

foreign publications. He suggested that an understanding be made with Mr. Hodge that in practice the latter would have to take account only of objections to comments raised by the Commission, on the grounds that the comments might lead to international misunderstanding. The Commission would not publicly accept responsibility. It would be publicly responsible only for the summaries of the trials published through the Stationery Office. Sir Robert thought that Mr. Hodge would agree to this.

The SECRETARY GENERAL said that the discussions which he and Dr. Schwelb had had with Mr. Hodge showed that the latter had the same arrangements in mind.

The CHAIRMAN: The texts should be reviewed by the Commission and not by the individual governments.

Sir Robert CRAIGIE: No reference to the Commission should appear except in the form of acknowledgements in the publishers' preface, to the Commission for making the documents available and for giving general assistance. The Commission should not have an absolute veto. Mr. Hodge would not accept any arrangements on that condition, and it would probably be unnecessary. The Commission would, in the unlikely event of its proving necessary, be able to disallow the appearance of the name of the Commission in the publications if Mr. Hodge should prove obdurate on any point which the Commission thought might injure international relations.

The SECRETARY GENERAL suggested that he and Dr. Schwelb should draft some points to put before Mr. Hodge. Committee III would be able to examine these points first.

Dr. FANDERLIK: Mr. Hodge would not like to give the impression to his readers that his comment was subject to any outside direction.

Dr. SCHRAM-NIELSEN: The Commission should not be mentioned at all.

Dr. SCHWELB felt that all Mr. Hodge cared for was the use of the transcripts. He would not mind greatly whether the Commission were mentioned or not.

Sir Robert CRAIGIE foresaw difficulties regarding the use of comment even in the summaries. For instance, the British authorities might be chary of allowing it to appear. It might happen that the comment in Mr. Hodge's publications might have to be restrained considerably or that the Commission could not agree to it at all. In that case, the Commission could not be mentioned in the publications. It would only be possible to judge when the Commission had seen a draft.

Dr. LACHS: Since the governments have handed over to the Commission the transcripts of the trials, they might hold the Commission responsible for any comment that was unfavourable, even if the Commission were not mentioned.

COMMITTEE III AGREED THAT THE SECRETARY GENERAL SHOULD MAKE CERTAIN WHETHER THE STATIONERY OFFICE, ACTING ON BEHALF OF THE WAR OFFICE AND OF THE ATTORNEY GENERAL'S OFFICE, WOULD PREFER TO MAKE ARRANGEMENTS DIRECTLY WITH MR. HODGE AS REGARDS THE HANDING OVER OF THE TEXTS OF THE TRANSCRIPTS. IF THE STATIONERY OFFICE PREFERRED THIS, THEN THE COMMISSION WOULD BE RESPONSIBLE ONLY FOR LOOKING THROUGH THE COMMENTS. THE COMMITTEE AGREED TO INVITE MR. PLUMBLEY TO THE NEXT MEETING OF THE COMMITTEE AT 3.0 p.m. and MR. HODGE AT 3.30 p.m.

Point 8.

The SECRETARY GENERAL, as a result of his contact with Penguins, had received a letter from Mr. Lane, Director, to the effect that Penguins were publishing a book on Nuremberg, and could not undertake to publish another series immediately afterwards due to paper shortage.

The Secretary General suggested that it might be wise to mention the point to Mr. Hodge in case he might be able to publish the popular edition too.

THE COMMITTEE DECIDED TO RETURN TO THE QUESTION WHEN CIRCUMSTANCES WERE MORE FAVOURABLE.

III. Further discussion of Doc. C. 199.

After considerable discussion in which the Chairman, Dr. Lachs, Sir Robert Craigie, Dr. Schwelb and Dr. Litawski participated, on the advisability of including in each volume of the summaries an explanatory annex, dealing with the significance of the various legal terms used in that volume, Dr. SCHWELB undertook to examine the possibility of carrying into effect the suggestion of Sir Robert Craigie's. This was to the effect that there should be a separate explanatory annex defining the legal terms used in the summary reports of trials by courts of each separate nation. Wherever a trial held by the courts of any particular nation appeared in a volume, the relevant explanatory annex would be included at the end of that volume.

Dr. SCHWELB referred to a telephone call from the War Office received by the Secretary General, regarding the appearance of comments in the summaries. This seemed to strike at the very roots of the Committee's scheme. Reports with comments would be more helpful to the reader.

Sir Robert CRAIGIE agreed that the absence of comment in the summary reports would make them much less comprehensible. He would try to persuade his authorities to allow the comments to appear, but such comments must be mainly explanatory. Critical comments could be very dangerous.

The CHAIRMAN: Paragraphs 3 and 4 of page 14, for instance, contained a criticism which might have been left out.

Dr. SCHWELB explained that he merely meant to state that the words involved were obiter dictum and not ratio decidendi. He fully agreed with the procedure and findings of the court in the Peleus case.

THE COMMITTEE AGREED THAT IT WOULD BE WISER TO INCLUDE THIS POINT IN THE FORM OF A FACTUAL FOOTNOTE.

The CHAIRMAN referred to the last paragraph but one on page 19, as another doubtful criticism.

Dr. SCHWELB explained that the fact that the prosecution had omitted a charge which it might have made was simply illustrative of State practice, and showed that this article of the Submarine Protocol was now regarded as obsolete.

Sir Robert CRAIGIE agreed that something should be said on this point, as the question would occur to any intelligent reader, but on this point for instance, also he would have to consult the Admiralty.

THE COMMITTEE AGREED THAT THE LAST BUT ONE PARAGRAPH SHOULD BE PARTLY RE-DRAFTED AND PARTLY SUBSTITUTED BY A FOOTNOTE REFERENCE TO THE OPINION OF PROFESSOR LAUTERPACHT.

Dr. SCHWELB undertook to redraft Doc. C.199 on the lines agreed upon, and to take out various more general paragraphs which might be included in an explanatory annex.

IV. Cover of the publication.

THE COMMITTEE APPROVED THE WORDING FOR THE COVER OF THE PUBLICATION OF THE SUMMARIES PRESENTED BY THE SECRETARIAT.
(See appendix to these Minutes.)

V. Discussion of Doc. III/43 of 26th June 1946.

The Committee agreed that Trial No. 4. could be left out of the first volume, and the others all included if the available space was sufficient.

VI. H.M. Stationery Office - Conditions of publication on agency terms.

A paper containing the standard conditions of publications on agency terms was distributed during the meeting.

It was subsequently circulated as Doc. III/44.

THE COMMITTEE EXPRESSED ITS AGREEMENT WITH THESE CONDITIONS.

The next meeting of the Committee will be held on Tuesday 2nd July 1946, at 3.0 p.m.

ANNEX.
(See paragraph IV Supra.)

ENGLISH EDITION.

TRIAL OF WAR CRIMINALS.

Annotated Summaries.

Volume I.

(Design)

Published for

The United Nations War Crimes Commission

by

H. M. Stationery Office.

SECRET

Committee III
Minutes No. 15/46.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of the Meeting of Committee III

held on 2nd July 1946 at 3.00 p.m.

In the Chair: Dr. Mayr-Harting (Czechoslovakia)

There were also present:

Sir Robert Craigie (United Kingdom)
Commander Mouton (Netherlands)

The Chairman extended on behalf of the Committee a cordial welcome to the following representatives:-

Mr. Lambert - Deputy Under Secretary of State for War.
Major Thomson - A.G. 3. (V.W.) War Office.
Colonel Halse - Department of the Judge Advocate General.
Mr. Plumbley - H.M. Stationery Office.
Mr. Reed - Attorney General's Department.

M. De Baer and Dr. Schram-Nielsen had sent apologies for not being able to attend. M. de Baer's letter as far as it contains a comment on the subject matter of the meeting, is reproduced as an annex to this note.

1. Responsibility of Commission for the publication of full reports of the Notable Trials type to be produced by Hodge (III(f) of LR2).

Sir Robert CRAIGIE said in the discussions the Committee had had there were three possible methods of dealing with the question of full reports: (1) the Commission should undertake the whole work and be responsible for any comments made in these fuller reports. (2) the Commission should make arrangements with Messrs. Hodge for publication of a fuller report while the Commission would maintain a certain control and have an understanding with Mr. Hodge that he must take out anything in his commentary which the Commission might consider would have a prejudicial effect, (3) for the work to be left entirely to Mr. Hodge and the Commission take no responsibility in the matter at all. These were the three courses which were most obvious. He thought that in their discussions this Committee had rather favoured the middle course, which was publication by Messrs. Hodge with the Commission retaining a certain degree of control. Sir Robert said that Lord Wright on his return had had preliminary discussions with the Secretary General and while he had not urged any definite conclusion, was on the whole favourable to courses 1 or 3. Sir Robert informed the Committee that Lord Wright hoped to attend the meeting later. He thought that the Committee should be very careful not to commit itself in its discussions with Mr. Hodge.

Mr. LAMBERT asked if the Nuremberg Trial would be included.

Sir Robert CRAIGIE said that the Commission reports were not touching on the Nuremberg trials. The report would include all war crimes trials other than Nuremberg and possibly any major trial which might follow Nuremberg.

Mr. LAMBERT said that there were various possible methods of procedure. It was possible that the War Office might decide only that it would approve the Editor whom Mr. Hodge selected, or it might decide to take on the function of approving the comment as well. The question would have to be decided after the conference with Mr. Hodge.

Sir Robert CRAIGIE: Other countries might want simply to translate the English version. It was important, therefore to see to it that only responsible comment appeared.

Mr. LAMBERT: Observations made by the United Kingdom Government on the comments contained in the reports might be either legal or political. On the one hand the legal authorities in the War Office were already over worked and new appointments were not being made. On the other hand, the question of any comment likely to cause international friction was a matter for the Foreign Office. Making observations on these two aspects would be a large task, but less so if only selected trials were published in the series of "full reports".

The SECRETARY GENERAL asked whether the Commission would be justified in giving Mr. Hodge a free hand if neither the Commission nor the War Office could take responsibility for the commentary.

Sir Robert CRAIGIE: Some responsibility should be undertaken by the Commission in order to avoid the appearance in reports intended for translation into foreign languages of comments similar to those included in the report of the Joyce Trial published by Mr. Hodge.

Mr. LAMBERT: The usual procedure followed by the War Office, where a publisher was given official material, was to leave him a free hand.

Sir Robert CRAIGIE asked whether Mr. Hodge should be given a monopoly if the Commission took no responsibility for the contents of the reports.

Mr. LAMBERT: In practice, it was difficult to give the same transcripts to more than one firm. It was not without precedent for an individual to be given material by the United Kingdom Government, and then to include in a preface an acknowledgment to the Government, while making it clear that the comment was the publisher's responsibility.

Sir Robert CRAIGIE, when speaking of the summaries as distinguished from the fuller reports, pointed out that the summaries would cover a larger field - he understood that Messrs. Hodge would probably publish the more important trials and would wish to take these first. Sir Robert asked for members' views on this question, also what the opinion of the War Office would be as to the summaries. He said, it would be the business of the members of the Commission to consult their authorities in order to be sure that they agreed with the comments.

As to the control of the full reports Sir LAMBERT said the War Office had not got any special interest in making a contract with Messrs. Hodge and Co., but it was possible to deal only with one firm. The amount of direction or control to be exercised seemed to be variable. One might control the authorship of the commentary or merely see to it that Messrs. Hodge got the right sort of editor to do the work. There were two or three possible courses.

Sir Robert CRAIGIE said the Committee on the whole was in favour of attaching to the summaries a series of annexes which would explain the judicial procedure of the country responsible for the trial. If there was a United Kingdom trial or an American or French trial, annexes would appear on the end of each volume describing the procedure in those trials. The summary would come first and then after that would be the commentary on that.

Dr. MAYR-HARTING asked whether the Stationery Office would prefer to make arrangements direct with Mr. Hodge as regards the handing over of the transcripts.

Mr. PLUMBLEY said that Mr. Hodge would really be using copyright material and he thought that he should be asked what were his proposals with regard to payment for the right to use this material.

Sir Robert CRAIGIE thought that the Commission ought to retain some control over the commentary. At present that was purely a United Kingdom matter, but these trials would be international trials and it might affect relations with foreign countries. He thought that from the Foreign Office point of view they would prefer some form of control.

As Mr. REED did not have any observations to make Sir Robert said that he could take it that they would agree if the Commission finally decided to undertake the control and censoring of the commentary.

Mr. LAMBERT thought that they would more or less be bound to take that line. He thought whoever did the commentary should make it quite clear that the commentary was his own responsibility.

Mr. PLUMBLEY thought that when it was quite clear who was the legal holder of copyright then a disclaimer could be called for. The Commission would be quite in order to call for a disclaimer. It would be explained that the book was based on official material. There should be no difficulty in putting in that although the book was based on official material, the Commission took no responsibility for the views expressed.

2. Conference with Mr. Hodge.

Mr. HODGE (partly in answer to questions): He would certainly like to publish the fuller reports and would leave it to the Commission to decide which trials to include. It would be preferable to choose them for international law or historical value. He must have the full transcripts and could only judge after reading these what other material he might need but he did not think he would require much additional material. The editor for each volume could be proposed by the Commission, if it so desired, but the editor should be chosen in the light of the trial dealt with.

Comment on the reports would appear first in each volume, followed by a full report of the trial. His preference would be to submit for approval to the Commission the editing of the trial and the comment, only after the completion of each draft. Annexes dealing, for instance, with differences between English and foreign procedure, could be included and it might be necessary to repeat such annexes from volume to volume. He did not think he could undertake the translations of the full trials, because of the cost involved. He agreed that it would be preferable to have as editor a lawyer of the same nationality as the Court dealing with each case, but he could not undertake to find the foreign editors. The explanatory annexes would be brief, and would be the responsibility of the editor. When asked for his reactions concerning popular reports published for the benefit of the "man-in-the-street", immediately after the appearance of the summaries, Mr. Hodge said that his last venture on these lines was successful. The sale would be greater if they were written by popular journalists. He undertook to look around for a possible writer. He thought that the suggested Digest would only be a bound reprint of extracts from reports already published.

Sir Robert asked whether as regards the previous commentaries had Mr. Hodge given his editors a fairly free hand.

Mr. HODGE replied he had done so but had reserved the right to strike out or amend. In this instance he would prefer that it be submitted to someone for approval.

Colonel HALSE asked if Mr. Hodge would expect to have a copy of the transcript.

Mr. HODGE replied that he would need one complete copy, but would not deface it. He said that the work would be done in Edinburgh and/or Glasgow.

Sir Robert CRAIGIE asked Mr. Hodge if he had any ideas as to the number of trials likely to be covered in these reports. Had he in mind only the important trials which had attracted public interest?

Mr. HODGE said that there should be sufficient trials to make a series of volumes say of about 50.

Dr. MAYR HARTING said that if Mr. Hodge published e.g. a report on a French trial it would be necessary to explain French procedure and asked if Mr. Hodge would repeat that in every report on a French trial.

Mr. HODGE replied that he thought he would have to - very briefly. He thought each volume should be a book on its own.

Dr. MAYR HARTING thought that as to other than British and American trials there seemed to be the question of translation. Could Mr. Hodge undertake these translations from say, French or Czech?

Mr. HODGE did not think he could undertake a long French trial. There was also the question of the costs of translations. A French trial required someone with a knowledge of French law. French pleading was very different from English

pleading. He thought that possibly translating would be more than any individual publisher could undertake. In the case of foreign trials a certain amount of editing would have to be done before it was translated.

Dr. MAYR HARTING wished to know if Mr. Hodge would choose a French editor.

Mr. HODGE said it would wiser to get a French Barrister to cut it down before translation.

Dr. MAYR HARTING thought that it was essential that the editor had a knowledge of French law and not only of the French language.

Sir Robert CRAIGIE thought that the best plan would be for the Government concerned to arrange for the translation of the summary and then send it to the Commission.

Dr. MAYR HARTING thought that even if it was translated he did not imagine an English editor would be happy with such a task.

Mr. HODGE thought it best that the editor should be a Frenchman.

Mr. REED then asked if the Commission would take the responsibility for comments on law.

Sir Robert CRAIGIE said that his own suggestion as regards the fuller reports was that the Commission should only intervene in so far as any statement was made by editors which might lead to international misunderstanding. The Commission would be able to assist the publishers but he did not think the Commission could undertake comments on law. The whole purpose both of the summaries and of the full reports was to make the subject generally understandable to the reader and student. Of course if the Commission were to accept any responsibility on the comment it would be very important that the comment should not be critical - it should be more explanatory than critical.

Mr. HODGE said that the text of the trial itself would probably be done by himself and he thought the best thing was that the manuscript should be sent to the Commission as a finished job for their comments.

Dr. MAYR HARTING then thanked Mr. Hodge for his explanations. He thought it had clarified the position of the Commission, and he hoped that they would be able to let him know their view very soon.

(MR. HODGE LEFT THE MEETING.)

3. Continuation of discussion on full reports of the Notable Trials type in the absence of Mr. Hodge.

Dr. MAYR HARTING then asked for comments from the members.

Mr. LAMBERT was of the opinion that Mr. Hodge clearly contemplated publication of a long series of volumes that would

take a number of years to complete. If the Commission was going to identify itself with the work then would it outlast the whole series? There might be a considerable number of volumes which would have to be dealt with by some means other than by the Commission.

Dr. MAYR HARTING thought it was obvious that the work Mr. Hodge contemplated must take a number of years, and apart from that, as to the question of responsibility, it occurred to him that Mr. Hodge expected the governments to transmit first of all the transcript and then supply an editor and supervise the whole publication, and it seemed that the Commission would only be doing this to enable Mr. Hodge to publish such a report.

Sir Robert CRAIGIE thought that that was a very important point and he was sure it was necessary that the Commission should undertake some responsibility. It was very important to get these things on the right lines from the start. Once so, it would go on much the same even when the Commission would not be in existence. There would have to be some note to that effect. It will have to be made clear that after the Commission went out of existence that these trials would be issued solely on the responsibility of Messrs. Hodge.

Mr. PLUMBLEY said he wanted to have some undertaking that Messrs. Hodge would carry on with this publication after the closing of the Commission. He remarked that no one had raised the question as to whether Mr. Hodge was willing to pay for the right to publish these reports.

The SECRETARY GENERAL said that this had been discussed and that Mr. Hodge understood this and expected to make some payment.

Sir Robert CRAIGIE thought that the cheaper the Commission allowed Mr. Hodge to have these transcripts the cheaper he could publish.

Lord WRIGHT joined the sitting at this point.

Dr. MAYR HARTING informed Lord Wright that the problem of fuller reports had been discussed and also the question as to what extent the Commission should be responsible for these publications. He thought the financial risk would obviously be taken by the publisher.

Lord WRIGHT said he attached most importance to the annotated summaries but preferred the expression "law reports". The "Peleus" report C.199 seemed to fulfill all the requirements. He would rather leave the publication of full transcripts alone and did not think it would be profitable or useful. We had an extremely competent team - Dr. Schwelb, Dr. Litawski and Mr. Brand. They would have the material and he did not see why they should not produce the reports. He understood that some reports of the same size were ready and he wondered if they could not be examined so that the Commission could decide on the form of the publications. He thought it better if the Commission had something definite to work on.

Dr. SCHWELB said he had circulated a list of trials. The list contained nine names of trials in addition to the big concentration camp trials (III/43). The publication of Belsen, Neuengamme and Dachau would have to be postponed which would not mean a considerable loss of time. The Belsen trial alone would fill one volume.

Lord WRIGHT asked if the War Office was not anxious to have a report on Belsen.

Colonel HALSE said he would prefer a report on the Neuengamme case. He thought that the "Peleus" report was the best type to suit the requirements of everyone concerned. The question about the best sort of cover could easily be left to the experts.

Sir Robert CRAIGIE said that the point had been raised as to whether it was desirable to have comments on these trials. Some authorities in the United Kingdom had questioned the appearance of the comments in the annotated summaries. The feeling of the Committee was that there should be explanatory comments but not critical ones, particularly as these reports would be read in very many countries.

Mr. REED said he had not yet been able to discuss the question with the Attorney General. He had not seen the "Peleus" trial report, but undertook to read it and to give his opinion.

Lord WRIGHT said that nearly all the comments in the "Peleus" report were purely explanatory, and Sir Robert CRAIGIE thought that it would take away the usefulness of these reports if they appeared without a comment.

Mr. REED said the only anxiety of his authorities arose with regard to remarks such as appeared on Page 14 of the "Peleus" report in the 3rd and 4th paragraphs.

Sir Robert CRAIGIE assured Mr. Reed that the Commission was diligently watching such points.

Lord WRIGHT said that the reports would be of little value without comment.

Sir Robert CRAIGIE asked whether it could be agreed that the reports should contain explanatory comment, but that he should consult the United Kingdom authorities on any points on which he thought they might have objections.

Mr. REED and Major THOMPSON approved this procedure.

Lord WRIGHT said that the reports mentioned in Document III/43 (except No. 4) should go into Volume One of the "annotated summaries" now to be called "law reports" along with as many of the newly arrived French cases as space would allow. It would be important to note the rules of procedure followed in the non-British reports. For instance, the United States trials differed extremely amongst themselves in the rules of evidence followed. The commentary in the reports would deal largely with questions of procedure, and ought not to include criticism. He did not think that the problem of excluding critical comment

would arise in practice. The comment in the third paragraph of Page 11 of the "Peleus" trial report should, in his view, be omitted.

THE COMMITTEE AGREED TO THE PROCEDURE SET OUT
BY LORD WRIGHT REGARDING THE PUBLICATION OF THE
LAW REPORTS.

A N N E X

Letter dated 1st July, 1946 sent by M. de Baer to
the Acting Chairman of Committee III
(Dr. Mayr-Harting)

"I am sorry that I shall again be prevented from attending your meeting to-morrow, as I am flying to Belgium in the morning. I hope that you will excuse my absence.

I have read very carefully the summary trial report of the S.S. Peleus (C.199). I was very impressed by the excellent way in which Dr. Schwelb has presented it, and have only one or two minor suggestions to make about it:

1. Composition of the court. I suggest that the names of the judges, the prosecuting counsel and counsel for the defence should be mentioned. I know that several of these are not professional lawyers. Nevertheless, the authority that attaches to the person of the judge is, in my opinion, of sufficient importance to justify their inclusion. I realise that the names of some of the counsel are mentioned, e.g. on pages 3, 6 and 7, but I think it would be as well to mention them also in the beginning of the summary.

2. As to the third paragraph of II on page 14, I would like to have a word with Dr. Schwelb about this, when it is convenient to him."

SECRET

Committee III
Minutes No. 16/46.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of a Meeting of

COMMITTEE III

held on July 10th 1946 at 10.30 a.m.

In the Chair: Dr. Mayr-Harting: Czechoslovakia

There were also present:

Sir Robert Craigie	Great Britain
Colonel Halse	J.A.G. Department
Dr. Schram-Nielsen	Denmark
Lt. Kintner	United States.

1) Minutes of the last two Meetings.

Minutes No. 14/46 and No. 15/46 were approved, subject to some amendments of No. 15/46 to be sent in writing by the CHAIRMAN to the Secretariat.

2) Consideration of Draft Glossary (General Introduction) of the law governing British Military Courts for the Trial of War Criminals

Colonel HALSE: His chief interpreter had informed him that the "Führerbefehl" contained no order that a man should be shot as soon as captured. It ordered that no prisoners should be taken, but that if prisoners were taken they should be handed over to the Sicherheitsdienst. There was, however, a second explanatory document which said that the prisoners should be killed by the Sicherheitsdienst within a certain time. He pointed this out, as it seemed to be different from the interpretation given hitherto to the "Führerbefehl". This point should be made clear in connection with the Dostler case because it was in that case that it would be mentioned for the first time, and it would appear often afterwards.

Dr. SCHWELB drew Colonel Halse's attention to page 7 of the Dostler trial report, where the Court said that the accused had even exceeded his orders under the Führerbefehl. The Court had had no knowledge of the second document referred to by Colonel Halse. The Führerbefehl had been treated as a question of fact in the case and not as law. It could not, therefore, be included in the explanatory annex.

Sir Robert CRAIGIE: Nevertheless the Führerbefehl and the explanatory document could be made into a separate annex to the Dostler case.

THE COMMITTEE AGREED TO THIS PROCEDURE.

3) Responsibility of Commission in connection with the publication of full reports of the "Notable Trials" type, proposed by Messrs. Wm. Hodge & Co. Ltd.

The CHAIRMAN: It was necessary for the Committee to give Mr. Hodge some answer with regard to the publication of the fuller reports.

Sir Robert CRAIGIE: He had drawn the attention of the

Foreign Office to the possibility of comments having possible political repercussions appearing in the law reports. He would like to reserve his final opinion until he had had the advice of the Foreign Office on the matter.

Colonel HALSE: He could not see who would be able to undertake the supervising of the legal comment. As Mr. Lambert had said, the War Office could not undertake it. The Judge Advocate's office might help, but he did not think that it would have sufficient staff to continue to do so after the end of the British War Crimes Trials.

Dr. SCHRAM-NIELSEN asked whether the Foreign Office would be satisfied if the representative on the Commission of the foreign country concerned approved the comment on a trial held by a court of his country.

Sir Robert CRAIGIE: thought that this would satisfy the Foreign Office but apart from such cases it would be necessary for the Commission to undertake control, as no British agency seemed to be able to do so.

The CHAIRMAN: His Government were interested in the publication of the trial of K.H. Frank in Great Britain and would prefer the Commission to act in the matter. If, however, the Commission could not do anything further, his government would have to act alone. He hoped that the Commission would decide soon on what answer to give Mr. Hodge.

Dr. SCHWELB: on behalf of the Secretariat endorsed what the Chairman had said. The Secretary General and Dr. Schwelb had been in contact with Mr. Hodge for seven months, and the latter or his representative had called on a number of occasions.

Sir Robert CRAIGIE hoped to have the Foreign Office's view in the following week. He would then consult Lord Wright on the question. He hoped that the Commission would be able to decide on the matter in a fortnight.

THE COMMITTEE AGREED THAT A LETTER BE WRITTEN TO MR. HODGE STATING THAT THE QUESTION WAS STILL ACTIVELY UNDER CONSIDERATION AND ASKING HIM IN THE MEANTIME NOT TO CONTACT INDIVIDUAL GOVERNMENTS ON THE QUESTION.

- 4) Consideration of law reports to be published in the first volume of the series (Doc. III/46 and papers referred to therein)

Case No. 1 DR. SCHWELB'S SUGGESTION WAS APPROVED.

Case No. 2 DR. SCHWELB: An annex on the American legal points would soon be circulated. The preparation of French comments would be more difficult and take rather longer because of the absence of certain documents and the necessity of the collaboration of an expert on French law.

Sir Robert CRAIGIE: The French authorities might be approached and asked to prepare a Glossary. If this arrived early enough, it would enable a French report to be included in Volume 1. He was opposed to the inclusion of a French case without a glossary since this would seem incongruous because other trials would be accompanied by glossaries. General de BAER had proposed that the names of Judges, Judge Advocate and Counsel should be mentioned in trials. Sir

Robert CRAIGIE agreed with this proposal. Moreover, it should be stated whether the Defence Counsel was of the nationality of the accused or whether he was an allied officer.

THE COMMITTEE AGREED TO THE LAST TWO PROPOSALS OF SIR ROBERT CRAIGIE.

THE COMMITTEE AGREED UPON A SUGGESTION MADE BY DR. SCHRAM-NIELSEN THAT A SHORT SUMMARY OF THE CASE BE PUT AT THE HEAD OF EACH TRIAL.

THE COMMITTEE ALSO AGREED THAT DETAILED HEADINGS GIVING THE CONTENTS OF EACH REPORT SHOULD BE OMITTED BUT THAT THE ARRANGEMENTS OF EACH REPORT SHOULD BE AS FAR AS POSSIBLE IDENTICAL.

After a discussion in which Dr. SCHRAM-NIELSEN, Lt. KINTNER, Sir Robert CRAIGIE and the CHAIRMAN took part, IT WAS AGREED THAT QUESTIONS OF JURISDICTION WERE OF CONSIDERABLE IMPORTANCE AND SHOULD BE DEALT WITH IN THE REPORTS. THE USE OF EXPLANATORY ANNEXES WOULD ENABLE THE AVOIDANCE OF REPETITION IN THIS CONNECTION.

THE COMMITTEE AGREED THAT THE QUESTION OF THE JURISDICTION OF THE COURT IN CASE NO. 2 SHOULD AS FAR AS THE MUNICIPAL ASPECT WAS CONCERNED BE DEALT WITH IN THE EXPLANATORY ANNEX.

WITH REGARD TO ALL THE REPORTS, THE COMMITTEE AGREED THAT DRAFTING QUESTIONS SHOULD BE SUGGESTED TO DR. SCHWELB BY MEMBERS INDIVIDUALLY.

Case No. 3

IN CONNECTION WITH THE REMARKS ON PAGE 7 OF THE TRIAL REPORT REGARDING A POSSIBLE SECRET AGREEMENT BETWEEN GREAT BRITAIN AND HOLLAND, THE COMMITTEE AGREED THAT IT WOULD SUFFICE TO QUOTE THE SPEECH BY MR. EDEN ON THE QUESTION. IT WAS ALSO AGREED TO OMIT ANY WORDS WHICH MIGHT GIVE THE IMPRESSION THAT THE ACCUSED WOULD NOT HAVE BEEN TRIED AT ALL IF HE HAD NOT BEEN TRIED BY THE BRITISH COURT.

THE COMMITTEE AGREED TO LEAVE OUT PARAGRAPH (a) AT THE BOTTOM OF PAGE 7 AND TO LEAVE OUT THE WORDS "IT MAY BE ASSUMED THAT" IN PARAGRAPH (b) ON PAGE 8 AND TO INTRODUCE THESE PARAGRAPHS WITH A STATEMENT TO THE EFFECT THAT THEY REPRESENTED POSSIBLE BASES WHICH MAY OR WHICH MAY NOT HAVE BEEN TAKEN INTO CONSIDERATION BY THE COURT.

THE COMMITTEE AGREED TO LEAVE OUT PARAGRAPH 5 ON PAGE 8.

SUGGESTION NO. 3 OF DR. SCHWELB WAS AGREED UPON.

Sir Robert CRAIGIE: Expressions like "it appears" at the bottom of Page 10 seemed to give the impression that the writer of the report was interpreting what was in the minds of the Judge Advocate or Counsel. Phrases of this kind and the word "implied" in similar connections should be avoided. When it was not clear what Counsel or Judge Advocate meant, the actual words might be quoted.

THE COMMITTEE AGREED TO THIS SUGGESTION.

Sir Robert CRAIGIE suggested that a more general paragraph might be inserted at the end of the comment on each trial.

Case No. 4

SUBJECT TO THE APPROVAL OF THE UNITED STATES AUTHORITIES, THE COMMITTEE AGREED TO INCLUDE CASE NO 4 IN VOLUME I, ALONG WITH A NOTE STATING THAT THE REPORT WAS BASED ON NOTES SUPPLIED BY THE UNITED STATES AUTHORITIES AND NOT ON A FULL TRANSCRIPT.

SUGGESTION NO 2 OF DR SCHWELB WAS APPROVED. CASES 5 & 6 WERE ADJOURNED.

Case No. 7

POINT NO 1 HAD ALREADY BEEN DECIDED.

A DECISION REGARDING POINT NO. 2 WAS LEFT TO THE DISCRETION OF THE SECRETARIAT.

REGARDING POINT 3 THE COMMITTEE AGREED TO OMIT FROM THE REPORTS OF INDIVIDUAL CASES ANY DISCUSSION OF THE QUESTION, AND AGREED THAT IT MIGHT BE SUGGESTED TO LORD WRIGHT AS ONE OF THE QUESTIONS WHICH HE WOULD TOUCH UPON IN HIS GENERAL PREFACE.

IT WAS AGREED THAT THE PARAGRAPH REFERRED TO IN POINT NO. 4 WOULD BE RE-WORDED.

SUGGESTION NO. 5 OF DR. SCHWELB WAS APPROVED.

Case No. 8

BOTH SUGGESTIONS OF DR. SCHWELB WERE APPROVED.

5) The Yugoslav Case No. 3296 (Document III/45)

It was decided that the Secretary should write to Dr. Zivkovic enquiring whether this case was one of the further cases illustrating crimes against humanity committed by Italians against Italian nationals of Yugoslav extraction, the presentation of which had been promised by Dr. Zivkovic on 28th May in connection with the Yugoslav Case Nos. 1323 and 1462 (see Committee III Minutes No. 11/46). Dr. Zivkovic would also be asked whether further charges of a similar type were to be expected and whether he wished that the Case No. 3296 should now be considered, together with the Cases 1323 and 1462, or whether their consideration should be adjourned until additional charges of a similar kind are before the Committee.

COMMITTEE III MINUTES

No. 17/46.

UNITED NATIONS WAR CRIMES COMMISSION.

The Meeting of COMMITTEE III held on 25th July 1946

at 3.0 p.m.

In the Chair: Dr. Mayr-Harting (Czechoslovakia)

Also Present:

Sir Robert Craigie,	United Kingdom,
Lt. Col. G. Barratt,	United Kingdom,
Major Dr. Fanderlik,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Commander Mouton,	Netherlands,
Dr. Szerer,	Poland,
Dr. Lachs,	Poland,
Lt. Kintner,	United States of America.

Apologies were received from General de Baer for his absence.

MINUTES.

The CHAIRMAN: Mr. Lambert, Assistant Under Secretary of State for War, had sent in two corrections to Minutes No. 15/46.

On page 1 of the Minutes, "Deputy Under Secretary of State" should be changed to "Assistant Under Secretary of State for War".

On page 2, where Mr. Lambert was first quoted, he meant to convey that "the deciding authority" "decide either to approve the Editor, and leave him to exercise his own discretion, or to go further and approve the text of his work as well." The "deciding authority," Mr. Lambert continued, would presumably not be the War Office and he did not mean necessarily to claim that function for his Department.

Dr. Mayr-Harting suggested that paragraph 2 on page 6 of Minutes No. 15/46, should read as follows:

" Dr. MAYR-HARTING thought it was obvious that the work Mr. Hodge contemplated must take a number of years, and apart from that, as to the question of responsibility, it occurred to him that Mr. Hodge expected the governments to transmit first of all the transcript and then supply an editor and supervise the whole publication. If a government undertakes all this, they cannot effectively disclaim responsibility by a sentence inserted in the preface. "

Minutes No. 16/46 were approved.

I. Consideration of the Draft Glossary (British Law.)
(Docs. III/47 and III/48.)

The CHAIRMAN welcomed to the Committee Lt. Col. G. Barratt, Colonel Halse's Deputy.

The Committee then dealt with the Draft Glossary (British Law) paragraph by paragraph.

Paragraph I.

Colonel Halse's suggestion was approved.

Paragraphs II and III.

These were approved.

Paragraph IV.

On the CHAIRMAN's suggestion and with the concurrence of Lt. Col. BARRATT, it was decided that there should be a separate sentence saying that observers were invited in many cases.

Col. Halse's suggestion to delete the reference in brackets, was approved.

Paragraph V.

Colonel Halse's suggestion was approved, subject to a change of wording of the last sentence, as follows: "Since the Legal Member, unlike the Judge Advocate, is a member of the Court, he has the right to vote".

The Committee also agreed to include in the Draft Glossary the reference made in the footnote to Trial and Law Reports Series No. 20, page 2, regarding the functions of the Judge Advocate in English Law.

Paragraph VI.

The CHAIRMAN: It did not seem sufficient to make reference to only one difference between the English and the Continental Rules of Procedure. He suggested that mention should also be made of the individual characteristics of the English system of cross examination.

The Committee approved the Chairman's suggestion.

Paragraphs VII, VIII, IX and X. were approved.

Paragraph XI.

Dr. SCHRAM-NIELSEN doubted whether the mention of prerogative writs would be understandable to Continental lawyers.

Dr. SCHWELB: These matters would be dealt with necessarily in the American Annex. Their mention here was intended to show that Military Courts were subject to the Rule of Law.

Lt. Col. BARRATT thought it was doubtful whether these writs would run in English law. He suggested either the insertion of Col. Halse's remarks on paragraph XI, or the insertion in the American Annex of a remark to the effect that no action had yet been taken in Great Britain similar to the action taken in the Quirin, Yamashita and Homma cases.

The Committee agreed to insert the second remark suggested by Lt. Col. Barratt, both in the American Annex and at the end of paragraph X in the English Annex, and also to delete paragraph XI in the English Annex.

Paragraph XII.

The Committee agreed to the paragraph with the substitution of the words "binding character of precedent" for the words "stare decisis".

II. Consideration of Final Texts of Cases Nos. 1, 2, 3, 4, 7 and 8.

Lt. KINTNER approved the final manuscript of the American reports Nos. 2 and 4.

Sir Robert CRAIGIE said that he would submit the final manuscript of the British Trials to the Attorney General's Department. The Committee could assume that they were approved if nothing was heard to the contrary.

The Committee approved the final manuscript of cases Nos. 1, 2, 3, 4, 7 and 8, subject to Sir Robert CRAIGIE's reservation.

III. Consideration of cases not yet passed by Committee III, namely Cases Nos. 5, 6 and 9.

The Committee agreed that the Grumpelt and Masuda drafts (Trial and Law Reports Series Nos. 20 and 21) should be brought into line with the previous reports in matters of presentation. It was agreed that the factual section of the Grumpelt draft should be abridged.

During a preliminary discussion of the Masuda case, it was pointed out that the contents of the footnote on page 2 regarding the functions of the English Judge Advocate, were to be transferred to the English glossary.

It was agreed that the term "nolle prosequi" be defined in a footnote, as signifying the abatement of prosecution.

The Committee agreed to a suggestion by Sir Robert CRAIGIE that the full contents of each case should be inserted at the beginning of each report and that an index should be provided with each volume.

The Committee agreed that Dr. SCHWELB should make further enquiries regarding the securing of a French Lawyer to prepare, for a fee, the French explanatory annex.

After a preliminary discussion of the Wagner case, Trial and Law Report Series No. 22, the Committee agreed that the notes should mention the two groups of Alsatian citizens who had been accorded German nationality.

Dr. SCHWELB: The Secretariat would be able to consider, after examination of the French Codes, just received, whether the notes on the Wagner trial and the French Glossary, could be written without outside help.

IV. Full Reports. (Hodge Scheme). Proposals. Doc. III/52.

Sir Robert CRAIGIE suggested that the Secretary General should contact the Stationery Office for a legal adviser who would be able to comment on the terms of contract set out in Doc. III/52. He suggested that in paragraph 4(e) of Doc. III/52, the word "where" should be substituted by the words "whether and if so".

The Secretary General undertook to enquire whether the Stationery Office had a legal adviser who could help and to contact the British authorities. The draft letter would also be laid before the Commission for approval.

V. Yugoslav cases and Italian crimes in Ethiopia.

These remaining two items on the agenda were adjourned.

The next meeting will be held on Tuesday 30th July 1946, at 3.0 p.m.

COMMITTEE III MINUTES

No.18/46.

UNITED NATIONS WAR CRIMES COMMISSION.

Minutes of the meeting of COMMITTEE III held on 30th July 1946

at 3.0 p.m.

In the Chair: Dr. Mayr-Harting, (Czechoslovakia)

Also Present:

Sir Robert Craigie,	United Kingdom,
Lt. Col. G. Barratt,	United Kingdom,
Major Fanderlik,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Commander Mouton,	Netherlands,
Dr. Szefer,	Poland,
Er. Kintner,	United States of America,
Dr. Marković,	Yugoslavia,
Dr. Mezulić,	Yugoslavia.

I. Minutes.

Minutes No.17/46 were approved.

II. Jurisdiction of the Commission over war crimes committed in Abyssinia during the Italo-Abyssinian War. (Doc.III/50).

The CHAIRMAN pointed out that in his opinion this question could be answered only by first answering the wider question of whether the member Governments were prepared to go back beyond 1939 in proceeding against war criminals. The Commission had already decided that it had jurisdiction over crimes against humanity committed before 1939, yet it had decided that it was too early actually to list people accused of having committed such crimes. Committee I had recently accepted the Czechoslovak view that the present war started in March 1939, in order to include the crimes against Czechoslovakia or Czechoslovak citizens committed after that date.

Sir Robert CRAIGIE: Committee I had decided that one particular case of an offence committed against a Czechoslovak citizen between March and September 1939 should be considered as a war crime. He did not think, however, that it could be regarded as settled, because of that one case, that the Commission regarded the war as having started in March 1939.

The CHAIRMAN: Certainly one decision did not constitute a precedent but it did constitute a reason for deciding the wider issue. In the case of Czechoslovakia, the crimes committed between March and September 1939 were greater in number and of greater importance than those committed after September 1939. It followed that the Czechoslovak government was much concerned to find the Commission's answer to the wider question. Once that question was settled, it would be easy to decide on the Ethiopian question.

Dr. SCHRAM-NIELSEN urged that the Ethiopian question alone should be decided upon because, he feared, there would be no general agreement forthcoming on the greater question.

Sir Robert CRAIGIE: The Ethiopian question had been raised in the Foreign Office because it was not desired to give the Ethiopian Government a reply which would encourage them to put forward cases of war crimes to the Commission before it was clear what the Commission felt as regards its competence in the matter.

Dr. SCHRAM-NIELSEN: Whatever was the final decision as to when this war started, it was certain that the Commission's jurisdiction only extended to this war. The only argument against that view was the one quoted in the last paragraph of Doc. III/50. He did not think, however, that any conclusion could be drawn from this paragraph because the acts of limitation in German law could not apply to war crimes, since these would not be crimes in German law.

Sir Robert CRAIGIE agreed with Dr. Schram-Nielsen.

The CHAIRMAN: He had been persuaded by Doc. III/50 that the Abyssinian war had finished before the present war started.

Sir Robert CRAIGIE: In the Far East the major war crime trials extended to offences committed from 1931 onwards, on the grounds that the war there had started in 1931. This decision had arisen, however, out of the feeling that the fighting since 1939 constituted one war and not two different wars.

Commander MOUTON: The Commission should limit itself to this war despite the fact that previous German aggression arose out of a general pan-Germanistic policy. As Dr. Schwelb had said, the Ethiopian war finished before this one started.

The CHAIRMAN: There were no legal reasons preventing the Commission from dealing with other wars. Only expediency prevented it from doing so.

Dr. SCHRAM-NIELSEN and Dr. SZERER disagreed with the Chairman.

Dr. SCHRAM-NIELSEN: No other wars were mentioned in the London Agreement, in the terms of reference of the Commission, or in the Moscow Declaration.

Lt. KINTNER: The governments themselves had not decided whether the Italo-Abyssinian war which started in 1935 was to be considered part of the present war. To ask the Commission to decide this question was premature.

The Committee decided that its reply to the first question before it should be that in practice, up to the present, the Commission had dealt only with crimes committed during this war. Nothing in the terms of reference of the Commission indicated that it should go back to other wars. In the absence of any authority from governments, the Commission would continue only to deal with crimes committed during the present war.

The CHAIRMAN: The second question now remained, that was to say, whether the Abyssinian war of 1935 was part of the present war.

Sir Robert CRAIGIE: The view of the Foreign Office would probably be that the Abyssinian war was not part of this war. No sequence of events connected the two; no understanding had been proved to have existed between Hitler and Mussolini to the effect that at given dates one would attack Ethiopia and the other Poland.

Dr. SZERER: The war started when hostilities started and the hostilities started in September 1939. There was nothing in the Nuremberg indictment to the effect that the war was prepared by Hitler in agreement with Mussolini.

Major FANDERLIK: It was not necessary for the purposes of the Nuremberg trial to prove this agreement.

The CHAIRMAN: The Moscow Declaration mentioned the aggression against Austria and he thought that it followed that the occupation of Austria was part of the hostilities.

Dr. SZERER questioned whether the Austrian occupation constituted a war.

Commander MOUTON: All discussion of the Austrian question was beside the point because in any case there was no historical link between the Abyssinian war and the present war.

Dr. SCHRAM-NIELSEN suggested that the committee should say that it saw no direct connection between the Abyssinian war and the present war. The Committee's answer should simply refer to the question put before it.

Commander MOUTON and Sir Robert CRAIGIE agreed with Dr. Schram-Nielsen.

Dr. MARKOVIC asked whether the Commission would have jurisdiction over crimes committed in Abyssinia during the present war. As far as the Abyssinians were concerned, the present war started in 1935. The Commission should not take too strict a view of its competence.

The CHAIRMAN: Mr. Markovic's view had some weight. As was the case with Czechoslovakia, it seemed that for the convenience of the Commission, a division in time was to be decided upon for which the Abyssinians could see no reason.

Sir Robert CRAIGIE: If the Commission should decide that it had no competence over crimes committed in the 1935 war in Abyssinia, this decision would not prejudice the case of Czechoslovakia. In Ethiopia there had been a making of peace and a recognition of conquest which separated the two wars. In the case of Czechoslovakia on the other hand, the present war followed soon after the occupation by the German forces, and there had been no break in the events.

The CHAIRMAN: This view would mean that there were two Abyssinian wars. He asked Sir Robert Craigie whether in his view the Commission had jurisdiction only against such crimes against humanity also as had been committed during the second Abyssinian war.

Sir Robert CRAIGIE agreed to this interpretation.

The Commission decided that in its opinion there was no proof of a direct connection between the Ethiopian war of 1935 and the present war.

The CHAIRMAN: Mr. Noel Baker had been mistaken in saying that the Commission would definitely be unwilling to deal with crimes committed before 1939. Actually the Commission had been in doubt on this question and further, had decided that crimes against humanity committed before the present war were within its jurisdiction. Some publicity should be given to this point.

Sir Robert CRAIGIE: It might be as well to make this point clear but there was no need to give it exceptional publicity. An answer to a supplementary question would not seriously injure the position of the Commission.

At this point the Secretary General produced the correspondence between the Commission and the Ethiopian Legation, which showed that the Commission had given no indication to the Ethiopian government that war crimes committed before the present war would be considered by the Commission to be within its jurisdiction.

The Committee unanimously agreed to submit to the Commission the following resolution for consideration at its next meeting:

1. The UNWCC has, up to the present, only dealt with war crimes (including crimes against peace and crimes against humanity) committed during or connected with, the present war. The Committee can find no evidence that it is the wish of member Governments that the Commission should deal with war crimes committed in any other war.
2. The Committee are not in possession of any evidence to show that it is the opinion of the Governments that any direct connection exists between the Italo-Abyssinian war and the present war.

COMMITTEE III MINUTES.

No. 20(revised)1946.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of the meeting of COMMITTEE III held on 25th September, 1946

at 3 p.m.

(incorporating the amendments suggested by Dr Mayr-Harting
and Dr. Zivković on 2nd October, 1946).

In the Chair: Dr. Mayr-Harting (Czechoslovakia)

Also present:

Sir Robert Craigie	United Kingdom
Major Fanderlik	Czechoslovakia
Commander Mouton	Netherlands
Mr. Kintner	U.S.A.
Dr. Zivković	Yugoslavia
Dr. Mezulic	Yugoslavia

Apologies were received from
Dr. Schram-Nielsen
and
Dr. Szerer.

1. Minutes

Minutes No. 19/46 were approved.

2. Yugoslav-Italian cases alleging crimes against humanity
(Documents III/32 III/45 and III/56)

Dr. Zivković said that he had prepared a short memorandum giving a general view of the question, which he circulated to members and read aloud. (This memorandum has been circulated as Document III/57). He also produced a publication of the Yugoslav Government entitled "The War Effort of the People of the Julian March". This publication included maps which showed the position of the two Units mentioned in his memorandum. They showed that these Units operated in then Italian territory. He proposed that the Committee should begin by considering Documents III/45 and III/56.

The Committee agreed and proceeded to discuss Document III/45 dealing with the case No. 3296.

Dr. Mayr-Harting expressed the view that it would be necessary to examine the examples given before coming to a general idea of the types of charges made. Regarding Example 1, (Agazzi - Hocevar case) it would be better to find for what reason the victim was denounced and why he was sentenced. If he had committed what International Law recognised to be an offence it would be difficult to talk of a war crime having been committed.

Dr. Zivković said that he would find out further details regarding this point.

The Committee adjourned No. 1 of case 3296 until Dr. Zivković could supply further information.

Dr. Mayr-Harting in discussing No. 2 of case 3296 (Village of SREDNJI LOKOVEC) quoted paragraph No. 2 on pages 2 and 3 of Document C. 201. (General Propositions adopted by Committee III). It followed that crimes against property could hardly be considered as crimes against humanity, certainly not as crimes of the murder type.

Dr. Zivković replied that there had existed a systematic terrorism in the area in question. The cases given were only instances of this terrorism. They were selected and varied examples. Isolated cases may not in every case appear serious. All the examples were of offences committed for racial and political motives as was stated in the charge ("against the Slovene people because of their race and the fact that they were not Fascist").

Sir Robert Craigie pointed out that a rebellion was in progress. The territory in question was Italian territory under the Peace Treaties following the first World War.

Dr. Mayr-Harting expressed the opinion that it was not necessary to examine the question of the legality of methods used against Partisans; for instance torture was unjustifiable in any case.

Sir Robert Craigie said that the question was whether each measure was excessive.

Dr. Mayr-Harting suggested that the offence would be a crime against humanity if it could be shown that it had been committed as part of a pattern, for racial motives or similar motives.

Dr. Schwelb suggested that the Committee should examine all the cases to see whether the acts complained of were crimes, and should reserve the question of whether they amounted to crimes against humanity until all cases had been examined. He quoted paragraph No. 6 from p. 3 of Document c. 201, and pointed out that the definition set out therein had been accepted verbatim by the British Authorities in Germany, as was shown in a copy of the British Zone Review which he produced (Vol. 1, No. 21, p. 2). If the Committee could find that the offence mentioned in Point 2 had been repeated again and again, it might be possible to find that it was a crime against humanity.

Dr. Zivković drew the Committee's attention to the fact that all the crimes in Case 3296 had been committed after the Italian armistice; the accused were rebels in relation to their own government which had capitulated to the Allies and they had no claim to the status of a belligerent force.

Sir Robert Craigie and Dr. Mayr-Harting mentioned that, though in rebellion against their lawful Italian Government, the "Fascist-Republican" forces had been via facti treated as combatant belligerent units by the Allies. Dr. Mayr-Harting asked what difference there was between their status and, for example, the status of the Free French Forces under General de Gaulle.

Sir Robert Craigie said that it seemed to him that the correct approach would be to ask in the first place whether the acts were committed in the course of operations against Partisans, and in the second place whether they were committed according to a pattern whose object was the persecution of the civilian population.

Dr. Zivković replying to Dr. Mayr-Harting, said, as regards the status of General de Gaulle's movement, that this was an organisation fully recognised by the Allies, whereas the status of Mussolini's government after the capitulation was one of an enemy. It was always difficult to find sufficient evidence to prove the existence of a motive, but circumstantial evidence did show that the acts were committed according to a pattern of racial persecution.

The Committee decided that in cases of the murder type it must be showed that they were committed according to a pattern. In other cases of crimes against humanity it should be shown also that they were committed for racial or political reasons. These general questions would be decided by the Committee after the discussion of the individual cases.

The Committee decided that points 2 and 3 of case 3296 would be crimes against humanity if the conditions set out above were satisfied.

The Committee came to the same decision with regard to the first part of No. 4 (Bertosi-Mavrič). The Committee adjourned consideration of the second part (Stepančič) until the National Office had supplied information regarding the question why Stepančič had been killed.

The Committee decided that numbers 5, 6 and 7 of case 3296 (Oslavje, Rocinje, Medana) would have to be classified as crimes against humanity, if the general conditions set out above were satisfied.

Dr. Mayr-Harting: In connection with number 8 (Fulmine-Solkan) the question arose whether a trial had been held.

Dr. Zivković replied that sometimes in special cases trials were held and sometimes not.

The Committee decided that number 8 (torturing and shooting without trial) also would be a crime against humanity if the general conditions were satisfied.

Dr. Mayr-Harting was prepared to accept that these charges were only examples of a pattern, but he was uneasy about the question whether they were racial in motive and not part of the war against Partisans. If it could be shown that they were all committed in districts inhabited by people of Yugoslav race where no Partisan warfare was in progress, the question would be clearer.

Dr. Zivković said that the victims in this case, with the exception of number 8, did not belong to the Partisans and were in their homes when the offences were committed. All Yugoslav Partisans were uniform except some secret agents. The Partisans were not operating in these districts.

The Committee then proceeded to the examination of the cases dealt with in Document III/56

Case 4031

Dr. Zivković said that whereas the acts alleged in case 3296 were committed after the Italian armistice, case 4031 alleged crimes committed before the armistice. Points 1 and 2 were important as illustration of a pattern, but were not charges in themselves. The students mentioned in point 3 were Yugoslav nationals. The fifth accused had ordered the burning of the house. No hostilities were in progress. The woman mentioned in point 6 was not a Partisan but simply gave hospitality to Partisans. With regard to the second paragraph of charge 7, he pointed out that the Italians were in control at the time and a curfew was in force. This was an example of the way in which the Italians mistrusted the Yugoslavs.

The Committee decided that points 3, 4, 5, 6 (except the arrest referred to in the case) and 8 would be crimes against humanity if the general conditions were satisfied.

The same applied to the second paragraph of 7. It was doubtful, however, whether the first and third paragraphs of 7 set out crimes against humanity, and on the proposal of Dr. Zivković consideration of these was adjourned.

Case 4032

Dr. Zivković said that the victims were all peaceful inhabitants. The orders which were given to them were of the nature of "lie down" and so on.

The Committee decided that this also set out an offence which would be a crime against humanity if the general conditions were satisfied.

Case 4033

The Committee came to the same decision with regard to both points in this case.

Case 4034

Dr. Zivković said that no military action was going on at the time when these offences were committed. The internment mentioned was in a concentration camp in Germany. Such internment would have been unjustifiable even if Partisan activity had been in progress. The "mopping-up" mentioned in point 2 signified action against the population. Even given the fact that the population did favour the Partisans whenever the latter were in their district, it was still unjustifiable to shoot civilians on the spot. The words "without trial" should be added after the word "hanged". The same addition should be made in the fourth point. Dr. Zivković agreed to abandon point 6, since the accused could not be identified.

With regard to points 1 - 5 the Committee came to the same decision as before.

Case 4035

Dr. Zivković agreed to abandon point 2 for lack of information. He pointed out that the offences alleged to have been committed in points 1, 7, 8, 9 and 13 were committed arbitrarily. Dr. Zivković abandoned point 4, and also point 6 in so far as the robbery was concerned. In point 10 internment in a concentration camp was signified.

The Committee came to the same decision as before as regards the following points as far as the offences in brackets were concerned: points 1, 3, 6, 7, 8, 9 and 13 (shooting), point 5 (forced labour), points 10, 11 and 12 (deportation to concentration camps) and point 14 (beating and shooting).

Case 4036

Dr. Zivković abandoned the charge of wrongful arrest.

The Committee came to the same decision as before as regards the detaining without food and the order that victims be sent to concentration camps.

Case 4037

Dr. Zivković pointed out that General Bergonzi actually did put into force the measures referred to in charge 1, and not only "proposed" to do so. Members of the Committee in reading over such charges as these should remember that, as had been shown in the Nuremberg trials, certain words had special meanings: for instance "special treatment" really signified torture. Official reports made by Bergonzi contained such words.

The Committee adjourned case 4037 till the next meeting.

COMMITTEE III MINUTES

No. 19/46.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of the meeting of COMMITTEE III held on 5th September, 1946

at 3 p.m.

In the Chair: Dr. Mayr-Harting, (Czechoslovakia)

Also Present:

Lord Wright	Chairman of the Commission
Sir Robert Craigie	United Kingdom
Lt. Col. G. Barratt	United Kingdom
Dr. Schram-Nielsen	Denmark
Commander Mouton	Netherlands
Dr. Szerer	Poland
Dr. Marković	Yugoslavia
Dr. Mezulic	Yugoslavia

1. Minutes.

Minutes No. 18/46 were approved subject to an amendment suggested by Dr. Schram-Nielsen, according to which lines 7 to 8 on page 2 would include the words "it was certain that the Commission's terms of reference did only envisage this war", in place of "it was certain that the Commission's jurisdiction only extended to this war".

2. Further Considerations of Drafts and Manuscripts of Law Reports.

The Committee approved the manuscript of the Grumpelt Trial (Case No.5) subject to any amendments which might be sent in by members during the following week.

The Jaluit Atoll Trial (Case No.6) was also finally approved, subject to certain suggestions which Lord Wright had made to the Secretariat.

The Committee decided that the "contents" of each trial should be stated at the beginning of each Volume as part of a complete statement of the contents of that Volume, and not at the beginning of each report.

Lord Wright, in describing the Preface which he proposed to write for Volume I, said that it would be quite short and would contain no discussion of questions of law. The importance of publishing accounts of war crime trials would be emphasised. The names of the reporters and of the editorial committee of the Commission would be stated.

Lord Wright left the meeting at this point.

Dr. Schwelb reported that with the kind help of Professor Gros the drafts of the Wagner Trial (Trial and Law Reports Series Nos. 22 and 23) and of Annex III (Doc. III/53) had been submitted to the French Ministry of Justice. From Professor Gros' Secretary he had been informed that the Ministry were working on the matter and it was expected that the Ministry's reply would be received here very soon. It was feared that the Ministry's reply had been lost in the accident on the previous day of an Air France passenger aircraft. It might be possible however, for the Secretariat to produce without the active help of the French authorities a final draft of the Wagner Case and of Annex III on French provisions for war crimes trials, due to the

arrival of further publications into the hands of the Secretariat. The final approval of the French authorities would of course still be necessary.

The Committee approved Dr. Schwelb's suggestion. It was agreed that only in the event of the French authorities not approving the drafts regarding the French trial and French law would a new trial report, namely that of Bruno Tesch (Trial and Law Reports Series, No. 24) be substituted for the Wagner Trial in Volume I. Consideration of the Drafts of the French papers was adjourned.

The Committee approved the Tesch Trial subject to members sending suggested alterations during the following week.

Annex I dealing with British legal provisions for war crime trials was finally approved.

Annex II dealing with United States provisions was approved subject to whatever alterations Colonel Springer might suggest. It was agreed that Dr. Schwelb should ask Colonel Springer which types of case came before United States Military Commissions and which types before Military Government Courts.

The Committee, after examining three specimen cover papers for Volume I which the Stationery Office had provided for the approval of the Commission, requested Colonel Ledingham to negotiate with the Stationery Office for the securing of a better quality paper for the Law Reports.

Commander Mouton pointed out with regard to the Almelo trial (No. 3) that there had been a secret agreement concluded in 1944 between Great Britain and the Netherlands which in his opinion had afforded the legal basis for conducting the trial on Dutch territory. He felt sure that the British jurisdiction over the case did not rest on any of the first three possible bases set out in page 8 of the manuscript of the Trial. He offered to find from his Ministry of Justice whether it would be permissible to state in the report that the Trial had been based on this secret agreement.

The Committee agreed that point (d) on page 8 of Case No. 3 should be framed according to the instructions which Commander Mouton would receive from his authorities, and that points (a), (b), and (c) would remain in the report, subject to any re-drafting which might become necessary.

3. Yugoslav Cases (crimes against humanity)

Dr. Schwelb drew attention to the Yugoslav Cases regarding crimes against humanity the consideration of which had been postponed, at the suggestion of Dr. Zivković, until September.

Dr. Marković informed the Committee that Dr. Zivković was expected to be back in London very soon, and that new charges regarding crimes against humanity were being prepared by the Yugoslav National Office.

The Committee therefore decided to await further proposals by the Yugoslav Representative.

COMMITTEE III MINUTES.

No. 20/46 *See Revised*

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of the meeting of COMMITTEE III held on 25th September 1946

at 3 p.m.

In the Chair: Dr. Mayr-Harting (Czechoslovakia)

Also present:

Sir Robert Craigie	United Kingdom
Major Fanderlik	Czechoslovakia
Commander Mouton	Netherlands
Mr. Kintner	U.S.A.
Dr. Zivković	Yugoslavia
Dr. Mezulic	Yugoslavia

Apologies were received from
Dr. Schram-Nielsen
and
Dr. Szerer.

1. Minutes

Minutes No. 19/46 were approved.

2. Yugoslav-Italian cases alleging crimes against humanity
(Documents III/32 III/45 and III/56)

Dr. Zivković said that he had prepared a short memorandum giving a general view of the question, which he circulated to members and read aloud. (This memorandum has been circulated as Document III/57). He also produced a publication of the Yugoslav Government entitled "The War Effort of the People of the Julian March". This publication included maps which showed the position of the two Units mentioned in his memorandum. They showed that these Units operated in then Italian territory. He proposed that the Committee should begin by considering Documents III/45 and III/56.

The Committee agreed and proceeded to discuss Document III/45 dealing with the case No. 3296.

Dr. Mayr-Harting expressed the view that it would be necessary to examine the examples given before coming to a general idea of the types of charges made. Regarding Example 1, (Agazzi - Hocevar case) it would be better to find for what reason the victim was denounced and why he was sentenced. If he had committed what International Law recognised to be an offence it would be difficult to talk of a war crime having been committed.

Dr. Zivković he would find out further details regarding this point.

The Committee adjourned No. 1 of case 3296 until Dr. Zivković could supply further information.

Dr. Mayr-Harting in discussing No. 2 of case 3296 (Village of SPREDNJI LOKOVEC) quoted paragraph No. 2 on pages 2 and 3 of Document C. 201. (General Propositions adopted by Committee III). It followed that crimes against property could hardly be considered as crimes against humanity, certainly not as crimes of the murder type.

Dr. Zivković replied that there had existed a systematic terrorism in the area in question. The cases given were only instances of this terrorism. They were selected and varied examples. Isolated cases may not in every case appear serious. All the examples were of offences committed for racial and political motives as was stated in the charge ("against the Slovene people because of their race and the fact that they were not Fascist").

Sir Robert Craigie pointed out that a rebellion was in progress. The territory in question was Italian territory under the Peace Treaties following the first World War.

Dr. Mayr-Harting expressed the opinion that it was not necessary to examine the question of the legality of methods used against Partisans; for instance torture was unjustifiable in any case.

Sir Robert Craigie said that the question was whether each measure was excessive.

Dr. Mayr-Harting suggested that the offence would be a crime against humanity if it could be shown that it had been committed as part of a pattern, for racial motives or similar motives.

Dr. Schwelb suggested that the Committee should examine all the cases to see whether the acts complained of were crimes, and should reserve the question of whether they amounted to crimes against humanity until all cases had been examined. He quoted paragraph No. 6 from p. 3 of Document C.201, and pointed out that the definition set out therein had been accepted verbatim by the British Authorities in Germany, as was shown in a copy of the British Zone Review which he produced (Vol. 1, No. 21, p. 2). If the Committee could find that the offence mentioned in Point 2 had been repeated again and again, it might be possible to find that it was a crime against humanity.

Dr. Zivković drew the Committee's attention to the fact that all the crimes in Case 3296 had been committed after the Italian armistice; the accused were rebels in relation to their own government which had capitulated to the Allies and they had no claim to the status of a belligerent force.

Sir Robert Craigie and Dr. Mayr-Harting mentioned that, though in rebellion against their lawful Italian Government, the "Fascist-Republican" forces had been via facti treated as combatant belligerent units by the Allies. Dr. Mayr-Harting asked what difference there was between their status and, for example, the status of the Free French Forces under General de Gaulle.

Sir Robert Craigie said that it seemed to him that the correct approach would be to ask in the first place whether the acts were committed in the course of operations against Partisans, and in the second place whether they were committed according to a pattern whose object was the persecution of the civilian population.

Dr. Zivković, replying to Dr. Mayr-Harting, said that it was always difficult to find sufficient evidence to prove the existence of a motive, but circumstantial evidence did show that the acts were committed according to a pattern of racial persecution.

The Committee decided that paragraphs 2 and 3 of case 3296 would be crimes against humanity if committed according to a pattern.

The Committee came to the same decision with regard to the first part of No. 4 (Bertosi-Mavrič). The Committee adjourned consideration of the second part (Stepančič) until the National Office had supplied information regarding the question why Stepančič had been killed.

The Committee decided that numbers 5, 6 and 7 of case 3296 (Oslavje, Rocinje, Medana) would have to be classified as crimes against humanity, if the crimes were committed according to a pattern.

Dr. Mayr-Harting: In connection with number 8 (Fulmine-Solkan) the question arose whether a trial had been held.

Dr. Zivković replied that sometimes in special cases trials were held and sometimes not.

The Committee decided that number 8 also would be a crime against humanity if the crime was committed according to a pattern (namely shooting without trial).

Dr. Mayr-Harting was prepared to accept that these charges were only examples of a pattern, but he was uneasy about the question whether they were racial in motive and not part of the war against Partisans. If it could be shown that they were all committed in districts inhabited by people of Yugoslav race where no Partisan warfare was in progress, the question would be clearer.

Dr. Zivković said that the victims in this case, with the exception of number 8, did not belong to the Partisans and were in their homes when the offences were committed. All Yugoslav Partisans wore uniform except some secret agents. The Partisans were not operating in these districts.

The Committee decided to leave open the question whether the crimes alleged in this case were committed according to a pattern and whether they were committed for racial motives, until it had examined the other cases.

The Committee then proceeded to the examination of the cases dealt with in Document III/56.

Case 4031

Dr. Zivković: Whereas the acts alleged in case 3296 were committed after the Italian armistice, case 4031 alleged crimes committed before the armistice. Points 1 and 2 were important as illustrations of a pattern, but were not charges in themselves. The students mentioned in point 3 were Yugoslav nationals. The fifth accused had ordered the burning of the house. No hostilities were in progress. The woman mentioned in point 6 was not a Partisan but simply gave hospitality to Partisans. With regard to the second paragraph of charge 7, he pointed out that the Italians were in control at the time and a curfew was in force. This was an example of the way in which the Italians mistrusted the Yugoslavs.

The Committee decided that points 3, 4, 5, 6 and 8 would be crimes against humanity if committed according to a pattern.

The same applied to the second paragraph of 7. It was doubtful, however, whether the first and third paragraphs of 7 set out crimes against humanity.

Case 4032

Dr. Zivković: The victims were all peaceful inhabitants. The orders which were given to them were of the nature of "lie down" and so on.

The Committee decided that this case also set out an offence which would be a crime against humanity if committed according to a pattern.

Case 4033

The Committee came to the same decision with regard to both points in this case.

Case 4034

Dr. Zivković: No military action was going on at the time when these offences were committed. The internment mentioned was in a concentration camp in Germany. Such internment would have been unjustifiable even if Partisan activity had been in progress. The "mopping-up" mentioned in point 2 signified action against the population. Even given the fact that the population did favour the Partisans whenever the latter were in their district, it was still unjustifiable to shoot civilians on the spot. The words "without trial" should be added after the word "hanged". The same addition should be made in the fourth point. Dr. Zivković agreed to abandon point 6, since the accused could not be identified.

With regard to points 1 - 5 the Committee came to the same decision as before.

Case 4035

Dr. Zivković agreed to abandon point 2 for lack of information. He pointed out that the offences alleged to have been committed in points 1, 7, 8, 9 and 13 were committed for no reason whatever and were without justification. Dr. Zivković abandoned point 4, and also point 6 in so far as the robbery was concerned. In point 10 internment in a concentration camp was signified.

The Committee came to the same decision as before with regard to charges 1, 3, 5, 6 (as far as the shooting was concerned), 7, 8, 9, 10, 11, 12, 13 and 14 (as far as beating and torture was concerned).

Case 4036

Dr. Zivković abandoned the charge of wrongful arrest.

The Committee came to the same decision as before as regards the detaining without food and the order that victims be sent to concentration camps.

Case 4037

Dr. Zivković pointed out that General Bergonzi actually did put into force the measures referred to in charge 1, and not only "proposed" to do so. Members of the Committee in reading over such charges as these should remember that, as had been shown in the Nuremberg trials, certain words had special meanings: for instance "special treatment" really signified torture. Official reports made by Bergonzi contained such words.

The Committee adjourned case 4037 till the next meeting.

Committee III Minutes.

No. 21/46.

UNITED NATIONS' WAR CRIMES COMMISSION.

Notes of the meeting of COMMITTEE III held on 2nd October 1946
at 3.0 p.m.

In the Chair: Dr. Mayr-Harting, (Czechoslovakia),

Also Present:

Sir Robert Craigie,	United Kingdom,
Major Fanderlik,	Czechoslovakia,
Dr. Aars-Rynning,	Norway,
Mr. Kintner,	United States of America,
Dr. Zivkovic,	Yugoslavia,
Dr. Mezulic,	Yugoslavia.

Apologies were received from Dr. Schram-Nielsen for his absence..

I. Minutes No.20/46.

The Committee agreed upon certain amendments to Minutes No.20/46 which are incorporated in the new text, circulated as No.20 (revised)/46.

II. Welcome to Mr. Kintner, (U.S.A.)

The CHAIRMAN welcomed Mr. Kintner as a member of Committee III. Mr. KINTNER explained that he was unable to vote on behalf of his government on the question of the Yugoslav-Italian charges involving crimes against humanity until he had received instructions. He added that he had asked his Government for these instructions and hoped to receive them soon.

III. The Yugoslav-Italian cases alleging crimes against humanity.
(Doc. III/56.)

The Committee then continued the examination of charge No.4037 (Doc. III/56).

Dr. ZIVKOVIC read to the Committee an additional paper which he had prepared and which will be circulated as Doc. III/59, particularly the text of a speech made by Mussolini on 31st July 1942 at Gorizia.

Dr. MAYR-HARTING and Sir Robert CRAIGIE expressed their opinion that the speech quoted by Dr. Zivkovic was relevant to the consideration of the Committee in throwing light on the scheme underlying the atrocities.

Case No.4037.

The points reproduced under I on page 11 of Doc. III/56.

Point 1.

After discussion, the Committee expressed its opinion that it would be useful if the Yugoslav National Office could furnish the text of the Regulations which were enforced in the occupied region of Ljubljana.

Point 2.

The Committee arrived at the opinion that the shooting of the prisoner Furlan, during an alleged attempt to escape, constituted a crime against humanity if the general pattern could be shown.

Points 3, 4 and 5.

Dr. ZIVKOVIC explained that the facts described under these points were brought forward to illustrate the general atmosphere and did not purport to allege that they were crimes in themselves.

The charge in point 4 regarding the killing of Sasa was adjourned to enable the Yugoslav National Office to furnish further information on the circumstances of the killing.

Point 6.

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

Points 7, 8, 9, 10 and 11.

Dr. ZIVKOVIC declared that the facts contained in these points were recorded only for illustration of the general atmosphere.

Point 12.

Regarding point 12, Dr. ZIVKOVIC supplemented the charge by stating that the homes of the killed partisans had been set on fire deliberately and without military necessity, and certainly not in the course of fighting. Thereupon the Committee decided that this wanton destruction of property would constitute a crime against humanity, if perpetrated according to a pattern.

Point 13.

Here the Committee decided that the shooting of a young man for shouting Communist slogans constituted a crime against humanity in the event either of his having been shot without a trial or of a trial having been held, because the punishment would in any case have been excessive.

Point 14.

The Committee decided that this case constituted a crime against humanity if the pattern could be shown.

Point 15.

Sub-paragraph (1) (Sambasso and Ranziano)

The Committee decided that the sending of the relatives to concentration camps constituted a crime against humanity.

Sub-paragraph (2) (Montespino)

The decision on this point was adjourned until further information was forthcoming.

Points 16 and 17.

The Committee decided that the facts described there (internment of relatives of young people in concentration camps) constituted a crime against humanity.

Point 18.

The decision on this point was adjourned.

Case No. 4037. - Points contained in Doc. III/56 under II.

Point 1.

The Committee decided that the killing of a man while allegedly attempting to escape constituted a crime against humanity. The same applies to the wanton destruction of 81 buildings dealt with under the same point.

Point 2.

In this case the same decision was taken as on point 1. of I., namely that the Yugoslav National Office be asked to provide the text of the provisions valid in the Ljubljana province.

Dr. ZIVKOVIC, making a general statement, said that, in the first place, Bergonzi had given orders for persecutions, which resulted in the commission of many offences, secondly, in one report he had proposed the extension of the ruthless system applied in Slovenia, and thirdly, many crimes had been committed under his orders.

Dr. ZIVKOVIC drew attention to the fact that the case No. 4037 dealt with in Doc. III/56, gave the same facts as the case No. 1462, dealt with in paper III/32. At the same time, he proposed that consideration of the case No. 1323 (Annex to Doc. III/32) should be adjourned, because it was not directly connected with the cases so far discussed by the Committee.

This was agreed to and the Chairman stated that all the Yugoslav cases referred to Committee III with the exception of the case No. 1323, had been discussed.

The CHAIRMAN, continuing, stated that in drawing up his report for Committee I, Committee III should state:

- (1) that they were not concerned with the question whether the persons charged by the Yugoslav Government should be listed by the Commission on the instance of the Yugoslav Government;
- (2) that they were not concerned with the question whether the persons should be extradited or handed over to the Yugoslav Government;
- (3) that they were not concerned with the guilt of each individual accused.

The only question which Committee III had to decide was whether the facts set out in the Yugoslav charges constituted crimes against humanity and if so, to give the reasons. The task of Committee III was, therefore, to reply to this theoretical legal question only.

Dr. ZIVKOVIC replied that Committee I would want Committee III to examine the question what should be done. In his opinion the problem would be solved in connection with the territorial settlement respecting the Julian March. Obviously crimes committed in the territory which will form part of Yugoslavia would, according to the Moscow Declaration, have to be tried by a Yugoslav court. He agreed with the opinion that to decide upon the guilt of the individuals was a matter for Committee I, while the problems how the accused persons should be listed fell either within the jurisdiction of Committee II or that of Committee III. He suggested that the Commission could decide to produce some separate lists which would not prejudice the final decision of the controversial points.

Sir Robert CRAIGIE stated that, prima facie, it appeared to him that the questions fell within the jurisdiction of Committee I.

Dr. MAYR-HARTING summed up by saying that the Committee had seen examples of criminal actions comprising various crimes, murder, execution without trial, shooting of hostages, shooting of prisoners while allegedly trying to escape, torture, internment under inhumane conditions and wanton destruction of property. The Yugoslav National Office had succeeded in showing that all these crimes, mentioned in the various charges, were examples only and that, on the whole, the fight against the partisans had been carried out in complete disregard of the Hague Regulations. It would be useful to consider in this connection the Preamble of the 4th Hague Convention. Dr. Mayr-Harting quoted Articles 1 and 2 of the Hague Regulations and indicated that units which had not complied with these two Articles were protected by the laws of humanity invoked in the Preamble. In all the cases mentioned above, it seemed fairly clear that crimes against humanity had been committed.

The Yugoslav charges set out also some cases of pillage. Many more may have occurred, but nevertheless it seemed doubtful whether one could say that this pillage was committed for racial or political reasons and not for purely personal reasons, and it did not seem advisable to promote a common crime to a political crime if there were no clear indications of the latter.

Finally two cases of forced labour were dealt with in the Yugoslav charges. One could hardly say that these crimes formed part of the fight against the partisans. It was also doubtful whether directing one's own subjects to do certain work constituted a crime at all. The Committee had to keep in mind that the victims were Italian subjects.

Sir Robert CRAIGIE agreed with what Dr. Mayr-Harting had said and pointed out that, with regard to pillage, it would be necessary to show that the commanding officers had ordered or specifically authorised the looting on political grounds in order to establish a case of a crime against humanity as distinct from a common crime committed in the looters' own interest.

Dr. ZIVKOVIC pointed out that there were very many cases of forced labour and referred to the judgment of the International Military Tribunal which had declared it to be a crime to order German citizens (e.g. Jews of German nationality), to forced labour.

Sir Robert CRAIGIE expressed the opinion that the decisive question was whether the labour imposed upon the persons was to be effected in a state of internment or whether they were to remain free.

Dr. MAYR-HARTING agreed that forced labour imposed in connection with internment in a concentration camp constituted a crime against humanity.

Dr. MEZULIC remarked that it was also a question of the numbers involved. In a part of the Fiume Province, the whole population of which numbered 11,000, 5,000 - 6,000 people had been taken to different Dalmatian islands; most of them had died. 55% of the inhabitants had been removed from the district. The fight against the partisans consisted, inter alia, in removing the population from their place of abode.

At the instance of Dr. ZIVKOVIC, the Committee decided to adjourn also point 5 of case No. 4035 and the second part of the case No. 4036, the two charges dealing with forced labour.

The Committee then decided that the Secretary should draft a report on those cases and those points of particular cases which had been decided upon in that and the previous meetings, excluding those which had been adjourned.

IV. The Bearing of the Nuremberg judgment on the activities of Committee III connected with crimes against humanity.

At the proposal of Sir Robert CRAIGIE, the Committee resolved to ask the Secretary to prepare a paper analysing the Nuremberg judgment as far as it dealt with crimes against humanity and to try to set out what bearing the judgment had on the interpretation of the notion of "crimes against humanity" and, consequently, on the charges involving crimes against humanity with which Committee III was dealing.

Dr. SCHWELB informed the Committee that according to a wish expressed by Sir Robert Craigie privately, a summary of the article by M.E. Aroneanu on "Le crime contre l'humanité" which was published in the Nouvelle Revue de Droit International Privé and the publication of which was noted in his "Survey of Legal Literature", Supplement to War Crimes News Digest No. XVII would be inserted in the next issue of the "Survey" which was being duplicated. The English summary was prepared by one of Mr. Justice Jackson's collaborators.

V. Law Reports. (Doc. III/58).

The Committee agreed to the proposals made in Paper III/58 under (a) and (b).

Dr. MAYR-HARTING stated that Committee III had finished its task connected with Volume I of the Law Reports and he would therefore, in accordance with previous decisions, suggest in the next meeting of the Commission that the Special Committee to deal with publications, should be appointed. The Committee also agreed that Lord Wright should be asked to insert in his preface to the first Volume a statement to the effect that, for technical reasons, it had not been possible to insert into the first volume reports of French cases, but that it was hoped that reports on cases tried by French courts and courts of other nations would be inserted in the following volumes.

The Committee adjourned after it had decided that no meeting would be held in the following week, in order to enable the Secretary to prepare the two papers with the preparation of which he had been charged under III and IV.

COMMITTEE III MINUTES
22/46

UNITED NATIONS WAR CRIMES COMMISSION

Notes of the Meeting of COMMITTEE III held on 30th October, 1946,
at 3.0. p.m.

In the Chair: Dr. Mayr-Harting, (Czechoslovakia).

Also Present:

Lord Wright,	Chairman of the Commission,
Sir Robert Craigie,	United Kingdom,
Colonel Springer,	United States of America,
Major Fanderlik,	Czechoslovakia,
Dr. Demitsas,	Greece,
Dr. Aars-Rynning,	Norway,
Dr. Szerer,	Poland,
Dr. Mezulic,	Yugoslavia,
Mr. Klemencic	Yugoslavia.

I. Minutes No. 21/46

The Committee agreed to the Minutes No. 21/46 without amendments.

II. Bearing of the Nuremberg Judgment on the Interpretation of the Term:
Crimes against Humanity. (Doc. III/62.)

The CHAIRMAN introduced the discussion on the paper III/62 prepared by Dr. Schwelb.

Dr. SZERER pointed out that he had not been able to study the document carefully in the short time since its circulation.

Sir Robert CRAIGIE thanked Dr. Schwelb for the paper, which he described as a very good piece of work.

On the invitation of the CHAIRMAN, Dr. Schwelb orally gave a summary of his paper. A general discussion ensued in which Sir Robert Craigie, Dr. Mayr-Harting and Dr. Szerer took part, and in which Dr. Schwelb replied to several questions posed by members of the Committee.

At the instance of the CHAIRMAN, the relevance of the Nuremberg Judgment on Doc. C. 201 was discussed, on the basis of paragraph XXVI of Doc. III/62. After a discussion, in which Lord Wright, Sir Robert Craigie, Colonel Springer, Dr. Mayr-Harting and Dr. Szerer took part, the Committee agreed on the following points:

- (1) There is no reason to alter anything in paragraph 1 of Doc. C. 201.
- (2) Though the Nuremberg Judgment does not speak of two different types of crimes against humanity, it is still possible to make a distinction without saying that any practical consequences arise from it.
- (3) No modification of Point 3 appears necessary.
- (4) It was decided not to make any change in paragraph 4.
- (5) As far as major war criminals who were tried in Nuremberg are concerned, it is now established by the Tribunal that the connection with the war is now necessary in both types of crimes against humanity committed by major war criminals.

(6) It was decided that there was no reason to alter paragraph 6 of the "General Propositions". Although the prosecution of lesser criminals, particularly under Law No. 10, has predominantly a local German character, some international concern remains in view of the fact that Law No. 10 is also the basis of the surrender of war criminals from the individual zones of Germany.

(7) A considerable qualification on the lines of paragraph XXVI, subparagraph 7 of Doc. III/62 is necessary, as far as the German major war criminals are concerned. The judgment does not affect, however, the activities of the Commission concerning so-called minor war criminals because in their case the text of the Charter does not apply. It was pointed out by Dr. Mayr-Harting that Doc. III/62 stresses only the negative side by pointing out the Tribunal's view as to crimes committed before 1st September, 1939, but does not sufficiently stress the positive side of the Tribunal's attitude as far as crimes committed during the war are concerned.

Sir Robert CRAIGIE said that as far as crimes against humanity allegedly committed by minor perpetrators are concerned the Judgment does not necessarily mean that the Commission should regard them as crimes against humanity only if they are connected with the war.

Dr. MAYR-HARTING remarked that, in the Czechoslovak cases, the positive side of the Nuremberg Judgment had to be taken into account as explained in paragraph XIII of Doc. III/62, to the effect that all inhumane acts committed on Czechoslovak territory after the occupation of the so-called Sudeten territory are, in the light of the Nuremberg Judgment, either crimes against humanity or war crimes.

(8) The Committee expressed the general agreement with paragraph XXVI, subparagraph 8 of III/62.

(9) The same applies to paragraph 9.

With regard to all that has been said with respect to the relevance of the Nuremberg Judgment for the practice of the Commission, it must be kept in mind that the legal basis in proceedings based on Law No. 10 is different from the provisions of the Charter of the International Military Tribunal.

(10) and (11) The comment contained in Doc. III/62 was agreed to by the Committee.

The Committee decided:

(1) To ask Dr. Schwelb to draft a special paper where there should be set out side by side:

- (a) the text of C. 201, and
- (b) the appropriate conclusions corresponding to the result of that day's debate.

(2) To circulate III/62 as a Commission document.

III. Yugoslav- Italian cases involving crimes against humanity. (III/63).

Draft Report III/63 was circulated by the Secretariat during the meeting of the Committee.

Dr. MAYR-HARTING pointed out with regard to the cases of alleged pillage that the paper did not fully correspond to what the Committee had decided.

Further discussion of Doc. III/63 was adjourned.

IV. Suggestion regarding the publication of enactments dealing with war crimes.

After a discussion in which Dr. Mayr-Harting, Dr. Szerer and Sir Robert Craigie took part, Dr. SZERER pointing out the urgency of the matter and Sir Robert CRAIGIE proposing the adoption of the suggestions, it was decided to recommend to the Commission:

- (a) That the Commission adopt the proposal set out in the paper regarding the publication of enactments. (III/60).
- (b) That the Secretariat be charged with the task of commencing the preparatory work without delay.
- (c) That the publication should, if necessary, take place by instalments (in case the material relating to some countries should not be available within a reasonable time.)
- (d) That also with regard to this publication, the rule should be observed that the consent of the representative of any member government will be necessary as far as the enactments of the respective member country are concerned.
- (e) That further points relating to this publication should be dealt with by the Special Committee for Legal Publications which was appointed by the Commission in its meeting held on 23rd October 1946, (M. 115).

Dr. Schwelb was asked to compile from the document III/60 and the amendments suggested, a Commission document which would go before the Commission as the Committee's recommendation.

UNITED NATIONS WAR CRIMES COMMISSION

ERRATUM.
COMMITTEE III MINUTES.
No. 22/46.

Among the representatives present, add:

Commander M.W.Mouton, Netherlands.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 7th November 1946 at 3.0 p.m.

In the Chair: Dr. Mayr-Harting, (Czechoslovakia),

Also Present:

Sir Robert Craigie,	United Kingdom,
Colonel Springer,	United States of America,
Major Fanderlik,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Commander Mouton,	Netherlands,
Dr. Szerer,	Poland,
Dr. Zivkovic,	Yugoslavia.

I. Minutes No.22/46.

Minutes No.22 were approved. Dr. MAYR-HARTING remarked that, in connection with paragraph 4 of Doc.C.201, his view that the Nuremberg Judgment obviously inclined to ignore the difference between civilian and military victims of crimes against humanity, should be recorded in the Minutes.

II. Yugoslav Cases. (Doc.III/63.)

After a discussion in which Dr. Mayr-Harting, Sir Robert Craigie, Colonel Springer, Commander Mouton and Dr. Zivković took part, the Secretary was asked to prepare a new paper to be presented to the Commission and to Committee I which should differ from Doc.III/63 in the following respects:

Paragraph VI, case 3296. Counts 2 and 3 should be shortened. It should be pointed out particularly that if the acts were committed in the course of operations then no crime had been committed.

Page 3, paragraph VII, case No.4031. In paragraph XV, note should be taken of Count 3, as far as the shooting was concerned.

Page 4, paragraph X, case No.4034. Count 2 should be mentioned in the last category in paragraph XV.

Page 5, paragraph XII, case No.4036. The deportations to concentration camps should be mentioned in paragraph XV.

Page 6, paragraph XIII, case No.4037. Counts 16 and 17 should be mentioned in paragraph XV. Counts 15, 16 and 17 should be redrafted to make clear their connection with particular cases. The same applies to Count 1 of Part II.

It should also be pointed out that the charged cases of pillage had not been recognised by Committee III as crimes against humanity and they should therefore be left out in paragraph XV, giving the reasons.

In the concluding part of the paper, the conclusions should be more elaborate. It should be stated that the Committee had found that the

acts charged were systematic, authoritative and also in all other respects falling within the definition of paragraph 6 of Doc.C.201.

It was decided that the redrafted paper would go once more before the Committee and would then be voted upon.

III. The Bearing of the Nuremberg Judgment on the interpretation of the term "Crimes against Humanity". (Doc.III/66).

Before the Committee started discussing Doc.III/66, Dr. ZIVKOVIC made a general statement on the present situation with regard to crimes against humanity. He said that the question was getting more and more confused; new legal concepts were in the making. The Tribunal had to apply the law as laid down in the Charter and was not concerned with theoretical aspects. The Control Council Law No.10 differed from the Charter and had a much wider scope. Dr. Zivković referred to a Congress of Lawyers, held in Paris a few days ago, at which a resolution on crimes against humanity had been passed, demanding that crimes against humanity be a permanent part of International Law, as a penal repression for violation of human rights and fundamental freedoms. He suggested that before going further in trying to define crimes against humanity, the Committee should take note of the Paris Resolution.

The SECRETARY informed the Committee that this Resolution had been received by the Secretariat and was being duplicated and would be distributed as a Commission document (Doc.C.235).

Dr. ZIVKOVIC added that the organisation established at Paris would seek recognition from the United Nations and if they succeeded they would become the only representative body of lawyers and would have a consultative voice in the Economic and Social Council of the United Nations. Dr. Zivkovic stated that the United Nations was working very hard in collecting information on human rights, and very extensive work was being done on the question of development and codification of International Law. It was to be expected that this question would be the object of study by the United Nations itself, and a field of co-operation between the United Nations and the United Nations War Crimes Commission would arise. Dr. Zivković thought that eventually the Commission should prepare a comprehensive document embodying not only the positive law on the question, but also what he called "judicial policy".

Dr. MAYR-HARTING replied that the differences between the Charter of the International Military Tribunal and the Control Council Law No.10 had already been pointed out by Dr. Schwelb. The Committee was grateful to Dr. Zivković for drawing its attention to the Paris Conference, but this should not prevent the Committee from dealing with the matter step by step, and he proposed that for the time being, the discussion should be restricted to Doc.III/66.

Dr. SCHRAM-NIELSEN asked that in future documents should be circulated earlier to enable members to study them properly.

Dr. SCHWELB explained that in the six days between the last meeting and the present meeting, about 7 documents had been produced and circulated, and added that Doc.III/66 contained no new matter, but only a reproduction of paragraph XXVI of Doc.III/62, amended according to last week's discussions.

Sir Robert CRAIGIE welcomed Dr. Zivković's suggestion that the Committee examine carefully the report of the Paris Conference, but he made one qualification: up to now this Committee had been endeavouring to interpret what they called the "basic documents", and on the whole it was wise that the Committee should confine itself to these. The Committee should not modify its conclusions as a result of recommendations of unofficial bodies.

Dr. ZIVKOVIC replied that he was thinking of taking into account what was the general trend with regard to a term which itself was still confusing. In his view, the Paris Conference was ahead of practical possibilities.

After further discussion in which Dr. Mayr-Harting, Sir Robert Craigie and Dr. Schram-Nielsen took part, III/66 was adopted and the decision made last week to circulate it as a Commission document was repeated. The Committee also repeated its decision to circulate Doc. III/62, with the proviso that it should be made clear that paragraph XXVI of Doc. III/62 was superseded by Doc. III/66.

IV. The Dutch cases regarding the criminal responsibility of Administrators of Jewish Property (Verwalter). (Docs. III/65 and III/68)

The Committee decided to have a preliminary discussion on Doc. III/65. Commander MOUTON made a statement explaining in detail the arguments and conclusions contained in Doc. III/65.

Dr. SCHRAM-NIELSEN stated that he could not associate himself with Commander Mouton's views. He recalled that Lord Wright had said some time ago that he would be satisfied if 10% of the criminals would be prosecuted. It was therefore not advisable to try to extend artificially the number of persons falling under the term of war criminals. The Commission should concentrate its efforts on bringing persons to justice who had really committed shocking crimes. In his opinion, a prima facie case of crimes had not been made out, the persons in question could have been bona fide of the opinion that the property had been legally confiscated. That the price they paid was inadequate made no difference because confiscated goods were often sold very cheaply.

Dr. ZIVKOVIC referred to the inter-allied declaration of January 1943 regarding acts of dispossession. German law was quite irrelevant both with regard to the civil validity of such transfers, and to the criminal responsibility of the persons involved. In his view, the reply to the question with which the Committee was dealing, was more a matter of policy than a matter of law.

Dr. MAYR-HARTING pointed out that in his view, the crime of receiving stolen property could not have been committed in cases where the subject matter was real property, because under all the legal orders he knew, theft could be committed only with regard to moveable property. He was of the opinion that not all common crimes committed in occupied territory were war crimes and the crime of receiving stolen property was surely not sufficiently important to classify it as a war crime. He pointed out that otherwise tens and hundreds of thousands of inhabitants of occupied territories would be guilty of this war crime. The Dutch cases should, however, be considered on their own merits without laying down a general rule. Some of them certainly contained an element of pillage, e.g. where the persons involved had removed machinery from the sequestered concerns to Germany, or where they had bought the business at an inadequately low price. He also said that the difference between a Verwalter and other people buying such property consisted, from the point of view of their liability for war crimes, only in the fact that in the case of the Verwalter, it was established that the origin of the goods was known to them, but this knowledge was shared by tens of thousands of other people and there was no reason to single out the Verwalter.

Sir Robert CRAIGIE pointed out that if the Committee accepted Commander Mouton's point of view, it would be necessary to list as war criminals all who had knowingly bought confiscated Jewish property. This would be doubtful wisdom. It was doubtful whether anyone who had taken over property from a government could be an accomplice to an Act of State. Nevertheless he was impressed by the possibility of differentiating

between various cases, as suggested by Dr. Mayr-Harting. Where, for instance, the element of pillage existed, he would be pleased to list the person involved. He would not like, however, to commit his government to the general principle set out by Commander Mouton.

Commander MOUTON pointed out that the Verwalter was not a private individual, but a kind of civil servant.

Sir Robert CRAIGIE stated that if the Verwalter was important enough to be responsible for the policy of confiscation, it would be justifiable to list him.

Dr. SCHRAM-NIELSEN expressed the opinion that administrators could not be regarded as part of the authority of a country.

Dr. SZERER asked for further information as to whether the properties in question had only been seized and placed under temporary administration or whether they had been confiscated (expropriated). If the former was the case, it was obvious that they were, even under German law, still the property of the legitimate owner, and that to acquire them was an act of complicity in the criminal confiscation. In that case the Verwalter would know that the transfer was not complete.

Major FANDERLIK explained the procedure of the German authorities in seizing and confiscating Jewish property throughout Europe. On the preliminary seizure, usually followed fully fledged confiscation and expropriation.

Further discussion of Doc.III /65 was adjourned.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE III

Notes of the meeting of Committee III
held on 13th November, 1946,
at 3.0 p.m.

In the Chair: Dr. MAYR-HARTING (Czechoslovakia)

Also Present:

Sir Robert CRAIGIE	United Kingdom
Colonel SPRINGER	United States of America
Major FANDERLIK	Czechoslovakia
Commander MOUTON	Netherlands
Dr. SZERER	Poland
Dr. ZIVKOVIC	Yugoslavia

Apologies were received from Dr. SCHRAM-NIELSEN, Denmark, Dr. AARS-RYNNING, Norway, and Dr. DEMITSAS, Greece.

- I. Minutes No. 23/46
Minutes No. 23/46 were approved.
- II. Dutch cases regarding the criminal responsibility of
Administrators of Jewish Property (Verwalter) (Docs. III/65 & III/68)

Dr. MAYR-HARTING summarised the proceedings on this question which had taken place in the meeting held on 7th November 1946 (Minutes Nos: 23/46)

Commander MOUTON again stated the case submitted on behalf of the Netherlands National Office. He suggested that the price at which the confiscated property had been acquired, was irrelevant.

Dr. MAYR-HARTING said that there would hardly be unanimous approval of Commander Mouton's proposition, and he suggested that the examination of the individual cases by Committee III should proceed on the principle that where the property was bought for a price out of reasonable relation to the value of the property, or for the purpose of dismembering a business and bringing its assets to Germany, a war crime has been committed. He proposed that the Committee should start examining the individual cases with a view to establishing how far they contained elements of pillage.

Dr. SZERER pointed out, inter alia, that buying confiscated property by the Verwalter himself was always a suspicious deal.

Commander MOUTON stated that he wanted the Committee to give a decision on principle whether or not a person's buying confiscated goods commits a crime of either receiving stolen goods or complicity in the war crimes of confiscation or pillage.

Dr. ZIVKOVIC agreed with the proposal to examine individual cases from one of the following three angles:

1. Whether they constituted the crime of receiving stolen goods.
2. Complicity in the war crime of confiscation.

3. complicity in the war crime of pillage.

Dr. SCHWELB drew attention to the term used in Art. 6(b) of the Charter of the International Military Tribunal and in the Nuremberg Judgment, namely "Plunder of public and private property".

Sir Robert CRAIGIE expressed the opinion that plunder meant activities on a wider scale, whilst pillage denoted acts committed by individuals or small groups of individuals. Confiscation implied that there was an authoritative sanction behind it.

Dr. MAYR-HARTING pointed out that, in his view, confiscation amounted to a change in the right of ownership, while pillage implied only a change in possession.

Commander MOUTON stressed that the money had not been paid to the legitimate owner but to a German Government institution.

The Committee then started discussing the first of the cases submitted (Case No. 3379) reproduced in Doc. III/68, page 2.)

Dr. MAYR-HARTING said that buying property worth 105,000 florins for 65,000 florins, did not avoid the contract, even under the provisions of civil law, under the doctrine which in Roman law is called "laesio enormis". He further laid stress on the fact that as far as he was aware, there was no general principle of penal law, recognised in all municipal legal systems, to the effect that an accomplice after a fact was always criminally liable together with the actual perpetrator.

Dr. SCHWELB replied to the argument based on the absence of laesio enormis that the doctrine was applicable only if property was bought from the legitimate owner and did not apply where a contract was concluded with a person who had not the right to dispose of the property. He also pointed out that the criminal liability of an accomplice after the fact had been applied by the International Military Tribunal in the case of the defendant Funk, who had been found guilty of receiving belongings of victims of concentration camps in his capacity of President of the Reich Bank. (Doc. III/67, para XI, page 6)

Sir Robert CRAIGIE pointed out that Funk was among those responsible for the policy involved.

Dr. SCHWELB remarked that he had mentioned the Funk case only because it showed that the criminal liability of an accomplice after the fact was recognised by the International Military Tribunal, without applying it to the cases now before the Committee. Even if it were admitted that, e.g. the accused Willer, by purchasing the property, did not commit a crime, it did not alter the legal position which was that he did not acquire legal ownership of the property, and therefore the eventual removal of the property to Germany had the flavour of pillage. An "error" as to the legality of the anti-Jewish measures was not an error of a kind which could exculpate a defendant.

Dr. ZIVKOVIC stated that it was necessary to examine the intention (dolus malus) of the Verwalter. It was not possible to say that every one who bought confiscated Jewish property was necessarily a war criminal. It was necessary to note the circumstances of each case. The Verwalters were active members of the Nazi party and the Nazi régime and knowingly took part in a criminal scheme directed against the Jewish race. It followed that when the Verwalter bought for his own use a confiscated property, he was taking part in the war crime of pillage.

Dr. LITAWSKI pointed out that there were cases among those to be considered by the Committee, where the Verwalter was appointed and bought the enterprise after a considerable time and obviously with money taken out of the enterprise.

Dr. MAYR-HARTING and Sir Robert CRAIGIE agreed that if this were established it would constitute pillage.

The Committee then proceeded to work out, if possible, a general principle which would guide it in deciding upon the individual cases.

Sir Robert CRAIGIE and Dr. MAYR-HARTING suggested that a vote be taken on the question whether the Committee considered to be a war crime the fact that somebody bought confiscated property knowing that it was confiscated. Some members suggested that the question should be... "knowing that it was illegally confiscated", or "knowing that the confiscation was illegal", or "knowing that the confiscation was a crime in international law".

Dr. SCHWELB submitted that it was not necessary to formulate such general principles for the purpose of deciding the four cases. Referring to case 3379, he pointed out that it was nearly impossible that Willer, a tailor in a Dortmund suburb, had at a time of strict regulation of the German currency, brought from Germany the considerable amount of 65,000 florins and that he had been the owner of such an amount when he took over the confiscated business. Foreign currency was not accessible to German nationals, and could certainly not be exported from Germany to Holland. It was, therefore, obvious that the accused had taken the 65,000 florins out of the business. In his view, it would not be wise to adopt a kind of magna carta for perpetrators of such crimes.

Dr. SZERER said that the Committee had not to decide whether somebody was a criminal, but only whether a prima facie case was made out against him.

Dr. ZIVKOVIC replied that the Committee must be certain that what had been committed was a crime in order to state that there was a prima facie case against an accused person.

Sir Robert CRAIGIE stated that if the Committee had an individual before it who was responsible for the policy to confiscate private property, he would say that he was criminally liable, but it was a different thing to list anybody who was not responsible for the policy making and had only acquired confiscated goods.

Colonel SPRINGER was of the opinion that the facts with which the accused were charged ought perhaps to be crimes according to the future International Law, but they were not crimes in International Law as it stood.

After further discussion, in which Dr. ZIVKOVIC, Dr. MAYR-HARTING, Sir Robert CRAIGIE, Commander MOUTON, Colonel SPRINGER and Dr. SZERER took part, the Committee voted on the following questions, formulated by Dr. SZERER:

"Do we consider that buying property which, to the knowledge of the buyer, was confiscated in pursuance of the criminal policy against the Jews, constitutes a war crime?"

It was made clear that the effect of this vote should be only for the purpose of considering the question by the Committee. It should not permanently lay down an opinion and should not be embodied in the report to be drawn up by the Committee.

Dr. SZERER, Dr. ZIVKOVIC and Commander MOUTON voted YES.

Sir Robert CRAIGIE, Colonel SPRINGER and Dr. MAYR-HARTING voted NO.

Dr. MAYR-HARTING summed up that accordingly there was no majority for his principle to guide the Committee in its further deliberations.

Dr. LITAWSKI drew attention to the fact that it was not stated in the charges whether the confiscation (transfer of the right of ownership under German law) had taken place before the purchase by the Verwalter.

After further discussion, Commander Mouton was asked to furnish further information on the following points:

- 1) Whether the property in the different cases had been expropriated before the purchase by the Verwalter.
- 2) Whether the alleged price was paid by the Verwalter from his own money or from money taken from the business or whether it was credited to him.
- 3) Commander Mouton should, if possible, submit to the Committee copies of the Occupational Enactments dealing with Jewish Property.

Commander MOUTON said that he would try to give the information wanted, but that he still hoped that the Committee would give a general reply.

Dr. ZIVKOVIC replied to a question put to him by Colonel SPRINGER with regard to his view on the relationship between present and future International Law. He said that International Law was, inter alia, created by precedent, particularly by Judgments of Courts, and the Commission should contribute towards the Courts having the possibility of adjudicating on controversial cases of this kind, by listing the alleged perpetrators and thus contributing towards the development of International Law.

III. Denouncing as a war crime (Doc. III/69)

The consideration of this question was adjourned and Committee was asked to clarify the terms of reference.

COMMITTEE III MINUTES
No. 25/46.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes on the meeting of COMMITTEE III held on 28th November 1946 at
10.45 a.m.

In the Chair: Dr. Mayr-Harting, (Czechoslovakia)

Also Present:

Sir Robert Craigie,	United Kingdom,
Colonel Springer,	United States of America,
Mr. Ben H. Brown,	United States of America,,
Major Fanderlik,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Dr. Dimitzas,	Greece,
Commander Mouton,	Netherlands,
Dr. Szerer,	Poland,
Dr. Mezulić,	Yugoslavia.

I. Minutes No. 24/46.

Minutes No. 24/46 were approved subject to the following alterations:

The first sentence of Dr. Mayr-Harting's statement on page 2, paragraph 7, will read as follows:

" Dr. MAYR-HARTING stated that buying property worth 105,000 florins for not more than 65,000 florins, did not in itself avoid a contract even under the provisions of civil law, under the doctrine which in Roman law is called "laesio enormis". "

On page 3, last line, instead of "his principle", it should read: "this principle".

Colonel SPRINGER's statement on page 3, paragraph 8, will be altered according to a written text to be furnished to the Secretary. (*)

II. Yugoslav-Italian charges of crimes against humanity (Doc. III/73).

Dr. MEZULIC objected to paragraph V of Doc. III/73. He had the view that this passage weakened the whole report. It could be prejudicial to the discussion of the matter in the Commission. The three points were, in his opinion, not necessary. He proposed the omission of paragraph V and also of the last sub-paragraph of paragraph XVIII.

After a discussion on the proposal regarding paragraph XVIII, it was decided to leave out the following words: " In addition to those charges and counts which have been adjourned, "

The second paragraph of paragraph XVIII will read as follows:

" The Committee has not included in its classification as crimes against humanity the allegations which charged individual officers or men with pillage. Here the Committee is of the opinion that the

(*) The amendments of Minutes No. 24/46 will be circulated as a corrigendum to that Minutes.

authoritative character of the crime of pillage has not been established and that the crimes in question thus lack one of the qualifications, which, in the opinion of the Committee, are necessary for the classification of a crime as a crime against humanity. "

With regard to Dr. MEZULIC's proposal to omit paragraph V of the report, Dr. MAYR-HARTING pointed out that in his opinion all members of the Committee were agreed upon the substance of what was said there, and that retaining the paragraph would clarify the report.

Sir Robert CRAIGIE suggested that perhaps the first sub-paragraph of paragraph V containing Nos. 1, 2 and 3 could be omitted and the paragraph start with the present 2nd sub-paragraph, "The only question on which..." etc.

Dr. MAYR-HARTING stated that it was obviously not the Committee's opinion that the people responsible for these crimes against humanity should be listed technically in the same way as persons alleged to have committed violations of the laws and customs of war are listed by the Commission.

Dr. SZERER suggested that paragraph V could be omitted and the explanation made orally by Dr. Mayr-Harting in presenting the report to the Commission.

Colonel SPRINGER expressed the opinion that paragraph V would be useful and of considerable guidance with regard to the actual function of the Committee in the present case.

Sir Robert CRAIGIE meant that perhaps the phrasing could be altered as it looked like a leading statement at present. He suggested saying "that it is not part of its mandate to deal with ..." etc.

To further objections that at least No. 3 was superfluous and was already included in No. 1., Dr. SCHWELB explained that Nos. 1 and 3 referred to different matters. No. 3, only stated, in accordance with the Committee's proceedings, that the individual guilt of the accused had not been examined by Committee III. Behind point 1, however, there was an important principle. From the outset the Commission had been careful not to express an opinion which would justify retrospectively the proposition that the authorities of one State were, in International Law, entitled to interfere in the internal affairs of another State, basing their intervention on the allegation that the other State did not properly treat its own subjects who were racially akin to the population of the interfering State, as Hitler had done with regard to the German speaking populations of Austria, Czechoslovakia, Poland and throughout Europe.

The stress was on the words "on the instance of the Yugoslav Government". As these charges referred to the treatment meted out by the Italian authorities to persons who at least at the material time were Italian nationals, it was the policy of the Committee neither to confirm nor to reject the special claim of one particular State, to charge the perpetrators and have them handed over. In the opinion of the Committee, the right to intervention with regard to crimes against humanity belonged to the community of nations, to the United Nations as a whole, not to an individual State.

Dr. MEZULIC declared that he accepted this explanation by Dr. Schwelb, and it was decided that paragraph V should remain in the text, but that in a covering note from Committee III to the Commission, an explanation on the lines of Dr. Schwelb's statement should be given.

Sir Robert CRAIGIE proposed verbal amendments of the last sub-paragraph of paragraph V; the Committee decided that the final text should be formulated by Sir Robert Craigie in collaboration with Dr. Schwelb.

Dr. MAYR-HARTING suggested that Count 3 of Charge No.4031 should be mentioned in paragraph XV among the shootings. The second paragraph of XV should, therefore, read: "Shooting of prisoners while allegedly trying to escape are contained in No.4031, Counts 3, 7 (para.2) and 8,...."etc.

This was agreed to.

Colonel SPRINGER suggested an alteration in the wording of paragraph XII regarding the case No.4036, as no order to deport the victims to concentration camps was alleged in the charge.

Major FANDERLIK drew attention to the fact that the deportation to concentration camps had in this case not been carried out as the victims were liberated by partisans.

It was decided that the second sentence of paragraph XII should read as follows:

" As regards the detaining without food of 12 people and their transference to a prison in order to be sent to a concentration camp, the Committee found a prima facie case established. "

At the suggestion of Colonel SPRINGER, it was decided to leave out the word "enslavement" in paragraph XV, first sub-paragraph, 4th line.

Colonel SPRINGER objected to the following words contained in paragraph XVI, sub-paragraph 3: "...that they warrant the intervention by States other than those on whose territory the crimes have been committed, or whose subjects have become the victims of the crimes. "

In his opinion this was not a requirement for the qualification of an act as a crime against humanity, but a consequence. He therefore suggested the deletion of the words quoted.

Dr. MAYR-HARTING and Sir Robert CRAIGIE pointed out that the statement with regard to the right of other States to intervene was a restrictive qualification of the notion of crime against humanity.

After discussion it was agreed that the third sub-paragraph of paragraph XVI would be redrafted by Sir Robert CRAIGIE in collaboration with Dr. SCHWELB.

Colonel SPRINGER drew attention to the last sub-paragraph of paragraph XVII pointing out that the statement that the crimes were committed during the war, and were, therefore, in execution of or in connection with the aggressive war, was a non sequitur.

Dr. SCHWELB stated that the passage was in effect a quotation from the Nuremberg Judgment.

On the suggestion of Sir Robert CRAIGIE, it was decided to strike out the word "therefore" and to insert "in the words of the Nuremberg Judgment", placing the quotation in quotation marks.

Sir Robert CRAIGIE further suggested verbal amendments to paragraph XIV of the Draft Report, particularly replacing the words "Mussolini in words, the meaning of which is unambiguous" by "Mussolini announced in unambiguous terms" For the last sentence of sub-

paragraph 1 of paragraph XIV, Sir Robert CRAIGIE suggested the text: "It goes without saying that the term "barbaric tribe" was intended to refer to the population of Yugoslav origin living in the Julian March". These amendments were agreed to.

Dr. MAYR-HARTING asked whether the report Doc.III/73 with the amendments decided that day, could be considered the unanimous opinion of the Committee so that it was not necessary to bring the final text once more before the Committee.

Colonel SPRINGER declared that he would like to abstain from voting in order not to commit his government; he personally felt that the Committee had found, after careful examination, the alleged facts to be within the definition of Doc.C.201.

Dr. SCHRAM-NIELSEN asked whether members of Committee III, in expressing an opinion, were really committing their governments. He had never felt that he was doing so when taking part in the discussions of Committee III.

Dr. MAYR-HARTING stated that every member expressed more or less his private opinion. Up to the stage where a recommendation was agreed to by the Commission, it was the opinion of the representatives. This, however, was not a rule which could be forced on every member.

Sir Robert CRAIGIE agreed that it would limit the Committee very much if every word committed the government in question. This did not, however, exclude that a delegate who had doubts about the attitude of his government would consult it. All was a matter of practical procedure.

Colonel SPRINGER declared that on the understanding that the members of the Committee were expressing their personal opinion, the Secretary might record him among those voting for the report.

The report III/73 with the amendments recorded in these Notes, was unanimously adopted.

III. Netherlands Case No.4262 (Doc.III/72).

Dr. MAYR-HARTING suggested the adjournment of the consideration of this case until the Committee resumed the discussion of the other Netherlands cases (Doc.III/68), which were adjourned in the meeting of Committee III held on 13th November 1946, (Minutes No.24/46).

Commander MOUTON said that in accordance with the questions put to him in the meeting of 13th November 1946, as to the laws issued during the occupation, he had carefully examined the whole of the German legislation for occupied Holland, and found that there was no Ordinance to the effect that Jewish property should be confiscated. All the decrees regarding Jews cloaked the measures which were taken so that they should appear, on the face of them, legal. He presented to the Committee the bound volumes of the German Gazette for the Netherlands for the whole period of occupation and said that he was prepared to submit these volumes to any member of the Committee or to the Secretary in order to check his statement. He continued saying that if there was no official confiscation of Jewish property, any act which involved handling this property contrary to the existing (Dutch) laws, should be considered a crime.

Dr. MAYR-HARTING said that a statement to this effect was to be expected from experience in other countries relating to similar cases. He pointed out, however, that this purely negative evidence was not satisfactory. The position would be clearer if the Committee had a more positive statement showing the basis which lead to the administrators

being appointed to administer the property and to the property being sold to this or that person. It would be very useful to see how the administering and expropriating was actually done. He referred to the decision by Committee I (quoted in III/72, para.II) where the Netherlands National Office had been asked to submit the copy of the order issued by the first accused.

Commander MOUTON expressed his disappointment that the cases were again being adjourned and that he was asked for additional information.

After a discussion in which Dr.Schram-Nielsen, Colonel Springer, Sir Robert Craigie and Dr. Mayr-Harting took part, it was decided to adjourn the case and to ask Commander MOUTON to furnish further information particularly about the following points:

- (a) To place before the Committee, if possible, either the general administrative order or alternatively, any individual orders concerning the liquidation of Jewish property in Holland.
- (b) Information whether entries both in the Land Register (where real property was concerned) and in the Commercial Register (where commercial firms were concerned), had been made showing the appointing of administrators and/or the change in ownership. This information should be collected for all the cases before the Committee.
- (c) To examine (in the case of 4262), the witness Jolenberg again, regarding the kind of authorization which the accused Brämer had shown him when taking over the business.
- (d) Information as to the price allegedly paid and whether the price was paid by the Verwalter from his own money or from money taken from the business, or whether it was credited to him. This also refers to all five cases before the Committee.

IV. Giving Information as a War Crime. (III/69 and III/71).

Dr. MAYR-HARTING handed to the Secretary a copy of Part 9 of the Collection of Laws and Decrees of the Czechoslovak State of 1945, containing inter alia, the text of the Decree of the President of the Czechoslovak Republic of 19 June 1945, regarding the punishment of Nazi criminals, traitors and their helpers and regarding the establishment of Extraordinary Peoples Courts (No.16 of the Collection of Laws and Decrees). The provision regarding Giving Information as a Crime, was contained in Section 11 of this Presidential Decree.

Dr. SCHWELB was asked to procure an English translation of this provision and to circulate it to the members of Committee III.

The consideration of the question was adjourned until the English text of the provision was before the Committee.

COMMITTEE III MINUTES
No. 25/46.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes on the meeting of COMMITTEE III held on 28th November 1946 at
10.45 a.m.

In the Chair: Dr. Mayr-Harting, (Czechoslovakia)

Also Present:

Sir Robert Craigie,	United Kingdom,
Colonel Springer,	United States of America,
Mr. Ben H. Brown,	United States of America,,
Major Fanderlik,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Dr. Dimitzas,	Greece,
Commander Mouton,	Netherlands,
Dr. Szerer,	Poland,
Dr. Mezulić,	Yugoslavia.

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Colonel SPRINGER's statement on page 3, paragraph 8, will be altered according to a written text to be furnished to the Secretary. (*)

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After a discussion on the proposal regarding paragraph XVIII, it was decided to leave out the following words: "In addition to those charges and counts which have been adjourned, "

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COMMITTEE III MINUTES
No. 25/46.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes on the meeting of COMMITTEE III held on 28th November 1946 at

10.45 a.m.

In the Chair: Dr. Mayr-Harting, (Czechoslovakia)

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Dr. Mezulić,	Yugoslavia.

I. Minutes No. 24/46.

Minutes No. 24/46 were approved subject to the following alterations:

The first sentence of Dr. Mayr-Harting's statement on page 2, paragraph 7, will read as follows:

" Dr. MAYR-HARTING stated that buying property worth 105,000 florins for not more than 65,000 florins, did not in itself avoid a contract even under the provisions of civil law, under the doctrine which in Roman law is called "laesio enormis". "

On page 3, last line, instead of "his principle", it should read: "this principle".

Colonel SPRINGER's statement on page 3, paragraph 8, will be altered according to a written text to be furnished to the Secretary. (*)

II. Yugoslav-Italian charges of crimes against humanity (Doc. III/73).

Dr. MEZULIC objected to paragraph V of Doc. III/73. He had the view that this passage weakened the whole report. It could be prejudicial to the discussion of the matter in the Commission. The three points were, in his opinion, not necessary. He proposed the omission of paragraph V and also of the last sub-paragraph of paragraph XVIII.

After a discussion on the proposal regarding paragraph XVIII, it was decided to leave out the following words: " In addition to those charges and counts which have been adjourned, "

The second paragraph of paragraph XVIII will read as follows:

" The Committee has not included in its classification as crimes against humanity the allegations which charged individual officers or men with pillage. Here the Committee is of the opinion that the

(*) The amendments of Minutes No. 24/46 will be circulated as a corrigendum to that Minutes.

authoritative character of the crime of pillage has not been established and that the crimes in question thus lack one of the qualifications, which, in the opinion of the Committee, are necessary for the classification of a crime as a crime against humanity. "

With regard to Dr. MEZULIC's proposal to omit paragraph V of the report, Dr. MAYR-HARTING pointed out that in his opinion all members of the Committee were agreed upon the substance of what was said there, and that retaining the paragraph would clarify the report.

Sir Robert CRAIGIE suggested that perhaps the first sub-paragraph of paragraph V containing Nos. 1, 2 and 3 could be omitted and the paragraph start with the present 2nd sub-paragraph, "The only question on which..." etc.

Dr. MAYR-HARTING stated that it was obviously not the Committee's opinion that the people responsible for these crimes against humanity should be listed technically in the same way as persons alleged to have committed violations of the laws and customs of war are listed by the Commission.

Dr. SZERER suggested that paragraph V could be omitted and the explanation made orally by Dr. Mayr-Harting in presenting the report to the Commission.

Colonel SPRINGER expressed the opinion that paragraph V would be useful and of considerable guidance with regard to the actual function of the Committee in the present case.

Sir Robert CRAIGIE meant that perhaps the phrasing could be altered as it looked like a leading statement at present. He suggested saying "that it is not part of its mandate to deal with ..." etc.

To further objections that at least No. 3 was superfluous and was already included in No. 1., Dr. SCHWELB explained that Nos. 1 and 3 referred to different matters. No. 3. only stated, in accordance with the Committee's proceedings, that the individual guilt of the accused had not been examined by Committee III. Behind point 1, however, there was an important principle. From the outset the Commission had been careful not to express an opinion which would justify retrospectively the proposition that the authorities of one State were, in International Law, entitled to interfere in the internal affairs of another State, basing their intervention on the allegation that the other State did not properly treat its own subjects who were racially akin to the population of the interfering State, as Hitler had done with regard to the German speaking populations of Austria, Czechoslovakia, Poland and throughout Europe.

The stress was on the words "on the instance of the Yugoslav Government". As these charges referred to the treatment meted out by the Italian authorities to persons who at least at the material time were Italian nationals, it was the policy of the Committee neither to confirm nor to reject the special claim of one particular State, to charge the perpetrators and have them handed over. In the opinion of the Committee, the right to intervention with regard to crimes against humanity belonged to the community of nations, to the United Nations as a whole, not to an individual State.

Dr. MEZULIC declared that he accepted this explanation by Dr. Schwelb, and it was decided that paragraph V should remain in the text, but that in a covering note from Committee III to the Commission, an explanation on the lines of Dr. Schwelb's statement should be given.

Sir Robert CRAIGIE proposed verbal amendments of the last sub-paragraph of paragraph V; the Committee decided that the final text should be formulated by Sir Robert Craigie in collaboration with Dr. Schwelb.

Dr. MAYR-HARTING suggested that Count 3 of Charge No.4031 should be mentioned in paragraph XV among the shootings. The second paragraph of XV should, therefore, read: "Shooting of prisoners while allegedly trying to escape are contained in No.4031, Counts 3, 7 (para.2) and 8,...."etc.

This was agreed to.

Colonel SPRINGER suggested an alteration in the wording of paragraph XII regarding the case No.4036, as no order to deport the victims to concentration camps was alleged in the charge.

Major FANDERLIK drew attention to the fact that the deportation to concentration camps had in this case not been carried out as the victims were liberated by partisans.

It was decided that the second sentence of paragraph XII should read as follows:

" As regards the detaining without food of 12 people and their transference to a prison in order to be sent to a concentration camp, the Committee found a prima facie case established. "

At the suggestion of Colonel SPRINGER, it was decided to leave out the word "enslavement" in paragraph XV, first sub-paragraph, 4th line.

Colonel SPRINGER objected to the following words contained in paragraph XVI, sub-paragraph 3: "...that they warrant the intervention by States other than those on whose territory the crimes have been committed, or whose subjects have become the victims of the crimes. "

In his opinion this was not a requirement for the qualification of an act as a crime against humanity, but a consequence. He therefore suggested the deletion of the words quoted.

Dr. MAYR-HARTING and Sir Robert CRAIGIE pointed out that the statement with regard to the right of other States to intervene was a restrictive qualification of the notion of crime against humanity.

After discussion it was agreed that the third sub-paragraph of paragraph XVI would be redrafted by Sir Robert CRAIGIE in collaboration with Dr. SCHWELB.

Colonel SPRINGER drew attention to the last sub-paragraph of paragraph XVII pointing out that the statement that the crimes were committed during the war, and were, therefore, in execution of or in connection with the aggressive war, was a non sequitur.

Dr. SCHWELB stated that the passage was in effect a quotation from the Nuremberg Judgment.

On the suggestion of Sir Robert CRAIGIE, it was decided to strike out the word "therefore" and to insert "in the words of the Nuremberg Judgment", placing the quotation in quotation marks.

Sir Robert CRAIGIE further suggested verbal amendments to paragraph XIV of the Draft Report, particularly replacing the words "Mussolini in words, the meaning of which is unambiguous" by "Mussolini announced in unambiguous terms" For the last sentence of sub-

paragraph 1 of paragraph XIV, Sir Robert CRAIGIE suggested the text: "It goes without saying that the term "barbaric tribe" was intended to refer to the population of Yugoslav origin living in the Julian March". These amendments were agreed to.

Dr. MAYR-HARTING asked whether the report Doc.III/73 with the amendments decided that day, could be considered the unanimous opinion of the Committee so that it was not necessary to bring the final text once more before the Committee.

Colonel SPRINGER declared that he would like to abstain from voting in order not to commit his government; he personally felt that the Committee had found, after careful examination, the alleged facts to be within the definition of Doc.C.201.

Dr. SCHRAM-NIELSEN asked whether members of Committee III, in expressing an opinion, were really committing their governments. He had never felt that he was doing so when taking part in the discussions of Committee III.

Dr. MAYR-HARTING stated that every member expressed more or less his private opinion. Up to the stage where a recommendation was agreed to by the Commission, it was the opinion of the representatives. This, however, was not a rule which could be forced on every member.

Sir Robert CRAIGIE agreed that it would limit the Committee very much if every word committed the government in question. This did not, however, exclude that a delegate who had doubts about the attitude of his government would consult it. All was a matter of practical procedure.

Colonel SPRINGER declared that on the understanding that the members of the Committee were expressing their personal opinion, the Secretary might record him among those voting for the report.

The report III/73 with the amendments recorded in these Notes, was unanimously adopted.

III. Netherlands Case No.4262 (Doc.III/72).

Dr. MAYR-HARTING suggested the adjournment of the consideration of this case until the Committee resumed the discussion of the other Netherlands cases (Doc.III/68), which were adjourned in the meeting of Committee III held on 13th November 1946, (Minutes No.24/46).

Commander MOUTON said that in accordance with the questions put to him in the meeting of 13th November 1946, as to the laws issued during the occupation, he had carefully examined the whole of the German legislation for occupied Holland, and found that there was no Ordinance to the effect that Jewish property should be confiscated. All the decrees regarding Jews cloaked the measures which were taken so that they should appear, on the face of them, legal. He presented to the Committee the bound volumes of the German Gazette for the Netherlands for the whole period of occupation and said that he was prepared to submit these volumes to any member of the Committee or to the Secretary in order to check his statement. He continued saying that if there was no official confiscation of Jewish property, any act which involved handling this property contrary to the existing (Dutch) laws, should be considered a crime.

Dr. MAYR-HARTING said that a statement to this effect was to be expected from experience in other countries relating to similar cases. He pointed out, however, that this purely negative evidence was not satisfactory. The position would be clearer if the Committee had a more positive statement showing the basis which lead to the administrators

being appointed to administer the property and to the property being sold to this or that person. It would be very useful to see how the administering and expropriating was actually done. He referred to the decision by Committee I (quoted in III/72, para.II) where the Netherlands National Office had been asked to submit the copy of the order issued by the first accused.

Commander MOUTON expressed his disappointment that the cases were again being adjourned and that he was asked for additional information.

After a discussion in which Dr.Schram-Nielsen, Colonel Springer, Sir Robert Craigie and Dr. Mayr-Harting took part, it was decided to adjourn the case and to ask Commander MOUTON to furnish further information particularly about the following points:

- (a) To place before the Committee, if possible, either the general administrative order or alternatively, any individual orders concerning the liquidation of Jewish property in Holland.
- (b) Information whether entries both in the Land Register (where real property was concerned) and in the Commercial Register (where commercial firms were concerned), had been made showing the appointing of administrators and/or the change in ownership. This information should be collected for all the cases before the Committee.
- (c) To examine (in the case of 4262), the witness Jolenberg again, regarding the kind of authorization which the accused Brämer had shown him when taking over the business.
- (d) Information as to the price allegedly paid and whether the price was paid by the Verwalter from his own money or from money taken from the business, or whether it was credited to him. This also refers to all five cases before the Committee.

IV. Giving Information as a War Crime. (III/69 and III/71).

Dr. MAYR-HARTING handed to the Secretary a copy of Part 9 of the Collection of Laws and Decrees of the Czechoslovak State of 1945, containing inter alia, the text of the Decree of the President of the Czechoslovak Republic of 19 June 1945, regarding the punishment of Nazi criminals, traitors and their helpers and regarding the establishment of Extraordinary Peoples Courts (No.16 of the Collection of Laws and Decrees). The provision regarding Giving Information as a Crime, was contained in Section 11 of this Presidential Decree.

Dr. SCHWELB was asked to procure an English translation of this provision and to circulate it to the members of Committee III.

The consideration of the question was adjourned until the English text of the provision was before the Committee.

COMMITTEE III MINUTES
No. 26/46.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 5th December 1946
at 3.30 p.m.

In the Chair: Sir Robert Craigie, (United Kingdom)

Also Present:

Major Mason,	United Kingdom,
Colonel Springer,	United States of America,
Mr. Brown,	United States of America,
Major Fanderlik,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Dr. Dimitzas,	Greece,
Commander Mouton,	Netherlands,
Dr. Aars-Rynning,	Norway,
Dr. Mezulic,	Yugoslavia.

I. Appointment of Chairman.

Colonel Springer suggested the appointment of Sir Robert Craigie to be Chairman for the present meeting, and the following meetings until the final appointment of a Chairman of Committee III.

Sir Robert Craigie was unanimously elected.

II. Vote of thanks to Dr. H. Mayr-Harting.

Sir Robert CRAIGIE expressed his very deep regret at the fact that Dr. Mayr-Harting had ceased to be a representative on the Commission and acting Chairman of Committee III. It was difficult to over-estimate the work Dr. Mayr-Harting had performed as Chairman. He not only conducted the Committee's discussions with great skill, but put in a great amount of work and guided the Committee through difficult times in dealing with difficult subjects. Sir Robert proposed that the Committee should adopt a vote of thanks to Dr. Mayr-Harting and the expression of regret at his departure.

Colonel SPRINGER seconded the vote and it was carried unanimously.

The Secretary-General will be asked to convey the vote of thanks to Dr. Mayr-Harting while he is still in England.

III. Minutes No. 25/46.

It was resolved to adjourn the approval of Minutes No. 25/46 because they had only been circulated on the day of the meeting.

IV. Giving Information as a War Crime. (Docs. III/69, III/71 and III/74.)

Sir Robert CRAIGIE stated that there had been some feeling in Committee I that where the informer was an enemy national it was his duty to denounce. At the other end of the scale, was the obnoxious individual who denounced a fellow national. In between there were many intermediate stages. He asked whether the Committee was to

consider denouncing as a war crime in itself or only in relation to the consequences of the action.

Commander MOUTON was personally inclined to think that denunciation should, in general, be considered a war crime. There were, in his opinion, two ways of approach to the problem.

(1) If a German informed to his own authorities against a person concerning a violation of a German decree, it was necessary to judge the status of the decree, whether it was a normal decree or whether it was forbidden under International Law. In the case of the violation of, e.g., a curfew decree, any German was, in Commander Mouton's view, perfectly within his right if he informed against a person who violated it. If, however, the decree was criminal, for instance an order to deport Jews, the German who denounced an erring Jew committed simply complicity in the crime. It was, therefore, necessary to discriminate between different sorts of denunciations.

(2) The second approach, suggested by Commander Mouton, was based on the general principle of penal law, that by any act whereby an actual perpetrator was assisted, the assisting person became an accomplice and if the consequences were criminal, the Committee should follow the general principle of penal law in finding that a war crime had been committed by denunciation.

Dr. SCHRAM-NIELSEN thought that there was no legal basis to consider giving information as a war crime as such; it might be a form of instigation and might then constitute complicity in murder, torture and so on. We had to consider the principles which were pre-conditions or pre-requisites for considering a person a guilty accomplice. The person must have had mens rea, i.e. he must have known that what he did would lead to the commission of a war crime. If he had reason to assume that no war crime would result from his denunciation, that the person informed against would be properly treated, and duly tried, he had committed no war crime.

Colonel SPRINGER, while in general agreeing with Dr. Schram-Nielsen's opinion, added that the question must be examined against the background of the practice of the Allies. In the British, American and French Zones of Control in Germany, it was an offence to fail to report a violation of Military Government Regulations. The Allies required some informing in their own zones. Several elements must be considered:

(1) the act, (2) the personality of the accused, (3) the person informed upon, (4) the knowledge which must be assumed; here also the notion of a pattern came in, (5) the connection with the war.

Dr. DIMITSAS recalled that both the German and Italian occupants of Greece introduced the death penalty for those who hid British prisoners of war and for those who hid arms.

Acts of agents provocateurs were committed by Italians who clandestinely placed arms in the back gardens of Greek inhabitants and by Italians who disguised themselves as British prisoners of war asking for help. In both types of cases, the Greek inhabitants in whose premises arms were found, or who had shown willingness to help the prisoners of war, were eventually sentenced to death and shot. Such denunciation, he submitted, was done with dolus malus and, therefore, was a war crime.

Major FANDERLIK stated that in some penal codes at least, acting as agent provocateur was expressly forbidden. An agent provocateur acting under superior orders could not be excused. Informing against persons

who had committed common crimes, like theft, constituted, in his opinion, no war crime. He would go so far as to state that informing against a person for having violated, e.g., food regulations, though imposed by the occupant, was not a war crime.

In most of the other cases, however, the informer certainly knew that the victim would be taken to a concentration camp or punished excessively. He knew what would be the result and that his information would lead to the commission of a war crime.

Commander MOUTON remarked that it was difficult to establish the intention of the perpetrator; this was the task of the court. The Commission had to deal only with prima facie cases. In the case of the denunciation of a hiding Jew, we could assume that the informer knew what would happen to the Jew. Commander MOUTON replied to Colonel Springer's reference to the Ordinances promulgated in the different zones of Germany that these cases could be distinguished because of the different character of the allied enactments. While some of the German ordinances in occupied territory had been criminal, the allied ordinances in German territory were not.

Dr. SCHWELB referred to Article 44 of the Hague Regulations (Fourth Hague Convention of 1907), which provision, incidentally, had not been accepted by Germany, providing that a belligerent was forbidden to compel inhabitants of occupied territory to furnish information about the army of the other belligerent or about its means of defence. This was the only reference in conventional international law to giving information. The provision was addressed only to the occupying Power and referred only to the compelling of inhabitants to furnish information and not to those who furnished the information themselves. He, therefore, agreed with the opinion that there was no independent crime of giving information in International Law, as such, and that therefore giving information could only be punished if and insofar as it amounted to complicity in a war crime.

The Committee thereupon unanimously agreed to proceed on the basis that denouncing as such, without regard to the consequences, was not a war crime, and went on to consider the conditions of making it complicity in a war crime.

Dr. SCHRAM-NIELSEN remarked that denunciation was to be considered as a kind of instigation or complicity provided that the general rules relating to instigation and complicity were complied with in the individual cases.

Colonel SPRINGER did not think instigation had a specific or accurate connotation in American law. If a man was important and vital in instigating a crime he became an accomplice. Complicity covered all forms of taking part in a crime.

After further discussion, Dr. SCHRAM-NIELSEN proposed a resolution on the following lines:

WHERE GIVING INFORMATION LEADS TO THE COMMISSION OF A WAR CRIME,
SUCH GIVING INFORMATION FALLS, IN THE OPINION OF THE COMMITTEE,
WITHIN THE NOTION OF COMPLICITY IN THE COMMISSION OF A WAR CRIME
PROVIDED THE GENERAL CONDITIONS RELEVANT TO COMPLICITY ARE
FULFILLED.

Dr. SCHRAM-NIELSEN added that he had inserted in the proposed definition the reference to the general conditions relevant to complicity in order to release the Committee from the necessity of investigating and stating these general conditions in its resolution. He was, of course, referring to the intention of the perpetrator, to the mens rea.

Colonel SPRINGER drew the attention of the Committee to the fact that "honorary informers" had originally, (on 30th September, 1946), been included in the declaration made by the Nuremberg Tribunal with regard to the criminality of the S.D., but that this had been corrected by the Tribunal on the following day, (1st October, 1946).

Dr. SCHWELB said that the Judgment, as pronounced on 30th September, stated that the declaration regarding the Gestapo and the S.D. included all local representatives and agents, honorary or otherwise (p.16949 of the official English transcript; p.75 of the Command Paper Cmd.6964). On the following day, the Tribunal declared that its attention had been drawn to the fact that the prosecution expressly excluded the honorary informers who were not members of the S.S. In view of that exclusion by the Prosecution, the Tribunal also excluded those persons from the S.D. which was declared criminal. (p.16969 of the official English transcript; p.83 of the Command Paper, Cmd.6964). Dr. SCHWELB added that this declaration was not, of course, concerned with the guilt of individual informers but with the question whether honorary informers were, as such, to be included in the criminal group.

Major MASON concurred with Colonel Springer's opinion, that as far as English law was concerned, the expression "complicity" covered all forms of participation in the crime, including what in non-legal parlance is understood as instigation.

Colonel SPRINGER suggested the insertion, in the definition, of a provision to the effect that the responsibility of the informer was restricted to a war crime which directly resulted from the information.

Dr. SCHRAM-NIELSEN did not agree and replied that even indirect information or denouncing might lead to a war crime. To tell whether a Jew was hiding was a war crime even if not directly made to the Gestapo. The requirements of knowing of the eventual criminal act was implied in the reference to the general provisions as to complicity.

Colonel SPRINGER further suggested that a distinction should be made between voluntary and compulsory denunciation.

Commander MOUTON asked whether this did not fall under the notion of superior orders.

Sir Robert CRAIGIE added that it was for the court to decide whether an order to give information was a mitigating circumstance.

Dr. SCHRAM-NIELSEN pointed out the difference between disobeying an order to shoot, e.g., given to a member of an execution squad, and an order to give information. It was easy to hide one's knowledge, but it was, in most cases, not possible to hide whether one had obeyed an order to shoot or not. Giving information, which to the knowledge of the informant led to a war crime, could hardly be covered by superior orders.

Sir Robert CRAIGIE pointed out that Dr. Schram-Nielsen's test was not infallible. If an informer persistently failed to report information, the authorities would surely notice that he was not performing his duty.

Major FANDERLIK was also of the opinion that it was for the court to decide whether the pressure put upon a person was so strong as to exculpate his giving information.

Colonel SPRINGER, in further explaining why he wanted the word "voluntarily" included in the definition, said that the Committee were going a little beyond the established conception. In such circumstances, the Committee should advance cautiously.

Sir Robert CRAIGIE agreed.

Colonel SPRINGER added that the Committee were making a new definition in a new field on a new crime.

Commander MOUTON remarked that the Committee was, in his opinion, inclined to go into too many details. Legal niceties should be left to the court and not included in the general definition.

Colonel SPRINGER thought that while the insertion of the word "volunatrily" would exclude the actions of a soldier, it would not exclude the actions of paid informers who accepted their occupation voluntarily.

After further discussion, it was agreed not to include the word "voluntarily" in the definition itself, but to mention the problem in the Committee's report, pointing out, inter alia, that the word was not included in the definition because it impinged on the problem of superior orders. There was, however, no difference of opinion on the question between members of the Committee, because all were agreed that a person who had been forced to do something was not an actual accomplice.

The Committee further decided to consider its task as finished by preparing a report and a Draft Definition. The Committee was not really called upon to express an opinion on the Czechoslovak provision reproduced in Doc. III /74.

The Secretary was charged with the task of circulating the Draft Resolution, together with a Draft Report by Committee III.

V. The Question of the Chair of Committee III.

Commander MOUTON suggested that the Committee should elect a permanent Chairman forthwith and he suggested Sir Robert Craigie.

The members of the Committee expressed their agreement with this proposal, but Sir Robert pointed out that he was not a lawyer and that his other work would not permit him to take on this function permanently. He was, however, ready to be acting Chairman for the time being, as long as no permanent Chairman was appointed. Nominally the Chairman of Committee III was still Dr. Eßer.

The meeting was thereupon adjourned until Wednesday 11th December, at 3.30 p.m.

COMMITTEE III MINUTES.

No. 28/46.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 18th December 1946

at 2.30 p.m.

In the Chair: Sir Robert Craigie (United Kingdom),

Also Present:

Mr. B.H. Brown,	United States of America,
Major Fanderlik,	Czechoslovakia,
Commander Mouton,	Netherlands,
Dr. Aars-Rynning,	Norway,
Dr. Mezulic,	Yugoslavia.

I. Minutes Nos. 25/46, 26/46 and 27/46.

Minutes Nos. 25, 26 and 27 of 1946 were agreed to.

II. Giving Information as a War Crime. (Doc. III/76).

The Committee continued the discussion of Doc. III/76.

Paragraph V. was agreed to subject to the following alterations: The words "under this category" will be replaced by "under the category of accomplice".

The word "own" is to be omitted.

Paragraph VI. was agreed to.

Paragraph VII.

Dr. SCHWELB read to the Committee the contents of a letter received during the meeting from Dr. MEZULIC, a copy of which is annexed to these Minutes.

After discussion, in which Commander Mouton, Mr. Brown, Sir Robert Craigie and Dr. Mezulic took part, it was decided to insert between sub-paragraph 1 and sub-paragraph 2 of paragraph VII (at the bottom of page 3), the following paragraph

" Such mitigating circumstances would clearly not exist, in the case of an informer, who acted entirely on his own initiative".

In the first line of the first sub-paragraph, the words "will have had to be furnished" will be replaced by "must have been furnished".

Paragraph VIII. was agreed to.

Paragraph IX was agreed to subject to the following modifications:

In line 2, add "too" between "examine" and "closely";
in line 9, place the word "even" between "establish" and "a prima facie";
in line 11, omit the word "precise";
in line 13, omit the word "possibly".

The three remaining sub-paragraphs of paragraph IX are to be linked into one sub-paragraph.

Paragraph X.

The wording of the conclusion as contained in Minutes No.27/46, page 1, was agreed to with a verbal modification so that it will read as follows:

- X. " In the light of the above considerations, the Committee reached the following conclusion as to the circumstances in which the giving of information can constitute a war crime:

Where the giving of information leads to the committing of a war crime it falls within the notion of complicity in that crime provided that the general conditions which constitute complicity are present. "

The report III/76 with the amendments recorded in these Minutes and in Minutes No.27/46 was then passed unanimously.

The Secretary was charged with presenting the report in the amended wording to the Commission as a Commission document.

III. Crimes against Humanity before the United Nations Assembly.

In view of the fact that two reports by Committee III regarding the problem of crimes against humanity, would be before the Commission that afternoon, Dr. SCHWELB informed the members of the fact that the United Nations General Assembly had been discussing the problem of crimes against humanity under the name of "the crime of genocide". He read to the Committee the following summary:

1. The delegations for Cuba, India and Panama requested the inclusion of an item referring to the crime of Genocide in the agenda of the General Assembly. Genocide - an expression suggested by Dr. Lemkin - covers partly the same ground as the notion of crimes against humanity, within the meaning of Article 6(c) of the Charter of the International Military Tribunal. It was decided on 5th November 1946, to place the crime of Genocide on the agenda. The matter was referred to the 6th Committee (Legal Committee) of the General Assembly.
2. The resolution was discussed in the meetings of the 6th Committee on 22nd November, 28th November and 29th November, 1946. The representatives of the following nations spoke in favour of the resolution:

Cuba,
United Kingdom, (Sir Hartley Shawcross and Mr. McKinnon Wood),
India,
France,
Uruguay,
U.S.S.R.,
Chile,
Columbia,
Saudi Arabia,
Czechoslovakia,
Netherlands,
Poland, (Dr. Lachs),
China,
Lebanon,
Belgium, (Mr. Kaeckenbeek)
U.S.A.

3. The U.S.A. representative, (Mr. Fahy), referred to a proposal made by the U.S.A. delegation to sub-Committee No.1 containing the general principles condemning crimes of the kind in question.

The details of this American proposal are not available at present, except an extract contained in a report by an American news agency.

4. On 29th November 1946, a special sub-committee was appointed, composed of representatives of the following countries:

Saudi Arabia,
Chile,
Cuba,
France,
India,
Panama,
Poland,
Union of Soviet Socialist Republics,
United Kingdom,
United States of America.

5. The following are examples of proposals made by the different representatives:

6. Sir Hartley Shawcross suggested a declaration:

" that Genocide is an international crime for which the principal authors, accomplices and States concerned will be held responsible."

7. The representative of India suggested the following addition:

" It calls upon the Members to get their respective National Legislatures to deal with this crime in the same way as they have dealt with piracy, trade in women, children and slaves - crimes which have been condemned by all nations as outraging the conscience of humanity."

8. The representative of France suggested the following modification:

" Declares that Genocide is an international crime, for which the principals and accomplices, whether private persons or responsible statesmen, should be punished. "

9. The representative of the Soviet Union suggested the following addition:

" It is desirable that the Economic and Social Council should study the question of the preparatory work to be done for the convention on crimes against any particular race. "

Sir Robert CRAIGIE was afraid confusion would only result if the Assembly were to agree upon a separate resolution for Genocide as distinguished from crimes against humanity as a whole. He would draw his Government's attention to the possible conflict which would arise if this course were taken.

Mr. Brown thought that it was probable that the Assembly would not act on a question of Genocide alone. There was another sub-Committee which was dealing with crimes against humanity as a whole.

Commander MOUTON enquired whether it would be possible to invite Sir David Maxwell Fyfe to address the Commission on the preliminary discussions which led to the setting up of the International Military Tribunal.

Sir Robert CRAIGIE suggested that Commander Mouton should draft the questions to which he would require replies. This was agreed to.

A N N E X.

"Office of the Representative of Yugoslavia
on the
United Nations War Crimes Commission.

195, Queen's Gate, London, S.W.7.

Ken. 4903, 6505.

17th December, 1946.

Dear Dr. Schwelb,

May I be allowed to suggest an addition to the Draft of the resolution on "Giving Information as a war Crime" (III/75) before it is submitted to the Commission?

I propose that the present wording which reads:

"Where the giving of information leads to the committing of a war crime, it falls within the notion of complicity in that crime, provided that the general conditions which constitute complicity are present".

be followed by this additional paragraph:

"The fact that the informer did not belong to the permanent staff of the police or any other service of security or information shall be considered as an aggravating circumstance. "

This, or something in a similar style, would not affect the question - raised in the Committee and then dropped with good reasons - as to the character - voluntary or otherwise - of information given under superior order or extorted under compulsion, but it would be appropriate to hit the denouncer who had obviously acted on his own initiative and most out of malice.

The true curse of subjugated Europe was the amateur informer - whether he received reward for his services or not. He perhaps caused more evil than the ordinary staff of the foreign administration. The danger of unscrupulous neighbours, relatives, rivals and competitors would, to a certain extent, be diminished by providing aggravations for deeds committed under this aspect. It would, at the same, have some beneficial influence on the individuals in question.

In recommending the proposed addition, I consider that it is in full accordance with the ideas laid down in Section VII of the Draft Report (III/76) and with the main aim of making certain kinds of information a War Crime.

Yours sincerely,

s/

Mezulic

for the
Delegate.

Dr. Egon Schwelb,
Legal Officer,
United Nations War Crimes Commission,
London, W.1.

COMMITTEE III MINUTES
No. 27/46.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 11th December 1946
at 3.30 p.m.

In the Chair: Sir Robert Craigie (United Kingdom),

Also Present:

Mr. Brown,	United States of America,
Major Fanderlik,	Czechoslovakia,
M. Dimitzas,	Greece,
Commander Mouton,	Netherlands,
Dr. Aars-Rynning,	Norway,
Dr. Mezulić,	Yugoslavia.

Dr. Szerer had sent apologies for not being able to be present.

I. Minutes Nos. 25/46 and 26/46.

The approval of Minutes Nos. 25/46 and 26/46 was adjourned because the latter had been circulated only on the day of the meeting and the former had been examined by Colonel Springer who, however, was not present because he was attending the Nuremberg trial.

II. Giving Information as a War Crime. (Docs. III/75 and III/76.)

Doc. III/75.

The CHAIRMAN, Sir Robert Craigie, submitted to the Committee a re-draft of Doc. III/75, which read as follows:

"Where the giving of information leads to the committing of a war crime, it falls, in the opinion of the Committee, within the notion of complicity in that crime, provided that the general conditions relevant to complicity are fulfilled."

After a discussion in which Sir Robert Craigie, Mr. Brown, Major Fanderlik and Commander Mouton took part, the following final text was agreed to:

"The Committee reached the following conclusions as to the circumstances in which the giving of information can constitute a war crime:

Where the giving of information leads to the committing of a war crime it falls within the notion of complicity in that crime provided that the general conditions which constitute complicity are present."

Doc. III/76.

The Committee then proceeded to examine the draft report, III/76. The Introductory Note and Paragraphs I and II were agreed to without amendments.

Paragraph III of Doc. III/76 was agreed to in the following amended wording:

"III. The giving of information does not, therefore, in itself, constitute a war crime under the existing provisions of International Law. A person acting as an informer commits a crime only if by giving information he becomes a party to a war crime recognised as such in International Law,

e.g., murder and massacre, torture of civilians, internment of civilians under inhumane conditions, forced labour of civilians, compulsory enlistment of soldiers in the armed forces of the occupying Power, etc. "

Paragraph IV of III/76 was agreed to with the following alterations:

In the 7th line of sub-paragraph 1, the word "knows" is to be replaced by "recognises".

The 3rd sub-paragraph of paragraph IV is to be omitted.

The meeting was adjourned until Wednesday 18th December 1946 at 2.30 p.m.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 26th February 1947
at 3.0 p.m.

In the Chair: Sir Robert Craigie (United Kingdom)

Also Present:

Mr. Dao,	China,
Dr. Neumann,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Dr. Dimitzas,	Greece,
Dr. Aars-Rynning.	Norway.

Deliberate Bombardment of Undefended Places.
Request from the Far Eastern and Pacific Sub-Commission,
Docs. III/77, III/78 and I/82.

Sir Robert CRAIGIE suggested that the Committee might begin with a general discussion on the problem on the basis of the reports submitted by Dr. Schwelb and Dr. Litawski, before attempting to answer the three specific questions before it.

His first impression was that the term "deliberate bombardment of undefended places" was met with in International Law only as regards land bombardment. In connection with bombardments from the sea, the criterion adopted was whether a military objective was aimed at. The nature of "defendedness" had never been defined. He thought that an accused person could say in his defence that the presence of anti-aircraft guns would constitute "defendedness". His tentative conclusion was that the criterion as regards aerial bombardment should be whether a military objective existed. This was the test followed in Committee I and it was easier to operate than that of "defendedness", even though it had never been explicitly defined; for instance, there was the argument as to whether an industrial area was a military objective. During the second World War, there had been bombing from both sides of areas in which there existed only the remotest military objective. On the part of the Allies, however, this was done by way of reprisal for indiscriminate bombardment on the part of the Axis.

Dr. NEUMANN agreed with the papers before the Committee and with the remarks of the Chairman. The main consideration in judging cases of aerial bombardment should be whether there was a military target, as in cases of bombardment from the sea.

~~Mr. DAO suggested that the Committee should confine itself to answering the three questions before it.~~

The Committee then proceeded to discuss the first question, (a).

The SECRETARY, (Dr. Schwelb), suggested that the Committee should preface its replies to the three questions by a general statement saying that it was doubtful whether defendedness was any longer the correct criterion.

Dr. NEUMANN agreed with Dr. Schwelb.

Dr. SCHRAM-NIELSEN said that he was in full agreement with the tentative proposal contained in para. XIV(a) of Doc. III/78 if the words in brackets were omitted.

The Committee accordingly approved the following text regarding question (a):

" 'Deliberate Bombardment of Undefended Places' means the intentional bombardment of places with the knowledge that they are undefended.

According to general principles of criminal law, the burden of proof rests on the prosecution. The intention to bombard the undefended places may be inferred from actions taken by the accused persons. "

It was agreed that Dr. SCHWELB should draft a short introduction to the Committee's replies, showing why the Committee did not regard the criterion of undefendedness as useful in the present circumstances.

Dr. AARS-RYNNING said that undefended places might nevertheless include military objectives.

The SECRETARY said that in the law as it stood up to 1939, it was illegal to bomb civilian non-combatants. If an aviator could not bomb a military target without hitting civilians, he was expected not to use his bombs. Similarly in submarine warfare, according to written International Law, it was illegal to torpedo a merchant ship without warning and without providing means of safety for the crew. The whole practice of U-boat warfare was thus contrary to the written law. He pointed out that the Nuremberg Indictment and Judgment made no mention of aerial bombardment, even of the use of the V-weapon.

Sir Robert CRAIGIE said that the explanation of this was that indiscriminate bombardments had developed on both sides, but there was no question of reprisals being taken by the Japanese in China before 1939. In 1937 the Japanese Government was bound by the Hague Convention No. IV.

The SECRETARY said that the binding nature of Article 25 of the Hague Rules had been questioned from the beginning. Further, there was the General Participation Clause to consider. Dr. Schwelb said that the unratified Hague Air Warfare Rules of 1923 laid down, in para. 2. of Article 24, very specific objectives which it was legitimate to bomb from the air, and provided, in paragraph 3 that, when these objectives could not be bombed without indiscriminate bombardment of civilians, the aircraft must abstain from bombardments.

Sir Robert CRAIGIE said that as United Kingdom Ambassador to Japan he had had to make numerous protests against indiscriminate bombardments of civilians. The answer given was always that, owing to anti-aircraft defences, the aircraft in question was forced to fly higher and that, as a result, the bombs fell outside the area intended.

The Committee then went on to consider question (b).

The SECRETARY said that with the exception of the provision regarding contact mines in Article 1 of the Hague Convention No. IX, there was no provision in international law on the question of defendedness.

Sir Robert CRAIGIE said that even if the Hague Air Warfare Rules were taken to define what should be bombarded, it was legitimate for the Japanese to bomb an arsenal without hitting civilians. This, however, was not usually possible in practice. Furthermore, in nearly all cases, the places bombarded were defended by anti-aircraft guns, however weak.

The Committee was of the opinion that there was no indication in International Law of what was meant by undefended places; it agreed to the first sentence of paragraph XIV (b) of Doc.III/78 as reply to question (b) and charged Dr. Schwelb with the task of drafting a proviso referring to the introductory paragraph and expressing the opinion that the term "undefended place" should be read as place containing no military objective.

The Committee then proceeded to deal with question (c).

Dr. LITAWSKI, in introducing Doc.I/82, pointed out that the cases listed on 'A' were cases in which the bombardments had taken place only after the occupation of the country containing the areas bombed. It seemed to be the general attitude of Committee I that bombing of areas where partisans were hiding was legitimate.

The SECRETARY said that it seemed to him proper to say that the main practice of Committee I was governed by Dr. Litawski's conclusions (a) and (b) on page 5 of Doc.I/82. He added that if belligerent status were demanded for partisans, so as to afford them the protection of prisoners of war, then it must be admitted that to take military action against them could not be regarded as a war crime.

Mr. DAO said that it seemed to him that the expressions "undefended" and "without military objectives" were the same.

The CHAIRMAN said that to him they did not seem quite the same. Committee I had had to deal with a case in which a German commander had bombarded the civilian part of the town of Brest. Despite the fact that the town was defended, the Commander was listed on 'A' because the bombardment of the civilian area was more than was necessary in the circumstances.

The Committee agreed to answer question (c) in the sense of Dr. Litawski's points (a) and (b) on page 5 of Doc.I/82.

The SECRETARY pointed out that the questions referred to Committee III were not restricted to 1937. It would be necessary for the Committee to attempt to give an answer as regards the position in 1945 also. He was not sure that the question of reprisals should be mentioned in the Committee's replies. The International Military Tribunal at Nuremberg was faced with the same dilemma in the case of Raeder and Doenitz and their violations of the Submarine Protocol of 1936.

Dr. SCHRAM-NIELSEN said that the use of atomic bombs could hardly be considered under the aspect of reprisals.

Dr. MARS-RYNNING also advised great caution in referring to the concept of retaliation.

Sir Robert CRAIGIE agreed that mention of reprisals might be omitted. He suggested that the Committee simply state that it was impossible to define the law at the present time.

The SECRETARY said that that would be an argument in favour of listing the accused in case of doubt and leaving it to the court to clarify the law.

It was agreed that Dr. SCHWELB should submit to the Committee at its next meeting, a paper stating the three answers formulated by the Committee, prefacing these answers with a general statement shifting the emphasis from "undefended places" to "military objectives" and saying that there was no accurate definition of either.

The next meeting will be held either on Wednesday 5th or Thursday 6th March, the latter if there will be no meeting of Committee I next week.

UNITED NATIONS WAR CRIMES COMMISSION

Notes of the Meeting of COMMITTEE III held on 6th March, 1947,
at 3 p.m.

In the Chair: Sir Robert Craigie, United Kingdom.

Also present:

Dr. Aars-Rynning, Norway.
Col. Dr. Muszkat, Poland.

Dr. Schram-Nielsen, (Denmark), M. Dinitzas (Greece), and Commander Mouton (Netherlands) sent apologies for not being able to attend.

I. Deliberate Bombardment of undefended places.
(Documents III/77, III/78, III/79 and I/82)

The draft report, Document III/79, was considered. Sir Robert Craigie made the following suggestions which were agreed to by the Committee after a discussion, in which Dr. Aars-Rynning and Colonel Dr. Muszkat took part:

- (1) Omitting the first three lines:
- (2) Some verbal alterations in paragraph II.
- (3) Amendment of paragraph III to the effect that it will read as follows:-

"III: Subject to the observation contained in the preceding paragraph, the Commission replies to the three questions posed by the Sub-Commission, as follows:-

(a) "Deliberate bombardment of undefended places" means the intentional bombardment of places with the knowledge that they are undefended.

According to general principles of criminal law the burden of proof rests on the prosecution. In establishing such proof, the intention to bombard an undefended place and the knowledge that it was undefended may be inferred from the conduct and actions of the accused person.

(b) There is no indication either in conventional law or in the opinion of legal writers or in actual state practice what "undefended place" means.

In view of the considerations set forth in Section II of this Memorandum it has been the practice of this Commission to use the term "place containing no military objective" rather than the term "undefended place" as the criterion.

(c) As stated under (b) the Commission has, in its actual practice, considered the absence of military objectives to be the correct criterion. It has, therefore, declined to list persons accused of being responsible for the bombardment of places containing military objectives, and has, on the other hand, placed on its lists persons responsible for the deliberate, i.e., intentional, bombardment of places containing no military objectives".

The Committee further decided that in the accompanying letter from the Commission to the Far-Eastern and Pacific Sub-Commission the wish should be expressed that the Commission be informed of the way these charges will eventually be dealt with by the Sub-Commission.

II. The French Case No. 4695. (Doc. III/80, Part I).

In the tentative preliminary discussion, Dr. Aars-Rynning and Colonel Dr. Muszkat expressed the view that the subject matter of the charge constituted a war crime in view of the grand scale in which the use of the black market had been planned and in which the plan had been executed. The activities of the accused amounted to pillage and complicity in pillage.

The Secretary (Dr. Schwelb) expressed his doubts whether it was possible to consider, what has been done, as pillage. The charge proved that the scheme had been financed to 9/10ths from contributions which were extorted by the German authorities from France. The extortion of contributions far in excess of the needs of the army of occupation and the administration of the territory was, of course, a violation of Article 49 of the Hague Regulations. For these violations the persons demanding those contributions were responsible, not the persons who used part of the money for the operations on the black market. The Secretary put tentatively forward the suggestion that the organisation of the black market on such a scale might possibly be considered a violation of Article 43 of the Hague Regulations, under which the occupant has a duty to ensure public order and to respect, unless absolutely prevented, the laws in force in the occupied country. The prohibition is addressed to the occupant as such. Only the organising of the violation of the law on a grand scale and on a high level can be considered a violation of Article 43. Contraventions of economic provisions valid in occupied territory are probably offences under municipal law, but are not per se also war crimes.

Sir Robert Craigie suggested that the matter should be examined from the point of view of Articles 49 and 43 of the Hague Regulations and the Secretary was charged with the task of preparing a paper on these lines.

III. The French Case No. 4698. (Document III/80, Part 2; on p.5)

The Committee discussed this case and came to the conclusion that the facts as set forth in the charge, unless supplemented by further facts, did not constitute a war crime. The Committee had regard to the fact that the goods were sent back to Germany and that the compulsion was exercised by the Hide office and not by the trading firm.

The Secretary was charged with the task of preparing a paper giving expression to this opinion.

The Committee decided that its next meeting should be held in the week ending 22nd March, 1947.

Corrigendum
to the Notes of the
Joint Meeting of Committees I and III.

Committee I Minutes No. 92.
Committee III Minutes No. 3/47.

UNITED NATIONS WAR CRIMES COMMISSION.

The 6th paragraph on page 4 is amended to read as follows:

" It was further agreed that Dr. SCHWELB should draw up a short statement for the four Ambassadors which, when approved by Sir Robert Craigie as Chairman of Committee III and by Lord Wright as Chairman of the Commission, should be sent to the United Kingdom Foreign Office with the request to transmit it to the British Ambassador in Rome. The United States and French representatives on the Commission would doubtless arrange for copies to be sent to the United States and French Ambassadors. "

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 27th March 1947
at 10.30 a.m.

In the Chair, Sir Robert Craigie (Great Britain)

Also Present:

Dr. Neumann,	Czechoslovakia
Dr. Schram-Nielsen,	Denmark,
Male. Capiomont,	France,
Commander Mouton,	Netherlands,
Colonel Dr. Muszkat,	Poland,
Mr. Kintner,	United States of America,
Dr. Zivkovic.	Yugoslavia.

Dr. Aars-Rynning apologised for not being able to attend and expressed his full agreement with Dr. Schwelb's paper, No. III/83.

I. Exploitation of the Black Market as a War Crime.

The Committee discussed Doc. III/83.

Sir Robert CRAIGIE, Dr. ZIVKOVIC, Dr. SCHRAM-NIELSEN, Mr. KINTNER, Commander MOUTON and Dr. NEUMANN took part in the discussion.

The Document was unanimously approved subject to the following substantial amendments, in addition to some verbal amendments:

In paragraph VII, the repetition of "in the view of Committee III" is to be omitted from the 2nd and 3rd sub-paragraphs. The words "not possible to say" are to be replaced by "it would be incorrect to say" in the 1st and 3rd sub-paragraphs.

In paragraph VIII, last sub-paragraph, "Committee I" is to be replaced by "Committee III".

After paragraph IX, paragraph XIV of the document is to be inserted and the subsequent paragraphs are to be re-numbered accordingly.

Paragraph XI, 3rd sub-paragraph, on page 6, will read as follows:

" That acts constituting what corresponds to civil wrongs (torts) and breach of contract were by writers of international law put on the same footing as acts corresponding to crimes in municipal law, was, in the opinion of Committee III, mainly due to the fact that, until very recent times, only States were considered to be subjects of international law. According to this theory the law of nations excluded the possibility of "punishing" a State for an international delinquency and of considering the latter in the light of a crime and led to the conclusion that the only legal consequences of international delinquency were such as create reparation of the moral and material wrong done. The equation of acts morally shocking with acts constituting merely contraventions of contractual obligations, had its origin in the theory of this school of thought, which was by no means unchallenged, namely that even atrocious crimes were supposed to lead not to the punishment of the guilty individual, but only to a claim against the State for reparation and damages. "

As to the 4th sub-paragraph of paragraph XI, on page 6, the Committee agreed on the substance but the Secretary to Committee III was charged with rewording the paragraph to the effect that it should be divided into at least two or three different sentences.

The last sentence of the paragraph will read as follows:

" At a time when international law assumes the responsibility for punishing international crimes, it is necessary to establish the delimitation between acts entailing criminal responsibility and other illegal acts which, without constituting an international crime, are mere contraventions of customary or conventional rules."

The last sentence of the last sub-paragraph of paragraph XI on page 6, bottom, is to be deleted.

Paragraphs XII and XIII.

In the first sub-paragraph of paragraph XII, on page 7, the first "and" in line 7 is to be deleted, and in line 9, the words "there are" will be replaced by "we find". At the end of this first part of the paragraph, a reference to Rivier is to be inserted.

The second part of paragraph XII, together with paragraph XIII will be redrafted as follows and form paragraph XIII of the text:

" Provided that the facts alleged are taken to be established, Committee III is of the opinion that those persons who are responsible for the preparation or planning of this policy or for carrying in into effect, whether at the centre or locally, are criminally responsible for these violations of international law.

This does not implicate persons who, without operating this scheme or forming part of the machinery of carrying it out, have availed themselves of the possibility to make sales or purchases prohibited under French law.

The latter, though probably criminally liable under municipal law are, in the Committee's opinion, not guilty of a war crime. "

II. Minutes Nos. 28/46, and 1, 2 and 3 of 1947.

Minutes Nos. 28 of 1946 and 1, 2 and 3 of 1947 were approved.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes on the Meeting of COMMITTEE III held on 30th April 1947

at 3.0 p.m.

In the Chair, Sir Robert Craigie (Great Britain)

Also Present:

Lord Wright,	Chairman of the Commission,
Dr. Neumann,	Czechoslovakia,
Mr. Dimitzas,	Greece,
Dr. Aars-Rynning,	Norway,
Mr. Kintner,	United States of America,
Dr. Zivković,	Yugoslavia.

M. MAILLARD had sent an apology for not being able to be present at this meeting, while adding that he had approved the amendment to Doc. III/86 contained in Doc. III/87. M. Maillard had said also that he had no instructions from his Government regarding the 3rd item on the agenda, Development and Codification of International Criminal Law.

I. Minutes Nos. 4 and 5 of 1947.

These minutes were approved.

II. Exploitation of the Black Market as a War Crime.
Final Approval of Draft Report annexed to Doc.
III/86, as amended in Doc. III/87.

The Committee proceeded to discuss Docs. III/86 and III/87.

Sir Robert CRAIGIE said that he would prefer to use the words "responsible for" instead of the words "implicated in" in the second line of the proposed amendment. He thought that the latter wording, though not quite clear, was sufficiently wide to include within its scope not only persons responsible for deciding on a policy but also persons responsible for its execution. If the words did indeed have this meaning, he could not agree to their use. The words "responsible for" were themselves fairly wide, and he thought that their substitution would satisfy M. Maillard.

Mr. KINTNER agreed that the wording suggested in Doc. III/87 would include persons responsible for the execution of the policy as well as those responsible for deciding on it. He felt that this text gave Committee I greater freedom when judging the facts before them.

After some further discussion, the Committee unanimously agreed to Sir Robert CRAIGIE's suggestion and asked the Secretary to Committee III (Dr. Schwelb) to explain to M. Maillard that Committee III had found the text proposed in Doc. III/87 a little vague and had felt that, if the words "implicated in" were replaced by "responsible for" the report could be considered as unanimously adopted. This was agreed to.

III. Development and Codification of International Criminal
Law. Continuation of the discussion of Doc. III/85.
(Docs. III/85, III/88, Misc. No. 88, see also Misc. Nos.
46, 66, 68 and 69.)

The Secretary, (Dr. SCHWELB) said that since the circulation of Docs. III/88 and Misc. No. 88, there had been new developments in the contact between the UNWCC and the United Nations. Professor Humphrey, the Director of the Human Rights Division of the United Nations Secretariat, had been in London

and had held consultations with Lord Wright, General de Baer and members of the Secretariat, between 22nd and 25th April. Dr. Schwelb read the Note on these discussions.

At the suggestion of Mr. KINTNER, the Committee agreed that the Note should be circulated as a Miscellaneous document. Mr. Kintner also expressed his appreciation of the way in which negotiations had been conducted by the Secretariat of the UNWCC.

Dr. SCHWELB further read the letter of invitation extended by General de Baer on behalf of the Belgian Government for the Commission to send one or two delegates to the 8th International Conference of the International Bureau for the Unification of Criminal Law, to be held at Brussels from 10th - 12th July 1947. One of the two points on the agenda of this international conference was "Definition of Crimes against Humanity".

At the suggestion of the Chairman, (Sir Robert CRAIGIE), the Committee decided that the letter of invitation from the Belgian Government and the attached note on the agenda of the conference should also be circulated as a Miscellaneous document.

Dr. ZIVKOVIC said that this conference would be very important from the point of view of lawyers and constituted a sequel to the Paris Conference of the previous year. The agenda of the Brussels conference was closely related to some aspects of the work of the United Nations Secretariat.

Sir Robert CRAIGIE suggested that the Commission should discuss the invitation at its next meeting and that in the meantime the Secretary General should express thanks to General de Baer and to the Belgian Government for extending this invitation.

Lord WRIGHT expressed his agreement with this proposal.

The Committee approved this course.

The Committee then went on to discuss the subject matter before it, in the same order as was followed in the minutes of the meeting with Professor Humphrey, (Doc.Misc.89).

Sir Robert CRAIGIE said that, should Gen. de Baer go to Lake Success, the Committee on his return would have a much clearer concept of the best way in which the UNWCC could help in the codification of international law. The experience of the Commission in this field was a long one and was of a practical nature. He added that he had made representations to his own government to the effect that it would be disastrous for the Commission to go out of existence without placing its experience on record in some form. It was necessary, however, to know how far the United Nations desired the help of the Commission, and in what direction. He enquired from Dr. Schwelb what would be the precise procedure to be followed should the Commission be asked by the Secretariat of the United Nations to carry out the study described in the Resolution of the Economic and Social Council regarding information concerning human rights arising from trials of war criminals and others.

Dr. SCHWELB said that it was not known what was in the minds of the authors of this Resolution, but he thought that the wisest thing would be for the Secretariat of the Commission to draft a plan of studies which would then be submitted for approval both to the UNWCC and to the United Nations Secretariat.

Sir Robert CRAIGIE emphasised that the Tokyo trials, which were mentioned in the Resolution, would be rich in material concerning human rights and that the documents relating to these trials were massive. Moreover, the trials had not received adequate attention in the press. Great issues were raised by these trials, including political ones. He enquired whether the United States had issued any material relating to them.

Mr. KINTNER said that United States reports on these trials would probably be issued a little later.

Dr. SCHWELB said that in his view the material concerning human rights to be studied in connection with the trials of war criminals, fell into two categories:

- (1) the human rights in respect of the violation of which the trials were held; these violations would include breaches of the human rights of subjects by their own governments, i.e. human rights protected by the provisions concerning crimes against humanity,
- (2) the human rights of the accused themselves and their protection by the courts; for instance, the International Military Tribunal had rejected the notion that every member of a criminal organisation was ipso facto himself a criminal and had laid it down that only those members who could be shown to have had knowledge of the criminal purposes of the organisation could be regarded as individually responsible.

Mr. KINTNER said that there was possibly a third heading of studies relating to the human rights of soldiers and partisans. The Commission was highly qualified to deal with this aspect.

Sir Robert CRAIGIE and Dr. ZIVKOVIC agreed in pointing out that the Resolution seemed to call for an analysis of the facts and not for any recommendations on the part of the Commission.

Sir Robert CRAIGIE, passing on to the question of Genocide, expressed his grave doubts as to the wisdom of introducing this new legal concept.

Dr. ZIVKOVIC agreed with Sir Robert, but pointed out that the term had now been adopted in official texts and had also been used in several United States newspapers.

Dr. SCHWELB pointed out that should the United Nations submit to the Commission a draft on the crime of Genocide, the Commission would then have the opportunity of commenting upon this draft.

Turning to the question of the general resolution of the General Assembly, regarding the progressive development of international law and its codification, Sir Robert CRAIGIE drew the attention of the Committee to paragraph II on page 3 of Doc.III/85, and to the five provinces of international law enumerated there, namely:

- (a) the laws and customs of war, particularly the laws and customs of land warfare including the law of belligerent occupation and the treatment of prisoners of war and internees; the law of naval warfare; the law of air warfare;
- (b) the law of State jurisdiction, including territorial and personal jurisdiction, immunities and limitations;
- (c) the law of international institutions, particularly international tribunals and investigating and prosecuting agencies;
- (d) international criminal law as a means of preventing threats to the peace, acts of aggression and breaches of the peace, ("crimes against peace");
- (e) the protection of human rights and fundamental freedoms by way of international criminal law ("crimes against humanity").

Sir Robert CRAIGIE said that he felt that he could fully agree to the estimate set out in this paragraph of the Commission's ability to render assistance as regards points (a) to (e) though he thought that the actual experience of the Commission was rather less as regards (c) than it was in connection with the other points.

After further discussion, during which the scope of paragraph (c) was explained by reference to the close contact the Commission had had with all the international and national investigating, prosecuting and judicial agencies, the Committee agreed that the Commission was qualified to aid in the codification of international law on these questions.

The Committee then proceeded to examine points (a) to (g) in paragraph III on page 4 of III/85, where it is set out that the principles of international law recognised by the London Charter and the Nuremberg Judgment are not restricted to crimes against peace, but include also such fundamental questions as:

- (a) the responsibility for inhumane acts committed "against any civilian population";
- (b) the responsibility for inhumane acts committed "before the war";
- (c) the irrelevance of the fact that inhumane acts were committed "in violation of the domestic law of the country where perpetrated";
- (d) the whole notion of crimes against humanity, its delimitation from common law crimes and its relation to war crimes and crimes against peace;
- (e) the doctrine of act of state, the irrelevance of the official position of the defendants as heads of state or responsible officials in government departments;
- (f) the plea of superior order;
- (g) the problem of criminal groups or organisations and the criminal responsibility for membership in such groups or organisations.

The Committee agreed with this summary of the principles and with the further statement that the principles recognised by the Charter and the Judgment of the International Military Tribunal also include detailed questions of the law of war.

Dr. ZIVKOVIC suggested that Dr. Schwelb should write to Dr. Liang asking for further elucidation on the scope of the Resolution concerning the affirmation of the Nuremberg principles.

Dr. SCHWELB referred to Document No.25 of Misc. 88.

Dr. ZIVKOVIC suggested that a special letter to Dr. Liang should be devoted to this question.

After further discussion, it was decided that, should M. de Baer's journey to New York not materialise, then a letter on these lines should be addressed to the Secretariat of the United Nations and that the letter should be written on a higher level. In this case the Committee decided to ask Lord Wright to write a letter on these lines to the Secretary-General of the United Nations.

The Committee then adjourned sine die.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 16th April, 1947

at 3.0 p.m.

In the Chair: Dr. Schram-Nielsen (Denmark),

Also Present:

Dr. Neumann,	Czechoslovakia,
M. Maillard,	France,
Dr. Aars-Kynning,	Norway,
Mr. Kintner,	United States of America,
Dr. Zivković,	Yugoslavia.

Sir Robert CRAIGIE and M. de BAER sent apologies for not being able to be present.

I. Appointment of Acting Chairman.

Mr. KINTNER proposed that Dr. SCHRAM-NIELSEN should be appointed Chairman for the meeting. The SECRETARY reported that he had spoken to Sir Robert Craigie on the telephone and that it was Sir Robert's opinion that Dr. Schram-Nielsen should be appointed Acting Chairman.

This was unanimously agreed to by the Committee.

II. Exploitation of the Black Market as a War Crime.
(French Case No. 4695.)

The Committee discussed Doc. III/86.

Monsieur MAILLARD made the following statement:

" I wish, first of all, on behalf of my Government to thank Committee III and specially Dr. Schwebel for the very careful and valuable work they have done in regard to this important issue which was raised by the French case No. 4695 concerning the exploitation of the black market as a war crime. The French Government thinks, as a matter of fact, that this question is of fundamental importance not only for France itself but for all countries which have suffered from enemy occupation and have therefore been submitted, quite apart from the moral suffering, to a general dislocation of their respective economies through deliberate and conscious action, leading to a considerable rise in prices and impoverishment of the community, not to speak of a decline in the morality whose consequences are still felt in those countries today. For all those reasons, the French Government thinks that it is particularly important that correct legal principles be set up having regard to such activities.

Having read very carefully the long report redrafted by Committee III, and presented as Document III/86, the French authorities, though in agreement with the greater part of it, have found it difficult to accept the distinction made by the Committee between accused 1 and accused 2 - 37. They quite recognize the impossibility of charging the accused of pillage or plunder, in the traditional sense of the word. They consequently support the Committee's opinion that at least the 1st accused should be charged with a violation of Article 49 of the Hague Regulations, confirmed in the Nuremberg judgment, which provides that, if the occupant levies money contributions in the occupied territories, "this shall only be for the needs of the army or the territory in question." They consider, however, that to limit the application of these charges to the Head of the Economic mission specially set up to organise the black market would be

both legally incorrect and impracticable. The French Government would like to draw the Committee's attention in this connection to the principles which have been adopted regarding membership of criminal organisations, the S.A., S.S. and so on. Nobody would pretend, in that case that criminal responsibility could only be fastened upon the chiefs of such organisations, excluding all members thereof, except of course as regards such accused as could allege with some reason that they were in fact unaware of the special purposes and activities of those bodies. The same distinction should be made regarding black market activities. "Whereas of course it is impossible to charge every German soldier or civilian with complicity in such activities, just because they may have used for purchases on the black market the money raised on this special purpose, it seems difficult to deny the correctness of bringing similar charges against persons who, as members of the organisations set up by Veltjens, are at least suspect of having known the purposes of their task, which in fact most of them knew perfectly well.

The French Government would add, moreover, that this knowledge is implied also in the charge which the Committee proposes to fasten upon them, namely that of systematic violation of the municipal laws. I should refer in this respect to the terms used in the report itself, para. XIII, page 5, when it is said that "...the activities resulted, according to the charge, in the emptying of France of all substances, in the causing of a rise in prices, in inflation and in a certain moral decline. All these results are contrary to the duties which are enjoined upon an occupant by international law and we find therefore combined both the illegal means and the effect deprecated by international law." For it might be contested that the activities considered are, as a violation of an essential right, war crimes, provided of course the notion of essential right is understood so widely that it covers the exploitation of the economy of the occupied country, in other words the main charge which is fastened upon Veltjens.

The recourse to a new item seems, therefore, an unnecessary substitute, not to speak of the difficulties it involves as far as the notion of an international war crime is concerned (examined in para. XII of the present document.) The same difficulties would arise also in connection with the establishment of facts prohibited by the municipal laws and which may have varied according to the circumstances and according to different countries.

As a conclusion, the French Government suggests that the charge of the violation of the municipal laws proposed by Committee III of the accused 2 - 37 be abandoned and replaced by a general charge against the same accused, of complicity in the violation of the Article 49 of the Hague Regulations. "

The CHAIRMAN, (Dr. SCHRAM-NIELSEN) thanked M. Maillard and the French authorities for their contribution and reminded the Committee that it was difficult to alter a report which had already been unanimously agreed to. He called upon the Secretary to express his opinion on the French statement.

The SECRETARY (Dr. Schwelb) said that there were three possible approaches to the problem:

- (1) Art. 47 of the Hague Regulations, (pillaging),
- (2) Art. 49 of the Hague Regulations, (extortion of exorbitant contributions),
- (3) Art. 43 of the Hague Regulations, (disrespect to the local law.)

With regard to (1), all members, including the French authorities, were agreed that the provisions as to pillaging in the technical sense did not apply.

With regard to (2) it was expressed in the Draft Report that those persons who were personally implicated in exacting exorbitant contributions were guilty of a war crime.

With regard to (3), (disrespect to the local law), it was suggested in Art. XIV of the Draft Report that all persons responsible for the preparation or planning of the black market policy or of carrying it into effect, whether at the centre or locally, were criminally responsible.

The French statement amounted, in effect, to a proposal to drop the charge under the point of view of Art. 43 altogether and replace it by subjecting all 37 accused to the charge based on Art. 49. The Secretary was of the opinion that it was not advisable to drop the arguments based on Art. 43 altogether and to concentrate exclusively on Art. 49 for two reasons:

(a) The black market activities consisting in a large scale organised violation of the local law were a crime quite irrespective of how the money to finance them was raised. In other countries similar offences might have been committed without any connection with the raising of contributions. He referred to the instance mentioned by Dr. Schram-Nielsen in a previous meeting, concerning Denmark.

(b) It would probably be difficult to prove that all 37 accused were criminally liable for the raising of the contributions by the German Government from the French Government.

The Secretary thought, however, that the objections raised by the French authorities could be met by replacing the last sub-paragraph of paragraph VIII, (p.5, paragraph 3), of Doc. III/86 by a general statement restricted to the expression of the legal opinion, without entering into the examination of the guilt of the 37 individual accused.

Dr. NEUMANN said he sympathised with the French view and was in favour of striking out the 3rd paragraph on p.5. He also said that it was beyond the jurisdiction of Committee III to decide on individual responsibility.

Dr. ZIVKOVIC agreed, suggesting that the Committee should be careful to distinguish between expressing an abstract legal opinion and commenting on the personal responsibility of the individuals.

Mr. KINTNER concurred, suggesting that the paragraph could be omitted entirely and the French National Office could be invited to present to Committee I additional proof setting out the personal responsibility of the individual accused for the crime of raising exorbitant contributions.

M. MAILLARD also agreed, explaining that the main objection of the French authorities was that the present wording seemed to rule out a priori the responsibility of the accused 2 - 37 for the crime of raising exorbitant contributions.

The CHAIRMAN, (Dr. Schram-Nielsen), was doubtful whether the respective paragraph could be simply omitted and suggested that it would probably be necessary to replace it by some differently worded text.

After further discussion in which the Chairman, Dr. Zivkovic and M. Maillard took part, the Secretary suggested that the paragraph in question could be re-worded on the following lines:

" Persons who are responsible for the exaction of exorbitant contributions by Germany from France and persons who are accessories either before or after the fact of this crime in knowingly using the money thus extorted for purchases on the black market are suspect of having committed a war crime."

The CHAIRMAN suggested that the Secretary should be charged with the task of redrafting the discussed paragraph and circulating it to the members of Committee III. If no objections were received by the Secretariat within a few days from circulation, a proposed new text would be inserted in the appropriate place and the document circulated as the Report by Committee III to Committee I and to the Commission. In redrafting the paragraph, stress should be laid on the necessity of proving the mens rea.

This was unanimously agreed.

III. The task of the United Nations in the Province of International Criminal Law. Possibilities of Co-operation of the United Nations War Crimes Commission in this task. (Doc. III/85).

Called upon by the Chairman to do so, the SECRETARY gave a resumé of Doc. III/85.

Dr. ZIVKOVIC said that this question was part of the whole problem of regulating international relations in the future so as to secure the organisation of the world on a legal basis, so that law and not force would predominate. He was inclined, therefore, to think that matters should not be rushed and conclusions reached too hastily. One question which could be decided as soon as possible was that of the procedure of liaison to be reached between the U.N.W.C.C. and the various relevant departments of the United Nations. Regarding the substance of the problem, formidable questions arose and if the Committee were to enter into a discussion of the questions arising from the three resolutions referred to on p.2 of III/85, the Committee should do so with great care and skill. He stressed that before the Committee could adequately discuss these problems it would need to know much more of what work was currently being done in New York. It would also need to know the content of the correspondence between Dr. Schwelb and the Secretariat of the U.N. The Committee would also need to know what was the present position reached by the Human Rights Commission in this task. Dr. Zivkovic asked for more details on Mr. Trygve Lie's letter of 11th December 1946 referred to in the last but one paragraph on page 2. He recalled the contributions made by Dr. Liang while representing China on this Commission and also referred to the excellent qualities of Dr. Kernö, an eminent Czechoslovak lawyer, who was Assistant Secretary-General of the United Nations in charge of Legal Affairs.

Dr. SCHWELB replied that owing to the courtesy of the U.N. authorities the Secretariat had at its disposal all the relevant papers and records of the U.N. The Resolutions of the General Assembly had been circulated by the U.N.W.C.C. Secretariat as "Miscellaneous Documents". The Secretariat had also the full Minutes of the first session of the Human Rights Commission which was held in New York from 27th January to 10th February, 1947. He also said that the Secretariat would undertake to circulate to members of the Committee copies of the correspondence exchanged on the Secretariat level between the U.N. and the U.N.W.C.C. The Secretary General had sent to the U.N. Secretariat at their request, all the papers produced by this Committee concerning the problem of crimes against humanity but had, of course, stressed that they were only preparatory papers which had not yet been endorsed by the full Commission as a body.

Dr. ZIVKOVIC said that though the full Commission had not, so far, adopted any documents dealing with crimes against humanity, he was of the opinion that this could not be avoided. In dealing with the Charter of the International Military Tribunal the Commission could not avoid investigating the problem most thoroughly from the general point of view.

Mr. KINTNER said that, although he was not instructed on the point by his Government, he felt that the latter would disavour any attempt on the part of the Commission to influence the policy of the U.N. on the questions raised in Doc. III/85. He felt, however, that any technical advice which the Commission and its legal authorities could give would meet the approval of his Government. The question was one of liaison and of what the U.N. would ask for and what the U.N.W.C.C. would give.

The CHAIRMAN, (Dr. Schram-Nielsen) said that it was not in any one's mind that the U.N.W.C.C. should attempt to influence the policy of the U.N., but it was clear that some kind of contact between the two must be established, not only for purposes of present needs, but also in view of the approaching winding up of the U.N.W.C.C. He agreed with Dr. Zivkovic on the advisability of the Committee receiving more documentary information.

Dr. ZIVKOVIC also said that he had not proposed that the U.N.W.C.C. should attempt to influence the U.N. on matters of policy.

The SECRETARY felt that the documentary information available to the Committee was complete as regards all matters relevant to the U.N.W.C.C.'s sphere of interest. There were the three resolutions of the General Assembly; the preceding discussions had been on general lines. The outcome of the first session of the Human Rights Commission was that its Chairman, (Mrs. Eleanor Roosevelt), together with the Vice-President, Dr. Chung (China) and the rapporteur, Dr. Malik (Lebanon) had been asked to prepare the first draft of the International Bill of Rights. With regard to personal contact, Mr. Trygve Lie had indicated that Professor Humphrey, the Director of the Human Rights Division, would come to London for discussions with the U.N.W.C.C. Professor Humphrey had been prevented from coming, and Professor Giraud had come in his place, and had had very fruitful discussions with members of the Secretariat of the U.N.W.C.C. at the beginning of January 1947. The Minutes of the meeting with Professor Giraud would be included in the paper to be circulated by the Secretariat.

Mr. KINTNER said that he could only at present give his personal opinion, but he thought that it might be feasible after the study of the problem in detail, to ask the Secretary General of the U.N.W.C.C. and a Legal Officer, to fly to New York in order to have personal consultations with various authorities in the U.N.

Dr. ZIVKOVIC raised the question whether anything was known about the programme and procedure of the U.N. authorities in connection with the task of codification.

The SECRETARY recalled that the General Assembly had directed the Codification Committee to treat as a matter of primary importance the affirmation of the principles recognized in the Nuremberg Charter.

Dr. ZIVKOVIC agreed that if the correspondence on the Secretariat level failed to produce the results, Mr. Kintner's proposal to send a delegation to New York was best.

The CHAIRMAN stated that Mr. Kintner's suggestion was an excellent one but that it must be certain before the representatives of the Commission left for New York, what their mandate would be.

The CHAIRMAN said that both parties would benefit from the day-to-day contact and it would be wise to avoid over-lapping of work and arriving at differing conclusions on the same questions. It was difficult to think of any other body which would be able to take over the custody of documents at present held by the Commission, than the U.N. His opinion was that the Legal Officer dealing with Committee III, which was the Legal Committee, should go with the Secretary General to New York.

The SECRETARY GENERAL said that he would be glad to accept the task of going to New York, accompanied by Dr. Schwelb, he himself to negotiate on the broader issues and Dr. Schwelb being present for the discussion of technical questions of International Law.

Dr. ZIVKOVIC said that the next step on the part of Committee III should be to start discussing the problems raised on pages 3 and following of III /85.

The CHAIRMAN suggested that it would be preferable to discuss first the question of forming a contact with the U.N. If the Commission was to send representatives to New York, they must leave soon.

Dr. ZIVKOVIC explained that he was not thinking in terms of a detailed discussion, but it was necessary to have some examination of the questions raised in order that the Commission's representatives would know what to ask for when they reached New York.

Mr. KINTNER said that it would be an excellent outcome if the Commission's representatives could return from New York with a written request as to the nature of the assistance which the Commission could render to the U.N.

The CHAIRMAN hoped that the Commission's representatives would return with a representative of the U.N. who would then be able to examine the files of the Commission.

It was decided to hold another meeting to continue the discussion in two weeks' time, and the Secretariat was charged with circulating the correspondence with the U.N. Secretariat as soon as possible.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 22nd May 1947
at 2.30 p.m.

In the Chair: Sir Robert Craigie (United Kingdom),

Also Present:

Dr. Neumann,	Czechoslovakia,
Commander Mouton,	Netherlands,
Dr. Aars-Rynning,	Norway,
Dr. Muszkat,	Poland,
Mr. Kintner.	United States of America.

I. Minutes No. 6/47.

These Minutes were approved.

II. Exploitation of the Black Market as a War Crime.

Final Approval of Draft Report annexed to Doc.
III/86, as amended in Doc. III/87, and at the
meeting of Committee III of 30th April 1947,
Minutes No. 6/47.

The Secretary, (Dr. SCHWELB), reported that Monsieur Maillard had informed him that he was not in agreement with the alteration agreed upon on 30th April 1947 (Minutes No. 6/47.)

In view of the fact that no representative of France was present and that to an enquiry by telephone at the French Embassy it was replied that M. MAILLARD was not available that afternoon and that he apologised for not being able to be present, consideration of this draft report was adjourned.

III. Collection and Publication of information concerning
Human Rights arising from trials of War Criminals, etc.
(Docs. A.45 and III/89.)

The Chairman, (Sir Robert CRAIGIE) referred to the previous day's decision of the Commission where the Commission had decided to do the work requested by the United Nations Secretariat as far as it referred to trials of war criminals and where the Commission had reserved its decision on the question whether the trials of quislings and traitors should be dealt with also. Discussing the memorandum III/89, Sir Robert CRAIGIE pointed out that the distinction between the two aspects of human rights made in paragraph IV of the memorandum were very sound. The same applied to paragraph VII of the memorandum where it was pointed out that the objective of the work to be done was discriminatory and that the indiscriminate collection of a great amount of material would not be useful. He also expressed his general agreement with the matters to be dealt with as enumerated in para. VII (a) to (g) of the memorandum. Sir Robert added that the Committee would have to be careful not to recommend things which would appear to interfere with the sovereign rights of States.

Dr. MUSZKAT asked the Secretary for further explanation of sub-paragraph (b) of paragraph VII of the memorandum III /89.

Dr. SCHWELB explained that sub-paragraph (b) was a corollary to sub-paragraph (a). Sub-paragraph (a) dealt with cases where a court had found that the existing provisions of international law did not furnish a sufficient basis for imposing a just penalty for activities

violating human rights. Sub-paragraph (b) dealt with cases where a court had assumed that international law furnished a sufficient basis for imposing a just penalty, but where the question remained still doubtful in international law because of the fact that other courts were not bound by the decisions already passed.

Dr. SCHWELB further reported that he had sent a copy of Doc. III/89 to the Director of the Division of Human Rights of the United Nations, pointing out, however, that for the time being, it represented only his personal views and had not yet been approved by any authority of the Commission. On 20th May, he had received a letter from the Director of the Division of Human Rights dated 15th May, where the latter expressed his opinion that the memorandum was an excellent piece of work and his agreement with the conclusions of the paper. Dr. Schwelb further informed the Committee that he had discussed the problems involved with the legal members of the Secretariat.

Mr. Brand, the Assistant Legal Officer, who was at present on leave, had handed him a paper on the subject which he would read to the Committee. Dr. Mayr-Harting had also drafted a paper on the subject, the substance of which he would explain orally. Both papers contained, in the Secretary's opinion, very valuable observations on, and additions to, the original memorandum, III/89.

Called upon by the Chairman to do so, Dr. MAYR-HARTING gave an outline of his views, particularly on paragraphs V and VII of Doc. III/89. He drew attention to the distinction to be made between the terms "quisling" and "traitor" and suggested that the Commission should only deal with trials of quislings who were responsible for the commission of war crimes in the wider sense, including crimes against humanity, but that the Commission should not deal with trials of persons who were charged only with treason against their own country without being involved in war crimes or crimes against humanity. Dr. Mayr-Harting further pointed out that the transcripts of trials would not necessarily give complete information with regard to gaps in international law because, in many instances, where such gaps did exist, the prosecuting authorities had refrained from preferring charges, in cases e.g., where existing international law offered to the prospective defendant a valid defence, such as the defence of legitimate reprisals. The Commission should therefore make requests to the national prosecuting authorities for reports on cases in which the prosecuting authorities had abstained from making the charges in view of gaps in international law. Dr. Mayr-Harting further stressed the necessity of dealing also with trials conducted by German, Austrian and other courts of former enemy and satellite countries, concerning crimes of enemy nationals committed against enemy nationals and stateless persons. He expressed the view that valuable results would be achieved if not only the present state of international law were taken into account, but also its development in the twentieth century.

Dr. MAYR-HARTING mentioned as instances of changes having taken place in international law, the law of U-boat warfare and the law of the bombardment of so-called undefended places, where way had been given to the requirements of modern warfare. In other respects, however, international law had moved towards a higher protection of human rights. He also suggested that it would be useful to examine the files of the Responsibilities Commission of 1919. (*)

The Chairman, (Sir Robert CRAIGIE) thanked Dr. Mayr-Harting for his valuable contribution to the discussion.

Mr. KINTNER stated that questions of policy were involved in the whole problem and he suggested that the papers prepared by Dr. Mayr-Harting and by Mr. Brand should be circulated.

(*) Dr. Mayr-Harting's paper will be circulated as Doc. III/91.

Sir Robert CRAIGIE agreed with the suggestion by Dr. Mayr-Harting that for the purposes of securing information only those acts of traitors should be dealt with which at the same time were war crimes in the wider sense, including crimes against humanity.

Dr. MAYR-HARTING instanced the Joyce trial as one which was restricted to treason without prima facie having any bearing on the problem of human rights.

Dr. SCHWELB mentioned the case of the Hungarian Prime Minister, referred to in Mr. Brand's paper, as an instance of a treason trial which fell on the other side of the line, because it involved the charge of crimes against humanity.

Commander MOUTON submitted that the Joyce trial might be of interest as an example of the misuse of human rights, namely the misuse of the right of freedom of expression. Referring to the question of reprisals, Commander MOUTON said that reprisals were one of the black pages of international law.

Dr. MAYR-HARTING mentioned as a further instance of the development of international law, that the shooting of hostages had up to a certain time, been legitimate.

Commander MOUTON and Sir Robert CRAIGIE dissented from this opinion.

Mr. KINTNER submitted that the work in hand should be done by way of recording the present state of affairs rather than by suggesting alterations of the law.

Dr. LITAWSKI recalled that the request from the United Nations spoke only of the collection of information.

Mr. KINTNER said that the purpose of the report should not be changed by inference.

Dr. NEUMANN suggested that it should be pointed out in the foreword that the Commission was not making any suggestions, but that it was pointing out the present state of affairs.

Dr. LITAWSKI said that in the matter of quislings and traitors it would be necessary to secure the material not only from member countries, such as Yugoslavia, Czechoslovakia and Poland, but also from the satellite countries like Bulgaria, Roumania and Hungary.

Dr. SCHWELB recalled that with the assistance of the United Kingdom Foreign Office, the Commission had received very valuable material on the enactments of the satellite countries and that a similar procedure should be adhered to in this respect.

Dr. LITAWSKI meant that the trials of traitors and quislings had some political implications and that it might be more difficult to get the necessary information with regard to them through the help of the United Kingdom Foreign Service, than in the case of the enactments. It will perhaps be necessary to enlist the help of the United Nations itself. The question of principle whether the report should include trials of traitors and quislings should, in Dr. Litawski's opinion, be approached by not taking into account the present terms of reference of the Commission. This was a special task entrusted to the Commission which had no bearing on its general jurisdiction.

Sir Robert CRAIGIE repeated that in his opinion it would be advantageous to limit the examination of trials of quislings and traitors to those who had committed war crimes in the wider sense, including crimes against humanity.

Mr. KINTNER pointed out that a traitor violated national or municipal law and the human rights guaranteed by his country. The United Nations had in mind human rights not bounded by a municipal statute.

Commander MOUTON thought that the Commission should restrict itself to dealing with quislings, if they had committed a war crime.

Sir Robert CRAIGIE suggested that for the time being the Committee should not arrive at any final decision. He summed up the discussion, however, by pointing out that the Committee was inclined to think that the Commission should limit itself to trials of quislings and traitors as far as these trials disclosed war crimes in the wider sense.

Dr. SCHWELB then read to the Committee the paper prepared by Mr. Brand, which like the paper prepared by Dr. Mayr-Harting, would, on Mr. Kintner's suggestion, be circulated to Committee III. (*)

Sir Robert CRAIGIE remarked that Mr. Brand's was a very useful paper and that his points would, to a great extent, be met by restricting the work to the trial of quislings and traitors who had committed crimes against humanity or war crimes.

It was decided that the Secretariat should prepare a draft report to be submitted by Committee III to the Commission. This report will have to be based on the memorandum III/89 and it should embody the suggestions contained in the papers prepared by Dr. Mayr-Harting and Mr. Brand and the result of that day's discussion in Committee.

The Committee adjourned. The next meeting will be held on 4th June 1947, at 3.15 p.m.

(*) Mr. Brand's paper will be circulated as Doc. III/90.

UNITED NATIONS WAR CRIMES COMMISSION

Notes of the Meeting of COMMITTEE III held on 4th June 1947
at 3.15 p.m.

In the Chair: Sir Robert Craigie, (United Kingdom)

Also Present:

M. de Baer,	Belgium,
Dr. Neumann,	Czechoslovakia,
M. Maillard,	France,
Commander Mouton,	Netherlands,
Dr. Aars-Rymning,	Norway,
Col. Dr. Muszkat,	Poland,
Mr. Kintner,	U.S.A.

I. French Case No. 4695. (Docs. III/86 and III/87)

M. MAILLARD explained that he had been instructed by his Government not to concur in the replacement of the words "implicated in" by the words "responsible for" in the text of Doc. III/87, which had been agreed to by Committee III in his absence on 30th April, 1947. (Minutes No. 6/47). He thought that the words "responsible for" would unduly narrow the scope of those persons who, in the opinion to be expressed by Committee III, could be held prima facie responsible by Committee I.

If Committee III insisted, however, in replacing the words "implicated in" by "responsible for", then he would alternatively suggest that the word "and" in the third line, be replaced by the word "or".

Sir Robert CRAIGIE repeated the reasons which had led him, in the meeting held on 30th April, to suggest the replacement of the words "implicated in" by "responsible for". In his, Sir Robert's, opinion, the words "implicated in" were rather vague and if they were retained everybody could be considered guilty who took however subordinate a part in the execution of the policy of exacting contributions.

Dr. NEUMANN supported the alternative proposal made by the French representative (replacement of "and" by "or").

Mr. KINTNER, Dr. AARS-RYNNING and M. de BAER expressed their opinion to the same effect.

Commander MOUTON said that he preferred "responsible for" to the words "implicated in". He was also in favour of the replacement of the word "and" by the word "or".

Dr. MUSZKAT also supported the French alternative proposal.

All members present unanimously agreed to the report III/86, as amended by III/87, provided that in the latter text two alterations were

made, namely,

- (a) the replacement of "implicated in" by "responsible for" and
- (b) the replacement of "and" by "or".

It was decided that the unanimous report by Committee III should be circulated to the Commission and to Committee I.

II. Report by M. de Baer on his visit to the United Nations Headquarters at Lake Success

M. de BAER stated that his journey had been decided on at a moment's notice. When Professor Humphrey, Director of the Human Rights Division, visited the Commission, only such members as were present, were able to speak to him; it had then been decided that it would be desirable to send a representative to the United Nations and M. de Baer had agreed to go at a moment's notice. Professor Humphrey had wired Lake Success asking if it would be in order for a representative of the Commission to be invited to attend a meeting of the Committee on the Codification of International Law. Some replies had been received and no further action was taken until suddenly about two or three weeks later an invitation arrived. These were the reasons why it had not been possible to consult the Commission.

There were two main questions to be discussed with the Legal Department, and M. de Baer had examined them at length with Dr. Ivan Kerno and Dr. Liang. The first dealt with the relations of the United Nations War Crimes Commission with the Committee which is concerned with the codification on international law, whose meeting was in progress at the time of M. de Baer's visit. His first task, which was purely exploratory, was to enquire whether the U.N. would welcome a contribution from the U.N.W.C.C. on the principles of international law, as they resulted from the Nuremberg judgment and from the documents in the possession of the Commission. The second matter was to arrange that this Commission should be placed on the list of inter-governmental agencies, which would be consulted when the codification of international law was discussed.

1. The Committee on Codification of International Law

It appeared that the Committee which is now in progress is not discussing questions of substance but merely questions of procedure and methods, in which the U.N.W.C.C. is not concerned. Before these discussions come to an end, however, the Committee is going to consult certain agencies. Dr. Liang promised M. de Baer that the U.N.W.C.C. would be consulted and would be charged with a mission on similar lines as that with which it has been charged by the Division of Human Rights. It will be for the members of the U.N.W.C.C. to decide whether to agree to this or not. The report of the Committee concerning procedure will go to the General Assembly in September, and it is expected that it will be adopted. M. de Baer was advised to ask the Commission (1) if it will be willing to undertake this task and if so, (2) to start collecting the material for the report. Dr. Liang gave M. de Baer a letter, (*) couched in cautious terms which he read to the meeting.

2. Listing of the United Nations War Crimes Commission as an Intergovernmental Agency to be consulted by the Codification Committee

It appears that there are objections to this: firstly, the list has not yet been drawn up, and if M. de Baer had not gone to Lake Success the U.N.W.C.C. would not have been put on this list because (1) it is believed to be an organ with the task to liquidate the consequences of the war which has nothing to do with the future and, (2) a temporary commission and there have been rumours that it would be closing down in a few weeks. M. de Baer

replied that the finances of the Commission were assured until next spring, and that it has been charged by the Social Department with the submission of a report. Moreover, there are some countries which think the Commission should go on after the middle of next year. Dr. Liang stated that in view of this, he will himself see that it is put on the list of inter-governmental agencies to be consulted, but there would probably be certain objections.

3. Dispatch of United Nations Documents to the United Nations War Crimes Commission

Up to now the U.N.W.C.C. has not automatically been sent the U.N. documents. M. de Baer talked this over with the appropriate authorities and on advice wrote to them a letter asking that all documents relating to human rights and to the codification of international law, should automatically be sent to the U.N.W.C.C. He subsequently received a reply agreeing to this.

4. Arrangements for the time of the Winding up of the Commission

M. de Baer raised the question as to who was to be the residuary of the U.N.W.C.C. when it finished its work and what would happen to certain of the present personnel of the Commission. He pointed out that it is a legal body, and explained some of the tasks which it has carried out. He showed them the copy of the Law Reports so far published and stated that others are in preparation. He stated that the Commission has valuable archives which must either stay in England or remain with someone who could manipulate them. He stated that the Commission is making a collection of the texts of municipal legislation on the subject of war crimes, that it has about 5000 dossiers dealing with specific war crimes, and that it is preparing a history of the Commission. This the United Nations authorities seemed to understand, but when this matter was broached to members of the Legal Department, the latter did not seem prepared to lend their support; they said that if the Commission can continue to be supported by the member-nations they would be delighted; as for the future of individual members of the Commission and of its staff, when the Commission winds up, it will be for these individuals to make direct application to U.N. It was indicated that at the moment all posts in the Legal Department are filled, but the situation may have changed in a year or two, when the Commission winds up.

5. Human Rights

M. de Baer had a long talk with Professor Laugier, Assistant Secretary-General, about the future of the Commission. On being informed that the Commission costs between twelve and fifteen thousand pounds a year, Professor Laugier seemed to be prepared to take over the Commission, provided it showed evidence that it had some useful contribution to make in the sphere of human rights. M. de Baer had another conversation with Professor Humphrey who advised him to follow up on this half promise, and the best way would be for the Commission to send, as soon as possible, a statement showing the contribution which it can make to the work of the Human Rights Division; this will enable the latter to see in what way they can incorporate either the whole or part of the Commission under the Economic and Social Council.

6. Economic Affairs

M. de Baer had conversations with three members of the Department of Economic Affairs, who informed him that the question of the incorporation of the U.N.W.C.C. would have to be recommended by Professor Laugier and Professor Humphrey, and they will then consider it. Present discussion

would therefore be premature. These conversations showed that at the present time there is no question of the United Nations financing this Commission. For the present it must continue to be financed by its member-governments.

Replying to questions by Sir Robert Craigie and M. Maillard, M. de Baer said that in his opinion the Commission would remain here in London, where it had its records, continuing with the same personnel. If it was to be taken over by U.N. it would not necessarily be primarily concerned with human rights. It would be for the member-governments to decide whether or not it continued to deal with the subject of war crimes. U.N. is not interested in the past, only in the future, for instance, in the codification of international law with a view to setting up an international court, and the laying down of human rights. It was a bit premature to ask what would be the status of the U.N.W.G.C. though it seemed that if it were taken over by U.N. it would continue to enjoy diplomatic status. So long as it is financed as at present it remains an independent inter-governmental agency.

M. de Baer believed that if the Commission accepts this mission on the codification of international law, it will then be charged with a work which will last a very long time, and it would be the duty of each representative to make this clear to his respective Government, for it would mean the prolongation of the life of the Commission for a number of years. The work of the Commission in the framework of the task of codification would be restricted to the principles of the Nuremberg judgment and the Commission would make its contribution while the Committee of experts in New York continued with its work.

III. Collection and publication of information concerning Human Rights. (Docs. III/92 and III/93).

Sir Robert CRAIGIE opened the discussion by stating that Doc. III/92 summed up correctly the discussion which had taken place.

Dr. NEUMANN considered III/92 a remarkable work and agreed with every point of it.

Mr. KINTNER said that he was in agreement with the conclusions contained in paragraph XIV of Doc. III/92 and would like the paper to go before the Commission.

M. de BAER also expressed his agreement with Doc. III/92. He stressed that the work could not be started too soon, particularly the collection of material, the necessity of which was implied in paragraphs III, VI and XII. He added that what was said in paragraph XII as to the British Element of the Control Commission for Germany, also applied to the American and French zones of Germany.

The SECRETARY, Dr. Schwelb, reported that the Secretary-General had held a conference with the legal members of the Secretariat on the 2nd June, 1947, in which the individual members of the staff had been allotted shares of the work in case the Commission should decide to perform it and distributed to members Doc. III/93, containing notes on this distribution of the work.

Dr. AARS-RYNNING expressed his agreement with the proposals contained in Doc. III/92.

Dr. MUSZKAT was also in full agreement with Doc. III/92 and informed the Committee that he had already approached his Government with a view to procuring the necessary material. He added that the Soviet Government would certainly also make available the necessary documentation although the Soviet Government was not a member of the Commission. He also pointed

out that in the Soviet Academy of Law there existed a special Research Department dealing with the problems of war crimes.

Sir Robert CRAIGIE agreed and expressed the opinion that it would be for the United Kingdom Government as the host government of the Commission to approach the governments which were not represented on it. He stressed the necessity to draw up a very clear questionnaire which should be sent to the governments.

As to the actual form of Doc. III/92, Sir Robert CRAIGIE submitted that perhaps too much scope was devoted to the question of the jurisdiction of the Commission in view of the fact that the document went on to say that the Commission will, in practice, deal only with trials concerning war crimes in the wider sense. The paper put up a terrific argument on the question of jurisdiction only to produce a solution which was well within the jurisdiction. In Sir Robert's opinion, however, it was conceivable that by crimes of quislings which constituted war crimes in the wider sense, the whole field of the violation of human rights would not be covered.

Sir Robert further said that Doc. III/92 proceeded on page 4, before paragraph 3, rather abruptly to the conclusion that the Commission will only deal with trials disclosing war crimes in the wider sense. He suggested that it should be stated that, in the Committee's opinion, trials involving war crimes and crimes against humanity would cover most of the ground and that the matter could be reconsidered if the Commission should find that this was not so.

Mr. BRAND said that Dr. Mayr-Harting and he had drawn up an alternative text for the last paragraph on page 3, and the first paragraph on page 4, of Doc. III/92, which, they suggested, should read as follows:

"The human rights usually referred to in everyday discussions, and indeed in the deliberations of the Human Rights Commission itself are such rights as those of equality before the law and the freedom of information and of the press. The trials which will be most illustrative of the extent of the protection or vindication of such rights are clearly the trials of quislings and traitors and those of the major war criminals. Of the Nuremberg and Tokyo trials this fact will readily be granted, but it is urged that no study of the protection of the basic human rights of the individual can afford to ignore the trials of quislings and traitors. For instance, Marshal Antonescu and certain others were tried by a Roumanian Court, inter alia, for enslavement of the press and information services with the object of spreading Nazism in Roumania and corrupting public opinion, and of crimes against the Jewish race, including deportation to the death camps of Eastern Europe and the compulsory "Roumanization" of Jewish property.

"An examination of the transcripts and records of trials of quislings and traitors will show that a large number of such violations of civic rights are also war crimes or crimes against humanity; and a study of offences having this dual aspect is clearly within the scope of the United Nations War Crimes Commission. For example, Bela Imredy, former Premier and Finance Minister, was found guilty in Hungary, inter alia, of the promulgation of anti-semitic legislation.

After discussion in which Sir Robert CRAIGIE, Dr. NEUMANN, M. de BAER and various members of the Secretariat took part, it was decided that the paragraphs affected should be altered and that it should be made clear that it was not suggested by the Commission that the suppression of freedom of press and information and similar civic rights in war time constituted, under the present law, a crime.

The Committee agreed unanimously to the draft report III/92, with the amendments suggested by Sir Robert CRAIGIE and with the alterations in the text of the last paragraph on page 3 and the first paragraph on page 4, which will be redrafted according to the Committee's discussions.

The SECRETARY was charged with circulating the report to the Commission in time for its next meeting. The Committee agreed that the report could also have the form of a 'C' Document containing the alterations envisaged in that day's meeting, to which the document III/92 could be annexed as it stood, if in this form the circulation of the document could be expedited.

The Committee adjourned.

COMMITTEE III MINUTES

No. 2/47.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of COMMITTEE III held on 24th July 1947,

at. 3.30 p.m.

In the Chair,

Sir Robert Craigie (United Kingdom),

Also Present:

Dr. Schram-Nielsen,	Denmark,
M. Maillard,	France,
Dr. Aars-Rynning,	Norway.

I. Minutes Nos. 7 and 8 of 1947.

Minutes Nos. 7 and 8 of 1947 were approved.

II. French Case No. 4615, (C.260 and III/97).

Sir Robert CRAIGIE recollected that at the last meeting of the Commission, Lord Wright had suggested that the report of Committee III (C.260) should be amended so as to be less positive in regard to the limitations on pillage as a war crime. Dr. Schwelb had therefore gone into the matter and produced Doc. III/97. On pages 2 and 3 of this paper, Dr. Schwelb proposed a new text of paragraphs VII and VIII of Doc. C.260. The main changes occur, in Sir Robert's opinion, at the bottom of page 2, where it is said that no opinion is expressed on the question whether the purchase of goods on the black market constitutes pillage or plunder.

M. MAILLARD thought that the document, as it now stood, brought very few alterations to the original document. He did not think, however, that the wording of the special paragraph was particularly lucky. Normally Committee III would have had an opinion on a question which went to the basis of the charge, and if it came to the conclusion that there was no legal basis for a charge, it would say so.

Dr. SCHRAM-NIELSEN supported M. Maillard. The fact that the goods were not taken against the will of the legitimate owners did not logically lead to the conclusion that Committee III should not express an opinion on the question of pillage and plunder. On the contrary, if a particular problem were raised, the Committee should express its views. Dr. Schram-Nielsen therefore suggested that the paragraph be re-worded replacing the words "does not express an opinion..." by the words "is in doubt on the question whether..." In this way the activities referred to in the French charge would fall outside the scope of pillage.

Sir Robert CRAIGIE said that the document did not say that we had no opinion; all it said was that we did not express an opinion on the question whether there was a case of pillage or plunder. The reason for this was, as Sir Robert explained, that in Lord Wright's view, we must be extremely careful not to interpret plunder or pillage in a too restricted sense.

M. MAILLARD pointed out that according to the Nuremberg Judgment, the black market operations came under the wider notion of plunder.

Sir Robert CRAIGIE thought that a clear distinction had to be drawn between the actual operations on the black market and the exacting of exorbitant contributions to the cost of the army of occupation. As to the first, we were not proposing to lay down that the action of operating on the black market constituted pillage. On the other hand, by refraining from expressing an opinion we did not state the contrary.

Mr. AARS-RYNNING suggested the following wording: "Committee III does not find it necessary to express a definite opinion on the question", the text then to continue as in paragraph VIII, where the reasons why we do not find it necessary are given.

Dr. MAYR-HARTING recalled that in Lord Wright's opinion, the French case could be decided without the Commission committing itself to a precise or definite definition of "pillage". The new wording of paragraph VII, as proposed in Doc. III/97, suggested that the actions charged by the French Government could be considered as war crimes for the reasons set out in paragraph VIII and that it was therefore, as pointed out by Mr. Aars-Rynning, unnecessary to deal with the pillage and plunder aspect of the matter.

Mr. KINTNER expressed the view that it was for the Courts to decide controversial questions. He supported the amendment suggested by Mr. Aars-Rynning.

Sir Robert CRAIGIE agreed that since the matter could be dealt with as explained in paragraph VIII, the Committee did not consider it necessary to express an opinion on the question whether the acts constituted pillage or plunder. He proposed the following wording:

" Since the question of the illegal character of these transactions can best be dealt with on the basis proposed in section 8 (below), Committee III does not consider it necessary to express an opinion whether the purchasing of goods on the black market constitutes pillage either in the traditional sense of this word or as extended by the leading writers on the subject, (cf. Feilchenfeld, "Economic Law of Belligerent Occupation") or whether these black market operations come under the wider notion of plunder as applied at Nuremberg."

M. MAILLARD proposed to add to the first part of the sentence the words: "In order not to preclude any national decision"

Sir Robert CRAIGIE thought that it would only complicate matters.

As Document C.260 had been adopted by the Commission, in its meeting held on 18th June 1947, subject to some drafting amendments, it was agreed to issue Doc.C.260 in its amended form without submitting it previously to the Commission.

III. Human Rights Report. (Doc. III/96, III/101, III/102, III/103, III/105, and III/106.)

Sir Robert CRAIGIE introduced the subject, saying that one of the purposes of to-day's meeting was to inform Committee III of the preparatory work which had been done and the further action now proposed. It would be convenient to take Doc. III/105 first because the most important thing to be done was the Progress Report for the Commission on Human Rights which was to meet in August 1947 at Geneva.

Mr. KINTNER said that his government was in agreement with anything within the terms of reference of the Commission and the work in connection with human rights and war crimes should be done by Committee III, but his government would be opposed to undertaking a task of such magnitude as would unduly prolong the life of the Commission. As to these documents and the task which Committee III had set before it, he felt sure that his government was quite willing to leave the task to the Legal Secretariat of the Commission.

Sir Robert CRAIGIE said that on the question of prolonging the life of the Commission, the United Kingdom entirely shared the view expressed by the United States Government. On the other hand, quite independently of the task which we had been asked to undertake by the United Nations Organisation, we had rather reached the view that it would be difficult to complete the tasks, particularly of Committee I, before the early part of the next year. That being the case, in order to meet the view of the United Kingdom and United States and possibly other governments, it was necessary to take steps to ensure that not only this work but the rest of the work of the Commission should be concluded by, say, the end of March next, the end of our Financial Year, and on the lines which we were proposing to work, he thought that this could be done. If this meant that it would not be possible to produce such a full report as would be desirable, it did not mean that we could not make a useful contribution to the study of the relationship between war crimes trials and human rights. There was no doubt that we could proceed if we always had the idea in mind that we must not allow this question to carry us so far into a field of research that we might in fact find it necessary at a later stage to ask for a prolongation.

Mr. KINTNER said that the opinion expressed by Sir Robert would meet with the full approval of his government.

Dr. SCHRAM-NIELSEN explained that he had had no instructions from his government, but his own view was that the work would be voluminous and prolonged if the suggestions set out in Doc. III/96, p.2., were carried out. There seemed to him to be too many unnecessary sub-headings. He would merely suggest that when we performed this work, we should try to make it as little complicated as possible and also as short as possible.

Mr. BRAND explained that it was certainly not intended to sub-divide all of the headings 1 - 7 into sub-headings (i) - (ix), but only into whichever sub-headings were relevant, for instance the material relating to spies would deal only with the right to a fair trial.

Dr. SCHRAM-NIELSEN approved the interpretation given by Mr. Brand.

Sir Robert CRAIGIE preferred the second type of Progress Report suggested in p.l. of Doc. III/105, summarising in one paper the work carried out so far. This would be of more use to the United Nations Secretariat. Some of the reports had been drawn up primarily for internal consumption and the members of the Secretariat had been feeling their way and they might want to modify their opinions at a later stage.

On being asked by the Chairman, Dr. Mayr-Harting, Mr. Brand and Dr. Zivkovic agreed that the second type of report would be preferable.

Sir Robert CRAIGIE expressed the view that the arrangement of the material suggested at the beginning of section III of Doc. III/105 was a sound preliminary division. He mentioned that it was then proposed to sub-divide each part as follows:

- (a) the rights of the victims,
- (b) spheres of conflict between the rights of the accused and the victims at the time of the offence,
- (c) the rights of the accused at the time of the trial.

Dr. MAYR-HARTING explained that this sub-division would be used fully in the second part of the report. Some modifications might, however, prove necessary in the first part.

Dr. SCHRAM-NIELSEN asked whether it would be possible to reduce the number of sub-headings appearing under D. Rights of the Accused. It seemed to him to be obvious that the rights mentioned would be guaranteed in all civilized states.

Mr. BRAND pointed out that the opening paragraph of Section D explained the contents thereof. Points 1 - 5 were concerned with the rights of the accused, whereas points 6 - 11 tended to illustrate the other point mentioned in the opening paragraph, namely that the guilty should not escape punishment through legal technicalities.

Sir Robert CRAIGIE said that the arrangement should be as simple as possible but that it was necessary to have a certain number of sub-headings in order to present the material in an orderly way. The report would be incomplete if it did not mention, for instance, that every accused had the right of knowing with what he was charged, but it could be done in very few words.

Mr. Brand said that it would be of value to include these paragraphs in order to show the world that the accused was allowed the fundamental rights of a fair trial.

Sir Robert CRAIGIE said that to many people these things were not so obvious as to us. Too much knowledge of war crimes matters must not be assumed on the part of either the Human Rights Commission or the United Nations Secretariat.

Mr. KINTNER agreed that the report should be comprehensive.

Sir Robert CRAIGIE said that if the Secretariat had ample time at its disposal, it would be possible to make the fullest use of the transcripts but it would be quite impossible to do so very fully as things stood at present. The Secretariat would always be working under a sense of urgency and in the report dealing with the Nuremberg trial it should be explained that it had been necessary to base the material primarily on the indictment and judgment and to make use of the transcripts in exceptional cases only. Members of the Secretariat must use their judgment on the points.

Dr. ZIVKOVIC said that that applied also to the Tokyo trial.

Mr. KINTNER supported Sir Robert CRAIGIE.

Sir Robert CRAIGIE said that Dr. Zivkovic had raised the question whether the material on the Tokyo trial, when once compiled and presented, would be better in a separate chapter of its own. In Sir Robert's opinion, it was very important to say in the Progress Report that this latter represented the general lines of the final Report insofar as it could be envisaged at present, but of course in the process of drafting, if it were found that amendments were necessary, they would be undertaken. At present, prima facie, he would prefer the Nuremberg and Tokyo, and other trials, to be dealt with together and not in separate chapters.

Dr. ZIVKOVIC suggested that for the time being the work should be performed on the lines of Mr. Brand's scheme.

The Committee authorized the Secretariat to draft a Progress Report based on Doc. III/10; and in the light of the Committee's discussions. Copies of the draft of the Progress Report would be sent to the members of the Committee to enable them to make suggestions by post or telephone.

COMMITTEE III MINUTES
No. 10/47.

UNITED NATIONS WAR CRIMES COMMISSION.

Minutes of the Meeting of COMMITTEE III held on 30th October, 1947

at 3.30 p.m.

In the Chair: Sir Robert Craigie, (United Kingdom)

Also Present:

Lord Wright,	Chairman of the Commission,
Dr. Schram-Nielsen,	Denmark,
Mr. Aars-Rynning,	Norway,
Dr. Muszkat,	Poland,
Mr. Kintner,	United States of America.

I. Minutes No. 9/47.

Minutes No. 9/47 were approved with the proviso that Mr. Kintner's name, which had been omitted erroneously, would be added to the list of those present.

II. Human Rights Report.

Sir Robert CRAIGIE introduced the first preliminary papers concerning the Human Rights Report, which had been submitted by the Legal Secretariat and asked the legal officers present to explain in greater detail the papers which had already been written and those which were being prepared.

Dr. MAYR-HARTING said that Part II of the Report would consist of three chapters, the first dealing with the jurisdiction of the Nuremberg Court over offences against Germans and Stateless persons; the second with the jurisdiction of the municipal courts, established in Germany over the same offences, and the third chapter would treat the information arising out of some quisling trials. A draft of the first chapter would be circulated within a few days and a draft of the third chapter was at present being prepared by Dr. Zivkovic.

Dr. ZIVKOVIC explained that he would distribute, within the next few days, one more paper on the war crimes trials conducted by French Tribunals and some pages of this paper would be devoted to the Laval trial, so as to insure that at least one quisling trial would be touched upon in the Report.

Dr. LITAWSKI referred to the covering note of Doc. III/107 where it was shown in detail which contributions he proposed to include. He mentioned that Part I of the Historical Survey covering the period prior to the outbreak of the 1939 war had been distributed; he had, however, abandoned the idea of including in the Report Part II of this survey dealing with developments during the war. It seemed preferable to devote the time still available to the more important items of the Nuremberg Trial. A paper on the legal basis and jurisdiction of the Nuremberg Tribunal was already in the hands of the members of the Committee and another on the rights of the victims would be circulated shortly. The remaining chapters of the Section of the Report dealing with the Nuremberg Trial, which had been indicated in the covering note of Doc. III/107, would have to be left at present.

Sir Robert CRAIGIE expressed the view that item 8 of this covering note, "General Conclusions" should be put at the end of the Report.

Mr. BRAND said that apart from Docs. III/96 and III/112 which were already circulated, he intended to contribute a third paper covering the whole sphere of information on human rights in trials other than those conducted by the International Military Tribunals and if time permitted, a fourth paper on aspects of jurisdiction.

A discussion followed on the advisability of one separate chapter on jurisdiction, in which Sir Robert CRAIGIE, Mr. BRAND, Dr. ZIVKOVIC and Dr. MAYR-HARTING took part. It was noted that there would be many repetitions in the papers when they were finally drafted.

Sir Robert CRAIGIE suggested that many of the repetitions would be avoided if questions of jurisdiction which were at present discussed in various sections of the Report, were treated comprehensively in one chapter.

Lord WRIGHT said that repetitions would be dealt with when revising the papers, but that a certain amount of such repetition would be inevitable.

Speaking of the work which remained to be done, Sir Robert CRAIGIE pointed out that after all papers had been drafted, they were to be merged into a single block. In view of the time limit given by the Human Rights Division, the individual contributions should be ready by 20th November, so as to leave sufficient time for merging them into one Report.

Sir ROBERT said that he would be glad to have any suggestions from the members of the Committee on the plans of the secretariat which had been explained. He suggested that the Committee should keep to a general discussion of the proceedings and plans, before details of documents were discussed.

Mr. KINTNER asked if it were necessary to retype the stencils or whether the present ones could be used.

Sir Robert was of the opinion that most of the stencils would have to be redone.

A discussion followed as to whether the Report should be printed.

It was finally decided that all parts of the Report should be available by 20th November.

During the discussion of the details of the papers already presented, Dr. SCHRAM-NIELSEN said that there was one question to which he had given thought, i.e., whether it was a survey which was being composed or a thesis, and he suggested that a survey would meet the requirements of the United Nations more than a thesis. He quoted as an example Doc. III/113, which dealt on 32 pages with the question of the legal basis and jurisdiction of the Nuremberg Tribunal, which was, after all, only one aspect of the theme.

Sir Robert CRAIGIE felt that some parts, such as the Introductory paragraphs, explanatory paragraphs, etc., could be cut down. It was, however, agreed that the whole Report had been compressed to the utmost limits.

Lord WRIGHT considered that it would take too long to cut down any one of the sections.

Dr. LITAWSKI remarked that some of the papers had been prepared for the Report as it was envisaged at the outset of the work. The time limit later imposed required changes in the original plan. It was thus that disproportions had occurred. He further mentioned that in his view the Report would be of greater value to the codification section of the United Nations than for the division which had asked for it.

Coming back to the question of the relative lengths of the various sections of the Report, Sir Robert CRAIGIE said that it seemed that some of the examples of trials illustrating Mr. Brand's section, were perhaps too long.

Mr. BRAND replied that it would be very difficult to re-write his section, although it might be attempted at the end.

Lord WRIGHT regretted that examples were not given from more countries, - Poland, Czechoslovakia, - and more from France.

Sir Robert CRAIGIE said that the time limit had affected this aspect of the work, which could be done in the future.

Dr. ZIVKOVIC gave a report on his previously mentioned paper which he was preparing.

It was decided that in order to discuss the papers which were at present prepared, another meeting of Committee III was necessary before the Report was sent to the United Nations.

COMMITTEE III MINUTES

No. 11/47.

UNITED NATIONS WAR CRIMES COMMISSION.

Minutes of the Meeting of COMMITTEE III held on 17th November, 1947

at 3.30 p.m.

In the Chair: Sir Robert Craigie, (United Kingdom)

Also Present:

Colonel Springer,	}	United States of America,
Mr. Kintner,		
Mr. Aarsleff,		Norway,
Col. Dr. Muszkat,		Poland.

Apologies were received from Dr. Zeman (Czechoslovakia), Dr. Zimonjić (Yugoslavia) and Dr. Schram-Nielsen (Denmark) for being unable to attend.

I. HUMAN RIGHTS REPORT.

Sir Robert CRAIGIE introduced Document III/118 containing proposals with regard to the arrangement of the report and the preliminary papers which had been circulated since the last meeting of the Committee.

A discussion followed as to the way in which the report should be sent to Geneva and the latest date of its dispatch. It was decided to send the Report not later than the 25th November 1947.

Sir Robert CRAIGIE suggested that if there were no remarks to make in regard to the arrangement of the Report (Doc. III/118), the Committee might proceed to discuss the preliminary papers.

Col. Dr. Muszkat pointed out that the report was so voluminous that during the meeting of the Human Rights Commission the members would hardly find the time to read the report. It was therefore important to draft general conclusions giving on 3 or 4 pages, a picture of the contents of all the papers and thus to afford the members of the Commission in Geneva the opportunity of studying and appreciating the work done by the U.N.W.C.C. Otherwise only the Secretariat would have time to study the complete document.

Sir Robert CRAIGIE remarked that in the preface and introductions there would be observations which would be of use to the Human Rights Commission. It was intended to draft the conclusions as succinctly as possible and to give a clear indication of what had been aimed at. Sir Robert added that, if time had been available, the volume of the document could no doubt have been reduced considerably and suggested that this might be said in the preface. It was, however, impossible at the present stage to contemplate any re-writing of the document.

Turning to the individual papers, Sir Robert CRAIGIE said that many linguistic amendments had been made. It would not be possible to re-distribute drafts showing these amendments; the Committee was, therefore, asked to leave these amendments to the Secretariat.

Colonel MUSZKAT suggested that it might be useful to concentrate such topics as the legal basis of the Nuremberg and Tokyo trials, in one chapter and in a similar way the jurisdiction of the different tribunals.

Sir Robert CRAIGIE considered it would be almost impossible to do so in the time available. There was a good deal to be said, e.g., for collecting everything concerning jurisdiction in one chapter. This and similar re-arrangements would, however, require several weeks.

Dr. MAYR-HARTING pointed out that the document would hardly gain in clarity if questions of a general nature, which were at present touched upon in various sections of the Report, were treated comprehensively in separate chapters. Part II of the Report, eg., required an investigation into the question of the international character of the Nuremberg Tribunal which appeared unnecessary for the purposes of Part I. It would be of no advantage if this and similar topics which were mainly of interest for the second part of the Report, were to be looked for in chapters at the beginning of the document.

Colonel MUSZKAT felt that the United Nations were interested not in the basis of the jurisdiction of the various courts, but in the points to be considered in the International Bill of Human Rights. Too much stress was placed in the document on questions concerning the legal basis and jurisdiction. He thought that the main interest would attach to the findings arrived at by the courts.

Dr. ZIVKOVIC was of the opinion that the legal basis of the trials had been given comparatively little attention. It was, however, thought necessary to include the treatment of this and other topics to make the subsequent analysis comprehensible.

Sir Robert CRAIGIE thought that to some extent Col. Muszkat's previous point would be covered by the conclusions which were still to be drawn up. Complete conclusions could not be drawn at present because the task was not finished. Some more months work were needed before final conclusions could be drawn.

Dr. LITAWSKI said that his last paper which had not yet been circulated, concerned violations of human rights dealt with in the Nuremberg trial. Conclusions as to what extent these rights were protected was one of the most important parts of the report.

He added that the Commission had not been charged by the United Nations with the presentation of a thesis; it had been asked to present a collection of information arising from trials and nothing else, and the very compressed conclusions drawn were already something more than had been asked.

Sir Robert CRAIGIE reiterated Col. Muszkat's point that an endeavour should be made to draw final conclusions.

Dr. MAYR-HARTING expressed the view that it was almost impossible to draw any general conclusions at that stage.

Col. MUSZKAT thought that the most important aspect was what human rights must be protected either by international law or by national law. This could be pointed out in final conclusions.

Col. SPRINGER thought that the arrangement of the Report proposed in Doc. III/118 presented a simple, easy diagram and that it impressed itself easily on the mind. He agreed with Colonel MUSZKAT that the object of the United Nations was to decide what human rights should be given international protection. He thought, however, that there was not enough time available to draft final conclusions such as those suggested by Colonel Muszkat.

Mr. KINTNER said that the Report might be more valuable in connection with the Codification of International Law than the development of human rights and the papers would therefore be of great value in their present form.

Sir Robert CRAIGIE thought that point to be important. He mentioned that Lord Wright was proposing to write to Professor Humphrey shortly and one of the points was that he hoped that the documents would be communicated also to the Committee which deals with the codification of international law.

On the proposal of Colonel SPRINGER, it was decided to entitle the Report: "Information concerning Human Rights arising from trials of War Criminals".

Mr. BRAND said that in Chapter III, trials held by the courts of 6 or 7 countries had been dealt with.

A discussion followed on the question of drafting final conclusions and Sir Robert CRAIGIE declared his willingness to undertake this work after he had seen the conclusions to the various chapters.

Mr. KINTNER said that the Report might be more valuable in connection with the Codification of International Law than the development of human rights and the papers would therefore be of great value in their present form.

Sir Robert CRAIGIE thought that point to be important. He mentioned that Lord Wright was proposing to write to Professor Humphrey shortly and one of the points was that he hoped that the documents would be communicated also to the Committee which deals with the codification of international law.

On the proposal of Colonel SPRINGER, it was decided to entitle the Report: "Information concerning Human Rights arising from trials of War Criminals".

A discussion followed on the question of drafting final conclusions. Colonel MUSZKAT mentioned that these conclusions should explain why in Chapter III examples were given only from British and American trials.

Mr. BRAND said that in Chapter III trials held by the courts of 6 or 7 countries had been dealt with.

Sir Robert CRAIGIE declared his willingness to undertake this work after he had seen the conclusions to the various chapters.

The Committee then adjourned sine die.

COMMITTEE III MINUTES
No. 11/47.

ERRATUM.

UNITED NATIONS WAR CRIMES COMMISSION.

Please destroy page 3 of Committee III Minutes
No. 11/47 circulated on Friday 12th December, and replace
with page 3 attached.