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UNITED NATIONS WAR CRIMES COMMISSION

THE CRIMINAL AND PERSONAL RESPONSIBILITY OF
THE MEMBERS OF THE GERMAN NAZI GOVERNMENT.
/Memorandum for information/
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Chapter I.

THE PROBLEM.

The question to be answered by Lord Wright's Committee in respect of the enemy Governments was formulated at the first meeting of the Committee on February 6th 1945 as follows:
"As to whether membership to enemy Governments may involve criminal responsibility for the criminal policy followed by such Governments".

Our task is to decide whether a man charged by a National Office as a member of the enemy Government in connection with crimes committed on behalf of the respective enemy state and by its civilian or military apparatus, could be put on the list of war criminals by virtue of the fact that he is a member of the Government.

I try to solve this problem with regard to the German Government, and would formulate the question as follows:
Is membership to the German Nazi Government a prima facie proof sufficient to justify the decision to put him on the list of war criminals in connection with crimes committed by the German State apparatus and its members in the invaded or occupied Allied citizens? /I leave out for further consideration, the question raised by British State Minister, Richard Law, in the House of Commons on January 31st 1945 as to the punishment of crimes committed in Germany by Germans on German citizens/.

In other words: Are we authorised to apply the principles laid down in the British Law quoted in my report on Gestapo, page 28 /Def. Reg./ 91, dealing with offences committed by corporations, or the similar principles laid down in the Swiss Criminal Code of 1937, Article 172, according to which the members of the board of a Corporation are personally responsible for crimes committed by such corporation.

Both British and Swiss laws established a "praesumptio juris" i.e. "inference of fact which only holds good until evidence has been given which contradicts them. They consequently afford merely a prima facie proof of the fact presumed; a proof which may be overthrown by evidence which negatives it, or by collision with some other and still larger presumption which suggests a contrary inference". /Kenny, "Outlines of Criminal Law", Cambridge 1936, page 386/.

If there would be some objection to the qualification of this presumption as praesumptio juris or as legal presumption which the law commands the Jury or the Judge to draw, it is at least a praesumptio facti which the law advises the Judge to draw. In this connection I should like to stress that our decision to put a man charged by a National Office, on the list of war criminals does not involve any conclusion as to his guilt.

Whether he is guilty or not must be decided first by the Public Prosecutor framing the charge, and then by the Judge passing the sentence.

On the other side we cannot answer the question and solve the problem which the Commission is facing, without legal considerations. But these considerations must be based on facts, and the legal conclusions even in the limited sense /prima facie basis for listing/ must be drawn from relevant facts. Thus there are two elements on which the answer should be based as far as members of the German Government are concerned:

a/ facts important for the personal position and responsibility of the members of the German Government by virtue of their membership

b/ the general principles of criminal law dealing with the question: Who is to be regarded as perpetrator, accomplice or conspirator?

As to the criminal laws to be taken into consideration I think that the following method should be applied:

According to the Moscow Declaration of November 1st 1942, war criminals should be tried by the Criminal Courts of the liberated countries according to their laws. But the members of the German Government have violated by their acts, the criminal laws of several Allied countries, and even the criminal law of their own country. Thus I shall try to establish general principles which are common to some Allied systems of criminal law /English, French, Czechoslovak and Soviet/ regarding our problem.

I think that only by this empirical and inductive method the question could be satisfactorily answered. A purely speculative answer not based on facts and not taking into consideration the above-mentioned principles of criminal law would be of little use.

PART A. The Facts.

Chapter II.

CRIMINAL AIMS AND CONCEPTIONS OF NAZISM.

I think that the following facts should be taken into consideration as being important for the answer to our question as formulated in Chapter I.

1/ Nazi Party and the German State. We must bear in mind that the relation between the Nazi Party and the German State is exactly the opposite to the relation between a Political Party and the State in democratic and civilised countries. After having liquidated all other existing Political parties and forbidden by law of July 14th 1933 the creation of new parties, the Nazi Party became the only Party in the Reich. The law of December 1st 1933 called "A law to safeguard the Unity of Party and State" established a totalitarian union between the only existing Party and the State.+ The substance of this unity of Party and State was more clearly defined by Hitler himself to the Nuremberg Party Congress in 1934: "It is not the State which gives orders to us but it is us who give orders to the State".

The same idea was stated in one of the leading Nazi text-books /Haidn Fischer, Das Recht der N.S.D.A.F., 1938, page 54/: "In Nazi Germany the State becomes merely the instrument for the realisation of the aims of the Nazi Party".

+ This union was dissolved by a decree issued by Hitler on April 7th 1945.

The union between the Nazi Party and the German State was realised in a manner which I described on pages 2 and 3 of my report on the German S.A., S.S. and Gestapo. Here I should like to add to this description:

a/ ~~All members of the German Government are leading members of the Nazi Party, and the majority of them are members of the S.S.~~ The following diagram may illustrate how the principle of personal union between Party and Government works in practise:

<u>Position in the Party.</u>	<u>Name.</u>	<u>Position in Government.</u>
Leader of the Party.	HITLER	Head of the German State and German Government.
Head of the Agricultural Office.	DARRÉ	Minister of Agriculture.
Head of the Bureau for Colonial Policy.	EPP	" without Portfolio.
Head of the National Legal Office.	FRANCK	" " "
National Propaganda Leader.	GOEBBELS	Minister for Propaganda.
National Labour Leader	HIERL	Minister without Portfolio.

b/ The Civil Servants Act of 1937 /Deutsches Beamtengesetz/ established the duties of every civil servant in the present German State. The basic principle is "unconditional devotion to the political ideas and aims of the National Socialist Party, and unconditional personal allegiance to Adolf Hitler" /Haidt-Fischer, op.cit. page 536/. This principle has been put into legal terms by the mentioned Civil Servants Act of 1937 /Deutsches Beamtengesetz/ which demands: "that a civil servant must be permeated by the National Socialist Weltanschauung" and that he "must be an executor of the State idea based on the Nazi Party" /Section 1, sub-section 2/. If a civil servant ceases to satisfy this standard, if any facts are brought to the notice of his superiors which may give rise to the suspicion that he would not at all times support the Nazi regime, he may be dismissed from office by a special "process of law" /Section 71/.

2/ The aims, conceptions, programme and "philosophy" of the Nazi Party. ~~We must constantly bear in mind that all members of the German Government are at the same time leading members of the Nazi Party, most of them members of the S.S. All are and must be fanatical Nazis.~~ They are obliged to realise the aims of the Party because the State is, according to Hitler, an instrument of the Nazi Party. The principles and aims of the Nazi Party have absolute priority in Germany, even over the law. On January 18th 1935 the so-called German Supreme Administrative Tribunal in Dresden passed a sentence in which it stated that the law in the National Socialist conception is not a complex of individual provisions issued by the law-making authority, but the legal ideas rooted in the German people. These legal ideas, the source of which is mainly Adolf Hitler have, according to this tribunal, priority even over the written law. / Quoted in the book "Die Deutsche Polizei" written in 1941 by Dr. Werner Best, S.S. Brigadeführer. At present German Minister in Denmark/.

Thus it is necessary to sum up at least the most important points of the Nazi "philosophy", programme, and aims, as far as these are relevant for our problem.

a/ The conception of State. As has been proved above, the present German State is the instrument for the realisation of the aims of the Nazi Party.

b/ Life and liberty of individual man. There are many books, and a mass of statements of Nazi leaders with regard to the position of the individual man in the Nazi community. I quote two statements: Dr. Best wrote in his above-mentioned book, page 19, that the only reality of the human life is "Das Volk" /The People/. "The individual man must serve the preservation and furtherance of the 'Volk', and when necessary must be sacrificed".

This general principle was explained in more detail and with more barbarous frankness by Goering who wrote in his book "German Reborn", page 129, referring to the two decrees given by him to the Police to shoot every opponent of the Nazi regime: "If you call it murder then I am a murderer..... I assume full responsibility for all shootings". And the same Goering in a speech to the German Academy of Journalists in 1934: "We need to have no indictments, proof or trials. We were killing enemies of the people". He referred in this phrase to the massacre of June 30, 1934.

It should be remembered that already in 1931, one of the Nazi papers wrote with regard to the political murder: "Only the small republican wretch with his guilty conscience will call political murder something damnable in itself".

The acts of the Nazis, especially since 1933, are in full accordance with this attitude to the life of individual man. With the same disrespect to the human being, the Nazis advocated and even introduced by law, sterilization of people affected by some diseases, and the so-called euthanasia. This high-sounding scientific phrase is nothing but a cover for systematic murder committed against men and women who did not live up to the standard of "pure race" demanded by Nazi Ideology. A special commission was created for this purpose by Rudolph Hess, and the high Nazi official Philipp Bouhler, under the name of "Euthanasia Commission". According to Oechsner, an American Press correspondent in Berlin until Germany declared war on the U.S.A., this Commission had "destroyed" 37,000 persons up to the Summer 1941. The victims were persons allegedly suffering from physical or mental disability. It should be noticed that the question "whether a victim was suffering from such disability", was decided by a mixed Medical and Legal Commission consisting of course entirely of reliable Nazi officials. On what criteria they based their decision may be gathered from the fact that according to Oechsner's information 17% of the victims of this Commission came from concentration camps; in other words euthanasia is only another weapon by which the Nazis get rid of their political opponents and other people who are in the way. It should also be noted that this murder of "undesirable elements" is not just an excess by particularly zealous Nazis; Hitler himself is responsible. Although it has been pointed out to him that the application of Euthanasia would be put into the hands of unscrupulous physicians or lawyers, the power arbitrarily to get rid of peoples in whose deaths their clients / i.e. the Nazis/ might have an interest, he has been adamant. / see Oechsner, page 97/.

The most gruesome kind of scientific murder however, has been committed in the so-called "Hitlerkammern" where children whom the Nazis regarded as being feeble-minded / i.e. unable to die for Hitler as soldiers / were put to death. Ziemer, the author of "Education for Death" inspected one of these murder chambers where sometimes several children were murdered in a month. As Georg Abels, a high official in the Nazi Ministry of Health told him, the parents of these unfortunate children were requested by a "Court of Health" consisting entirely of Nazi criminals, to sign a paper that they gave up their children to the State. Asked by Ziemer what happened if they refused, Abels just replied: "They do not refuse".

Euthanasia, Hitlerkammern, Death vans of Kharkov and Death Factory of Maidanek - all these are part of the horrible plan by Hitler and his gang to exterminate every one who might be in the way of their criminal intention to dominate the world.

c/ Enslavement and extermination of Foreign Nations and Races. Hitler said "The German people alone will be a people of warriors. The other Nations will be Helots working for the Teuton Warrior Caste, / Otto Strasser, "Hitler and I" 1940, p. 224/.

Darré in a speech delivered in 1940 to Nazi Officials, /the speech was not reported in the German Press, but was reproduced by the British Press on May 27th 1944/:

"It will then be our duty to organise economically the territories gained which gradually will be included in the German area. We will introduce in our new "living space" completely new methods.

"All soil and industrial property of inhabitants of non-German origin, will be confiscated without exception, and distributed primarily among the worthy members of the Party, and soldiers who were accorded honours for bravery in this war.

"Thus a new aristocracy of German masters /Herrenvolk/ will be created. This aristocracy will have slaves assigned to it, these slaves to be their property and consist of landless, non-German nationals.

"Please do not interpret the word "slaves" as a parable or as rhetorical term. We actually have in mind a modern form of medieval slavery which we must and will introduce because we urgently need it in order to fulfil our tasks.

"These slaves will by no means be denied the blessings of illiteracy; higher education will in future be reserved only for the German population of Europe".

Dr. Best stated that Germans have "a divine right" to enslave, and when necessary to exterminate foreign nations and races.

The attitude of the Germans to the Jews is wellknown. All members of the Nazi Party agree with what Hitler said: "The Jews must be routed out to their last hair from every phase of German activity. The Jew is an inferior thing, he can only be called a man of third grade". /Oechsner "This is the Enemy" p. 109/.

Other statements are contained in Colonel Wade's report No. 11 called "The Planned Extermination of the Jews". In this excellent report there are statements of Hitler, Goebbels, and Rosenberg,

all aiming at the extermination of the Jews.

d/ Education of Youth for Death and Crime. The best characterisation of the mentality which made possible the organisation of crimes on such a vast scale has been given by Hitler himself in "Mein Kampf" /page 724/: "The determined gangster is at any time free to thwart any political activity of a respectable man". "It has been the task of Nazi education to degrade the whole German Nation to "determined gangsters". "The education of Youth is entirely subordinated to this purpose" Gregor Zeimar has shown how this "Education for Death" is put into practice.

Thus Nazi education is systematic education for death, and systematic education for crime. It is in accordance with the negation by the Nazis of all moral values known to the civilised world. All moral scruples are decried. "Dominance and harshness are demanded" /Darre/. "I must harden my heart. I must do terrible things whatever it may cost, without pity like Torquemada" /Hitler quoted by Louis Gillet, Rayons et Ombres d'Allemagne, Paris, 1937/. "Pity", he stated on another occasion /see Alexander Stein, Adolf Hitler, Schuler der Weisen von Zion, Karlsbad, 1936/ is not our business. That is the business of the Higher One. Our duty is merely to see that justice is done. We may be as inhuman as we like if only we make the German people happy in that way".

The young Nazis are the bulk of the S.S. formations. They are "fanatic animals".

e/ The conception of Law and Justice. Nazi law has similar functions in the criminal plans of the Nazi gangsters. Justice has been defined by the Nazis as being all that serves the German people. In other words all that serves the criminal intentions of Hitler and his gang. The meaning of this phrase "subjective law" is more clearly defined by Karl Lorenz, one of the "legal philosophers" of Nazi Germany /see "Deutsche Rechtsentwicklung und Rechtsphilosophie" 1934/: "Nobody but the Fuehrer can take the decision in the last instance whether a certain law should apply or not..... A law based on his will is therefore not subject to judicial control. The Fuehrer does not obey a norm directed to him, but the living law of the community which has been embodied in his flesh". This principle of lawlessness was even more clearly expressed by Kerrl, Prussian Minister of Justice, quoted by Dimitroff in his memorable defence at the Reichstag Fire Trial: "Measures taken by Judges and Counsel for the Prosecution and the Defence must be guided by one rule of conduct: What is good for the life of the Nation?" "Not aimless objectivity which means standstill, and thus ossification which means severance from the people must govern. All acts, all measures taken by the community and by the individual should be devoted to the vital needs of the people. They are subordinated to the nation". - Judges and lawyers who are guided by their own conscience are warned not to follow "this alleged voice of conscience" if it is at variance with Nazi views /Freisler, Nationalsozialistisches Recht und Rechtsdenken, 1933/. "Only what Adolf Hitler, our Fuehrer, allows or does not allow is our conscience" said Dr. Ley in 1942. Thus it is not surprising to hear the Fuehrer himself proclaiming /in 1936/ that "in the new penal code, German justice would be placed on a basis which will put justice for all time into the service of maintaining the German race". In his Reichstag speech of April 26th 1942, the Fuehrer explained this principle further: "I expect German justice to realise that Germany must live though formal principles of justice may suffer. In future I shall dismiss those Judges who do not understand the necessities of the day".

But even laws created by the Nazis themselves are overridden by these gangsters when it suits them. Rudolf Olden, writing long before the war, points out that though the régime "maintains Law Courts and Prisons, side by side with them it has set up concentration camps. The Supreme Administrative Court can review every measure or decision taken by the Administration, but it has no control over the Secret State Police since it has itself ruled that its competence does not comprise these. The State has its proper organs, but where these are not adequate the Party steps in". Apart from that, Judges are openly encouraged to break the law. A leading Nazi "lawyer" Senator Rothenberger, President of the Hanseatic Court of Appeal admitted himself in a speech addressed to lawyers at Hamburg on the 21.10.1936: "Finally there are even occasions for deciding contrary to the law if, in the opinion of the judge the law and the popular sentiment are in conflict".

At last, in 1942, the Reichstag itself has purported to legalise this state of barbarism in its resolution dated April 26, 1942, a veritable Magna Charta of Nazi Lawlessness: "The Fuehrer must possess the right..... to do everything which serves or contributes to the attainment of victory.....In his capacity as Leader of the Nation, as Commander-in-Chief of the Army, as Head of the Government, and supreme bearer of the executive authority, as chief Judge, and as Leader of the Party, the Fuehrer must therefore, - without being bound by existing legal principles - be able at any time if necessary to urge any German to fulfil his obligations by all means which appear to him appropriate.....In the case of a dereliction of these duties after a conscientious investigation, he must be able without regard to so-called "well-acquired" rights, to impose the fitting punishment, in particular without introducing the prescribed procedure, to remove any man from his office, his rank, and his position".

The best definition of "law" in the Nazi State was given by the notorious Dr. Frank in the "Volkischer Beobachter" of the 18th May 1936: "The law is an instrument in the hands of the Fuehrer for the realisation of National Socialism". In other words, an instrument in the hands of the leading gangster for the realisation of his criminal intentions.

The attitude of Nazism towards International Law was explained authoritatively by Hitler as follows:

"I shall shrink from nothing. No so-called International law, no agreements will prevent me from making use of any advantage that offers". /Schwarzenberger "International Law and Totalitarian Lawlessness", London 1943, page 16/.

"My behaviour in war-time will be no different. The most terrible warfare is the kindest. I shall spread terror by the surprise employment of all my measures. The important thing is the sudden shock of an overwhelming fear of death" /Schwarzenberger, p. 17/.

The criminal character of the aims and conceptions of Nazism as summed up in this Chapter, is manifest according to the criminal laws of civilised nations.

Chapter III.

THE REALISATION OF THE CRIMINAL NAZI AIMS AND
CONCEPTIONS BY THE PRESENT GERMAN STATE, ITS
GOVERNMENT, AND APPARATUS.

The German State as instrument of the German Nazi Party realised and is still realising the criminal aims and conceptions of the Nazi Party. The German Government and the whole German State apparatus /civilian and military/ since 1933, and especially during the course of the present war, put into operation a system of criminal acts aiming at the realisation of the Nazi Party programme which in itself is, as far as the main points are concerned, a criminal one according to the general conceptions of Criminal law of civilised countries.

It is, of course, impossible to give in a chapter of this paper, a description of how the German State in the service of Nazism realised, and still realises the criminal aims of the Party. But in view of the fact that the criminal deeds are notorious, and in addition described in detail in various documents of our Commission, I content myself to giving a summary:

a/ Suppression of personal liberty.

On February 28th 1933, the Reichstag fire was used as a pretext to issue an emergency decree for "the Protection of People and the State" which was based on Article 48, Sub-section 2. /Weimar Constitution/.

This decree was stated to be "a defensive measure against Communist acts of violence endangering the State". This decree "suspended the fundamental rights of the Weimar Constitution until further notice, and "authorised" restrictions on personal liberty, such as "protective custody" in Concentration Camps. Thus, this decree has become the "legal" basis for the reign of terror which has since been established in Nazi Germany.

Nazi authorities quite openly admit that protective custody and Concentration Camps have no foundation in German law. Thur Geigenmüller /3/ declares: "Although the decree of February 28th 1933 was issued formally in accordance with the Weimar Constitution its basis has long since ceased to exist. By virtue of article 48, sub-section 2, the fundamental rights enumerated there may be "temporarily" suspended wholly or in part "for the purpose of restoring public order and security". Neither of these conditions have been present for a long time. After all, the actual situation in Germany is sufficient proof to show that public order and security have been restored a long time ago; but the Communist danger which gave rise to the decree, and which has been expressly mentioned in the preamble as the reason for it, is still subsisting in undiminished force".

The "formal" procedure governing protective custody was laid down in a Regulation issued by the Reich Minister for Home Affairs, dated April 12, 1933. This Regulation gave power to the Police authorities of the Länder to impose "protective custody", and very soon afterwards Decrees were issued in all the German Länder entrusting this task to the newly formed Secret State Police /Geheime Staatspolizei - GESTAPO/. By a decree of the Fuehrer dated June 17, 1936, the command of the whole German Police was given to the Reichsfuehrer of the S.S., Heinrich Himmler, the most ominous figure in the gallery of Nazi Thugs.

The régime in the Concentration Camps, and the special responsibility of men in charge of the Camps, is described in Colonel Wade's report No. 10 called "Concentration Camps".

b/ Slavery.

I refer to the following reports of Colonel Wade:

- No. 1 - Sauckel, Forced Labour.
- No. 2 - Goebbels, Mobilisation of Man-Power.
- No. 5 - Forced Labour and Deportations.
- No. 6 - Mobilisation of Man-Power.
- No. 7 - Deportation of Foreign Workers.
- No. 8 - Forced Labour.

All these reports prove that the German State, i.e. German Government with Hitler at the head, and the German State apparatus, established under various headings a system of legalised slavery and slave traffic, precisely on the lines of Hitler's statement quoted on page 5 and Darre's speech quoted also on page 5.

c/ Torture.

I refer to Colonel Wade's reports:

- No. 4 - Laws against Poles and Jews.
- No. 10 - Concentration Camps.
- No. 11 - Extermination of Jews.
- No. 12 - Crimes connected with prisoners of war.

In addition there is a mass of absolutely reliable reports about torture in the Concentration Camps. All reports agree on one point: the tortures are a recognised and legalised means of treatment of human beings by the Germans. The system of torture was introduced and established by laws, ordinances, and orders of the German Government with Hitler at the head, and the leading officials of the German State apparatus.

d/ Starvation.

I refer to Colonel Wade's reports:

- No. 3 - Goering, Confiscation of property.
- No. 9 - Nazi Hunger Policy.
- No. 11 - Extermination of Jews.
- No. 18 - Economic Organisation.

and to various documents already published about this category of crimes. All reports agree on one point: that this category of crimes constitutes a special branch of the German Governmental policy.

e/ Mass-murders.

I refer to Colonel Wade's reports:

- No. 10 - Concentration Camps.
- No. 11 - Extermination of Jews.
- No. 17 - S.S. Organisation.

further to numerous charges submitted by National Offices to the Commission, and to numerous reports published by various Governments and their agencies, especially by the Soviet Extraordinary State Commission, and various Jewish Organisations, on the mass-murders

in Concentration and Extermination Camps. I refer to the records of the Kharkov and Lublin trials in this respect. All these sources prove that mass-murder was organised by Hitler and his Government, Leading Officials of the State apparatus, and Army Commanders, and carried out by State formations and organisations such as the S.S. All this exactly on the lines of statements and declarations made by the Nazi leaders with regard to political murder and mass extermination of foreign races and nations, especially of the Jewish race.

Chapter IV.

THE POSITION OF THE GERMAN GOVERNMENTS AND ITS MEMBERS.

First of all I should like to draw the attention to the fact that Mr. Eden stated in the House of Commons on March 7th 1945 in reply to a question, that the British Government regard Goebbels and Ribbentrop as major war criminals coming within the scope of the Declaration on German atrocities at the Moscow Conference in 1943.

Both are already on the United Nations War Criminals List No. 1. They were put on the list by a decision of Committee No. 1. of November 22nd 1944, approved by the Commission the same day. The basis for the decision of the Committee and Commission was the charge submitted by the Czechoslovak Government under the heading "Standgerichte". The Committee agreed that all members of the German Government are prima facie responsible for the crimes described in the Czechoslovak Charge, by virtue of their membership to the German Government at the time when the crimes were committed.

This legal position is in full agreement with the attitude of the British Government as stated by Mr. Eden. Neither Goebbels nor Ribbentrop are members of the so-called Ministerrat für die Reichsverteidigung /Council for the Defence of the Reich/, which is regarded as the real War Cabinet of Germany in the document supplied by our Secretariat under the heading "Extracts from Germany Basic Handbook". And yet both are responsible for atrocities according to Mr. Eden's statement. It is quite obvious that the British Government holds them responsible mainly if not only by virtue of the fact that both are members of the German Government.

So we come to the question of the German Government, its constitutional position, and general and special responsibility for war crimes.

1/. I think that we must constantly bear in mind the fundamental fact that all members of the German Government are and must be, according to the principle of union between Party and State, members of the Nazi Party. In fact they are even leading and fanatical members of the Party, many of them members of the S.S. All are obliged by their membership to the Nazi Party to put into operation the aims of the Nazi Party through the apparatus of the German State.

2/. In addition to this general fact there are some fundamental legal provisions defining the position of the German Government and its members:

a/ On August 1st 1934 an Act was issued called "Das Gesetz u**ber** das Staatsoberhaupt des Deutschen Reichs" /Act concerning the Head of the German State/. This act united in the hands of Adolf Hitler two functions of the Head of State, and the function of the Reich Chancellor who could be regarded as the Prime Minister.

b/ But this was not the only change. In addition the relation between the Reich Chancellor and the Government was changed. According to the Weimar Constitution the Reich Chancellor was *primus inter pares* in the body of the Ministers forming the Government of the Reich.

In Nazi Germany the Reich Chancellor is in a position superior to that of the Government /see Meissner und G.Kaisenberg, Staats- und Verwaltungsrecht im Dritten Reich, Berlin 1935, p. 65, and following, further quoted as M.u.K. and F.Poetzsch-Heffter, Vom Deutschen Staatsleben, 30 Jan - 31 Dez- 1933. - Jahrbuch des Oeffentlichen Rechts, Bd. 22 1935, P. 52, further quoted as P-H/.

What is called in the German terminology "Decision of the Government" is not in fact the result of a vote inside the Government, but a decision of Adolf Hitler which was prepared by the members of the Government as advisory body. It means that the members of the Government are not playing merely a passive rôle with regard to the decisions of Hitler. As all authors quoted above stress in their books, the relation between the members of the Government and the Fuehrer is a mutual one in the sense that the Minister is obliged to prepare the decision of Hitler. He is obliged to advise him, and Hitler is naturally entitled to reject his advice but through their advisory function, the Ministers are contributing in a decisive manner to the definite formulation of what is called "The decision of the Government" and what is in fact the decision of Hitler. Consequently they are, at least as advisers, responsible for the decision of Hitler. But apart from this function as advisers of Hitler with regard to the final decision of the Government, they are of course responsible for all ordinances or orders issued by them within the sphere of their ministerial department. /I shall come back to this question later on/.

c/ The position of the present German Government is fundamentally different from the position of the Republican Government because the present German Government is not only the executive body of the State, but the law-making one. The Act of March 24th 1933 called "Das Gesetz zur Behebung der Not von Volk und Reich" /Act abolishing the distress of People and State/, authorised the German Government to issue Acts, as a law-making body. The Act is called "Enabling Act". The Government was authorised to issue Acts deviating from the Constitution, but with one exception; the institution of the Reichstag and the rights of the President of the State could not be changed by an Act passed by the Government. But even this exception was abolished later on in a special Act, so that the Government became "the unlimited legislator" /M.u.K.p.105/.

The question arises now: How the individual members of the Government may influence the legislation? It is a curious fact that at present the proceedings of the Governmental meetings, and the function of the individual members of the Government are ruled by an old Act of May 23rd 1924, amended on April 14th 1926, called "Die Gemeinsame Geschäftsordnung der Reichsministerien" /the joint rules of procedure of the Reichs Ministeries/. These rules were adapted to the new situation by a decision of the German Government of July 14th 1933.

The essential provisions of these rules concerned with the function of the members of the Government are:

A/ According to Article 57, 3, para. 1, all drafts of Acts should be prepared by the competent Minister and submitted to the Reichs Chancellery. The competent Minister is obliged to inform the Reichs Chancellery in an accompanying letter, whether the other Ministers concerned agree to the draft.

B/ Then the draft is put by the Reichs Chancellery on the agenda of one of the next meetings of the Government. The Government discusses the draft and after discussion the Chancellor decides without being bound by the opinion expressed by individual members of the Government. A formal vote does not take place.

C/ A special and more simple procedure is provided by the Act for treating matters of minor importance. But even in this simplified procedure every member of the Government must be informed about every subject matter, and has the right and the duty to express his opinion.

D/ The Act passed by the Government is signed by all Ministers who have submitted the draft to the Government. The significance of the signature is of another kind than in Democratic countries. By signing an Act the Ministers take responsibility for the correctness and so on, towards the Chancellor.

d/ The National Socialist régime has maintained the distinction between Bill and Ordinance. The Government disposes of both, of the legislative power, and of the power to issue Ordinances. The formal difference between Bill and Ordinance is, therefore, a slight one only. According to the definition we find everywhere repeated: Bills are legal maxims created by the co-operation of all members of the Government, Ordinances, the general regulations which the Fuehrer or Ministers as Heads of their department issue jointly or singly within their special competence /P-H.p. 73/. "The decisive co-operation of the Fuehrer and the observance of an orderly legislative procedure characterises the Bill". /P-H.p.73/. But definitions of this kind are correct only when we compare the Bill with the Ordinance of a single Minister. Ordinances which are issued by the whole Government are created as well as a Bill, with the "decisive co-operation of the Fuehrer and Reichs Chancellor".

The Ordinance differs more distinctly from a Bill as far as its content is concerned. The Bill contains a legal maxim, the Ordinance is a regulation in the sphere of the Administration /M.u.K.p.110/.

The issuing of legal maxims of minor importance was occasionally assigned by the Constitution or a Bill, to a group or single members of the Government even before the Nazis came to power.

The sphere of questions which had to be decided by the whole Government has been limited more and more under the National Socialist régime. In the same degree the sphere which was left to the independent activity of a group or a single Minister has been enlarged. It corresponds to this development that the Government more often than before discharged its legislative task by transferring the right to issue Ordinances.

In the National Socialist State the Fuehrer and Reich Chancellor has the right to issue Orders which belonged, according to the Weimar Constitution, to the Reich President. As Supreme Commander of the Wehrmacht he issues the Ordinances concerning the Wehrmacht.

Amongst others, he is entitled to issue the Ordinances which define the competence of the various Ministers /M.u.K.p.112/. As a Bill is determined by the Fuehrer and Reich Chancellor alone - the rest of the Government functions in the process of legislation as an advisory body only - it is hardly possible to find a boundary between a Bill and an Ordinance of the Fuehrer. The Cabinet for the Defence of the Reich for instance, was established by an Ordinance of the Fuehrer of August 30th 1939. This Ordinance assigns to a group of Ministers a joint sphere of activity. This part of its contents certainly does not require a Bill. But further it lays down that the Cabinet for the Defence of the Reich may issue Ordinances with the force of law. This right might be granted strictly speaking by a Bill only.

It cannot be ascertained from the literature at our disposal whether an Ordinance of the Fuehrer is created in the same way as a Bill. However, as both come to life through the sole decision of the Fuehrer and there is no distinct difference between both, it can be presumed that Ordinances of the Fuehrer are handled and proposed in the same way as the Bill. The Ordinances of the Fuehrer concerning the Wehrmacht, and his other Ordinances, require the Ministerial counter-signature for their validity. This counter-signature has certainly no other meaning as the counter-signature of a Bill.

Besides the Fuehrer and Reich Chancellor, the Reich Government has the right to issue Ordinances - Under the Nazi regime the sphere which is left to the regulation by Ordinances has been substantially enlarged. Ordinances have been further issued mainly by single Ministers, not by the whole Government. But as before the decision of important matters is left to a Bill, and generally Ordinances arrange the details /P-H-p.73/. Above all in the National Socialist State too, Ordinances may be issued only by persons to whom this right has been transferred by the Legislative power, and only within the sphere which is circumscribed by a Bill. Even the Cabinet for the Defence of the Reich is not a Legislative body which has wholly or partly superseded the Reich Government in this capacity. This Cabinet too has only the right to issue Ordinances.

e/ The appointment and dismissal of the higher Civil Servants is reserved for the Reich Chancellor. Appointments are proposed by the Minister of Interior, in some cases by other Ministers. It seems that these proposals are made without consultation of the other members of the Government.

f/ The so-called "general clauses" in German Acts.

A characteristic feature of the National Socialist legislation is the fact that the Acts passed by the German Government do not contain precise provisions in order to avoid any abuse and to give strict limits to executive organs, but they contain in an astonishing number of cases, the so-called "general clauses", as for instance: "Recklessly intercede in favour of the National State", "unconditional devotion to the political ideas and aims of the National Socialist Party"; "unconditional personal allegiance to Adolf Hitler"; "measures necessary for the maintenance of public order and security; "measures necessary for reasons of public welfare", and so on.

In such a manner the subordinate authorities are given general permission to a great extent to act according to their own discretion. It is obvious that National Socialist authorities are making full use of this extended permission which covers in fact, all crimes committed by them against the "enemies of the German people". Innumerable crimes were committed on this basis.

The Nazi experts stress that these general clauses must be interpreted "according to the principles of the National Socialist conception of the world" /P-H.p.72/. They further stress that the State authorities are bound by statements and declarations of Hitler, irrespective in which form Hitler expressed his will. The authorities and even the Courts must decide "on the basis of the Fuehrer's thoughts and the National Socialist conception of the world". /P-H.p. 120/.

Part B - LEGAL CONSIDERATIONS.

Chapter V.

THE RELEVANT GENERAL PRINCIPLES OF CRIMINAL LAWS.

I think that the relevant principles of criminal laws which should be used for the legal appreciation of the facts as explained in the previous chapters are contained in the provisions concerning the following subject matter:

- 1/ The guilty mind and the prima facie proof of the guilty mind.
- 2/ The possible parties to a crime.
- 3/ Conspiracy and similar forms of criminal co-operation or criminal organisation.
- 4/ Criminal liability of the master for criminal acts of the servant.
- 5/ Criminal liability of corporations /corporate liability/.

I think that principles common to the four Allied systems of Criminal Law which I have examined /English, French, Soviet and Czechoslovak/ would be a sufficient basis for legal conclusions:

- ad.1/ The guilty mind and the prima facie proof of the guilty mind.

The four systems seem to me to be in accordance that a guilty mind is:

- a/ the criminal intention,
- b/ the criminal negligence.

Responsibility for crimes requires criminal intention or "gross" negligence, mere inadvertence is not sufficient. All the four systems and the judicial practice of the Courts of the respective countries seem to me to be in accordance that the criminal intention is composed of two elements:

a/ the consciousness, i.e. "the accused must realise that certain consequences are likely to follow from his conduct whether that conduct consists of action, or omission to act, coupled with the duty to act" /Kenny, "Outlines of Criminal Law", Cambridge 1936 p. 42/.

b/ The volition, i.e. "He may intend the consequences or be merely reckless or indifferent to them" /Kenny, pp.42 and 43/.

The proof of the guilty mind is in general the task of the prosecution. But there are some exceptions where the burden of proof is overthrown to the accused. I quoted some examples in my report on the S.A., S.S. and Gestapo. As a general rule the Prosecutor must prove the guilty mind as one of the important elements of the crime. But in every criminal case it must necessarily be proved by circumstantial evidence /except when the prisoner confesses/ and in every criminal case the Judge on the Continent, or the Jury in England must be aided by legal presumptions. One of the main legal presumptions in respect of the guilty mind is "that a man intends the natural consequences of his act" /Kenny p. 396, N. 1/.

In Chapter III of his work, Kenny deals with this question in more detail. On page 43 he says: "Yet in most cases the law regards the criminal act itself as sufficient prima facie proof of the presence of mens rea. Every sane adult is presumed to intend the natural consequences of his conduct". I think that is the general line adopted by all the four systems of criminal law, and by the criminal courts of the respective countries in respect of the proof of the guilty mind. The presumption plays a very important rôle as one of the important modes of judicial proof. We will see later on to what extent the facts explained in the previous chapter justify such presumption on the part of the Nazis in general, and of the members of the German Government in particular.

ad.2/ The possible parties to a crime.

After having examined all four systems I come to the conclusion that apart from slight differences, as for instance in respect of the aider and abettor, all four criminal laws and the practice of criminal courts of the respective countries agree that there are four groups of possible parties to the crime:

a/ the principal in the first degree /the perpetrator/, the man by whom the criminal act itself was done, or the man who gave the order to another man to commit the crime, "the man who finally despatches the assassin". /Kenny, p.102/, and finally a man who did not commit a criminal act but who omitted an act which he was obliged to carry out and which would prevent the criminal result. Such an omission is punishable exactly as the commission of a criminal act. In this connection I should like to stress that in my opinion all four systems and their legal practise agree with the principle: "qui facit per alium facit per se".

b/ the principal in the second degree, or subordinate principal who aided and abetted the actual perpetrator and who may or may not be present at the scene of the crime. The modes of his aiding and abetting are various. Even a mere applause may be "aiding and abetting". As to the question of liability: an aider and abettor is in principle punishable as the perpetrator for crimes committed by the principal in the first degree, as being done in the execution of their common purpose.

I think that according to all four systems and practise of the respective courts, we could accept the following opinion: Thus if two men have a common design to commit robbery with violence and one causes death while another is present aiding and abetting the felony, as a principal in the second degree, both are guilty or murder although the latter had not specifically consented to such a degree of violence as was in fact used" /Kenny, p. 997.

c/ an accessory before the fact is a person who procures or advises one or more of the principals to commit the crime. In some cases the activity of such an accessory before the fact might reach such intensity that he may be regarded as principal in the first degree. For instance, if Hitler gives to the subordinate Gaulleiter or Governor any order no one could say that Hitler is merely accessory before the fact. He is in fact principal in the first degree, the principal perpetrator, and the other is the co-perpetrator. The same applies to the members of the German Government. But these conclusions are the subject matter of Chapter VI.

d/ Accessory after the fact is a remote degree of complicity, consisting usually in subsequently sheltering or relieving the criminal.

I think that in this respect all systems agree in spite of some differences of place attributed to this fourth group in the system of criminal law. Some criminal courts treat the fourth, this group, as accomplices, some as perpetrators of a crime sui generis.

ad.3/ Conspiracy and similar forms of co-operation or organisation.

In all of the four systems of criminal law there is a provision dealing with criminal co-operation or organisation. This criminal co-operation may consist of a simple agreement of two men to commit a crime, or of an agreement to commit a series of indefinite crimes, or in the creation of a genuine criminal gang for committing crimes, with its own leaders, administration, rules and so on. These various forms of criminal co-operation in the four systems I examined, are called: conspiracy /English Criminal Law/, complot and L association de malfaiteurs /French Criminal Law/, and complot and crime of banditry /Soviet and Czechoslovak Criminal Law/.

I cannot deal in detail with this problem. I should like to stress:

a/ that the fact of organised criminality is a source of such danger to the community that all penal systems agree on one point: repression of criminality cannot wait until a crime is committed as the result of criminal co-operation. The community must intervene at a much earlier stage than in cases of individual criminality. That is the first general principle in respect of such organised crime.

b/ the guilty mind of all members of such criminal organisations or of all men taking part in a criminal agreement is presumed. So for instance the French criminal law as explained in Garraud "Précis de droit criminel" authorises the court to presume the guilty mind of all men taking part in a complot. The fact that the men joined the complot is a sufficient prima facie evidence of their guilty mind. In English criminal law there is not such a general presumption, but "so soon as a common

criminal purpose has been shown, evidence of the acts of one accomplice though done in the absence of the others, will be admissible against all of them". /Kenny p.473/

c/ in some criminal laws /French, Czechoslovak and Soviet/ the criminal organisation is regarded as being so dangerous in itself that the mere fact of joining some such organisation is a criminal act, and the membership to it constitutes a special crime, the so-called "crime of banditry".

d/ all members of such organisations, or all men participating in a criminal agreement must bear joint responsibility /collective responsibility/ without regard to their real share in the final result.

I think that the following opinion of Kenny could be adopted as common principle to all the four systems of law: "As regards the malice which is to be imputed to the various members of a group of wrong-doers when one of them commits a homicide, the rule is that, if several persons act together in pursuance of a common intent, every act done in furtherance of it by any one of them is, in law, done by all".

ad.4/ Criminal responsibility of the master for criminal acts of the servant.

In some cases the master is made liable criminally for the acts of his servant. In England there are two cases of statutory offences with regard to whom the master is responsible for the servant even if he had no knowledge of his act, or even when the servant acted contrary to the express orders of the master. But the general rule in the common law is that the master is not involved in any criminal liability unless he has himself authorised the acts of his servant, or aided and abetted them. "To render him liable criminally this authorisation must have been given either expressly or else by a general authority couched in terms so wide as to imply permission to execute it even criminally". /Kenny p. 457. I think it could be regarded as a principle common to all systems of criminal law. This principle is of great importance for the criminal responsibility of the German Government and its members, for the criminal acts of the subordinate authorities, with regard to the position of the German officials /see the German Civil Servants Act 1937, explained in Chapter II, pp. 5 and 6 and with regard to the so-called "general clauses".

ad. 5/ Criminal liability of corporations /corporate liability/.

In this respect I refer to what I said on page 28 of my report on the S.A., S.S. and Gestapo, and should like to draw attention to the principle of the Swiss Criminal Code of 1937, Article 172, quoted on page 3. I have not found a similar provision in the other Criminal Laws, but think that such cases are covered by the French provision about complot and criminal associations, and by the provision of the Czechoslovak and Soviet law about complot and banditry.

As to the Soviet criminal law I should like to stress that the Public Prosecutor of the Soviet Union in the trial against the Trozskits, Vyshinski, who is at present deputy to the Foreign Minister Molotov, stated the following opinion about the criminal responsibility of a criminal gang: "every member of a criminal

band who knowing the criminal purpose of the gang, joined it, is responsible for all crimes committed by the gang because in advance he agreed to the crimes to be committed, and by his membership he helped the gang to carry out its criminal purposes. It is absolutely indifferent whether one part of the gang is operating in one town and the other part in another town. All are responsible for every crime committed by the gang".

The German Criminal Code of 1871 contains the same general provisions as explained above. The new Nazi Criminal Code of 1942 took over these provisions, and as to the criminal responsibility of principal in the second degree the Nazi Criminal Code establishes the rule that aiding and abetting may consist not only in positive action but in an omission even if there was no legal but a moral duty to act.

Chapter VI.

LEGAL CONCLUSIONS.

With the help of the general principles of Criminal Law derived from the provisions of the four Allied Criminal laws as explained in Chapter V /which are in accordance even with the German Criminal Law/, it is possible to draw the following conclusions as to the members of the German Government:

1/ As members of the Nazi Party, membership to which is voluntary, they accepted by joining the Party, the duty to realise all party aims even the criminal ones. Thus they agreed in advance to the crimes to be committed by the Nazi Party, especially since 1933 when the Party came to power, and by their membership and party activity they helped the Party to carry out its criminal purposes.

2/ Having joined the German Government as members of the Nazi Party they accepted the official "constitutional" principle of the German Nazi State, that the German State is but an instrument for the realisation of the aims of the Nazi Party without any exception consequently even the criminal aims, as explained in Chapter II. They entered the German Government with the criminal intention of realising the criminal aims of the Nazi Party which were never denied or contested by them. Thus, by joining the Government they perpetrated the first step towards crimes, which is certainly at least a criminal conspiracy according to the English Criminal Law or the crime of banditry according to the Soviet, French and Czechoslovak laws. The guilty mind manifested itself in this act in a sufficient manner. In any case, the fact that they entered the German Government as Nazis with the admitted purpose of realising all aims of the Nazi Party is a sufficient prima facie proof of their guilty mind.

3/ Their activity as members of the German Government was:

a/ they aided and abetted Adolf Hitler in making and issuing Laws and Ordinances which ordered the German State apparatus to commit crimes, as explained in Chapter III. Their participation in this category of crimes cannot of course be proved at the moment as nobody knows in which form and to what extent one or the other member of the German Government participated in the perpetration of such laws. But one thing is sure: a member of the German Government who would oppose such laws, would be at least dismissed. Consequently the presumption is justified that the members of the German Government participated in an active manner in the preparation, framing, and issuing of such laws, as principals in the second degree, aiders and abettors by virtue of their Party and Governmental position. At least this presumption is justified that they

omitted to prevent such laws being issued.

b/ they issued laws empowering the members of the State apparatus to act according to their own discretion, in agreement of course with the Nazi principles and aims. Thus the members of the German Government by issuing such laws, gave to the members of the State apparatus wide permission to execute the aims of the Party, even criminally. Thus they are liable criminally for the acts of their subordinates and in this respect they must be regarded not only as principals in the second degree, but as real organisers and co-perpetrators /principals in the first degree/ because knowing the criminal aims of the Nazi Party, and the criminal qualities of the leading men in the State apparatus, they must be presumed to have intended the consequences of such legislation.

c/ they acted as members of the German Government and at the same time as leading members of the Nazi Party, together in pursuance of an intent common to all Nazis in general and to the Nazi leaders in particular, i.e. to realise all aims even the criminal ones of the Nazi Party. Thus they must be held responsible like members of a group of wrong-doers for all criminal acts according to the principle that every act done in furtherance of it /the criminal purpose/ by any one of them is in law done by all.

d/ they ordered their subordinates either by general order or by special instructions, to commit crimes, or they omitted to prevent crimes of their subordinates although it was their duty to do so. The moral duty is sufficient in this respect according to the German Criminal Code of 1942.

4/ The members of the German Government are according to the general principles of criminal law, either perpetrators/co-perpetrators or accomplices to /aiders and abettors or accessories before and after the fact/ crimes committed by the German State apparatus /civilian or military/.

5/ I therefore suggest that the following rule already adopted by Committee I on November 22nd 1944, and approved implicitly the same day by the Commission, should be declared a guiding rule for the examination of charges against German war criminals:

Membership to the German Government during a period in the course of which war crimes were either committed or prepared by members of the State apparatus, is a sufficient prima facie proof of their guilt and justifies the decision to put them on the list of war criminals.

SECRET

C.89
10th April 1945.

UNITED NATIONS WAR CRIMES COMMISSION

COLLECTIVE RESPONSIBILITY FOR WAR CRIMES

OBSERVATIONS ON PROFESSOR GROS'S MEMORANDUM (DOC. C.85)

By M. de BAER.

To begin with, I wish to make it clear that I heartily agree with the main idea underlying Professor Gros's memorandum. The work that has been carried out by Committee I during this last year has shown the difficulty of proving the guilt of each individual criminal and I feel, in the same way as M. Gros, that it is essential that the position be clarified in this respect, in the general direction which he has suggested. As he points out, the spirit of criminal law and the fundamental principles of civilized life are much more important than existing texts.

However, when there is a possibility of conciliating existing jurisprudence with the necessities of repression, I believe that it is advisable, in the interests of repression itself, that existing principles should be respected as far as possible.

In the light of what precedes I would venture two observations concerning M. Gros's proposals. I hope it will be understood that these are intended to reinforce Professor Gros's trend of ideas and not to undermine it.

1. M. Gros quite rightly points out that it would be going too far to require of the prosecution, in respect of mass-murders, such as the case of Oradour, that it should show the exact part which each man took in the mass-crime. This would obviously be impossible, the more so that the perpetrators took care to suppress all possible witnesses.

Where I do not follow M. Gros is when he says that special legislation would be necessary before a prosecution based upon a presumption of guilt could be established in respect of every member of the Unit that took part in the mass-murder.

I have been trying to visualise the wording of such legislation and it seems to me that the drafting of it would be almost impossible.

Moreover, I do not believe that such legislation would be necessary: the crimes are certain, the individuals concerned were on the spot, they were carrying arms, and they were present there for the purpose of killing inhabitants. What more is necessary? Is this not enough to lay the onus upon them? It is certainly not necessary that a criminal should have been seen doing the act. The Public Prosecutor is never bound to furnish complete proof, he may even submit a case that is incomplete or doubtful and it is then for the jury or the court to decide whether, in view of the circumstances, the evidence is sufficient to convict. If a number of burglars broke into a house and several inhabitants of the house were found to have been murdered in the process, would that not be a sufficient reason for the prosecution to charge all the burglars with murder and would the onus not rest upon them all?

Committee I has been acting on this principle throughout, and it is for this reason that it has accepted a presumption of guilt and put all the members of the Units on the list of accused (irrespective of whether the

names of the members were known or not). As M. Gros rightly points out, the accused always has the possibility of proving that, although he was on the spot, he did not take any part in the crime.

Altering legislation is such a complicated business that we should refrain from proposing it unless it is absolutely unavoidable and unless there are chances that the modification will be generally acceptable.

The principle that a person is presumed innocent until he has been proved guilty is one that has been so dearly bought and so firmly accepted since the days of Magna Carta that the chances of acceptance of a Statute establishing the adverse principle are but slight.

I therefore suggest that M. Gros's proposal is unnecessary; the circumstance that Governments have brought charges against Units as a whole goes to prove that they consider all the members thereof as prima facie perpetrators, and that the onus of disproving their guilt will be upon them.

However, if it is desired, the Commission could make a statement that, in drawing up the lists of war criminals, it has accepted the presumption that, in the case of mass-murders, all the members of the Units whose presence has been ascertained are actual perpetrators thereof.

2. M. Gros's second proposal is that the United Nations should "decide unanimously to consider the Gestapo and certain formations of the S.S. as associations of criminals and not simply military formations".

Here again I heartily concur with M. Gros's idea; perhaps I may remind the members of the Commission that it was I who proposed, a year ago, that all members of the Gestapo should be arrested and placed in custody at the moment of the armistice and that the Commission felt that I was going too far and that it could not follow me.

Perhaps also I may be allowed to point out that the Belgian law, like the French, contains a provision concerning associations of criminals (Belgian Penal Code, Sections 322 to 326). The Belgian Law is at least as explicit as the French since it provides that the mere fact of organising an association with the purpose of committing crimes against persons or property is a crime in itself, irrespective of whether the gang committed further crimes or not. Therefore, by Belgian law any member of an association of criminals can be punished with five to ten years' penal servitude even if he did not actually commit one of the crimes planned by the gang.

However, no Belgian court would pass sentence unless it were convinced that the association actually had a criminal object, and that is what is essential. The question whether a decision of the United Nations to consider the Gestapo as an association of criminals would suffice, in the eyes of a court, to prove its criminal object is doubtful. To carry weight such decision would have to be based on - and supported by - well-established and irrefutable facts. Until the present moment it is doubtful whether the War Crimes Commission is in possession of such facts. Many crimes have been vaguely ascribed to the Gestapo by newspapermen or by the man in the street of the occupied countries but it is not impossible that some of them were committed by other bodies such as the Sicherheitspolizei, the Ordnungspolizei, or other branches of the S.S. or the S.A. (I read, for instance, in Dr. Boér's excellent report that before 1933 the S.A. was really a criminal organisation composed in the main of criminal elements and that it became afterwards the instrument of the armed Nazi underground movement and of mass-terrorism.)

I wonder if it would be in keeping with the high standards which this Commission has imposed upon itself to make, without sufficient bases, a sweeping statement of the kind which is proposed by M. Gros, the more so that he does not specify the formations of S.S. ("certain formations of S.S.") which he would like to see assimilated to the Gestapo. What would be our position if at a later date it were proved that there is some other body that carried an equal - or perhaps even heavier - responsibility in the organisation of atrocities, which we had overlooked (e.g. the S.A. or S.S.)? What would be our position if, having insufficiently studied the subject, it were proved at a later date that there are, in the Gestapo, divisions that are exclusively concerned with the welfare, the finance of the organisation, etc., and who had nothing to do with crimes? Could the members thereof be branded as criminals? It may well be that they could, but at this moment our study is not sufficiently advanced to declare this with a reasonable degree of certitude.

I therefore propose that, with the object of recommending a decision that the Gestapo and other formations of S.S. and S.A. be considered as associations of criminals, this Commission should charge our legal adviser with the task of:

- (a) Obtaining a copy of the Basic Decrees organising the S.A., the S.S. and the Gestapo, and if possible other German Government documents containing regulations, instructions or orders to these bodies;
- (b) Making a compilation of reliable evidence pointing to the culpability of these bodies in actual atrocities;
- (c) Determining what exactly are the "certain formations of S.S." referred to in Professor Gros's memorandum.

I firmly believe that a declaration based upon a well-reasoned report on the lines indicated above would, in the eyes of the court which will ultimately be called upon to decide each individual case, carry much more weight than any sweeping decision or recommendation. In other words, before indicting the Gestapo we must make a good case against that body, and establish the link between that body and the crimes that have been committed.

I realise also that the matter is urgent and I would therefore suggest that a report be presented to this Commission within one month of this date, and that the matter be placed on the agenda at that time without further notice.

SECRET

C.90
14th April, 1945

UNITED NATIONS WAR CRIMES COMMISSION

Translation of an Article published in the Weekly

" C Z E C H O S L O V A K "

No. 14, dated 6th April, 1945, page 4,
and bearing the signature: Dr. B. Ecer

(Extract)

THE PUNISHMENT OF WAR CRIMES AND WORLD SECURITY

(EXPOSITION OF THE CZECHOSLOVAK STANDPOINT)

On the 25th April of this year the Representatives of 45 United Nations will meet at San Francisco in order to lay the foundations for the organisation of world security. ...

... But there will not be either peace or security in the world, and particularly in Europe, if the criminals - who have prepared and initiated this second world war and who, during the war, have added to their crimes which had been committed long before the war, crimes the number, importance and character of which are unprecedented in history - are not brought to justice and rendered powerless. Between the punishment of these criminals and the security of the world there is a connection of which the nations tortured by the Germans and their allies are aware. This connection should not be overlooked by those who have undertaken to build a new world of peace and security. Their work would be built on sand if they repeated the errors of their predecessors in 1919, who gave their assent to the abandonment of the Peace Treaty just signed exactly in regard to those articles which were drafted in order to safeguard the making of the criminals powerless. Today mankind suffers for the mistakes of those Statesmen. It is therefore natural that the builders of world security and peace are just now, before the opening of the Conference at San Francisco, reminded of the fact that the punishment and making powerless of the war criminals is one of the chief conditions of world security.

Two remarkable voices were heard at the beginning of March: the Soviet Union through one of its leading jurists, Professor Borisov, and twenty Republics of the Western Hemisphere, through the Inter-American Conference at Mexico City and the Inter-American Law Committee in Rio de Janeiro.

Professor Borisov published in the Soviet War News Daily Edition, March 7th, 1945, and Weekly Edition dated 15th March, 1945, an article under the title: "No St. Helena for Hitler". Professor Borisov deals in the article also with the work of the United Nations War Crimes Commission, on which also Czechoslovakia is represented and on which - to the detriment of its work - the Soviet Union is not represented. The Commission will have to decide whether and how they will reply to Professor Borisov's criticism.

We consider it to be our duty to explain the Czechoslovak attitude, i.e. the attitude of the Czechoslovak nation, the President of the Republic, and the Government, towards those important and, for the world's security, decisive questions with which Professor Borisov is dealing.

(Here ...)

(Here follows a summary of Professor Borisov's article and a summary of reports and resolutions of the Inter-American Conference and of the proposals of the Inter-American Law Committee.)

The article then continues: What is the Czechoslovak standpoint in regard to the questions with which Professor Borisov deals in his article, and which were the subject of the deliberations of the Conference of 20 American Republics headed by the United States in Mexico City and of the Inter-American Law Committee in Rio de Janeiro? On various occasions we have explained it several times. Today we recapitulate and supplement it by new facts. We are doing so because in our opinion the Conference of San Francisco is a unique occasion for proceeding from solemn declarations to deeds, from promises to practical preparations, from utterances of disgust to actions by which the necessities of justice and at the same time of security will be complied with.

(1) The Crime of preparing and initiating aggressive war.

... In accordance with the moral and legal convictions of the Czechoslovak people, the President of the Republic and the Government, the Czechoslovak Delegate on the United Nations War Crimes Commission on the 27th April, 1944, submitted to the Commission a lengthy report in the conclusion of which he proposed that it be recommended to the United Nations to issue a declaration setting out the crimes to be punished by the common effort of the United Nations, which include:

- (a) the monstrous crime of preparing and opening the totalitarian second world war, criminal both in its aims and in its methods, and the crimes committed during the preparation of the war, irrespective of the place where they were committed;
- (b) crimes against any person, irrespective of his nationality, and against stateless persons, committed for their race, language, religion or political opinion.

The Czechoslovak Delegate reiterated and reformulated his proposals, as far as they referred to the crime of the second world war, in writing, on the 27th September, 1944, as follows:

(Here follows a summary of the proposals dated 27th Sept. 1944.)

The article continues: The Czechoslovak standpoint, thus formulated in the United Nations War Crimes Commission, is therefore entirely in accordance with the Soviet standpoint as formulated by Professor Borisov in his article, and by Professor Trainin in his book, and with the American standpoint as formulated in the proposals of the Inter-American Law Committee. What decision has been arrived at in regard to the Czechoslovak proposals in the Commission we are not for the time being allowed to disclose. The Czechoslovak Government, however, will very soon tell the people at home about them, for the people have a right to know, irrespective of whether or no certain circles attempt to apply secret diplomacy in these matters. The punishment of war criminals concerns in the first place the masses of those nations who have been invaded, tortured and murdered by the Germans and their allies during the occupation. It is not and it will not be a matter solely for diplomats and politicians who suffered nothing, and of so-called "experts" on international law who do not do anything else but invent obstacles to the efficient punishment of war criminals. Those, of course, fear the light: they are in favour of secrecy and against publicity.

(2) Putting Adolf Hitler and the other Arch-Criminals on the List of War Criminals.

Professor Borisov is right. For a long time Hitler and his fellow-gangsters were not on the list of war criminals which is being prepared in

London ...

London. The reason was simple: the members of the Commission were once and again reminded that the intention is to treat Hitler and the arch-criminals in a "political" manner in the same way as in the case of Napoleon. It was not clearly stated whose intention it was, but it was indicated. Sir Cecil Hurst, former Chairman of the Commission, admitted it publicly in the Press Conference on the 30th August 1944. The Czechoslovak Delegate has from the outset of the work of the Commission decidedly and vigorously opposed this standpoint or this intention as a dangerous standpoint, as fatal for the result of the whole retribution programme, as morally destructive and legally unfounded. ...

... In full accordance with the moral and legal conviction of the Czechs and Slovaks as expressed by this declaration by the President of the Republic, solemnly confirmed and repeated by the Czechoslovak Government, the Czechoslovak Delegate on the U.N.W.C.C., towards the end of the year 1944, submitted to the Committee, among others, nine copious indictments of Adolf Hitler, of all members of his Government of the Reich Protector in Prague, and ...

On the proposal of the Czechoslovak Delegate, Adolf Hitler, the members of his Government, the other leading German criminals and their subordinate henchmen have been placed on the List of War Criminals No. 1 by the decision of the U.N.W.C.C., dated the 22nd November, 1944.

(3) No St. Helena for Hitler.

... The Czechoslovak standpoint is in accordance both with the Soviet and with the American standpoint. (The article now quotes the Press interview by the Czechoslovak Delegate published in the Sunday Express of 11th February 1945.) The article continues: Therefore the Czechoslovak Government have agreed to the recommendation by the War Crimes Commission to the effect that there be established a Criminal Court of the United Nations which would pass sentence on the arch war criminals

(4) From words to deeds.

We know what obstacles are being placed in the path of justice. We know there are people - people in positions closely connected with the punishment of war criminals - who consider it to be their task to invent legal and diplomatic obstacles in the way of swift just punishment as recently promised at Yalta. They protest against the internment of S.S. men because it is supposed to be impossible of performance. They treat in an ironic way the proposal to consider membership in the Gestapo and S.S. as membership in a gang of criminals, punishable as such, because, they contend, there are also decent people among Gestapo and S.S. men; they oppose a trial of Hitler and suggest the employment in his case of the "precedent" of Napoleon. They are against publicity and in favour of obscurity, or at least of twilight in regard to the question of war criminals, because they harbour dark plans favourable for the criminals.

But it is possible to overcome these obstacles - and they will be overcome - obstacles which are placed in the path of justice by these people, either by imprudence, or out of mistaken sympathy with the criminals or wittingly out of sympathy with them.

There is a different and greater danger: that there will not be time to prepare the necessary Allied machinery to discover, detain, try and hand over to national courts or to the Allied Court those war criminals who hide in Germany, or in neutral countries or even in Allied countries.

The recommendations submitted by the London Commission referring to the establishment of such machinery have all been agreed to by the Czechoslovak Government. ...

But one ...

But one thing is certain: the work will not succeed, or will succeed only partially, to the detriment of justice and in favour of crime, unless all the United Nations collaborate with the same end in view.

The article then proceeds to explain that the necessary machinery is not yet available and continues: First of all, it is a regrettable, but nevertheless true, fact that only one-third of the United Nations are represented on the U.N.W.C.C. As a matter of fact, the Commission's title is misleading. Out of 45 United Nations invited to San Francisco, only 15, and, amongst them, five British Dominions, are represented on the Commission.

The Soviet Union whose Western Federal Republics have suffered most by reason of German crimes, is not represented on the Commission. With regard to this, the Czechoslovak standpoint has been clear from the outset: without the collaboration of the Soviet Union there cannot be full justice, just as with its collaboration victory would be impossible.

The Czechoslovak Delegate on the Commission has time and again, orally and in writing, pointed out this gap. (Here the article summarises the Czechoslovak Delegate's activities in this connection.)

(It then deals with the question of crimes against Jews and points out the lack of precision in regard to the definition of war crimes and the lack of a common declaration by the United Nations.)

The article continues: The third serious deficiency and cause of obstacles is as follows:

The U.N.W.C.C. has sent to the Governments represented on it a considerable number of very useful and necessary recommendations. That took place as early as the autumn of 1944. It is the aim of the Commission's recommendations to safeguard the tracing, detention, examining and handing over to the appropriate courts of the war criminals. We are sure that the Governments are considering these recommendations carefully. The Czechoslovak Government have already agreed to them, but this is not sufficient. The Governments must decide to give effect to them. Somebody must give orders to the appropriate Allied military and other authorities to give effect to the agreed recommendations. Who is to give this order? Who is to summon the Governments to a Conference on these recommendations? No agreement has been reached on this point. Thus the Commission's most valuable recommendations are being carefully studied, but time is short and does not admit of a long study.

(The article then describes the preparations in connection with the San Francisco Conference and gives a summary of a statement made by the Czechoslovak Delegate on behalf of the Czechoslovak Government in the Commission's meeting held on the 14th March, 1945.)

The article continues: We cannot divulge what the Commission did about these proposals, but very soon the people at home, in the Fatherland, will get full information by its Government and the world at large as well. We can only add that the Czechoslovak Government do not confine themselves to this action.

(The article concludes by describing the Czechoslovak preparations in connection with the San Francisco Conference.)

SECRET

C.91
16th April, 1945

UNITED NATIONS WAR CRIMES COMMISSION

CONVENTION FOR THE SURRENDER OF WAR CRIMINALS AND OTHER WAR OFFENDERS

Letter from the United Kingdom Government to
certain Member Governments

The text of the following letter which was sent on 29th March by the United Kingdom Foreign Office to the diplomatic representatives of the Governments represented on the Commission except those of Australia, Canada, India and New Zealand has been communicated to Lord Finlay and is circulated for the information of the members of the Commission.

29th March, 1945

Your Excellency,

His Majesty's Government in the United Kingdom have had under consideration the draft Convention for the surrender of war criminals and other war offenders prepared by the United Nations Commission for the Investigation of War Crimes and submitted by them to the Allied Governments represented on the Commission as Document C. 47 of 4th September, 1944.

2. His Majesty's Government have every sympathy with the object which the draft Convention is designed to achieve, namely, to facilitate and simplify the reciprocal transfer between the United Nations of persons in the territory of one country and wanted by another for trial as war criminals or traitors. They recognise that this object accords with the spirit of the Declaration on German Atrocities issued at Moscow on the 1st November 1943, in which the principle was laid down that those implicated in such atrocities would "be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free Governments which will be erected therein".

3. As one of the parties to the Moscow Declaration, His Majesty's Government are firmly resolved that the guilty war criminals shall be sought out and punished in accordance with its terms. They are most anxious to assist any of their Allies in bringing to justice war criminals responsible for offences against its own nationals or on its territory, and also its own nationals charged with treachery to the State involving active assistance to the enemy. His Majesty's Government appreciate that some of the United Nations concerned may find the conclusion of a Convention on the lines proposed by the Commission the most convenient means of achieving these objects. They have, however, reached the conclusion that, so far as they are concerned, the draft Convention does not represent an appropriate means of doing so. The procedure envisaged under the draft would give rise in the United Kingdom to difficulties which in some cases could not be resolved without special legislation, involving probably considerable delay. Moreover - and this in the view of His Majesty's Government is the dominant consideration - they are satisfied that their participation in the proposed Convention would in fact prejudice rather than assist the objects which His Majesty's Government, in common with their Allies, desire to achieve.

4. It is, I think, generally agreed to be highly desirable that the process of trial of war criminals and traitors should be completed within a comparatively brief period. On that assumption, His Majesty's

Government, ...

Government are satisfied that the powers which they possess are sufficient to enable this matter to be dealt with rapidly and satisfactorily by executive action, provided that it is kept on an informal basis and not made the subject of a formal treaty.

5. Under existing law His Majesty's Government are empowered to repatriate by way of deportation any alien civilian if it is deemed to be conducive to the public good to do so, and they prepared to treat as an undesirable alien civilian liable to deportation, any alien against whom there is a prima facie case that he is a war criminal or has been guilty of treachery involving active assistance to the enemy.

6. As regards criminals, His Majesty's Government would of course attach all due importance to any report by the War Crimes Commission that a sufficient case existed to justify his being brought to trial. As regards traitors, His Majesty's Government would desire to be satisfied that the person concerned was a national of the Allied country desiring his surrender and that a prima facie case exists showing that he had actively assisted a State at war with his own country.

7. As regards war criminals or traitors who may be in the hands of His Majesty's Government as prisoners of war, the powers of the military authorities are sufficient to ensure their delivery to the Government concerned at a time to be agreed upon. In such cases, His Majesty's Government will desire to be satisfied in the manner set forth in paragraph 6 above that a prima facie case exists against the person concerned. In the event of a request for the delivery of an individual being made by more than one Allied Government, His Majesty's Government would consult with the Governments concerned as to the action to be taken.

8. In these circumstances, His Majesty's Government do not feel able to become a party to the proposed Convention, though they would, of course, not wish to dissuade Allied Governments who might wish to participate in such a convention from doing so. His Majesty's Government in the United Kingdom are satisfied that they are in a position to give effect, in the manner indicated above, to the declaration made at Moscow on the 1st November, 1943, and that in so far as the United Kingdom is concerned, no additional conventional undertaking is required. I have now the honour to give your Excellency a formal assurance that it is the firm intention of His Majesty's Government in the United Kingdom to give effect to the declaration of Moscow by the exercise of the powers referred to above, and to express the hope that the Government will be prepared to give His Majesty's Government a corresponding assurance as regards the reciprocal assistance which they will be prepared to give, by such means as they may find appropriate, to His Majesty's Government in the matter.

9. The above observations relate to persons who are, or may be found, in the United Kingdom. The question of the surrender of persons who may have fallen, or may fall, into the hands of the Allied forces operating elsewhere is a matter to be dealt with by the Military Commander concerned, and His Majesty's Government understand that arrangements to this end are already in process of being made.

I have, etc.,

(for the Secretary of State)

To Representatives at:

Belgium	Luxembourg
China	Netherlands
Czechoslovakia	Norway
France	Poland
Greece	United States of America
	Yugoslavia

SECRET

6.92.

33rd April 1945.

UNITED NATIONS WAR CRIMES COMMISSION

OBSERVATIONS BY DR. T. CYPRIAN CONCERNING COLLECTIVE
RESPONSIBILITY FOR WAR CRIMES

Are the Gestapo, the SS and the SA "Sociétés des malfaiteurs"?

The question whether the mere fact that a person belongs to the Gestapo, the SS or the SA constitutes or does not constitute a war crime is a very intricate one, as the organisations mentioned above being based on German law cannot from the purely theoretical legal point of view be prima facie considered as "sociétés des malfaiteurs" and their members cannot be brought to justice unless they have committed, individually or as a collective unit, a special crime for which they could be indicted.

But the question is not as simple as that as we have to consider not only this theoretical point of view but also facts which show clearly that all those three German organisations, although legal under the German law, acted in practice as a criminal gang. The mere name of the Gestapo or the SS brings with it the closest association with every conceivable war crime: rounding up the population of whole towns, burning down villages, deportations, prison camps, torture, starvation, shooting of hostages, mass murder ...

There must be something more behind the legal "façade" than casual outbreaks of cruelty on the part of certain high officials - there is system in what has been done. The Gestapo and the SS (the SA is concerned in a lesser degree) used their power to the full for the purpose of exterminating persons obnoxious to the German doctrine of world domination by the Nazis.

Yet this does not mean that the Gestapo, the SS or the SA are associations of criminals from the point of view of the law; even the broadest interpretation of the law cannot satisfy a judge that the president of the officers mess of the SA or the clerk in charge of the pay roll at the administrative branch of the Gestapo is a criminal and should be found guilty unless he offers evidence that he did not commit any particular crime (even this evidence could not help him much if we accept the rule that every member of these organisations is to be punished for the mere fact of being a member).

The meaning of "association of criminals" in Polish or French law is a different one, for it refers to criminal gangs formed specially with the purpose of committing crimes, i.e. criminal gangs hunted by the police and, of course, illegal under the law of the country where they operate.

All that does not apply to the Gestapo, the SA or the SS and it would be difficult, if not impossible, to devise an interpretation of the law which would make it possible to apply the sanctions of law to them.

But, on the other hand, we cannot leave unpunished all the atrocities committed by these organisations for the mere reason that ..

that we find some legal obstacles to punishing them - especially as we can find ways and means of committing the guilty for trial without being hampered by legal considerations.

The essential point is that we should be careful not to include too many people as among great numbers the real criminals are like to disappear.

Let us not forget that the SA alone had more than 2,500,000 members, the SS perhaps about half that number and the Gestapo several hundred thousand - altogether something like four million people theoretically guilty of membership in an association of criminals.

A good Public Prosecutor does not pay attention to trifling offences when he has to investigate an important criminal case and so should we do, concentrating our attention upon major criminals and letting the smaller fry go.

The first thing to do is to eliminate from consideration the SA as an organisation and leave to the National Offices the task of finding evidence against its members, either as individuals or as units, as the case may be.

Looking at the organisation of the SA (see below) we find that although many individuals belonging to it, as even whole units, are guilty of committing various war crimes, there is not so much of criminal nature to be found in its organisation as such as can be found in that of the Gestapo and the SS.

To leave out the SA makes our task much easier, as it reduces considerably the number of people to be brought to justice.

The case of the SS and the Gestapo is different. They both have in their organisation special branches closely connected with all that constitutes war crime: concentration camps, "special tasks", suppressing of riots (hostages), executions, supervision of non-Aryans (extermination of Jews), and so on.

Besides, the members of the SS and the Gestapo are much more easily to be traced, as they were both hated and feared. They were prominent and ardent Nazis and they are more deserving of punishment, even for mere membership, than are the rather lukewarm Nazis who joined the SA.

We might even consider membership of some branches of the Gestapo and the SS as a crime, leaving out branches not directly connected with activities leading to crime - the details of organisation shown below can help in these considerations.

Moreover, it might be useful to get acquainted with the broad outlines of the history of these organisations, as it can throw some light on their present activities and the purpose of their coming into being before the Nazi system made them legal.

Until the year 1935 there was no uniform police system in Germany as every German state had its own police, except for the political branch which was the same throughout the whole Reich, but had a rather limited sphere of activity, as the final decision rested always with the juridical authorities.

The SA ..

The SA (Sturmabteilungen)

The organisation of the SA goes as far back as 8th August 1921 when a handful of supporters of Hitler stormed the hall in Munich where the Socialists held their meeting, chased them out and protected the place during the subsequent meeting of the Hitler Party.

The SA in 1933, before the Nazis came to power, counted over 300,000 members; later on this number increased to over 2,500,000 according to Roehm himself, who gave this information to the foreign correspondents in 1934.

On the 1st December 1933 a law (amended on 3rd July 1934) was passed giving to the SA the status of "the leading and driving force" (die fuhrende und bewegende Kraft).

The membership of the SA was voluntary and did not require such high qualifications as the membership of the SS. The whole force of SA was divided in several branches, infantry (first line troops), cavalry, signals, pioneers, reserve units, navy, motorised units (NSKK), air force (NSFK) and a motorised division called Standarte Feldherrnhalle.

The SS (Schutz-Staffel)

The SS originated in the "Combat Group" formed in 1923 on Hitler's order and called then "Stosstrupp Hitler". That name was changed in 1925 into "Schutzstaffel" which means something like "security squad".

The organisation was mainly destined to protect Hitler himself during his public appearances, meetings and speeches against possible attacks of his opponents, and formed in the beginning his personal bodyguard.

On the 6th January 1929 Heinrich Himmler was appointed by Hitler as the Leader of the SS in the whole of Germany. The SS at that time constituted only part of the broader paramilitary organisation of SA, but after the "night of long knives" in June 1934, when Roehm, Schleicher and other important Nazis were murdered by the SS men, the SS was reorganised into an independent body "for the protection of the Reich from inside".

Since then the SS has been divided into four separate branches with different denominations and tasks assigned to them. These are:

1. Allgemeine SS ("General SS")
for the "territorial defence of the Reich";
2. Waffen SS ("Armed SS")
a fully military organisation, parallel with the Reichswehr, grouping the most reliable Party members;
3. Verfügungstruppen SS ("Special tasks SS")
to be used for any task assigned to it on special occasions by the Leader Himmler or Hitler himself (rounding up of Jews, destroying of Jewish property, burning of villages, deportations and so on);
4. Totenkopfstandarte SS ("Death's Head SS")
to supervise the concentration camps, forced labour camps and similar duties.

4.

The membership of the SS was voluntary and required high party records, as well as special qualifications. The candidates had to pass through previous schooling in Youth Organizations and to be ardent Nazis, ready to do anything on the order of Hitler or their commanding officers.

The Gestapo

The Gestapo (Geheime Staatspolizei, Secret State Police) was created in April 1934 by Goering for special tasks in Prussia. After the separate German States were abolished, its activities were extended to the territory of the whole of Germany.

Heinrich Himmler became chief of the Gestapo; the central office was in Berlin (Geheimes Staatspolizei Amt, Prinz Albertstrasse 8).

The Gestapo was divided into three main branches, plus one special branch and a Women's branch (created in 1943).

The branches are:

I. Organisation and personnel branch:

subdivided into :

- a) I.A. organisation and administration,
- b) I.B. protective custody including administration of concentration camps, prisons, filing of names of persons in whom the Gestapo is interested, dactyloscopy and photographs of suspected persons.

II. Political branch:

subdivided into :

- II.A. communist and socialist affairs,
- II.B. unions and societies with political purposes,
- II.C. supervision of legal and illegal societies, clubs, trade unions,
- II.D. churches and religious organisations,
- II.E. masonic societies, international banking houses and international trade institutions,
- II.F. supervision of the Nazi Party (NSDAP), control of purity of the German race, control of non-Aryans.

III. Intelligence Service branch:

subdivided into:

- III.A. East, West, South, Coast, Overseas, America,
- III.B. Economic intelligence service.

IV. Special tasks branch:

Security service, protection of Party leaders and high State officials, suppression of riots, rounding up of undesirable or suspected elements, carrying out of executions, censorship of letters, telephones and telegraphs.

V. Women's branch of Gestapo:

destined for the supervision of family life in Germany.

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5.

Polish law concerning "Sociétés des malfaiteurs".

The question whether the Polish law as to the criminal offence of membership of a "Société des malfaiteurs" can be applied if we agree that the above mentioned German organisations can be considered as such a "société" must be answered in the affirmative.

The Polish Penal Code (article 166) states :

166 § 1. Any person belonging to a society having crime as its purpose is liable to the penalty of imprisonment for five years (or less).

§ 2. Any person founding or directing such a society is liable to the penalty of imprisonment for ten years (or less).

SECRET

C.93
23 April 1945

UNITED NATIONS WAR CRIMES COMMISSION

MEMORANDUM ON THE QUESTION OF THE CO-OPERATION OF THE WAR
CRIMES COMMISSION WITH THE RUSSIAN EXTRAORDINARY STATE COMMISSION

by M. de Baer

On March 20, 1945, Lord Addison, in the House of Lords, drew the attention of the members to the existence in Moscow of a body called the Russian Extraordinary State Commission which is dealing with matters similar to those treated by the United Nations War Crimes Commission. He inquired what relation there was between the two bodies, what arrangements there are for the interchange of information between them and what arrangements there are for acting as far as possible in common.

Lord Wright, in his answer, said that he should very much desire to get into contact with that Russian organization. He stated that there was no possibility of their becoming members of the Commission or members of an enlarged Commission. However, he saw no reason why there should not be an inter-communication of counsel, advice, information, and he was doing what he could to bring that about.

By the Lord Chancellor no answer was given to Lord Addison's question and the co-operation with the Russian Commission was not mentioned.

Until March 20, 1945, there was no communication or co-operation whatever between the Russian Commission and the War Crimes Commission. Since then, one month has passed which has been full of events, the end of the war is drawing near and still there is no sign of any collaboration between the two Commissions. In fact the War Crimes Commission is in complete ignorance of what is happening in Russia, and the best proof that the Soviet Press and public are misinformed concerning our activity is the article published in the issue of March 7, 1945, of the "Soviet War News" by Prof. Borisov: "Speedy justice for War Criminals". Lack of co-operation is certain to create such misunderstandings; moreover, it may endanger the issue of our work.

On the other hand collaboration would procure not only the exchange of the lists of accused whose surrender is to be demanded, but would make it possible for the two Commissions to exchange views on the methods of punishment, apprehension, etc., with the purpose of achieving some unity. Each Commission would benefit by the experience acquired by the other, and valuable information could be obtained.

The Soviets do not seem to have put any obstacles in the way of collaboration; the members of the Commission have read in Dr. Ecer's memorandum (C.76 of February 3, 1945) that, although the participation of the Soviet Government in the work of our Commission was refused because the U.S.S.R. requested that seven Republics (namely the Ukrainian, Byelorussian, Moldavian, Lithuanian, Latvian, Estonian and Karelo-Finnish) should be represented on the Commission, nevertheless they were prepared to collaborate with the Commission and to participate in it. Dr. Ecer rightly points out in his letter to Sir Cecil Hurst of October 5, 1944, that the collaboration with the U.S.S.R. Commission is a practical question and he suggested that the Commission should make use of the willingness of the Soviet Government.

It /

It is not known that anything has been done to bring about this result.

It is therefore suggested that the United Nations War Crimes Commission should send a formal recommendation to the Governments members of the Commission, with a view to insure, in the near future, the representation of the Soviet Union in the Commission.

Failing this, it is recommended that the Commission should establish, through the appropriate channels, a close collaboration with the Soviet Extraordinary State Commission for the German crimes.

C. 94.
April 23rd, 1945.LIST OF GERMAN WAR CRIMINALS CONSIDERED BY THE
COMMISSION TO HAVE HELD KEY POSITIONS IN THE
ORGANISATIONS OF WAR CRIMES.MEMORANDUM BY LORD FINLAY.

I desire to express to my colleagues some doubts which I feel as to the position in which the Commission may be placed if we adopt without qualification the list of war criminals proposed by Colonel Hodgson. If I rightly understood an observation made by General de Baer at the last meeting my approach to this matter coincides closely with his.

I believe that the adoption of Colonel Hodgson's list is held to be justified by the decision of the Commission of the 26th September 1944. I was not a member at that date but I have read the Minutes of the Meeting and it seems to me that the intention was to confine the decision to those who are strictly 'arch-criminals' - Hitler, Himmler, and others in that category. This is, I think, shown by two sentences in the unanimous decision of the Commission (see page 5 of Minutes): "It was felt that it would not be necessary to compile a voluminous comprehensive documentation concerning each of the persons in question. Their activities were sufficiently well known to warrant the inclusion of their names on the Commission's Lists".

I feel no difficulty in applying this to Hitler and Himmler, but the list we were considering last week went far beyond such names. A very large number of Gauleiters (as well as many other persons) were included. I myself, and I think the same thing must apply to my colleagues, knew nothing about any particular Gauleiter nor about the war crimes which may have been perpetrated in his Gau. I need hardly say that if Colonel Hodgson had told us that he had satisfied himself that there was evidence of the perpetration of systematic war crimes within each Gau I should accept that without qualification but I did not understand Colonel Hodgson to say that.

It is, I venture to think, important that we should understand how far we may be departing from the general principle which has hitherto guided us. Our system with regard to the Lists has of course been that cases are presented to us by the various National Offices and that, if the Commission is satisfied that a *prima facie* case is made out, then the persons concerned are placed on the List, which in due course is sent to the Government whom we represent. The result is that the Governments know that the names on the List have been presented to the Commission by some National Office and that the members of the Commission have satisfied themselves that there is a good *prima facie* case.

It is of course true that we recently modified the system of the presentation of all cases by National Offices by stating that the Commission might on its own initiative place names on the list without the intervention of a National Office. But it was expressly laid down that this was a special procedure to deal with exceptional cases, particularly cases of stateless persons, and that such cases would be rare. This modification in no way affected the principle that the Commission in placing a name on a list must satisfy itself that there was a *prima facie* case.

Such exceptional cases might no doubt be dealt with without affecting the working of the system, that system being that the Lists are placed in the hands of the military authorities who effect arrests and the prosecution and trial are undertaken by the allied nation concerned. If we send forward the list which is now suggested we must - as it seems to me - explain to the Governments that we have not - at all events as to many names in the List - satisfied ourselves that there is a *prima facie* case. And I am not clear as to how the subsequent proceedings would work out. Who is to prepare the case? Who is to be responsible for the prosecution and trial if prosecution and trial there are to be?

We ought I think to be slow to depart from the principle that names are placed on a list only where there is a prima facie case. And if we maintain that principle names can be placed on the list only as the result of investigation. I yield to no one in admiration of the work done by our staff but we have not at present a staff which could possibly make investigations in large numbers of cases. That is the work of the various National Offices and we should leave it to them. If we do this I do not doubt that we shall be able to cope with the cases where owing to no National Office being available or for some other reason we are compelled ourselves to initiate the proceedings.

My main object is to submit that we should adhere strictly to the principle that we should place a name on a list only if we are satisfied that a prima facie case is made out.

SECRET

C.93.
23 April 1945

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Until March 20, 1945, there was no communication or co-operation whatever between the Russian Commission and the War Crimes Commission. Since then, one month has passed which has been full of events, the end of the war is drawing near and still there is no sign of any collaboration between the two Commissions. In fact the War Crimes Commission is in complete ignorance of what is happening in Russia, and the best proof that the Soviet Press and public are misinformed concerning our activity is the article published in the issue of March 7, 1945, of the "Soviet War News" by Prof. Borisov: "Speedy justice for War Criminals". Lack of co-operation is certain to create such misunderstandings; moreover, it may endanger the issue of our work.

On the other hand collaboration would procure not only the exchange of the lists of accused whose surrender is to be demanded, but would make it possible for the two Commissions to exchange views on the methods of punishment, apprehension, etc., with the purpose of achieving some unity. Each Commission would benefit by the experience acquired by the other, and valuable information could be obtained.

The Soviets do not seem to have put any obstacles in the way of collaboration; the members of the Commission have read in Dr. Eeer's memorandum (C.76 of February 3, 1945) that, although the participation of the Soviet Government in the work of our Commission was refused because the U.S.S.R. requested that seven Republics (namely the Ukrainian, Byelorussian, Moldavian, Lithuanian, Latvian, Estonian and Karelo-Finnish) should be represented on the Commission, nevertheless they were prepared to collaborate with the Commission and to participate in it. Dr. Eeer rightly points out in his letter to Sir Cecil Hurst of October 5, 1944, that the collaboration with the U.S.S.R. Commission is a practical question and he suggested that the Commission should make use of the willingness of the Soviet Government.

It /

It is not known that anything has been done to bring about this result.

It is therefore suggested that the United Nations War Crimes Commission should send a formal recommendation to the Governments members of the Commission, with a view to insure, in the near future, the representation of the Soviet Union in the Commission.

Failing this, it is recommended that the Commission should establish, through the appropriate channels, a close collaboration with the Soviet Extraordinary State Commission for the German crimes.

SECRET.

C. 94.
April 23rd, 1945.

LIST OF GERMAN WAR CRIMINALS CONSIDERED BY THE
COMMISSION TO HAVE HELD KEY POSITIONS IN THE
ORGANISATIONS OF WAR CRIMES.

MEMORANDUM BY LORD FINLAY.

I desire to express to my colleagues some doubts which I feel as to the position in which the Commission may be placed if we adopt without qualification the list of war criminals proposed by Colonel Hodgson. If I rightly understood an observation made by General de Baer at the last meeting my approach to this matter coincides closely with his.

I believe that the adoption of Colonel Hodgson's list is held to be justified by the decision of the Commission of the 26th September 1944. I was not a member at that date but I have read the Minutes of the Meeting and it seems to me that the intention was to confine the decision to those who are strictly 'arch-criminals' - Hitler, Himmler, and others in that category. This is, I think, shown by two sentences in the unanimous decision of the Commission (see page 5 of Minutes): "It was felt that it would not be necessary to compile a voluminous comprehensive documentation concerning each of the persons in question. Their activities were sufficiently well known to warrant the inclusion of their names on the Commission's Lists".

I feel no difficulty in applying this to Hitler and Himmler, but the list we were considering last week went far beyond such names. A very large number of Gauleiters (as well as many other persons) were included. I myself, and I think the same thing must apply to my colleagues, knew nothing about any particular Gauleiter nor about the war crimes which may have been perpetrated in his Gau. I need hardly say that if Colonel Hodgson had told us that he had satisfied himself that there was evidence of the perpetration of systematic war crimes within each Gau I should accept that without qualification but I did not understand Colonel Hodgson to say that.

It is, I venture to think, important that we should understand how far we may be departing from the general principle which has hitherto guided us. Our system with regard to the Lists has of course been that cases are presented to us by the various National Offices and that, if the Commission is satisfied that a *prima facie* case is made out, then the persons concerned are placed on the List, which in due course is sent to the Government whom we represent. The result is that the Governments know that the names on the List have been presented to the Commission by some National Office and that the members of the Commission have satisfied themselves that there is a good *prima facie* case.

It is of course true that we recently modified the system of the presentation of all cases by National Offices by stating that the Commission might on its own initiative place names on the list without the intervention of a National Office. But it was expressly laid down that this was a special procedure to deal with exceptional cases, particularly cases of stateless persons, and that such cases would be rare. This modification in no way affected the principle that the Commission in placing a name on a list must satisfy itself that there was a *prima facie* case.

Such exceptional cases might no doubt be dealt with without affecting the working of the system, that system being that the Lists are placed in the hands of the military authorities who effect arrests and the prosecution and trial are undertaken by the allied nation concerned. If we send forward the list which is now suggested we must - as it seems to me - explain to the Governments that we have not - at all events as to many names in the List - satisfied ourselves that there is a *prima facie* case. And I am not clear as to how the subsequent proceedings would work out. Who is to prepare the case? Who is to be responsible for the prosecution and trial if prosecution and trial there are to be?

We ought I think to be slow to depart from the principle that names are placed on a list only where there is a prima facie case. And if we maintain that principle names can be placed on the list only as the result of investigation. I yield to no one in admiration of the work done by our staff but we have not at present a staff which could possibly make investigations in large numbers of cases. That is the work of the various National Offices and we should leave it to them. If we do this I do not doubt that we shall be able to cope with the cases where owing to no National Office being available or for some other reason we are compelled ourselves to initiate the proceedings.

My main object is to submit that we should adhere strictly to the principle that we should place a name on a list only if we are satisfied that a prima facie case is made out.

SECRET

C.95
25th April, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

RESOLUTION ADOPTED AT THE INTER-AMERICAN CONFERENCE
ON PROBLEMS OF WAR AND PEACE

Mexico, D.F., Mexico, February 21 to Mar. 8, 1945
Provisional English Translation.

(Communicated by Colonel Hodgson)

WAR CRIMES

WHEREAS:

During the present world war the leaders, as well as numerous officials and military and civilian agents of the Axis powers and their satellites, have committed heinous crimes, in violation of the laws of war, and in violation of existing treaties, of the rules of International Law, or of the penal codes of civilized nations, or of the concepts of civilized life;

Individuals who have committed such crimes may have taken refuge in, or may seek refuge in, the territories of the American Republics,

Arrangements should be made to distinguish such criminals from ordinary political refugees.

THE INTER-AMERICAN CONFERENCE ON PROBLEMS OF WAR AND PEACE DECLARES :

That the American Republics, faithful to the principles of humanity and law on which their civilization is founded, repudiate war crimes and adhere to the Declaration of October 1943 by Great Britain, the United States of America and the Soviet Union in the sense that persons guilty of, responsible for, and accomplices in the commission of such crimes, shall be tried and sentenced; and, therefore,

RESOLVES :

1. To recommend that the Governments of the American Republics do not give refuge to individuals guilty of, responsible for, or accomplices in, the commission of such crimes.

2. To recommend that the Governments of the American Republics shall, upon the demand of any of the United Nations, and in accordance with the procedure set forth in the following paragraph, surrender individuals charged with the commission of such crimes to the United Nations making the request, or to the custody of the agency of the United Nations which may be established for the trial and punishment of such criminals.

3. To request that the Inter-American Juridical Committee, having in mind the pertinent national legislation on the subject, prepare and submit for adoption by the Governments of the American Republics, appropriate rules for determining the status of individuals as war criminals, as well as the procedure to be followed for the return or delivery of such criminals.

SECRET

C.96
25th April, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

PROPOSALS BY DR. CYPRIAN CONSIDERING RELATIONS
WITH THE PRESS.

The last incident, the article in the Evening News, again showed clearly the importance of informing the Press about the current work of the Commission, its aims and limits in order to avoid that sort of detrimental publicity, based on the ignorance and sometimes perhaps on ill will or longing for sensation.

To get into close touch with the Press we set up the Public Relation Committee which some weeks ago drafted an excellent communication to the Press which was released on 29th March, 1945.

It seems to me that it would be advisable to increase the activities of that Committee by releasing periodically short communiques, even weekly communiques, under a good headline, drafted in a way suitable for the daily papers, and informing the public in concise form about our current work. This is the only way to avoid the Commission falling into disrepute with the public of this country and abroad. So long as the only thing the public gets to know consists of strong criticism and even accusations of hampering the bringing to justice of war criminals by inventing legal obstacles, we cannot expect any credit for or confidence in our work.

Even the political leaders of the Allied countries cannot underestimate the opinion of the Press. We are still less able to do so, being an advisory body whose only authority rests on esteem and confidence that the task upon us will be performed in the best possible way.

It does not help us for some papers of a very high standard and authority but of rather restricted circulation to publish from time to time excerpts from our communiques, as they do not reach the large public which reads the more popular Press.

In connection with this matter, it seems to me that it would be expedient to know whether the Press did publish our communication of 29th March in full or in excerpts and which papers did so. During the discussion on 28th March I expressed some doubts as to whether that excellent communication was not too long for the daily Press. I was told that it was drafted with the help of some very competent people connected with the Press.

I do not think that I have seen any part of it published in the daily papers after 29th March, except perhaps in the Daily Telegraph, which published, if I am not mistaken, some excerpts; but I do not read all the daily papers myself and during Easter I was for some days away from London, and may be I overlooked it.

My opinion therefore is that the best way of having close contact with the Press is to issue short statements every week instead of long communications at long intervals. The Press has nowadays such an amount of important news items to publish that it cannot afford much space for the work of the Commission despite the importance of its work.

SECRET

C.97
23rd April, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

RENEWAL OF THE PROPOSAL MADE BY M. de BAER ON APRIL 7, 1944, TO INSTITUTE IN GERMANY AN AGENCY FOR THE INVESTIGATION OF WAR CRIMES.

MEMORANDUM BY M. de BAER

I have been deeply shocked by reading in the Press on and about April 21st that no systematic recording of the investigation of war crimes that are being discovered in the German concentration camps is taking place. I read, for instance, in the "Daily Express" (and this was confirmed in other newspapers), that "the few army men who have recorded the names and brief descriptions of some of the crimes, have only done this as a side line to other duties which have a prior claim. There is no time for inquiry. These men start to investigate an atrocity story, then receive an order to move on before the inquiry is under way. It seems to be nobody's job to take the evidence so that the only evidence may finally be that of war reporters who have been able to record the names, etc... of the Nazi and S.S. criminals. It seems nobody's specific work to see that these criminal's names are recorded even for a secret file and the result is that Germans who have maltreated or tortured numbers of Allied prisoners have even been enrolled in the Military Government Police Forces."

This was inevitable. As I have already pointed out (Doc. II/14 of May 17, 1944, p.3) the military authorities

"...have many other essential and more urgent tasks to perform and would consequently be in a difficult position to attend to the aforesaid (i.e. investigation) duties."

Now it appears that, notwithstanding our repeated recommendations that an Investigating Agency be set up in Germany, nothing has been done. Evidence is rapidly disappearing and in a matter of days it will be impossible to record and perpetuate it: the opportunity will have passed for ever.

For the benefit of those who were not at that time members of the Commission may I be allowed to recall that on April 7, 1944, I presented a report to the Commission in which, after having drawn the attention to the failure with which AMGOT had met in Italy (in respect of the punishment of war criminals) and the criticism directed in the Press against the lack of policy of that organisation, I wrote among others:

"....we must have some machinery ready to operate, at the moment of the Armistice, and the necessary men ready to step in and take charge."

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

etc....), (4) eventually agreed making a summary investigation on those statements, and finding the witnesses, (5) forwarding the accused together with his dossier to the place or country where the trial is to be held, (6) maybe: completing the half-ready cases mentioned above on page 4.

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

This was repeated in document C.14 of April 25th, 1944 (p.5/6).

On May 3, 1944, my proposal was discussed in the Commission, it "excited criticism" (doc. M.6, p.5) and the whole question of creating such an institution was referred to Committee II.

In Committee II, on May 11th, a detailed scheme was proposed on the lines suggested by me. In this paper the duties of the War Crimes Office were described as follows :

" The Office in question should be charged with the following duties :

- (1) to locate the whereabouts and to find, within enemy territory, the accused whose names are mentioned on the United Nations War Crimes Commission's Lists or whose delivery is directly requested for trial by one of the United Nations; to this effect the Office should have the power to question any persons who might give indications as to the place where the accused is residing or hiding;
- (2) to issue search-warrants with a view to discovering exhibits or documents which might provide proof of the charge or indications which might lead to discovering the place where the accused is in hiding; to order and conduct searches and medical examinations when necessary. It is obvious that if justice is to be administered properly only a judicial body will be in a position to carry out these tasks adequately;
- (3) to examine any witnesses or experts, either on office, upon its own initiative.....

- (4) to ascertain the identity of all persons accused of war crimes who are not known by name but only by their rank or position. It is certain that, as the War Crimes Office will be functioning in the territory where most war criminals are residing, and charged with the duty of finding war criminals, it will be in a far better position than the National Prosecutors to do this work;
- (5) to place under arrest and keep in custody the accused persons.
- (6) to take down the preliminary statements of the accused. It is obvious that the speed with which the trial can be conducted will be greatly hampered if the first statements of the accused can only be taken down after he has arrived in the country where he is to be tried. If, on the other hand, as soon as he is arrested, the accused is brought before an official of the judiciary, by whom a statement can be taken down this will save much time: the accused may for instance, from the beginning, disclose the names of those who have given him the order to commit the crime or of those upon whose instigation he has acted; he may also deny his guilt and give the name of those who he accuses of having actually committed the criminal acts. In all these cases the War Crimes Office should have the power to arrest now accused and to send them, together with the original accused, the witnesses, and the dossier, to the place or the country where the trial is to be held;
- (7) to obtain on the spot any information or expert advice which could not be obtained elsewhere;
- (8) to ensure the transport of the accused and witnesses to their place of destination;
- (9) to collect information which may lead to the discovery of other crimes or of further evidence;
- (10) to carry out, in the judicial field, any task which they might be requested to execute, by the judiciary or the Allied nations.

If a War Crimes Office is not created in Germany, it will be necessary that the above-mentioned duties be carried out either by the military authorities of occupation or else by German courts. The inadvisability of having German courts with these duties has already been pointed out. As to the Allied High Command, apart from the fact that it will have many other and more urgent duties it seems that, being essentially military, it will find such difficulty in performing these judicial tasks. Whatever body (whether the High Command or a War Crimes Office) is charged with the necessary tasks, an inter-allied agreement will be necessary to confer upon it the necessary judicial power.

It should be recommended that any action temporarily in the place of German courts in the field of investigation of war crimes, and the judicial tasks should include a clause whereby the German authorities are compelled to co-operate with it and to render such assistance as may be required."

This was repeated in a slightly different form in document II/14 (p.2), under the heading "Mission of the Agency".

The matter was discussed, but not all the questions arising out of my proposal were decided, and the Secretary-General then drafted document II/15 in order to obtain a decision of the Commission on this question.

On May 30 (doc. C.24), Committee II presented a draft report specifying the functions and organization of the proposed agency. The agency was to be organized for recording, among other duties, cases in enemy territory, making surveys on the spot and collecting information which might lead to the discovery of other crimes or further evidence. It is unnecessary to point out how valuable the work of such an agency would have been last week in collecting reliable evidence in the camps of Belsen, Buchenwald, etc...

During the discussions in Committee II it was agreed that the setting up of such an agency could not be carried into effect without the concurrence of the military authorities.

It was therefore proposed that the subject should be discussed with S.H.A.E.F. and this was done at an informal and unofficial meeting at which were present, besides Sir Cecil Hurst, Mr. Pell and myself, some members of the Commander-in-Chief's staff, including General Foster, who agreed that the institution of the proposed agency was a matter of necessity and urgency.

On June 9th, the Note C.28 was made.

Finally, on June 15th, the recommendation C.30 was adopted by the Commission. In this recommendation it was specifically pointed out that "when the Allied Forces are established in enemy territory..... an agency....." should be formed for the purpose of "apprehending and collecting evidence against men who are to be put on trial....", further that

" information must be collected as to cases of war crimes of which the perpetrators have not yet been identified. The above work can only be done by men who are acquainted with the language and the legal system of the country in which the trial will take place."

That was on June 15th, and the documents I have mentioned show that our Commission is not at fault for having failed to suggest adequate and practical measures for the investigation of crimes committed in Germany against Allied nationals, especially in the ill-fated concentration camps, the appalling conditions of which were well known.

At the end of July we had no news yet of the outcome of our proposal. I had several talks about this with the Chairman and finally I sent him a private letter on July 24, 1944, in which I said how much I regretted this state of affairs:

".....There is also a total absence of any information about our proposal to set up an agency for the apprehension of war criminals in Germany, it might be of some use if we could supplement our proposal with a detailed view of our conception; but we have not been asked to do so. As I have said before, how can we propose suitable measures when we know nothing of what is planned by the High Command in respect of punishment, and we do not even

know if anything is being planned in this field.....
 More and more evidence is forthcoming that, together
 with suppressing as much evidence as possible of their
 crimes, the Germans are making large scale
 preparations (including mass production of forged
 identity papers) to escape the consequences of their
 guilt. It will need not only a well trained body of
 German-speaking and German-knowing police to track
 them down, but also a strong body of investigation
 magistrates familiar with the Continental practice,
 to question the accused persons, to sift the
 evidence, prepare the dossiers and assist the justice
 of the United Nations (whether national or inter-
 national) in every way. Obviously, such an agency
 should be either directed by one of the members
 of our Commission, or else in constant and very
 close liaison with the War Crimes Commission. Lack
 of liaison with the responsible organs which will
 be charged with the execution of punishment, lack
 of knowledge even whether there are any organs which
 will be charged with such duty, is, in my opinion,
 deeply regrettable."

For a long time we had no news whatever about the outcome
 of this recommendation. Finally, a few weeks ago we received a
 copy of the "Eclipse" memorandum No. 10, in which it was said that
 during the operational phase (which is the present phase)

"particulars of war crimes committed against
 other (other than British and U.S.) Allied
 civilians or members of the resistance
 movements which came to the notice of
 Commanders will be forwarded to G-1 Division
 Shaeff, for transmission to the Allied authorities
 concerned who will carry out the final
 investigation."

This calls for some comment. The "operation period" may last
 some time; how is it possible for the Allied authorities to carry
 out any investigations during that period? They are not on the
 spot, they have no representatives there, no means of investigation.
 There is no evidence that qualified Allied representatives have been
 called to take down evidence in camps such as Belsen, Buchenwald, etc...
 where their own nationals were interned and tortured. If evidence
 is to be of any use at all it must be taken down when it is fresh
 and not when it is several weeks stale.

Only the National Offices are qualified to bring cases to the
 notice of the War Crimes Commission. How can they be expected to
 put forward cases of atrocities in German camps of which they
 have no possibility of knowing anything, and are the criminals
 to escape for lack of organizing the necessary machinery?

Now we hear that crimes are not properly investigated.
 Amateur recording haphazardly taken down by officers who have the
 best intentions but who - unlike lawyers and continental Judges
 d'Instruction - are not specialists trained for that kind of work
 will not lead to much. The work must be done specially and
 systematically otherwise it will be of no use.

The consequence of the present state of affairs is that S.S. men (whom this Commission has recommended should be kept in custody), and even listed war criminals, seems to have been left in charge of camps, and that they still go on murdering prisoners and internees. Not only there is not the appropriate authority to investigate their crimes but, if the reports which we hear are true, their names are not even taken down.

I therefore propose that this Commission should urgently establish in Germany a War Crimes Office charged with the mission described in the above-said documents.

This is within our province :

Our Commission has been instituted, according to Lord Simon's speech of October 7, 1942 :

" to investigate war crimes committed against nationals of the United Nations, recording the testimony available....."

and to

".....report from time to time to the Governments of those Nations cases in which such crimes appear to have been committed, naming and identifying wherever possible the persons responsible."

We are a Commission for the Investigation of War Crimes and no restriction has been placed upon us as to the means by which this investigation was to be carried out. We were left entirely free to carry out our terms of reference as we thought fit. It was found undesirable to increase the staff and therefore it was understood that we could content ourselves with receiving dossiers submitted by the National Offices, and abstain from any active investigation ourselves. In the beginning this policy was defensible, notwithstanding I have always been opposed to it.

In the private letter to the Chairman of July 24th, 1944, to which I referred above, I wrote :

" It seems to me that two courses are open to us:
1. The first course : be content with adopting a passive attitude, and take cover behind the literal sense of our terms of reference, confining ourselves to our lists of accused and to our study of legal and judicial problems, clearly repudiating any responsibility and blaming the narrowness of our terms of reference for any possible failure. In this case we should demand that statements which throw a false light of the extent of our activity be discontinued, for they are likely to mislead the public on the results which may be expected from our work.
2. The second course : Not only is the public expecting from us something more than academic discussions on legality and judicial machinery, but even in official circles there seems to be a widespread belief that we are invested with some kind of executive power or at least with authority to do more than make mere platonic recommendations. The statement made last Thursday in the House by Mr. Hall is, in that respect, characteristic.

Furthermore, we are the only body specially concerned with the punishment of war crimes and it is obvious that our Commission will be, as time goes by, more and more closely connected with this problem. Events are precipitating, and we have not yet got ready that blue-print which is so urgently needed. We have not got it because we have no knowledge of the concrete plans for the occupation, nor of the machinery which will be used to catch the criminals. We are, in other words, expected to recommend the best way to use a tool, when we have not the faintest idea of what the tool is; and we do not know whether it is good or bad; if we think it is no good, we should have an opportunity to say so, before it is too late. It is therefore necessary that we should be kept informed in detail about the bodies which were designed to work out the scheme, and about the way in which they will work."

It was unfortunately decided to follow the first course. In my opinion there was little justification for doing so. The task of the Commission is not merely to receive cases on the pretext that we have not the staff to do more. We should have recruited the necessary personnel and set up the Commission on a sound and practical basis long ago. The repercussions of this situation are being felt now. We should not have been content to remain passive, for investigation is not merely passive and comprises active and constructive duties: it is our duty to see that it is done properly and completely, and the United Nations are relying on us to see that it is adequately done.

We had obviously no power to function in any Allied country as would an investigating magistrate, but the narrow construction that was placed upon our terms of reference as meaning that we could not either operate in conquered territory or was not imposed upon us. We could have demanded - we can still do it - that our Commission should be given the opportunity to conduct investigations in occupied Germany. It is now proved that there is no other body that is undertaking this task. It is therefore our duty to undertake it ourselves. Personally, I am prepared, if given the necessary staff, and if my Government consents, to set up and conduct the work of the agency which I visualised more than a year ago, if such is the desire of the Commission.

It is easy for those who are not affected by the Nazi horror to express academic views on these matters. Personally, my only nephew is still in the camp of Fallingbomel and another of my near relatives is in Buchenwald. As a member of this Commission I am responsible towards my Government and my countrymen, as an individual I am responsible towards my family and I wish to make it quite clear that, in good time, more than a year ago, I did all I could to draw the attention to the shortcomings of the machine and on the necessity to avoid a repetition of past errors. I foresaw the happenings of today and proposed a constructive remedy. I deeply regret that action was not taken to carry out our proposals in an efficient and satisfactory way. My most sincere desire is that this Commission may come up to the expectations of the public. I could explore it very much if, through lack of vision, and taking cover behind an erroneous interpretation of our terms of reference, our Commission was to fail in its duty towards mankind.

There are other reasons why it would be proper for our Commission to stop on without delay.

In the instance of Kramer, the "Beast of Belsen", is there not a danger that he may be released after some time because no country brings a charge against him, each country relying either on the others - or on the War Crimes Commission - to see that he is maintained in custody and indicted? Should not there be an office to co-ordinate this business where several countries are involved, to decide upon the country that shall try accused persons who have committed crimes against nationals of several countries, and to avoid that men such as Kramer escape punishment through lack of organisation?

As Chairman of Committee I I have also some misgivings about the so-called "C" cases. In respect of accused whose identification is absolutely insufficient to permit their arrest we have simply set the case aside, warning the National Office that it was for them to supply complementary information if they wished to see the accused arrested. In many cases the National Office has answered that they are not in a position to do so, and some have even pointed out that, with the international connections and the numerous sources of information which are at our disposal, we are better placed than they. Nevertheless we have done nothing more to help them, on the grounds that we have not the necessary staff. But is that a good reason? Are we really justified in declining to carry out the task of investigation with which we have been specifically charged? Have we the right to say that we are merely a Commission for the "receiving" of dossiers and that we have not the duty to investigate crimes which demand international information and in respect of which the Governments, that cannot investigate outside their boundaries, are powerless? When we are called to account, will the public be satisfied with our merely "standing by"? I believe not, I believe it will be indignant that we have not ourselves instituted the necessary machinery for the proper investigation of crimes committed in Germany.

In my opinion it is necessary that we make a list of the accused insufficiently described and in respect of whose identity further research is needed in Germany. The war crimes agency would be charged with making inquiries and finding the accused who are now classified "C". It should have the power to impose punishments when there is a deliberate refusal of information, destruction of archives and records, etc....

For all these reasons I propose that :

1. In view of the absence of proper recording and investigating of the atrocious crimes that have been committed in Germany and in order to perpetuate evidence, in view also of the fact that much evidence is rapidly disappearing, the War Crimes Commission shall set up without delay in occupied Germany an Agency for the Investigation of War Crimes;
2. The said Agency be charged with the duties described in document C.24 and furthermore with the task of deciding the country to which shall be sent, for trial, such accused as have committed crimes against nationals of more than one Ally.

SECRET

C.98
30 April, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

NOTES OF THE CZECHOSLOVAK REPRESENTATIVE ON DOCUMENT

C.87(1), SEC. 4. PAR. "K"

In the dossiers submitted to the U.N.W.C.C. (we have specially in mind the Czechoslovak cases) persons were several times charged on the sole ground of their membership of a body, (or unit) members of which were as a whole or partly under the suspicion of having participated in the particular war crime. It has not yet been possible to ascertain in which way each member actually participated in the crime under consideration. Thus the Czechoslovak National Office charged, for instance, in the case "Forced Labour" (Z 13/44) leading officials of the Reichsprotector office (in charge of the Forced Labour organisation), in the case Buchenwald (Z 11/44) officials of the police (Gestapo) departments which were concerned with the relevant districts of the Protectorate of Bohemia and Moravia.

In the dossiers concerned with the crimes which were committed in the various concentration camps (Dachau Z 10/44, Buchenwald Z 11/44, Natzweiler Z 12/44, Terezin Z 15/44 etc.) the Czechoslovak National Office charged the members of the SS garrison of the particular camp. In the cases Dachau, Buchenwald, and Natzweiler the Czechoslovak National Office was able to state the names and ranks of at least a portion of these members. All the members of the garrison mentioned by name are to be listed on Document A, according to the decision of Committee I. In the case of Terezin (Z 15/44) it was possible to identify for the time being just the name of the commander of the camp. The Czechoslovak National Office has therefore, charged under No. 101 the "unknown members" of the SS battalion of the 6 SS Totenkopf Division garrisoned in Terezin who are to be put on the list A as a unit according to the decision of Committee I.

Should it be possible in future to amend the list of the members of the SS garrison in Dachau, Buchenwald or in Natzweiler, it will be necessary, according to the practice of Committee I to submit a new charge against the newly identified persons and they could be listed only after a new decision of the Commission.

In the analogous case of Terezin there was already decided that all members of the SS garrison of this camp are to be listed. Although this case was less complete than the other similar cases the procedure of amending would be simpler. As soon as the names of the members of the garrison were known it would be sufficient to notify them to the Commission which would complete the already existing lists without circumstantial proceedings.

In cases where the mere membership of a body (unit) is the basis of the charge against certain persons or groups of persons, the supplementing of the submitted names will generally be necessary and possible.

In our opinion it would simplify matters if a procedure of the kind mentioned in the case Terezin could be applied in all similar cases. An appropriate form of the charges has already been proposed in Sec. 4,6 K of the dossier C.87. It is suggested that in all cases where such charges are submitted the whole body (unit) should be listed (either under "A" or "S") in both cases whether the names and particulars of the members of the units are wholly or partly unknown. It would thus be possible to supplement the charges without a complicated procedure.

VERY SECRET

C.95
2 May, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

MEMORANDUM ON THE INTEGRATION OF AGENCIES

CONCERNED WITH WAR CRIMINALS

Submitted by Committee II

1. With the rapid advance of the Allied Forces into Germany and the occupied countries, the need for co-ordinating the activities of the various major agencies concerned with the bringing of war criminals to justice becomes most apparent and urgent. These agencies are as follows:-

- (a) The Supreme Commanders in the several theatres (including any Control Commissions which may take over in these theatres);
- (b) The United Nations War Crimes Commission;
- (c) The Allied Governments concerned (which have established National War Crimes Offices).

2. The establishment of a closer relation between the Commission and the staff of each Supreme Commander is essential if confusion and delay are to be avoided. It is evident that the work of obtaining evidence in the field and on the spot remains at this stage primarily with the Supreme Commanders. However the maximum amount of information as to war crimes must reach the Commission with the minimum of delay in order that the criminals may be quickly listed, apprehended, segregated and held for such form of trial as may be determined by Governmental decision. Moreover, it must be made sure that the maximum amount of information concerning war crimes against their nationals is transmitted from the Supreme Commanders to the Governments concerned.

3. Having regard to the principles underlying the Moscow Declaration, it may be said that the criminal acts committed by the enemy during this war fall into two principal categories:-

- (a) Crimes having an international character (as in the case of the so-called horror camps recently over-run in Germany and the occupied countries);
- (b) Crimes having a limited national character in that the crimes affect the nationals of one country only.

4. The Governments have a joint interest in crimes of an international character, even though the several nations may each have a particular interest. It is felt that information as to these "international" crimes should reach the Commission from all possible sources without delay so that the criminals implicated may be listed, and so that suitable dossiers may be compiled by the Commission against them. Otherwise, the Commission would have great difficulty in discharging the obligation imposed upon it by the Governments to provide an over-all picture of enemy criminality during this war. Again, this would, of course, facilitate the apprehension, trial and punishment of the offenders.

5. In turn, the Commission should continue to provide the Supreme Commanders with lists of the criminals indicated with the minimum of delay so as to assure their identification and apprehension. The Commission also, of course, would collate and present to the participating Governments lists of these "International Criminals" and accounts of the evidence compiled against them. The Commission could serve, in addition, as a clearing-house for the National Offices in respect of the crimes which should be brought to the attention of particular Governments.

6. It would appear to be greatly to the advantage of all concerned if there were established at once a close relation between the Commission and SHAEF (and other Supreme Commands). It is believed that this close relation could best be established by the appointment of a senior representative of the Supreme Command to sit constantly on the Commission for the sole purpose of keeping alive the channels of communication and dealing with such other matters as might be associated therewith or developed from time to time. Similarly, a responsible senior official of the Commission should be attached to the H.Q. of the Supreme Commander. In this way, the objects outlined above should be capable of accomplishment without undue difficulty.

7. To establish this close relation three steps would seem to be indicated, as follows:-

- (a) An understanding reached with the Supreme Commanders that the above-expressed reciprocal need existed;
- (b) A decision to implement the understanding in the manner above mentioned. (This decision would perhaps be made by the interested Governments or by the Combined Chiefs of Staff, but it is possible that working arrangements might be made with the Supreme Commanders themselves);
- (c) The Selection and appointment without delay of competent liaison officers as above outlined.

8. It would seem that immediate negotiations should be opened with SHAEF along these lines. Similar negotiations should be opened with other Supreme Commanders and also with such Control Commissions as are or may be established.

9. For the moment it is recommended that immediate arrangements be made for Lord Wright and for others to contact SHAEF in this matter.

SECRET.

C.100.
2nd May, 1945

UNITED NATIONS WAR CRIMES COMMISSION

DRAFT RECOMMENDATION TO THE GOVERNMENTS CONCERNING
PENAL SANCTIONS FOR THE THREAT OR USE OF FORCE.

Submitted by Committee II.

I.

Committee III of the Commission, composed of the representatives of Belgium, China, Czechoslovakia, Greece, Netherlands, Norway, Poland, United Kingdom and United States, considered the resolution on the subject of the "Scope of the Retributive Action of the United Nations" (Doc. C.20). This resolution contained inter alia the following statement:

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

"1. The crimes committed for the purpose of preparing or launching the war, irrespective of the territory where those crimes have been committed."

On 18th September 1944 it reached the conclusion and recommended to the Commission that, while acts committed by individuals for the purpose of preparing for and launching aggressive war, and not falling within certain exceptions mentioned by it, were, lege lata, not war crimes, it was desirable that for the future penal sanctions should be provided for such outrages. (Doc. C.55).

Dr. Ecer, representative of Czechoslovakia, disagreed with the Committee's conclusion, viz. that acts committed by individuals for the purpose of preparing for and launching aggressive war were not war crimes, and filed a separate report with the Commission. (Doc. C.56). However, except as this view rendered it unnecessary to consider whether future penal sanctions should be provided, it was not urged that it was undesirable to expressly provide such sanctions.

After discussion in the Commission, consideration of the principal question was referred to the Governments with the request that the Governments make known to the Commission their views thereon.

One of the principles proclaimed by Chapter II of the Dumbarton Oaks Proposals is as follows: "All members of the Organization shall refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the Organization". Thus, not only war, but "any use of force" or "threat of force" are prohibited by the proposals.

Observance of this rule is to be enforced by the Organization not only in respect of member States but also in respect of States which are not members of the Organization. An effective means to ensure such compliance is the establishment of individual responsibility for persons who acting for States violate the rule. Therefore, it would seem that the Charter of the United Nations is an appropriate place to set forth the principle of individual responsibility for the threat or use of force, and thus provide future penal sanctions for acts committed for the purpose of preparing and launching aggressive war.

It is therefore recommended that the Charter of the United Nations establish in substance the following rule:

"Any person in the service of any State who has violated any rule of international law forbidding the threat or use of force, or any rule concerning warfare, especially the obligation to respect the generally recognised principles of humanity, shall be held individually responsible for these acts, and may be brought to trial and punishment before the civil or military tribunals of any State which may secure custody of his person."

III.

In addition to the foregoing recommendation, it is believed highly desirable to establish a solid legal basis, which will stand any scrutiny, in respect of the trial and punishment of individuals for the launching of the present war.

During the discussion in the Commission, divergent views were expressed as to whether acts committed by individuals for the launching of aggressive war are, lege lata, war crimes. This, of itself, would seem to indicate that it is, at least, doubtful whether such acts are so plainly war crimes as to withstand reasonable scrutiny and criticism. Yet, all members of the Commission were of the opinion that, among all the monstrous acts of Axis individuals, the launching of the present war was the most serious and notorious violation of the generally accepted principles of morality.

On the other hand, the existence of opposite views upon the mentioned question may also indicate that the meaning of the Kellogg-Briand Pact, which was the primary ground for both sets of opinions, is not clear in this regard. Some members urged that the provisions of the Pact created individual criminal responsibility for the launching of aggressive war, and, hence, that the launching of the present war was a war crime. Other members contended, in general, that the consent of States can not be presumed and that, in the absence of any provisions in the Pact from which individual responsibility could be presumed, individual criminal responsibility for the launching of aggressive war did not exist. They believed that these acts were not "war crimes" within the accepted meaning of that term. The existence of this diversity of opinion may indicate that the Kellogg-Briand Pact is ambiguous.

If the Kellogg-Briand Pact is ambiguous in the mentioned respect and it was intended, as maintained by some members of the Commission, that individual criminal responsibility should attach to those who launched an aggressive war, it would seem highly desirable that its meaning be clarified and that its original intent be clearly declared to that effect. If the stated premises exist, such a declaration is not legally objectionable because it would merely clarify the original meaning of the Kellogg-Briand Pact. It would not constitute an ex post facto crime. Likewise, it is not morally objectionable for it makes law and morality coincide. If the stated premises exist and such a declaration were made, it would afford a sound basis for the trial and punishment of the individuals guilty of launching the present war.

The launching of World War II and the crimes committed in the war are the facts which led to the organization of the United Nations, and thus are in such close connection with it that it is justifiable that its charter should deal with these outrages. It also seems an important function of the charter of a league, whose purpose is to prevent the repetition of aggression and crime, to plainly declare the original intent of the Kellogg-Briand Pact and to state that the aggressions of the Axis Powers since that Pact have been war crimes. This could be accomplished if the mentioned premises exist.

Inasmuch as the great majority of nations which were signatories of the Kellogg-Briand Pact are now members of the United Nations and all of the signatories may become members, they would seem especially qualified to declare its original meaning.

It is therefore recommended that if the Governments believe that the Kellogg-Briand Pact is ambiguous and that it was intended that individual criminal responsibility should attach to those who launched an aggressive war, the Charter of the United Nations establish in substance the following rule:

"It being the original intent and meaning of the Kellogg-Briand Pact, signed 27th August 1928, that any person in the service of any Party-State, who violated its provisions condemning recourse to war for the solution of international controversies and renouncing war as an instrument of national policy in the relations of the parties to one another should be held individually responsible for these acts, it is declared that the aggressions of the Axis States since the signing of the Pact violated its provisions and that the persons in the service of such Axis States are individually responsible for such acts and may be brought to trial and punishment before any United Nations court or other tribunal of competent jurisdiction which may secure custody of such persons or any of them."

SECRET

3 May, 1945

UNITED NATIONS WAR CRIMES COMMISSION

NOTE BY THE LEGAL OFFICER

on

Part I of Dec. C.100 (Draft Recommendation concerning
penal sanctions for the threat or use of force)

Part I of the Draft Recommendation intends to fill the gap (alleged or real) in the present state of the law which is, or is alleged to be, to the effect that individuals violating the rules of international law forbidding the use of force are not individually criminally responsible.

According to the view of those who hold that at present this lacuna exists, a court, international or national, could not find the offenders guilty because of the two maxims:

- 1) nullum crimen sine lege;
- 2) nulla poena sine lege.

Part I of the recommendation removes, for the future, the obstacle consisting in the first of the two maxims in expressly providing that "any person ... shall be held individually responsible ... and may be brought to trial and punishment ..."

Thus, the recommendations, if accepted, and if made part of the municipal legal orders of the members of the community of nations, would satisfy the first maxim by providing a "lex" under which the acts in question would be crimes.

The text of the recommendation does not, however, remove the obstacle presented by the second maxim because it does not provide for a penalty.

It is to be expected that national legislatures in making the recommendation part of their municipal law, would simultaneously introduce legislation providing the penalties to be imposed for the offence. It may also be that, in some legal systems, the courts, by judicial legislation or by the application of "general principles of customary international law" would be in a position to pass sentence in the absence of a legal provision fixing penalties.

But in many countries courts applying the recommendation would have difficulties similar to those which confront them today: they would not have before them a law stating the sentence that they were called upon to pass upon the criminal.

I, therefore, recommend that the international conventional rule itself should provide - though in a general way only - not only that the act is a crime but for the penalty as well, and that the draft be supplemented accordingly.

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I submit the following alteration (C.100, p.2, line 6):-

The words: "and may be brought to trial and punishment before
"the civil or military tribunals of any State which may secure
"custody of his person" could be replaced by the following text:

"and may be brought to trial before the civil or military
"tribunals of any State which may secure custody of his person
"and punished by death or any lesser punishment".

SECRET

C.101
2 May, 1945

UNITED NATIONS WAR CRIMES COMMISSION

VISIT OF DELEGATION TO BUCHENWALD CONCENTRATION CAMP

IN GERMANY

R E P O R T

At the invitation of General Eisenhower, a Delegation from the War Crimes Commission on the 26th and 27th April, 1945, made an inspection of Buchenwald Concentration Camp near Weimar, Germany, and subsequently consulted with United States Investigation Officers in the field and Allied Staff Officers at the Supreme Headquarters Allied Expeditionary Force (Forward).

The conditions at Buchenwald Camp had been made the subject of a number of cases filed with the Commission by various Governments over the past year. These cases had disclosed that this camp was a means for exterminating peoples from all of the German-occupied countries of Europe and that torture, malnutrition and other organised brutalities were the rule and not the exception. As a result the Commission had placed upon its lists of war criminals a number of persons believed to have been responsible for this phase of the German reign of terror. Consequently the Commission deeply appreciated the invitation of General Eisenhower and the opportunity to confirm at first hand the findings which it had already made.

The Delegation consisted of the following Representatives:-

Lord Wright (Chairman)	Poland
Dr. T. Cyprian	China
Mr. D.Y. Dao	Belgium
General M. de Baer	Netherlands
Dr. J.M. de Moor	India
Mr. S.N. Dutt	Czechoslovakia
Dr. B. Eder	United Kingdom
Lord Finlay	France
Prof. André Gros	U.S.A.
Lt. Col. J.V. Hodgson	Canada
Wing Comdr. E.R. Hopkins	Australia
Mr. J. Oldham	Greece
Mr. C. Stavropoulos	

Also accompanying the Delegation were Lt. Cmdr. Latta, Lt. Prowse, and Lt. Rainey, United States Navy. Major J.B. Ford (Grenadier Guards) was in charge of the Delegation throughout the journey.

The Delegation left England by air at 9.20 a.m. on the 26th April and after passing over Arras made a short stop at Brussels. The plane then flew on to Weimar which was reached in the early afternoon.

On arrival at Weimar the Delegation was met by Colonel Claude B. Mickelwaite, J.A.G.D., Staff Judge Advocate, 12th Army Group and Colonel M. Brannan, J.A.G.D., Staff Judge Advocate, First United States Army, and then drove through the town to the Elephant Haus where it was accommodated. The Delegation then

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proceeded by motor transport to Buchenwald which lies about a quarter of an hour's motor drive from the town. It will be seen that the existence of the camp and the conditions therein must have been well known to the inmates of the town.

At Buchenwald the Delegation, accompanied by Colonel Mickelwaite and Colonel Brannan, was received by the United States Army officers charged with the administration of the camp. Before inspecting the camp the Delegation assembled in the Administration building, formerly occupied by the S.S. Commandant. Here Colonel Mickelwaite explained the history and lay-out of the Camp. He said that it was captured and first occupied by the Third U.S. Army and that on the 11th April it was taken over by the First U.S. Army. He also stated that in addition to the actual inmates found at Buchenwald there were at the time of liberation approximately 33,000 male and 27,000 female prisoners who lived outside of the Camp and were scattered throughout the surrounding countryside. They were under the administrative control of the S.S. at Buchenwald.

Major McVee then explained in detail the organisation of the camp. It had been founded in July 1937 for the incarceration of German political prisoners and was constructed to accommodate 6,000 inmates. Since the outbreak of war it had been used for the reception of political prisoners from various occupied countries. The number of prisoners gradually increased until it reached a peak of 51,000 in 1941. Shortly before the United States Army freed the camp there were 48,500 prisoners but it had been established that during the eleven previous days from 18,000 to 22,000 had been removed from the camp by the German authorities.

In discussing the form of investigation adopted by the United States authorities Major McVee said that statements had been taken from 150 selected inmates, the selection being based on nationality and length of incarceration. These statements amount in effect to diaries and tell a complete story of the experiences of each inmate from the time of his apprehension by the Germans to the time of his liberation. As a result a great deal of evidence now exists not only in regard to the concentration camp at Buchenwald but also in regard to Auschwitz, Nordhausen and other concentration camps. Moreover, a general picture was thus presented of Nazi methods in dealing with political prisoners. Major McVee said that it was clear that a large number of Russian prisoners of war had been detained at the camp and that they had been treated as political prisoners. (After 1943 many Russian prisoners of war were invited to join the Wehrmacht. If they refused, their category was changed from prisoner of war to that of political prisoner and they were confined at Buchenwald and other concentration camps.)

The official camp records found at Buchenwald indicated that 32,000 prisoners perished at the camp from the time of its inception to the time of Allied occupation. However, reliable estimates from United States Investigation Officers set the figure at not less than 51,000. It is likely that further investigations will reveal that the figure of 51,000 is an underestimate. The death-rate at the time of the occupation was approximately 200 a day, but due to evacuations from the camp and to improved conditions the rate had fallen (by April 26th) to 20 to 30 a day.

Major McVee said that there were four types of premises which were used for the furtherance of the sadistic programmes of the German authorities. These were as follows:-

- (a) The Crematorium. This building contained six ovens, each of which was capable of consuming three or four bodies at a time and often (due to extreme emaciation) five or six. In the basement of the crematorium was a torture chamber fitted with hooks for the torture and strangulation of the prisoners. Elaborate precautions were taken to conceal all evidence of brutality. For example it was well-drained and hosed-out after each incident of brutality and an air ventilator served to remove the stench. In addition an elevator served to carry out tortured bodies to the crematorium above. Before cremation the bodies were thrown into a pit to await cremation. At the time of occupation of the camp there were 2,000 bodies awaiting cremation.
- (b) "Riding Stable". This was used principally as an execution chamber for Russian prisoners. The Russians were brought there for the stated purpose of being physically examined. After being stripped and examined they were (ostensibly for measuring their height) stood up alongside a wall from behind which, through apertures, they were shot in the head, the bullets penetrating upwards and lodging in the ceiling of the stable. Bullets still remain embedded in the ceiling. Part of the ceiling however had recently been replastered by the Germans evidently in an effort to conceal this evidence.
- (c) "Shooting Gallery". This was situated in a building beyond the crematorium in the eastern part of the camp. The official investigators had secured direct evidence that inmates were, from time to time, summarily shot there without trial.
- (d) "Barracks No. 38" - ("The Hygienic Institute"). This was a laboratory for experimentation on inmates by doctors placed there for that purpose. It was revealed that inmates of the camp on the whole preferred to be selected for this type of experimentation rather than to remain in the squalor and under the revolting conditions which existed elsewhere. The subjects of experimentation were given better food, better quarters and were assigned lighter duties than the remainder of the inmates of the camp.

Various members of the Delegation then questioned Major McVee and he explained that the identity of all the camp Commandants was known. He mentioned in particular the notorious Commandant Koch whose special form of sadism resulted in the killing of inmates for the purpose of obtaining their tattooed skin. Specimens were handed to the members of the Delegation for examination.

Major McVee then explained that the inmates of the camp were dressed in zebra-like costumes marked with triangular tabs to indicate nationality, etc. For example, a red tab meant a political prisoner a green tab a non-political German prisoner, a yellow tab (in which the triangle was placed with its apex pointed upwards) a Jew. Near the tabs were attached letters

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indicating the nationality of the inmate; for example "P" for Polish. Germans and Austrians were not so lettered. For differentiation the Austrians, since liberation had themselves placed the letters "OO" alongside the triangle.

The Major then described the manner in which prisoners recently evacuated from Auschwitz and other eastern camps were transported to Buchenwald. These evacuees arrived in Buchenwald in appalling condition, a large percentage of each draft being dead on arrival but in no way segregated from those who were living. He said that the camp at all times had been administered by the S.S., of whom there were 2,200 in April, 1945. Most of the guards had fled the camp before the United States occupation, but a small number had been apprehended. The inmates were required to raise their hats when meeting the S.S.; apparently for not so doing the penalty was a beating. The S.S. did not invariably carry clubs but these were always at hand. He said that the identification and apprehension of S.S. guards and other wanted war criminals was being carried out by C.I.C. (Counter-Intelligence Corps of SHAEF).

Major McVee lastly referred to the Central Parade Ground ("Appel" Square). The prisoners were assembled on this square at 6 a.m. each morning and also periodically during the day for roll-call and general instructions. If anybody was missing from a parade the common practice was to keep the whole of the remainder standing in the square until the missing person was recovered; this sometimes occupied hours. Late-comers were beaten.

After hearing Colonel Mickelwaite and Major McVee, the Delegation was divided into groups of from three to five and commenced their inspection of the camp. Each group had with it a former prisoner who could speak English and who acted as a guide. The statements made by the United States Officers were more than substantiated by the sights each party saw. The following observations made by members of the various parties may be of interest:

- (1) The whole impression created by the inspection of the camp was one of cold-blooded, scientific and premeditated savagery calculated to degrade, dehumanise and exterminate the inmates. (It must be remembered, however, that Buchenwald is only one of a system of concentration camps, and from the evidence in the files of the War Crimes Commission was by no means the worst. For example, the exterminations at Auschwitz and Maidanek were on a far greater scale.
- (2) The majority of the surviving inmates showed evidence of systematic starvation. Their bodies were wasted and many appeared to be tubercular. The mental condition of many of the inmates had obviously been seriously impaired. Some were unable to answer questions. Many were unable to stand up.
- (3) The Delegation saw Buchenwald under the best possible weather conditions, the day being a pleasant spring one with a bright sun and a fresh breeze blowing. These favourable conditions did not, however, dispel the pall of death, disease and squalor that hung heavily over the whole filthy camp and its evil surroundings, nor did they dissipate the foul stench that emanated from all quarters. It must be considered too that these conditions existed although the Americans had been at work disposing of the dead bodies, removing the worst cases of malnutrition and disease and generally clearing up the camp for a period of nearly a fortnight.
- (4) It was of interest to note that the evacuation of various nationals appeared to be taking place as quickly as conditions permitted. While the Delegation was at the camp small parties of prisoners were continuously evacuated.
- (5) Certain members of the Delegation found among the inmates friends whom they had not seen for many years. The Czechoslovak Representative, Dr. Ecer, who, before his escape from his country in 1939, was the Deputy-Mayor of Brno, discovered that the Mayor and other members of the Town Council at Brno were still alive and at Buchenwald. As it had been reported that Brno had been liberated by the advancing Russian Forces that day, the reunited members of the City Council held a meeting at the camp. Another European Member learned that his cousin, a Colonel, had died one month previously from starvation, the weight at death being forty pounds.
- (6) All members of the Delegation interrogated inmates. Many members were able to interrogate inmates in their native language.
- (7) The precision bombing by the Royal Air Force of the factory attached to the camp on the 24th August, 1944, was noted and admiration was expressed at the accuracy displayed.
- (8) It was noted that the nationals of each country represented in the camp had, so far as practicable, banded themselves together in separate huts. Outside the various huts there had been erected banners welcoming the Americans as liberators.

- (9) A large number of children have been removed from the camp, but many were still to be found there. They were clothed in the zebra suits worn by adults and were stunted and obviously in poor condition.
- (10) Every now and then one came upon a particularly bad case where the inmate's skin looked like parchment. In addition, as the day was a warm one and certain prisoners were stripped to the waist and sunning themselves, one was able to observe the appalling results of malnutrition.
- (11) Finally, one obtained an overall impression of the mixture of scientific and primitive methods employed to dehumanise the inmates. For example, in the torture chamber (as at other places where hangings were carried out) the gallows ropes were less than 2 ft. in length between hook and neck; thus slow strangulation was ensured. When the S.S. became impatient at the length of time which a prisoner took to die, as in the case of the more emaciated victims, they clubbed the unfortunate man to death. The club used was produced to the Delegation. At the back of the chamber was a lift used for conveying bodies to the crematorium above; this lift was an up-to-date piece of mechanism, well polished, and bearing the makers' name.

After completing the inspection certain members of the Delegation conferred with their fellow nationals who were inmates of the camp and discussed with the latter problems relating to the investigation and recording of war crimes, evacuation to their respective countries, etc.

There was one group at the camp, 200 anti-Franco Spaniards, who asked that their plight be made known to the outside world.

In the late afternoon the Delegation left the camp and returned to the hotel. After dinner there was time for a short walk about the town.

During the evening the Delegation had consultations with Major Baule, J.A.G.D., who had come from the concentration camp at Nordhausen (which lies 50 miles north-west of Buchenwald) in order to report to the Delegation the results of investigations so far carried out in that area. He stated that he had obtained the names of 2,000 S.S. men who had been in control at Nordhausen. The ration allowed to each person was calculated on the basis of the minimum food value necessary for the preservation of human life under normal working conditions. In fact, however, the prisoners were forced to work in the factory for from 12 to 16 hours daily. If, as a result, they failed to maintain the standard of production required of them their food allowance was reduced, and the cumulative effect was of course starvation. Over 100,000 persons had passed through Nordhausen, there being approximately 30,000 at any one period of time. Conditions seemed to be as bad as at Buchenwald, although the methods of cruelty practised differed in particulars. Still the general pattern of brutality at both concentration camps was similar, for example, beatings, tortures, starvation, etc. It was established that not less than 25,000 persons have perished at Nordhausen. The records of the S.S. in charge of the camp had been captured intact. The prisoners were largely Poles and Russians. Twenty-five statements had already been taken although the United States Forces had only been in occupation for a little over a week. Colonel Marr who was in charge of the camp at the time of liberation had found 2,000 bodies there.

The institution at Hedemar was then described. It was one of six similar organisations established to carry out "mercy killings". No medical instruments appeared to have been used; such instruments as were found there were rusty. The general method employed to bring about death was to

administer six times the amount of morphine normally given to invalids. In certain cases the men were buried alive.

The purported object of all these camps, according to the Germans, was to dispose of incurables. This claim proved to be untrue when the investigating officers exhumed the bodies of victims and pathologists found that these persons were not suffering from incurable diseases prior to their execution. At least 300 Poles and 150 Russians were identified as having been murdered at this camp.

The Delegation left Weimar at 9.30 a.m. on the 27th April, the plane circling over Buchenwald so as to enable a good view to be obtained of the layout of the camp and of the quarries where many prisoners were done to death in the course of real or alleged attempts at escape.

Owing to poor flying weather, Supreme Headquarters Allied Expeditionary Force (Forward) was not reached until 12.30 p.m. The Delegation consulted with high ranking officials of Supreme Headquarters.

The Delegation wishes to express its gratitude to General Eisenhower for extending an invitation to the Commission to make the inspection; to Brigadier General Ed. C. Betts, U.S.A., Theater Judge Advocate, European Theater of Operations, who conveyed General Eisenhower's invitation to the Commission and arranged for its visit to Weimar; to Lt. Colonel J.V. Hodgson (United States member of the Commission) for facilitating and expediting arrangements for the trip, and to Colonel Minkelwaite and Colonel Brannan and the other United States Army Officers in charge at Buchenwald and Nordhausen for the trouble they went to in order to ensure that the inspection was thorough and for the valuable information they imparted concerning conditions at the camps. The Delegation wishes also to thank the United States members of the aircrew for their efficiency and attention on the flight and Major J.B. Ford (Grenadier Guards) for the tactful and efficient manner in which he supervised arrangements.

SECRET

UNITED NATIONS WAR CRIMES COMMISSION

C. 102
May 2nd, 1945

PROPOSAL CONCERNING THE INVESTIGATION OF CRIMES
COMMITTED IN BUCHENWALD, BELSEN AND DACHAU
by Dr. Ecer

With regard to the result of the visit of the United Nations War Crimes Commission to Buchenwald, I modify and amend my original proposal of April 18th 1945 as follows:

1. The result of the visits of various parliamentary delegates of Great Britain and the United States of America and of various groups of reporters gave an impressive description of horrors in Belsen and Buchenwald. The report about our own visit to Buchenwald will confirm the facts already described and published.
2. The former prisoners of these camps and our peoples are expecting the second logical step: the investigation of crimes committed in these camps. Most of the national offices are unable to do this work as long as the ex-prisoners are in Germany. To wait for their return to their countries would cause a harmful delay. Moreover, the whole work should be done as a common action of the United Nations, thus the United Nations War Crimes Commission seems to be the only legitimate body for this purpose.
3. The investigation of crimes committed in the three above-mentioned camps and possibly in other camps is, in my opinion, a test case for the Commission. If we prove - and I am sure that we are able to prove it - our capacity to help the United Nations Governments and the SHAEF in these matters, our suggestions concerning the general scheme and machinery to be set up in Germany will be accepted by SHAEF and other allied authorities with great understanding. The practical results of our work in Buchenwald, Belsen and Dachau would be the best recommendation for our suggestions. Under such circumstances we should undertake immediately the first practical step: to organise a thorough investigation of crimes committed in the above-mentioned camps through machinery set up for this special and particular purpose. Moreover, according to my personal experience in Buchenwald, we will be able to set up teams of experienced lawyers, police officers, civil servants and medical experts on the spot in the camps among the ex-prisoners themselves, who will help us in every direction, so, for instance, I was able to bring to London a complete and precise list of 2,662 Czechoslovak ex-prisoners in Buchenwald who are, at the same time eye-witnesses of crimes committed in this camp. My countrymen worked all through the night of April 26th/27th in order to compile this list.
4. Thus I suggest:
 - a) To set up a Committee of Enquiry composed of five or six members of the U.N.W.C.C. who are willing to serve, for investigation of war crimes committed in the camps of Buchenwald, Belsen and Dachau or others.
 - b) Every member of the Committee should take with him an adequate number of staff and complete his team by qualified persons among the ex-prisoners.
 - c) The chairman of this committee should be authorized to take - in accordance with the members of the Committee - on the spot, all necessary measures in order to ensure the success of the investigation.
 - d) The chairman of our Commission should be authorized to contact immediately the competent authorities in order to obtain for the Committee and its staff permission, travel facilities and instructions for the commanders of camps to be visited.

SECRET

C.103
4 May, 1945

UNITED NATIONS WAR CRIMES COMMISSION

RECOMMENDATION TO THE GOVERNMENTS CONCERNING
PENAL SANCTIONS FOR THE THREAT OR USE OF FORCE

Adopted by the Commission on 3 May, 1945.

Committee III of the Commission, composed of the representatives of Belgium, China, Czechoslovakia, Greece, Netherlands, Norway, Poland, United Kingdom and United States, considered the resolution on the subject of the "Scope of the Retributive Action of the United Nations" (Doc. C.20). This resolution contained inter alia the following statement:

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

"1. The crimes committed for the purpose of preparing "or launching the war", irrespective of the territory where "those crimes have been committed."

On 18th September, 1944, it reached the conclusion and recommended to the Commission that, while acts committed by individuals for the purpose of preparing for and launching aggressive war, and not falling within certain exceptions mentioned by it, were, lege lata, not war crimes, it was desirable that for the future penal sanctions should be provided for such outrages (Doc. C.55).

Dr. Ečer, representative of Czechoslovakia, disagreed with the Committee's conclusion, viz. that acts committed by individuals for the purpose of preparing for and launching aggressive war were not war crimes, and filed a separate report with the Commission, (Doc. C.56). However, except as it is viewed rendered it unnecessary to consider whether future penal sanctions should be provided, it was not urged that it was undesirable to expressly provide such sanctions.

After discussion in the Commission, consideration of the principal question was referred to the Governments with the request that the Governments make known to the Commission their views thereon.

One of the principles proclaimed by Chapter II of the Dumbarton Oaks Proposals is as follows: "All members of the Organization shall refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the Organization". Thus, not only war, but "any use of force" or "threat of force" are prohibited by the proposals.

/ Observance

Observance of this rule is to be enforced by the Organization not only in respect of member States but also in respect of States which are not members of the Organization. An effective means to ensure such compliance is the establishment of individual responsibility for persons who acting for States violate the rule. Therefore, it would seem that the Charter of the United Nations is an appropriate place to set forth the principle of individual responsibility for the threat or use of force, and thus provide future penal sanctions for acts committed for the purpose of preparing and launching aggressive war.

It is therefore recommended that the Charter of the United Nations establish in substance the following rule:

"Any person in the service of any State who has
"violated any rule of international law forbidding the
"threat or use of force, or any rule concerning warfare,
"especially the obligation to respect the generally
"recognised principles of humanity, shall be held
"individually responsible for these acts, and may be
"brought to trial before the civil or military tribunals
"of any State which may secure custody of his person and
"punished by death or any lesser punishment."

Furthermore, it is recommended that the obligation be imposed in the Charter upon the Member-States to incorporate the above provision in the criminal Statutes of their country, provide a penalty and confer upon their Courts the necessary jurisdiction to try and punish the offenders.

SECRET

C.104

4th May, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

RECOMMENDATION TO THE GOVERNMENTS
CONCERNING THE INTERPRETATION OF THE
BRIAND/KELLOGG PACT

Adopted by the Commission on 3rd May, 1945

It is believed highly desirable to establish a solid legal basis, which will stand any scrutiny, in respect of the trial and punishment of individuals for the launching of the present war.

During the discussion in the Commission⁽¹⁾, divergent views were expressed as to whether acts committed by individuals for the launching of aggressive war are, lege lata, war crimes. This, of itself, would seem to indicate that it is, at least, doubtful whether such acts are so plainly war crimes as to withstand reasonable scrutiny and criticism. Yet, all members of the Commission were of the opinion that, among all the monstrous acts of Axis individuals, the launching of the present war was the most serious and notorious violation of the generally accepted principles of morality.

On the other hand, the existence of opposite views upon the mentioned question may also indicate that the meaning of the Kellogg-Briand Pact, which was the primary ground for both sets of opinions, is not clear in this regard. Some members urged that the provisions of the act created individual criminal responsibility for the launching of aggressive war, and, hence, that the launching of the present war was a war crime. Other members contended, in general, that the consent of States cannot be presumed and that, in the absence of any provisions in the act from which individual responsibility could be presumed, individual criminal responsibility for the launching of aggressive war did not exist. They believed that these acts were not "war crimes" within the accepted meaning of that term. The existence of this diversity of opinion may indicate that the Kellogg-Briand Pact is ambiguous.

If the Kellogg-Briand Pact is ambiguous in the mentioned respect and it was intended, as maintained by some members of the Commission, that individual criminal responsibility should attach to those who launched an aggressive war, it would seem highly desirable that its meaning be clarified and that its original intent be clearly declared to that effect. If the stated premises exist, such a declaration is not legally objectionable because it would merely clarify the original meaning of the Kellogg-Briand Pact. It would not constitute an ex post facto crime. Likewise, it is not morally objectionable for it makes law and morality coincide. If the stated premises exist and such a declaration were made, it would afford a sound basis for the trial and punishment of the individuals guilty of launching the present war.

The launching of World War II and the crimes committed in the war are the facts which led to the organisation of the United Nations, and thus are in such close connection with it that it is justifiable that its charter should deal with those outrages. It also seems an important function of the charter of a league, whose purpose is to prevent the repetition of aggression and crime, to declare plainly the original intent of the Kellogg-Briand Pact and to state that the aggressions of the Axis Powers since that Pact have been war crimes. This could be accomplished if the mentioned premises exist.

(1) The reference is to the Commission discussions of 10th October 1944 (M.35, p.3) and 17th October 1944 (M.36, p.3).

Inasmuch as the great majority of nations which were signatories of the Kellogg-Briand Pact are now members of the United Nations and all of the signatories may become members, they would seem especially qualified to declare its original meaning.

It is therefore recommended that if the Governments believe that the Kellogg-Briand Pact is ambiguous and that it was intended that individual criminal responsibility should attach to those who launched an aggressive war, the Charter of the United Nations establish in substance the following rule:

"It being the original intent and meaning of the Kellogg-Briand Pact, signed 27th August 1928, that any person in the service of any Party-State, who violated its provisions condemning recourse to war for the solution of international controversies and renouncing war as an instrument of national policy in the relations of the parties to one another should be held individually responsible for these acts, it is declared that the aggressions of the Axis States since the signing of the Pact violated its provisions and that the persons in the service of such Axis States are individually responsible for such acts and may be brought to trial and punishment before any United Nations court or other tribunal of competent jurisdiction which may secure custody of such persons or any of them."

SECRET

C. 105(1)
17th May, 1945

UNITED NATIONS WAR CRIMES COMMISSION

COLLECTIVE RESPONSIBILITY FOR WAR CRIMES

Recommendation to the Governments

Adopted by the Commission on 16th May, 1945

The United Nations War Crimes Commission, having ascertained that countless crimes have been committed during the war by organised gangs, Gestapo groups, S.S. or military units, sometimes entire formations, in order to secure the punishment of all the guilty, makes the following recommendation to the member Governments:-

- (a) to seek out the leading criminals responsible for the organization of criminal enterprises including systematic terrorism, planned looting and the general policy of atrocities against the peoples of the occupied States, in order to punish all the organizers of such crimes;
- (b) to commit for trial, either jointly or individually all those who, as members of these criminal gangs, have taken part in any way in the carrying out of crimes committed collectively by groups, formations or units.

SECRET

C.106
7th May, 1945

UNITED NATIONS WAR CRIMES COMMISSION

HISTORY, CONSTITUTION AND OPERATION

OF THE GESTAPO, S.S., AND S.A.

Preliminary Report by the Legal Officer

1. The Scope of the Enquiry

The purpose of this enquiry is restricted - in accordance with the debate on the subject in the meeting of the Commission held on 24th April 1945 - to the questions which appear to be relevant with regard to the problems which are dealt with in Professor Gros' Memorandum C.85, and M. de Baer's Memorandum C.89, i.e. to the problems - of fact and of law - which can be roughly, but not quite correctly, described as (a) The problem of "collective responsibility" of members of certain organisations, formations and units, and (b) The problem of the burden of proof in criminal trials against members of such organisations, formations and units.

The restriction of the enquiry to this particular aspect of the matter is the more advisable as both within the framework of the Commission and by allied and inter-allied bodies outside the Commission thorough investigations into the nature and the activities of the Gestapo, the S.S. and the S.A. have been made.

2. Sources of the Enquiry

This report is based on the literature regarding the German Police and the Nazi organisations at present available in London, the most important of which are enumerated in Dr. Ecer's paper C.32 and, in addition, on the following material:

Dr. Alfred SCHWEDER: "Politische Polizei" - Berlin, 1937.

S.A. Sturmbannführer SCHAEFER: "Das Anti-Braunbuch über das erste deutsche Konzentrationslager", "Konzentrationslager Oranienburg".

Dr. Werner SPOHR: Recht der Schutzhaft.

Collections of recent Press Cuttings, available at the Wiener library, London.

A number of Basic Handbooks prepared by allied military authorities and kindly placed at my disposal by Colonel WADE.

Colonel WADE's Reports to this Commission, particularly Reports No. 10 and 11, and his paper on "Atrocities in the Concentration Camps".

The papers laid before this Commission by members of the Commission (Dr. Ecer, C.32; Professor Gros, C.85; M. de Baer, C.89, Dr. Cyprian, C.92).

Files of this Commission.

Information sent in by different national offices for the purposes of this report.

The events of the last weeks have certainly made much more complete information about the S.A., S.S. and the Gestapo available to the allied authorities. All conclusions based on the material at present obtainable in England and America are subject to the proviso that they may prove incomplete when the newly captured material is investigated.

3. Arrangement of subject-matter

The crimes, in connection with which the problems of "collective responsibility" and of the burden of proof arise, may usefully be arranged under certain headings. These headings sometimes overlap and, taken together, do not exhaust all the war crimes which have been committed. But this does not exclude the advisability of such an arrangement for practical purposes. It is submitted that as the main headings of "collective" criminality, the following may be chosen:

(a) Concentration Camps and Detention Centres, including Arbeitslager (Work Camps), Zwangslager (Forcible Detention Camps), Zwangsarbeitslager (Penal Servitude Camps), Zivilgefangenenlager (Detention Camps for Civilians), Straflager (Punitive Camps) and similar establishments;

(b) Outrages of the Oradour-sur-Glane and Lidice type, judicial murder, mass executions, shooting of hostages, etc.;

(c) Persecution, Spoliation and Extermination of the Jews;

(d) Forced Labour and Deportations;

(e) Ill-treatment of Prisoners of War.

The ill-treatment of prisoners of war (supra (e)) belongs to a category separate from the categories mentioned sub (a) to (d). The other four headings ((a) to (d)) centre round the institution of concentration camps for it is the threat of sending objectors to a concentration camp, which is the main instrument for enforcing slave labour (supra (d)). The concentration camp (in the wider sense) including the death camps, is the most important means of "solving" the Jewish question (supra (c)), and the concentration camp is used as a subsidiary means of terrorism even in connection with such crimes as the extermination of whole towns and villages (supra (b)).

We shall therefore go a long way towards our present goal, i.e. towards elucidating the "collective" responsibility of certain organisations for the most important war crimes, if we establish the responsibility of certain organisations, their officers and members, for the crimes committed under the heading "Concentration Camps".

4. The S.A. and the Concentration Camps

It will ease our task if we, at the outset, dispose of the problem to what extent the organisation known as S.A. (Sturmabteilungen) has been or was connected with the crimes committed under the head "Concentration Camps".

Short outline of the facts. The S.A. were founded in 1921 as a paramilitary organisation to protect Nazi meetings and leaders, to throw out interrupters and hecklers, to fight political opponents and to provide military training at a time when the German authorities still pretended to abide by the military clauses of the Treaty of Versailles. Since then the role of the S.A. within the Nazi movement changed several times.

In the years before 1933, the S.A. were the most militant part of the Nazi movement and all outrages which helped Hitler to power were in practice committed by them.

From January 1933 to June 1934, the S.A. played a very important part in the development of the totalitarian State. The S.A. did most of the hunting, beating and killing of the political opponents of Nazism, they did the work of seizing and looting of premises of political opponents and Trades Unions, they had quasi-police powers and the S.A. were also in charge of the concentration camps then in existence. S.A. Sturmbannführer SCHAEFER was Lagerkommandant of the Concentration Camp Oranienburg, the official title of which was: "Konzentrationslager Oranienburg der S.A. Standarte 208" ("Concentration Camp Oranienburg of the S.A. Regiment 208").

Since the "purge" of June 30, 1934, the S.A. has been increasingly overshadowed by the S.S. who, a.o., took over from the S.A. the police functions, including the administration and guarding of Concentration camps, as will be explained below in more detail.

But though the political importance of the S.A. was steadily declining, it never ceased to exist as a part of the Nazi movement and, in 1939, it reappeared on the scene. Then it was given the task of pre- and post-military training (Decree of January 19th, 1939). Its activities in wartime have included: supervision of the black-out and A.R.P. work and "Flak" duties, guarding important buildings, transport institutions, bridges, railways, roads, prisoner-of-war camps and transports, searching for "criminals" and escaped prisoners, supervising foreign agricultural labourers, control of radio sets, etc.

The pre-military training was carried out by the S.A. WEHRMANNSSCHAFTEN. In July 1943, it was claimed that more than 2,500,000 had been trained so far.

In the autumn of each year, WEHRKAMPFTAGE, consisting of military and athletic competitions, were held in the whole Reich. In October, 1944, "in spite of great demands by the army and fortification work" approximately 600,000 men took part in the 1944 WEHRKAMPFTAGE and about 4,000,000 took part in the WEHRSCHESSSEN (shooting exercises), "thus receiving a good foundation for further instruction in the VOLKSSTURM". (Hamburger Fremdenblatt, 26th October 1944.)

In October 1944, the Chief of Staff of the S.A., Wilhelm SCHEPMANN, published in the periodical "The Political Soldier" (a bulletin introduced after the attempt on Hitler's life in July 1944, and designed to help the party commissars in the army in their "educational" work of spreading ^{Nazi} doctrines) an article on "The Task and the Position of the S.A.". There he stated that it remained the task of the S.A. man, to be the most active National Socialist in the Army and, if need be, again the most active baiter of grumblers and defeatists, (auch wieder der aktivste Schlger gegen Miesmacher und Defaitisten). After the war, according to this article, the S.A. will remain the trustee "for extra-military National Socialist armed education" (fur die aussermilitrische nationalsozialistische Wehrerziehung).

In his New Year's proclamation dated December 30th, 1944, SCHEPMANN referred to the proved valour of the S.A. men fighting in the Panzerkorps "Feldherrnhalle" and in the other parts of the Wehrmacht formed by members of the S.A. Standarte "Feldherrnhalle" and went on to say that the S.A. entered the New Year more devoted ("verschworen") to the Fuhrer than ever; determined for everything ("zu allem entschlossen") that is necessary for the people's sake.

As late as March 1945, celebrations were held, solemnizing the recruiting of young volunteers from the S.A. Standarte Feldherrnhalle for the "Division Horst Wessel" of the Waffen S.S. (D.N.B. Schreibfunk, 9.3.1945).

Conclusions. From this account, it follows that:

- (1) The S.A. is - even in present days - by no means an innocent organisation and that it probably will play an important part in "werewolf" and similar partisan activities if the designs of the Nazi leadership regarding such activities should materialise;
- (2) That people who at the material time were members of the S.A. are prima facie suspect of crimes committed before 1933, and between January 1933 and June 1934, against the political opponents of the Nazi party and the Nazi regime respectively in Germany; and that
- (3) A great number of S.A. men were, during the present war, qua S.A. men involved in crimes committed against prisoners of war and foreign workers.

But these facts, though of great interest to the allied occupation authorities and even, in a different connection, for the work of this Commission, are not relevant to the present enquiry, because the S.A. as such has since June 1934, not been in charge of the activities which consisted in the commission of "collective" crimes, although it is highly probable that S.A. men and particularly S.A. leaders and officers, have taken part in all kinds of crimes.

Apart from the case mentioned sub (2) (terrorism in 1933-34) the fact that a man was a member of the S.A. does not constitute any more circumstantial evidence for his having committed a crime than would the fact that he was a member of any other organisation of the Nazi movement (the party itself, N.S.K.K., N.S.F.K., H.J. and others).

Membership in the S.A. does, of course, in many countries constitute a crime under municipal law either under the heading of treason (its aims endangering the security and integrity of the state), or under the heading of membership of an unlawful association, or under provisions prohibiting the enlistment in foreign armed formations.

In this present survey we may disregard the S.A. and now deal with the two remaining organisations mentioned in the title of this paper.

5. The origins of the Gestapo

Schweder states (loc. cit. p. 165) that already in the beginning of the National Socialist regime it became obvious that it was impossible to defend the National Socialist Weltanschauung and its state with the traditional methods of the political police. This was the reason why the Governments of the German LÄNDER in time entrusted the Reichsfuehrer S.S. with the task of defending the people and the State with the means which are adequate for the present situation. Thus, the system of secret policing, known under the name of the Gestapo, originates in legislative measures taken not by the Reich authorities, but under the ordinances of the individual German States (Länder). The following is a list of the statutes or ordinances constituting the system of political police in Germany, as it existed up to the occupation by allied forces in 1945.

In Prussia: An Act dated 26th April, 1933, regarding the establishment of a Secret State Police Office in Berlin; an Act dated 30th November 1933, regarding the Secret State Police. These two statutes were superseded by the (Prussian) Secret State Police Act, dated 10th February 1936. The last mentioned enactment was followed by an Executive Order of the same date explaining its provisions in more detail.

In the State of Anhalt: Ordinance of the State Ministry dated 29th March 1934, regarding the new organisation of the political police.

In the State of Baden: Ordinance of the Minister of the Interior regarding the Secret State Police Office, dated 26th August, 1933.

In Bavaria: Order of the Acting State Minister of the Bavarian Ministry of the Interior dated 1st April, 1933.

In Brunswick: Law regarding the Political Police in Brunswick, dated 17th April, 1934.

In Bremen: Order of the Chief of Police, dated 16th June, 1933, and Order of the Senator for the Interior, dated 13th July, 1935.

In Hamburg: Order of the Acting Burgomaster dated 6th October, 1933.

In Hesse: Order of the State Commissioner for Police regarding the organisation of the Political Police, dated 28th March, 1933.

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In Lubeck: Order of the Senator for the Interior regarding the competence of the Secret State Police Office, dated 1st March 1935.

In Mecklenburg: Order of the Minister of the Interior dated 7th December, 1933.

In Oldenburg: Order of the Minister of the Interior regarding the establishment of a Secret State Police Office, dated 4th November, 1933.

In Saxony: Order of the Saxon Council of Ministers regarding the establishment of a Secret State Police Office, dated 5th July, 1933, and Executive Order dated 2nd August, 1933.

In Thuringia: Act regarding the establishment of a Secret State Police Office dated 4th December, 1933, with an Executive Order of the same date as amended by Orders dated 22nd December, 1933, 28th May 1934, and 18th March, 1935.

In Württemberg: Act of the State Ministry regarding the Political Police Department, dated 27th January, 1934, with Executive Orders dated 3rd February, 1934 and 27th November, 1934.

Obviously, the most important of these statutes are the Prussian statutes. They were made at a time when Goering was the head of the entire Prussian Administration. Thus, Goering became the first chief of the Gestapo, but he soon delegated the active direction of this organisation to Oberregierungsrat Diels.

Thus, the Gestapo emerged as a Prussian institution and even in 1945, it was not technically a Reich organisation, though the question was by then purely academic since, under a Reich decree of the 17th June, 1936 (Section 6) and a decree issued by Himmler on 22nd June, 1936 (Section 7), the Gestapo formed part of the Reich Security Police.

In 1934, Himmler was appointed by Goering Deputy Chief of the Prussian Gestapo in place of Diels. This appointment amounted in fact to the domination of the entire Gestapo organisation by the S.S. Shortly after Hitler's access to power, Himmler had become Commander of the Political Police in Bavaria, having with him Heydrich, who was then Political Police Chief in Munich and Chief of the Sicherheitsdienst des Reichsführers S.S. (abbreviated S.D.RFSS. - Security Service of the Commander-in-Chief of the S.S.).

During the first year of the power of Nazism, Himmler gradually obtained control of the Political Police Forces of all the Länder except Prussia, and held the title of Political Police Commander of the German States. On being appointed head of the Political Police of Prussia, Himmler became actually the chief of the whole political police organisations of the Reich. He at once replaced all officials suspected of a lukewarm attitude towards the regime by members of the S.S. and thus started the amalgamation of the S.S. and the Police, which was to find its full expression some two years later.

On 17th June, 1936, a new post, that of the Chief of the German Police, was created, and Himmler was appointed to fill it. He thus was Commander of the S.S. and simultaneously Chief of the State police.

It is perhaps not necessary to deal with the quas-constitutional niceties which arose out of this appointment, Himmler being directly responsible to Hitler as Commander-in-Chief of the S.S., being formally subordinated to the then Reich Minister of the Interior, Frick, with regard to Reich affairs, and formally subordinated to Goering in Prussian affairs.

In 1938, the actual linking between the Police, run on Government lines, and the Intelligence Department of the S.S. (S.D.RFSS), run on Party lines, was expressed also in the form of a statutory provision. An ordinance dated 11th November 1938, made the S.D. (an organ of the Party) officially responsible for

the control of all persons, activities and events which might interfere with the dominance of the National Socialist idea. It was expressly stated that the S.D. was active on behalf of the Reich, and that the officials of the State administration had to cooperate with it. In the same year, the complete placing of the Gestapo and the other branches of the Police in the hands of the S.D. was achieved by a Decree of the 23rd June, 1938, ordering the enrolment of all police personnel in the ranks of the S.S. if they were not already members. In terms of organisation the process was expressed in 1939 by the merging of the competent department in the Reich Ministry of the Interior (Hauptamt-Sicherheitspolizei) with the S.S.Sicherheitshauptamt. From the fusion of these organs of the State Police and of the Party Police the Reichs-Sicherheitshauptamt, (National Department of Security) emerged. The headquarters of the Gestapo became part of the Reichssicherheitshauptamt and known as Amt IV of this organisation.

This Amt IV was, up to the occupation of Germany, a vast and intricate organisation reflecting in structure the widespread interests of the Secret State Police. It is subdivided into a great number of sections and sub-sections each of which is devoted to some special form of activity considered obnoxious to the interests of the Nazi State, such as "Communism, Marxism and affiliated organisations", enemy propaganda, sabotage, counter-intelligence, ideological opponents ("Jews, emigres, foreign workers and prisoners of war"), escapes and attempts to escape by foreign workers, "refusal to work by foreigners", military counter-intelligence, subdivided into France and Belgium; Holland, England, North America, Canada; Denmark, Norway, Sweden, Finland; Eastern Territories; Government General (Poland); Protectorate and Slovakia (Czechoslovakia); etc.

6. The Origin and Development of the S.S.

The forerunner of the S.S. was the Stabswache (Headquarters Guard) formed in March 1923 to serve as a protective guard for Hitler and composed of selected men from the S.A. Later, this Stabswache was transformed into the formation called "Stosstrupp Hitler", which took a prominent part in the Munich Beer-cellar Putsch of 1923. With the rest of the Party, this organisation was banned and dissolved after the Putsch. When the Nazi Party was revived in 1925, the S.A. still remained under official ban. This led to the founding of the Schutzstaffel, as a protective guard for leaders and speakers at Party meetings. After the lifting of the ban on the S.A., this Schutzstaffel, or S.S. ceased for a time to be of any considerable importance. In 1929, Himmler was appointed its Commander-in-Chief, or "Reichsführer S.S." Himmler began to fit out and to equip what was to become the Praetorian Guards of the Nazi formations. The foremost duty of the S.S. was the protection of the Führer. In 1931, Himmler described the S.S. as "the Leader's most personal selective guard". The importance of this bodyguard of the Führer was demonstrated in 1934 when an open cleavage between the S.A. and the Party arose. It was the S.S. which carried out the decisive purge of the dissentient elements on the 30th June 1934. This purge broke the political power of the S.A. - at least for a great number of years - and established Himmler and the S.S. as the ruling caste within the Party. As a consequence, the S.S. which previously had formed part of the larger body of the S.A., was made an independent organisation. The war brought a resurrection of the S.A. to a certain extent, as was explained in the chapter dealing with the S.A. (paragraph 4, supra).

The influence of the S.S. Apart from the importance of the S.S. as an independent armed organisation, it enhanced its influence by a systematic penetration and permeation of the whole life of Germany. Those who wished to stand well with the new Party aristocracy and could afford to pay for the privilege, were allowed to become patron members. Selected members of the Government or important public figures were appointed to high rank in the S.S. The most important method of gaining decisive influence in the State was the direct promotion of S.S. men to high positions, not only in the State police, but in the State and local government generally.

Growth of full-time S.S. units. The first unit to be organised under Himmler's ideal of a Praetorian Guard was the Leibstandarte S.S. Adolf Hitler (the Adolf Hitler Bodyguard) which was set up in 1933 under the command of Sepp Dietrich. This was followed by a number of other S.S. regiments and, in addition

to these barrack regiments, full time units to act as concentration camp guards were formed from selected S.S. volunteers. These units are generally known as the Death's Head formations. The regiments mentioned so far, including the Death's Head formations, acquired the title of S.S. Verfügungstruppen (General Service troops). The outbreak of the present war raised important problems both for the S.S. Verfügungstruppen and for the other S.S. formations by now generally known as Allgemeine S.S. Membership in the Allgemeine S.S. did not carry with it exemption from military service. The S.S. leadership was, therefore, confronted with the alternative of allowing their men to become merged in the general mass of the regular army or of providing a special branch of the armed forces where S.S. men could retain their identity and strengthen their tradition. The answer to the problem was the creation of the Waffen S.S. This Waffen S.S. was employed in nearly all the campaigns of the present war and has steadily expanded. The recruiting for the Waffen S.S. has not been exclusively or even mainly from the Allgemeine S.S.

The General Organisation of the S.S. The S.S. in its entirety is divided into three main groups: the Allgemeine S.S. the Waffen S.S. and the Germanic S.S.

The Allgemeine S.S. is made up of (a) part-time members, more and more of whom have been absorbed in the Waffen S.S. and the police; (b) full-time members serving with units or at Headquarters; (c) non-active members, including those holding honorary rank.

The Sicherheitsdienst (SD) ranks as a part of the Allgemeine S.S. and is now integrally linked with the Sicherheitspolizei, as has been explained in the introductory chapter on the Gestapo. The Waffen S.S. comprises the full-time field formations, together with their depot and training units and establishments. The Death's Head formations are normally included under this category, although they are self-contained formations which retained their individual identity. From our point of view, it is particularly interesting that although many Death's Head formations are serving in the field, others at the time of the allied occupation were still fulfilling their original function as guards in concentration camps in Germany and German-occupied areas.

The Germanic S.S. is the title of S.S. organisations set up in certain occupied countries (Norway and Holland) on the model of the Allgemeine S.S. in Germany. Organisations on lines similar to the Allgemeine S.S. were set up under different, partly camouflaged, names before the war and before the occupation of the respective territories, e.g. in Austria, Danzig, Czechoslovakia, Memel, and other countries.

The Central Leadership of the S.S. The Reichsführung S.S. is the collective name for the entire higher direction of the S.S. As the executive apex of the system, it duplicates in many respects the various Reich ministries and governmental departments as well as the departmentalised branches of the National Socialist Party Directorate which are all patterned along the same line as the German State and provincial administrative agencies. The supreme command of the S.S. consists of a number of departments, one of which, the S.S. Reichssicherheitshauptamt (RSHA), as we have shown, forms both a part of the Reich Ministry of the Interior and a part of the Supreme Command of the S.S. Among the individual departments of the Supreme Command of the S.S. we mention in addition to the RSHA, the S.S. Wirtschafts-und-Verwaltungs-Hauptamt (WVHA: S.S. Economic and Administrative Department), and the S.S. Rasse-und-Siedlungshauptamt (S.S. Race and Settlement Department). Part of the WVHA forms a sub-department (D) "Operation and Administration of Concentration Camps". The chief of this sub-department was S.S. Gruppenführer and Lieutenant General of the Waffen S.S. Richard Glücks. The sub-department consists of four offices: Office No. I, called the Central Bureau. Its chief was S.S. Obersturmbannführer Arthur Liebehenschel. This office was responsible for general policy, security arrangements, public relations and coordination of the various bureaux within the branch. The second office, whose chief was S.S. Obersturmbannführer Gerhard Maurer, is called "General Administration and Prisoners". The office No. III, "Medical Administration", was responsible for general medical and health administration of all camp personnel, both staff and prisoners. Its chief was S.S. Obersturm-

bannführer Dr. Lolling. The Office No. 4 was in charge of "General Administration of Camps and Camp Staff". Its chief was S.S. Obersturmbannführer Kaindl.

The principal task of the S.S. Rasse-und-Siedlungshauptamt is to carry out the racial policy and programme in connection with repatriation and settlement of Germans and transfers of population. This department is responsible i.a. for executing the policy of settling S.S. men as peasants and colonists or Wehrbauern (armed peasants) in the lands bordering on Germany.

Other central departments of the Supreme Command of the S.S. are the S.S. Hauptamt proper; the S.S. Führungs Hauptamt (S.S. Operational Headquarters); the Hauptamt S.S. - Gericht (the judicial department of the S.S.); and the S.S. Personnel Department.

7. Concentration Camps

General Outline. It is not proposed to give here a description of what German Concentration Camps are or to prove that, to quote the Buchenwald Camp Report of the Parliamentary Delegation, "a policy of steady starvation and inhuman brutality was carried out" at the Concentration Camps "for a long period of time; and that such camps as this mark the lowest point of degradation to which humanity has yet descended".

This paper is an attempt at establishing the criminal responsibility of certain organisations and their members qua members for the crimes there committed.

From the point of view of Nazi "law", Concentration Camps are places where people who have been taken into "protective custody" (Schutzhaft) are kept. This term in pre-Hitler Germany meant the imprisonment of people in order to protect them against real or alleged dangers, e.g. of being lynched. After Hitler's access to power, the then Reich President, Hindenburg, by an Order based on the ill-famed Article 48 of the Weimar Constitution (dated February 28th, 1933) suspended all the constitutional safeguards, inter alia, the right to personal liberty. The constitutional safeguards against discretionary confinement of citizens by the Police were swept away and the term "protective custody" came to mean protection of the "community" against the person to be imprisoned. In 1935, it was decided by the competent court in Prussia, (Preussisches Obergericht), that the measures taken by the Gestapo, including orders for detention in "protective custody" were not subject to judicial review and control. This rule was then expressly enacted in Section 7 of the Prussian Act concerning the Secret State Police dated 10th February 1936. This means that persons may be arrested and kept in prison according to the unfettered discretion of the Gestapo. Thus, the Gestapo had the power to order the "protective custody" in Concentration Camps of persons who had not been sentenced to imprisonment by a court of law, of persons who were not suspect of having committed a crime, punishable by imprisonment, and of persons who had served a legal sentence and whose further detention the Gestapo considered advisable.

Section 2(4) of the Prussian Executive Order dated 10th February, 1936, expressly provides that the Secret State Police Office (das Geheime Staatspolizeiamt) administers the State Concentration Camps (die staatlichen Konzentrationslager) and this administration of the camps through the Gestapo was eventually organised as follows:

We must distinguish between the operation and administration of concentration camps in the narrower sense, excluding the question who is to be committed to a camp and who is to be released. As stated above, this task of "running" the camps was entrusted to the S.S. Wirtschafts- und Verwaltungshauptamt (S.S. Economic and Administrative Department), which is a department of the S.S. High Command. The actual imprisonment and release of prisoners is the responsibility of the Reichssicherheitshauptamt, which was both part of the S.S. High Command and part of the Reich Ministry of the Interior (see supra, paragraph 6).

4-4

8. The Commitment to Concentration Camps

The Responsibility of the Gestapo. The commitment to concentration camps may be effected by both branches of the Sicherheitspolizei: (1) by the Gestapo (political police), and (2) by the Kripo (criminal police).

Accordingly there are two distinct categories of custody in concentration camps, namely: (1) Politische Schutzhaft (Political Custody) and (2) Polizeiliche Schutzhaft (Police Custody).

The second type (Police Custody) which is imposed upon Alcoholics, Vagrants, Habitual Criminals and the like, does not concern us in this connection, except insofar as the imprisonment of alleged political offenders together with, e.g. habitual criminals, was one of the circumstances which contributed to the horrors of the life in the camps. It is well known that common criminals, committed to concentration camps by the Sicherheitspolizei, often were employed as supervisors and foremen of the political prisoners (so-called Capos).

The purpose of the "political custody" was to secure the "Reich-structure against its enemies".

The custody orders (Schutzhaftbefehle) were executed by a department (Amt IV) of the Reichssicherheitshauptamt. Requests for custody orders were made to this Amt by the "Regional Commanders of the Security Police and Security Service", the Gestapostellen and Gestapoleitstellen (Regional District Headquarters of the Secret State Police), the Inspector of Security Police and Security Service and the Superior S.S. and Police Leader in the region or district where the "offender" was apprehended. In cases of mass arrests, only one blanket order was executed.

Custody in a concentration camp lasted for whatever period was thought necessary. Release from custody was also ordered by Amt IV of the RSHA.

In addition to the Kripo and the Gestapo, the Geheime Feldpolizei (Secret Field Police), as sister organisation of the Gestapo within the armed forces, had also power to submit civilians as well as soldiers for detention.

From the foregoing summary account it follows that, if we disregard the commitment to concentration camps of habitual criminals and similar elements, the Gestapo was responsible for every single imprisonment and for all mass imprisonments in concentration camps. It further follows that persons who, in the material time, were employed

- (a) in the Gestapo Headquarters (Amt IV of the Reichssicherheitshauptamt)
- (b) in the offices of the Regional Organisation of the Gestapo (see below)

are suspected of having committed, either as actual perpetrators or as accessories, the crimes committed in, and in connection with, the concentration camps.

The following are types of regional organisations of the Gestapo, falling under (b) supra:

(a) In Greater Germany

Staatspolizei-Leitstellen (Stapo-LSL)
Staatspolizei-Stellen (Stapo-St)
Staatspolizei-Aussenstellen (Stapo-ASt)
Staatspolizei-Ausendienststellen

(b) In German-occupied territories

Offices of the Befehlshaber der Sipo und des S.D.
Sipo and S.D. Kommandos
Sipo and S.D. Einsatzkommandos

(In contrast to the organisation within "Greater Germany", the Gestapo in occupied countries did not, as a rule, function in independent headquarters, but formed part of combined Sipo and S.D. units. Within these organisations, one department (Abteilung IV) dealt with Gestapo affairs exclusively.

9. The responsibility of the S.S., Death's Head Formations for the Concentration Camps.

(a) As outlined above, the Reichsführung S.S. absorbed step by step the functions of the Hauptamt Sicherheitspolizei, until it was officially merged with the S.S. Sicherheitshauptamt der Reichsführung S.S. to form the Reichssicherheitshauptamt. Thus, the S.S. leadership wielded absolute power over the whole state police. What in the preceding paragraph of this paper was said as to the responsibility of Amt IV of the Reichssicherheitshauptamt for the crimes committed under the head "Concentration Camps" applies also to the responsibility of the same Amt IV as part of the Reichsführung S.S.

(b) It has already been stated that another central department of the Reichsführung S.S., the S.S. Wirtschafts- und Verwaltungs Hauptamt (Amtsgruppe D), i.e. a Party, not a State organ, was responsible for the operation and administration of concentration camps other than commitment and release of prisoners. In occupied territories, concentration camps were administered by the S.S. Wirtschafts und Verwaltungs Hauptamt through S.S. Wirtschaftler (Economics Officials).

(c) We have now to investigate the question who did the actual day-to-day work in the concentration camps and who is therefore, in addition to the persons responsible for the commitment to imprisonment in the Camps (the Gestapo) and in addition to the persons bearing responsibility on the top-level, responsible for carrying out the actual murdering and torturing in the camps.

From all the material available, including the charges brought before this Commission by the National Offices, it follows that - at least after the "purge" of June 30, 1934, when the S.A. lost most of its power, the personnel of the Concentration Camps was taken from the S.S. S.S. formations were the administrators and guards of the camps.

The guarding of the concentration camps was entrusted, after the elimination of the S.A. from their control, to a special branch of the S.S. recruited from volunteers of the Allgemeine S.S. and known as the S.S. Totenkopfverbände (TVor Death's Head units). They were originally organised into four Standarten (Oberbayern-Dachau; Brandenburg-Sachsenhausen; Thüringen-Buchenwald; Ostmark). Wartime demands on German manpower have diverted many of these troops to other tasks and they have been replaced by older S.S. men. Under the general policy of manpower preservation, the employment of S.S. Aufseherinnen (female guards) became a universal practice at camps containing female prisoners.

The Death's Head units were also organised along functional lines as follows:

Streifendienst und Rollkommandos (Patrols and raiding pursuit squads), e.g. detachments searching for escaping prisoners;

H.J.-Rollkommandos or H.J. Jagdkommandos, auxiliary raiding squads and pursuit detachments composed of members of the Hitler Youth under the command of S.S. Death's Head units officers;

Wachverbände (Guard Formations);

Sonder-Verbände (S.Verb.-Special Purpose Units). These are reported to furnish execution squads.

Successive levies of men for the field formations of the Waffen S.S. have left the original Death's Head formations considerably reduced both in numbers and in quality. As a result, there was an influx into the Totenkopf-

verbände of foreign volunteers, mostly "Volksdeutsche" from East European countries. According to the material available also S.A. Auxiliary guards, Werkschutz (Factory Police), have recently been reported as Konzentrationslager personnel.

From what has so far been said, it would follow that a person who at the material time was a member of any of the Death's Head Formations of the S.S. belongs to a class of persons suspect of being criminally responsible for having carried out the concentration camp policy.

The same applies to women who served as S.S. Aufseherinnen in the camps.

10. The responsibility of S.S. formations, other than the Death's Head Formations, for the Concentration Camps.

From the material at present available it cannot be proved with the same amount of certainty as in the case of the Death's Head Formations, that also the members of S.S. units, other than the Death's Head Formations, were directly concerned with the life in the concentration camps and directly criminally responsible for what has been done inside the camps.

But there is sufficient information available to say that also the organisations "S.S. Verfügungstruppen" and "Allgemeine S.S." participated in the concentration camp crimes.

We may distinguish two sides of this complicity:

- (a) The part of the S.S. in rounding up and imprisoning the victims;
- (b) The exploitation of concentration camp labour through the S.S.

ad (a) As a result of the close amalgamation of the S.S. and Police the members of the Allgemeine S.S. collect information for the S.D. and Gestapo as part of their duty.

The S.S. Verfügungstruppen and the Allgemeine S.S. formed the personnel which guarded Gestapo Headquarters and the regional offices and Kommandos of the S.D. and Gestapo, they carried out the actual rounding up, guarding during interrogation, (including all the paraphernalia of Gestapo methods of interrogations), they were in charge of the victims when transported from the place of arrest to the Gestapo and from there to the camps, etc.

In this connection, some special units of the Allgemeine S.S. may be mentioned:

- S.S. Sturmscharen (S.S. Assault sections)
- S.S. Alarmsturm or Alarm Kompanie (Emergency Company)
- S.S. Kraftfahr Stürme (Motorised units)
- S.S. Kradstürme (Motorcycle units)
- S.S. Werkspolizei (Industrial Police; anti-sabotage units)
- S.S. Bahnschutz (Railway Guards)
- S.S. Funkschutz (Radio Guards; policing of radio installations, the detection of illicit radio stations and illegal listening to foreign stations)

ad (b) The exploitation of prison labour and of occupied territory was one of the most important aspects of the "economic" activities of the S.S. Through the S.S. Wirtschafts und Verwaltungs Hauptamt and its subordinate commands, the S.S. controlled any labour and industrial undertakings carried on by the inmates of the camps.

Prisoners in concentration camps worked, inter alia, in quarries and gravel pits or in industries attached to the camp.

A paper compiled by the allied military authorities contains details about the employment of concentration camp labour in S.S. undertakings and offices.

Here are some examples:

Concentration Camp Buchenwald: S.S. und Polizeiführer West, Bombensuchkommando (Bomb disposal unit).

Concentration Camp Dachau: S.S. Bekleidungswerk (Clothing factory); S.S. Waffenamt (Ordnance Department); S.S. Gut Pabenschwandt (Estate Pabenschwandt); S.S. Hauptzeugamt (S.S. Central Ordnance Depot).

Concentration Camp Flossenburg: S.S. Bekleidungswerk (Clothing Factory); Kleiderkasse S.S. (Clothing Store).

Concentration Camp Mauthausen: S.S. Bekleidungslager (Clothing Depot).

Concentration Camp Sachsenhausen: S.S. Hauptzeugamt (S.S. Central Ordnance Depot); S.S. Bekleidungswerk (S.S. Clothing Factory).

The following are examples of the employment of Prison Labour in works and buildings conducted by the S.S.:

Concentration Camp Buchenwald: S.S. Baubrigaden (Building Brigades) Köln, Duisberg, Tuppertal, Atlantikwall; Bauten für die Rüstungsindustrie im Konzentrationslager Fertigungswerk, Gustloffwerk (Armaments Industry buildings near the camp).

Concentration Camp Flossenburg: Bauwesen - S.S. Pionier Ersatz Bataillon (Building Section) Dresden and similar establishments at Beneschau, Neuhirschstein, Nürnberg and Pottenstein.

Concentration Camp Gross-Rosen: Bauwesen S.S. Ers. Btl. (Building Section) Breslau.

Concentration Camp Sachsenhausen: S.S. Building Brigades Berlin and in other places near Berlin.

To a very great extent the prison labour of the concentration camps was employed in the armament industry.

Conclusion. The activities of the S.S. were, of course, manifold and there must have been branches within the organisation, which had no direct and personal part in the criminal activities listed supra (paragraph 3 under (a), (b), (c) and (d)), e.g. the administration of S.S. Men's halls, canteens, medical services and hospitals for S.S. men (as distinguished from medical services for camp inmates which were definitely criminal), S.S. Convalescent Homes and S.S. Maternity Homes, Veterinary Depots and the like.

It is impossible to tell from the material available whether there were any men (and women) in the general organisation of the S.S., whose activities throughout the many years of the existence of the S.S. were confined to "neutral" and innocuous activities.

It can fairly be assumed - though this is at present only an assumption - that the number of S.S. officers and men, whose activities from 1933/34 to 1945 were restricted to, as it were, welfare departments of the organisation, was comparatively small. The suspicion connected with the mere fact of having been a member of the Allgemeine S.S. or an S.S. Verfügungstruppen unit is only to a small extent rebutted by the fact that the particular person may only have been active in the "welfare" branches of the S.S.

It may, of course, be argued that even a person who acted as a cook in an S.S. canteen or as a clerk in an S.S. supply-depot was to a certain extent, aiding and abetting the actual perpetrators of the crimes, the commission of which formed the purpose of the whole organisation. But this question is not for this Commission to decide. It is a question for the court in each individual case.

It seems to follow that also the members of the "Allgemeine S.S." and of the "S.S. Verfügungstruppen" are qua members prima facie suspect of having committed crimes or having taken part in the committing of crimes of the type mentioned in paragraph 3(a) to (d) of this paper.

11. The Responsibility of the Waffen S.S.

Note on Oradour-sur-Glane and Lidice

It is necessary to deal with the Waffen S.S. separately, because the information available is to a certain extent conflicting as to the relation between the Waffen S.S. on the one hand and the Death's Head and Verfügungstruppen units on the other.

Some statements are to the effect that both the Death's Head units and the S.S. Verfügungstruppe simply were merged into the Waffen S.S.

Others maintain that they remained self-contained formations with their individual identity.

But whatever the correct answer to this question may be, there is no doubt that the Waffen S.S., having during the war become the largest of the three S.S. groups, does not consist only of members of the Death's Head Formations and the S.S. Verfügungstruppe. Recruiting for the Waffen S.S. has not been exclusively or even mainly from the other S.S. groups and from the Allgemeine S.S. Many students of Nazi organisations state that the Waffen S.S. formed in effect a fourth arm of the services with the Army, Air Force and Navy.

When dealing with the Waffen S.S., we, therefore, must distinguish between such of its units, as before the formation of the Waffen S.S. belonged to the groups: S.S. Verfügungstruppen and Death's Head Formations, and such as were formed independently of the existing S.S. organisation.

What was said in the preceding paragraphs of this paper, applies to the S.S. Verfügungstruppen and Death's Head Formations, though they acted within the larger wartime framework of the Waffen S.S. Men, directly recruited for the Waffen S.S., are however from the legal point of view simply members of the armed forces, though members trained and resolved to a still more ruthless warfare than the regular German army.

In order to illustrate the problem, I would like to point out that, e.g. the mass murder of ORADOUR-SUR-GLANE was, according to the first French charge 217 committed by members of the S.S. Panzer Grenadier Regiment No. 4 "Der Führer" of the Division "Das Reich" or, according to the supplement to the charge, by members of the S.S. Division "Der Führer".

Before the outbreak of the war, the Standarte (Regiment) "Der Führer" was one of the four Standarten forming the S.S. Verfügungstruppe. Out of the Standarte "Der Führer" and two other Standarten ("Deutschland" and "Germania"), the "Verfügungs-Division" later known as "Das Reich" was formed. In this case, therefore, the participation of one of the old "S.S. Verfügungstruppen" has been established.

In the case of Lidice, the Czechoslovak charge (No. 116) states, at p.23, that the S.S. Standarte "Deutschland", commander S.S. Standartenführer Steiner, probably carried out the massacres in Lidice. The S.S. Standarte "Deutschland" was, before the war, also one of the four Standarten forming the S.S. Verfügungstruppe and was subsequently made part of the Verfügungs Division "Das Reich".

In the Czechoslovak Concentration Camp cases (Dachau, No. 399; and Buchenwald No. 423), a.o., the S.S. Standarten "Adolf Hitler", "Germania", "Deutschland" and "Der Führer" are charged. The first ("Adolf Hitler"), is probably the "Leibstandarte Adolf Hitler" which eventually, under its old name, became a division of the Waffen S.S. The other three are those which eventually formed the Division "Das Reich". All four were "S.S. Verfügungstruppen".

12. Note on the responsibility for the execution of anti-Jewish measures.

From the Dutch charge 173 (Aus der Fünfte and others) and from the Czechoslovak charge No. 465 ("Terezin"), it follows that special offices charged with the solution of the Jewish question were instituted, both in Holland and in Czechoslovakia. A similar organisation had previously been set up in Vienna after the occupation of Austria in 1938. The official title of this institution was in the three countries mentioned (and probably also in other countries) "Zentralstelle für jüdische Auswanderung" (Central Office for Jewish Emigration). In Czechoslovakia the office was eventually re-named "Zentralamt für die Judenfrage" (Central Office for the Jewish Question).

At the head of both the Amsterdam and the Prague office was an S.S. officer (S.S. Obersturmführer Aus der Fünfte in Amsterdam, S.S. Sturmführer Günther Burger in Prague). In the Dutch charge it is stated that people who had organised the office in Prague were afterwards acting in the similar office in Amsterdam and this writer knows that the personnel of the Prague office, including the S.S. guards and clerical staff were brought to Prague from the analogous establishment in Vienna.

The "Zentralstelle" actually was a special branch of the Gestapo to which representatives of other offices (e.g. of the taxing and rating authorities) were added in order to simplify the procedure. Before the war, the Zentralstelle granted exit permits to Jews who were in a position to emigrate. After the outbreak of war, it changed its activities to the organisation of Jewish mass deportations to the ghettos and to the death camps on Polish territory.

At the top level the "solution" of the Jewish question was directed by Amt IV of the Reichssicherheitshauptamt, which simultaneously was a department of the Reichsführung S.S. Every regional organisation or office of the Gestapo also had a special department in charge of the Jewish question.

With regard to the actual execution of the deportations, of the imprisonment and murdering of Jews nothing need be added to what has been said above on the question of the responsibility for concentration camps in general.

13. Summary

1) From the cases decided by this Commission, from the papers laid before it, from the investigations conducted by different allied and inter-allied authorities and from other material at present available in London, it follows that the activities of the branch of the German (Prussian) Police, called Gestapo, in connection with

- (a) Concentration camps;
- (b) Outrages of the Oradour-sur-Glane and Lidice type, judicial murder, mass execution, shooting of hostages;
- (c) the persecution, spoliation and extermination of the Jews;
- (d) Forced labour and deportation;

were such as to make every person who was in the service of this branch of the Police suspect of being criminally responsible for the crimes committed under the four headings mentioned.

2) All persons who were members of the Death's Head Formations (Totenkopfverbände) of the S.S. are suspect of being criminally responsible for the actual perpetration of the crimes, particularly for those committed in the concentration and extermination camps. The same applies to women employed as S.S. Aufseherinnen in the camps.

3) All persons who were members of the organisations called "S.S. Verfügungstruppen" and "Allgemeine S.S." are prima facie also so suspect, with the proviso that there may have been members of these organisations whose activities, either temporarily or perpetually, were restricted to "welfare" departments of the Allgemeine S.S.

4) As to the Waffen S.S. (armed S.S.) we must distinguish between (a) such of its units, as before the formation of the Waffen S.S. were S.S. Verfügungstruppen and S.S. Death's Heads Formations, and (b) such Waffen S.S. units as were formed independently of the existing S.S. organisations. As to the former, the statements sub 2 and 3 (supra) apply.

As to (b): Men, directly recruited for the Waffen S.S. are simply members of a special branch of the armed forces, though trained and resolved to a still more ruthless warfare than the regular German army.

5) Persons who, before 30th June 1934, were members of the S.A. are prima facie suspect of crimes committed at that time against the political opponents of the Nazi Party and the Nazi regime in Germany.

Apart from that, the fact that a person was a member of the S.A. does not constitute any more circumstantial evidence for his having committed a crime than the fact that he was a member of any other organisation of the Nazi movement.

The organisations mentioned sub (1) (Gestapo), (2) (S.S. Death's Head Formations), (3) ("S.S. Verfügungstruppen" and "Allgemeine S.S." - the latter with the above proviso) are therefore organisations which correspond to the description in the Draft Recommendation proposed by Professor Gros (Doc. C.105).

NOTE: A survey of municipal and international provisions connected with the problems of "collective responsibility" will be laid before the Commission separately.

SECRET

C.107
7 May, 1945

UNITED NATIONS WAR CRIMES COMMISSION

ARTICLE III, RULE 14 OF THE COMMISSION'S RULES
(SECURITY OF PROCEEDINGS) - Doc. C.2

PROPOSALS BY DR. CYPRIAN

- 1) Having been asked by the Commission during the meeting on 2nd May, 1945, to draft proposals concerning the security of the proceedings of the Commission (Article III, Rule 14), I shall begin by quoting that rule itself, which reads as follows:

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

Commenting on this rule I would like to stress that it does not need amendment, even under the present circumstances which seem to call for some relaxation of the security of the proceedings of the Commission, since the war in Europe appears to be in its final stage and may be over by the time this document is distributed.

What Rule 14 needs is to be interpreted and commented by the Commission, in a sense which will make it a guide for the Chairman and members in all their public statements on subjects lying within the scope of the Commission.

- 2) To get a clear picture of the matter we must make a sharp distinction between the authority of the Chairman of the Commission and that of the individual member in regard to public statements, and between the kind of topics on which security must be maintained and those which can properly form the subject of public statements.
- 3) The authority of the Chairman of the Commission to make public statements is in no way hampered or limited by Rule 14.

The Chairman speaks not as a member, but for the whole Commission. The object of Rule 14 was to prevent members from expressing their personal views, especially on controversial matters public discussion of which could have a detrimental influence on the Commission's proceedings. The rule aimed at preventing the unavoidable and necessary differences of opinion which arose from leaking out and causing the impression that the Commission was not united in opinion, and could be influenced from outside.

All this does not apply to the Chairman, who speaks for the whole Commission, avoiding raising questions which are still controversial, for the Chairman expresses the opinion of the majority of members i.e. of the Commission.

If we desire publicity, the best way to obtain it is to state clearly that the Chairman is free to make any statements he may find appropriate, especially as there is no possibility for him to submit them to the Commission for approval beforehand.

The necessity of making a statement may confront the Chairman quite suddenly, in the House of Lords or on other occasions, and he either has to make a statement without previously referring the matter to the Commission or is compelled to abstain from making any statement at all.

To avoid the latter event we shall conclude that the Chairman has authority to make public statements without asking for approval from the

/ Commission

Commission, provided that he does not touch controversial subjects still under discussion and that he informs the Commission at the next meeting of the contents of his statement.

- 4) The power of the members to make public statements has still to be considered in the light of Rule 14.

It would be detrimental for the work of the Commission if every member could freely give in public his and his fellow members' views on controversial subjects or even subjects already decided, as it would inevitably lead to the public discussion of matters which are still not ripe for publication.

Besides, the members can not and are not expected to be impartial and so their statements could easily show the matter from a particular point of view, not shared by other members.

Finally, we have to remember that although the war in Europe is as good as over, there is still war in the East and leakages could easily impair the security of the Allied nationals still under Japanese domination or in Japanese prison camps, causing reprisals against them.

- 5) The rule of secrecy does not apply to facts which the members of the Commission have learned in their capacity of members, e.g. facts ascertained at Buchenwald or other places later visited.

It is highly important for our common cause to make known those facts as widely as possible, as there seem to be still some people inclined to accept them as a kind of "horror propaganda", although the latest facts discovered in Germany did much to convince everybody that the atrocities were worse than their description.

But these facts have to be known publicly and as this publicity has nothing to do with the proceedings in the Commission itself, or with any question of security, every member should be allowed to make public statements if he wants to, provided he does not go beyond stating the facts he or his fellow members saw on the spot or were told about.

- 6) The conclusions to be drawn from the above considerations are:

(a) Article III, Rule 14, of the Commission's Rules does not prevent the Chairman of the Commission from making any public statement on behalf of the Commission which he finds appropriate, without previously referring the matter to the Commission or the Public Relations Committee for approval, but the Chairman should inform the Commission afterwards of the content of his statement.

(b) This liberty of action does not belong to the members of the Commission who must observe the secrecy demanded by Rule 14, as far as concerns the matters still under consideration or already decided by the Commission during its meetings.

(c) The rule of secrecy does not prevent members from making public statements on facts they have seen or evidence gathered in the capacity of members of the Commission, provided they state only facts and not an appreciation of them or comments upon them made by the Commission during its meetings.

SECRET

C.108.

9th May, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

Establishment of an International
Military Tribunal

Statement by President Truman at a Press Conference at
Washington on 2nd May 1945.

The following Radio Bulletin of a statement by the President of the United States at a Press Conference on 2nd May has been communicated by Colonel Hodgson.

President Truman read the following statement :

"At my request, Mr. Justice Robert H. Jackson, in addition to his duties as Justice of the Supreme Court, has accepted designation as Chief of Counsel for the United States in preparing and prosecuting the charges of atrocities and war crimes against such of the leaders of the European Axis powers, and their principal agents and accessories, as the United States may agree with any of the United Nations to bring to trial before an international military tribunal.

"Pursuant to the Moscow declaration of November 1, 1943, all war criminals, against whom there is sufficient proof of personal participation in specific atrocities, are to be returned to the countries where their crimes were committed to be judged and punished by those countries themselves. These cases are not involved in this assignment.

"There are left, however, the cases of other war criminals - - particularly the major war criminals and their principal agents and accessories, whose offenses have no particular geographical localization.

"I hope and expect that an international military tribunal will soon be organized to try this second category of war criminals. It will be Justice Jackson's responsibility to represent the United States in preparing and presenting the case against these criminals before such military tribunal.

"Justice Jackson has assembled a staff from within the War, Navy, and other Departments concerned, which has already begun work, so that there will be no delay on the part of the United States. It is desirable that preparation begin at once, even though the details of the military court are not yet determined.

"I have just signed an executive order designating Justice Jackson to this post. He and his staff will examine the evidence already gathered and being gathered by the United Nations War Crimes Commission in London and by the various Allied Armies and other agencies; he will arrange for assembling the necessary additional evidence; and he will begin preparation for the trial.

"It ..

"It is our objective to establish as soon as possible an international military tribunal; and to provide a trial procedure which will be expeditious in nature and which will permit no evasion or delay - - but one which is in keeping with our tradition of fairness towards those accused of crime. Steps to carry this out are actively under way.

"Arguments in the Supreme Court for the current term will conclude this week, and the court has ordered adjournment on May 28th. It is hoped that the trial of these war crimes cases will have been completed next October when the court reconvenes."

SECRET

O.109.

15th MAY, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

THE NAZIS' WAR AGAINST THE JEWS.

Communicated by the Association of Jewish Refuges in
Great Britain

"I venture another prophecy. Should the international finance Jews within and without Europe succeed in precipitating the peoples into another world war, the result will not be the Bolshevisation of the earth and thus a victory of Jewry, but the annihilation of the Jewish race in Europe".

Thus Hitler, in his speech to the Reichstag in January, 1939, the same year that he unleashed the new World War. How important he considered this statement can be seen from the fact that he reiterated it later, during the war, in several of his other speeches, at the very time when he had actually begun to send hundreds of thousands of Jews to the slaughter-houses in Poland. Long before the shooting war had started Hitler and the whole Nazi Party did regard themselves as at war with the Jews. Julius Streicher, Jew-Baiter No.1, had called the thing by its proper name. Addressing members of the Officer Corps in Nuremberg he said:

"The German Reich has thrown down a challenge to world Jewry through its Fuehrer. As long as there have been emperors, kings, or great people's tribunes in history, none of them has ever dared to issue such a clear and unambiguous declaration of war against world Jewry as the Fuehrer has done in his last speech to the Reichstag".

And some time later, the Deputy Press Chief, Suendermann, stated publicly that the Jews were a power waging war on Germany. Even if the formal declaration of war was made as late as January 1939, the actual war had started very much earlier. It actually began the very day Hitler and his Party gained power in Germany.

It is very significant that in that war the methods adopted by the Nazis were exactly the same as those used against all other nations or groups against whom the Nazis have waged war. Step by step the enemy was manoeuvred into a position of helplessness, where he was finally to succumb to the last physical assault. With the Jews, as with all other opponents, Hitler adopted the system of beginning with comparatively mild and outwardly harmless-looking measures, with dividing and splitting up the enemy he intended to fight and with slowly but surely tightening the screw. In this case, as in all others, every attack began with a spate of propaganda, followed by carefully organised incidents which finally- according to the Nazi version - made official steps by the Government an urgent necessity, in order to "protect the victims".

When the Nazis came to power in 1933 a wave of propaganda against the Jews in Germany had already begun. A few days after the accession to power, the incidents carefully organised by the storm troopers were set in motion and then, in order to guide the "people's rage" into orderly channels, an official boycott was staged on April 1st, 1933. This boycott, which in its material

effects was of little importance, must be regarded not by itself but as a signal. It was soon followed, however, by the first legal steps which had the purpose of driving the Jews out of public life, from the professions and vocations.

The first stage in this war against the Jews in Germany lasted from 1933 to 1935. During that period the Nazi regime was still rather shaky. It feared opposition within and resistance from without, and in consequence the first measures against the Jews appear rather mild. Nothing was to be done to disturb the general economic life of Germany, nothing was to be done yet to show the world that Nazism really meant, and the Jews themselves were to be lulled into a false feeling of security, one section was to be set against the other by being placed in a privileged position.

The initial steps were directed against a section of Jewish civil servants, lawyers, doctors, teachers, and other professional people. A number of them were driven out of their professions, but exceptions were made for large groups, such as ex-servicemen, men and women whose fathers or sons had been killed in the last war, and those who had been in the profession before 1914. It was intended that the victims, that is the whole of German Jewry, should not notice that war had been declared against all of them and that these first mild steps were merely the thin end of the wedge. Practically nothing of serious importance happened during this first period to the Jews in commerce and industry, who in numbers were the largest group among German Jewry.

By 1935 the Nazi regime in Germany had become much stronger, all opposition, whether from the left or from the right, whether from political parties or from the Churches, had been crushed. Germany had become stronger in the sphere of power politics too. She already possessed a strong air force, she had re-introduced conscription for the army, the naval pact with Great Britain had put her on the map again as a sea power. The time had come for the second phase in the war against the Jews. Again it began with a visible signal, the Nuremberg Laws of September 1935, which at one blow deprived all German Jews of their citizenship and made them second-class subjects of the State, with duties but without rights. By the way, the same laws cancelled, with one stroke of the pen, the exceptions for ex-servicemen etc., which had in 1933 allowed a fair number of Jewish civil servants, municipal officials, teachers, professors etc. to remain in office. It is significant that the Nuremberg laws again had followed a spate of propaganda and a number of officially staged incidents. After the laws had been issued, new attempts were made at once to lull the world and the victims into a false sense of safety, by telling them publicly that this was the final act and nothing more would be done. Nazi Germany's economic basis was not yet safe enough to go the whole hog, and regard still had to be paid to foreign opinion.

The Nuremberg Laws, however officially making the Jews second-class subjects, opened the gate of innumerable semi-official measures. By administrative decrees and orders, all Jews without exception were driven out of journalism, special Jewish schools were to be set up for Jewish children, who had to be separated from their non-Jewish school-mates, and as the main feature, Jews were gradually squeezed out of economic life. The Nazi Party officially boycotted Jewish businesses and firms with Jewish employees. The law courts now began to accept this Party Boycott as a kind of law. Whereas earlier judgments had, for instance, protected Jewish employees against summary dismissal, now the law courts regarded such dismissals as valid.

Particularly in the smaller towns Jewish businesses were picketed and labels affixed to them indicating that the owner was a Jew. No legal protection was granted against such methods. The first Jewish-owned factory was expropriated without compensation - significantly a munitions factory - under some trumped-up pretext, and many other Jewish firms were forced by all kinds of pressure to sell their businesses to non-Jews at prices fixed by the would-be purchasers.

This second period of the Nazi-war against the Jew ended with the year 1937. At the end of that year the status of the Jews in Germany was that of pariahs, but most of them were still more or less able to exist, although in a permanent state of insecurity. The Nuremberg Laws, depriving all Jews of their rights of citizenship, were the most significant measure of that period. In consequence of these laws the Jews had been expelled from all official or semi-official positions in the Government of the Reich and the Federal States, in the municipalities, and in all public corporations. A Jew could be neither an official in any Ministry, nor a municipal scavenger. He could not be a judge, a teacher at a school or university, or a junior clerk in the electricity works of any town. At the end of this period Jews had been entirely expelled from all activities in the sphere of culture (except those catering for Jews only). No Jews, in whatever capacity, were permitted in the Press, the theatre, in the realms of art and music. This was achieved not by any special law, but by administrative steps taken by the head of the Chamber of Culture - Dr. Goebbels. Some Jews were still tolerated as doctors and lawyers, as students at universities and high schools and particularly in economic life, although here the Party boycott made their position intolerable in the smaller places. In addition, chicanery by the Government Offices controlling the import of raw materials, credits, etc., amounted to discrimination against Jewish firms. In the larger towns with a fairly numerous Jewish population, Jews were still able to make a living, but never secure from interference from Party or Government authorities. Up to the end of this period Jews were still able to prepare for emigration without undue haste and they could still take a limited part of their property with them.

The third phase of the war began early in 1938. The coup which led to the annexation of Austria showed Hitler that he need not fear any foreign interference. This first act of aggression outside his own frontiers did not lead to more than a few feeble protests. This was the signal to tighten the screw in the war against the Jews. All the steps that had been taken against the Jews in Germany proper during the preceding five years were now taken against the Jews in Austria in as many weeks. They were given no time to prepare themselves and to try to adapt themselves to the new conditions. As a matter of fact the annexation of Austria led to a kind of pogrom in which many Jews were ill-treated, thrown into prison or concentration camps, and forcibly deprived of their businesses which were then administered by "Aryan" commissars. In some districts of Austria, such as the Burgenland, the Jews, were actually driven over the frontier and left stranded in no-man's land. The full success of this phase of the war against the Jews led also to new and sharper measures being taken in Germany proper.

In the course of the year 1938 decrees were issued to the effect that all Jewish doctors and all Jewish lawyers had to cease their general practice, the exceptions formerly made for ex-servicemen etc. had been cancelled at one blow. In June 1938, a strange decree was issued, the purposes of which was not evident at the moment but became very plain a few months later. It was decreed that every Jewish shop had to be visibly marked as such. As pretext it was given out that people who did not want to buy from Jews should not be misled.

The real reason was a different one. When, in the night of 9th - 10th November 1938, the pogrom against the German Jews was organised, in which most of the Jewish synagogues were set aflame and nearly all Jewish shops smashed up, the gangs of storm troopers and Hitler Youth who were detailed to do this job of "spontaneous popular demonstration" found this marking of Jewish shops very convenient, lest they should inadvertently destroy shops belonging to non-Jews. The decree

of June, 1938, can be regarded as a proof that the November pogroms had been planned long ahead. Corroborating proof may be seen in the fact that room had been prepared in the concentration camps many weeks ahead for the Jews arrested during that night. The murder of a German diplomatist in Paris by a Jew was merely used as a convenient pretext.

The November pogroms were not the end of the matter. The following day a law was issued to the effect that as from January 1939 no Jew was to own any retail business, delivery business, or to work as an independent craftsman. Long term contracts with Jews became invalid. The last remaining Jewish banks were "aryanised". That this exclusion of the Jews from economic life had been planned beforehand was now revealed by the Minister of Economics, Herr Funk, who in a speech a few days after the pogroms said:

"It is impossible to exclude the Jews from public life and to leave them alone in economic life. That the final violent explosion of popular rage, on account of a criminal Jewish attempt against the German nation, should have happened at the very moment when we had almost completed the economic measures for the elimination of the Jews from German economic life, is due to the fact that in previous years this problem has not been tackled speedily and consistently enough. We had already excluded the Jews entirely, by means of "Aryanisation" under Government supervision, from the stock exchanges and the banks, and almost entirely from big business and all important industrial undertakings. Of the registered property of the Jews to the value of 7,000 million marks, already about 2,000 million marks have been transferred to German possession. Our preparations enable us now to exclude the Jews entirely within a short time from German business life and to transfer what is left of Jewish property to German hands".

At the same time a fine of 1,000 million marks was imposed on the Jewish Community, a fine which was later increased after the outbreak of war, although in the meantime the Jews had been deprived of a large part of their property and practically all their earning capacity. It is interesting to note that the pogrom and these final measures of economic liquidation of German Jewry took place only a few weeks after the Munich agreement when Germany had secured a major diplomatic victory over the great Powers of Europe.

The final phase - the physical liquidation - began with the outbreak of war. Its progress cannot be traced as clearly as that of the earlier phases, because it was not marked by any laws or decrees. As a matter of fact, it was given little publicity in Germany.

The first step was to deprive the Jews remaining in Germany, and later on the Jews in occupied territories, of food. In Berlin for instance, they were completely barred from the purchase of fresh and smoked fish, while in the "Protectorate of Bohemia-Moravia", neither vegetables, nor fruit, nor mushrooms could be sold to Jews. Similar orders forbidding Jews to purchase fruit and vegetables were

were published in Berlin, Hamburg and other German Towns.

The most important foodstuff, however, withheld from the Jews was milk. In Berlin, the supply of milk to Jews was stopped on the 15th January, 1940. In Vienna, even sick and infirm Jews were deprived of their Certificates for milk, and there is no reason to presume that the same regulations were not applied everywhere. That Jews were also excluded from any extra distribution of food, like sugar for preserves, any chocolate, tinned vegetables and milk, and coffee, goes without saying. In Poland Jews were given no eggs, and less bread and half as much sugar as non-Jews.

The Axis paper UJ MAGYARSAG, Budapest, in a Berlin report published on 5th September, 1942, described the result of this policy of starvation: "The Jews whom one sees in the streets have wax-like faces and look like death. It depends on the shopkeepers whether they get anything at all, and shopkeepers who do not want to, just do not let the Jews into their shops".

Undernourished as the Jewish population of Nazi Europe necessarily was, they had suffered additional injury to their health through the fact that no clothing or footwear coupons had been issued to them. Even shoe repairs were permitted only in exceptional cases. These prohibitive measures were justified by the Nazis with the alleged wealth of the Jewish community, who could easily draw from their accumulated stocks. In reality, the vast majority of Jews in Germany and the occupied countries had been utterly impoverished through being deprived of their jobs and through specially heavy taxation and confiscations of all kinds. Desperate as the clothing situation already was, it was made worse when Jews had to surrender furs, woollen clothes and underwear, when the German Army ran short of warm things in the 1941-42 winter campaign in Russia.

Although the German Jews, had by successive measures, been completely eliminated from Germany's economic life, the great labour shortage due to war conditions compelled the Nazis to force Jews back to work. They had to take any job given to them and had to do the hardest work without being given the social benefits accorded to non-Jewish workers. Digging, street-cleaning etc. were classed by the German Ministry of Labour as work specially suited for Jews. Jews, moreover, were not granted payment like other workers for feast days, no family allowances were given, old age pensions were scrapped, and any loss of wages through air action was not compensated, as "the war is in no small way due to the influence of world Jewry". In addition, Jewish workers had to pay a special tax, the "Sozialausgleichs-abgabe".

European Jewry, thus weakened in body and mind, underfed and underclothed, overworked by forced labour and often tortured in concentration camps, had now to face its worst ordeal, deportation. Almost immediately after the occupation of Poland, the Nazis created a special "reservation" for Jews in the Lublin area. The first deportations were made from Vienna, Bohemia and Moravia. From Vienna about 65,000 men, women and children were taken to Poland, from Bohemia and Moravia mainly men between 17 and 70 years of age. Early in 1940, the first deportations were reported from Germany proper. All Jews living in the Baltic region in and around the port of Stettin were expelled to Poland. Soon the idea of a Jewish reservation in Lublin was dropped and ghettos were formed in the larger cities. In Cracow, Governor Waechter issued an order forming the ghetto on the 3rd March 1941. In Warsaw, Governor Fischer had created a ghetto at the end of October, 1940. The deportations continued. On the 22nd October 1940, almost all the Jews living in Baden and the Palatinate

were deported to un-occupied France and interned in the ill-famed Gurs Concentration Camp. From 1941 onward, deportations of Jews from Germany and Austria went on at an ever-increasing rate, mostly to camps or ghettos in Poland. Only a small number of able-bodied Jews were left in Germany and forced to do slave labour on roads or in war factories.

Simultaneously, deportations to Poland started in all countries under Nazi occupation. The KOELNISCHE ZEITUNG reported in October, 1941, that "all Jews in the former Grand Ducky of Luxemburg have been transported eastward". From Holland Jews were deported also to the east. Most of them received orders to work there in German labour camps. At the end of July, 1942, the Dutch Nazi press reported: "Henceforth transports will go regularly to the east, and at such a rate that not a single Jew will be left in Holland by June 1st, 1943".

In Czechoslovakia, those Jews who had not been deported to Poland were taken to the North Bohemian fortress town of Terezin. On the 28th February 1942, a decree was published aiming at "the concentration of all Jews in the Protectorate in one single town". Mass deportations from France were carried out, and that from the occupied and un-occupied zones alike. Similar deportations were carried out in Belgium and in Norway. Eugen Kvaternik, Secretary of State in the Croat Ministry of the Interior, declared that after the establishment of a Croat State there had been a revolutionary period in the handling of the Jewish questions carried out chiefly by the Ustachi organisation. This had been followed by legal measures. The result was that Croatia to-day had only 6,000 instead of 35,000 Jews. From Slovakia, the VOELKISCHER BEOBACHTER reported on the 31st October, 1942, that four-fifths of Slovakia's Jewish population had already been driven out.

In Poland the Jews were at first placed in ghettos and labour camps, where they had to work for the German war machine until exhausted. Considering their very meagre food rations, this state was reached fairly quickly. As soon as the men and young women were no longer of any use for work, they followed the way the old people and children had gone before them, to the now notorious death camps of Maidanek, Oswiecim, Treblinka, and many others, where they were put to death in gas chambers and their bodies burnt in huge incinerators.

"It is not enough to isolate the Jews: the Jew has got to be exterminated", said Dr. Ley in May 1941 thus making even plainer Hitler's threat of January 1939.

There remains one other aspect of the Nazi war against the Jews which must be mentioned. That is the spreading of anti-Semitism in all countries where Nazi influence extends or extended. It was the Jew-baiter, Streicher, who made this intention plain earlier than other: "The German nation is on the way to forming itself in such a manner that it will one day save the world from the Jew. The victory will be complete, only when the whole world is free of Jews". This he said in 1937. At the same period officially-subsidised propaganda organisations published anti-Jewish leaflets in foreign languages and sent them out all over the world. Pro-Nazi parties in every country were urged to adopt an anti-Semitic policy, and since they required either diplomatic help from Germany or financial assistance, they all fell into line, even those who at first had denied any anti-Jewish bias.

Mussolini, who had rejected any anti-Jewish policy during the first 15 years of his regime, suddenly introduced anti-Semitic laws at the behest of Germany when he needed Germany's political help. The moment Czechoslovakia became subservient to Germany after Munich, that country too was compelled to adopt anti-Jewish measures. The same happened in Hungary when it fell into the German orbit. During the war all quisling governments in occupied or Axis territories were forced to introduce anti-Jewish laws, and the weaker ones among them had to send their Jews to the slaughter-houses of Poland.

Before the outbreak of war the Nazis even managed to use the Jews themselves as a weapon of this anti-Jewish propaganda. They made their life in Germany intolerable, and after 1939 actually impossible; they released Jewish prisoners from concentration camps only on condition that they emigrated within a few weeks, but at the same time they placed every possible obstacle in the way of Jewish Emigration from Germany. They prevented the Jews from taking their property, even their chattels, with them, thus thrusting them as penniless emigrants into a world which has no liking for penniless emigrants of any race. By this method they hoped to create first an anti-refugee and then an anti-Jewish animosity in the other countries, which finally was to strengthen the Fascist parties in those countries, to increase the number of potential quislings; and thereby open the country to German infiltration. Thus the Nazi war against the Jews, which began in 1933, was also a cunning preparation for the new methods of warfare brought into the open in 1939.

The boycott day of April 1st, 1933, appears but a small matter to-day. Actually it was the first shot fired by the Nazis in their war against the Jews (a war which later merged into the war against modern civilisation). From the boycott of April 1933 the way led slowly but surely, step by step, to the extermination camps in Poland. Even at the time when the German armies were being driven out of the countries they had occupied, they still found time to wreak their revenge on the surviving Jews.

Quite recently they threatened to use the last remnants as hostages, in order to procure more advantageous terms from the Allies. The official Deutsches Nachrichten-Buero declared on March 13th 1945:

"If Roosevelt now admits that he and his accomplice Churchill undertook in Yalta to surrender German prisoners of war as slaves to the Soviet Union, that too is part of the devilish Jewish plan. We shall thoroughly upset the machinations of these slave-drivers of the Jewish International. Or are these international criminals under the impression that we have no means of retaliation. In this respect they will be taught a lesson too. Above all, we shall make every Jew who is or falls into our hands pay for all the others. When this war comes to an end, there will be no more Jews in Europe.

SECRET

C.110
14th May, 1945

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT OF AN AGENCY ATTACHED TO THE
ALLIED CONTROL COMMISSION IN ITALY

Proposal by Dr. Zivkovic

1. The United Nations War Crimes Commission has undertaken all the steps required for the establishing in Germany of an effective machinery for the apprehension of war criminals put on its lists. It is about to adopt the practical conclusions submitted to it by Committee II (Doc. C.99) and to act on the lines of the following recommendations:

.....

"8. It would seem that immediate negotiations should be opened with SHAEF along these lines. Similar negotiations should be opened with other Supreme Commanders and also with such Control Commissions as are or may be established."

2. The enemy state which ranks immediately after Germany in respect of war crimes committed against nationals of the United Nations is Italy. While the Supreme Allied Commander (SHAEF) in Germany has to a certain extent started apprehending war criminals nothing of this nature has so far been undertaken in Italy, nor is there any indication of the likelihood of such a development in the near future.

It seems therefore, that the time has come for the Commission to take the initiative and see that Article 29 of the terms of surrender accepted nearly two years ago by the Italian Government is put into effect:

"Benito Mussolini, his chief Fascist associates and all persons suspected of having committed war crimes or analogous offences whose names appear on the lists to be communicated by the United Nations and who now or in the nearfuture are on territory controlled by the Allied military command or by the Italian Government will forthwith be apprehended and surrendered into the hands of the United Nations. Any instructions given by the United Nations to this purpose will be complied with."

3. The crimes committed by members of the Italian armed forces and of the Italian occupying authorities in Yugoslavia, France, Greece and Albania and against the nationals of these countries on other territories do not, in any respect, fall short of those committed by the Germans. The apprehension of Italian war criminals is therefore of the same importance to the Commission, as the representative body of all the United Nations, and to the Governments of the countries more particularly affected.

It is to be feared that, if swift action is not taken in respect of Italy, while strong action is taken in respect of Germany, the Governments concerned and public opinion in their countries may feel that the United Nations War Crimes Commission is not acting uniformly with regard to all war criminals, and that even many of them, who merit severe punishment, will not be brought to justice at all.

4. I therefore move the following proposal:

- (a) That an immediate request is made by the Commission, through its Chairman, to the Allied Control Commission in Italy, with a view to attaching an Agency of the Commission to it.
- (b) This Agency would act both as an advisory body to and an executive organ of the Control Commission in the carrying out of the terms provided in Article 29 cited above.

- (c) The Agency should be composed of five to six members, four of whom should represent respectively France, Yugoslavia, Greece and Albania. The other one or two members should be chosen from among the other nations not directly concerned.
- (d) Member representatives of the above nations should be detached from the National Offices concerned and should act as assistants of the member delegates to the United Nations War Crimes Commission, thus representing at the same time the War Crimes Commission.

SECRET

C.111
16th May, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

THE PROBLEM OF THE MAJOR WAR CRIMINALS

(M. de BAER)

On the 20th October, 1942 Lord Simon, when establishing the War Crimes Commission, said in his introductory speech that the Governments concerned would be interested in its views on the treatment of those who might be described as arch-criminals. Later, however, this statement was said to have been superseded by the terms of the Moscow Declaration according to which the major war criminals whose offences have no particular geographical localization will be punished by a joint decision of the Governments of the Allies.

At that time there was no indication whether the joint decision mentioned at Moscow would be an indictment before a Court or a political declaration of guilt and punishment.

On October 4th, 1944, Mr. Churchill was still in doubt, for he said in the House of Commons that it should not be assumed that the procedure of trial will necessarily be adopted in respect of men such as Himmler, Goebbels and Goering.

It seems that no decision has yet been taken on this question of principle and it is not even known whether any one of the Governments of the Allies has approached the others with a view to solving that problem.

The urgency of the matter cannot be denied, and the confusion which prevails concerning the position of men such as Admiral Doenitz, who is acting as if he has been accepted by the Allies as the head of the German State, and who may be charged with having ordered the unrestricted submarine warfare, is a disturbing element.

x x
x

In this connection, two questions can be envisaged :

- I. Who are the top criminals;
- II. How they should be dealt with.

I. Determining who are the top criminals is a difficult matter. As far as Heads of States such as Hitler are concerned, it is easy. There is no difficulty either in respect of his handful of immediate collaborators who have framed the gangster policy of the German Reich. But the lower down the scale of Nazi officialdom, the greater the number of subordinates, the lesser the responsibility of each individual, and the more the difficulty increases.

To draw an arbitrary line below which criminal liability does not attach is not advisable.

On the other hand the National Offices are, generally speaking, bringing charges against perpetrators of specific acts, and notwithstanding the efforts of this Commission some still show little inclination to bring charges against officials responsible for the framing and carrying out of Nazi policy.

There is little doubt that public opinion will exercise the necessary pressure to demand the punishment of leaders such as Himmler and Goering, but there is some danger that State servants whose activities have not been so much in the limelight - and who nevertheless are at the root of the evil - may escape.

The conclusion is that, if punishment is to be imposed, it is important that, wherever possible, not only the perpetrators but also the persons in office responsible for the policy should be charged with the criminal liability for specific crimes.

If all parties responsible are charged with partnership in specific crimes, then the question of determining who are the top criminals becomes of secondary importance.

Establishing a discrimination between top criminals and the others presents other disadvantages. Top men will appear to the public as having been made criminally liable for their political behaviour, and in democratic countries the people have always been unwilling to accept this. Moreover, it will appear as if the Allies had established two kinds of justice: one for the powerful and another for the small fry, and this is also distasteful to the democracies. Therefore it would be far better if charges of a criminal nature were brought against all persons accused of having committed, directed, ordered or incited criminal acts; thus the need for discriminating between top criminals and others would be eliminated or at least reduced. However, as it cannot be hoped that this will be done in time (notwithstanding this has been advised by the Commission for more than a year), it is necessary to frame measures for the punishment of such top criminals as have not been charged with partnership in a specific crime.

II. The second question, how the accused should be dealt with, has been the object of several proposals:

(1) There is first the Commission's own proposal for the institution of an International Criminal Court. In the absence of any acknowledgement of this proposal it may be assumed that it has found no favour with our leaders, and so it may be unnecessary to dwell further upon it.

(2) In order to avoid the necessity of determining the guilt of each individual by means of lengthy public trials by a Court, the imposition of punishment by executive decision has been advocated. In a recent article published in the Bulletin of the Royal Institute of International Affairs. It was proposed that reasons for the decision in respect of each accused should be given and made public, and, preferably to a decision prepared in secret and anonymously, it was suggested that the War Crimes Commission be charged with preparing these reasons, with the power to investigate doubtful cases; it would be within the Commission's discretion to hear the accused or witnesses in cases in which there is not already sufficient evidence of guilt. Thus the advantage of a speedy justice would be combined with the elementary rights of the defence.

(3) President Truman's statement of May 2, 1945 is another solution to the problem. The Chief Executive of the United States seeing that the other United Nations have failed to frame the machinery to punish the leaders and principal agents of the Axis, has taken the initiative of proposing that these accused be brought to trial before an international tribunal which, in his opinion, should be a Military Tribunal. The President has appointed Mr. Justice Jackson to prepare the prosecution in the name of the United States, and preparations for the trial have already begun.

Some may regret that the vindication of justice and the condemnation of the Nazi major criminals will not be solemnly pronounced by a Court composed of the highest judges of the Allied Nations; others who feel that speed is essential may prefer a punishment imposed by means of a political decision, nevertheless the United States' initiative in taking a constructive step will probably be welcomed by the smaller nations, eager to see punishment imposed. They will be grateful to the more dynamic of the United Nations for taking the lead in this field, at the last minute.

Therefore, in view of President Truman's proposal, the Commission may find it expedient to abstain from proposing a different solution, and to help towards its realisation.

It may also be found advisable that the jurisdiction of the proposed Court should not be limited to any category of war criminals; many countries have not adapted their legislation to cover all war crimes: the proposed Court should have jurisdiction to try any cases that cannot be judged by National Courts (namely violations of international law and customs). The Court should be a "Court of Common Law" and its sentences declarative of such law.

To uphold the publicity of the hearings but to deny the right of appeal will probably also serve the cause of justice.

For the rest the Commission has clearly indicated its view in its draft proposal for the creation of an International Criminal Court.

From the paper that was circulated, it does however not appear clearly whether the prosecution against all the accused is to be conducted by the United States in the name of mankind, or not. Individual prosecution by each one of the United Nations would lead to unnecessary delays, even if conducted by each Nation in succession before the same Court. On the other hand prosecution by one country alone would lack the unanimous and formal support that is desirable. A prosecution conducted by the United Nations as a whole, with the help and backing of all the Member-States might be preferable. The War Crimes Commission has already collected much valuable material in this field; a prosecution conducted in the name of the Commission on behalf of all the United Nations would give the world one more proof of the unity of the civilized world in its desire to do justice.

SECRET

C.112
22nd May, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

The following document has been communicated to the
Secretary General by the Commissioner of the United States,
Colonel HODGSON.

EXECUTIVE ORDER 9547

PROVIDING FOR REPRESENTATION OF THE UNITED STATES IN PREPARING
AND PROSECUTING CHARGES OF ATROCITIES AND WAR CRIMES AGAINST
THE LEADERS OF THE EUROPEAN AXIS POWERS AND THEIR PRINCIPAL
AGENTS AND ACCESSORIES.

By virtue of the authority vested in me as President and as
Commander in Chief of the Army and Navy, under the Constitution and
statutes of the United States, it is ordered as follows :

1. Associate Justice Robert H. Jackson is hereby designated to
act as the Representative of the United States and as its Chief of
Counsel in preparing and prosecuting charges of atrocities and war crimes
against such of the leaders of the European Axis powers and their
principal agents and accessories as the United States may agree with any
of the United Nations to bring to trial before an international military
tribunal. He shall serve without additional compensation but shall
receive such allowance for expenses as may be authorized by the President.
2. The Representative named herein is authorized to select and
recommend to the President or to the head of any executive department,
independent establishment, or other federal agency necessary personnel
to assist in the performance of his duties hereunder. The head of each
executive department, independent establishment, and other federal
agency is hereby authorized to assist the Representative named herein in
the performance of his duties hereunder and to employ such personnel
and make such expenditures, within the limits of appropriations now or
hereafter available for the purpose, as the Representative named herein
may deem necessary to accomplish the purposes of this order, and may
make available, assign, or detail for duty with the Representative named
herein such members of the armed forces and other personnel as may be
requested for such purposes.
3. The Representative named herein is authorized to cooperate
with, and receive the assistance of, any foreign Government to the
extent deemed necessary by him to accomplish the purposes of this order.

HARRY S. TRUMAN.

SECRET

C.113
23rd May, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

PROPOSALS BY DR. CYPRIAN, FOR THE SIMPLIFICATION AND
SPEEDING UP OF THE WORK OF THE COMMISSION.

From our meetings held during the last few months I obtained the impression that our activities increase to such an extent that we cannot cope with all the questions put before us and it happens more and more often that the agenda of the meeting has too many items on it for all of them to be dealt with.

Besides, every member of the Commission gets so many papers that even if he did nothing else than study them he would be not able to do it, as every morning the mail brings a rather heavy envelope.

According to my rough estimate we are able to discuss at our meetings no more than 40 per cent of all the matters submitted to us by the Secretary, who has admirably coped with his task until now but is threatened with sinking under the numbers of the papers to be prepared, duplicated, distributed and discussed.

On the other hand we cannot simply cut the number of matters to be settled and of papers dealing with them, as the end of the war and the nearing of the moment of punishing of war criminals makes our task a very real and actual one.

To avoid our being overwhelmed by the sheer number of questions to be settled I would like to move as follows :

- 1) That all the papers concerning general policy of the Commission, and legal or theoretical questions be put before the Commission and, without going into details, sent to the legal Committee or a special (drafting) Committee set up for that purpose.
- 2) That those Committees discuss the matter and lay before the Commission the conclusions they agreed upon.
- 3) That the Commission discuss current affairs as it does now and the conclusions of the special Committees, avoiding if possible going into details.

SECRET

C.114
24th May, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

USE OF UNRRA FACILITIES IN WAR CRIMES INVESTIGATIONS

Recommendation adopted by the
Commission on 23rd May, 1945.

In many cases the Displaced Persons Organisation of the United Nations Relief and Rehabilitation Administration will be the first point of contact between the United Nations and persons who have been victims or witnesses of Nazi and Fascist atrocities and other war crimes.

In view of the foregoing it seems advisable that the cooperation of the United Nations Relief and Rehabilitation Administration be obtained in the discovery and perpetuation of evidence concerning war crimes.

It is therefore recommended that the Governments and Supreme Headquarters, Allied Expeditionary Forces, obtain the full cooperation of the United Nations Relief and Rehabilitation Administration with the United Nations War Crimes Commission and the Supreme Headquarters, Allied Expeditionary Forces, in the discovery and perpetuation of evidence concerning war crimes.

It is further recommended that the Governments and the appropriate Supreme Commands obtain the full cooperation of the United Nations Relief and Rehabilitation Administration with the United Nations War Crimes Commission and the respective Supreme Commands in other areas in the discovery and perpetuation of evidence concerning war crimes.

The foregoing recommendation will apply mutatis mutandis to the Sub-Commission at Chungking and any other Sub-Commissions which may be established in the future.

SECRET

C.115
24th May, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

RECORD OF CONFERENCE HELD ON MAY 6TH, 1945, BETWEEN
MEMBERS OF THE UNITED NATIONS WAR CRIMES COMMISSION
AND MEMBERS OF THE UNITED STATES SENATE AND HOUSE
OF REPRESENTATIVES.

Chairman: Lord WRIGHT - Australia

There were also present:

Lt.-Col. HODGSON - United States of America.
accompanied by Captain WOLFF.
Mr. OLDHAM - Australia.
accompanying Lord WRIGHT.
M. de BAER - Belgium.
Lord FINLAY - United Kingdom.
Mr. Vincent MASSEY - Canada.
accompanied by Mr. Andrew BELL.
Dr. ECER - Czechoslovakia.
Professor GROS - France.
M. STAVROPOULOS - Greece.
M. CLASEN - Luxembourg.
Dr. CYPRIAN - Poland.
M. ZEVKOVIC - Yugoslavia.

and

Brigadier-General WEIR.
Major MARYE.

U.S. Senators: The Hon. Elbert D. THOMAS.
" " Wayland C. BROOKS.
" " Kenneth S. WHERRY.
" " Levett SALTONSTALL

Representatives: The Hon. Ewing R. THOMASON.
" " James P. RICHARDS.
" " Edward V. IZAC.
" " James W. MOTT.
" " Dewey SHORT.
" " John M. VORYS.

THE CHAIRMAN welcomed the distinguished members of the U.S. Senate and House of Representatives and said that he would first make some introductory remarks, and afterwards ask the members of the Commission to add a few words based on their own experiences.

"You are here in the present Council Chamber of the United Nations War Crimes Commission. I say the present Chamber, because we have great hopes of procuring different offices and premises soon. At the time when the Commission was formed, it was extremely difficult to obtain

suitable premises in London for we were at the height of the war, and accommodation was very limited. So the Commission was very glad to have accommodation in the Law Courts which had a further significance: it associated us physically with the Courts of Justice. We are an instrument of justice and our motto is justice not revenge, however much we may be horrified and disgusted and filled with hatred at what we have read and seen of the diabolical deeds of the Germans. You have just come from seeing for yourselves these dreadful places of torment: Buchenwald, Dachau and Nordhausen. Diabolical as these particular scenes are, they become more so in idea and in fact when we remember that they are not isolated specimens of the habits and practices of the Germans. These camps are to be found in every part of Germany and of the occupied countries. I think they run into hundreds, and some are much bigger than any one of the three you have seen. This was no isolated act, but one part of an enormous widespread diabolical scheme of the "Master Race", as they fondly called themselves, to degrade and debase and destroy a large part of the peoples of Europe. They proclaimed what they would do in England when they conquered her. There is no reason to think that their methods would have been any less humane or considerate or kind than those illustrated in the occupied countries which are now fortunately being liberated. This diabolical scheme operated in some concentration camps by means of starvation, accompanied by overwork, ill-treatment and tortures. In other camps it took a much more wholesale form; for instance, in Auschwitz and others, they had gas chambers and the destruction was not only of tens of thousands, but - according to reputable records at Auschwitz, not less than one and three-quarter million people were destroyed by this means. There is no precedent in history for these atrocities, and if there is no international law which covers these dreadful acts, it is up to us to make one. I, personally, am quite convinced that the existing international law, the customary law of nations, is quite sufficient and, to quote President Roosevelt's language, it has teeth - and we have got to show that it has teeth. That is the whole idea of punishing war criminals, that is the reason for our existence and the purpose why we are concentrated here. It has been said by writers of very great standing that there is such a law. For instance, one quotation says: "It is commonplace that there is a body of criminal law for the punishment of offences committed in times of armed hostilities in violation of the laws of war" - that primarily is what we are here for.

What is the machinery according to which this Commission works? It is perhaps a little complicated, but I will try to explain in a few words. First of all, its history.

The Commission was formed at a meeting in the Foreign Office in October 1943. Its primary functions were to investigate war crimes and receive statements as to crimes committed, to examine these statements and to report whether in fact there was a prima facie case. Somewhat later, the further power was added of giving advice to the Governments. The Commission settled down to work. At first, its operations were somewhat restricted because most of the countries where atrocities were committed, were occupied and it was only through the underground forces which were operating despite the Germans in these countries, that information was able to come out and reach this Commission. This is now no longer so, as the countries are being liberated. The point is how to investigate - and this must generally be done on the spot - how to investigate the atrocities which have been committed and are being committed. For that purpose three instrumentalities were brought in. One was the National Office. The Commission itself is not expected or intended to exercise these functions; it was first of all impossible while the countries were occupied, and later the nations would not have welcomed the idea of other countries sending in their detectives and holding enquiries in their territory and therefore it could not be contemplated as one of the methods. The Commission therefore got the Governments to create (each in its own country) what we call a national office, operating within the nation, composed of its own nationals and using

its own endeavours to examine the atrocities and track the main offenders and send its reports to the Commission. The Commission was therefore in the nature of a receiving office fed with reports by the national offices and it acted upon these reports like a committing magistrate. One of the most important features was that the Commission brought to bear an impartial judgment, at an allied international level, and prevented it being said that matters were dealt with and arrests made on the partial or unchecked statements of a single Government. When the Governments' statements are examined by the Commission, it deals with them impartially according to its views of international law or of the appropriate law, and if it is satisfied on investigation that the case is a proper one, it places the names of the accused on a list which it sends to the Governments who pass it on to the Army. In practice, however, the lists are also sent straight to the Army authorities by the Commission. We therefore see the following procedure: a national investigation conducted by people of the nation who know the language and get in touch with the witnesses and in that way bring the enquiry to the best conclusion. Then the Commission puts a name on the List, and the task of the military begins. That task is undoubtedly both difficult and certainly very important. The Army, in cooperation with other allied agencies, has to give effect, if it can, to the List. It traces the person listed and arrests him. The number of arrests which have been made is continually increasing.

After that, comes the question of trial. This had been postponed for some time, because of fear of reprisals. Everyone who has worked at these matters is looking forward with interest to the day when some suspected offender is duly brought before the appropriate court and dealt with according to international justice. That is true of the ordinary criminals. But there is a special sort of criminal, who is often described as arch or major criminal. The Moscow Declaration of 1st November, 1943, described him as a criminal whose crimes were not limited to any particular geographical location. These persons have been put in a different category. The Moscow Declaration said that they were to be dealt with in the way that the Governments might decide. We know that, in the last few days, President Truman has issued at a press conference a statement which is to the effect that Mr. Justice Jackson of the Supreme Court will, on behalf of the U.S.A., be appointed to the post of conducting these prosecutions and will arrange for sending the necessary evidence and will begin preparations for the trial. He said: "It is our objective to establish as soon as possible an international military tribunal; and to provide a trial procedure which will be expeditious in nature and which will permit no evasion or delay - - but one which is in keeping with our tradition of fairness towards those accused of crime. Steps to carry this out are actively under way". This conception of major criminals carries the matter right up to Hitler - if he is still alive. The principle involved is that if you know of crimes committed which can be traced to people higher up in the scale in the rank of the country, who can be proved to have organised and ordered the scheme, then they are guilty themselves of the crimes which have been committed under their orders or directions. This invokes a principle common to all civilised law. If you think of Buchenwald or Dachau, you may be able to trace the guilt up, from the actual perpetrator to the commandant of the camp, to the army commandant and so on up to the supreme Government, and to Hitler. That is the wide scheme into which the major criminal will fit. You can trace a pattern right through the whole scheme of these atrocious acts. They are not acts of individual wickedness or wrongdoing; they are the acts of the people at the top who worked the scheme out, otherwise the extraordinary similarity which runs through the whole pattern cannot be explained. The principle throughout is to destroy. What you see in the concentration camps confirms this impression and is sufficient indication to prove it.

The ordinary criminal will be tried by national courts. Experts differ as to whether they should be tried according to international law or national law or both. I don't think it matters much which is chosen. The military courts established by the allied Commander-in-Chief proceed according to the law and practice of international law as prescribed by the Commander-in-Chief who establishes them, as he can do under his powers under international law. The accused man comes within the scope of the court's jurisdiction, if he falls into the hands of the Army operating in the area.

In dealing with major criminals, we must not forget that many of them have been listed by the Commission not as major criminals, but as criminals who have been, according to the views of the Commission, guilty as principals or accessories in ordering and directing that which has been done.

The Commission has so far issued seven lists and is on the point of issuing an eighth. The number of actual suspects, (named persons) is something over 2600. These are being increased now that communications are restored with the countries being liberated. In addition, there are lists of suspects and witnesses, all of whom have to be detained. The Commission has also recommended that all S.S. men and all Gestapo men should be detained even though there is no special charge against them.

A question which the Commission has not yet discussed is that of deciding whether industrialists and financiers are major war criminals, as being the men who financed the war and made it possible for Hitler and his gang to start and proceed with it, as being parties to the scheme initiated by Hitler of which they must have appreciated the character, intention and purpose. Without them, the war could not have been carried on. But we shall have to investigate how much and to what extent the industrialists and financiers can be treated as implicated.

We are now at the end of a great war and a mass of problems arise for the Governments. It is very sad that President Roosevelt did not live to see the final triumph. A few weeks ago, we expressed here our humble admiration for what he has done for the world and paid our tribute to his memory which will be illustrious in history. He did not live to see the end and his help will not be available for dealing with a great number of problems. He, along with our Prime Minister and Marshal Stalin, have, from time to time, encouraged the Commission to go on with its work because they have declared the punishment of war criminals to be a vital matter and an essential element in the policy of the allied Nations - and so it is. If there is no law which can punish these criminals or crimes, the systematic and deliberate crimes committed all over Europe, it will be a very sad thing for the future of mankind. The Commission is the symbol of international justice. It holds aloft the standard of that ideal. When the time comes for the prisoners to be tried, and the suspects arrested and tried, a great many objections will be raised. You will hear idealists claiming that the harm has been done, and no good will be done by punishing the authors of it. But we must proceed, in order that men may be turned in the future from pursuing this course by the knowledge that punishment will come and that good is stronger than evil and that they cannot be successful. They must know that in addition to the other inconveniences of failure, there is the special inconvenience of being punished by a special court. That is some safeguard for the cause of peace in the future.

The Commission has been hampered in the matter of publicity by the fear of reprisals so long as the Germans had millions of our prisoners. The Commission has also been hampered by what seems to me an insufficiency of support from outside. Perhaps some members will enlarge on these matters. The chairman of the Finance Committee is not here, but I should like you to know that our finances are on the most meagre scale. We want to increase our staff, enlarge and improve our buildings.

In conclusion, I should like to say how obliged I am to you for listening to what must have been a most uninspiring account of the Commission, but it was suggested that such a statement might be of some use to you. I apologise for its dullness and its length.

I now call upon the members of the Commission to say a few words".

M. de BAER

I sit here first as representative of my country, Belgium, and secondly as chairman of Committee I, which is charged with receiving the cases and examining facts and evidence. As Belgium's representative, I would say that those people in my country who have submitted, during the occupation, to German rule have not been very much molested. Those who have resisted have been abominably treated. Everyone was of course living in dread of being deported as slave labour and in the fear of the Gestapo. Many of our left wing politicians and many of our ministers were in Buchenwald; also, judges, members of the Brussels University and others were deported. And of course the Jews and Communists were badly treated. The cases we have submitted to the Commission concern firstly mass crimes, such as the shooting of hostages, deportations, etc. We have brought charges against the people responsible for this, including Falkenhausen. Into the second category come the camps, such as Breendonck in Belgium and those in other countries where many Belgians were sent. Thirdly there are the charges for individual crimes, and looting. On the List, there are also Belgians who helped the Germans to commit crimes and fled to Germany.

As chairman of Committee I, I would say that we had great difficulties at first. For example, with regard to the identification of criminals. The deliberate suppression of evidence in cases of mass murder encouraged us to adopt a policy of putting whole units on the List, i.e. all those present at the time of the crime. But these were special cases. In most cases criminals are indicated by names or by the posts which they held. As regards the question of major war criminals, we ascertained a year ago that the same methods were followed everywhere, and that not only the individual perpetrators of the crimes, but the leaders who framed the whole policy were responsible. In April 1944, we recommended that not only those charged by the National Offices, but also the ring leaders should be held responsible. There was some reluctance on the part of the National Offices to follow this up, but now some countries have responded to our recommendation, and others will no doubt follow. Much more can still be done in the way of pooling information; there are too many watertight compartments between the National Offices. There is also a lack of understanding regarding the judgment and place of trial of those criminals who are wanted by several countries. And we also have to decide on our policy regarding those who committed crimes against anti-Nazi Germans.

DR. CYPRIAN

I am speaking on behalf of Poland, the country that had the rather dubious privilege of being invaded first and having suffered more than any other European nation. The atrocities committed by the Germans in Poland exceed by far anything they have done in the other countries, with regard to the numbers of people affected as well as to the extent of the crimes themselves.

Our Government, having managed to get out of the country, found after a short stay in France, the most welcome hospitality on British soil and the most cordial support from the United Nations.

It is well known that the Polish Government in London never lost touch with our country and that a shadow government was set up in Poland working underground on orders coming from London; that Government was fully organised and among other tasks had to collect full evidence of all war crimes committed by Germans, recording names of perpetrators and victims, places, witnesses and dates.

This evidence was sent by several underground channels to London and at risk and loss of many lives arrived regularly and in great numbers until the Warsaw rising and subsequent events which made any contact with Poland most difficult.

In London we set up a Polish National War Crimes Office, working up the received information into cases which were submitted eventually to the War Crimes Commission.

I cannot help mentioning here that this Commission emerged from the organisation, which had as its objective the punishment of war criminals, that was first created during a conference at St. James' Palace and which was convened on Polish initiative, on 13th January, 1942.

Our National Office presented to the Commission by far the greatest number of cases, of which I would like to mention some of the most appalling.

These are in brief :

- 1). Arrest and deportation to Oranienburg, Sachsenhausen and Dachau of 167 professors of Cracow University, many of whom were scientists of world wide fame, and almost all of whom died, executed or starved.
- 2). Punitive expedition to suburb of Warsaw, Anin, on 26 and 27 December, 1939, in dragging out of bed by night and shooting of 140 Poles, only because a German soldier was assailed by a drunken civilian.
- 3). Setting up of the concentration camp at Treblinka, where in the chambers filled with hot steam several hundred thousand Jews were executed.
- 4). Deportation, killing or imprisoning of outstanding persons among the Polish population, politicians, intelligentsia and officers, carried out methodically all over Poland.
- 5). Mass deportation of Polish population from Western Poland, Pomerania and Silesia, incorporated in the Greater Reich against the fundamental rules of international law.
- 6). Setting up of extermination camps at Belzec, where over 500,000 Jews were exterminated during the liquidation of Ghettos, set up by the Germans in all Poland.
- 7). Deportation to Germany of something between 2,500,000 and 3,000,000 Poles as slave labour. You have seen these people in Germany as "displaced persons".
- 8). Campaign against catholic clergy, resulting in executing and deporting to various concentration camps of over 800 priests, among whom there were many bishops.
- 9). Extermination of all lunatics in lunatic asylum in Swiecie in Pomerania, where over 1000 lunatics have been killed in one day.
- 10). Setting up of the Oswiecim (Auschwitz) camp, where over one million people, most of them Poles, died from torture, starvation or hanging. That camp made the now famous Buchenwald camp look like a holiday resort, as its inmates say.

11). The medical experiments carried out on thousands of Polish women in the camp of Ravensbruck and elsewhere.

12). Setting up of the famous extermination camp in Majdanek, where more than one million Jews from Poland and all other countries of Europe perished in gas chambers, steam chambers, were shot, hanged, starved or tortured to death.

These are some of the most striking, appalling facts I have to mention here. It is my duty as a Pole to stress that the sufferings of Poland exceed, by far, anything that happened elsewhere and that the number of Polish victims exceeds several times the victims of all other countries of Europe put together.

THE CHAIRMAN: The representative of China is not present today. I ought to mention that there is a sub-commission with headquarters in China, in close cooperation with our Commission, which has dealt with almost all the Far Eastern cases so far heard.

The representative of India is also not present. So I will call upon Dr. Ecer, who, I might mention, is on the point of starting off with an investigation team to the three camps, and possibly others. By arrangement with the Army, he is going to help them in getting the names and tracking down criminals.

DR. ECER.

I wish to point out that we are not only facing individual crimes, but a mass of crimes organised by the German State, i.e. by the Nazi Government, the German High Command, the leaders of the Nazi Party etc., and of course by those criminal organisations as the Gestapo and the S.S. I know a little about their methods because I was arrested and examined by the Gestapo, although I was not tortured.

Up to December 30th, 1944, the Czech Government has submitted 10 big charges, collective charges against the German Government with Hitler at the head - against the German Army Chiefs, against the German Party Leaders, the Gestapo and the S.S. officials. We were limited because we could not obtain all the necessary evidence; our only two sources being the underground and the German public announcements about executions (more than 4,000 up to July 1942). Based on evidence from these two sources, our first big charge related to the extermination of Lidice and Lezaky; further charges concerned the massacre and deportations of students in October/November 1939; then followed charges for crimes of deportation to the concentration camps in Buchenwald, Dachau and others and crimes committed in the camps, for the extermination of Jews and for the crimes of forced labour and slavery etc. If I include 560,000 deportees for slave labour, the number of victims is probably one million out of a population of 12 millions.

We have been hampered until now, but when our country is finally liberated, our investigations will proceed. We have over 2,600 Czechs in Buchenwald. Nobody examined them, although some cases were investigated by the American authorities. There is no agency of the War Crimes Commission in Germany. The National Offices (i.e. war crimes offices of the individual nations represented on the Commission) are not in the same position. The national offices of the nations who are occupying Germany have at their disposal the armed forces of their countries and a well-operating system of investigating teams. However, offices of some other nations (among them my country) have not at their disposal such organisations in Germany. Thus, my Government gratefully accepted the recommendation made by the United Nations War Crimes Commission last year to set up in Germany a United Nations War Crimes office which would work for all the United Nations. This recommendation has not yet been accepted by all the governments. It is

certainly under careful consideration. But the time for considerations and discussions is past and now the time calls for action. The office should be set up without any delay in order to help the national offices of the various United Nations to detect, arrest, examine, and hand over to the National Courts or to the Inter-Allied Criminal Court, war criminals who are actually in Germany.

The second point is as follows: to prevent the escape of Germans who could be reasonably suspected of having committed war crimes or to have ordered war crimes to be committed. Thus, all the Germans who are prima facie responsible as perpetrators or as accomplices of war crimes (as, for instance, the members of the German Government, members of the German High Command, the Nazi leaders, the Party leaders, the leading industrial and financial leaders, all members of the SS, Gestapo and the leading members of the S.A.) should be taken into preventive custody at once without waiting for lists approved by the United Nations War Crimes Commission. As to the Gestapo and S.S. the United Nations War Crimes Commission already recommended this measure last year.

The third point is to establish military tribunals in Germany. The bulk of criminals are in Germany and the mass of crimes were committed in Germany. We recommended to Governments the establishment of mixed military tribunals by the Commander-in-Chief in the hope that this instrument will be able to try the criminals on the spot. For instance, it could go to Belsen to try on the spot Kramer and his accomplices - the witnesses are on the spot and the criminals are already arrested. Justice could be done quickly.

The fourth point: I am happy to hear that President Truman has agreed to establish an international military court for trying major criminals, but we need now the support of the other Governments. We know the difficulties, but I should like to stress the importance of avoiding a repetition of the fiasco which occurred after the last war.

LORD FINLAY

I represent a country which has not been overrun. The result is that we have a very direct interest, but a less painful one than some of my fellow-members. With regard to the method of trial, I agree with every word the Chairman has said about the existence of international criminal law, but I feel that that is not the main business of the Commission. This is primarily a body in the position of a committing magistrate - which is not directly concerned with the trial which will follow.

With regard to Committee I cases, M. de Baer has explained how we work. I would like to say a word about the British National Office. The head of that Office is Sir Thomas Barnes, the Treasury Solicitor, an official whose capacity will be doubted by no one. He has as his principal assistant, Mr. Kent, with long practice at the bar in the Far East, who has devoted an enormous amount of interest to this work. He has several assistants under him. Steps are being taken to secure even further help. The National Office has contact with the 21st Army Group and as camps are being overrun evidence is being steadily collected which is forwarded and will ultimately be laid before the Commission. It goes before Committee I and there it is decided what is to be done.

Young institutions like young persons sometimes have teething troubles, but nobody could have worked with more ardour than the predecessor of Lord Wright. And now under Lord Wright we are still developing. Particularly Committee I is doing most valuable work and I believe that, as time goes on, the difficulties will disappear and it will be recognised that the Commission is making a great contribution to what we all have at heart; the vindication of criminal law and the punishment of those guilty of atrocities which perhaps have had no equal in the world.