitled to object to the president or any member of the court or the judge advocate or to offer any special plea to the jurisdiction of the court.

9. Counsel may appear on behalf of the prosecutor and accused in like manner as if the military court were a general court-martial, and Rules of Procedure 88 to 93, both inclusive, shall in such cases apply accordingly. In addition to the persons deemed to be properly qualified as counsel under Rule of Procedure 93 any person qualified to appear before the courts of the country of the accused and any person approved by the convening officer shall be deemed to be properly qualified as counsel for the defence.

10. (1) At any hearing before a military court convened under these Regulations the court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the court to be of assistance in proving or disproving the charge, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a field general court-martial, and without prejudice to the generality of the foregoing, in particular:

- (a) if any witness is dead or is unable to attend or to give evidence or it is, in the opinion of the court, not practicable for him to do so, the court may receive secondary evidence of statements made by or attributable to such witness;
 - (b) any document purporting to have been signed or issued officially by any member of any Allied (including British Commonwealth) or enemy force or by any Allied (including British Commonwealth), neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof;
 - (c) the court may receive as evidence of the facts therein stated any report of the "Comité International de la Croix Rouge" or by any representative thereof, by any member of the medical profession or of any medical service, by any person acting as a "man of confidence" (homme de confiance), or by any other person whom the court may consider was acting in the course of his duty when making the report;
 - (d) the court may receive as evidence of the facts therein stated any depositions or any record or report of any military court or military court of inquiry or of any examination made by any officer detailed for the purpose by any military authority;
 - (e) the court may receive as evidence of the facts therein stated any diary, letter or other document appearing to contain information relating to the charge;
 - (f) if any original document cannot be produced or, in the opinion of the court, cannot be produced without undue delay, a copy of such document or other secondary evidence of its contents may be received in evidence;
 - (g) any statement made prior to trial by an accused or by any witness at such trial, whether or not such statement was made on oath, and whether made before or after or without the giving of any caution, shall be admissible in evidence for all purposes.
- (2) It shall be the duty of the court to judge of the weight to be attached to any evidence given in pursuance of this Regulation which would not otherwise be admissible.
- (3) Where there is evidence that a war crime has been the result of concerted action upon the part of a formation, unit, body, or group of persons, evidence given upon any charge relating to that crime against any member of such a formation, unit, body, or group may be received as prima facie evidence of the responsibility of each member of that formation, unit, body, or group for that crime; in any such case all or any members of any such formation, unit, body, or group may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the court.
- (4) Where there is evidence that more than one war crime has been committed by members of a formation, unit, body, or group while under the command of a single commander, the court may receive that evidence as prima facie evidence of the responsibility of the commander for those crimes.
- (6) The court shall take judicial notice of the laws and usages of war.
- (7) Unless the convening officer otherwise directs, a finding of guilty and the sentence shall be announced in open court by the president, who shall at the same time state that such finding and sentence are subject to confirmation. If such announcement is not made in open court the president shall notify the accused of the finding and sentence under sealed cover at the termination of the proceedings and record in the proceedings that this has been done. A finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation or be subject to be revised and shall be pronounced at once in open court, but the court shall not thereupon release the accused, unless otherwise entitled to be released.
- (8) The sittings of military courts will ordinarily be open to the public so far as accommodation permits. Nevertheless the court may, on the ground that it is expedient to do so in the national interest or in the interests of justice, or for the effective prosecution of war crimes generally/

See
Erratum

generally, or otherwise, by order prohibit the publication of any evidence given or to be given or of any statement made or to be made, or of the names, descriptions or photographs of any witnesses heard or to be heard, in the course of the proceedings before it, or direct that all or any portion of the public shall be excluded during any part of such proceedings as normally take place in open court, except during the announcement of the finding and sentence pursuant to paragraph (6) above.

(9) A record shall be made of the proceedings of every military court.

11. (1) A person found guilty by a military court of a war crime may be sentenced to and shall be liable to suffer any one or more of the following punishments, namely:

- (a) Death (either by hanging or by shooting);
- (b) Imprisonment for life or for any less term;
- (c) Confiscation;
- (d) A fine.

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

(3) Sentence of death shall not be passed on any person by a military court without the concurrence of all those serving on the court if the court consists of not more than three members, including the president, or without the concurrence of at least two-thirds of those serving on the court if the court consists of more than three members, including the president.

12. The accused may within 14 days of the termination of the proceedings in court submit a petition to the confirming officer against the finding or sentence or both if he gives notice to the confirming officer within 48 hours of such termination of his intention to submit such a petition. The accused shall have no right to submit any petition otherwise than as aforesaid: Provided that, if such petition is against the finding, it shall be referred by the confirming officer, together with the proceedings of the trial, to the Judge Advocate General, or to any representative of his appointed by him for that purpose for advice and report thereon.

13. (1) The finding and any sentence which the court had jurisdiction to pass may be confirmed and, if confirmed, shall be valid, notwithstanding any deviation from these Regulations, or the Army Act or the Rules of Procedure or any technical or other defect or objection.

14. When a sentence passed by a military court has been confirmed, the senior combatant officer of the Canadian forces in the theatre in which the trial took place not below the rank of major general or its relative rank, or any officer not below the rank of brigadier, or its relative rank, authorized by him, shall have power to mitigate or remit the punishment thereby awarded or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court: Provided that this power shall not be exercised by an officer holding a command or rank inferior to that of the officer who confirmed the sentence.

15. The fact that an accused acted pursuant to the order of a superior or of his government shall not constitute an absolute defence to any charge under these Regulations; it may, however, be considered either as a defence or in mitigation of punishment if the military court before which the charge is tried determines that justice so requires.

16. Any sentence passed by a military court shall, so far as practicable, be carried out as if the person so sentenced were a member of the Canadian military forces on whom a like sentence had been passed by court-martial.

17. In any case not provided for in these Regulations such course will be adopted as appears best calculated to do justice.

UNITED NATIONS WAR CRIMES COMMISSION.

Erratum.

Misc. No. 48.

In Doc. Misc. No.48, p.4, insert between sub-paragraph (4) and sub-paragraph (6), the following text of sub-paragraph (5):

(5) Where there is evidence that a war crime has been committed by members of a formation, unit, body or group and that an officer or non-commissioned officer was present at or immediately before the time when such offence was committed, the court may receive that evidence as prima facie evidence of the responsibility of such officer or non-commissioned officer, and of the commander of such formation, unit, body, or group, for that crime.

Misc. No. 49.
1st October, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Collecting International and Municipal Provisions
regarding War Crimes.

Report by Egon Schwelb, Legal Officer.

In the meeting of the Commission held on 27th March 1946, (M.101), several members expressed the wish that statutory provisions enacted in different countries to deal with the problems of war criminals, should be collected by the Secretariat and made available to Members.

The Chairman of the Commission ruled that the Legal Secretariat should take up this matter.

This paper is a survey of the action taken to comply with this decision.

The following enactments are available to the Secretariat, and have, with the exception of those which have been published by H.M. Stationery Office and may therefore be easily purchased in London, been circulated to Members of the Commission.

Part I.

International and Multilateral Provisions.

- 1) The Charter of the International Military Tribunal attached to the London Agreement of 8th August 1945. British Command Paper, Cmd. 6668, and United States Department of State Publication 2461, Executive Agreement Series 472. The latter publication contains also the Protocol signed at Berlin, 6th October 1945, which has been circulated as Document C.193. The U.S. Department of State Publication 2420, also contains the Four-Power Agreement and the Indictment. (See also the Indictment, British Command Paper Cmd. 6696 and the Proceedings of the International Military Tribunal sitting at Nuremberg, Part I, the Opening Speeches of the Chief Prosecutors and the Speeches of the Chief Prosecutors at the Close of the Case, against the Individual Defendants, the latter three published under the authority of H.M. Attorney General, by H.M. Stationery Office, London.)
- 2) The Charter of the International Military Tribunal for the Far East, (Doc. C.182, amended text Doc. C.198) and the Indictment before the International Military Tribunal for the Far East (C.197). (See also below, Part III, (2)(c).)
- 3) The Draft Peace Treaties with Italy, Roumania, Bulgaria, Hungary and Finland. The Draft Peace Treaties have been published by H.M. Stationery Office as Command papers, viz: Italy, Cmd. 6892, Hungary, Cmd. 6894, Bulgaria, Cmd. 6895, Roumania Cmd. 6896, Finland, Cmd. 6897. The provisions regarding war crimes are quoted in Doc. Misc. No. 43.

Part II.
Inter-Allied Provisions.

1) Western Zones.

Military Government Courts. Ordinance No.2. printed in "Military Government Gazette, 6 Army Group Area of Control" No.1., page 7 and in Military Government Gazette, Germany, 21 Army Group Area of Control, No. 2., page 7. (See Doc.C.132)

2) Provisions for the whole of Germany.

Control Council Law No.10 regarding the punishment of persons guilty of war crimes, crimes against peace and against humanity. Printed in the Official Gazette of the Control Council for Germany, No.3., Berlin, Allied Secretariat, 31st January 1946, and in the Military Government Gazette, Germany, British Zone of Control, No.5., page 46, circulated also by the Research Office in its Document Series as No.15 bis.

Part III.
Municipal and Occupational Provisions.

1) United Kingdom.

Royal Warrant of 14th June 1945, (Army Order 81/1945), amended by the Royal Warrant of 4th August 1945, (Army Order 127/1945), Royal Warrant of 30th January 1946, (Army Order 8/1946) and Royal Warrant of 20th February 1946, (Army Order 24/1946). (Docs. C.131 and Misc.No.13).

2) United States of America.

(a) Regulations for the trial of war crimes in the Mediterranean Theater of Operations, Doc.Misc.No.16.

(b) Provisions regarding Military Commissions in the European Theater of Operations and Military Government Courts. (Doc.Misc.23).

(c) Regulations governing the Trial of War Criminals in the Pacific Theater of Operations, (Misc.41). (See also the Charter of the International Military Tribunal for the Far East, Supra under I(2), Docs.C.182 and 198, and the Executive Order providing for the representation of the United States in preparing and prosecuting in the trials against the leaders of the European Axis Powers, Doc.C.112, Amendment in Annex to Doc. C.178).

3) France.

Ordinance of 28th August 1944, concerning the prosecution of war criminals. Document Series of the Research Office, No.26.

4) Australia.

War Crimes Act, 1945; Regulations under the War Crimes Act 1945, Statutory Rules 1945, No.164; Amendment of the Regulations Statutory Rules 1946, No.30; Copy of Instrument of Appointment referred to in definition of "War Crimes" in Section 3 of the War Crimes Act. These documents have been circulated, in extract, as Doc.C.196.

5) Dominion of Canada.

War Crimes Regulations (Canada) and the Canadian War Crimes Bill.
(Doc.Misc.No.48).

6) Poland.

Decree of 31st August 1944, Official Gazette No.4/1944; Decree of 6th May 1945, Official Gazette No.17/1945 and Decree of 22nd January 1946, No.5/1946. Summary circulated in Doc.C.218.

7) Czechoslovakia.

A report on legislative measures is contained in Doc.III/14.

8) Greece.

Emergency Law No.533 concerning the imposition of Penal Sanctions on enemy collaborators. Printed in "Report of the British Legal Mission to Greece", Command Paper, Cmd.6838; an extract circulated as Doc. Misc.38.

9) Denmark.

Danish Act on the Punishment of War Crimes of 12th July 1946.
Extract circulated as Doc.Misc.47.

10) Austria.

Austrian Constitutional Law of 26th June 1945, concerning War Crimes and other National Socialist misdeeds, and amendment thereto of 18th October 1945. Circulated in Document Series of the Research Office, under Nos. 23 and 32.

11) Roumania.

Decree Law of April 1945, Extract from the book by Professor V.Pella, circulated as Doc.Misc.44.

UNITED NATIONS WAR CRIMES COMMISSION

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON SEPTEMBER 30TH, 1946.

	:Cases tried:	:Accused involved:	S e n t e n c e s			: R e m a r k s
			Death	Imprison- ment.	Acquittal	
EUROPE.	:	:	:	:	:	:
UNITED STATES:	:	:	:	:	:	:
U.S.F.E.T.)	:	:	:	:	:	:
U.S.Mediterranean)	78	341	192	123	26	U.S.Mediterranean figures relate to June 1946 only
BRITISH:	:	:	:	:	:	:
B.A.O.R.	126	482	117	229	136)	Situation as at 1.10.46
C.M.F.	28	57	8	28	21)	
FRANCE:	Not given	138	75	58	5	Situation as at 18.7.46.
(A) Total reported for Europe	:	1,018	392	438	188	
FAR EAST.	:	:	:	:	:	:
UNITED STATES:	103	225	79	135	11	
BRITISH	127	406	170	187	49	
AUSTRALIAN	129	489	77	232	180	Situation as at 18.4.1946
(B) Total - Far East:	:	1,120	326	554	240	
GRAND TOTAL A + B:	:	2,138	718	992	428	

Misc. No. 51.
October 22, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Additional United States Provisions regarding Military
Commissions and Military Government Courts Trying War
Criminals

In complying with the task with which the Secretariat was charged in the meeting of the Commission held on 27th March 1946, (M.101), and referring to the general report contained in Doc. Misc. No. 49, the Secretariat herewith circulates three additional documents which have been made available by the United States Commissioner. Previous United States documents of a similar character have been circulated as Misc. Nos. 16, 23 and 41.

The present paper contains: .

I. The Regulations Governing the Trials of Accused War Criminals in the Pacific Theater of Operations, issued by command of General MacArthur on 5th December 1945. These Rules, (the SCAP Rules of 5th December 1945) replace the Regulations made on 24th September 1945 which were circulated as Doc. Misc. 41. (p.1)

II. The Regulations Governing the Trial of War Criminals in the China Theater, issued by Command of Lieut. General Wedemeyer on 21st January 1946. (p.7)

III. The Directive issued by Command of General McNarey on 26th June 1946, regarding the trial of war criminals in the European Theater. (p.12)

I
R E S T R I C T E D
GENERAL HEADQUARTERS, SUPREME COMMANDER
FOR THE ALLIED POWERS.

AG 000.5 (5 Dec 45) LS

APO 500
5 December 1945.

Subject: Regulations Governing the Trials of Accused War Criminals.

To: Commander-in-Chief, United States Army Forces, Pacific, APO 500
Commanding General, Sixth Army, APO 442
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235.

The following rules and regulations will govern the trials of persons, units and organisations accused as war criminals;

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units or organisations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The Commissions will be established dependent upon the number, nature of the offences involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offences against one (1) or more nation.

2. Jurisdiction

a. Over Persons. The military commission appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offences

(1) Military commissions established hereunder shall have jurisdiction over all offences including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages, plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offences need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case, shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally investigated, nor if he is required as a witness in that case. A Commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission or an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offences involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

- (1) To prepare and present charges and specifications for reference to a commission.
- (2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A Commission shall:

- (1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any necessary delay or interference.
- (2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.
- (3) Hold public sessions except when otherwise decided by the commission.
- (4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

- (1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offence charged.
- (2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defence.
- (3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defence, and cross-examine each adverse witness who personally appeared before the commission.
- (4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The commission shall have power:

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offences involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

- (1) To prepare and present charges and specifications for reference to a commission.
- (2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A Commission shall:

- (1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any necessary delay or interference.
- (2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.
- (3) Hold public sessions except when otherwise decided by the commission.
- (4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

- (1) To have in advance of trial a copy of the charges and specifications clearly worded so as to advise the accused of each offence charged.
- (2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defence.
- (3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defence, and cross-examine each adverse witness who personally appeared before the commission.
- (4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing, general rules, the following evidence may be admitted:-

- (a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.
- (b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.
- (c) Affidavits, depositions or other signed statements.
- (d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.
- (e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The Commission shall take judicial notice of facts of common knowledge, official government documents of any nation and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) The commission may require the prosecution of the defence to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offence involving concerted criminal action upon the part of a military or naval unit, or any group or organisation, evidence which has been given previously at a trial resulting in the conviction of any other member of that unit, group or organisation, relative to that concerted offence, may be

received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgement of a commission in any trial of a unit group, or organisation with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organisation convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, not be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defence, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

e. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:-

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defence for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defence shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defence, and thereafter the prosecution, shall address the commission.

(9) The commission shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused upon conviction to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation or any property of a convicted accused, deprive that accused of any stolen property of order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer, shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

BY Command of General MacARTHUR:

/s/H.W. ALLEN
H.W. ALLEN
Colonel, A.G.D.,
Asst. Adjutant General.

- 7 -
II.
R E S T R I C T E D.

HEADQUARTERS
UNITED STATES FORCES, CHINA THEATER

A.G. 000.5(21 Jan 46) JA

APC 971

21 January 1946

SUBJECT: Regulations governing the Trial of War Criminals.

The following rules and regulations will govern the trials of persons, units and organizations accused as War Criminals in this Theater:

ESTABLISHMENT OF MILITARY COMMISSIONS

1. General Trial of persons, units, and organizations accused as War Criminals will be by military commissions to be convened by the Commanding General, United States Army Forces, China Theater.

2. Number and Types The number and types of commissions to be established will depend upon the number and nature of the offenses involved and of the offenders to be tried. Such commissions may include members of any one branch or of several branches of the armed services, to try cases involving offenses against any one or more of such service branches, or any other offenses.

JURISDICTION

3. Over Territory: The military commissions established hereunder shall have jurisdiction over all of China, co-extensive with the China Theater of Operations and territory now or formerly belonging to China, including Formosa, Manchuria, and Hainan Island and other areas wherein the armed forces commanded by the Commanding General, United States Army Forces, China Theater, are or have been stationed.

4. Over Persons - a. The military commissions established hereunder shall have jurisdiction over all persons, units or organizations within China Theater of Operations including Formosa, Manchuria, and Hainan Island and other areas wherein the armed forces, commanded by the Commanding General, United States Army Forces, China Theater are or have been stationed.

b. Any Military or naval unit or any official or unofficial group or organizations, whether or not still in existence, may be charged with criminal acts or complicity therein and tried by a military commission.

c. The convening authority may specify particular offenders to be tried before any commission appointed by him.

5. Over Offences. - a. The military commissions established hereunder shall have jurisdiction over the following offenses: Violations of the laws or customs of war, including but not limited to murder, torture, or ill-treatment of prisoners of war or persons on the seas; killing or ill-treatment of hostages; murder, torture or ill-treatment, or deportation to slave labor or for any illegal purposes, of civilians of, or in, occupied territory; plunder of public or private property; wanton destruction of cities, towns or villages; devastation, destruction or damage of public or private property not justified by military necessity; murder, extermination, enslavement, deportation or other inhuman acts committed against any civilian population, or persecution on political, racial, national or religious grounds, in execution of or connection with any offenses within the jurisdiction of the commission, whether or not in violation of the domestic law of the country where perpetrated; and all other offenses against the laws or customs of war; participation in a common plan or conspiracy to accomplish any of the foregoing. Leaders, organizers, instigators, accessories and accomplices participating in the formulation or execution of any such common plan or conspiracy will be held responsible for all acts performed by any person in execution of that plan or conspiracy.

b. Persons whose offenses have a particular geographic location outside the China Theater of Operations may be returned to the scene of their crimes for trial by competent military or civil tribunals of local jurisdiction. In the event a person is requested for trial in two (2) or more countries, the Commanding General, United States

Army Forces, China Theater, will determine the place of trial on the basis of the relative gravity of the respective charges and other relevant circumstances.

MEMBERSHIP OF COMMISSION

6. Appointment. The members of each military commission will be appointed by the Commanding General, United States Army Forces, China Theater, or under authority delegated by him. The appointment may be made in the order convening the commission or in a separate order. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission and in case of illness or other incapacity of any principal member alternates shall take the place of that member. Any vacancy among the members or alternates occurring after a trial has begun may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

7. Number of Members. Each commission shall consist of not less than three (3) members.

8. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest and prejudice; provided, that no person shall be appointed to hear a case which he personally investigated, nor if he is required as a witness in that case. A commission may consist of Army and other service personnel, or of both service personnel and civilians. If feasible, one or more members of a commission should have had legal training.

9. Quorum and Voting. A quorum shall consist of two-thirds (2/3) of the members of the commission, or alternates (if any) acting as members, but in no event less than three (3) members. All decisions of the commission shall be by majority vote of the members present when the vote is taken, which shall be a quorum, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members of the quorum. In case of a tie vote, the vote of the presiding member will determine.

10. Presiding Member. In the event the convening authority does not name one of the members as the presiding member the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

PROSECUTORS

11. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission.

12. Duties. The duties of the prosecutor are:-

a. To determine the offenses and the offenders to be tried before the commission in addition to those specifically ordered by the convening authority.

b. To prepare and present to the commission charges and specifications.

c. To prepare cases for trial and to conduct the prosecution of each case before the commission.

POWERS AND PROCEDURE OF COMMISSION

13. Conduct of the trial. A Commission shall:

- a. Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.
- b. Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.
- c. Sessions of a commission shall be public except when otherwise directed by the commission.
- d. A commission shall hold each session at such time and place as it shall determine or as may be directed by the convening authority.

14. Rights of the Accused. The accused shall be entitled:

- a. To have in advance of trial a copy of the charges and specifications, so worded as clearly to apprise the accused of each offense charged.
- b. To be represented prior to and during trial by counsel of his own choice, or to conduct his own defense. If the accused fails to designate his counsel, the commission shall appoint competent counsel to represent or advise the accused.
- c. To have his own counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.
- d. To have the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

15. Witnesses. The commission shall have power:

- a. To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmation to witness and other persons, and to question witnesses.
- b. To require the production of documents and other evidentiary material.
- c. To have evidence taken by a special commissioner appointed by the commission.

16. Evidence.- a. The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charges, or such as in the commission's opinion would have probative value in the mind of a reasonable man. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

- (1) Any document which appears to the commission to have been signed or issued officially by an officer, department agency, or member of the armed forces of any government, without proof of the signature or of the issuance of the document.
- (2) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a medical doctor or any medical service personnel, or by an investigator or intelligence officer or by any other person whom the commission finds to have been acting in the course of his duty when making the report.

- (3) Affidavits, depositions, or other statements taken by an officer detailed for that purpose by military authority.
- (4) Any diary, letter or other document appearing to the commission to contain information relating to the charge.
- (5) A copy of any document or other secondary evidence of its contents.
- (6) Hearsay evidence.

b. The Commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings records and findings of military or other agencies of any of the United Nations.

c. A commission may require the prosecution and the defence to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

d. If the accused is charged with an offence involving concerted criminal action upon the part of a military or naval unit, or any group or organisation, evidence which has been given previously at a trial of any other member of that unit, group or organisation, relative to that concerted offence, may be received as prima facie evidence that the accused likewise is guilty of that offence.

e. The findings and judgment of a commission in any trial or a unit, group or organisation with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial by that or any other commission of an individual person charged with criminal responsibility through membership in that unit, group or organisation. Upon proof of membership in such unit, group or organisation convicted by a commission, the burden of proof shall shift to the accused to establish any mitigating circumstances relating to his membership or participation therein.

f. The official position of the accused shall not absolve him from responsibility, or be considered in mitigation or punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defence, but may be considered in mitigation of punishment if the commission determines that justice so requires.

17. TRIAL PROCEDURE. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

a. Each charge and specification will be read, or its substance stated, in open court.

b. The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

c. The prosecution shall make its opening statement.

d. The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

e. The commission may put any question to any witness and to any accused at any time. The prosecution and the defence may then further examine and/or cross-examine any such witness or accused.

f. The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defence for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

g. The defence may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defence to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

h. The witnesses and other evidence for the defence shall be heard or presented. Thereafter, the prosecution and defence may introduce such evidence in rebuttal as the commission may rule admissible.

i. The defence, and thereafter the prosecution, shall address the commission.

j. The commission shall consider the case in closed session and thereafter in open court deliver its judgment, and in the event of a conviction shall pronounce sentence.

18. RECORD OF PROCEEDINGS. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defence counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

JUDGMENT AND SENTENCE

19. JUDGMENT. The judgment of a commission as to guilt or acquittal shall be delivered in open court. It may state the reasons ^{on} which based.

20. SENTENCE. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine, or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property, or order its delivery to the Commanding General, United States Army Forces, China Theater, for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

21. APPROVAL OF SENTENCE. No sentence, including the death sentence, of a military commission shall be carried into effect until approved by the Commanding General, United States Army Forces, China Theater, or his successor. He shall have authority to approve, mitigate, remit, commute, suspend, reduce, or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. Except as herein provided, the judgment and sentence and interlocutory rulings of a commission shall be final and not subject to review. No appeal may be taken from the judgment and/or sentence of a commission to any civil court or higher military authority.

RULE MAKING POWER

22. SUPPLEMENTARY RULES AND FORMS. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof or such rules and forms as may be prescribed by the convening authority to-wit, the Commanding General, United States Army Forces, China Theater.

By command of Lieutenant General WEDEMEYER:

/s/ PAUL W. CARAWAY

PAUL W. CARAWAY

Brigadier General, GSC
Acting Chief of Staff.

III
HEADQUARTERS
US FORCES, EUROPEAN THEATRE

A.G. 000.5 WCB-AGO

AGO 757
26 June 1946

SUBJECT: Trial of War Crimes Cases

TO: Commanding General, Third US Army Area
Theater Judge Advocate

1. References.

a. Letter, this headquarters, file AG 000.5-2 GAP, subject:
"Trial of War Crimes and Related Cases", 16 July 1945.

b. Letter, this headquarters, file AG 210.6 JAG-AGO, subject: "Execution of Death Sentences Adjudged in Trials of War Crimes and Related Cases", 16 August 1945.

c. Letter, this headquarters, file AG 013.3 GAP-AGO, subject: "Disposition of Military Government Court Case Records in Certain War Crimes Cases", 18 August 1945.

d. Letter, this headquarters, file AG 000.5 WCB-AGO, subject:
"Trial of War Crimes and Related Cases", 12 December 1945.

e. Letter, this headquarters, file AG 250.4 JAG-AGO, subject:
"Military Commissions", 25 August 1945.

f. Letter, this headquarters, file AG 014.1 GEC-AGO, subject:
"Administration of Military Government in US Zone in Germany", 30 November 1945.

g. Letter, this headquarters, file AG 000.5 JAG-AGO, subject:
"Trial of War Crimes and Related Cases", 29 January 1946.

h. Letter, this headquarters, file AG 000.5 JAG-AGO, subject:
"Assumption of War Crimes Responsibilities Previously Exercised by Seventh US Army", 12 March, 1946.

i. General Order No:337, this headquarters, subject: "Responsibility for Military Government in US Zone in Germany", 14 December, 1945.

2. Revocation of Authority

The authority heretofore vested in the Commanding General, Third US Army, to appoint special Military Government Courts and Military Commissions for the trial of war crimes cases as well as all authority to take other actions in connection therewith is revoked.

3. Appointment of Military Government Courts.

Hereafter Military Government Courts for the trial of war crimes cases involving American Nationals as victims and mass atrocities committed in the American Zone of Occupation will be appointed by, and all further actions in connection with such cases will be taken by this headquarters. The principles hereinafter set forth will be adhered to in the appointing of such courts and in the taking of such actions.

4. General

As a matter of policy, such cases involving offences against the laws and usages of war or the laws of the occupied territory or any part

thereof, commonly known as war crimes, committed prior to 9 May 1945, as may from time to time be determined by the Deputy Theater Judge Advocate for War Crimes, will be tried before specially appointed Military Government Courts, except where otherwise directed by the Theater Commander.

5. Procedural Matters before Trial.

a. Charges. Charges in the cases contemplated will be prepared under the direction of the Deputy Theater Judge Advocate for War Crimes in the form prescribed for Military Government Courts.

b. Reference for Trial. The charges will be referred to special Military Government Courts by the Deputy Theater Judge Advocate for War Crimes.

c. United Nations Observers. At the time of referring such charges for trial the Deputy Theater Judge Advocate for War Crimes will determine those United Nations, if any, which in his judgment should be invited to send observers to the trial and will extend such invitations on behalf of the Theater Commander.

d. Appointment of Courts The courts will be appointed by this headquarters and will be composed of officers within this command. General Military Government Courts and Intermediate Military Government Courts appointed as contemplated herein will consist of not less than five and not less than three members, respectively, and the senior member present at each trial will be the president and presiding officer of the court. The orders appointing such courts will detail at least one officer with legal training as a member of such courts. The Deputy Theater Judge Advocate for War Crimes will assign one or more prosecutors and defence counsel but they will not be formally designated in the orders appointing the courts.

6. Trial.

a. If after the trial has begun a new member is sworn or a member, on account of unavoidable absence during a trial misses part of the proceedings, the president will cause such member to read the record of the proceedings had prior to his being sworn or during absence, as the case may be.

b. The trial will be conducted according to pertinent Military Government directives and instructions, except that no person will be convicted or sentenced except by the concurrence of two-thirds of all the members present at the time the vote is taken.

c. The effective date of prison sentences will be as provided for other Military Government Courts. Sentences imposing death will provide for the execution thereof by hanging.

7. Post-trial Action.

a. Irrespective of the result of trial, the accused will be returned to custody pending final disposition.

b. The prosecuting officer will be responsible for the preparation of the record of trial, which, after being properly authenticated, will be forwarded to the Deputy Theater Judge Advocate for War Crimes, who will prepare a written Review and Recommendations for submission to the Theater Judge Advocate.

c. In taking the action prescribed in paragraph b, above, the Deputy Theater Judge Advocate for War Crimes will take into consideration and include in the Review and Recommendations any Petition for Review or request for clemency filed on behalf of the accused.

d. Except as hereinafter provided in this paragraph, no sentence will be carried into execution until the sentence has been approved by the Theater Judge Advocate as to the views expressed in the Review and Recommendations. The Theater Judge Advocate is hereby authorized and directed to exercise all of the powers of the Theater Commander in cases where the sentence of death has not been pronounced. The action taken will be entered on the case record in the space provided on Legal Form No. 13 over the signature of the Theater Commander or, in the case of sentences not involving death, of the Theater Judge Advocate.

8. Witnesses to Executions. Death sentences adjudged may be executed without attendance of "mandatory witnesses" specified in MGR-382.5. Such executions will be attended by such US Army officer or officers as may be designated in the death warrant or order of execution.

9. Permanent Filing of Records. After final action the case records of all trials will be forwarded to the Deputy Theater Judge Advocate for War Crimes for permanent file.

10. Cases Being Tried. Upon the issuance of this directive the tribunals heretofore appointed by the Third US Army for the trial of war crimes cases will simultaneously become tribunals of this headquarters and will complete all war crimes cases then on trial by such tribunals. Courts appointed by this headquarters will proceed to trial with the war crimes cases heretofore referred to the Third US Army for trial. This headquarters will take all appropriate action in connection with war crimes trials heretofore completed by the Third or Seventh US Armies as though such cases had been referred to courts appointed by this headquarters in the first instance.

11. Mass Atrocity Subsequent Proceedings.

a. Certain mass atrocity cases have heretofore been tried, i.e. Hadamar, Dachau, and Mauthausen cases, wherein the principal participants in the respective mass atrocities were charged with violating the laws and usages of war under particulars alleging that they acted in pursuance of a common design to subject persons to killings, beating, tortures, starvation, abuses and indignities, or particulars substantially to the same effect. The courts pronounced sentences in those cases involving imprisonment and death and of necessity, in view of the issues involved therein, found that the mass atrocity operation involved in each was criminal in nature and that those involved in the mass atrocities acting in pursuance of a common design did subject persons to killings, beatings, tortures, etc.

b. With regard to subsequent proceedings against accused other than those involved in initial or "parent" mass atrocity cases heretofore or hereafter tried involving charges and particulars substantially similar to those described in paragraph a, above, it is prescribed as follows:

(1) After final action by the reviewing and confirming authority, if any, in connection with a parent mass atrocity case, this headquarters will appoint one or more Intermediate Military Government Courts to try such additional individuals as may be charged with participating in the mass atrocity.

(2) In such trial of additional participants in the mass atrocity, the prosecuting officer will furnish the court certified copies of the charge and particulars, the findings and the sentence pronounced in the parent case. Thereupon, such Intermediate Military Government Courts will take judicial notice of the decision rendered in the parent case, including the finding of the court (in the Parent case) that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, did subject persons to killings, beating, tortures, etc., and no examination of the record in such parent case need be made for this purpose. In such trials of additional participants in the mass atrocity, the court will presume, subject to being rebutted by appropriate evidence, that those shown by competent evidence to have participated in the mass atrocity know of the criminal nature thereof.

d. Except as hereinafter provided in this paragraph, no sentence will be carried into execution until the sentence has been approved by the Theater Judge Advocate as to the views expressed in the Review and Recommendations. The Theater Judge Advocate is hereby authorized and directed to exercise all of the powers of the Theater Commander in cases where the sentence of death has not been pronounced. The action taken will be entered on the case record in the space provided on Legal Form No. 13 over the signature of the Theater Commander or, in the case of sentences not involving death, of the Theater Judge Advocate.

8. Witnesses to Executions. Death sentences adjudged may be executed without attendance of "mandatory witnesses" specified in MGR-382.5. Such executions will be attended by such US Army officer or officers as may be designated in the death warrant or order of execution.

9. Permanent Filing of Records. After final action the case records of all trials will be forwarded to the Deputy Theater Judge Advocate for War Crimes for permanent file.

10. Cases Being Tried. Upon the issuance of this directive the tribunals heretofore appointed by the Third US Army for the trial of war crimes cases will simultaneously become tribunals of this headquarters and will complete all war crimes cases then on trial by such tribunals. Courts appointed by this headquarters will proceed to trial with the war crimes cases heretofore referred to the Third US Army for trial. This headquarters will take all appropriate action in connection with war crimes trials heretofore completed by the Third or Seventh US Armies as though such cases had been referred to courts appointed by this headquarters in the first instance.

11. Mass Atrocity Subsequent Proceedings.

a. Certain mass atrocity cases have heretofore been tried, i.e. Hadamar, Dachau, and Mauthausen cases, wherein the principal participants in the respective mass atrocities were charged with violating the laws and usages of war under particulars alleging that they acted in pursuance of a common design to subject persons to killings, beating, tortures, starvation, abuses and indignities, or particulars substantially to the same effect. The courts pronounced sentences in those cases involving imprisonment and death and of necessity, in view of the issues involved therein, found that the mass atrocity operation involved in each was criminal in nature and that those involved in the mass atrocities acting in pursuance of a common design did subject persons to killings, beatings, tortures, etc.

b. With regard to subsequent proceedings against accused other than those involved in initial or "parent" mass atrocity cases heretofore or hereafter tried involving charges and particulars substantially similar to those described in paragraph a, above, it is prescribed as follows:

(1) After final action by the reviewing and confirming authority, if any, in connection with a parent mass atrocity case, this headquarters will appoint one or more Intermediate Military Government Courts to try such additional individuals as may be charged with participating in the mass atrocity.

(2) In such trial of additional participants in the mass atrocity, the prosecuting officer will furnish the court certified copies of the charge and particulars, the findings and the sentence pronounced in the parent case. Thereupon, such Intermediate Military Government Courts will take judicial notice of the decision rendered in the parent case, including the finding of the court (in the Parent case) that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, did subject persons to killings, beating, tortures, etc., and no examination of the record in such parent case need be made for this purpose. In such trials of additional participants in the mass atrocity, the court will presume, subject to being rebutted by appropriate evidence, that those shown by competent evidence to have participated in the mass atrocity know of the criminal nature thereof.

(3) The Intermediate Military Government Court will examine the evidence presented to it bearing upon the nature and extent of the participation of the additional participants in the mass atrocity operation and pronounce such sentences, if any, as may be appropriate, providing, however, that in any instance where in the opinion of the court the evidence presented warrants a greater sentence than is within the power of the Intermediate Military Government Courts, the court will suspend proceedings with regard to the accused involved and refer the matter to the Deputy Theater Judge Advocate for War Crimes, recommending that charges against the accused be referred to a General Military Government Court.

BY COMMAND OF GENERAL McNARNEY

/s/ George VW Pope
GEORGE WV POPE
Colonel, Inf.
Acting, Adjutant General.

TELEPHONE: Wiesbaden 7117

Misc. No. 52
4th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Bibliography of Legal Literature on the Law of War Crimes and Belligerent

Occupation in the Second World War

Fourth Supplement to the Bibliography (*)

Compiled by Egon Schwelb, Legal Officer

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34 and 45.

RESTRICTED.

MISC.No.53.
5th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Control Council Directive No:38 regarding the
Arrest and Punishment of War Criminals, Nazis
and Militarists, and the Internment, Control
and Surveillance of Potentially Dangerous Germans.

ALLIED CONTROL AUTHORITY

CONTROL COUNCIL

Directive No. 38

The Arrest and Punishment of War Criminals, Nazis and Militarists and the Internment, Control and Surveillance of Potentially Dangerous Germans.

The Control Council directs as follows:

PART I

1. OBJECT

The object of this paper is to establish a common policy for Germany covering:

- a) The punishment of war criminals, Nazis, Militarists, and industrialists who encouraged and supported the Nazi Regime.
- b) The complete and lasting destruction of Nazism and Militarism by imprisoning and restricting the activities of important participants or adherents to these creeds.
- c) The internment of Germans, who, though not guilty of specific crimes are considered to be dangerous to Allied purposes, and the control and surveillance of others considered potentially so dangerous.

2. REFERENCES

- a) Potsdam Agreement, Sec. III, Para 3, I, a)
- b) Potsdam Agreement, Sec. III, Para. 3, III.
- c) Potsdam Agreement, Sec. III, Para 5.
- d) Control Council Directive No. 24.
- e) Control Council Law No. 10, Article II, Para 3 and Article III, Paras. 1 and 2.

3. THE PROBLEM AND GENERAL PRINCIPLES

It is considered that in order to carry out the principles established at Potsdam, it will be necessary to classify war criminals and potentially dangerous persons into five main categories and to establish punishments and sanctions appropriate to each category. We consider that the composition of categories and the nature of penalties and sanctions should be agreed in some detail but without limiting in any way the full discretion conferred by Control Council Law No. 10 upon Zone Commanders.

4. A clear definition of Allied policy with regard to the obviously dangerous as well as to only potentially dangerous Germans is required at this time in order to establish uniform provisions for disposing of these persons in the various Zones.

5. CATEGORIES AND SANCTIONS.

Composition of categories and sanctions are treated in detail in Part II of this Directive. They shall be applied in accordance with the following general principles:

a) A distinction should be made between imprisonment of war criminals and similar offenders for criminal conduct and internment of potentially dangerous persons who may be confined because their freedom would constitute a danger to the Allied Cause.

b) Zone Commanders may, if they so desire, place an individual in a lower category on probation, with the exception of those who have been convicted as major offenders on account of their guilt in specific crimes.

c) Within the categories, Zone Commanders will retain discretion to vary the sanctions if necessary to meet the requirements of individual cases within the limits laid down in this Directive.

d) The classification of all offenders and potentially dangerous persons, assessment of sanctions and the review of cases will be carried out by agencies to be designated by the Zone Commanders as responsible for the implementation of this directive.

e) The Zone Commanders and tribunals will have the authority to upgrade or downgrade individuals between categories. Zone Commanders may, if they wish, use German tribunals for the purpose of classification, trial and review.

f) In order to prevent persons dealt with under this Directive avoiding any of the consequences of the Directive by moving to another Zone, each Zone Commander will ensure that the other Zones know and understand the methods employed by him in endorsing the identity documents of classified individuals.

g) To implement this Directive, it is recommended that each Zone Commander will issue Orders or Zonal Laws conforming in substance to the provisions and principles of this Directive in his own Zone. Zone Commanders will supply each other with copies of such Laws or Orders.

h) Provided that such Zonal Laws are in general conformity with the principles here set forth, full discretion is reserved to the individual Zone Commanders as regards their application in detail in accordance with the local situation in their respective Zones.

i) In Berlin the Allied Kommandatura will have the responsibility for implementing the principles and provisions of this Directive and will issue such regulations and orders as are required for that purpose. Whatever discretion in the implementation of this Directive is left to Zone Commanders will be exercised by the Allied Kommandatura in Berlin.

j) Apart from the categories and sanctions set forth in Part II of this Directive, persons who committed war crimes or crimes against peace or humanity as defined in Control Council Law No.10, will be dealt with under the provisions and procedures prescribed by that Law.

PART II

Article 1

Groups of Persons Responsible

In order to make a just determination of responsibility and to provide for imposition (Except in the case of 5) below) of sanctions the following groupings of persons shall be made.

- 1) Major offenders;
- 2) Offenders (activists, militarists, and profiteers);
- 3) Lesser offenders (probationers);
- 4) Followers;
- 5) Persons exonerated. (Those included in the above categories who can prove themselves not guilty before a tribunal).

Article 2.

Major Offenders

Major Offenders are:

- 1) Anyone who, out of political motives, committed crimes against victims or opponents of national socialism;
- 2) Anyone who, in Germany or in the occupied areas, treated foreign civilians or prisoners of war contrary to International Law.
- 3) Anyone who is responsible for outrages, pillaging, deportations, or other acts of brutality, even if committed in fighting against resistance movements;
- 4) Anyone who was active in a leading position in the NSDAP, one of its formations or affiliated organizations, or in any other national socialistic or militaristic organisation;
- 5) Anyone who, in the government of the Reich, the Laender, or in the administration of formerly occupied areas, held a leading position which could have been held only by a leading national socialist or a leading supporter of the national socialistic tyranny;
- 6) Anyone who gave major political, economic propagandist or other support to the national socialistic tyranny, or who, by reason of his relations with the national socialistic tyranny, received very substantial profits for himself or others;
- 7) Anyone who was actively engaged for the national socialistic tyranny in the Gestapo, the SD, the SS, or the Geheime Feld or Grenz-Polizei;
- 8) Anyone who, in any form whatever, participated in killings, tortures, or other cruelties in a concentration camp, a labour camp, or a medical institution or asylum;

- 9) Anyone who, for personal profit or advantage, actively collaborated with the Gestapo, SD, SS or similar organisations by denouncing or otherwise aiding in the persecution of the opponents of the national socialistic tyranny.
- 10) Any member of the High Command of the German Armed Forces so specified.
- 11) In part I of Appendix "A" a list of categories of persons is given, who, because of the character of the crimes allegedly committed by them, shown in paras. 1 - 10 of this Article, as well as the positions occupied by them, will be carefully investigated and, if the results of the investigation necessitate a trial, must be brought to trial as major offenders and punished if found guilty.

Article 3.

Offenders

A. Activists

I. An activist is:

- 1) Anyone who, by way of his position or activity, substantially advanced the national socialistic tyranny;
- 2) Anyone who exploited his position, his influence or his connections to impose force and utter threats, to act with brutality and to carry out oppressions or otherwise unjust measures;
- 3) Anyone who manifested himself as an avowed adherent of the national socialistic tyranny, more particularly of its racial creeds.

II. Activists are in particular the following persons, insofar as they are not major offenders:

- 1) Anyone who substantially contributed to the establishment, consolidation or maintenance of the national socialist tyranny, by word or deed, especially publicly through speeches or writings or through voluntary donations out of his own or another's property or through using his personal reputation or his position of power in political, economic or cultural life;
- 2) Anyone who, through national socialistic teachings or education, poisoned the spirit and soul of the youth;
- 3) Anyone who, in order to strengthen the national socialistic tyranny, undermined family and marital life disregarding recognised moral principles;
- 4) Anyone who in the service of national socialism unlawfully interfered in the administration of justice or abused politically his office as judge or public prosecutor.
- 5) Anyone who in the service of national socialism agitated with incitement or violence against churches, religious communities or ideological associations;
- 6) Anyone who in the service of national socialism ridiculed, damaged or destroyed values of art or science;
- 7) Anyone who took a leading or active part in destroying trade unions, suppressing labour, and misappropriating trade union property;
- 8) Anyone who, as a provocateur, agent or informer, caused or attempted to cause, institution of a proceeding to the detriment of others because of their race, religion or political opposition to national socialism or because of violation of national socialist rules;

- 9) Anyone who exploited his position or power under the national socialistic tyranny to commit offences, in particular, extortions, embezzlements and frauds;
- 10) Anyone who by word or deed took an attitude of hatred towards opponents of the NSDAP in Germany or abroad, towards prisoners of war, the population of formerly occupied territories, foreign civilian workers, prisoners or like persons;
- 11) Anyone who favoured transfer to service at the front because of opposition to national socialism.

III An activist shall also be anyone who after 8 May 1945 has endangered or is likely to endanger the peace of the German people or of the world, through advocating national socialism or militarism or inventing or disseminating malicious rumours.

B. Militarists

I. A Militarist is:

- 1) Anyone who sought to bring the life of the German people into line with a policy of militaristic force;
- 2) Anyone who advocated or is responsible for the domination of foreign peoples, their exploitation or displacement; or
- 3) Any who, for these purposes, promoted armament.

II. Militarists are in particular the following persons, insofar as they are not major offenders:

- 1) Anyone who, by word or deed, established or disseminated militaristic doctrines or programs or was active in any organisation (except the Wehrmacht) serving the advancement of militaristic ideas.
- 2) Anyone who before 1935 organized or participated in the organisation of the systematic training of youth for war;
- 3) Anyone who, exercising the power of command, is responsible for the wanton devastation, after the invasion of Germany, of cities and country places;
- 4) Anyone who, without regard to his rank, as a member of the Armed Forces (Wehrmacht), the Reich Service (Reichsarbeitsdienst), the Organisation Todt (OT), or Transport Group Speer, abused his official authority to obtain personal advantages or brutally to mistreat subordinates.
- 5) Anyone whose past training and activities in the General Staff Corps or otherwise has in the opinion of Zone Commanders contributed towards the promotion of militarism and who the Zone Commanders consider likely to endanger Allied purposes.

C. Profiteers

I. A profiteer is:

Anyone who, by use of his political position or connections, gained personal or economic advantages for himself or others from the national socialistic tyranny, the rearmament, or the war.

II. Profiteers are in particular the following persons, insofar as they are not major offenders,

- 1) Anyone who, solely on account of his membership in the NSDAP, obtained an office or a position or was preferentially promoted therein.
- 2) Anyone who received substantial donations from the NSDAP or its formations or affiliated organisations;
- 3) Anyone who obtained or strove for advantages for himself or others at the expense of those who were persecuted on political, religious or racial grounds, directly or indirectly, especially in connection with appropriations, forced sales, or similar transactions.
- 4) Anyone who made disproportionately high profits in armament or war transactions.
- 5) Anyone who unjustly enriched himself in connection with the administration of formerly occupied territories;
- D) In Part II of Appendix "A" a list of categories of persons is given who, because of the character of the crimes allegedly committed by them, shown in this Article, paragraphs A, B and C, will be carefully investigated and, if the results of the investigation necessitate a trial, must be brought to trial as offenders and punished if found guilty.

ARTICLE 4

Lesser Offenders Probationers

I. A lesser offender is:

- 1) Anyone including former members of the Armed Forces who otherwise belongs to the groups of offenders but because of special circumstances seems worthy of a milder judgment and can be expected according to his character to fulfil his duties as a citizen of a peaceful democratic state after he has proved himself in a period of probation.
- 2) Anyone who otherwise belongs to the group of followers but because of his conduct and in view of his character will first have to prove himself.

II. A lesser offender is more particularly:

- 1) Anyone who, born after the first day of January 1919, does not belong to the group of major offenders, but seems to be an offender, without however having manifested despicable or brutal conduct and who can be expected in view of his character to prove himself;
- 2) Anyone, not a major offender, who seems to be an offender but withdrew from national socialism and its methods, unqualifiedly and manifestly, at an early time.
- 3) In Part III of Appendix "A" a list of categories of persons is given who will be carefully investigated and, if there is evidence of guilt in accordance with the provisions of paras I and II of this Article, will be charged as lesser offenders and punished if found guilty.

ARTICLE 5.

Followers

I. A follower is:

Anyone who was not more than a nominal participant in, or a supporter of the national socialistic tyranny.

II. Subject to this standard, a follower is more particularly:

- 1) Anyone who as a member of the NSDAP or of one of its formations, except the HJ and EDM, did no more than pay membership fees, participate in meetings where attendance was obligatory, or carry out unimportant or purely routine duties such as were directed for all members;
- 2) Anyone, not a major offender, an offender, or a lesser offender, who was a candidate for membership in the NSDAP but had not yet been finally accepted as a member.
- 3) Anyone being a former member of the Armed Forces who, in the opinion of the Zone Commander, is liable by his qualification to endanger Allied purposes.

Article 6.

Exonerated Persons

An exonerated person is:

Anyone who, in spite of his formal membership or candidacy or any other outward indication, not only showed a passive attitude but also actively resisted the national socialistic tyranny to the extent of his powers and thereby suffered disadvantages.

Article 7.

Sanctions

In accordance with the extent of responsibility the sanctions set forth in Art. 8 - 11 shall be imposed in just selection and gradation, to accomplish the exclusion of national socialism and militarism from the life of the German people and reparation of the damage caused.

Article 8.

Sanctions against Major Offenders.

I. Major Offenders having committed a specific war crime will be liable to the following sanctions:

- a) Death
- b) Imprisonment for life or for a period of five to fifteen years, with or without hard labour.
- c) In addition, any of the sanctions listed in Paragraph II of this Article may be imposed.

II. The following sanctions may be imposed upon other Major Offenders:

- a) They shall be imprisoned, or interned for a period not exceeding 10 years. Internment after 8 May 1945 can be taken into account. Disabled persons will be required to perform special work in accordance with their capability.
- b) Their property may be confiscated. However, there shall be left to them an amount necessary to cover the bare existence after taking into consideration family conditions and earning power.
- c) They shall be ineligible to hold any public office, including that of notary or attorney.
- d) They shall lose any legal claims to a pension or allowance payable from public funds.

- 1) Anyone who as a member of the NSDAP or of one of its formations, except the HJ and EDM, did no more than pay membership fees, participate in meetings where attendance was obligatory, or carry out unimportant or purely routine duties such as were directed for all members;
- 2) Anyone, not a major offender, an offender, or a lesser offender, who was a candidate for membership in the NSDAP but had not yet been finally accepted as a member.
- 3) Anyone being a former member of the Armed Forces who, in the opinion of the Zone Commander, is liable by his qualification to endanger Allied purposes.

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- a) They shall be imprisoned, or interned for a period not exceeding 10 years. Internment after 8 May 1945 can be taken into account. Disabled persons will be required to perform special work in accordance with their capability.
- b) Their property may be confiscated. However, there shall be left to them an amount necessary to cover the bare existence after taking into consideration family conditions and earning power.
- c) They shall be ineligible to hold any public office, including that of notary or attorney.
- d) They shall lose any legal claims to a pension or allowance payable from public funds.

- e) They shall lose the right to vote, the capacity to be elected, and the right to be politically active in any way or to be members of a political party.
- f) They shall not be allowed to be members of a trade union or a business or vocational association.
- g) They shall be prohibited for a period of not less than ten years after their release:
 - 1) To be active in a profession or, independently, in an enterprise of economic undertaking of any kind, to own a share therein or to supervise or control it.
 - 2) To be employed in any dependent position, other than ordinary labour.
 - 3) To be active as teacher, preacher, editor, author, or radio commentator.
- h) They are subject to restrictions as regards living space and place of residence, and may be enlisted for public works service.
- i) They shall lose all licences, concessions and privileges granted them and the right to keep a motor vehicle.

Article 9

Sanctions against Offenders.

- 1. They may be imprisoned or interned for a period up to ten years in order to perform reparation and reconstruction work. Political internment after 8 May 1945 can be taken into account.
- 2. Their property may be confiscated (as a contribution for reparation), either as a whole or in part. In case the property is confiscated in part, capital goods (Sachwerte) should be preferred. The necessary items for daily use shall be left to them.
- 3. They shall be ineligible to hold any public office, including that of notary or attorney.
- 4. They shall lose any legal claims to a pension or allowance payable from public funds.
- 5. They shall lose the right to vote, the capacity to be elected, and the right to be politically active in any way or to be members of a political party.
- 6. They shall not be allowed to be members of a trade union or business or vocational association.
- 7. They shall be prohibited, for a period of not less than five years after their release:
 - a) To be active in a profession or, independently, in an enterprise or economic undertaking of any kind, to own a share therein or to supervise or control it.
 - b) To be employed in any dependent position, other than ordinary labour.
 - c) To be active as a teacher, preacher, editor, author, or radio commentator.
- 8. They are subject to restriction as regards living space and place of residence.

9. They shall lose all licenses, concessions and privileges granted them and the right to keep a motor vehicle.
10. Within the discretion of Zone Commanders sanctions may be included in zonal laws forbidding offenders to leave a Zone without permission.

Article 10

Sanctions against lesser offenders

If the finding of the tribunal places an individual in the category of lesser offenders, he may be placed on probation. The time of probation shall be at least two years but, as a rule, not more than three years. To which group a person responsible hereunder will be finally allocated will depend on his conduct during the period of probation. While on probation, the following sanctions will apply:

1. They shall be prohibited, during the period of probation -
 - a) To operate an enterprise as owner, partner, manager or executive supervise or control an enterprise or to acquire any enterprise in whole or in part, or any interest or share therein, in whole or in part.
 - b) To be active as teacher, preacher, author, editor or radio commentator.
2. In the event the lesser offender is the owner of an independent enterprise, or any share therein, at the time of his classification, his interest in such enterprise may be blocked.
3. The term enterprise as used in paragraph 1 a) and 2 of this article need not include small undertakings of craftsmen, retail shops, firms and like undertakings, having less than 20 employees.
4. Property values, acquisition of which rested upon use of political connections or special national socialistic measures such as aryanization and armament shall be confiscated.
5. For the period of probation additional sanctions, taken from those set forth in Article 11 hereof may be imposed, with just selection and modification, more particularly:
 - a) Restrictions in the exercise of an independent profession, and prohibition to train apprentices.
 - b) In respect of civil servants: reduction of retirement pay, retirement or transfer to an office with lesser rank or to another position with reduction of compensation, rescission of promotion, transfer from the civil service relationship into that of a contractual employee.
6. Internment in a labor camp or confiscation of the whole property may not be ordered.
7. Within the discretion of Zone Commanders sanctions may be included in zonal laws forbidding the lesser offenders to leave a Zone without permission.
8. Within the discretion of Zone Commanders sanctions may be included in zonal laws denying them the capacity to be elected and the right to be politically active in any way or to be members of a political party. They may also be denied the right to vote.
9. They may be required to report periodically to the police in the place of their residence.

R E S T R I C T E D

Article II

Sanctions against followers:

The following sanctions against followers may be applied at the discretion of the Zone Commanders:

- 1 They may be required to report periodically to the police in the place of their residence.
- 2 They will not be permitted to leave a Zone or Germany without permission.
- 3 Civilian members in this category may not stand for election at any level but may vote.
- 4 In addition, in the case of civil servants, retirement or transfer to an office with lesser rank or to another position, possibly with reduction of compensation or rescission of a promotion instituted while the person belonged to the NSDAP, may be ordered. Corresponding measures may be ordered against persons in economic enterprises including agriculture and forestry.
- 5 They may be ordered to pay single or recurrent contributions to funds for reparations. When determining contributions, the follower's period of membership, the fees and contributions paid by him, his wealth and income, his family conditions and other relevant factors shall be taken into consideration.

Article 12

Exonerated Persons

No sanction will be applied against persons declared to be exonerated by a tribunal.

Article 13

Persons in the categories defined in Article 2 to 6 above who are guilty of specific war crimes or other offences may be prosecuted regardless of their classification under this Directive. Imposing of Sanctions under this Directive shall not bar criminal prosecutions for the same offence.

Done at Berlin on the 12th day of October 1946.

R. NOIRET,
General de Division.

P. A. KUROCHKIN,
Colonel General

Lucius D. CLAY,
Lieutenant General

G. W. E. J. ERSKINE
Major General
for B. H. ROBERTSON,
Lieutenant General

Appendix "A" containing the categories of persons is available for inspection by Members in Dr. Schwelb's Office, Room 314.

UNITED NATIONS WAR CRIMES COMMISSION

MISC-54-

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON OCTOBER 31ST, 1946.

	Cases tried	Accused involved	Death	Imprison- ment	Acquittal	Remarks
<u>EUROPE:</u>						
<u>UNITED STATES:</u>						
U.S.F.E.T. }						
U.S. Mediter- }	87	364	194	142	28	Figures for Germany as at 1.10.46 Mediterranean figures as at 25.10.46
ranean }						
<u>BRITISH</u>						
B.A.O.R. }	168	580	128	275	177	Situation as at 1.11.46
C.M.F. }						
<u>FRANCE:</u>	Not given	146	80	61	5	Situation as at 1.10.46
<u>GREECE:</u>	1	2	-	2	-	As at 16.10.46
<u>NORWAY:</u>	-	16	11	5	-	As at 16.10.46
(A) Total reported for Europe	256	1,108	413	485	210	
<u>FAR EAST:</u>						
<u>UNITED STATES:</u>	159 ⁺	225	79	135	11	+The total of 159 does not include U.S. cases in India
<u>BRITISH:</u>	141	505	184	259	62	
<u>AUSTRALIAN:</u>	200	620	121	310	189	As at October 5th, 1946
(B) Total - Far East	500	1,350	384	704	262	
GRAND TOTAL A + B		2,458	797	1,189	472	

Misc. No. 55
13th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Translation of the Netherlands Legislation
regarding the Investigation of War Crimes.

S T A T U T E B O O K
of the
K I N G D O M O F T H E N E T H E R L A N D S

(No. F 85) DECREE of 29th May 1945, establishing the Decree on the Investigation of War Crimes.

We WILHELMINA, by the Grace of God Queen of the Netherlands, Princess of the House of Oranje-Nassau, etc., etc., etc.

On the submission of Our Ministers for the Co-ordination of Warfare, for Foreign Affairs, of Justice, the Interior, War and the Navy, dated 16th May 1945, No. G.U. 103/45;

Considering that, for the carrying out of obligations accepted by the Netherlands and the United Nations in the declaration made on 13th January 1942 at St. James's Palace, London, in connection with the present extraordinary circumstances, it is necessary to draw up a special regulation for the appropriate investigation of those crimes to which the Decree on Extraordinary Criminal Law is applicable in so far as such crimes were committed by other than Dutchmen or Dutch subjects;

Have approved and understood;

Article 1.

Under war crimes shall be understood in this decree facts which constitute crimes considered as such according to Dutch law and which are forbidden by the laws and usages of war and which have been committed during the present war by other than Dutchmen or Dutch subjects.

Article 2.

1. There exists a Netherlands Commission for the Investigation of War Crimes.
2. The Commission consists of a president, vice-president, ordinary members and one or more secretaries, the which are nominated, suspended and dismissed by Us on the submission of Our Minister of Justice.
3. The ordinary members are Investigation officers in the meaning of Article 142 of the Code of Penal Procedure.

Article 3.

An office may be established in London which shall be composed of the Netherlands Representative on the United Nations War Crimes Commission, one or more members of the Netherlands Commission together with a secretary.

Article 4.

1. The task of the Commission consists in the investigation of war crimes, the collection of all available data in connection with such and the preparation and submission of charges to the United Nations War Crimes Commission.
2. Copies of the prepared charges shall be supplied to Our Minister of Justice.

Article 5.

1. The Commission may be assisted by investigation officers appointed for that purpose by Our Minister of Justice.
2. These are charged with the investigation of certain charges and receive their instructions from the President or Vice-president of the Commission.
3. The reports and statements resulting from these investigations shall be presented to the person responsible for having given instructions thereto or, if no instruction has been given, to the President of the Commission.

Article 6.

1. There exist sub-commissions for the investigation of war crimes whose task, composition and jurisdiction shall be further regulated by Our Minister of Justice.
2. These sub-commissions consist of a president with legal qualification, at least two members qualified as investigation officers and a secretary.
3. The task of these sub-commissions is the investigation and collection of data concerning war crimes.
4. These sub-commissions present their data and charges, which have been prepared as far as possible, to the President of the Commission.
5. The president orders if necessary supplementary investigation.

Article 7.

The Prosecutors of the Special Courts of Justice notify the President of the Commission of all charges where the accused is not in the Realm in Europe.

Article 8.

The investigation officers, appointed by or in virtue of the first title of the second book of the Code of Penal Procedure, have to report without delay all data etc. to the sub-commission in their area, as set out in Article 6.

Article 9.

Burgomasters must call upon the population of their municipalities by means of a general proclamation to give information and data concerning war crimes to the authorities named in the proclamation.

Article 10.

Our Ministers of Justice, the Interior and War shall see to it that

civil servants and departments under them transmit to the President of the Commission all data concerning war crimes which have already come or shall come to their knowledge and further supply him with the information which may be required.

Article 11.

1. At the request of the President of the Commission, of a Prosecutor of a Special Court of Justice or of the Allied Occupation Authorities in enemy territory, liaison officers with legal qualifications shall be appointed by Our Minister of War or the Navy in consultation with Our Minister of Justice in order to carry out in enemy territory investigations concerning war crimes in consultation with the Allied authorities mentioned above.

These appointments shall be made known to the other authorities mentioned above.

2. The liaison officers as mentioned in paragraph 1 shall send in the result of their investigations to the President of the Commission.

Article 12.

Our Minister of Justice shall fix compensation to be paid for services rendered as a result of this decree by persons not employed in the service of the State.

Article 13.

1. This decree, in respect of which the power mentioned in article 9, paragraph 2, of the Decree on the Special State of Siege cannot be exercised, shall come into force on the day on which it is issued.
2. It shall be quoted under the title "Decree on the Investigation of War Crimes".

Our Ministers for the Co-ordination of Warfare, for Foreign Affairs, of Justice, the Interior, War and the Navy are each in so far as he is concerned charged with the execution of this decree which shall be published in the Gazette.

Breda, 29th May 1945.

WILHELMINA

The Minister for the Co-Ordination of Warfare,
President of the Council of Ministers,
P.S. GERBRANDY.

For the Minister for Foreign Affairs,
E. MICHIELS van VERDUYNEN.

The Interim Minister of Justice,
P.S. GERBRANDY.

The Minister of the Interior,
BEEL.

The Minister of War,
J. de QUAY.

The Minister of the Navy,
De BOOY.

Published the sixth June, 1945.

The Interim Minister of Justice,
P.S. GERBRANDY.

MISC. 56.
November 19th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Provisions regarding crimes against humanity in the British
Zone of Control in Germany.

The following Ordinance has been
enacted for the British Zone
and promulgated in No. 13 of the
Military Government Gazette,
p. 306.

ORDINANCE NO. 47

Crimes against Humanity
(Control Council Law No. 10)

In accordance with Control Council Law No. 10, Article III,
Paragraph 1(d) it is HEREBY ORDERED AS FOLLOWS:-

ARTICLE I

Jurisdiction

1. The German Ordinary Courts are authorised to exercise
jurisdiction in all cases of Crimes against Humanity as defined
by Article II, paragraph 1(c) of Control Council Law No. 10
committed by persons of German nationality against other persons
of German nationality or stateless persons,

2. In exercising jurisdiction in pursuance of paragraph 1
hereof the German Ordinary Courts shall apply the provisions of
Article II, paragraphs 2, 3, 4 and 5 of Control Council Law No. 10.

ARTICLE II

Offences under German Law

3. If in any case the facts alleged, in addition to constituting
a crime as defined by Article II, paragraph 1(c) of Control Council
Law No. 10, also constitute an offence under ordinary German Law,
the charge against the accused may be framed in the alternative
and the provisions of Article II, paragraph 5 of Control Council
Law No. 10 shall apply mutatis mutandis to the offence under
ordinary German law.

ARTICLE III

Preliminary Proceedings etc.

4. German judges, prosecutors, police and other authorities
responsible for the maintenance of law and order shall have the
same powers with regard to all preliminary proceedings, arrests,
investigations and other matters necessary for the implementation
of this Ordinance as they exercise under ordinary German law.

ARTICLE IV

Effective Date.

5. This Ordinance comes into effect on the 30th August, 1946.

BY ORDER OF MILITARY GOVERNMENT

MISC. 57.
25th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

CO-OPERATION WITH CROWCASS
Matters to be considered by the Commission
in its Meeting on 27th November, 1946.

Note by the Secretary of Committee I.

In connection with the discussion in the Commission Meeting held on 6th November 1946 in the presence of Lieut. Colonel RYAN and Captain GOWING of CROWCASS (Draft Minutes No. 116) and the subsequent deliberations of Committee I (Minutes No. 80), and further in connection with a draft Memorandum on "WHAT IS CROWCASS?" prepared for circulation by that organization, it appears that the following matters require the Commission's attention and consideration.

I. Object of CROWCASS

On page 4, 1st paragraph, of the above mentioned Memorandum, it is stated that filing of a Wanted Report with CROWCASS is the only basis for an official claim on the war criminal wanted. The relevant sentence reads as follows: "It is important to note that a Wanted Report should be filed with CROWCASS even if the filing authority is aware of the address or place of detention of the wanted person as only thereby can an official claim be made on that person".

Taking into account what is generally understood as the object of CROWCASS as well as the procedure already established in regard to handing over of war criminals it would seem that the above statement does not correspond to the actual position as the filing of Wanted Reports with CROWCASS is not necessarily a pre-requisite for extradition of war criminals.

II. Commission's Lists and Wanted Reports.

Asked by members of the Commission what action is being taken by CROWCASS in regard to the Commission's Lists of War Criminals, Captain GOWING stated that though they had acted upon the Lists for a certain time, it was later decided that if a country wanted a person it should send a Wanted Report to CROWCASS. Therefore, from the 16th List onwards, the Commission's Lists have not been endorsed in CROWCASS records because of the hope that thereby CROWCASS would inspire all National offices concerned to send them Wanted Reports.

It may be noted that this policy is being re-stated in the CROWCASS Memorandum, where, without any reference to the Commission and in particular to its List of War Criminals, it is stated, on page 8, that "it is considered that except for special internal reasons it should not be necessary for any authority other than CROWCASS to publish Wanted Lists, and further that "it is hoped that after perusal of this account a clear understanding of the CROWCASS organization will lead to the elimination of other Wanted Lists."

According to the explanations given by Lieut. Colonel RYAN, there were also other reasons for not endorsing the Commission's lists by CROWCASS. First, the classification of

the Lists as Secret, a consideration which in fact has not prevented CROWCASS from acting upon the first 15 Lists, though they were also marked Secret. This obstacle has already been removed as in the Meeting of 6th November 1946, the Commission has decided to remove the ban of secrecy from all Lists issued by the Commission.

The second reason was that entries against the Commission's Lists are not as full as the CROWCASS Wanted Reports. CROWCASS keeps a panel for personal description while the Commission's Lists give no physical descriptions of persons listed.

It is to be noted that all personal data and descriptions submitted by the National Offices in charges filed with the Commission are being included in the Commission's Lists as far as practicable. In the great majority of cases, however, there is very rarely any detailed information as is required in Wanted Reports and in cases where such descriptive information is not known to the National Offices, Wanted Reports would not supply CROWCASS with any additional information than that contained in the Commission's Lists. It does not follow, however, that such entries should be disregarded as either the additional information might be forthcoming later or the persons wanted might be apprehended even in cases where insufficient personal data have been provided.

Notwithstanding, the question has been raised as to whether or not it would be practicable for Committee I to request the National Offices always to give in their charges full descriptions of individuals where known and whether, in that case, such descriptions could usefully be included in the Commission's Lists. As on the other hand, the Committee was not quite sure whether in the great majority of cases that come before that Committee, Wanted Reports are being sent to CROWCASS, it was decided first of all to find out from the National Offices whether they are filing Wanted Reports with that organization and if such is the case, whether the Wanted Reports are sent in at the same time as the cases are submitted to the Commission, or only after the individuals have been listed.

Of the replies received up to date from ten National Offices, it would appear that in the great majority of cases, Wanted Reports are being filed with CROWCASS, though it is not quite clear whether they cover all persons listed by the Commission. It appears, however, that in filing Wanted Reports, the National Offices have established different practices, in that some of them are sending Wanted Reports before the cases are submitted to the Commission, some of them at the same time, and others only after the accused have been listed by the Commission.

It is submitted that filing of Wanted Reports with CROWCASS before and/or at the same time as the charges are submitted to the Commission runs counter to the Commission's policy as such practice implies that in cases where individual charges have not been accepted by the Commission, the persons concerned would still remain on CROWCASS records and be subject to apprehension and in some cases, even to extradition. It is therefore suggested that before CROWCASS accepts a Wanted Report, they should enquire whether the particular case has been placed before and accepted by the Commission or else wait until the respective Commission List is published.

III. Listing of Allied Nationals charged with War Crimes.

On page 4, first and second paragraphs, of the CROWCASS Memorandum, it is stated that Wanted and Detention Reports should be filed in regard to nationals of ex-enemy countries only. There

is, however, no provision covering allied nationals listed by the Commission as war criminals which at the same time, it is true, might fall under the category of Quislings or traitors. This has been confirmed by Lieut. Colonel RYAN, who stated that it would be against CROWCASS policy established by its controlling body, the Control Commission for Germany, to include in their Lists any persons falling under this category as they all must be dealt with only and exclusively by the countries concerned.

It is not known what means of discrimination are available in this respect to CROWCASS, but it must be presumed that could only be acting on the information supplied by the National Offices. As the latter could not cover all possible cases, it is safe to assume that there will always be a great number of persons included in CROWCASS Lists in spite of that ruling.

The question of establishing the actual nationality of persons, who, being allied nationals, voluntarily joined any of the enemy organizations is a complicated one and involves many legal points, the solving of which could not be entrusted to a body set up for purely technical purposes. It is therefore suggested that in this respect CROWCASS should rely upon the United Nations War Crimes Commission and its careful examination of such cases before the individuals concerned are placed upon its Lists.

IV. From the foregoing it would appear that the only way out of the difficulties mentioned under II and III or any other that might arise in the future is that all the names of war criminals and only those contained in the Commission's Lists should be included automatically and promptly in CROWCASS Wanted Lists, irrespective of whether Wanted Reports have, or have not, been sent in by the National Offices.

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UNITED NATIONS WAR CRIMES COMMISSION.

MISC. 58.
3rd December, 1946.

MEMORANDUM ON THE SUGGESTIONS WHICH HAVE BEEN
MADE CONCERNING THE WORK OF CROWCASS.

BY

M. DE BAER.

Before reading this paper, it may be useful to reiterate the respective purposes of the Commission's lists and the CROWCASS Wanted lists: CROWCASS lists are the key lists for the arrest of wanted persons, whereas the UNWCC lists are the key lists for the surrender of wanted persons. In other words, when a Government or National Office has reason to believe that a person has been involved in a war crime, it sends in a wanted report, the data of which CROWCASS includes in its list of wanted persons; it is on the strength of these lists that the wanted persons are arrested and detained. That is the part of CROWCASS in this connection. In order to obtain the surrender of such persons the Government concerned sends a case to the UNWCC where, within a few days, the case is examined on its merits and the persons named therein are placed on the Commission's lists. This work, which lies within the exclusive province of the UNWCC is completely separate from the work of CROWCASS. The effect of UNWCC lists is that zone commanders are authorised to surrender upon request of any of the Governments of the United Nations, accused persons whose names are on the Commission's lists; zone commanders who surrender persons who are not on the Commission's lists do so on their own responsibility. From information received it appears that requests for the surrender of quislings (these are not within the province of the UNWCC) are made direct to the zone commanders, who use their own discretion.

A few weeks ago we were fortunate in receiving the visit of Colonel Ryan and Captain Gowing, who gave the Commission some valuable information on the recent changes in the scope of the work of CROWCASS and on the way in which that body functions. Since that time different suggestions have been made from various sources, and I intend to list them hereafter, examining each in the light of information which has been received recently from Colonel Harris.

Suggestion I. CROWCASS should act automatically on the UNWCC lists as was done for lists 1 to 16.

This amounts to demanding that CROWCASS should check the UNWCC lists when they arrive and that they should establish Wanted Reports for persons in respect of whom wanted reports have not yet been received.

Against this suggestion it should be pointed out that there is no reason for imposing upon CROWCASS a heavy burden, which lies within the province of - and which should be shouldered by - the National Offices. They are moreover in a better position than CROWCASS to obtain from the victims or their families such supplementary information as may be necessary to complete the Wanted Reports.

Suggestion II. Before accepting a Wanted Report, CROWCASS should wait until the accused has been placed on one of the Commission's lists, and act accordingly.

A reason for rejecting this suggestion may be that the sooner the wanted person is placed on a wanted list the better it will be. There is no reason to wait, before arresting someone, for his name to appear on one of the UNWCC lists.

It is feared in some quarters that by including in the "Wanted

lists"names of persons who may not appear in the UNWCC lists, some uncertainty as to the status or future of these persons may arise, or they might even stay indefinitely in custody. This danger should however not be exaggerated. We have been repeatedly told that no steps are taken to arrest persons who are on the UNWCC lists(who number 1800) because they are too numerous. We can therefore set our minds at rest: the CROWCASS lists are much more voluminous and it may safely be assumed that, in the absence of any action by an allied government or its liaison teams, no search for any wanted person will be instituted ex officio.

Suggestion III. If Suggestion II is rejected, should CROWCASS then at least not delete from the Wanted Lists persons whom the UNWCC has refused to place on its list?

The answer to this suggestion is that CROWCASS does not know what cases have been rejected or adjourned by the UNWCC and that they cannot therefore know what name should be deleted. Moreover, when a case is adjourned, the Government that has brought this case is always entitled to bring more evidence which might -- and often does -- result in the accused being finally placed on the UNWCC lists. If CROWCASS were required to delete a name because the case has been adjourned this would result in hopeless confusion.

Suggestion IV. CROWCASS should discontinue its practice of refusing to accept Wanted Reports concerning persons of Allied nationality(Quislings and Traitors).

From CROWCASS' letter dated 19th November 1946 it appears that the method which is used there for deciding whether a person's name should be placed on the lists is not the same as that which is in use in the UNWCC. CROWCASS' yardstick is subjective: it is nationality. The UNWCC on the contrary has adopted an objective measure: it considers nationality as irrelevant and merely considers the act: if the act charged was a war crime, then the doer is a war criminal; if it was not a war crime, the case is rejected although the doer may be a traitor according to his own national law.

The reasons for adopting this policy have appeared from the first days of the work of this Commission.

Even in peace time, questions of nationality are not easily solved, and in many cases there is a conflict of laws between the provisions of the two countries concerned, which may result in statelessness or in double nationality. In time of war the nationality of an individual becomes even more uncertain: serving the enemy, in some countries, causes an individual to lose his original nationality, in others it does not. Furthermore, acquiring a foreign nationality during a war is recognised by some Governments and not by others. It follows that an individual who has, let us say, enlisted in the German Army, or agreed to broadcast for Germany, and who may or may not have acquired German nationality, may or may not have lost his original nationality, as this depends not only on the law of his country of origin, but also on the law of his country of adoption, all of which differ from each other. So that, taking two individuals of different nationalities who have entered the service of two different enemy governments, one may have two nationalities and the other may be stateless.

This is further complicated by the German legal provisions, according to which German citizens inhabiting regions which had been separated from the Reich by the Versailles Treaty, were arbitrarily deemed never to have lost German citizenship. Others, such as the Alsacians, did not know themselves, during the war, what was, technically speaking, their own national status. Taking all this into account, when

the Commission was faced with cases of this kind, it was unanimously decided that although we had in our midst specialists in international private law, among them one of high repute, questions of nationality were so complicated that it was impossible to solve any one of them without a complete knowledge of the position and without a long study. Therefore, we decided that nationality could not possibly be used as a yardstick and this policy has been followed ever since and has never been challenged. It is not known what yardstick CROWCASS uses for the determination of a person's nationality, but there is no doubt that it is a controversial issue.

My conclusion to this question is that CROWCASS should regard its functions as those of a registry of possible war criminals, and should limit its activity to that view. It should not attempt to decide either on questions of nationality or on the merits of the charges brought by Governments. This last is the function of this Commission which is properly equipped to carry out this task.

Suggestion V. The National Offices should be asked to send their Wanted Reports to CROWCASS at the same time as (or not later than) they send the relevant case to the UNWCC.

This is, in my opinion, a valuable suggestion. I am well aware that some National Offices do not follow this practice because they consider that, as the search for the wanted persons is the business of their own liaison teams - and not that of CROWCASS - it is useless to send in Wanted Reports before they know that the wanted persons have been put on the UNWCC lists. I believe this is a mistake: the circulation of the CROWCASS lists is very wide, and although no actual search is instituted for all the persons mentioned on them, this may lead to some valuable information being obtained on the whereabouts of the wanted persons.

Suggestion VI. It should be necessary to register with CROWCASS (i.e. to send a Wanted Report) before any claim can be made.

It is difficult to see what reasons might be invoked in favour of this suggestion, and I am of the opinion that Dr. Litawski's remarks (Misc. 57 I Object of CROWCASS) should be endorsed.

Suggestion VII. That each name which is also on a UNWCC List should be eventually marked with an asterisk on the CROWCASS lists.

If this suggestion is practicable for CROWCASS I cannot see any reason why it should not be done: it will certainly help to indicate, in a clear way, such "wanted persons" who are charged with war crimes.

There is, in the connection, a last point which deserves consideration.

As mentioned by Dr. Litawski in his note (Misc. 57) CROWCASS intends to circulate a pamphlet entitled: What is CROWCASS. A preliminary draft of this pamphlet was brought to London by Colonel Ryan. The Section headed "Submission of Wanted Lists to CROWCASS" began with these words: "With the exception of the UNWCC which fulfils a similar function to CROWCASS in a slightly different way, and with whom CROWCASS maintains close liaison, there should be no necessity for any other authority to issue a wanted list....."

The very fact that the person who drafted the first version of "What is CROWCASS" thought that the UNWCC fulfils "a similar function to CROWCASS in a slightly different way" indicates that there is a misapprehension.

The function of the two bodies is quite different: the UNWCC has been functioning for over three years, consistently carrying out its terms of reference as laid down by the United Nations. It has changed neither its aims nor its policy. It examines cases on their merits and gives advice on policy.

CROWCASS on the contrary, which was, until a few months ago, a registry endeavouring to set up an index of all prisoners of war, has now become a registry of war criminals.

It is true that the wording of the said paragraph has been altered in the revised version which was sent to the Secretariat it reads as follows: "It is considered that except for special internal reasons it should not be necessary for any authority other than CROWCASS to publish Wanted lists.... It is hoped that after perusal of this account a clearer understanding of the CROWCASS organisation will lead to the elimination of other Wanted lists".

The "wanted lists" to which reference is made seem to be the lists of the UNWCC, which at once time CROWCASS has searched. However, this seems to be taking no account of the purpose of both lists, which, as I have pointed out in the beginning of this paper are quite different from each other.

As "What is CROWCASS" is obviously intended to convey an accurate idea of the valuable work of that body, I would suggest that, in the aforesaid paper, a reference should be made to the UNWCC, showing what are the relations of this Commission with CROWCASS, as well as clearly defining the purpose of both lists. This is the only way to show that the work of CROWCASS does not duplicate that of the UNWCC, and that, although there is close cooperation between them, each of these bodies has its own well defined field of action.

Misc. No. 59.
4th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Luxemburg War Crimes Legislation.

Grand Ducal Decree of 3rd July, 1945,
Establishing a National Office for the
Investigation of War Crimes.

Promulgated in
"Mémorial du Grand-Duché de Luxembourg"
No. 33, of 7 July, 1946, (p. 373).

(Translation by Col. H.H. Wade, Research Officer.)

WE, CHARLOTTE, by the Grace of God Grand Duchess of Luxembourg,
Duchess of Nassau, etc., etc., etc;

Having regard to the numerous infractions of international law
and of the obligations of humanity which have been committed by the
invaders;

Having regard to the Inter-Allied Declaration of January 13th,
1942, concerning the punishment of war crimes;

Having regard to the laws of September 28th, 1938, and August
29th, 1939, extending the scope of the executive authorities;

Having regard to Article 27 of the law of January 16th 1866,
concerning the organisation of the Council of State; and having in
view the urgency of the question;

Having considered the report of our Minister of Justice, and the
Government having deliberated in Council;

We have decided and decide:

Article 1: A National Office for the investigation of war crimes is
hereby established in connection with the Ministry of Justice.

The National Office will deal, generally, with all matters
connected with war crimes; in particular, acting in conjunction with
the United Nations War Crimes Commission(*), it will collect evidence
concerning infractions of the rules of international law, of the laws
and customs of war, of the obligations of humanity and of all crimes
or offences committed by the invaders with a view to ensuring their
subsequent punishment.

(*) The original French text uses the expression: United War Crimes
Committee.

Article 2: The Office shall be managed, under the authority of the Ministry of Justice, by a President to be designated by the Minister of Justice.

Counsellors and attachés of the Ministry of Justice may be appointed to the Office.

Article 3: The Office will undertake all necessary investigations; with that object it may call on all administrative and judicial authorities, who will be required to afford it their assistance. In particular, it may apply for information, and with that object may address itself to the detective service, the gendarmerie, or the police, and may require public departments and administrations, including prosecuting authorities, to communicate to it any charges or necessary documents, and it may appoint experts or take evidence from witnesses.

Witnesses may be examined on oath, in the interests of veracity and to give added weight to their evidence.

Persons who refuse to appear or to make statements shall be liable to imprisonment of from 8 days to one month and to a fine of from 1,000 to 10,000 francs, or to one only of the above penalties, which will be awarded by a court of summary jurisdiction.

Article 4: With a view to facilitating investigation of offences and the collection of evidence, the President of the Office may, in agreement with the Minister of Justice, delegate the performance of the duties mentioned in the preceding article to persons, designated as investigating officers, who have special knowledge of certain classes of war crimes.

Article 5: The results of the work shall be set forth in reports which will be addressed to the Minister of Justice and communicated, with his consent, to the national or Allied authorities with a view to the prosecution and punishment of offences.

Article 6: The emoluments of the investigating officers shall be fixed by the Minister of Justice.

Investigating Officers who are already in receipt of salaries or fixed emoluments as officials, agents, employés or temporary employés of the State, or State-controlled institutions, or of municipalities or railway services, shall not be entitled to emoluments.

The judicial expenses resulting from the performance of the duties assigned to the National Office shall be fixed and, where necessary, be recovered in conformity with the scale of expenses laid down for criminal proceedings, after having been passed by the President or his deputy.

Article 7: Our Minister of Justice is entrusted with the execution of the present decree, which shall come into force as from the date of its publication in the Mémorial (Official Gazette).

LUXEMBOURG, July 3rd, 1945.

(sd) CHARLOTTE.

Members of the Government:

P. DUPONG,
Jos. BECH,
N. MARGUE,
V. BODSON,

P. FRIEDEN,
P. KRIER,
R. ALS,
G. KONSBRUCK.

Misc. No. 60.
9th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Yugoslav War Crimes Legislation.

The following translation of the Yugoslav Law of 25th August 1945, was made available to the Secretariat by the representative of Yugoslavia on the United Nations War Crimes Commission.

The law was passed on 25th August 1945, by the Presidium of the Provisional Parliament of Democratic Federal Yugoslavia, and came into force on 1st September 1945, when it was published in No. 66 of Volume I of the Official Gazette of Democratic Federal Yugoslavia, page 645, under No. 619.

By this special law all previous criminal legislature, insofar as it dealt with criminal acts against the people and the State, has been abrogated. The law was considered a provisional one until the passing of a general codified criminal law, but is still in force.

LAW CONCERNING CRIMINAL ACTS AGAINST THE PEOPLE AND THE STATE.

No. 619.

By virtue of Article 2 of the Decision of the 30th November 1943, concerning the Supreme Legislative and Executive People's representative body of Yugoslavia as the provisional organ of the Supreme people's authority in Yugoslavia and by virtue of the Resolution of 10th August 1945, concerning the alteration of the name of the anti-Fascist National Liberation Council of Yugoslavia to that of the Provisional Parliament of Democratic Federal Yugoslavia, and upon the proposal made by the Minister of the Interior, the Provisional Parliament of Democratic Federal Yugoslavia enacts the

LAW

concerning Criminal Acts against the People and the State.

THE LAW

Article 1

Until the Criminal Code of Democratic Federal Yugoslavia is passed, criminal acts against the people and the state are punishable under this Law.

Article 2.

1. As a criminal act against the people and the state is considered an act aimed at the forcible overthrow of or threat to the existing state system of Democratic Federal Yugoslavia, or the menace of its foreign security, or of the basic democratic, political, national and economic achievements of the liberation war, e.g. the Federal structure of the State, the equality and fraternity of the Yugoslav peoples, and the system of the people's authorities.

2. As a criminal act under this Law any act outlined in the preceding paragraph directed against the security of other states with which Democratic Federal Yugoslavia has a treaty of alliance, friendship or co-operation, is punishable with due regard to the principle of reciprocity.

Article 3

As guilty of criminal acts under Article 2, the following shall be liable to punishment:

1. Any person who undertakes an act aimed at the forcible overthrow of the people's representative body of Democratic Federal Yugoslavia or of the Federative Units, or at overthrowing the Federal or Federative Units organs of supreme state administration, or the local organs of state administration, or at preventing these by menace from fulfilling their legal rights and duties, or at compelling them to fulfil those to the end desired by the person thus exercising force.

2. Any subject of Yugoslavia who commits an act to the detriment of the military strength, the defensive capacity or the economic power of Democratic Federal Yugoslavia, or which threatens the independence or integrity of its territory.

3. Any person who commits a war crime, i.e. who during the war or the enemy occupation acted as instigator or organiser, or who ordered, assisted or otherwise was the direct executor of murders, of condemnations to the punishment of death and the execution of such, or of arrests, torture, forced deportation or removal to concentration camps, of interning, or of forced labour of the population of Yugoslavia; any person who caused the intentional starvation of the population, compulsory loss of nationality, compulsory mobilisation, abduction for prostitution, or raping, or forced conversion to any other faith; any person who under these circumstances was responsible for any denunciation resulting in any of the measures of terror or terrorisation outlined in this paragraph, or any person who in these circumstances ordered or committed arson, destruction or loot of private or public property; any person who entered the service of the terroristic or police organisations of the occupying forces, or the service of any prison or concentration or labour camp, or who treated Yugoslav subjects and prisoners-of-war in an unhumane manner.

4. Any person who during the war organised or recruited others to enter, or himself entered any armed military or police organisation composed of Yugoslav subjects, for the purpose of assisting the enemy and fighting with the enemy against his own Fatherland, accepting from the enemy arms and submitting to the orders of the enemy.

5. Any person who during the war against Yugoslavia or against the allies of Yugoslavia, accepted service in the enemy army, or took part in the war as a fighter against his Fatherland or its allies.

6. Any person who during the war and enemy occupation entered the police service or accepted service in any organ of enemy authority, or assisted these in the execution of requisition orders for the taking

Article 2.

1. As a criminal act against the people and the state is considered an act aimed at the forcible overthrow of or threat to the existing state system of Democratic Federal Yugoslavia, or the menace of its foreign security, or of the basic democratic, political, national and economic achievements of the liberation war, e.g. the Federal structure of the State, the equality and fraternity of the Yugoslav peoples, and the system of the people's authorities.

2. As a criminal act under this Law any act outlined in the preceding paragraph directed against the security of other states with which Democratic Federal Yugoslavia has a treaty of alliance, friendship or co-operation, is punishable with due regard to the principle of reciprocity.

Article 3

As guilty of criminal acts under Article 2, the following shall be liable to punishment:

1. Any person who undertakes an act aimed at the forcible overthrow of the people's representative body of Democratic Federal Yugoslavia or of the Federative Units, or at overthrowing the Federal or Federative Units organs of supreme state administration, or the local organs of state administration, or at preventing these by menace from fulfilling their legal rights and duties, or at compelling them to fulfil those to the end desired by the person thus exercising force.

2. Any subject of Yugoslavia who commits an act to the detriment of the military strength, the defensive capacity or the economic power of Democratic Federal Yugoslavia, or which threatens the independence or integrity of its territory.

3. Any person who commits a war crime, i.e. who during the war or the enemy occupation acted as instigator or organiser, or who ordered, assisted or otherwise was the direct executor of murders, of condemnations to the punishment of death and the execution of such, or of arrests, torture, forced deportation or removal to concentration camps, of interning, or of forced labour of the population of Yugoslavia; any person who caused the intentional starvation of the population, compulsory loss of nationality, compulsory mobilisation, abduction for prostitution, or raping, or forced conversion to any other faith; any person who under these circumstances was responsible for any denunciation resulting in any of the measures of terror or terrorisation outlined in this paragraph, or any person who in these circumstances ordered or committed arson, destruction or loot of private or public property; any person who entered the service of the terroristic or police organisations of the occupying forces, or the service of any prison or concentration or labour camp, or who treated Yugoslav subjects and prisoners-of-war in an unhumane manner.

4. Any person who during the war organised or recruited others to enter, or himself entered any armed military or police organisation composed of Yugoslav subjects, for the purpose of assisting the enemy and fighting with the enemy against his own Fatherland, accepting from the enemy arms and submitting to the orders of the enemy.

5. Any person who during the war against Yugoslavia or against the allies of Yugoslavia, accepted service in the enemy army, or took part in the war as a fighter against his Fatherland or its allies.

6. Any person who during the war and enemy occupation entered the police service or accepted service in any organ of enemy authority, or assisted these in the execution of requisition orders for the taking

of food and other goods, or in the pursuance of any other measures of force against the population of Yugoslavia.

7. Any person who organised armed revolt or took part in this, or organised armed bands or their illegal entry to the territory of the state for the purpose of effecting acts outlined in Article 2 of this Law, or any person who abandoned his place of residence and joined any armed and organised group for the commission of such acts.

8. Any person who in the country or outside organised any association having fascist aims, for the execution of any act outlined in Article 2 of this Law.

9. Any citizen of Yugoslavia who incites a foreign state to war against his Fatherland, or to armed intervention, to economic warfare, to seizure of any property of Democratic Federal Yugoslavia, or of its subjects, to the rupture of diplomatic relations, the cancellation of international treaties, or to any interference in the internal affairs of his Fatherland, or who in any way whatsoever assists any foreign state at war with Yugoslavia.

10. Any person who carries out espionage, i.e. who either hands over or steals or collects data and documents which by their content constitute any particularly guarded state or military secret for the purpose of handing such information to any foreign state, or any fascist or enemy organisation, or any unknown person.

11. Any person who during the war undertook any action aimed at any defensive objects or positions or any means for waging war or other war needs passing to enemy hands or being destroyed or put out of service, or the use of these being frustrated, or action resulting in the Yugoslav Army or the armies of any allied lands or any individual soldiers falling into enemy hands, or in any military enterprise or measure being hindered or endangered.

12. Any person who kills any military person or representative or person in the service of the people's authorities either when these are carrying out their official duties or because of these, or commits such act against any person of an allied or friendly state.

13. Any person who for the purposes outlined in Article 2 destroys or damages by arson or any other means any transport, building or other material, any water supply system, public warehouse or any public property.

Article 4.

Acts outlined in Article 3 and Article 2 paragraph 2 are punishable by deprivation of liberty with forced labour of at least three years, confiscation of property and loss of political and civil rights or if there are particularly aggravating circumstances, by the death penalty.

2. If the acts in question were committed during the war or the period of danger of war, the punishment of deprivation of liberty with forced labour cannot be less than five years.

3. All acts under Article 1 involve the provisional imprisonment of the person indicted.

Article 5.

If any person committing a criminal act under Article 3 has fled the country with the enemy, or is working to accomplish the same criminal acts abroad, he shall be punished by loss of citizenship.

Article 6.

1. Participants and members of organisations formed for the commission of crimes under Article 2, shall be punishable, if there are mitigating circumstances, by deprivation of liberty with forced labour of at least one year.

2. Any member of an organisation under Article 3, paragraphs 7 and 8, who voluntarily surrenders to the authorities and discloses such organisation or communicates important facts concerning this before he or the organisation have committed any act under this Law, shall be relieved of criminal responsibility. If any act has been committed, he shall be liable to the lowest punishment prescribed for the act in question.

Article 7.

In a case of serious wounding of any persons, as under Article 3, paragraph 12, committed under the same conditions outlined concerning murder, any person guilty shall be liable to loss of liberty with forced labour for at least one year.

Article 8.

1. Any person who knew of the preparation or execution of any criminal act under Article 2 and failed to inform the authorities of this, shall be liable to forced labour of at least one year.

2. Any military person who was informed of the preparation or execution of any act of treachery or espionage (Article 3, paragraphs 1, 2 and 10) and failed to inform the authorities of this, shall be liable to deprivation of liberty with forced labour of at least two years.

Article 9.

1. Any propaganda or agitation which includes a call to the forced overthrow of the existing state system, shall be punishable by deprivation of liberty with forced labour of at least one year.

2. If the act has been committed by press or radio, this shall constitute an aggravating circumstance.

3. If any act, as under paragraphs 1 and 2 of this Article cause serious results, or are committed in time of war or in any place under military administration, they shall be punishable as criminal acts under Article 2 of this Law.

4. Proprietors of printing presses or persons responsible for these, who print any writings or other material containing propaganda or agitation in the circumstances outlined in paragraph 1 of this Article, shall be liable to deprivation of liberty, or if the act was committed by negligence, to a monetary fine.

Article 10.

Any person who in time of war collaborated in the economic field with the enemy or with the occupying forces, i.e. who placed their industrial, commercial, transport or other enterprise, or their expert

training at the service of the enemy for the purpose of production, or who themselves produced any articles which increased the economic strength and military resources of the enemy, or if their collaboration with the enemy introduced any particularly serious forms of exploitation or pressure on the workers effected with the assistance of the occupying authorities, shall be liable to deprivation of liberty with forced labour of up to ten years and confiscation of property.

Article 11.

Any person who in any way assists armed bands or similar organisations, or gives their active members shelter or who supplies, conceals or transports arms, food or other material or money, or who serves the maintenance of communication, or affords any other service, or who hinders the authorities in the discovery of such acts and also the persons concerned, shall be liable to deprivation of liberty with forced labour of at least one year.

Article 12.

Any person who undertakes the supply, theft, or collection of economic data which by its content does not constitute particularly preserved secrets, but either by explicit prohibition of the law or any order of leading economic organs shall not be published, and who does this in order to give such information for reward or without reward to any foreign state, enemy or fascist organisation or unknown person, shall be liable to deprivation of liberty of from three months to three years.

Article 13.

1. Any attempt to commit acts outlined in this Law shall be punishable as a complete criminal act.
2. For criminal acts under this law, besides the principal punishments, there are additional punishments under the Law concerning types of punishment which may be applied even when this is not precisely provided for.

Article 14.

1. Criminal acts under this Law are tried in the first instance by the People's County Courts, or in the case of military persons, by military courts.
2. In particularly important cases, criminal cases under Article 2 of this Law are to be tried by the Supreme Courts of the federative units, or if the act is of general state significance by the Military Bench of the Supreme Federal Court, or otherwise, by the Supreme Federal Court.
3. In each case, the findings of these courts is absolute.

Article 15.

1. The cross-examination of an accused person in preliminary procedure and the presence of the accused person at the principal trial concerning criminal acts under this Law, are obligatory.
2. Trial may be held without the presence of the accused person only: (a) if the accused person declared that he consents to this; (b) if it is established that the accused person is concealing himself from the authorities, or has fled the country, or is working abroad for the accomplishment of criminal acts outlined in this Law.

3. The Court will appoint defending counsel for any absent accused person starting from the preparatory procedure.

Article 16.

Appeal against the finding of any court of first instance may be made to a superior court, the finding of which is absolute.

Article 17.

Procedure concerning acts under this Law is urgent.

Article 18.

1. Acts committed before the coming into force of this Law which have not yet been tried, shall be punishable under this Law if its provisions are milder than those of earlier Laws.

2. Any cases for military courts on which first instance findings have not been brought before the coming into force of this Law, shall be transferred for further hearing to the courts made competent for such cases by this Law.

Article 19.

The Federal Minister of Justice will prescribe the necessary instructions for the administration of this Law.

Article 20.

With the coming into force of this Law any legal provision at variance with these provisions is annulled.

Article 21.

This Law comes into force when published in the Official Gazette of Democratic Federal Yugoslavia.

Belgrade, 25 August, 1945.

For the Presidium of the Provisional Parliament of
Democratic Federal Yugoslavia.

Dr. I. Ribar,	President,
M. Perunicic,	Secretary.

UNITED NATIONS WAR CRIMES COMMISSION

MISC. 61

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON DECEMBER 1ST, 1946.

	<u>Cases tried</u>	<u>Accused involved</u>	<u>Death</u>	<u>Imprison- ment.</u>	<u>Acquittal</u>	<u>Remarks</u>
<u>EUROPE:</u>						
<u>UNITED STATES:</u>						
U.S.F.E.T. }	109	477	202	227	48	as at 15.11.1946
U.S.M.T. }						
<u>BRITISH:</u>						
D.A.O.R.)	175	597	130	288	179	as at 1.12.1946
C.M.F.)						
<u>FRANCE:</u>	Not given	182	94	82	6	as at 16.11.1946
<u>GREECE:</u>	1	2	-	2	-	
<u>NORWAY:</u>	-	16	11	5	-	as at 16.10.1946
<u>POLAND:</u>	2	2	2	-	-	as at 1.12.1946: Major War Criminals only; for gross figures, including collaborators, see Doc. A.27
(A) Total reported for Europe:	271	1276	439	604	233	
<u>FAR EAST:</u>						
<u>UNITED STATES:</u>	160*	295	128	148	19	as at 15.11.1946. *Number of cases for India were not given in previous months.
<u>BRITISH:</u>	153	553	208	277	68	
<u>AUSTRALIA:</u>	200	620	121	310	189	
(B) Total - Far East:	513	1468	457	735	276	
GRAND TOTAL (A + B):	809	2744	896	1339	509	

Misc. No. 62
12th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Military Tribunals in the
United States Zone of Germany.

MILITARY GOVERNMENT - GERMANY.

ORDNANCE No. 7.

ORGANISATION AND POWERS OF
CERTAIN MILITARY TRIBUNALS.

Article I.

The purpose of this Ordinance is to provide for the establishment of military tribunals which shall have power to try and punish persons charged with offences recognized as crimes in Article II of Control Council Law No. 10, including conspiracies to commit any such crimes. Nothing herein shall prejudice the jurisdiction or the powers of other courts established or which may be established for the trial of any such offences.

Article II.

(a) Pursuant to the powers of the Military Governor for the United States Zone of Occupation within Germany and further pursuant to the powers conferred upon the Zone Commander by Control Council Law No. 10 and Articles 10 and 11 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945 certain tribunals to be known as "Military Tribunals" shall be established hereunder.

(b) Each such tribunal shall consist of three or more members to be designated by the Military Governor. One alternate member may be designated to any tribunal if deemed advisable by the Military Governor. Except as provided in subsection (c) of this Article, all members and alternates shall be lawyers who have been admitted to practice, for at least five years, in the highest courts of one of the United States or its territories or of the District of Columbia, or who have been admitted to practice in the United States Supreme Court.

(c) The Military Governor may in his discretion enter into an agreement with one or more other zone commanders of the member nations of the Allied Control Authority providing for the joint trial of any case or cases. In such cases the tribunals shall consist of three or more members as may be provided in the agreement. In such cases the tribunals may include properly qualified lawyers designated by the other member nations.

(d) The Military Governor shall designate one of the members of the Tribunal to serve as the presiding Judge.

(e) Neither the tribunals nor the members of the tribunals or the alternates may be challenged by the prosecution or by the defendants or their counsel.

(f) In case of illness of any member of a tribunal or his incapacity for some other reason, the alternate, if one has been designated, shall take his place as a member in the pending trial. Members may be replaced for reasons of health or for other good reasons, except that no replacement of a member may take place, during a trial, other than by the alternate. If no alternate has been designated, the trial shall be continued to conclusion by the remaining members.

(g) The presence of three members of the tribunal or of two members when authorized pursuant to subsection (f) supra shall be necessary to constitute a quorum. In the case of tribunals designated under (c) above the agreement shall determine the requirements for a quorum.

(h) Decisions and judgments, including convictions and sentences, shall be by majority vote of the members. If the votes of the members are equally divided, the presiding member shall declare a mistrial.

Article III.

(a) Charges against persons to be tried in the tribunals established hereunder shall originate in the Office of the Chief of Counsel for War Crimes, appointed by the Military Governor pursuant to paragraph 3 of Executive Order Numbered 9679 of the President of the United States dated 16 January 1946. The Chief of Counsel for War Crimes shall determine the persons to be tried by the tribunals and he or his designated representative shall file the indictments with the Secretary General of the tribunals (See Article XIV, infra) and shall conduct the prosecution.

(b) The Chief of Counsel for War Crimes, when in his judgment it is advisable, may invite one or more United Nations to designate representatives to participate in the prosecution of any case.

Article IV.

In order to ensure fair trial for the defendants, the following procedure shall be followed:

(a) A defendant shall be furnished, at a reasonable time before his trial, a copy of the indictment, and of all documents lodged with the indictment, translated into a language which he understands. The indictment shall state the charges plainly, concisely and with sufficient particulars to inform defendant of the offences charged.

(b) The trial shall be conducted in, or translated into, a language which the defendant understands.

(c) A defendant shall have the right to be represented by counsel of his own selection, provided such counsel shall be a person qualified under existing regulations to conduct cases before the courts of defendant's country, or any other person who may be specially authorized by the tribunal. The tribunal shall appoint qualified counsel to represent a defendant who is not represented by counsel of his own selection.

(d) Every defendant shall be entitled to be present at his trial except that a defendant may be proceeded against during temporary absences if in the opinion of the tribunal defendant's interests will not thereby be impaired, and except further as provided in Article VI(c).

The tribunal may also proceed in the absence of any defendant who has applied for and has been granted permission to be absent.

(e) A defendant shall have the right through his counsel to present evidence at the trial in support of his defence, and to cross examine any witness called by the prosecution.

(f) A defendant may apply in writing to the tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located and shall also state the facts to be proved by the witness or the document and the relevancy of such facts to the defence. If the tribunal grants the application, the defendant shall be given such aid in obtaining production of evidence as the tribunal may order.

Article V.

The tribunals shall have the power

(a) to summon witnesses to the trial, to require their attendance and testimony and to put questions to them;

(b) to interrogate any defendant who takes the stand to testify in his own behalf, or who is called to testify regarding another defendant;

(c) to require the production of documents and other evidentiary material;

(d) to administer oaths;

(e) to appoint officers for the carrying out of any task designated by the tribunals including the taking of evidence on commission;

(f) to adopt rules of procedure not inconsistent with this Ordinance. Such rules shall be adopted, and from time to time as necessary, revised by the members of the tribunals or by the committee of presiding judges as provided in Article XIII.

Article VI.

The tribunal shall

(a) confine the trial strictly to an expeditious hearing of the issues raised by the charges;

(b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever;

(c) deal summarily with any contumacy, imposing appropriate punishment, including the exclusion of any defendant or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Article VII.

The tribunals shall not be bound by technical rules of evidence. They shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which they deem to have probative value. Without limiting the foregoing general rules, the following shall be deemed admissible if they appear to the tribunal to contain information of probative value relating to the charges:

affidavits, depositions, interrogations, and other statements, diaries, letters, the records, findings, statements and judgments of the military tribunals and the reviewing and confirming authorities of any of the United Nations, and copies of any document or other secondary evidence of the contents of any document, if the original is not readily available or cannot be produced without delay. The tribunal shall afford the opposing party such opportunity to question the authenticity or probative value of such evidence as in the opinion of the tribunal the ends of justice require.

Article VIII.

The tribunals may require that they be informed of the nature of any evidence before it is offered so that they may rule upon the relevance thereof.

Article IX.

The tribunals shall not require proof of facts of common knowledge but shall take judicial notice thereof. They shall also take judicial notice of official governmental documents and reports of any of the United Nations, including the acts and documents of the committees set up in the various allied countries for the investigation of war crimes, and the records and findings of military or other tribunals of any of the United Nations.

Article X.

The determinations of the International Military Tribunal in the judgments in Case No. 1 that invasions, aggressive acts, aggressive wars, crimes, atrocities or inhumane acts were planned or occurred, shall be binding on the tribunals established hereunder and shall not be questioned except insofar as the participation therein or knowledge thereof by any particular person may be concerned. Statements of the International Military Tribunal in the judgment of Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary.

Article XI.

The proceedings at the trial shall take the following course:

(a) The tribunal shall inquire of each defendant whether he has received and had an opportunity to read the indictment against him, and whether he pleads "guilty" or "not guilty".

(b) The prosecution may make an opening statement.

(c) The prosecution shall produce its evidence subject to the cross examination of its witnesses.

(d) The defence may make an opening statement.

(e) The defence shall produce its evidence subject to the cross examination of its witnesses.

(f) Such rebutting evidence as may be held by the tribunal to be material may be produced by either the prosecution or the defence.

(g) The defence shall address the court.

(h) The prosecution shall address the court.

- (i) Each defendant may make a statement to the tribunal.
- (j) The tribunal shall deliver judgment and pronounce sentence.

Article XII.

A Central Secretariat to assist the tribunals to be appointed hereunder shall be established as soon as practicable. The main office of the Secretariat shall be located in Nurnberg. The Secretariat shall consist of a Secretary General and such assistant secretaries, military officers, clerks, interpreters and other personnel as may be necessary.

Article XIII.

The Secretary General shall be appointed by the Military Governor and shall organise and direct the work of the Secretariat. He shall be subject to the supervision of the members of the tribunals, except that when at least three tribunals shall be functioning, the presiding judges of the several tribunals may form the supervisory committee.

Article XIV.

The Secretariat shall:

- (a) Be responsible for the administrative and supply needs of the Secretariat and of the several tribunals.
- (b) Receive all documents addressed to tribunals.
- (c) Prepare and recommend uniform rules of procedure, not inconsistent with the provisions of this Ordinance.
- (d) Secure such information for the tribunals as may be needed for the approval or appointment of defence counsel.
- (e) Serve as liaison between the prosecution and defence counsel.
- (f) Arrange for aid to be given defendants and the prosecution in obtaining production of witnesses or evidence as authorised by the tribunals.
- (g) Be responsible for the preparation of the records of the proceedings before the tribunals.
- (h) Provide the necessary clerical, reporting and interpretative services to the tribunals and its members, and perform such other duties as may be required for the efficient conduct of the proceedings before the tribunals, or as may be requested by any of the tribunals.

Article XV.

The Judgments of the tribunals as to the guilt or the innocence of any defendant shall give the reasons on which they are based and shall be final and not subject to review. The sentences imposed may be subject to review as provided in Article XVII, infra.

Article XVI.

The tribunal shall have the right to impose upon the defendant, upon conviction, such punishment as shall be determined by the tribunal to be just, which may consist of one or more of the penalties provided in Article II, Section 3 of Control Council Law No.10.

Article XVII.

(a) Except as provided in (b) infra, the record of each case shall be forwarded to the Military Governor who shall have the power to mitigate, reduce or otherwise alter the sentence imposed by the tribunal, but may not increase the severity thereof.

(b) In cases tried before tribunals authorized by Article II (c), the sentence shall be reviewed jointly by the Zone Commanders of the nations involved, who may mitigate, reduce or otherwise alter the sentence by majority vote, but may not increase the severity thereof. If only two nations are represented, the sentence may be altered only by the consent of both zone commanders.

Article XVIII.

No sentence of death shall be carried into execution unless and until confirmed in writing by the Military Governor. In accordance with Article III, Section 5 of Law No.10, execution of the death sentence may be deferred by not to exceed one month after such confirmation if there is reason to believe that the testimony of the convicted person may be of value in the investigation and trial of other crimes.

Article XIX.

Upon the pronouncement of a death sentence by a tribunal established thereunder and pending confirmation thereof, the condemned will be remanded to the prison or place where he was confined and there be segregated from the other inmates, or be transferred to a more appropriate place of confinement.

Article XX.

Upon the confirmation of a sentence of death the Military Governor will issue the necessary orders for carrying out the execution.

Article XXI.

Where sentence of confinement for a term of years has been imposed the condemned shall be confined in the manner directed by the tribunal imposing sentence. The place of confinement may be changed from time to time by the Military Governor.

Article XXII.

Any property declared to be forfeited or the restitution of which is ordered by a tribunal shall be delivered to the Military Governor, for disposal in accordance with Control Council Law No.10, Article II(3).

Article XXIII.

Any of the duties and functions of the Military Governor provided for herein may be delegated to the Deputy Military Governor. Any of the duties and functions of the Zone Commander provided for herein may be exercised by and in the name of the Military Governor and may be delegated to the Deputy Military Governor.

This Ordinance becomes effective 18 October 1946.

BY ORDER OF MILITARY GOVERNMENT.

Article XVII.

(a) Except as provided in (b) infra, the record of each case shall be forwarded to the Military Governor who shall have the power to mitigate, reduce or otherwise alter the sentence imposed by the tribunal, but may not increase the severity thereof.

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Any of the duties and functions of the Military Governor provided for herein may be delegated to the Deputy Military Governor. Any of the duties and functions of the Zone Commander provided for herein may be exercised by and in the name of the Military Governor and may be delegated to the Deputy Military Governor.

This Ordinance becomes effective 18 October 1946.

BY ORDER OF MILITARY GOVERNMENT.

Misc. No. 63.
17th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Investigation, Prosecution and Trial of
War Crimes in the French Zone of Germany.

(Translations of Instructions
issued by the
French Supreme Command in Germany.)

FRENCH SUPREME COMMAND IN GERMANY.

General Directorate of Justice.

War Crimes.

August 28th, 1946.

INSTRUCTIONS FOR THE INVESTIGATION, PROSECUTION AND
TRIAL OF WAR CRIMES.

I. Definition of War Crimes.

A. GENERAL PRINCIPLES.

A definition of the offences coming under the general description "War Crimes" was given in Article 2 of Law No.10 of the Control Council dated December 20th, 1945, which was published in the Official Gazette of the French Supreme Command in Germany, (Journal Officiel du Commandement en Chef Français en Allemagne) No.12, of January 11th, 1946.

The above-mentioned law makes a distinction between crimes against peace, war crimes properly so called, crimes against humanity and membership in certain criminal groups or organisations.

1. Crimes against peace are the initiation of invasions of other countries, wars of aggression, in violation of international law and treaties(*) the crimes in question having been committed by members of the Government, Party leaders and high Nazi officials.

(*) The French original reads: "...l'invasion d'autres pays et le déclenchement de guerres, d'agressions, ou violation du droit et des traités internationaux". The French text of Law No.10 (Official Gazette of the Control Council for Germany, No.3., p.22) however, reads: "Déclenchement d'invasions d'autres pays et de guerres d'agression, en violation du droit et des traités internationaux..." It appears, therefore, that the French text of the leaflet contains misprints as far as it says "agressions" instead of "agression" and "ou" instead of "et".

Should the perpetrator of any such crimes have been identified, the Delegate for the Investigation of War Crimes should be at once informed, regard being had to the gravity of the offence and to its international effects.

2. War Crimes, properly so called, are offences against persons or against the property of foreign nationals in one of the Axis countries, or violations of the laws and customs of war, as described below in paragraph B.

3. Crimes against humanity are crimes committed against any civilian population, of whatever nationality, including persecutions on political, racial or religious grounds.

Where such crimes have been committed by nationals of Axis countries, the prosecution and punishment of the offenders may involve considerations affecting the general policy of the Allies; investigations in regard to such matters should therefore only be undertaken in pursuance of instructions from the Delegate for the Investigation of War Crimes, who should be informed at once of any cases that are being dealt with.

4. Membership of groups or organisations which may be declared criminal shall not be the subject of prosecutions until the International Military Tribunal at Nuremberg shall have given judgment on that point.

As soon as that judgment has been pronounced instructions will be issued as to the procedure for prosecutions in such cases.

B. WAR CRIMES PROPERLY SO CALLED.

It is desirable to specify the war crimes, properly so called, which, in the majority of cases form the subject of investigations. The principles laid down in Law No.10 of the Control Council, in the Ordinance dated November 25th, 1945, by the French C.I.C. in Germany, and the Ordinance, dated August 28th, 1944, (Journal Officiel of August 30th 1944) by the Provisional Government of the French Republic enable the following to be classed as war crimes:

1. All acts specified as crimes or offences by French criminal law or by the criminal law of the countries of which the offenders are nationals;
2. if committed after September 2nd, 1939, and before the end of the period of active hostilities;
3. by nationals of the Axis Powers, or by persons other than French nationals in the service of those Powers;
4. in connection with the war, and contrary to the laws of war.

In no case can French nationals be regarded as war criminals by the French authorities. Any crimes committed during the hostilities by such persons constitute acts of treason or collaboration, and fall exclusively within the jurisdiction of the French courts in France (Courts of Justice, Military Tribunals or Chambre Civile).

The principal war crimes are:

- (a) Offences against persons, in particular:
assassinations, murders, atrocities, deportations of civilian inhabitants of occupied territories, or of hostages, and all acts of violence committed against

civilian inhabitants in those territories or against nationals of countries at war with the Axis;
- Assassinations and murders of prisoners of war, subjecting prisoners of war to violence or ill-treatment;
- Rape, or indecent assault, committed against persons in occupied territory.
- Sequestration, arbitrary arrests, unjust judgments or judgments pronounced in compliance with orders, in occupied territory.

- (b) Violations of the Laws of War, in particular:
- Attacks on undefended dwellings;
 - Destruction of towns, villages or dwelling-houses, and devastations where such acts are not justified by military necessity;
 - bombardment of hospitals, or other protected buildings;
 - employment for warlike purposes of protected buildings;
 - poisoning wells or water courses;
 - improper use of the Red Cross or of other distinctive emblems, contrary to the Geneva Convention.
- (c) Offences against property, in particular:
- pillage, theft, arson, embezzlement, fraud, etc., to the prejudice of individuals or bodies.

In the preceding category are included offences coming under the term "economic war crimes", viz., abuses of authority by nationals of the Axis countries, resulting in the acquisition, for the benefit of the said Powers or of one of their nationals, of the whole or part of property belonging to States at war with Germany or her Allies or to nationals of the said States.

Although it is beyond doubt that acts of pillage committed by the Germans in the occupied territories constitute war crimes it is, on the other hand, very difficult to judge how far the issue of financial and economic instructions by the military chiefs, members of the Government or administrative officials, or the acquisition of businesses, shares, holdings or purchases of goods and other assets is of such a nature as to constitute a war crime.

Heads of War Crimes Investigation Brigades may not open enquiries into economic war crimes without referring to the head of the War Crimes Investigation Service; the latter will apply for instructions to the Delegate for the Investigation of War Crimes, in order to avoid the recurrence of errors which have led to unjustified enquiries and searches in connection with such matters.

II. POWERS AND JURISDICTION.

All police services and gendarmerie services are competent to undertake investigations in regard to war crimes.

War Crimes Investigation Brigades (formerly BERCG)^(*) are specially conversant with these questions, and are only qualified to undertake enquiries and investigations in regard to war crimes.

(*) R.C.G. - Recherche des crimes de guerre.

When the head of a Brigade, in the course of investigations undertaken by his Brigade becomes cognisant of an offence which does not fall under the war crimes legislation, he should inform the competent authority and furnish the latter with all the information which he has been able to acquire concerning the case. If he has already begun an enquiry, he should forward the file to the above mentioned authority. If he has detained the offender he must immediately inform the Public Prosecutor attached to the Intermediate Tribunal of his province, who will take over the case, prepare it, and give such instructions as he thinks fit to the police or gendarmerie authorities designated by him.

In no case may the War Crimes Investigation Brigade pursue an enquiry into offences not falling within their purview without special and precise instructions from the Public Prosecutor or the Delegate for the Investigation of War Crimes.

In particular, they may not carry out investigations or undertake prosecutions in regard to French traitors or collaborators accused of offences against Articles 75 et seq. of the (French) Penal Code.

The permanent Military Tribunals of the French Military Districts have jurisdiction to try war crimes committed in French territory or in a territory which was under the authority of France at the time when the said crimes were committed, i.e., in colonies, protectorates or mandated territories.

Other war crimes fall within the jurisdiction of the Military Government Tribunals in the French Zone of Occupation.

III. INVESTIGATIONS, SEARCHES AND SEIZURES.

Gendarmerie brigades, police services and, in particular, War Crimes Investigation Brigades may undertake enquiries, as in cases of ordinary law, either on their own initiative or on a complaint being laid, or, again, in pursuance of instructions from the Delegate for the Investigation of War Crimes or from a Public Prosecutor.

Investigations are carried out by taking depositions from the accused persons and witnesses. These depositions must be drawn up in the form prescribed in the specimen forms attached hereto in Annexes 1 and 2(*) It is essential that the date and place of the deposition, the name and description (identity and address) of the interrogator, the surname, first name and the exact status of the person interrogated, and the surname and first name of the interpreter, if any, should be set out very distinctly at the head of the deposition.

If the person interrogated - though a foreigner - can speak and understand French sufficiently, the deposition should be drawn up in French. Otherwise it must be drawn up in the language spoken by the person in question; in such cases it is desirable that, when possible, a French translation should be attached.

The form to be used in gendarmerie interrogation reports is governed by the regulations of that force.

The original copy of the deposition must be signed by the person interrogated, the interrogator, and the interpreter, if any.

The interrogator may also detain accused persons in custody and keep them under observation until the Public Prosecutor attached to the Intermediate Tribunal of his province, who must be informed within three days after the arrest, has given his decision, if necessary, by telephone when no other way is possible. In such cases, the decision must be confirmed in writing within eight days.

(*) Not attached.

Searches. Searches may only be carried out in the presence of the party concerned or of his authorized representative, or, if that is not possible, of two witnesses specially obtained for that purpose. A record must be drawn up and signed by the investigator, the accused or his representatives, and by the witnesses.

Seizures. Seizures may only be effected in regard to articles constituting evidence which is essential for the establishment of the facts. A record must be made of the seizure, and as in the case of records of requisitions, must be signed by the investigator, the accused or his representatives, and by the witnesses where the seizure has been effected during a search. The articles seized must be placed under seal, open or closed, according to the dimensions and nature of the article, and must be forwarded together with the file to the clerk of the Intermediate Tribunal.

At the outset of the investigation a list must be drawn up in the name of the accused person and forwarded, in a form to be subsequently laid down by a regulation, to the Department for the Control of Assets in the General Directorate of National Economy and Finance of the Military Government.

IV. TRANSMISSION OF FILES.

War Crimes cases must be prepared with all possible despatch and must be given priority:

(A) When a suspected person has been arrested the file must be forwarded within three days after the arrest to the Public Prosecutor attached to the Intermediate Tribunal of the Province in which the police or gendarmerie brigade is stationed. The file must include the interrogation report of the person arrested, the depositions of witnesses if any, the record of the search and of seizures, if they have been effected, and a report by the head of the brigade showing the reasons for the arrest and the charges which are pending against the accused person.

As regards cases prepared by brigades situated elsewhere than at the seat of the Intermediate Tribunal, the Public Prosecutor may delegate his powers to a law officer of the Summary Tribunal of the district in which the brigade is stationed.

(B) If it has not been possible to arrest the suspected person, the police or gendarmerie brigade will compile a file of the case, as full as possible, and will transmit it, as soon as it is complete, to the Public Prosecutor attached to the said Intermediate Tribunal.

The head of the Brigade will, as in the preceding case, attach a report describing the case concisely, but clearly, and indicating any further investigations which have still to be undertaken and the reasons which have prevented him from undertaking them himself.

It is desirable that, when a suspected person has been identified, the file should be forwarded as early as possible to the law officer in order that the latter may send out a wanted note. (Note de recherche).

Files forwarded to the Public Prosecutor must contain the original documents, not copies of them, since the Tribunal can only found its judgment on the original documents. Only copies or duplicates may be retained in the archives of the Brigades or of the Central War Crimes Investigation Office.

As soon as the file has been transmitted to the Public Prosecutor, the case enters upon the judicial stage, and the law officer to whom it has been submitted must take a decision upon it at once.

V. THE ROLE OF THE PUBLIC PROSECUTOR.

If the suspected person has been detained, the Public Prosecutor must consider whether it is desirable to retain him in custody; if he considers this necessary he must issue a detention warrant (mandat de prise de corps) against the accused. He may take this action even if the accused person has been allowed to remain at liberty during the investigation.

The law officer must specify in the detention warrant the nature of the offences with which the accused person is charged.

If the Public Prosecutor considers that the file is complete, it is his duty to submit the case either to the Summary Tribunal which is competent ratione loci, or to the Intermediate Tribunal, where the penalty incurred in the case should not, in his opinion, exceed 10 years' imprisonment or a fine of 5,000,000 frs.

If he considers that heavier penalties have been incurred, he should forward the file to the Public Prosecutor attached to the General Tribunal at Rastatt.

If the Public Prosecutor considers that the file is incomplete, he will act as follows:

- (a) if the case appears to fall within the jurisdiction of the General Tribunal he will forward the file to the Public Prosecutor attached to that Tribunal, who will consider what further steps he should take to complete it.
- (b) if it does not so fall, he will at once order additional enquiries; he may either undertake them himself or he may issue special and precise instructions or authorizations to take evidence on commission to the different police organisations; or again he may furnish general instructions or authorizations to take evidence on commission to whichever of the police services he regards as most competent in the case; this will, in most cases, be the War Crimes Investigation Brigade which opened the investigation.

During this stage of the proceedings, the case will remain under the direction of the principal law officer, who may at any time require the investigators to report to him on the progress of the enquiries.

VI. FUNCTIONS OF THE DELEGATE FOR THE INVESTIGATION OF WAR CRIMES.

The investigation of war crimes is conducted under the authority of the Director General of Justice, who is personally delegated for this investigation of war crimes in Germany by the Keeper of the Seals, (the Minister of Justice) and must be kept informed of any investigations in progress and of any difficulties that may arise.

He alone is competent, in virtue of the powers delegated to him, jointly, by the Keeper of the Seals and the General Commanding-in-Chief, to authorise the surrender of a person suspected of a war crime to the authorities of another country. Similarly, he alone is competent to apply to a foreign authority for the surrender of a war criminal.

Neither the law officers of the Military Government Tribunal nor the Police Services and Gendarmerie are entitled, save in cases of manifest urgency, to correspond with foreign authorities or with the French authorities, in particular with the Ministry of Justice at Paris (Directorate of the Investigation of Enemy War Crimes), or with the French war crimes liaison officers in the American and British zones, otherwise than through the intermediary of the Delegate.

In cases of manifest urgency direct communication is permissible, provided that the Delegate for the Investigation of War Crimes is at once apprised and that he is furnished with copies of the correspondence.

Should the authorities of another country ask a Public Prosecutor or a Brigade of the War Crimes Investigation Service (R.C.G.) to apprehend or surrender a war criminal, the law officer, or the Head of the said Brigade, may comply with the request if the matter is urgent. But in such cases, he must at once inform the General Directorate of Justice (Delegation for the Investigation of War Crimes) by telephone and confirm the report by letter.

It is essential that the Delegate for the Investigation of War Crimes should be kept informed of everything connected with cases of this sort, seeing that it is his duty to report to the Keeper of the Seals on the Progress of the work, to keep in touch with the Directorate at Paris, to co-ordinate the investigations and prosecutions and to keep up to date the returns and the lists of war criminals who are wanted or have been detained.

Any disregard of these imperative instructions will be treated as a grave dereliction of duty.

(signed) E. LAFFON.

Administrator-General.

(Translation by Colonel H.H.Wade, Research Officer.)

UNITED NATIONS WAR CRIMES COMMISSION

Misc. No. 64
January 1, 1947

FINNISH WAR CRIMES LEGISLATION.

The United Kingdom Foreign Office have placed at the disposal of the Secretariat copies of the Finnish War Crimes Legislation in Finnish and Swedish, together with a general explanation of the position and an English translation of the "Law relating to the Punishment of the War Guilty" No. 890, of 12th September, 1945. The general explanation is reproduced in this paper under (I) the text of the enactment under (II).

I

- (i) Crimes committed against the international law of war have been treated as ordinary crimes and prosecuted according to the Finnish general criminal law and military criminal law.
- (ii) By virtue of the law of September 23rd, 1944 regarding the enforcement of the Armistice Agreement concluded on September 19th 1944 between Finland on the one hand and the United Kingdom and Soviet Union on the other, a decree was enacted on December 7th 1944 authorising the apprehension of such persons as were suspected to have committed crimes coming under Article 13 of the Armistice Agreement.
- (iii) On July 5th 1945 a further decree was enacted dealing with the prosecution for acts which might be considered as war crimes in the terms of Article 13 of the Armistice Agreement. This decree ensures that provisions which had been in force for the exemption from prosecution or punishment by lapse of time will not apply to the prosecution of war criminals.
- (iv) A law was enacted on September 12th of that year for "the punishment of the war guilty". I enclose herewith an extra copy of the translation of this law for easy reference.
- (v) There has been no legislation on the question of compensating victims of war crimes but in the supplementary budget for 1945 provision was made "for the payment of compensation to persons arrested or prosecuted for political reasons or persons kept in protective custody," and a sum of 75 million Finnmarks was put aside for this purpose.

II

Law relating to the Punishment of the War Guilty
No. 890. Given in Helsinki, September 12th, 1945.

In accordance with the resolution of the Diet made in the manner prescribed by Section 67 of the Diet's Statutes, the following is enacted for the purpose of fulfilling the stipulations of Article 13 of the Armistice Agreement concluded on September 19th, 1944 between the representative of Finland and the Union of Soviet Socialist Republics and with the United Kingdom of Great Britain and Northern Ireland.

Section I.

Whosoever, in a decisive manner, contributed to Finland incurring war in the year 1941 against the Union of Soviet Socialist Republics or the United Kingdom of Great Britain and Northern Ireland, or during the continuation of the war prevented the attainment of peace, shall, on the charge of abuse of his official position to the detriment of the

country, be sentenced to imprisonment not in excess of eight years, or where there are aggravating circumstances, to penal servitude for a stipulated period or for life.

What is enacted in Section 47 of the Constitution and in paragraph 7 of the Law of November 25th, 1922 relating to the right of the Diet to examine into the illegality of the official acts of members of the State Council or of the Chancellor of Justice, shall constitute no obstacle to the trial and punishment of any person who has been President of the Republic or member of the State Council for such acts as are referred to in this Section.

Section II.

Proceedings under the present Law shall take place before a special War Guilt Court.

To the War Guilt Court shall belong in the capacity of Chairman, the President of the Supreme Court, and in the capacity of members, the President of the Supreme Court of Administration, one member of the legal faculty of the University of Helsinki, elected together with his deputy by the said faculty from among its members, as well as twelve other members who, together with their necessary deputies, shall be elected by the electors of the Diet in proportionate elections. If the President of the Supreme Court or the President of the Supreme Court of Administration shall be ineligible or prevented from acting, the senior member of the same Court shall replace him. The place of the Chairman shall, if necessary, be taken by the President of the Supreme Court of Administration.

Whoever is elected to membership of the War Guilt Court shall be obliged to act.

Section III.

The State Council shall order proceedings to commence before the War Guilt Court after having heard the report of the Chancellor of Justice in the matter.

Section IV.

Prosecutions before the War Guilt Court shall be conducted by the Chancellor of Justice or anybody by him appointed for the purpose.

Section V.

The right to commence proceedings for crimes envisaged in this law shall expire if the State Council does not order the commencement of proceedings within the year 1945.

Section VI.

No proceedings shall be commenced for acts connected with Finland's incurring war in the year 1941 or for preventing the attainment of peace other than those mentioned in Section I.

Section VII.

Unless otherwise provided in this Law, enactments relating to the activities of the State Court and of its Chairman shall, as far as applicable, apply to the War Guilt Court.

As regards publicity of the Court procedure, the Law of February 5th, 1926 regarding the publicity of procedure, shall apply in all cases the passing of decision or sentence shall always be public.

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As regards publicity of the Court procedure, the Law of February 5th, 1926 regarding the publicity of procedure, shall apply in all cases the passing of decision or sentence shall always be public.

Section VIII.

In the punishment of persons sentenced by the War Guilt Court the enactments shall apply which refer to persons sentenced for crimes under Chapter 11 of the Criminal Law.

As regards amnesty of the persons sentenced, what in general is enacted in the Constitution regarding the right of the President to grant amnesty shall apply.

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As regards amnesty of the persons sentenced, what in general is enacted in the Constitution regarding the right of the President to grant amnesty shall apply.

UNITED NATIONS WAR CRIMES COMMISSION

AUSTRIA

PROVISIONS REGARDING WAR CRIMINALS
IN THE FOUR POWER AGREEMENTS CONCERNING
CONTROL MACHINERY AND ZONES
OF OCCUPATION IN AUSTRIA AND
THE ADMINISTRATION OF THE CITY OF VIENNA
(Cmd. 6958)

(Compiled by E. Schwelb, Legal
Officer)

(1) The Four Power Agreement on Control Machinery in Austria, dated London, 4th July, 1945, prepared and unanimously adopted by the European Advisory Commission, provides in Article 8(a) that one of the primary tasks of the Allied Commission for Austria will be "to ensure the enforcement in Austria of the provisions of the Declaration regarding the defeat of Germany signed at Berlin on the 5th June, 1945. (Cmd. 6648) Article 11 of the Berlin Declaration applies therefore, also to Austria. It reads as follows:

Article 11:

(a) The Principal Nazi leaders as specified by the Allied Representatives, and all persons from time to time named or designated by rank, office or employment by the Allied Representatives as being suspected of having committed, ordered or abetted war crimes or analogous offences, will be apprehended and surrendered to the Allied Representatives.

(b) The same will apply in the case of any national of any of the United Nations who is alleged to have committed an offence against his national law, and who may at any time be named or designated by rank, office or employment by the Allied Representatives.

(c) The German authorities and people will comply with any instructions given by the Allied Representatives for the apprehension and surrender of such persons.

(2) The Four Power Agreement, redefining the nature and extent of the authority of the Austrian Government and of the functions of the Allied organisation and forces in Austria, dated Vienna, 28th June, 1946, contains, in Article 5, a list of matters in regard to which the Allied Commission may act directly. It provides, under (vii)(a) and (b) as follows:

(vii) (a) The tracing, arrest and handing-over of any person wanted by one of the Four Powers or by the International Court for War Crimes and Crimes against Humanity.

(b) The tracing, arrest and handing-over of any person wanted by other United Nations for the crimes specified in the preceding paragraph and included in the lists of the United Nations Commission for War Crimes.

The Austrian Government will remain competent to try any other person accused of such crimes and coming within its jurisdiction, subject to the Allied Council's right of control over prosecution and punishment for such crimes.

Note on the above provision.

(1) The Four Power Agreement of 28th June, 1946, is, to this writer's knowledge, the only quadripartite document in which reference is made to the United Nations War Crimes Commission, although the Soviet Union is not a member of the Commission.

(2) According to this provision, listing by the Commission is a condition for the tracing, arrest and handing-over of a criminal, wanted by any Power other than the Four Great Powers.

(3) Section (vii) (b) speaks of persons wanted for "the crimes specified in the preceding paragraph". These crimes are "War Crimes and Crimes against Humanity". The provision implies that the United Nations War Crimes Commission lists not only persons alleged to have committed war crimes in the narrower sense, but also persons charged with crimes against humanity which are not violations of the laws and customs of war. The Agreement is, therefore, a confirmation of the interpretation of the Commission's terms of reference adopted in the Commission meeting held on 30th January, 1946, (M.93, p.4).

Affirmation of the Principles of
International Law embodied
in the Charter of the International
Military Tribunal by the United
Nations Assembly.

A copy of the Report by the Sixth Committee of the United Nations Assembly (Doc. A/236, dated 10th December, 1946), which is reproduced in this paper, has been received by the Legal Officer from Dr. KERN, Assistant Secretary-General of the United Nations, who is in charge of the Legal Department of the Secretariat. The Resolution, proposed by the Sixth Committee, para 3 of the report, has been adopted by the General Assembly in December, 1946.

PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW
AND ITS CODIFICATION.

AFFIRMATION OF THE PRINCIPLES OF INTERNATIONAL
LAW RECOGNIZED BY THE CHARTER OF THE NUREMBERG
TRIBUNAL

REPORT OF THE SIXTH COMMITTEE

Rapporteur: Professor K. H. BAILEY (AUSTRALIA)

1. The General Assembly, at its forty-sixth plenary meeting on 31 October 1946 referred to the Sixth Committee the question of the implementation by the General Assembly of its obligation "to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law." The Sixth Committee referred the matter to a Sub-Committee, which had also before it, a resolution proposed by the delegation of the United States relating to the principles of international law recognized by the Charter of the Nuremberg Tribunal (document A/O.6/69).
2. The majority of the Sub-Committee agreed, not only that a Committee should be appointed to consider the proper methods of implementing the obligation of the General Assembly under Article 13, paragraph 1, sub-paragraph a of the Charter, but that that Committee should give priority to plans for the formulation of the principles of the Charter of the Nuremberg Tribunal, and of the judgment of that Tribunal, in the context of a general codification of offences against the peace and security of mankind or of an International Criminal Code. The Sub-Committee felt that this view was strengthened by the fact that similar principles had been adopted in respect of the trials of the major war criminals in the Far East.
3. The Sub-Committee's report (document A/O.6/116) presented by its Rapporteur, Mr. E. R. Hopkins (Canada), was adopted by the Sixth Committee which therefore recommends to the General Assembly the adoption of the following resolution:

AFFIRMATION OF THE PRINCIPLES OF INTERNATIONAL LAW
RECOGNIZED BY THE CHARTER OF THE
NUREMBERG TRIBUNAL

THE GENERAL ASSEMBLY,

RECOGNIZES the obligation laid upon it by Article 13,

paragraph 1, sub-paragraph a. of the Charter, to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification; and

TAKES NOTE of the Agreement for the establishment of an International Military Tribunal for the prosecution and punishment of the major war criminals of the European Axis signed in London on August 8th, 1945, and of the Charter annexed thereto, and of the fact that similar principles have been adopted in the Charter of the International Military Tribunal for the trial of the major war criminals in the Far East, proclaimed at Tokyo on 19 January 1946.

THEREFORE

AFFIRMS the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal;

DIRECTS the Committee on the codification of international law established by the resolution of the General Assembly of December 1946, to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal.

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON JANUARY 1st, 1947

Misc. 67
January 8, 1947

EUROPE: Countries whose reports comprise War Criminals only.		Cases Tried	Accused Involved	Death	Imprisonment	Acquittal	Remarks
United States:	USFET } USMT }	127	569	207	296	66	as at 6. 12. 46
British:	BAOR } CMF }	180	598	130	289	179	as at 1. 1. 47
France		not given	182	94	82	6	as at 16.11. 46
Greece		1	2	-	2	-	as at 31.10. 46
Norway		-	16	11	5	-	as at 16.10. 46
Total:		308	1367	442	674	251	
EUROPE: Countries whose reports show War Criminals & Collaborators combined.							
Czechoslovakia		-	18496	362	13969	4165	as at 31.10. 46
Poland		-	4593	631	1840	2122	as at 1. 7. 46
Total:		-	23089	993	15809	6287	
FAR EAST:							
United States		-	309	131	159	19	as at 6.12. 46
British		179	594	218	306	70	as at 1. 1. 47
Australian		215	674	123	340	211	
Total:		394	1577	472	805	300	as at 22.11.46

Misc. No. 68,
8th January, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

THE NUREMBERG TRIAL.

Report from the United States Member of the
International Military Tribunal
to the President of the United States,
and reply by the President to Mr. Biddle.

The following documents, printed in the
Department of State Bulletin of 24th November,
1946, p.954, were, at the request of the
Secretariat, made available to the Commission
by the United States Representative, Colonel
Robert M. Springer.

They were released to the press by the
White House on 12th November, 1946.

Text of letter sent by the President on November 12 to Francis
Biddle, United States Member of the International Military Tribunal:

Dear Judge Biddle:

I am profoundly impressed by your report, which I have studied
with careful attention.

When the Nürnberg Tribunal was set up, all thoughtful persons
realized that we were taking a step that marked a departure from the
past. That departure is emphasized in the verdict and the execution
of the Nazi war criminals and in your recommendations for the guidance
of nations in dealing with like problems in the future. An undisputed
gain coming out of Nürnberg is the formal recognition that there are
crimes against humanity.

Your report is an historic document. It is encouraging to know
that the dissent of the USSR was not on the fundamental principle of
international law but over the inferences which should be drawn from
conflicting evidence.

I am impressed by the change in point of view of the defendants
and their lawyers from indifference and skepticism at the outset to
a determination to fight for their lives. The fact that you and your
colleagues could bring about this change in attitude is in itself a
tribute to the judicial spirit and objectivity of the Tribunal.

I am satisfied that the defendants received a fair trial. I
hope that we have established for all time the proposition that
aggressive war is criminal and will be so treated. I believe with
you that the judgment of Nürnberg adds another factor tending toward
peace.

That tendency will be fostered if the nations can establish a
code of international criminal law to deal with all who wage aggressive

war. The setting up of such a code as that which you recommend is indeed an enormous undertaking, but it deserves to be studied and weighed by the best legal minds the world over. It is a fitting task to be undertaken by the governments of the United Nations. I hope that the United Nations, in line with your proposal, will reaffirm the principles of the Nürnberg Charter in the context of a general codification of offenses against the peace and security of mankind. All of these recommendations bring into special prominence the importance of the decisions which lie in the future.

Since your work is completed I accept as of to-day your resignation as United States Member of the International Military Tribunal. You have been part of a judicial proceeding which has blazed a new trail in international jurisprudence and may change the course of history.

To your work you brought experience, great learning, a judicial temperament and a prodigious capacity for work. You have earned my thanks and the thanks of the Nation for this great service.

Very sincerely yours,

HARRY S. TRUMAN

Text of Judge Biddle's report to the President:

Washington, D.C.,
November 9, 1946.

Dear Mr. President:

You will remember that when I conferred with you after my return from Nürnberg you asked me to make a report to you on The International Military Tribunal for the punishment of the major Nazi war criminals, and to make recommendations for further action. This report and these recommendations I now have the honor to submit to you.

When you appointed me, a little over a year ago, as the American Member of the Tribunal, you expressed your abiding interest in this, the first serious attempt to try those leaders of Germany who had been responsible for launching the war and who were the prime cause of the appalling atrocities which followed in the wake of that war.

You were particularly anxious, I remember, that no disagreement should arise among the four great nations who on August 7, 1945, had signed the London Agreement and Charter providing for the trial, formulating the law and establishing the practice, a disagreement which might prevent or obstruct this significant experiment in the field of international justice. It was your hope that Nürnberg might serve as a working example for the world of how four nations could achieve results in a specific field of endeavor. You recalled the failures in trying war criminals after the first World War, and were fully aware of the difficulties that would be encountered. There were four different systems of law and practice to be reconciled, with their varying points of view and procedures. International law - the law and practice of nations - was indeed a base and a background, but had in its practical application become somewhat sterile and academic. Language difficulties were presented, the whole thing was in a tentative and uncertain state.

It is not, of course, for me to say whether justice was done by the Judgment of Nürnberg. That Judgment is now being discussed by the informed public opinion of the United States and of the world. But I think I can say that the unity of action that you hoped for

among the four nations a year ago has been well realized. The fundamental principles of international law enunciated by the Judgment of Nürnberg were stated unanimously in the opinion of the Tribunal by the four member nations, the United States, United Kingdom, Republic of France, and the U.S.S.R.

This unity resulted from a willingness by all four nations to compromise on inevitable and desirable differences in points of view. This give and take, the essence of the democratic process, could not have been accomplished over night. Many weeks went by before mutual confidence between the members, an essential condition to prompt and effective work, was established. We were not interrupted by other engagements. We did not adjourn. We stayed in Nürnberg for a year, until finally the job was done. And this stability, this day-to-day relationship, made easier the development of a habit of cooperation. The Tribunal, for instance, sat in public session for six hours every day.

Parenthetically I should like to add a word about the dissent of the U.S.S.R. The comments I have made about the unanimity at Nürnberg are not affected by the dissent on certain individual defendants, as indeed, the judges of the U.S.S.R. were careful to point out. The dissent did not express any disagreement with the fundamental principles of international law, in which General Nikitchenko fully joined; in fact it was on those principles that he based the reasoning for his dissent. The dissent in a word was over the inferences which should be drawn from conflicting evidence. I personally believe that this difference - on the facts and not on the law - was extremely healthy.

At the beginning we established a rule that no member of the Tribunal should talk to the press or give interviews. This was rigidly adhered to. Any announcements were made through the General Secretary, and were announcements of the Tribunal, not of any individual member. Very soon we found that less constraint existed if our conferences were not minutely recorded. We therefore kept only a brief record in our minutes of the decisions. On rare occasions a member would record his disagreement, giving the reasons. These private sessions were held two or three times a week so as to deal currently with the constant flow of motions and applications.

When I use the word "members" I mean to include the alternates. Except in the actual voting in decisions, which was the responsibility of the members under the Charter, the alternates took as active a part at the private sessions. And I should like here to express my gratitude to my associates - the fairness and courtesy of the British; the patience and cooperation of the representatives of the U.S.S.R.; the French sense of logic coupled with a warm feeling for human justice. The long judicial experience and sound common sense of my alternate, Judge Parker, were of the greatest assistance to me, and, indeed, to all of us.

It was interesting to feel - what all of us so keenly felt - the change in the point of view of the defendants and their lawyers as the trial progressed. At first they were indifferent, skeptical, hostile. But very soon, as the Tribunal ruled on the merits of the motions that arose, frequently against the prosecution, and went to great pains to obtain witnesses and documents even remotely relevant to the defendants' case, this attitude changed; the defendants began to fight for their lives. And what had threatened to be a sounding board for propaganda or a stage for martyrdom, turned into a searching analysis of the years that felt Hitler's rise to power and his ultimate destruction - the objective reading of this terrible chapter of History. This change was in itself an instinctive tribute to our concept of Justice.

What, basically, did Nürnberg accomplish? Within a year and a half after the war ended the major war criminals were tried and punished. Although the judges were selected from the victorious allies, the trial was fair. This has been universally recognised. But of greater importance for a world that longs for peace is this: the Judgment has formulated, judicially for the first time, the proposition that aggressive war is criminal, and will be so treated. I do not mean that because of this interpretation men with lust for conquest will abandon war simply because the theory of sovereign immunity cannot be invoked to protect them when they gamble and lose; or that men will ever be discouraged from enlisting in armies and fighting for their country, because military orders no longer can justify violations of established international law. Such a conclusion would be naive. But the Judgment of Nürnberg does add another factor to those which tend towards peace. War is not outlawed by such pronouncements, but men learn a little better to detest it when as here, its horrors are told day after day, and its aggressive savagery is thus branded as criminal. Aggressive war was once romantic; now it is criminal. For nations have come to realise that it means the death not only of individual human beings, but of whole nations, not only with defeat but in the slow degradation and decay of civilized life that follows that defeat.

The conclusions of Nürnberg may be ephemeral or may be significant. That depends on whether we now take the next step. It is not enough to set one great precedent that brands as criminal aggressive wars between nations. Clearer definition is needed. That this accepted law was not spelled out in legislation did not preclude its existence or prevent its application, as we pointed out in some detail in the Judgment. But now that it has been so clearly recognized and largely accepted, the time has come to make its scope and incidence more precise. Thus in 1907 the Rules of Land Warfare adopted by the Hague Convention did not so much create new law as formulate for more effective application a definition of those practices which had been already outlawed for many generations by most civilized nations. These practices were not specifically termed criminal by the Convention. But thereafter they have always been punished as crimes.

In short, I suggest that the time has now come to set about drafting a code of international criminal law. To what extent aggressive war should be defined, further methods of waging war outlawed, penalties fixed, procedure established for the punishment of offenders, I do not here consider. Much thought would have to be given to such matters. But certain salutary principles have been set forth in the Charter, executed by four great powers, and adhered to, in accordance with Article 5 of the Agreement by 19 other governments of the United Nations. Aggressive war is made a crime - "planning, preparation, initiation or waging of a war of aggression". The official position of defendants in their governments is barred as a defense. And orders of the government or of a superior do not free men from responsibility, though they may be considered in mitigation.

For, as we pointed out in the Judgment, criminal acts are committed by individuals, not by those fictitious bodies known as nations, and law, to be effective, must be applied to individuals.

I suggest therefore that immediate consideration be given to drafting such a code, to be adopted, after the most careful study and consideration, by the governments of the United Nations.

The Charter of the United Nations provides in Article 13 that "the General Assembly shall initiate studies and make recommendations for the purpose of . . . encouraging the progressive development of international law and its codification". Pursuant to this Article the United States has already taken the initiative in placing upon the Agenda of the General Assembly meeting in New York the question of appropriate action. The time is therefore opportune for advancing the

proposal that the United Nations as a whole re-affirm the principles of the Nürnberg Charter in the context of a general codification of offences against the peace and security of mankind. Such action would perpetuate the vital principle that war of aggression is the supreme crime. It would, in addition, afford an opportunity to strengthen the sanctions against lesser violations of international law and to utilize the experience of Nürnberg in the development of those permanent procedures and institutions upon which the effective enforcement of international law ultimately depends.

I am taking this opportunity to resign as the United States member of the International Military Tribunal and am asking that you make my resignation immediately effective. I want to thank you for the honor of being appointed, for the admirable and intelligent help given us by the United States Army of Occupation in Germany which your orders made immediately available.

With warm personal regards, believe me,

Respectfully yours,

FRANCIS BIDDLE.

Misc. No. 69.
17th January, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

Recent activities of the United Nations
bearing on the work of the
United Nations War Crimes Commission.

In connection with the discussion of the problem of crimes against humanity in the Commission meeting held on 18th December 1946 (M.120), the Legal Officer gave a short report on the discussions of the General Assembly of the United Nations and its Legal Commission respecting the crime of "Genocide" (see also Committee III Minutes No.28/46).

In Doc. Misc.No.66, the Resolution adopted by the General Assembly relating to the affirmation of the principles of international law embodied in the Charter of the International Military Tribunal has been circulated. This Resolution was passed on the initiative of the United States Delegation in accordance with the correspondence between President Truman and Mr. Justice Biddle, which has been circulated as Doc.Misc.No.68.

The Secretariat of the United Nations War Crimes Commission has not yet received all the preparatory papers and minutes preceding the decisions of the General Assembly. The following preliminary report is based on the "Weekly Bulletin" of the United Nations, Vol.1, Nos. 20 and 21, of 17th and 24th December, 1946.

I. Resolution on Genocide.

The Resolution was adopted on 11th December 1946 and reads as follows:

- "1. Whereas, genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings, and such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations;
2. Whereas, many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part;
3. And whereas, the punishment of the crime of genocide is a matter of international concern;

The General Assembly

Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices, whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds, are punishable;

Invites the Member states to enact the necessary legislation for the prevention and punishment of this crime;

Recommends that international co-operation be organized between states with a view to facilitating the speedy prevention and punishment of the crime of genocide, and

To this end, the General Assembly requests the Economic and Social Council to undertake the necessary studies, with the view of drawing up a draft convention on the crime of genocide to be submitted to the next ordinary session of the General Assembly. "

II. Resolution on the Affirmation of the principles of International Law recognized by the Charter of the Nuremberg Tribunal.

This Resolution was also adopted by the General Assembly on 11th December 1946. The full text is contained in Doc.Misc.No.66.

III. Resolution on the Progressive Development of International Law and its Codification.

The Resolution provides for the establishment of a committee of 17 Members of the United Nations to be appointed by the General Assembly on the recommendation of the President, each member to have one representative on the committee. The Assembly "directs the committee to study:

- " (a) the methods by which the General Assembly should encourage the progressive development of international law and its eventual codification;
- (b) methods of securing the co-operation of the several organs of the United Nations to this end;
- (c) methods of enlisting the assistance of such national or international bodies as might aid in the attainment of this objective

and to report to the General Assembly at its next regular session."

And "requests the Secretary-General to provide such assistance as the committee may require for its work."

From the Resolution on the affirmation of the Nuremberg principles, (Misc.No.66), it appears that the Codification Committee has been directed by the Resolution on the Affirmation of the Nuremberg principles "to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal".

IV. Draft Declarations on the Rights and Duties of States and on Fundamental Human Rights and Freedoms.

The Delegation for Panama submitted to the appropriate Committee Draft Declarations on the Rights and Duties of States and on Fundamental Human Rights and Freedoms.

Panama's draft declaration on the rights and duties of states will shortly be forwarded by the Secretary-General to Member states for their comments. The draft will be sent also to national and international bodies concerned with international law. This action was directed by the General Assembly in a resolution which provided further that the

comments should be sent to the Secretary-General by June 1, 1946. The resolution referred the draft declaration to the committee established to study the methods of codifying international law and requested the Secretary-General to send to this committee the comments and observations he received from governments and institutions. The Committee is to report to the next session of the Assembly, and the matter is to be put on that session's agenda.

In another resolution the General Assembly took action on the second declaration proposed by Panama: that on Fundamental Human Rights and Freedoms.

The General Assembly unanimously adopted a resolution providing that the draft Declaration should be referred to the Commission on Human Rights which at the direction of the Economic and Social Council, is to study and make proposals for an international Bill of Rights. The resolution expressed the hope that the question would be referred back to the Assembly for inclusion on the agenda of the next session.

UNITED NATIONS WAR CRIMES COMMISSION.

Roumanian War Crimes Legislation.

The following English translations of
Roumanian enactments regarding War Crimes
have been made available to the Secretariat
by the United Kingdom Foreign Office.

I. Law for the Prosecution and Punishment of War Criminals and Profiteers. (*)
(No.50) Published in "Monitorul Oficial" of January 21st, 1945.

Art. 1. Those persons are considered war criminals, who, in any
capacity whatsoever, performed the following actions:

- (a) Inhuman treatment of prisoners of war or hostages, contrary
to international law.
- (b) Ordering or performing repressive measures against civilian
populations of territories which were theatres of war.
- (c) Ordering the creation of ghettos, of concentration camps or
deportations for reasons of race or political hostility.
- (d) Ordering or performing collective or individual repressive
measures; organising or carrying out of transports of persons, with the
obvious view of exterminating those transported; organising or ordering
excessive labour with the obvious view of extermination.
- (e) Systematic inhuman treatment inflicted on those in their power
by commanders, directors, wardens, supervisors and warders of prisons,
camps for the internment of war prisoners, political opponents, deported
persons or political prisoners, or compulsory labour detachments.
- (f) Persecution or torture inflicted on those who objected to the
war or to dictatorship, by police or examining magistrates, in support
of the policy favourable to the war; fulfilment of duties and giving
of verdicts in support of a policy of terror, injustice and violence or
an obvious desire to further them by civil or military public prosecutors
or judges.
- (g) Leaving the national territory to serve Hitlerist Germany and
attacking Roumania verbally, in writing or in any other way.
- (h) Disregard of international rules concerning the conduct of the
war.

(*) This law has been repealed by Article 18 of the Decree-Law of
23rd April 1945, which is printed below under III.

Art. 2. The following are considered war profiteers:

- (a) Those who, taking part in the conduct of the war in any capacity, have realised illicit fortunes.
- (b) Those who, in any capacity, profiting by Hitlerist legionary or racial legislation, or by the use of violence, have realised illicit fortunes.

Art. 3. The actions coming under Art. 1 and 2 are liable to one of the following punishments:

- (a) Sentence of death.
- (b) Penal servitude for life.
- (c) Penal servitude for 5 to 20 years.
- (d) Imprisonment with hard labour for 3 to 15 years.
- (e) Imprisonment from 5 to 10 years.

Actions coming under Art. 2. are liable to one of the following punishments:

- (a) Penal servitude for a limited period from 5 to 20 years.
- (b) Imprisonment with hard labour from 3 to 10 years.
- (c) Imprisonment from 5 to 10 years.

Together with the sentence, the court may decide the total or partial confiscation of the prisoner's property. Any of the above mentioned punishments entails loss of civil rights.

Art. 4. The Minister for Justice will appoint public prosecutors from among magistrates, lawyers, members of legal bodies or members of professional associations. They will be appointed by Royal Decree.

One of the public prosecutors, appointed by the Council of Ministers, acting on the proposals of the Minister for Justice, will be chief public prosecutor.

Public prosecutors will cross-examine those coming under Art. 1 and 2 of this Decree Law, and their accomplices, instigators and accessories before and after the fact.

Public prosecutors may be helped by magistrates, jurists or clerks of the courts, and by financial specialists, or by experts and officials appointed by the Ministry for Justice.

The investigation and cross-examining organs will be attached to the Ministry for Justice and will work in Bucharest. If necessary, the Minister for Justice may appoint public prosecutors also in residence towns of courts of appeal.

Art. 5. Public prosecutors may investigate all cases brought before the Council of Ministers.

Should the public prosecutor ascertain the guilt of any other persons of the charges provided in Art. 1 and 2, he will notify the Ministry for Justice to this effect, which will inform the Council of Ministers, which will then decide whether proceedings should be taken against these persons.

The public prosecutor is obliged to take ex officio measures to assure the safety of the property of the accused or of his wife or descendants, if they acquired it by deeds drawn up after June 21st, 1941, apart from that inherited.

The public prosecutor may withdraw these safety measures entirely or in part. Third parties affected by these measures may appeal to the local courts.

Art. 6. The public prosecutor may make any investigation to collect any proof, availing himself of all the rights and powers granted by the Code of Penal Procedure to public prosecutors and examining magistrates.

The right to arrest or release will be in compliance with the provisions of Art. 7. of the Decree-Law.

Art. 7. Warrants for arrest will be issued by the Council of Ministers.

Arrests ordered need not be confirmed and are not contestable through any ordinary or extraordinary channels.

The Council of Ministers may, through a Journal of the Council, order the release of those arrested.

Art. 8. Pursuant to the investigations undertaken, the public prosecutor will draw up the charge sheet and will immediately notify the court to try the case.

On the request of the Ministry for Justice, the Council of Ministers may at once notify the court to try the case even if an order of non-prosecution is given by the public prosecutor. This notification must be made within 30 days from the date when the non-prosecution order is communicated to the Ministry for Justice.

The actions of the Council of Ministers and of the public prosecutor are not contestable.

Art. 9. When a case is brought up for trial, all the property of the accused and of his wife and descendants, and the property they administer under the conditions of Art. 5, are placed under sequestration.

This sequestration operates from the publication in the "MONITORUL OFICIAL" of the act of accusation.

The death of a person who has perpetrated the actions coming under Art. 1 and 2 intervening before ordering his trial does not cancel the measures provided in Art. 5, nor the trial with a view to confiscation of property.

Art. 10. All public authorities are obliged to assist the public prosecutor. Civil servants disregarding this obligation are liable to the penalties provided by Art. 243 of the Penal Code.

Military authorities are obliged to put members of the regular army at the disposal of the public prosecutor.

Art. 11. The actions coming under this law will be tried by a Special Court for War Criminals.

Art. 12. The Special Court for War Criminals is composed of:

(a) Judges appointed by the Ministry for Justice, by drawing of lots, from among magistrates of the Bucharest Court of Appeal.

(b) Judges elected from among Roumanian subjects of both sexes, of age, belonging to one of the following political groups: the National Liberal party, the National Peasant party, the National Democratic Front.

For each Court, the National Liberal and the National Peasant parties will nominate 10 members each, and the National Democratic Front will nominate 20 members, to form the lists of elected judges.

Should one of these groups fail to name its members, the lists will be formed only with the persons indicated by the other groups.

Judges may be challenged only in the cases provided by Art. 274, paragraphs 2 and 3, Art. 275, paragraph 3 and Art. 276, paragraphs 1, 2 and 3 of the Code of Civil Procedure.

Art. 13. The Ministry for Justice has the right to form several sections of the Special Court for War Criminals.

A section will be composed of 7 members, 3 of them judges appointed by the Ministry for Justice and 4 judges named by the political groups, to wit: one of those named by the National Liberal party, one of those named by the National Peasant party, and two of those named by the National Democratic Front.

Elected judges belonging to a section will be chosen by the Ministry for Justice, by the drawing of lots from the list of judges of each party in the number provided by the preceding paragraph.

The section will be presided over by the judge highest in rank among those appointed by the Ministry for Justice.

Should one of the appointed judges be prevented from attending the Court, he will be replaced by the procedure described above, by another, belonging to the same category as the absent judge. The same procedure will be applied in case of absence of an elected judge, who will be replaced by another chosen through drawing of lots from the list of the members of the group to which the absent judge belongs.

Should one group not submit the list of its members within 15 days from the publication in the "MONITORUL OFICIAL" of the decision for the creation of the Special Court, the Ministry for Justice will appoint the list of judges, through the drawing of lots for the respective judge out of a number of ten persons belonging to the other two remaining groups. If two of the groups do not appoint the lists of their members, the judges will be drawn by lot from the list of the third group. If none of the three groups presents a list, the 7 judges will be completed with members from the body of judges, in compliance with the conditions of the provisions of Art. 7., paragraph a.

A group is also considered not to have presented its list if three of the members of the respective group, chosen by lot, do not appear at the hearing.

Art. 14. The judges' sections will function in Bucharest. The Minister for Justice may delegate the President of the Bucharest Court of Appeal or his deputy, by the drawing of lots from among the judges chosen to form the sections.

Lots will be drawn from the lists of judges appointed by the political groups according to Art. 12.

Co-authors, accomplices, instigators and accessories before and after the fact will be judged by the court competent to judge the principal authors.

Art. 15. The President opens the hearing, orders the parties and witnesses to be called to establish the identity of the accused, and orders the charge to be read out. He then proceeds to the examination of the accused and to the hearing of witnesses, after which he calls upon the counsel for the prosecution and upon the counsel for defence, in such a way that the defence should have the final word.

The President declares the hearing closed, and the Special Court pronounces its verdict.

The verdict will be pronounced by a majority of votes.

Reasons must be given and the verdict must be signed by all the members of the judges' section, divergent opinion, for which reasons need not be given, also being mentioned.

Art. 16. The provisions of the Code of Penal Procedure with regard to trial and execution in criminal matters are applicable to the Special Courts for War Criminals, if they are not contrary to the provisions of the present Decree Law. Civil actions for damages may not be tried before Special Courts for War Criminals, but must be tried before ordinary courts.

Art. 17. Appeal may be made against the decisions of the Special Court for War Criminals to the Supreme Court of Appeal.

The appeal may be made before the court which pronounced sentence. It will be tried with priority and immediately by Section II of the Supreme Court of Appeal and Justice within maximum 30 days from the lodging of the appeal files.

The quashing of a sentence may be demanded for the following reasons:

(a) When the punishment determined by law was not applied to the actions proved by the Court, or when a punishment has been applied exceeding the cases provided by law.

(b) When the court has omitted or refused to pronounce, without giving reasons, on a means of defence for the accused or on an act imputed to the accused.

(c) When the court was composed without regard for the provisions of the present law.

The motives for appeal will be lodged at the Supreme Court of Appeal and Justice 3 days before the term fixed for the trial of the appeal. If the motives are not lodged within the term the appeal is ipso facto null and void.

No adjournments can be allowed for lack of defence.

The appeal is tried ex officio even in the absence of the appellant. An appeal lodged within the term entails the suspension of execution.

The Ministry for Justice is authorised by virtue of the present law to create a special section of judges attached to Section II of the Supreme Court of Appeal and Justice to try the cases on days and at hours other than those provided by the law for judicial organisations.

Final decisions will be carried out by the Ilfov Prosecuting Magistrates' Court,

Art. 18. All legal deeds of any nature referring to the property of those condemned by virtue of the present law, and which were drawn up after August 23, 1944, are ipso facto null and void, and property originally belonging to those condemned is considered as still part of their property and will be liable to the sanctions pronounced by the court.

The property or rights of the wives and descendants of those condemned, if they acquired it in the conditions of Art. 5. are liable to the same provisions.

Art. 19. Persons who conceal or assist those coming under the present law to escape, will be punished by the same court with a term of imprisonment from 3 to 5 years.

Art. 20. Prosecution by virtue of this law must take place within a term of 6 months at the latest from the publication of the law.

II. Decree-Law for the Prosecution and Punishment of those responsible for the Country's Disaster. (*)

(No.51). Published in "Monitorul Oficial" of 21st January 1945.

Art. 1. The following persons are considered responsible for the country's disaster:

(a) Those who established dictatorship, and used their effective political responsibility to endanger the security of the state through concluding treaties of political alliance with Hitlerist Germany, giving permission to the German army to enter Roumania, or starting the war against the U.S.S.R. and the United Nations.

(b) Those who consistently militated for the orientation of our foreign policy towards Germany, and consented to the ceding of Northern Transylvania.

(c) Those who used threats, terror or any kind of illegal action to impose upon Roumania a foreign policy favourable to Germany.

(d) Those who from motives of material interest served the German propaganda organs, with the purpose of bringing Roumania to the side of Germany and of enslaving her to Germany.

Art. 2. The actions provided by Art. 1 are liable to one of the following punishments:

(a) Compulsory labour for life.

(b) Compulsory labour for 5 to 20 years.

(c) Hard Labour for 3 to 20 years.

(d) Imprisonment for 5 to 10 years.

The Court may add to the punishment the total or partial confiscation of the culprit's property, as damages to the State, as well as loss of civil rights or of political rights for 3 to 10 years.

(*) This law has been repealed by Article 18 of the Decree-Law of 23rd April 1945, which is printed below under III.

Art. 3. Investigation and cross-examination will be made by the public prosecutors appointed in accordance with the law for the prosecution and the punishment of war criminals. All provisions of Articles 4, 5, 6, 7, 8, 9 and 10 of that law are valid.

Art. 4. The actions provided for by this law will be judged by a Special Tribunal for those responsible for the country's disaster.

Art. 5. The Special Tribunal for those responsible for the country's disaster is composed of:

(a) Judges appointed by the Ministry for Justice, by the drawing of lots, from among magistrates of the Bucharest Supreme Court of Appeal.

(b) Judges elected from among Roumanian subjects of both sexes, of age, belonging to one of the following political groups: the National Liberal Party, the National Peasant party, the National Democratic Front.

The National Liberal and the National Peasant parties will nominate 10 members each, and the National Democratic Front will nominate 20 members, to form the lists of elected judges for the Court. Should one group fail to name its members, the lists will be formed only with the persons indicated by the other groups.

Art. 6. The Ministry for Justice may form several sections of the Special Court for those responsible for the country's disaster, as and when necessary.

A section will be composed of 11 members, 3 of them appointed judges and 8 judges named by the political groups, to wit: 2 of those named by the National Liberal party, 2 of those named by the National Peasant party and 4 of those named by the National Democratic Front.

Elected judges belonging to a section will be chosen by the Ministry for Justice, by the drawing of lots from the list of judges of each party, in the number provided by the preceding paragraph. The section will be presided over by the judge highest in rank among those appointed by the Ministry for Justice.

Should one of the appointed judges be prevented from attending the Court, he will be replaced, according to the procedure described above, by another, belonging to the same category as the absent judge. The same procedure will be applied in case of absence of an elected judge, who will be replaced by another chosen through the drawing of lots from the list of the members of the group to which the absent judge belongs.

Should one group not submit the list of its members within 15 days from the publication of this law, the Ministry for Justice will appoint the list of judges through the drawing of lots for the respective judge out of a number of ten persons belonging to the other two remaining groups. If two of the groups do not appoint the lists of their members, the judges will be drawn by lot from the list of the third group.

If none of the three groups presents a list, the 10 judges will be completed with members from the body of judges, in compliance with the provisions of Art. 5, paragraph (a).

Art. 7. The judges' section or sections will function in Bucharest.

Judges may be challenged only in the cases provided by Art. 12, final paragraph, of the law for the prosecution and punishment of war criminals and war profiteers.

Art. 8. The President opens the hearing, orders the parties and witnesses to be called to establish the identity of the accused, and orders the charge to be read out. He then proceeds to the examination of the accused and to the hearing of witnesses, after which he calls upon the counsel for the prosecution and upon the counsel for the defence, in such a way that the defence should have the final word. The President declares the hearing closed, and the court pronounces its verdict.

The verdict will be pronounced by a majority of votes and signed by all the members of the judges' section. Divergent opinions need not be mentioned.

Appeal may be made against this decision to the Supreme Court of Appeal, Section II, in cases coming under Art. 17 of the law for the prosecution and punishment of war criminals, following the procedure indicated by that article.

Final decisions will be carried out by the Ilfov Prosecuting Magistrates' Court.

Art. 9. The provisions of the Code of Penal Procedure with regard to trial and carrying out of sentences in criminal cases are valid before the Special Court for those responsible for the country's disaster as long as they are not contrary to the provisions of this law.

Civil actions for damages may not be tried before the Special Court for those responsible for the country's disaster, but must be tried before ordinary courts.

Art. 10 All legal deeds of any nature referring to the property of those condemned by virtue of the present law, and which were drawn up after August 23rd, 1944, are ipso facto null and void, and property originally belonging to those condemned is considered as still part of their property and will be liable to the confiscation pronounced by the Court. The property or rights of the wives and descendants of those condemned, if acquired after January 1st 1938, are liable to the same provisions, with the exception of inherited property.

Art. 11. Persons who conceal or assist those coming under the present law to escape, will be punished by the same court with a term of imprisonment from 3 to 5 years.

Art. 12. Prosecution by virtue of this law must take place within a term of 6 months at the latest from the publication of the law.

III. Decree-Law for the Punishment of those responsible for the Country's Disaster or guilty of War Crimes.
Published in "Monitorul Oficial" of April 23rd, 1945.

Art. 1. Those persons are responsible for the country's disaster who:

- (a) militating for Hitlerism or fascism and having actual political responsibility, permitted the entry of German troops on Roumanian territory;