

1/46.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Note of the Meeting of Committee III held on 8th January 1946 at 3.0 p.m.

In the Chair, M. Terje Wold, Norway.

There were also present:

Mr. Justice Mansfield,	Australia,
Major Dr. Fanderlik,	Czechoslovakia,
Dr. Mayr-Harting,	Czechoslovakia,
M. Stavropoulos,	Greece,
Commander Mouton.	Netherlands.

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

I. Co-optation of Mr. Justice Mansfield.

Dr. MAYR-HARTING proposed and Commander MOUTON seconded that Mr. Justice Mansfield should be asked to become a member of Committee III and should be co-opted. The proposal was carried unanimously and the acting Chairman was asked to report it in tomorrow's meeting of the Commission.

II. Membership of Sir Robert Craigie.

Dr. MAYR-HARTING reported that according to the wish expressed in previous meetings of the Committee he had approached Sir Robert Craigie as to his return to the Committee. Dr. Mayr-Harting was glad to be able to report that Sir Robert had declared he would try to make the necessary arrangements, if the Committee so desires. The Committee asked the acting Chairman to take the necessary formal steps.

III. The Czechoslovak Case No. 1962. (Reinhold Boecker).

The Secretary read Doc. III/23. The discussion arose on the relationship between the questions (a) and (b) at the bottom of Doc. III/23.

Dr. MAYR-HARTING said that in his opinion the Committee had two tasks to perform. Under (a) it had to reply to the question whether systematic removal of employees or workers who were nationals of the occupied country constituted the crime of denationalisation in the meaning of Doc. C.149. Under (b) it had to consider whether the facts of the actual case indicated that Boecker had committed the war crime of denationalisation or possibly a war crime of another type.

M. STAVROPOULOS asked whether the request by Committee I had any practical importance in view of the fact that Boecker had been listed on two other counts. In his view the question raised only a theoretical point.

Dr. MAYR-HARTING replied that:

(1) the Committee were interested to settle the question whether the removing of employees of a certain nationality was a war crime and

(2) it was, in his view, not correct to say that it is sufficient to charge a man with murder or some other crime and then to try him in the National Court for other matters. The trial in the National Courts should follow as closely as possible the Commission's decision in listing the criminals. He finally pointed out that the Committee could not possibly reply to Committee I that it considered its question of no practical importance.

Mr. WOLD said that the Committee ought to answer the question and expressed the opinion that the question (a) should be answered in the affirmative, repeating the Committee's opinion expressed in Doc. C.149 to the effect that denationalisation was a war crime.

Dr. MAYR-HARTING meant that the question (a) called not for the general reply consisting in renewed affirmation of what had been said in Doc. C.149, but that it posed the particular question whether the removing of employees of a certain nationality constituted the war crime of denationalisation. The simple repetition of what had been said in Doc. C.149 would only be detrimental to the weight of that document.

M. WOLD said that questions (a) and (b) go in a certain way together and that the reply to question (a) should be in the affirmative leaving the consideration of the actual facts of the case to the examination of question (b).

This was agreed to.

M. WOLD thereupon introduced the general discussion on question (b).

Dr. MAYR-HARTING said that the case itself presents the question whether the war crime of denationalisation in the meaning of Doc. C.149 can be committed by systematically removing employees and workers who are nationals of the occupied country and replacing them by nationals of the occupying Power.

When the Committee discussed its report on denationalisation it had no doubt that one of the means by which denationalisation can be committed is the systematic deprivation of the inhabitants of the occupied territory of the foundations of their economic existence. It is clear that a policy like this necessarily brings about, as Mr. Lenkin says, a crippling of the development of the national group concerned, even a retrogression. More obvious methods of this kind are, for instance, the confiscation of key industries, but similar results are obtained if a substantial number of minor economic positions are destroyed.

Dr. MAYR-HARTING proposed therefore to decide that the war crime of denationalisation as described in Doc. C.149 can be committed for the reasons set out in this document by systematically removing employees and workers who are nationals of the occupied country.

Dr. MAYR-HARTING pointed out that the facts set out in the Czechoslovak charge No. 1962 might constitute another war crime at the same time. We recognise the confiscation of property as a war crime. It is, however, necessary to protect also the economic basis of the man who has no property. His economic basis is his job. It would be necessary in the opinion of Dr. Mayr-Harting to consider a war crime, similar to confiscation of property, unlawful interference with this type of economic right.

M. WOLD remarked that the Committee should ask the Czechoslovak National Office for more information on the facts of the case.

Mr. Justice MANSFIELD proposed that the following four questions should be put to Czechoslovak National Office:

- (1) was the factory engaged in the manufacture of war material?
- (2) number of employees of the factory when the accused became superintendent,
- (3) number of Czechoslovak workers dismissed while Boecker was superintendent,
- (4) total period during which Boecker was superintendent of the factory.

M. STAVROPOULOS agreed with the four questions proposed by Mr. Justice MANSFIELD and added that it should be examined whether such occurrences did occur only in that one factory or whether it was part of a system. Denationalisation must be something which is the result of a policy. If it happened only in that one factory it was not the crime of denationalisation.

M. WOLD remarked: Perhaps the Czechs might not have worked hard enough. Perhaps the reason for the removal was sabotage on their part.

M. STAVROPOULOS: What was the factory producing?

Dr. MAYR-HARTING agreed with the four points made by Mr. Justice MANSFIELD but felt that as to the addition proposed by M. Stavropoulos, the Committee should keep in mind the practical possibilities of a National Office. The National Office could not be asked to supply statistics about hundreds of cases in support of one case.

Dr. MAYR-HARTING pointed out that Boecker, as security chief, had to supervise that the policy of the central authorities was carried out. He was a political supervisor.

Commander MOUTON was also completely in agreement with the questions proposed by Mr. Justice Mansfield. He thought that an official reply should also be sought to the question whether the factory was State owned or privately owned. If it were State owned the Germans had a right to seize it and if they were using the factory for making ammunitions it was only obvious that they replaced the workers because the Czechs were not allowed to make ammunition against their own country. He further proposed the question as to how the dismissals had been effected, whether normal notice had been given or whether the employees had been dismissed without notice.

Major FANDERLIK thought that the problem was not whether it was cruel to the individual workers, but whether it was the purpose to deprive the inhabitants of the occupied territory of their livelihood in their own country.

M. WOLD expressed the opinion that, as security officer, Boecker probably released people because he did not consider them reliable.

Dr. MAYR-HARTING said that the Committee should find out the facts which indicate the purpose of these dismissals, e.g. what categories of workers had been dismissed.



M. WOLD summed up that the Committee should agree to send a letter to the National Office. It may be that the crime of denationalisation could be committed by removing workers but a number of facts must be established. We should not be satisfied to say that we had the war crime of denationalisation before us unless we have good solid facts. He proposed to postpone the discussion until the Committee had more facts.

Mr. Justice MANSFIELD suggested that a further question should be inserted in the letter, namely what positions the dismissed employees did occupy.

The Secretary to Committee III was charged with the task of preparing a letter to the Czechoslovak National Office and circulating it to the members of the Committee.

#### IV. Request from the French National Office raising two questions of Law.

The Secretary read documents III/25 and I/46 and pointed out that two questions were to be answered by the Committee, (1) a question of jurisdiction, (2) a question of substantive law.

On the proposal of the acting Chairman, M. WOLD, the jurisdictional question was discussed first.

Dr. MAYR-HARTING drew the attention of the Committee to Commission document C.123, adding that in his view it was not opportune to deal with a question of jurisdiction in a general way before the problems raised in Doc.C.123 were settled. The Commission should be asked what happened to Doc.C.123.

Commander MOUTON thought that Doc.C.123 referred to a different case, namely that a German had travelled all over Europe and committed crimes in different States.

Dr. MAYR-HARTING replied that in his opinion both cases were covered by Doc.C.123, namely that one individual had committed different crimes in different countries and that one individual had committed one crime in one country, for which two different countries claimed jurisdiction.

The SECRETARY stated that there was, to his knowledge, no actual dispute between France and Czechoslovakia with regard to cases like this, and that the Committee was asked to express an opinion for the guidance of the National Offices.

Mr. Justice MANSFIELD said that the answer should be on the following lines:

If under French National Law, the French Courts have jurisdiction to try crimes committed against their nationals outside France, then the French courts have jurisdiction.

If under Czechoslovak National Law the Czechoslovak Courts may try offences committed on Czechoslovak territory - which they certainly have - then the Czechoslovak Courts have jurisdiction.

No problem of International Law was involved.

M. WOLD stated that the Committee could answer the first legal point according to what Mr. Justice MANSFIELD had said. It was, in his view, a case of concurrent jurisdiction.



The SECRETARY endorsed Mr. Justice MANSFIELD's view by referring to the law as laid down by the Permanent Court of International Justice in the LOTUS case (France v. Turkey.)

The Committee unanimously agreed that the reply to the first question should be on the lines proposed by Mr. Justice MANSFIELD.

The acting CHAIRMAN then opened the discussion on the second legal point, namely whether the German Military Judges in sentencing as deserters French citizens, compulsorily enrolled into the German armed forces, had committed war crimes..

M. STAVROPOULOS pointed out that International Law does not allow premature annexation. Contrary to what was said in Doc.I/46, it was, therefore, irrelevant whether penalties passed upon an alleged deserter were or were not excessive.

Mr. Justice MANSFIELD drew attention to the fact that Doc.I/46 contained an unwarranted assumption by describing the French nationality of the victim as "a fact which must necessarily have been pointed out by the defence."

M. WOLD proposed that the Committee had to base its discussions on the assumption that the judges knew that the victims had been Alsations and that they had been compulsorily enlisted.

Commander MOUTON expressed the view that if the Judge knew that the soldier was a French National, compulsorily enlisted into the German armed forces, he committed a war crime by sentencing him as a deserter.

M. WOLD said that if the French citizens would have enlisted voluntarily they would have been under military discipline and no war crime would have been committed by the judges.

Major FANDERLIK stated that in his view the judges were not criminally responsible in some respect. As German judges, they could not overlook the fact that the alleged deserter before them was a member of the German army. His French nationality should have been a reason to inflict a smaller punishment, but the judges were not in a position to acquit alleged deserters. What really constituted a criminal activity on the part of the judges was that they sentenced the Alsations even more severely than genuine German soldiers.

Mr. Justice MANSFIELD pointed out that our job was to enforce the observance of International Law. The recruitment of these French nationals being illegal, the judgments were based on an illegality. Nothing whatever based on the illegal recruitment could be considered legal.

Dr. FANDERLIK admitted that the sentence was based on an illegality but from this it did not necessarily follow that the judge had committed a crime.

Mr. Justice MANSFIELD: The judges must have known that the enlistments of the Frenchmen was illegal.

Dr. MAYR-HARTING: It is essential whether the deserters can be considered as Germans by the German court, whether the court was compelled to consider them as Germans.

M. WOLD said that the question was to what extent the members of the Courts were responsible, in addition to the leaders of the Reich and the Gauleiter, whose crime was in no doubt. It was a case of conflict between National and International law and the question is whether we can state that the citizens should, by obeying their own national law which is contrary to International Law, be guilty of a war crime.

Commander MCUTON said that in the Netherlands Penal Law, there was an article stating that where there was a conflict between International Law and Netherlands Municipal Law, International Law prevails.

Dr. MAYR-HERTING asked whether any judge can possibly disregard the fact that a territory has been annexed and forms, therefore, according to national law, part of that State.

The consideration of this question was adjourned.

2/46.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 15th January 1946 at 3.0 p.m.  
at 4, Carlton Gardens, London, S.W.1.

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

There were also present :

Major Dr. Fanderlik,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Commander Mouton,	Netherlands.

M. WOLD had sent apologies for not being able to be present.

- I. Proposal by Mr. Justice MANSFIELD to consider the question: Is the Commission or any Committee thereof competent to consider and deal with charges under Paragraphs I, II and III of the Summary Recommendations concerning Japanese War Crimes and atrocities, adopted by the Commission on 29 August 1945 (Doc.C.145(1)).

Because Mr. Justice MANSFIELD was absent, it was decided to adjourn the consideration of this item.

- II. Request from French National Office. (Doc.III/25.)

Consideration of this item was adjourned.

- III. Czechoslovak Case No.1962 (Reinhold Boecker ) (Docs.III/23 and III/26).

Commander MOUTON drew attention to the fact that according to the discussion of the last meeting (see minutes No.1/46) Doc.III/26 ought to be supplemented by the following two additional questions:

- 1) whether the factory was a State factory or whether it was privately owned,
- 2) the circumstances of how the dismissal was effected, whether due notice was given to the workers or whether they were dismissed without notice.

Dr. MAYR-HARTING posed the question what the Committee would do if it did not get satisfactory answers to the questions. In his opinion, Committee III should reply to the questions of Committee I without investigating whether the material facts were given in the special case. It should reply to the question whether the crime of denationalisation could be committed by dismissal of employees of a certain nationality and, if so, under what conditions. Committee III is not a fact finding body. It is, therefore, up to Committee I to find out whether the relevant conditions are given in the special case.

He did not propose to reverse the decision arrived at in the last meeting, to write a letter on the lines of Doc.III/26 to the Czechoslovak National Office, but he proposed that the Secretary to Committee III should be asked to draft a report on the general question whether dismissal



of employees was a war crime and if so under what conditions. He went on to say that the Committee should consider this draft report by the Secretary together with the Draft Letter III/26. The Committee should first of all answer the legal questions, before it troubles the National Office.

The SECRETARY drew the attention of the Committee to the fact that in order to prepare a draft report he had to know the opinion of the Committee on the relevant questions. Such opinion had, so far, not been pronounced.

Commander MOUTON said that probably Committee III should advise Committee I to get the information on these questions.

Dr. SCHRAM-NIELSEN outlined his idea of how to settle the question before the Committee by saying that paragraph VI of Doc.C.149 should be quoted and then it should be said that the dismissal of workers may be considered a war crime subject to the conditions mentioned in Doc.C.149, inter alia, that the de facto power of the occupant was used, that dismissal took place to a certain extent, that it was an aspect of general policy and so on. The Secretary should take every condition laid down in Doc.C.149 and transfer it to the case in question. It would be important, for instance, if it could be proved that workers who changed their nationality were kept in the factory.

Commander MOUTON asked whether a reply on these lines would be very useful for Committee I.

Dr. MAYR-HARTING said that also for practical purposes, it would be preferable, if it were left to Committee I to find out the relevant facts.

Dr. SCHRAM-NIELSEN commented on the individual questions formulated in Doc. III/26 and remarked that e.g. questions 2 and 3 would be covered by the more general and theoretical expression that the dismissals must have had such an extent that there was a chance to reach the objective, namely to denationalise.

Commander MOUTON said that it would be advisable to state in the Minutes precisely the difference between the two systems advocated, namely that adopted in the last meeting and that proposed by Dr.Schram-Nielsen.

The approach proposed by Dr. Schram-Nielsen is a more direct one, whereas the method of sending a letter to the Czechoslovak National Office would only exclude other motives as security reasons or the wish not to commit a war-crime by compelling Czechs to work for the Germans in a war factory.

An answer on this letter excluding other motives would not necessarily prove that the dismissal was an attempt to denationalise the inhabitants of occupied territory.

It was decided that the Secretary should prepare a draft report which would be discussed in the next meeting together with the Draft Letter.

#### IV. Control Council Law No.10.

Dr. SCHRAM-NIELSEN said that Dec.15 of the Documents Series containing the text of the Law had not been delivered to him. He had not, therefore, had an opportunity of studying the Law. Because other members also said that they had not had the possibility of studying the enactment, its discussion was postponed.

Dr. MAYR-HARTING: There is one fact which should be kept in mind and that is that the judge knew that the annexation was contrary to International law and therefore the fact that the accused was considered a German citizen was also contrary to International law, but from the fact that they had taken the annexation for granted and accepted all necessary consequences of this annexation, it does not follow that they committed a war crime.

Dr. MAYR-HARTING further on pointed out that in view of the principles adopted rightly by Committee I, the sitting of judges in Court, even constituted contrary to International law, as such, could not be regarded as a war crime. The war crime would be only if such a Court applied a procedure contrary to the minimum standards accepted by civilised nations.

Dr. CYPRIAN said that it could be maintained that if the judges were offered some evidence to the effect that the accused were not German citizens and such evidence was overruled without taking into account evidence from the other side, their actions could be regarded as criminal, but in particular cases only.

On the proposal of Dr. SCHRAM-NIELSEN, which was, in principle, supported by Dr. CYPRIAN, the Committee decided that the reply to the second question should be that

(a) the mere fact that a judge sat in the court trying an Alsatian for desertion because according to the German law he was considered as a German citizen, it is not necessarily considered a war crime.

(b) That the judge in question is responsible as a war criminal only if he neglected the ordinary principles of legal procedure to such an extent that according to the laws of all civilised countries his acts or omissions would have constituted a punishable crime.

Dr. FANDERLIK was of the opinion that the subjective position of the accused should have been also taken into consideration by the judge and if the judge knew that the man was a Frenchman and therefore in a dilemma between his duties as a member of the German forces and his feelings as a French national, it was the duty of the judge to take into account such an extenuating circumstance and sentence the man, say, to 10 years of imprisonment and not to death.

Dr. MAYR-HARTING agreed to that and pointed out that if the judge in such circumstances sentenced the accused more severely than a genuine German citizen, then he certainly went beyond the standards expected by all civilised nations and such an abuse of power should be regarded as contrary to the principles of jurisdiction generally accepted. It was agreed that this point should also be added to the Committee's opinion.

The Committee decided that the secretary should prepare a draft report on the reply, which in accordance with the discussion and the above decisions, should be given to the French National Office. In order to submit the final report to the Commission as soon as possible, it was agreed that the next meeting will be held on Monday next, 4th February at 10.30 a.m., instead of on Tuesday.

IV. Czechoslovak Case No.1962. (Docs.III/23 and III/26.)

V. Consideration of Law.No.10 of the Control Council for Germany. (Documents Series No.15.(bis).)

Consideration of these two items was adjourned.



3/46.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III

Minutes of the Meeting of Committee III held on 29th January 1946  
at 3.0. p.m.

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

There were also present:

Major Dr. Fanderlik,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Commander Mouton,	Netherlands,
Dr. Cyprian,	Poland.

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

I. Minutes Nos. 1/46 and 2/46.

The approval of the minutes of the meetings of 8th and 15th January was adjourned until the next meeting as some of the members had not received copies.

II. Proposal by Mr. Justice Mansfield to consider the question:

"Is the Commission or any Committee thereof competent to consider and deal with charges under paras. I, II and III of the Summary Recommendations concerning Japanese war crimes and atrocities, adopted by the Commission on 29th August 1945. (Doc.C.145(1))"

Because no representative of Australia was present, it was decided to adjourn the consideration of this item until the next meeting. On the suggestion of Dr. MAYR-HARTING, it was also decided that the secretary should write letters to the representatives of China and Australia asking them to attend the meeting as their advice in this matter would be most helpful.

III. Request from the French National Office concerning two questions of Law. (Doc.III/25.) Continuation of discussion.

The Chairman summarised the discussion held in the previous meeting, pointing out that with regard to the question of jurisdiction, two points, in his opinion, are involved. (a) The question of concurrent jurisdiction, and (b) what would be the position if both countries claimed the jurisdiction.

As the Committee had not been asked to solve the first question he would prefer to leave it to the countries concerned and was of the opinion that the real issue was to whom the person should be surrendered if both national courts were competent because what the French National Office wants to know is which principle should be preferred if one claims the person for territorial reasons and the other for the nationality of the victim.

Commander MOUTON said that the Committee was not competent to solve such a question. Referring to the Doc.C.123, he pointed out that it had been recommended that the Commission should act as arbitrator in such cases. Several countries had agreed to it, but it had not been agreed to generally.



Dr. MAYR-HARTING concurred and stressed that in Doc.C.123 it is said that the Commission is prepared to act as arbitrator between countries which have agreed to that, but in this special case the position would be that Czechoslovakia had already agreed and France had not as yet. It was quite clear that the Commission could not decide in such cases as long as it was not known whether France would accept the decision of the Commission as an arbitrator. First of all, France had to say whether she agreed to the recommendation contained in Doc.C.123. If so, the Commission would decide accordingly and if not, it would consider whether a general theoretical opinion be advisable.

The Committee agreed that the reply to the question of jurisdiction should be:

(a) that without going into the question whether the French or Czechoslovak Courts should have the jurisdiction to try war crimes committed against French nationals on Czechoslovak territory, the Committee was of opinion that in case both countries claim the jurisdiction such action would not be contrary to International law.

(b) As it is still possible that the Commission will have to act as arbitrator in cases where a person is wanted as a war criminal by more than one country and as long as the recommendations contained in Doc.C.123 have not been accepted by France, it is not possible for the Commission to give any general ruling in such cases.

The Committee suggests that the Commission should state a time limit with regard to answers by Governments which have not yet replied to the recommendation proposed in Doc.C.123.

As soon as the position is clarified to the effect that the Commission should not act as arbitrator in this particular case, or in similar cases, then the Commission should consider the position and give a general theoretical opinion.

The Chairman then suggested to continue the discussion on the second legal question, namely whether the German military judges in sentencing as deserters French citizens, compulsorily enlisted into the German army, had committed war crimes.

Dr. CYPRIAN was of opinion that the judges obviously acted in such cases upon the German law of annexation of Alsace-Lorraine and therefore it was impossible to solve this question in general, because in point of fact the judge has to apply the law of his own country which is binding upon him and is not entitled to judge whether a law is legal or illegal.

Commander MOUTON also agreed that no general opinion could be given in this matter but in particular cases the criminality would depend in the first place on whether the accused had a proper defence and the right of appeal and whether the sentence was excessive or not.

Dr. FANDERLIK: The point is that the punishment was not excessive because desertion is punishable by death.

Dr. MAYR-HARTING pointed out that the Court had obviously taken for granted the annexation of the French territory and the accused were in fact considered as German citizens. The question therefore was whether the Court was entitled to consider the accused as German Citizens and if not, did the court commit a war crime by considering them as German citizens?

Dr. CYPRIAN: The court considered them as German citizens and it was not possible for the court to consider them otherwise.

Dr. MAYR-HARTING: There is one fact which should be kept in mind and that is that the judge knew that the annexation was contrary to International law and therefore the fact that the accused was considered a German citizen was also contrary to International law, but from the fact that they had taken the annexation for granted and accepted all necessary consequences of this annexation, it does not follow that they committed a war crime.

Dr. MAYR-HARTING further on pointed out that in view of the principles adopted rightly by Committee I, the sitting of judges in Court, even constituted contrary to International law, as such, could not be regarded as a war crime. The war crime would be only if such a Court applied a procedure contrary to the minimum standards accepted by civilised nations.

Dr. CYPRIAN said that it could be maintained that if the judges were offered some evidence to the effect that the accused were not German citizens and such evidence was overruled without taking into account evidence from the other side, their actions could be regarded as criminal, but in particular cases only.

On the proposal of Dr. SCHRAM-NIELSEN, which was, in principle, supported by Dr. CYPRIAN, the Committee decided that the reply to the second question should be that

(a) the mere fact that a judge sat in the court trying an Alsatian for desertion because according to the German law he was considered as a German citizen, it is not necessarily considered a war crime.

(b) That the judge in question is responsible as a war criminal only if he neglected the ordinary principles of legal procedure to such an extent that according to the laws of all civilised countries his acts or omissions would have constituted a punishable crime.

Dr. FANDERLIK was of the opinion that the subjective position of the accused should have been also taken into consideration by the judge and if the judge knew that the man was a Frenchman and therefore in a dilemma between his duties as a member of the German forces and his feelings as a French national, it was the duty of the judge to take into account such an extenuating circumstance and sentence the man, say, to 10 years of imprisonment and not to death.

Dr. MAYR-HARTING agreed to that and pointed out that if the judge in such circumstances sentenced the accused more severely than a genuine German citizen, then he certainly went beyond the standards expected by all civilised nations and such an abuse of power should be regarded as contrary to the principles of jurisdiction generally accepted. It was agreed that this point should also be added to the Committee's opinion.

The Committee decided that the secretary should prepare a draft report on the reply which in accordance with the discussion and the above decisions, should be given to the French National Office. In order to submit the final report to the Commission as soon as possible, it was agreed that the next meeting will be held on Monday next, 4th February at 10.30 a.m., instead of on Tuesday.

IV. Czechoslovak Case No.1962. (Docs.III/23 and III/26.)

V. Consideration of Law.No.10 of the Control Council for Germany. (Documents Series No.15.(bis).)

Consideration of these two items was adjourned.



3/46.(a)  
18th February 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 29th January 1946 at 3.0.p.m.

As amended at the instance of Dr. MAYR-HARTING (his letter of 14th February 1946; see Notes 5/46 para.II(1).)

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

There were also present:

Major Dr. Fanderlik,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Commander Mouton,	Netherlands,
Dr. Cyprian,	Poland.

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

I. Minutes Nos. 1/46 and 2/46.

The approval of the minutes of the meetings of 8th and 15th January was adjourned until the next meeting as some of the members had not received copies.

II. Proposal by Mr. Justice Mansfield to consider the question:

"Is the Commission or any Committee thereof competent to consider and deal with charges under paras. I, II and III of the Summary Recommendations concerning Japanese war crimes and atrocities, adopted by the Commission on 29th August 1945. (Doc.C.145(1))."

Because no representative of Australia was present, it was decided to adjourn the consideration of this item until the next meeting. On the suggestion of Dr. MAYR-HARTING, it was also decided that the secretary should write letters to the representatives of China and Australia asking them to attend the meeting as their advice in this matter would be most helpful.

III. Request from the French National Office concerning two questions of Law. (Doc.III/25.) Continuation of discussion.

The Chairman summarised the discussion held in the previous meeting, pointing out that with regard to the question of jurisdiction, two points, in his opinion, are involved. (a) the question of concurrent jurisdiction and (b) what would be the position if both countries asked for extradition.

As the Committee had not been asked to solve the first question he would prefer to leave it to the countries concerned and was of the opinion that the real issue was to whom the person should be surrendered if both national courts were competent because what the French National Office wants to know is which principle should be preferred if one claims the accused for territorial reasons and the other for the reason of the nationality of the victim.

Commander MOUTON said that the Committee was not competent to solve such a question. Referring to the Doc.C.123, he pointed out that it had been recommended that the Commission should act as arbitrator in such cases. Several countries had agreed to it, but it had not been agreed to generally.



Dr. MAYR-HARTING concurred and stressed that in Doc.C.123 it is said that the Commission is prepared to act as arbitrator between countries which have agreed to that, but in this special case the position was that Czechoslovakia had already agreed and France had not as yet. It was quite clear that the Commission could not state a general opinion and thus prejudice its decision on the concrete case. As long as the recommendation contained in Doc.C.123 has not been rejected by France, it may be possible that the Commission is called upon to act as arbitrator in the cases referred to in the paper, submitted by the French National Office. First of all, France had to say whether she agreed to the recommendation contained in Doc.C.123. If so, the Commission had to act as arbitrator in the concrete case and if not, it could give a theoretical opinion in general.

The Committee agreed that the reply to the question of jurisdiction should be:

(a) that without going into the question whether the French or Czechoslovak Courts should have the jurisdiction to try war crimes committed against French nationals on Czechoslovak territory, the Committee was of opinion that in case both countries claim the jurisdiction, such action would not be contrary to International law.

(b) As it is still possible that the Commission will have to act as arbitrator in cases where a person is wanted as a war criminal by more than one country and as long as the recommendations contained in Doc.C.123 have neither been accepted nor rejected by both parties, it is not possible for the Commission to give any general ruling in such cases.

The Committee suggests that the Commission should state its position with regard to the Governments which have not yet replied to the recommendation proposed in Doc.C.123.

As soon as the position is clarified to the effect that the Commission should not act as arbitrator in this particular or in similar cases, then the Commission would be at liberty to give a theoretical opinion in general.

The Chairman then suggested to continue the discussion on the second question, namely whether the German military judges in sentencing as deserters Alsations, compulsorily enlisted into the German army, had committed war crimes.

Dr. CYPRIAN was of opinion that the judges obviously acted in such cases upon the German law of annexation of Alsace-Lorraine and therefore it was impossible to solve this question in general, because in point of fact the judge has to apply the law of his own country which is binding upon him and is not entitled to judge whether a law is legal or illegal.

Commander MOUTON also agreed that no general opinion could be given in this matter but in particular cases the criminality would depend in the first place on whether the accused had a proper defence and the right of appeal and whether the sentence was excessive or not.

Dr. FANDERLIK: The point is that a death-sentence for desertion cannot be considered as excessive in every instance.

Dr. MAYR-HARTING pointed out that the Court had obviously taken for granted the annexation of the French territory and considered the accused as German citizens. The question therefore was whether the Court was entitled to consider the accused as German citizens and if not, whether the judge committed a war crime by doing so.

Dr. CYPRIAN: The court considered them as German citizens and it was not possible for the court to consider them otherwise.

Dr. MAYR-HARTING: We cannot exclude the possibility that the judges knew that the annexation was contrary to International law and that it was, therefore, contrary to International law as well to consider the accused as German citizens. In the opinion of the Commission, expressed in many decisions of Committee I in similar cases, usurpation of sovereignty is certainly a war crime. Responsible for this crime, is, however, the executive, the Government, possibly the legislature, not the judge or the administrative official, who based their decisions on the fact of the annexation and on the facts necessarily connected with this annexation. The mere fact that a judge based his decision on the assumption that Alsace-Lorraine was part of Germany and the inhabitants of this territory, therefore, German citizens, cannot be considered as a war crime.

Dr. MAYR-HARTING further pointed out that it would be, however, a war crime, if the Court applied a procedure or administered a law contrary to the minimum standards, accepted by civilized nations.

Dr. CYPRIAN said that it could be maintained that if the judges were offered some evidence to the effect that the accused were not German citizens and such evidence was overruled without taking into account evidence from the other side, their actions could be regarded as criminal, but in particular cases only.

On the proposal of Dr. SCHRAM-NIELSEN, which was, in principle, supported by Dr. CYPRIAN, the Committee decided that the reply to the second question should be that:

(a) the mere fact that a judge sat in the court trying an Alsatian for desertion because according to the German law he was considered as a German citizen, is not necessarily considered a war crime.

(b) That the judge in question is responsible as a war criminal only if he neglected the ordinary principles of legal procedure to such an extent that according to the laws of all civilized countries his acts or omissions could have constituted a punishable crime.

Dr. FANDERLIK was of the opinion that the subjective position of the accused should have been also taken into consideration by the judge and if the judge knew that the man was an Alsatian who became a German citizen against his will and therefore in a dilemma between his duties as a member of the German forces and his feelings as a French national, it was the duty of the judge to take into account such an extenuating circumstance and sentence the man, say to 10 years of imprisonment and not to death.

Dr. MAYR-HARTING agreed to that and pointed out that if the judge in such circumstances sentenced the accused more severely than a genuine German citizen, then he certainly went beyond the standards recognised by all civilized nations and such an abuse of power should be regarded as contrary to the principles of jurisdiction generally accepted. It was agreed that this point should also be added to the Committee's opinion.

The Committee decided that the secretary should prepare a draft report on the reply which in accordance with the discussion and the above decisions, should be given to the French National Office. In order to submit the final report to the Commission as soon as possible, it was agreed that the next meeting will be held on Monday next, 4th February, at 10.30 a.m., instead of on Tuesday.

IV. Czechoslovak Case No. 1962. (Docs. III/23 and III/26.)

V. Consideration of Law No. 10 of the Control Council for  
Germany. (Documents Series No. 15 (bis).)

Consideration of these two items was adjourned.



UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 4th February 1946  
at 10.30 a.m.

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

There were also present:

Dr. Schram-Nielsen, Denmark,  
Commander Mouton, Netherlands.

Dr. Cyprian (Poland) informed the Committee in person that he was not able to attend the meeting. Dr. Zivkovic had sent an apology for not being able to be present.

I. Request from the French National Office concerning  
two questions of Law. (Docs. III/25 and III/28).

The Committee continued the discussion on the basis of the conclusions at which the Committee had arrived in its meeting held on 29th January 1946. (3/46.).

Dr. MAYR-HARTING and Dr. SCHRAM-NIELSEN expressed themselves in favour of a report to be based on the decisions of the previous meeting, the nucleus of which is reproduced below.

Commander MOUTON dissented and expressed the view that the judges should not be entitled to rely unconditionally on the law enacting the annexation of Alsace-Lorraine as a circumstance excluding their criminal responsibility.

Nucleus of the report as agreed to by Dr. MAYR-HARTING  
and Dr. SCHRAM-NIELSEN, Commander MOUTON dissenting.

After a summary of Doc. I/46, the report should be to the following effect.

"(1) Regarding the first question: "Which Government is competent to deal with cases like those mentioned in the French document," the Commission is of opinion that there is no doubt that Czechoslovak Courts have jurisdiction over crimes committed on Czechoslovak territory. On the other hand, if French Courts claim jurisdiction in view of the fact that the victim was a French national, such claim would not be contrary to the rules of International law. (Lotus case.)

" As to the possible question to whom the criminals should be surrendered, the Commission feels that it is not possible to give any general ruling as long as the recommendation contained in Doc. C.123 has not been either accepted or rejected by the interested parties. It is not appropriate to give a general opinion as long as it is possible that the Commission will be called upon to act as arbitrator in concrete cases.

"(2) Further, the question has been raised in what circumstances German judges can be considered to be guilty of a war crime if they tried an Alsatian for desertion in consequence of the fact that Alsace-Lorraine was, contrary to International law, annexed during the war and that the inhabitants of this territory were, according to German law, considered to be German citizens.

" The Commission is of opinion that the mere fact of sitting on a Court trying an Alsatian deserter does not in itself constitute a war crime, and further, that the mere fact that a judge considered the annexation of Alsace-Lorraine as established does not eo ipso constitute a war crime. The judge is further, in the opinion of the Commission, not guilty of a war crime if he acted upon the consequences necessarily connected with this annexation, that is, in our case, the fact that the citizens of Alsace-Lorraine became, pursuant to this annexation, German citizens.

" The Commission is further of opinion that the judge is guilty of a war crime if the rules of procedure applied were contrary to the principles recognised by all civilized nations, or if the law administered was contrary to the principles recognised by all civilized nations to such an extent that his acts or omissions would have constituted a punishable crime. "

It was decided to adjourn the continuation of the discussion for the next meeting, which will be held on Tuesday 12th February at 3.0 p.m.

II. Proposal by Mr. Justice Mansfield to consider the question:

"Is the Commission or any Committee thereof competent to consider and deal with charges under paras. I, II and III of the Summary Recommendations concerning Japanese war crimes and atrocities, adopted by the Commission on 29th August 1945. (Doc.C.145 (1))."

In view of the fact that the main question raised in Mr. Justice Mansfield's proposal has been decided by the Commission in its meeting held on 30th January 1946, the Committee felt that it would be unnecessary and superfluous to deal with the question in Committee III. It was therefore decided to take this item off the agenda.

III. Agenda of the meeting of Committee III to be held on 12th February 1946.

The Agenda of the meeting of Committee III to be held on 12th February 1946 will therefore be:

- 1) Request from the French National Office concerning two questions of law. (Docs. III/25 and III/28). Continuation of discussion.
- 2) The Czechoslovak Case No. 1962 (Docs. III/23, III/26 and III/27) Continuation of discussion.
- 3) Consideration of Law No. 10 of the Control Council for Germany. Documents Series No. 15. (bis).

5/46.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 12th February 1946 at 3.0. p.m.

In the Chair,

Dr. Mayr-Harting (Czechoslovakia)

There were also present:

Lord Wright,  
Sir Robert Craigie,  
Dr. Schram-Nielsen,  
Commander Mouton,  
Dr. Cyprian,

Chairman of the Commission,  
United Kingdom,  
Denmark,  
Netherlands,  
Poland.

I. Election of a Deputy Chairman.

In accordance with the wish expressed in one of the last meetings of the Commission, Commander MOUTON proposed and Dr. SCHRAM-NIELSEN seconded that, in addition to Mr. Wld, a second Deputy Chairman should be elected and that Dr. MAYR-HARTING should hold this office.

Sir Robert CRAIGIE expressed his agreement and the Committee unanimously elected Dr. Mayr-Harting to be its Deputy Chairman.

II. Minutes Nos. 1, 2, 3 and 4/1946.

Minutes Nos. 1, 2 and 3 of 1946 were agreed to, the last mentioned subject to some alterations regarding the statements made by Dr. Fanderlik and Dr. Mayr-Harting, which these two gentlemen would send to the Secretary in writing.

As to Minutes No. 4/46, Dr. MAYR-HARTING proposed and the Committee agreed to the following two modifications:

(a) The first three sub-paragraphs of paragraph I of Minutes No. 4/46 will be replaced by the following text:

I. Request from the French National Office concerning two questions of Law. (Docs. III/25 and III/28.)

"The Committee drafted the report on the basis of its previous meeting (Minutes No. 3/46) as follows:

Nucleus of the Report."

(b) Paragraph three of page 2 of Minutes No. 4/46 will read as follows:

"It was decided to adjourn the discussion for the next meeting which will be held on Tuesday 12th February 1946 at 3.0 p.m. "

III. Request from the French National Office concerning two questions of Law. (Docs. III/25, III/28 and III/29.)

The Chairman, (Dr. MAYR-HARTING) summarised the previous proceedings devoted to this item and pointed out that in his view three questions were involved in this paper.



(1) The question of jurisdiction.

(2) The question whether it was a war crime that the judges considered the Alsatians as German citizens and tried and sentenced them accordingly.

With regard to this second question, Dr. MAYR-HARTING pointed out that on the 29th January (Minutes No. 3/46), the Committee had agreed that it would be contrary to the practice of Committee I if it considered as a war crime the mere fact of sitting in a court illegally instituted or, what amounted to the same, a court, the jurisdiction of which was illegally extended. He further stated that on 29th January Committee III had agreed that it would be contrary to the practice of Committee I to consider every judge a war criminal who acted upon the annexation of Alsace-Lorraine by Germany.

(3) The third question, in the opinion of the Chairman, was whether the German judge committed a war crime if he judged an Alsatian more severely than an ordinary German citizen. In his opinion it was the duty of a judge to deal with an Alsatian who had been conscripted into the German army, not in the same way as he dealt with a German citizen. It was the duty of the judge to consider the compulsory drafting of the Alsatian into the German army as an extenuating circumstance.

Dr. MAYR-HARTING pointed out that no difficulty had arisen on the first question.

As to the second question, the Committee had also agreed on it, but had met with some difficulties as to the contrary statement that no judge could be considered a war criminal for sitting on such a Court.

Sir Robert CRAIGIE said that he agreed with the attitude taken by the Committee as to the questions Nos. 1 and 2.

The Committee now proceeded to the

#### DISCUSSION OF DOCUMENT III/29. Draft A.

Paragraph I of Draft A. was agreed to without any reservations on the part of the members.

Paragraph II, sub-paragraph 1 of Draft A.

Sir Robert CRAIGIE pointed out that here and in the following paragraphs, where the view of Committee III is stated, the word "Commission" should always be replaced by the word "Committee" because otherwise confusion might arise. This was agreed to.

The Secretary drew attention to Draft B, paragraph II, where the rule arrived at in Draft A para. II, sub-para. 1 was stated more elaborately and submitted that this statement of the law could be inserted into the report which then would not only express the result at which the Committee had arrived, but also the reasoning which led the Committee to this result.

Dr. SCHRAM-NIELSEN said that this was superfluous; the statement in Draft A para. II, sub-para. 1 was so clear that further elaboration was unnecessary.

Commander MOUTON pointed out that not all the readers of the report would be familiar with the decision in the "LOTUS" case.

Sir Robert CRAIGIE thought that para. II of Draft B. should be inserted into the report.

Dr. CYRILAN agreed and pointed out that para. II of Draft B was very clearly drafted.

Accordingly, the Committee decided to insert para. II of Draft B into its report and charged the Secretary with making the necessary editorial alterations in para. II sub-para. 1 of Draft A, particularly leaving out the quotation of the Lotus case in line 7.

Paragraph II sub-para 2 of Draft A.

Dr. CYRILAN expressed the view that Dec. C.123 was not in point because this recommendation was applicable in cases of different claims, all of which were based on the principle of territoriality. Where a claim based upon the principle of territoriality competed with a claim to jurisdiction based on some other principle, no difficult questions of law were involved because in his opinion the principle of territoriality of criminal law ought to prevail.

Sir Robert CRAIGIE asked whether the Committee should not express its view that the claim based on the principle of territoriality was stronger than a claim based on, e.g., the principle of protection.

Dr. MAYR-HARTING, while agreeing with this view, as a point of substantive law, thought it would be unwise to lay down a general rule at the present juncture in view of the fact that it was not yet excluded that the Commission would have to act as arbitrator in similar cases.

The SECRETARY referred to his paper III/28 and pointed out that the question of surrender was not put in the French document. He also drew the attention of the Committee to the fact that the Control Council Law No. 10 was based on the strict application of the principle of territoriality (cf. Misc. No. 9, para. XV.C.)

Dr. SCHRAM-NIELSEN said that it was for the reason that the question of surrender was only implied, and not expressed, in the French paper that he had moved the insertion of the word "possible" into para. II, sub-para. 2 of Draft A.

Para. II, sub-para. 2 of Draft A was agreed with the proviso that the word "Commission" will always be replaced by the word "Committee".

Paragraph III of Draft B.

Before the Committee proceeded to discuss para. III of Draft A, the SECRETARY drew attention to para. III of Draft B, which dealt with the two assumptions contained in the French paper in the way indicated by Mr. Justice Mansfield in the meeting of 8th January. (1/46). All members agreed that it would be useful to insert para. III of Draft B into the Committee's report, Lord Wright remarking that the assumption there formulated was the very basis of the Committee's deliberations.

After discussion, it was unanimously agreed to insert para. III of Draft B as part of para. III into Draft A, after the wording of its first sub-paragraph had been modified to read as follows:

"As to the question of substance, namely the criminal responsibility of the judges, Committee III considers it necessary to draw attention to the fact that the document appears to proceed on the assumption that the French nationality of the victim was "a fact which must necessarily have been pointed out by the defence" and by stating that the judges could not be ignorant of the victims' Alsatian origin."

The second sub-paragraph of para.III of Draft B was agreed to with the modification that the words "without fault of their own" in line 5, should read: "through no fault of their own".

It was further agreed that this text of Draft B, para.III, as amended, should be inserted after para.III sub-para.1 of Draft A.

Lord Wright left the meeting.

Paragraph III, sub-paragraph 1 of Draft A.

This was agreed to.

Paragraph III sub-paragraph 2 of Draft A.

When para.III sub-para 2 of Draft A was discussed, Commander MOUTON submitted that para.IV and the following of Draft B should be read.

The Chairman (Dr.MAYR-HARTING) objected by stating that the question dealt with in paragraphs IV and the following of Draft B had already been decided by this Committee in its meeting of 29th January and that it was not appropriate to discuss the matter once more.

Paragraphs IV to IX of Draft B were, therefore, not read or discussed by the Committee.

After Sir Robert CRAIGIE had expressed his agreement with the result reached at the meeting held on 29th January 1946, the Committee considered para.III sub-para.2 of Draft A.

Dr. MAYR-HARTING proposed a new wording of para.III sub-para.2, saying that some phrases were based partly on a statement by M. de Baer and partly on a formulation contained in Draft B.

The following wording of para III, sub-para. 2 was agreed to:

" The mere fact of sitting as a judge on a court which was illegally instituted or the jurisdiction of which was illegally extended, does not in itself constitute a war crime; nor does the mere fact that a judge considered the annexation of Alsace-Lorraine as established constitute eo ipso a war crime.  
The judge is further, in the opinion of the Committee, not guilty of a war crime if he acted upon the consequences necessarily connected with his annexation, that is, in our case, the fact that the citizens of Alsace-Lorraine became, pursuant to this annexation, German citizens".

Para.III, sub-para. 3 of Draft A was agreed to, in the following wording proposed by Dr.Schran-Nielsen:

" The Committee is, however, of opinion that the judge is guilty of a war crime in cases where the rules of procedure applied or the law administered are contrary to the principles recognised by all civilised nations to such an extent that his acts or omissions would have constituted a punishable crime.  
The judge should have considered the fact that they became German citizens against their will as an extenuating circumstance and if he omitted to do so, and, on the contrary, judged the cases with particular severity, he may be guilty of a war crime."



Dr. SCHRAM-NIELSEN asked that the report of the Committee should be distributed to the Commission by to-morrow afternoon. The Secretary said that he would do his best to achieve this, but pointed out that his secretary had to deal with very many urgent matters and that he was not sure whether the report could be dictated, stencilled and multiplied by the following afternoon.

#### IV. Discussion of the Czechoslovak Case No.1962.

The report III/27 was discussed and all members expressed their agreement.

Sir Robert CRAIGIE suggested one addition. He said: My Government is very hesitant about increasing too far the scope of the crime of denationalisation. It should not be carried down to the humblest school teacher and the Committee should approach the problem with a great deal of caution.

Sir Robert agreed with the two conditions laid down in para.III sub-para.2 of Doc.III/27 but meant that a third point should be added, to the effect, that the accused must have been acting as a potent instrument of this denationalisation policy.

After a discussion, in which Dr. MAYR-HARTING and Dr. SCHRAM-NIELSEN took part, it was decided to add to para.III sub-para.3, after the words "abused to such criminal purposes", the following proviso:

"provided that the accused played a rôle of a certain importance in planning or executing the said policy."

On the motion of Dr. MAYR-HARTING, it was decided to leave out para.II of Doc.III/27 and make the consequential alteration in para.III sub-para.1 which, it was decided, should begin with the following words;

"The question is whether the war crime of attempts to denationalise..."

It was decided that this report should be submitted by Committee III to Committee I and circulated to the members of the Commission for information as a Commission Document. This procedure differs from the procedure in the French case where the report will be submitted to the Commission.

#### V. Consideration of Law No.10 of the Control Council for Germany. (Document Series No.15(bis) and Misc.No. 9.)

The Chairman, Dr. MAYR-HARTING, proposed that the Committee should not now discuss Law No.10 because its discussion was on the agenda of the meeting of the Commission to be held the following day (13th February). Committee III should wait for the result of the discussion of the Commission which would probably deal only with Art.IV of the Law, regulating the problem of the surrender of war criminals. Committee III would in this case resume its consideration of the other provisions of the Law in due time.

The Committee was adjourned sine die.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 12th March, 1946,  
at 3.0 p.m.

In the Chair,

Dr. Mayr-Harting, (Czechoslovakia),

There were also present:

Sir Robert Craigie,  
Major Dr. Fanderlik,  
Commander Mouton,  
Dr. Lachs,

United Kingdom,  
Czechoslovakia,  
Netherlands,  
Poland.

I. Minutes No. 5/46.

The Minutes No. 5/46 as amended by the insertion circulated as 5/46(a) were approved.

II. The Czechoslovak Case No. 2553. (Christoph Manner.)

The case of Christoph Manner, referred to Committee III by Committee I as outlined in Doc. III/30, was discussed.

In opening the discussion, Dr. MAYR-HARTING pointed out that the crime with which Manner is charged was a typical Nazi crime. Everybody will remember that intrusions on foreign territory, even in peace time and murder or kidnapping of persons obnoxious to the Nazi régime were regularly adopted instruments of Nazi policy. It represented a suitable method of demonstrating that the power of the German Reich was not confined to the borders of Germany. Many similar cases happened on Czechoslovak territory and also on the territory of other States, e.g. Switzerland, and Dr. Mayr-Harting remembered a similar action in Brazil. Dr. Mayr-Harting thought that the Committee's task would be to look for a definition of the notion "crime against humanity", and then to examine whether the case falls under that definition, e.g., whether essential elements of this type of crime can be found in the present case. Dr. Mayr-Harting said that the Commission had so far no great experience in dealing with crimes against humanity and it has actually discussed only one (the case against Sepp Dietz.) Some guidance could be derived from the Nuremberg indictment and proceedings and probably also from the proceedings of the International Conference on the Repression of Terrorism held at Geneva in 1937. All that there was called "Terrorism", is part of what we now call "crimes against humanity". Dr. Mayr-Harting also drew attention to the provisions regarding crimes against humanity contained in the Control Council Law No. 10.

Sir Robert CRAIGIE said that the Nuremberg indictment confirmed his first impression that what was contemplated in the Four-Power Agreement as a crime against humanity was rather a crime on a big scale to the detriment of humanity in general. Sir Robert added, however, that the Nuremberg indictment was framed against the people at the top and that therefore the emphasis was necessarily on conspiracy and planning. What is said in the indictment is not entirely relevant to the case we have before us to-day. Sir Robert's first approach to the question, whether it was intended to cover crimes like that the Committee had to consider to-day, was one of doubt. The opinion of the United Kingdom Foreign Office was that we ought not to apply the notion of crime against humanity to individual cases. Sir Robert had agreed to the listing of Sepp Dietz in order to bring him to justice, and that case, doubtful though it was, with regard to whether or not it fell under "crimes against humanity", consisted of murder and killing of a considerable number of people. The case of Sepp Dietz



seemed, therefore, to fall with more certainty within the definition of crimes against humanity than the present case. Sir Robert's preference would be for the kind of procedure which was suggested by Captain Wolff in the last meeting of Committee I, namely that there should be an understanding with the occupying authorities for handing over people in the position of the accused in the present case.

Commander MOUTON said he was not sure whether extradition would apply in the present case. He did not know whether machinery for extradition had been created.

Dr. SCHWELB referred to Art. IV of Control Council Law No. 10 which was also applicable to crimes against humanity. (Art. IV refers to crimes as defined in Art. II., and Art. II. contains provisions with regard to crimes against humanity.)

Dr. MAYR-HARTING replied to Sir Robert Craigie that it would be a negation of the work of the Commission if member governments were referred to direct negotiations with the military authorities on the spot.

Sir Robert CRAIGIE remarked that the resolution adopted by the Commission on 20th February, Dec. C. 177, provided for exceptional cases, where the normal procedure (listing by the Commission) need not be applied. There was no great danger if we admitted among these exceptions cases where it was doubtful whether a war crime contained within the scope of the documents we had before us, had been committed, particularly if we admitted among the exceptions crimes committed before the outbreak of war.

Commander MOUTON agreed that kidnapping could be considered to be a symptom of a general policy adopted by the Nazi Government. He knew of a case of kidnapping which had taken place in Holland in 1939. He further suggested that the Commission should try to get information about the discussions which preceded the Four-Power Agreement of 8th August 1945, because these discussions might throw more light on what was in the minds of the draftsmen when using the term "crime against humanity".

Sir Robert CRAIGIE promised that he would enquire from the Foreign Office whether there was any material, but he doubted whether we would get much further.

Dr. LACHS: In dealing with this question, we are laying down, as it were, principles of case law. From this point of view, he agreed that it was dangerous just to establish a precedent by asking for extradition without giving a qualification of the crime for which extradition was asked. He said that there was no exclusiveness between count 4 of the Nuremberg indictment on the one hand, and counts 2 and 3 on the other. There was the danger that some confusion might arise. Dr. Lachs was of opinion that only such crimes should be regarded as crimes against humanity as were more than normal crimes. We should limit the notion of crimes against humanity to such acts against which there is no adequate protection in ordinary criminal law. He felt that the Committee would expand the notion too far if it included the case of Christoph Manner under crimes against humanity. A demarkation line between ordinary crimes and crimes against humanity should be clearly drawn. A precedent will be in the verdict of the Nuremberg Tribunal. Dr. Lachs summed up by saying that we should try to establish a principle that where existing penal legislation is adequate, we should leave the matter to be dealt with by municipal law.

Sir Robert CRAIGIE: When these two sets of crimes, (crimes against humanity and crimes against peace) were drawn up, the contracting Parties had in mind the planning at a high level. He, therefore, was not sure how much guidance the Commission would get from the Nuremberg judgment. The logical result of restricting the personal liability for crimes against humanity to persons on the level of planning would be to leave out all the



instruments of this policy. That would be unfortunate. On the other hand, we are on very weak ground when trying to get down to the individuals, who acted as instruments. Where we are in doubt in such cases and where municipal law can be made to apply, we should let the ordinary processes of municipal law do the work for us. In dealing with this particular case, we would be wise to say: until we have more data on which to decide what is to be the actual scope of "crimes against humanity", we should deal with them on the more practical basis of ad hoc arrangements.

Sir Robert CRAIGIE was sure that such an act as this, would, in normal circumstances, be extraditable.

Dr. MAYR-HARTING said that the Committee should use the possibilities offered by this case to find out what this Commission considers to be a crime against humanity. Dr. Lachs had given some suggestions as to what elements should be contained in a crime to fall under this category. Dr. Mayr-Harting therefore suggested to leave out for the time being the question whether this case was a crime against humanity and to try to arrive at a general definition. It was clear that Art.6(c) of the Charter dealt with two types of crimes against humanity, namely persecutions on certain grounds on the one hand, and murder, extermination, etc. on the other. As to the persecution, the purpose was a relevant consideration. It was our task to find a delimitation with regard to murder, extermination, etc.

Dr. LACHS agreed with the Chairman's proposal to enter into a general discussion on this plane and try to elaborate certain elements constituting a crime against humanity. Dr. Lachs referred to the implication immanent in considerations of this kind. When discussing the notion of crimes against humanity the Committee would have to have in mind the values to be protected by the law making crimes against humanity punishable. Thus the discussion would be linked up with the problem of human rights to be protected by criminal law.

Commander MOUTON felt it a bit premature to enter into such a general discussion as long as we have not got (a) information about the discussions preceding the Four-Power Agreement, and (b) the Nuremberg sentences.

Dr. SCHWELB replied that a great deal of what must have been in the minds of the four Powers in concluding the agreement of 8th August 1945, can be gathered from documents of this Commission which has devoted much time to defining the scope of the retributive action of the United Nations to the effect that crimes such as those committed against Jews of many nationalities should also fall under it. He referred to the collection of documents prepared by Dr. Eder's office, Doc.C.29, particularly to President Roosevelt's statement of 12th June 1944 (Doc.C.29(a)) and to the correspondence with the United Kingdom Government contained in the Doc.C.78. He also referred to Mr. Eden's statement of 4th October 1944 and to Mr. Law's statement of 31st January, 1945.

Dr. MAYR-HARTING proposed that Dr. Schwelb should collect sources relevant for the definition of crimes against humanity.

Dr. LACHS added that Dr. Schwelb should also prepare a paper as a basis for the discussion.

It was decided to charge Dr. SCHWELB with these tasks.

Sir Robert CRAIGIE thought that from the notion of crime against humanity such acts should be excluded as fell under the notion of war crimes proper.

Dr. MAYR-HARTING thought that such exclusion should not take place at the outset because the notions were overlapping.

Sir Robert suggested that Dr. Schwelb should, in preparing the material, not exclude considerations which could throw light on the equally important notion of crimes against peace.

It was decided to adjourn the discussion till Tuesday 26th March, 1946, at 3.0 p.m.

Committee III.  
Minutes No. 7/46.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 26th March 1946  
at 3.0 p.m.

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

There were also present:

Lord Wright,  
Sir Robert Craigie,  
Major Dr. Fanderlik,  
Dr. Schran-Nielsen,  
Commander Neuton,  
Dr. Szerer,  
Dr. Zivkovic.

Chairman of the Commission,  
United Kingdom,  
Czechoslovakia.  
Denmark,  
Netherlands,  
Poland,  
Yugoslavia.

I. Minutes No. 6/46.

Minutes No. 6/46 were approved after the record of Sir Robert Craigie's statement on page 1 had been amended to read as follows:

" Sir Robert CRAIGIE said that the Nuremberg indictment confirmed his first impression that what was contemplated in the Four-Power Agreement as a crime against humanity was rather a crime on a big scale to the detriment of humanity in general. Sir Robert added, that the Nuremberg indictment was framed against the people at the top and that therefore the emphasis was necessarily on conspiracy and planning. What is said in the indictment is not entirely relevant to the case we have before us to-day. Sir Robert's first approach to the question, whether it was intended to cover crimes like that the Committee had to consider to-day, was one of doubt. The opinion of the United Kingdom Foreign Office was that we ought not to apply the notion of crime against humanity to relatively minor individual cases. Sir Robert had agreed to the listing of Sepp Dietz in order to bring him to justice, and that case, doubtful though it was with regard to whether or not it fell under "crimes against humanity", consisted of murder and killing of a considerable number of people. "

II. The Alsatian Deserters Case.

Before the Committee started dealing with the proposed agenda, Sir Robert CRAIGIE raised a special point referring to the Alsatian deserters case. (Doc. C.174). He said that after discussion between Dr. Mayr-Harting and himself, he had thought it might be a good thing to ask the Foreign Office whether there were any other enactments relating to the annexation of Alsace-Lorraine which were not before the Commission, Committee III and the Ad Hoc Committee respectively. He had asked the Foreign Office to go through it to see whether there was anything which might be relevant to the general position.

As a matter of procedure, it had occurred to Sir Robert that Committee III might like to prepare a redraft of its report which could then be seen by the Ad Hoc Committee. If the Ad Hoc Committee cared to submit to the Commission a redraft of the report by Committee III, the impression of lack of unanimity which does not now exist, might be avoided.



Dr. MAYR-HARTING said that he was the last to make any opposition. We hoped to find a compromise. Dr. Mayr-Harting referred to the Nuremberg indictment which contained a charge connected with the annexation of Alsace-Lorraine. In his opinion, it would be dangerous to acquit the German government of this charge before the court had the possibility to express an opinion on that point. He asked Sir Robert to draw the attention of the Foreign Office to this fact. If we came to the conclusion that we could not accept the fact that Alsace-Lorraine had not been annexed, then it would be more difficult to find a solution, but not more so for this committee than for the Ad Hoc Committee. Dr. Mayr-Harting would support any decision which would bring it back to the Committee.

Sir Robert CRAIGIE: It will have to go to the Ad Hoc Committee, having been referred to them by the Commission, but we might expedite things if we find that we can agree first.

Dr. MAYR-HARTING summed up by stating that the Committee agreed to Sir Robert's proposal.

III. The Czechoslovak Case No. 2553 (Christoph Manner)  
and general discussion on the term "Crimes Against Humanity" (Doc. III/33)

Dr. MAYR-HARTING recalled that in the last meeting (see minutes No. 6/46), the Committee had come to the conclusion that it would be necessary first of all to find something like a definition of "crimes against humanity", and then to apply this definition to the special case in hand. In the meantime, two Yugoslav cases had been referred to the Committee. They had, apart from one exception, one thing in common which distinguished them from the Czechoslovak case. In the Czechoslovak case the crime was committed before the war - or to put it correctly, at a time the committee considers for the purpose of this case, to be before the war, - the cases charged by the Yugoslav National Office on the other hand were committed during the war by Italians against Italian citizens. Dr. Mayr-Harting said he would like to make it clear at the beginning, that we were, of course, competent to deal with crimes against peace and crimes against humanity. Another question was whether we could deal with the Yugoslav cases in the same way as with cases of crimes committed against allied citizens or on allied territory, but we had to answer only the question whether the facts in the Yugoslav cases constituted crimes against humanity or not. If they did, it would be for Committee I or some other organ of the Commission to find out the procedure appropriate to them. Dr. Mayr-Harting then referred to the paper III/33.

Dr. ZIVKOVIC drew attention to the particular interest of the Yugoslav delegation in this discussion and referred to his document I/30. He said: If we try to make a special definition according to what has been provided for in the Charter, in Law No. 10 and in the Charter for the Far Eastern Tribunal, we should bear in mind particular cases which were brought before the Commission, and which give rise to this discussion because the definition should serve to solve the problems raised in these charges. When reading Sir Robert Craigie's statement in the Minutes No. 6/46, that a crime against humanity was rather a crime on a big scale to the detriment of humanity in general, Dr. Zivkovic was struck by the question whether Sir Robert thought that the word "humanity" in the text meant mankind or whether he thought that it meant humanitarian laws or offences committed against laws of humanity and moral principles.

Sir Robert CRAIGIE: I do not consider it as a crime against mankind in general, but rather as a crime of an inhumane character, but judging from the text which we have before us, I concluded that it meant crimes on a large scale against civilian populations.

Dr. ZIVKOVIC: I agree with Sir Robert that the Nuremberg indictment was framed against the people at the top, but it does not follow from that that the guilty and responsible for such crimes are restricted to the major criminals. From Law No.10 it follows that also the actual perpetrators are responsible and will undergo punishment. Dr. Zivkovic was, in principle, in agreement with the paper III/33 but he was not quite sure whether we could, while we were trying to analyse and draw analytical legal conclusions from the text before us, restrict ourselves to such very restricted conclusions as Dr. Schwelb had made. He drew attention to the cases of Italian citizens of Yugoslav race serving in Yugoslav partisan units. This case may be unique, the crimes were serious, committed on a vast scale and even though they were combatants, and that Art.6. provides only for civilian populations, we must bear in mind that these were also crimes which deserved punishment. Therefore, Dr. Zivkovic would not be ready to agree to conclusion No.2. of paragraph VI on page 13, that crimes committed against combatants were outside the scope of the nation. It would be difficult to say that because if we referred now to Law No.10, we would see that the definition said "includes but is not limited to". The notion therefore embraced other akin cases, not necessarily similar or identical in type. Furthermore, it was difficult to estimate and say whether these Yugoslav combatants of Italian citizenship were victims of Italian crimes only because they were combatants or because they were members of the Yugoslav minority in Italy. They were the victims of crimes, and atrocities were committed against them, irrespective of the fact that they were combatants.

Commander MOUTON considered conclusion No.10 of paragraph VI of III/33 and said that Dr. Schwelb had found authority for this proposition in Law No.10, but this worked only in Germany and he was not too sure whether this could be accepted as a general rule of international law. Although Commander Mouton strongly so wished, he had never found anywhere anything written down from which we could conclude that the crimes described in the Charter were also meant for the minor criminals.

Dr. SCHRAM-NIELSEN drew attention to the fact that the restriction to civilian populations in Art.6.(c) referred only to the first type of crimes against humanity, but was not stated as far as persecutions on political, racial and religious grounds were concerned. In his opinion, persecutions of combatants were within the notion of crimes against humanity.

Dr. SCHWELB replied to the point raised by Dr. Zivkovic that as far as crimes against humanity of the murder type were concerned, it was expressly stated in the Charter that it refers only to civilian populations. This did not, in Dr. Schwelb's opinion, necessarily mean that the cases brought by the Yugoslav National Office concerning the ill-treatment of Yugoslav partisans of Italian citizenship were outside the scope. Italians could not, as it were, have it both ways; they must either treat these partisans as combatants and then the partisans are under the protection of Art.6(b) or they must treat them as members of the civilian population, then they are under the protection of Art.6(c). If these partisans were recognised as part of the belligerent armed forces and as combatants, then they were under the protection of the laws of war irrespective of their nationality. Then it would have been a war crime, e.g., to shoot them summarily without due legal proceedings. If they were not combatants, the perpetrators could not exclude their responsibility under (b) by stating that the victims were not combatants, but civilians bearing arms illegitimately, and simultaneously exclude responsibility under (c) by stating that they were not members of the civilian population.

With regard to the point raised by Dr. Schram-Nielsen, Dr. Schwelb admitted that the notion of a crime against humanity of the persecution type was not expressly restricted to civilian populations, and that



persecutions on political, racial or religious grounds would according to the wording, fall under the notion also if committed against members of the armed forces. He added, however:

1) Persecutions were, under the Charter, punishable only if in connection with another crime within the jurisdiction of the tribunal. Such persecutions must, therefore, be ancillary either to a crime against peace or to a war crime, or to a crime against humanity of the murder type. In the cases of (a) and (b), it was evident that allied victims must be involved, and in the cases of the murder type, (c), civilians must be involved as victims of the crime to which the persecution was ancillary.

2) Dr. Schwelb further drew attention to the fact that it would be a strange result to say that crimes of the murder type were punishable only if committed against the civilian population, whereas the more heinous crimes of the persecution type would fall under the notion also if committed against members of the armed forces. The grammatical interpretation led, of course to this result and therefore it would be necessary to elaborate a little more on the points raised by Dr. Schram-Nielsen.

As far as Commander Mouton's objection to Dr. Schwelb's proposition No. 10 was concerned, Dr. Schwelb said that the wording of the Charter itself, quite apart from Law No. 10, could be interpreted to the effect that it stated the criminal responsibility also of the subordinate perpetrators. The last paragraph of Art. 6. said that the leaders, organisers, etc. were responsible for all acts performed by any persons in execution of such plan. If the provisions say that person (A) is responsible for the acts of (B), it implies that (B) has also committed a crime. If the Charter did not mean that that for which (A) is vicariously responsible is a crime, the sentence would have no meaning. If the provision says that (A) is responsible for (B) and what (B) has committed is not a crime, then the statement of (A)'s responsibility would be meaningless, because he would be responsible for something which is not a crime. Another argument which could be adduced in support of point 10 is what Mr. Justice Jackson said during his speech: "Did it take these men by surprise that murder is treated as a crime?". There is nothing in Art. 6. which compels us to arrive at the opinion that the actual perpetrators are not committing crimes if they commit acts of the type described under (c).

Commander MOUTON said that it would be better to lay down point 10 less positively.

Dr. ZIVKOVIC: Commander Mouton overlooks the fact that Law No. 10 is as much a part of contemporary international law as the Charter. Both legal instruments, the Charter on the one hand and Law No. 10 on the other, are the product of the Four Powers which act on behalf of all the United Nations. Law No. 10 provides for the punishment of the actual perpetrators of all three categories of crimes.

Dr. MAYR-HARTING was not sure whether Law No. 10 was technically international law, but it was certainly very important in its bearing on the interpretation of the Charter.

Commander MOUTON: Law No. 10 is local law working only in Germany and that makes it doubtful whether it could be considered as a document of international law.

Sir Robert CRAIGIE: It always seemed to me when I read it that Art. 6.(c) of the Charter was designed to deal with the people at the top who have planned and organised these big crimes against humanity, either of the murder type or the persecution type. In the last paragraph, it goes on to say that the leaders participating in the execution of the common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed in the execution of such plan. I am



wondering whether the people who framed this had not in mind exactly this point, that in creating this new point the framers were intending to limit it to the leaders, attributing to them any responsibility which might otherwise be applicable to the perpetrators.

Dr. SCHWELB: The responsibility of the lesser perpetrators is expressly stated in Law No.10 which speaks of "any person".

Dr. SZERER doubted the statement in No.3. of the summary which said that crimes against humanity may consist also of violations of the laws and customs of war. He said: I asked myself what is the use of a notion of a crime against humanity if this notion covers also other crimes. I have nothing against this notion of a crime against humanity, but are we not rather asked to define this notion of a crime against humanity which would constitute a separate category of crime, a category for itself, which we can distinguish from violations of the laws and customs of war? I know where this comes from, namely from the wording of Art.6. but the question arises: are these texts so perfect, were they drafted in such a way that they might be considered as an absolute immaculate source. We might perhaps suppose for a moment that it is not so, that perhaps there was some laxity in drafting. Inserting on the text we might give rise to something which could be misleading.

Dr. SCHWELB said he was in agreement with Dr. Szerer and also felt that the notion of crimes against humanity if it included war crimes in the narrower sense was not very satisfactory from the point of view of building up a scientific system of law, but he had thought it to be his task to interpret the texts as they were laid down and as they were being applied in practice. The prosecution states in the indictment Count 4, X, 5th paragraph, as follows: "The prosecution will rely upon the facts pleaded in Count Three as also constituting Crimes against Humanity." Count 3 concerns war crimes in the narrower sense, and count 4 crimes against humanity. If I were the author of a text book on international criminal law, I should be in a position to say: For the purposes of my text book, and for my students and examinees I shall prefer the narrower notion of crimes against humanity as excluding war crimes in the narrower sense. As a practical lawyer, however, I cannot disregard the statutory definition in favour of one which would be, no doubt, scientifically preferable. Civilian populations of allied countries enjoy protection under (b) and (c), but the civilian population of non-allied countries only under (c).

Dr. MAYR-HARTING: It is not our task to define a pure notion of crimes against humanity. Our terms of reference say that we have to define crimes against humanity according to the Charter.

Dr. SCHWELB: Under this convention which, while drafting the paper, I considered to be binding upon me, a crime against humanity is only one which is committed against the civilian population, with the exception of some proviso to be made to cover Dr. Schrag-Nielsen's point.

Dr. ZIVKOVIC: Dr. Szerer is considering the notion of crime against humanity as a very wide one, but the answer to the question is that there is the technical classification which was made up to cover all cases which were estimated politically speaking, by the United Nations to deserve punishment. There were atrocities and crimes which were committed and which could not be embraced within the traditional definition of war crime. One of these offences was aggressive war. So, the term "crime against peace" was introduced. There were, e.g. the crimes against Jews which you cannot consider, strictly speaking, as war crimes, but which still deserve a punishment. All these crimes, except aggressive war, were embraced under Art.6(c) and Art.II c. of Law No.10.

Dr. MAYR-HARTING referred to the famous passage in the Preamble to the Hague Regulations and to the significant fact that the Preamble gives the possibility to apply the laws and customs of war in cases which are not covered by the letter of the Regulations. Not all the laws and customs of war are in this category but only those which infringe against the dictates of public conscience and the laws of humanity. Every crime against humanity is a contravention of the laws of warfare but it is not the other way round.

Dr. SZERER: Under the Charter, it is clear that there should be three distinct categories of crimes, one against peace, the second violations of the laws and customs of war and the third against humanity. If you say that crimes against humanity may consist of the violations of the laws and customs of war, this is the second point and you do not make the distinction between (b) and (c).

Major FANDERLIK drew attention to the difference in language in the Hague Regulations on the one hand and in the Charter and in Law No.10 on the other. If the soldier did something on his own account it was a violation of the laws and customs of war, it would be punished, but not under the Charter because what the Charter had in mind was just a conspiracy.

Dr. SCHWELB asked whether the point raised by Dr. Szerer would be met if we made it clear that there could be a scientifically clean notice of crime against humanity which would be formulated disregarding the positive provisions and if simultaneously the notion of crimes against humanity under the positive law would be given.

Dr. SZERER agreed.

Sir Robert CRAIGIE: Dr. Szerer's point is a very important one. We all try to draw up a document which is clear and which will help Committee I. We would prefer to have a distinct class of crimes against humanity from those of war crimes proper, but as we are dealing with what is really a new form of crime under international law, I think we are bound to do the best we can by interpreting such texts as have been drawn up by international agreement in order to define these crimes. It is difficult for this Commission to endeavour by itself to determine what is a crime against humanity without having regard to the existing texts. I sympathise with Dr. Szerer's view, but I am doubtful whether we can disregard the Charter which is our bible as far as interpreting these new crimes against international law is concerned.

Dr. SZERER: I am not for disregarding the Charter. I think it is an indication of these three points that the Charter means crimes against humanity to be a distinct category. I would disregard the indictment and anything that is not in agreement with the Charter.

Dr. ZIVKOVIC discussed point 4 of the summary and said that it should not read "thereby becomes the concern of foreign States", but should say that even one foreign state may be concerned with a crime against humanity committed in another State.

Dr. MAYR-HARTING was of opinion that it should be made clear that for the notion of a crime against humanity it is necessary that it should endanger the international community.

Dr. SCHWELB asked whether this point was not covered by Art.4. of the summary.

Dr. ZIVKOVIC replied to Dr. Mayr-Harting by saying that Art.4. of Law No.10 dealing with extradition showed that the concern of the third State was recognised.

Commander MOUTON: Might I go back to my suggestion. I think that the whole discussion proves that although Dr. Schwebel has done whatever was possible to give an interpretation in his document, we are still lacking a source from which the designers of the Charter got their ideas. Is it absolutely impossible to approach the four Powers on behalf of the Commission to get hold of the discussions which preceded the drafting of the Charter?

Dr. MAYR-HARTING referred to informative sources quoted in III/33 which mainly consisted in documents of this Commission.

Sir Robert CRAIGIE: I have already asked the Foreign Office on your suggestion whether they can produce anything of what was in the minds of the framers of the Charter, and they are having a search made, but it is not likely to be very fruitful.

Dr. SCHWEBEL: The point which was raised by Dr. Szerer was a point of legal nicety and systematics. I think some very valuable points have been made during this meeting and will lead to an important improvement of the proposed summary, but none of these points suggest that the law was uncertain, or at least less certain than international law generally is.

Dr. SCHRAM-NIELSEN: I think Dr. Szerer did not take sufficient note that the Four-Powers agreement is a treaty and not a scientific report. I am quite sure that when they made that treaty, they did not go so deeply into the matter and in my opinion there is no reason why paragraph (c) should not cover the wider field than that limited by section (a) and (b). In my opinion it is not quite inconsistent, because it is a treaty and we may imagine that when they had agreed to section (a) and section (b), they thought that they had missed something so they added (c) without amending (a) and (b) accordingly.

Lord Wright said that he had always been of the opinion that the terms of crimes against humanity and war crimes proper overlapped and that no harm would result from that.

Sir Robert CRAIGIE: We are all in agreement that, as the text stands, crimes against humanity cover not only this new conception of crimes against civilian populations, of non-allied or non-occupied territory, but they also cover ordinary war crimes, that is, crimes against the civilian populations of occupied territory. Ought we not to distinguish between the two? Dr. Szerer's view is that the charter does distinguish and that we are probably reading it wrongly in saying that the Charter covers two types of crimes.

Lord WRIGHT: There is bound to be some overlapping but it does not matter with this form of document, which is a useful document drawn up for practical purposes.

Sir Robert CRAIGIE: If Committee I were faced with a charge which fell both under (b) and (c), Committee I would say that it comes under either or both, leave it at that, and list the man as a war criminal proper.

Dr. MAYR-HARTING said that on the whole the committee had agreed on the 12 points. As to point 2, the amendment proposed by Dr. Schram-Nielsen would have to be incorporated. Doubts as to point 10 had been expressed, but Dr. Mayr-Harting understood that on the whole the Committee agreed with this point too.

Dr. ZIVKOVIC drew attention again to his question concerning paragraph 4 and asked whether several States at the same time were necessary.



Sir Robert CRAIGIE said that it could read "one or more Foreign States".

Dr. SCHWELB: As to Dr. Schram-Nielsen's amendment, it is difficult to conceive a case of a crime which is only a crime against humanity without being against the laws and customs of war and which nevertheless was committed against combatants only.

If the victim is a combatant soldier in battle and he is illegitimately ill-treated, then it is a violation of the laws and customs of war. If he is a prisoner of war and he is ill-treated it is again a violation of the laws and customs of war. An act falling under the notion of a crime against humanity committed against armed forces would be a case of persecution by a belligerent of his own soldiers, e.g. an Italian commander discriminating between Italian soldiers of Jewish origin and other Italian soldiers.

Dr. MAYR-HARTING drew attention to the cases of Yugoslav partisans of Italian nationality.

Dr. SCHRAM-NIELSEN: There is another point. If the perpetrator is an Italian civilian and the victim a Yugoslav soldier, what then? It falls certainly within the limits of Art. 6(c).

Dr. ZIVKOVIC stated with regard to the proposed passage "becomes the concern of one or more foreign States": When the Hague Regulations were made, I do not think there was such an extensive use of enemy nationals willing to collaborate with a coalition of Powers against their own country. I do not think that at that time such cases were as extensively used as during this war. We had two army corps in Italy of Yugoslavs of Italian citizenship, the 9th and 11th Army corps, which were set up according to the rules of the Hague Regulations and had regular officers and liaison. That is a new precedent and creates a new problem.

Lord WRIGHT referred to the 1919 report where the term "humanity" was used in a looser sense. Two American members said that the term was too vague but others accepted the expression.

Dr. SCHWELB: It was eventually dropped and does not appear in the Versailles text.

The meeting was adjourned.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 12th March, 1946,  
at 3.0 p.m.

In the Chair,

Dr. Mayr-Harting, (Czechoslovakia),

There were also present:

Sir Robert Craigie,  
Major Dr. Fanderlik,  
Commander Mouton,  
Dr. Lachs,

United Kingdom,  
Czechoslovakia,  
Netherlands,  
Poland.

I. Minutes No. 5/46.

The Minutes No. 5/46 as amended by the insertion circulated as 5/46(a) were approved.

II. The Czechoslovak Case No. 2553. (Christoph Manner.)

The case of Christoph Manner, referred to Committee III by Committee I as outlined in Doc. III/30, was discussed.

In opening the discussion, Dr. MAYR-HARTING pointed out that the crime with which Manner is charged was a typical Nazi crime. Everybody will remember that intrusions on foreign territory, even in peace time and murder or kidnapping of persons obnoxious to the Nazi régime were regularly adopted instruments of Nazi policy. It represented a suitable method of demonstrating that the power of the German Reich was not confined to the borders of Germany. Many similar cases happened on Czechoslovak territory and also on the territory of other States, e.g. Switzerland, and Dr. Mayr-Harting remembered a similar action in Brazil. Dr. Mayr-Harting thought that the Committee's task would be to look for a definition of the notion "crime against humanity", and then to examine whether the case falls under that definition, e.g., whether essential elements of this type of crime can be found in the present case. Dr. Mayr-Harting said that the Commission had so far no great experience in dealing with crimes against humanity and it has actually discussed only one (the case against Sepp Dietz.) Some guidance could be derived from the Nuremberg indictment and proceedings and probably also from the proceedings of the International Conference on the Repression of Terrorism held at Geneva in 1937. All that there was called "Terrorism", is part of what we now call "crimes against humanity". Dr. Mayr-Harting also drew attention to the provisions regarding crimes against humanity contained in the Control Council Law No. 10.

Sir Robert CRAIGIE said that the Nuremberg indictment confirmed his first impression that what was contemplated in the Four-Power Agreement as a crime against humanity was rather a crime on a big scale to the detriment of humanity in general. Sir Robert added, however, that the Nuremberg indictment was framed against the people at the top and that therefore the emphasis was necessarily on conspiracy and planning. What is said in the indictment is not entirely relevant to the case we have before us to-day. Sir Robert's first approach to the question, whether it was intended to cover crimes like that the Committee had to consider to-day, was one of doubt. The opinion of the United Kingdom Foreign Office was that we ought not to apply the notion of crime against humanity to individual cases. Sir Robert had agreed to the listing of Sepp Dietz in order to bring him to justice, and that case, doubtful though it was, with regard to whether or not it fell under "crimes against humanity", consisted of murder and killing of a considerable number of people. The case of Sepp Dietz

seemed, therefore, to fall with more certainty within the definition of crimes against humanity than the present case. Sir Robert's preference would be for the kind of procedure which was suggested by Captain Wolff in the last meeting of Committee I, namely that there should be an understanding with the occupying authorities for handing over people in the position of the accused in the present case.

Commander MOUTON said he was not sure whether extradition would apply in the present case. He did not know whether machinery for extradition had been created.

Dr. SCHWELB referred to Art. IV of Control Council Law No. 10 which was also applicable to crimes against humanity. (Art. IV refers to crimes as defined in Art. II., and Art. II. contains provisions with regard to crimes against humanity.)

Dr. MAYR-HARTING replied to Sir Robert Craigie that it would be a negation of the work of the Commission if member governments were referred to direct negotiations with the military authorities on the spot.

Sir Robert CRAIGIE remarked that the resolution adopted by the Commission on 20th February, Dec. C. 177, provided for exceptional cases, where the normal procedure (listing by the Commission) need not be applied. There was no great danger if we admitted among these exceptions cases where it was doubtful whether a war crime contained within the scope of the documents we had before us, had been committed, particularly if we admitted among the exceptions crimes committed before the outbreak of war.

Commander MOUTON agreed that kidnapping could be considered to be a symptom of a general policy adopted by the Nazi Government. He knew of a case of kidnapping which had taken place in Holland in 1939. He further suggested that the Commission should try to get information about the discussions which preceded the Four-Power Agreement of 8th August 1945, because these discussions might throw more light on what was in the minds of the draftsmen when using the term "crime against humanity".

Sir Robert CRAIGIE promised that he would enquire from the Foreign Office whether there was any material, but he doubted whether we would get much further.

Dr. LACHS: In dealing with this question, we are laying down, as it were, principles of case law. From this point of view, he agreed that it was dangerous just to establish a precedent by asking for extradition without giving a qualification of the crime for which extradition was asked. He said that there was no exclusiveness between count 4 of the Nuremberg indictment on the one hand, and counts 2 and 3 on the other. There was the danger that some confusion might arise. Dr. Lachs was of opinion that only such crimes should be regarded as crimes against humanity as were more than normal crimes. We should limit the notion of crimes against humanity to such acts against which there is no adequate protection in ordinary criminal law. He felt that the Committee would expand the notion too far if it included the case of Christoph Manner under crimes against humanity. A demarkation line between ordinary crimes and crimes against humanity should be clearly drawn. A precedent will be in the verdict of the Nuremberg Tribunal. Dr. Lachs summed up by saying that we should try to establish a principle that where existing penal legislation is adequate, we should leave the matter to be dealt with by municipal law.

Sir Robert CRAIGIE: When these two sets of crimes, (crimes against humanity and crimes against peace) were drawn up, the contracting Parties had in mind the planning at a high level. He, therefore, was not sure how much guidance the Commission would get from the Nuremberg judgment. The logical result of restricting the personal liability for crimes against humanity to persons on the level of planning would be to leave out all the



instruments of this policy. That would be unfortunate. On the other hand, we are on very weak ground when trying to get down to the individuals, who acted as instruments. Where we are in doubt in such cases and where municipal law can be made to apply, we should let the ordinary processes of municipal law do the work for us. In dealing with this particular case, we would be wise to say: until we have more data on which to decide what is to be the actual scope of "crimes against humanity", we should deal with them on the more practical basis of ad hoc arrangements.

Sir Robert CRAIGIE was sure that such an act as this, would, in normal circumstances, be extraditable.

Dr. MAYR-HARTING said that the Committee should use the possibilities offered by this case to find out what this Commission considers to be a crime against humanity. Dr. Lachs had given some suggestions as to what elements should be contained in a crime to fall under this category. Dr. Mayr-Harting therefore suggested to leave out for the time being the question whether this case was a crime against humanity and to try to arrive at a general definition. It was clear that Art. 6(c) of the Charter dealt with two types of crimes against humanity, namely persecutions on certain grounds on the one hand, and murder, extermination, etc. on the other. As to the persecution, the purpose was a relevant consideration. It was our task to find a delimitation with regard to murder, extermination, etc.

Dr. LACHS agreed with the Chairman's proposal to enter into a general discussion on this plane and try to elaborate certain elements constituting a crime against humanity. Dr. Lachs referred to the implication immanent in considerations of this kind. When discussing the notion of crimes against humanity the Committee would have to have in mind the values to be protected by the law making crimes against humanity punishable. Thus the discussion would be linked up with the problem of human rights to be protected by criminal law.

Commander MOUTON felt it a bit premature to enter into such a general discussion as long as we have not got (a) information about the discussions preceding the Four-Power Agreement, and (b) the Nuremberg sentences.

Dr. SCHWELB replied that a great deal of what must have been in the minds of the four Powers in concluding the agreement of 8th August 1945, can be gathered from documents of this Commission which has devoted much time to defining the scope of the retributive action of the United Nations to the effect that crimes such as those committed against Jews of many nationalities should also fall under it. He referred to the collection of documents prepared by Dr. Röer's office, Doc. C.29, particularly to President Roosevelt's statement of 12th June 1944 (Doc. C.29(a)) and to the correspondence with the United Kingdom Government contained in the Doc. C.78. He also referred to Mr. Eden's statement of 4th October 1944 and to Mr. Law's statement of 31st January, 1945.

Dr. MAYR-HARTING proposed that Dr. Schwelb should collect sources relevant for the definition of crimes against humanity.

Dr. LACHS added that Dr. Schwelb should also prepare a paper as a basis for the discussion.

It was decided to charge Dr. SCHWELB with these tasks.

Sir Robert CRAIGIE thought that from the notion of crime against humanity such acts should be excluded as fell under the notion of war crimes proper.

Dr. MAYR-HARTING thought that such exclusion should not take place at the outset because the notions were overlapping.

Sir Robert suggested that Dr. Schwelb should, in preparing the material, not exclude considerations which could throw light on the equally important notion of crimes against peace.

It was decided to adjourn the discussion till Tuesday 26th March, 1946, at 3.0 p.m.

Committee III.  
Minutes No. 7/46.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 26th March 1946  
at 3.0 p.m.

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

There were also present:

Lord Wright,	Chairman of the Commission,
Sir Robert Craigie,	United Kingdom,
Major Dr. Fanderlik,	Czechoslovakia.
Dr. Schran-Nielsen,	Denmark,
Commander Meuton,	Netherlands,
Dr. Szerer,	Poland,
Dr. Zivkovic.	Yugoslavia.

I. Minutes No. 6/46.

Minutes No. 6/46 were approved after the record of Sir Robert Craigie's statement on page 1 had been amended to read as follows:

" Sir Robert CRAIGIE said that the Nuremberg indictment confirmed his first impression that what was contemplated in the Four-Power Agreement as a crime against humanity was rather a crime on a big scale to the detriment of humanity in general. Sir Robert added, that the Nuremberg indictment was framed against the people at the top and that therefore the emphasis was necessarily on conspiracy and planning. What is said in the indictment is not entirely relevant to the case we have before us to-day. Sir Robert's first approach to the question, whether it was intended to cover crimes like that the Committee had to consider to-day, was one of doubt. The opinion of the United Kingdom Foreign Office was that we ought not to apply the notion of crime against humanity to relatively minor individual cases. Sir Robert had agreed to the listing of Sepp Dietz in order to bring him to justice, and that case, doubtful though it was with regard to whether or not it fell under "crimes against humanity", consisted of murder and killing of a considerable number of people. "

II. The Alsatian Deserters Case.

Before the Committee started dealing with the proposed agenda, Sir Robert CRAIGIE raised a special point referring to the Alsatian deserters case. (Doc. C.174). He said that after discussion between Dr. Mayr-Harting and himself, he had thought it might be a good thing to ask the Foreign Office whether there were any other enactments relating to the annexation of Alsace-Lorraine which were not before the Commission, Committee III and the Ad Hoc Committee respectively. He had asked the Foreign Office to go through it to see whether there was anything which might be relevant to the general position.

As a matter of procedure, it had occurred to Sir Robert that Committee III might like to prepare a redraft of its report which could then be seen by the Ad Hoc Committee. If the Ad Hoc Committee cared to submit to the Commission a redraft of the report by Committee III, the impression of lack of unanimity which does not now exist, might be avoided.



Dr. MAYR-HARTING said that he was the last to make any opposition. We hoped to find a compromise. Dr. Mayr-Harting referred to the Nuremberg indictment which contained a charge connected with the annexation of Alsace-Lorraine. In his opinion, it would be dangerous to acquit the German government of this charge before the court had the possibility to express an opinion on that point. He asked Sir Robert to draw the attention of the Foreign Office to this fact. If we came to the conclusion that we could not accept the fact that Alsace-Lorraine had not been annexed, then it would be more difficult to find a solution, but not more so for this committee than for the Ad Hoc Committee. Dr. Mayr-Harting would support any decision which would bring it back to the Committee.

Sir Robert CRAIGIE: It will have to go to the Ad Hoc Committee, having been referred to them by the Commission, but we might expedite things if we find that we can agree first.

Dr. MAYR-HARTING summed up by stating that the Committee agreed to Sir Robert's proposal.

III. The Czechoslovak Case No. 2553 (Christoph Manner)  
and general discussion on the term "Crimes Against Humanity" (Doc. III/33)

Dr. MAYR-HARTING recalled that in the last meeting (see minutes No. 6/46), the Committee had come to the conclusion that it would be necessary first of all to find something like a definition of "crimes against humanity", and then to apply this definition to the special case in hand. In the meantime, two Yugoslav cases had been referred to the Committee. They had, apart from one exception, one thing in common which distinguished them from the Czechoslovak case. In the Czechoslovak case the crime was committed before the war - or to put it correctly, at a time the committee considers for the purpose of this case, to be before the war, - the cases charged by the Yugoslav National Office on the other hand were committed during the war by Italians against Italian citizens. Dr. Mayr-Harting said he would like to make it clear at the beginning, that we were, of course, competent to deal with crimes against peace and crimes against humanity. Another question was whether we could deal with the Yugoslav cases in the same way as with cases of crimes committed against allied citizens or on allied territory, but we had to answer only the question whether the facts in the Yugoslav cases constituted crimes against humanity or not. If they did, it would be for Committee I or some other organ of the Commission to find out the procedure appropriate to them. Dr. Mayr-Harting then referred to the paper III/33.

Dr. ZIVKOVIC drew attention to the particular interest of the Yugoslav delegation in this discussion and referred to his document I/30. He said: If we try to make a special definition according to what has been provided for in the Charter, in Law No. 10 and in the Charter for the Far Eastern Tribunal, we should bear in mind particular cases which were brought before the Commission, and which give rise to this discussion because the definitions should serve to solve the problems raised in these charges. When reading Sir Robert Craigie's statement in the Minutes No. 6/46, that a crime against humanity was rather a crime on a big scale to the detriment of humanity in general, Dr. Zivkovic was struck by the question whether Sir Robert thought that the word "humanity" in the text meant mankind or whether he thought that it meant humanitarian laws or offences committed against laws of humanity and moral principles.

Sir Robert CRAIGIE: I do not consider it as a crime against mankind in general, but rather as a crime of an inhumane character, but judging from the text which we have before us, I concluded that it meant crimes on a large scale against civilian populations.

Dr. ZIVKOVIC: I agree with Sir Robert that the Nuremberg indictment was framed against the people at the top, but it does not follow from that that the guilty and responsible for such crimes are restricted to the major criminals. From Law No.10 it follows that also the actual perpetrators are responsible and will undergo punishment. Dr. Zivkovic was, in principle, in agreement with the paper III/33 but he was not quite sure whether we could, while we were trying to analyse and draw analytical legal conclusions from the text before us, restrict ourselves to such very restricted conclusions as Dr. Schwelb had made. He drew attention to the cases of Italian citizens of Yugoslav race serving in Yugoslav partisan units. This case may be unique, the crimes were serious, committed on a vast scale and even though they were combatants, and that Art.6. provides only for civilian populations, we must bear in mind that these were also crimes which deserved punishment. Therefore, Dr. Zivkovic would not be ready to agree to conclusion No.2. of paragraph VI on page 13, that crimes committed against combatants were outside the scope of the notion. It would be difficult to say that because if we referred now to Law No.10, we would see that the definition said "includes but is not limited to". The notion therefore embraced other akin cases, not necessarily similar or identical in type. Furthermore, it was difficult to estimate and say whether these Yugoslav combatants of Italian citizenship were victims of Italian crimes only because they were combatants or because they were members of the Yugoslav minority in Italy. They were the victims of crimes, and atrocities were committed against them, irrespective of the fact that they were combatants.

Commander MOUTON considered conclusion No.10 of paragraph VI of III/33 and said that Dr. Schwelb had found authority for this proposition in Law No.10, but this worked only in Germany and he was not too sure whether this could be accepted as a general rule of international law. Although Commander Mouton strongly so wished, he had never found anywhere anything written down from which we could conclude that the crimes described in the Charter were also meant for the minor criminals.

Dr. SCHRAM-NIELSEN drew attention to the fact that the restriction to civilian populations in Art.6.(c) referred only to the first type of crimes against humanity, but was not stated as far as persecutions on political, racial and religious grounds were concerned. In his opinion, persecutions of combatants were within the notion of crimes against humanity.

Dr. SCHWELB replied to the point raised by Dr. Zivkovic that as far as crimes against humanity of the murder type were concerned, it was expressly stated in the Charter that it refers only to civilian populations. This did not, in Dr. Schwelb's opinion, necessarily mean that the cases brought by the Yugoslav National Office concerning the ill-treatment of Yugoslav partisans of Italian citizenship were outside the scope. Italians could not, as it were, have it both ways; they must either treat these partisans as combatants and then the partisans are under the protection of Art.6(b) or they must treat them as members of the civilian population, then they are under the protection of Art.6(c). If these partisans were recognised as part of the belligerent armed forces and as combatants, then they were under the protection of the laws of war irrespective of their nationality. Then it would have been a war crime, e.g., to shoot them summarily without due legal proceedings. If they were not combatants, the perpetrators could not exclude their responsibility under (b) by stating that the victims were not combatants, but civilians bearing arms illegitimately, and simultaneously exclude responsibility under (c) by stating that they were not members of the civilian population.

With regard to the point raised by Dr. Schram-Nielsen, Dr. Schwelb admitted that the notion of a crime against humanity of the persecution type was not expressly restricted to civilian populations, and that



persecutions on political, racial or religious grounds would according to the wording, fall under the notion also if committed against members of the armed forces. He added, however:

- 1) Persecutions were, under the Charter, punishable only if in connection with another crime within the jurisdiction of the tribunal. Such persecutions must, therefore, be ancillary either to a crime against peace or to a war crime, or to a crime against humanity of the murder type. In the cases of (a) and (b), it was evident that allied victims must be involved, and in the cases of the murder type, (c), civilians must be involved as victims of the crime to which the persecution was ancillary.
- 2) Dr. Schwelb further drew attention to the fact that it would be a strange result to say that crimes of the murder type were punishable only if committed against the civilian population, whereas the more heinous crimes of the persecution type would fall under the notion also if committed against members of the armed forces. The grammatical interpretation led, of course to this result and therefore it would be necessary to elaborate a little more on the points raised by Dr. Schram-Nielsen.

As far as Commander Mouton's objection to <sup>D</sup>r. Schwelb's proposition No. 10 was concerned, Dr. Schwelb said that the wording of the Charter itself, quite apart from Law No. 10, could be interpreted to the effect that it stated the criminal responsibility also of the subordinate perpetrators. The last paragraph of Art. 6. said that the leaders, organisers, etc. were responsible for all acts performed by any persons in execution of such plan. If the provisions say that person (A) is responsible for the acts of (B), it implies that (B) has also committed a crime. If the Charter did not mean that that for which (A) is vicariously responsible is a crime, the sentence would have no meaning. If the provision says that (A) is responsible for (B) and what (B) has committed is not a crime, then the statement of (A)'s responsibility would be meaningless, because he would be responsible for something which is not a crime. Another argument which could be adduced in support of point 10 is what Mr. Justice Jackson said during his speech: "Did it take these men by surprise that murder is treated as a crime?". There is nothing in Art. 6. which compels us to arrive at the opinion that the actual perpetrators are not committing crimes if they commit acts of the type described under (c).

Commander MOUTON said that it would be better to lay down point 10 less positively.

Dr. ZIVKOVIC: Commander Mouton overlooks the fact that Law No. 10 is as much a part of contemporary international law as the Charter. Both legal instruments, the Charter on the one hand and Law No. 10 on the other, are the product of the Four Powers which act on behalf of all the United Nations. Law No. 10 provides for the punishment of the actual perpetrators of all three categories of crimes.

Dr. MAYR-HARTING was not sure whether Law No. 10 was technically international law, but it was certainly very important in its bearing on the interpretation of the Charter.

Commander MOUTON: Law No. 10 is local law working only in Germany and that makes it doubtful whether it could be considered as a document of international law.

Sir Robert CRAIGIE: It always seemed to me when I read it that Art. 6.(c) of the Charter was designed to deal with the people at the top who have planned and organised these big crimes against humanity, either of the murder type or the persecution type. In the last paragraph, it goes on to say that the leaders participating in the execution of the common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed in the execution of such plan. I am



wondering whether the people who framed this had not in mind exactly this point, that in creating this new point the framers were intending to limit it to the leaders, attributing to them any responsibility which might otherwise be applicable to the perpetrators.

Dr. SCHWELB: The responsibility of the lesser perpetrators is expressly stated in Law No.10 which speaks of "any person".

Dr. SZERER doubted the statement in No.3. of the summary which said that crimes against humanity may consist also of violations of the laws and customs of war. He said: I asked myself what is the use of a notion of a crime against humanity if this notion covers also other crimes. I have nothing against this notion of a crime against humanity, but are we not rather asked to define this notion of a crime against humanity which would constitute a separate category of crime, a category for itself, which we can distinguish from violations of the laws and customs of war? I know where this comes from, namely from the wording of Art.6. but the question arises: are these texts so perfect, were they drafted in such a way that they might be considered as an absolute immaculate source. We might perhaps suppose for a moment that it is not so, that perhaps there was some laxity in drafting. Inacting on the text we might give rise to something which could be misleading.

Dr. SCHWELB said he was in agreement with Dr. Szerer and also felt that the notion of crimes against humanity if it included war crimes in the narrower sense was not very satisfactory from the point of view of building up a scientific system of law, but he had thought it to be his task to interpret the texts as they were laid down and as they were being applied in practice. The prosecution states in the indictment Count 4,X,5th paragraph, as follows: "The prosecution will rely upon the facts pleaded in Count Three as also constituting Crimes against Humanity." Count 3 concerns war crimes in the narrower sense, and count 4 crimes against humanity. If I were the author of a text book on international criminal law, I should be in a position to say: For the purposes of my text book, and for my students and examinees I shall prefer the narrower notion of crimes against humanity as excluding war crimes in the narrower sense. As a practical lawyer, however, I cannot disregard the statutory definition in favour of one which would be, no doubt, scientifically preferable. Civilian populations of allied countries enjoy protection under (b) and (c), but the civilian population of non-allied countries only under (c).

Dr. MAYR-HARTING: It is not our task to define a pure notion of crimes against humanity. Our terms of reference say that we have to define crimes against humanity according to the Charter.

Dr. SCHWELB: Under this convention which, while drafting the paper, I considered to be binding upon me, a crime against humanity is only one which is committed against the civilian population, with the exception of some proviso to be made to cover Dr. Schram-Nielsen's point.

Dr. ZIVKOVIC: Dr. Szerer is considering the notion of crime against humanity as a very wide one, but the answer to the question is that there is the technical classification which was made up to cover all cases which were estimated politically speaking, by the United Nations to deserve punishment. There were atrocities and crimes which were committed and which could not be embraced within the traditional definition of war crime. One of these offences was aggressive war. So, the term "crime against peace" was introduced. There were, e.g. the crimes against Jews which you cannot consider, strictly speaking, as war crimes, but which still deserve a punishment. All these crimes, except aggressive war, were embraced under Art.6(c) and Art.II c. of Law No.10.

Dr. MAYR-HARTING referred to the famous passage in the Preamble to the Hague Regulations and to the significant fact that the Preamble gives the possibility to apply the laws and customs of war in cases which are not covered by the letter of the Regulations. Not all the laws and customs of war are in this category but only those which infringe against the dictates of public conscience and the laws of humanity. Every crime against humanity is a contravention of the laws of warfare but it is not the other way round.

Dr. SZERER: Under the Charter, it is clear that there should be three distinct categories of crimes, one against peace, the second violations of the laws and customs of war and the third against humanity. If you say that crimes against humanity may consist of the violations of the laws and customs of war, this is the second point and you do not make the distinction between (b) and (c).

Major FANDERLIK drew attention to the difference in language in the Hague Regulations on the one hand and in the Charter and in Law No.10 on the other. If the soldier did something on his own account it was a violation of the laws and customs of war, it would be punished, but not under the Charter because what the Charter had in mind was just a conspiracy.

Dr. SCHWELB asked whether the point raised by Dr. Szerer would be met if we made it clear that there could be a scientifically clean notice of crime against humanity which would be formulated disregarding the positive provisions and if simultaneously the notion of crimes against humanity under the positive law would be given.

Dr. SZERER agreed.

Sir Robert CRAIGIE: Dr. Szerer's point is a very important one. We all try to draw up a document which is clear and which will help Committee I. We would prefer to have a distinct class of crimes against humanity from those of war crimes proper, but as we are dealing with what is really a new form of crime under international law, I think we are bound to do the best we can by interpreting such texts as have been drawn up by international agreement in order to define these crimes. It is difficult for this Commission to endeavour by itself to determine what is a crime against humanity without having regard to the existing texts. I sympathise with Dr. Szerer's view, but I am doubtful whether we can disregard the Charter which is our bible as far as interpreting these new crimes against international law is concerned.

Dr. SZERER: I am not for disregarding the Charter. I think it is an indication of these three points that the Charter means crimes against humanity to be a distinct category. I would disregard the indictment and anything that is not in agreement with the Charter.

Dr. ZIVKOVIC discussed point 4 of the summary and said that it should not read "thereby becomes the concern of foreign States", but should say that even one foreign state may be concerned with a crime against humanity committed in another State.

Dr. MAYR-HARTING was of opinion that it should be made clear that for the notion of a crime against humanity it is necessary that it should endanger the international community.

Dr. SCHWELB asked whether this point was not covered by Art.4. of the summary.

Dr. ZIVKOVIC replied to Dr. Mayr-Harting by saying that Art.4. of Law No.10 dealing with extradition showed that the concern of the third State was recognised.

Commander MOUTON: Might I go back to my suggestion. I think that the whole discussion proves that although Dr. Schwelb has done whatever was possible to give an interpretation in his document, we are still lacking a source from which the designers of the Charter got their ideas. Is it absolutely impossible to approach the four Powers on behalf of the Commission to get hold of the discussions which preceded the drafting of the Charter?

Dr. MAYR-HARTING referred to informative sources quoted in III/33 which mainly consisted in documents of this Commission.

Sir Robert CRAIGIE: I have already asked the Foreign Office on your suggestion whether they can produce anything of what was in the minds of the framers of the Charter, and they are having a search made, but it is not likely to be very fruitful.

Dr. SCHWELB: The point which was raised by Dr. Szerer was a point of legal nicety and systematics. I think some very valuable points have been made during this meeting and will lead to an important improvement of the proposed summary, but none of these points suggest that the law was uncertain, or at least less certain than international law generally is.

Dr. SCHRAM-NIELSEN: I think Dr. Szerer did not take sufficient note that the Four-Powers agreement is a treaty and not a scientific report. I am quite sure that when they made that treaty, they did not go so deeply into the matter and in my opinion there is no reason why paragraph (c) should not cover the wider field than that limited by section (a) and (b). In my opinion it is not quite inconsistent, because it is a treaty and we may imagine that when they had agreed to section (a) and section (b), they thought that they had missed something so they added (c) without amending (a) and (b) accordingly.

Lord Wright said that he had always been of the opinion that the terms of crimes against humanity and war crimes proper overlapped and that no harm would result from that.

Sir Robert CRAIGIE: We are all in agreement that, as the text stands, crimes against humanity cover not only this new conception of crimes against civilian populations, of non-allied or non-occupied territory, but they also cover ordinary war crimes, that is, crimes against the civilian populations of occupied territory. Ought we not to distinguish between the two? Dr. Szerer's view is that the charter does distinguish and that we are probably reading it wrongly in saying that the Charter covers two types of crimes.

Lord WRIGHT: There is bound to be some overlapping but it does not matter with this form of document, which is a useful document drawn up for practical purposes.

Sir Robert CRAIGIE: If Committee I were faced with a charge which fell both under (b) and (c), Committee I would say that it comes under either or both, leave it at that, and list the man as a war criminal proper.

Dr. MAYR-HARTING said that on the whole the committee had agreed on the 12 points. As to point 2, the amendment proposed by Dr. Schram-Nielsen would have to be incorporated. Doubts as to point 10 had been expressed, but Dr. Mayr-Harting understood that on the whole the Committee agreed with this point too.

Dr. ZIVKOVIC drew attention again to his question concerning paragraph 4 and asked whether several States at the same time were necessary.



Sir Robert CRAIGIE said that it could read "one or more Foreign States".

Dr. SCHWELB: As to Dr. Schram-Nielsen's amendment, it is difficult to conceive a case of a crime which is only a crime against humanity without being against the laws and customs of war and which nevertheless was committed against combatants only.

If the victim is a combatant soldier in battle and he is illegitimately ill-treated, then it is a violation of the laws and customs of war. If he is a prisoner of war and he is ill-treated it is again a violation of the laws and customs of war. An act falling under the notion of a crime against humanity committed against armed forces would be a case of persecution by a belligerent of his own soldiers, e.g. an Italian commander discriminating between Italian soldiers of Jewish origin and other Italian soldiers.

Dr. MAYR-HARTING drew attention to the cases of Yugoslav partisans of Italian nationality.

Dr. SCHRAM-NIELSEN: There is another point. If the perpetrator is an Italian civilian and the victim a Yugoslav soldier, what then? It falls certainly within the limits of Art. 6(c).

Dr. ZIVKOVIC stated with regard to the proposed passage "becomes the concern of one or more foreign States": When the Hague Regulations were made, I do not think there was such extensive use of enemy nationals willing to collaborate with a coalition of Powers against their own country. I do not think that at that time such cases were as extensively used as during this war. We had two army corps in Italy of Yugoslavs of Italian citizenship, the 9th and 11th Army corps, which were set up according to the rules of the Hague Regulations and had regular officers and liaison. That is a new precedent and creates a new problem.

Lord WRIGHT referred to the 1919 report where the term "humanity" was used in a looser sense. Two American members said that the term was too vague but others accepted the expression.

Dr. SCHWELB: It was eventually dropped and does not appear in the Versailles text.

The meeting was adjourned.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 9th April, 1946.

In the Chair:

Dr. Mayr-Harting (Czechoslovakia),

There were also present:

Dr. Schram-Nielsen,  
Commander Mouton,  
Dr. Szerer,  
Sir Robert Craigie,  
Dr. Marković,

Denmark,  
Netherlands,  
Poland,  
United Kingdom,  
Yugoslavia.

I. Minutes No.7/46.

Minutes No.7/46 were approved subject to the following amendments:

In Sir Robert Craigie's statement on page 5, line 2, the word "point" is to be replaced by "law".

In Sir Robert Craigie's statement on page 7, paragraph 7, the last sentence shall read as follows:

" Dr. SZERER's view is that the Charter does not distinguish and that we are probably reading it wrongly in saying that Art.6(c) of the Charter covers two types of crimes."

In Sir Robert Craigie's statement on page 7, paragraph 2, the last word "proper", is to be deleted.

It was further agreed that the reproduction of the statement made by Dr. Mayr-Harting would be amended according to a text which Dr. Mayr-Harting undertook to supply to the Secretary.

II. The Case of the Alsatian Deserters.

Dr. MAYR-HARTING summarised the previous proceedings. With regard to the question of jurisdiction, the Committee had concluded that both French and Czechoslovak courts had jurisdiction and had agreed that it would be more appropriate to refrain from answering the question to whom the accused should be surrendered. This part of the report had been approved by the Commission with one objection. Colonel Hodgson thought that the report might lead to a misunderstanding, namely, that only two facts, either that the crime was committed on a certain territory, or that the victims were of a certain nationality could be the basis of the jurisdiction. Colonel Hodgson suggested that another basis for the jurisdiction was the fact that the accused were in the custody of a certain power. Professor Gros doubted whether the principle of "universality of jurisdiction over war crimes" was a general rule of international law. In Professor Gros' opinion it was a principle restricted to Anglo-American jurisprudence and foreign to the law of Continental European countries.

Based on this discussion, Dr. Schwebel had redrafted the report and proposed to insert the passage found in Doc.C.174(A) on page 2, paragraph 2. According to the Minutes M.99, page 4, Colonel Hodgson declared that he would be satisfied with a formula which indicated that there was some

other possible basis for jurisdiction over war crimes besides the facts which seemed relevant in connection with the French case. Committee III was charged with redrafting this part of its report and the Chairman of the Commission had suggested that Committee III should consider the new paragraph II on the lines of Dr. Schwelb's draft. Dr. Mayr-Harting was of the opinion that the Committee could meet everyone's wishes by taking the passage suggested by Dr. Schwelb, C.174(A) on page 2, paragraph 2, with the addition proposed in the note to C.174(A), that is to say by adding to this paragraph: "particularly in cases where, for some reason, the criminal would otherwise go unpunished."

Sir Robert CRAIGIE thought that Professor Gros did not object to the fact that every State had the jurisdiction, but that every State had the obligation.

It was decided to accept as paragraph II of the Report, the wording proposed in Document C.174(A) and to add on page 2, paragraph 2 of this document after the words "where the offence was committed", the words "particularly in cases where, for some reason, the criminal would otherwise go unpunished".

Turning to the question of substantive law, Dr. MAYR-HARTING said that when the Committee had prepared the report, they had taken for granted that Alsace-Lorraine was illegally annexed by Germany during the war and that such an annexation was to be considered as a war crime, i.e. the crime of usurpation of sovereignty for which the German government was responsible. Another question was, however, whether the judges who acted upon such illegal annexation were criminally responsible. In the opinion of Committee III it did not follow from the fact that the annexation was illegal according to international law that every act of State could be stripped of its essential quality, namely of its quality as act of State and investigated whether it comprised the elements of a crime. The Committee was of the opinion that if an act would be legal in the case of a legal annexation then the judge could not be held criminally responsible in the case of an illegal annexation. The opposite view would lead to the result that every judge had first of all to consider whether an annexation was legal or illegal and if he failed in finding the right answer to the question which is often disputed and sometimes doubtful, we would hold him criminally responsible. Dr. Schwelb had pointed out that it would be dangerous to accept the principle that the mere fact that a German law brought about the annexation was a sufficient defence; especially in his paper C.174(C) he stressed that the Four-Power Agreement of 8th August 1945 was based on the general principle that the domestic law of a European Axis country was irrelevant to the question whether or not a certain set of circumstances did or did not constitute a war crime in the wider sense.

This principle applies, Dr. MAYR-HARTING continued, according to the Four-Power Agreement, only to crimes against humanity and could not be used in connection with every War Crime in the wider sense. (Crimes against peace and War Crimes in the narrower sense.)

In the case of crimes against humanity, we were concerned with acts which everybody knew and recognised as crimes.

It would be outrageous to say that they cease to be War Crimes because a Municipal Law orders or admits them. Here, however, we are concerned with acts to which a Sovereign is certainly entitled and which, as such, cannot be recognised as crimes.

Dr. MAYR-HARTING said that the question was well known and had been discussed at some length, and now we were charged with the redrafting of our report. Dr. Mayr-Harting thought that the first possibility we had was to insist on the substance of the report we had submitted to the



Commission. Whether that would be advisable answered itself when we came to the discussion of the second possibility, and that was shown in Dr. Schwelb's paper of 19th March 1946.

In Dr. Schwelb's paper it was pointed out that nothing could be gathered from the German law supporting the view that Alsace-Lorraine was a part of the German Reich. A Power which had not even annexed the territory they occupied, could certainly not behave like a sovereign. Dr. Mayr-Harting said that Sir Robert Craigie had submitted a question to the Foreign Office asking whether there were any German provisions showing that Alsace-Lorraine had been annexed. The Foreign Office confirmed the view set out in Dr. Schwelb's paper.

It is doubtful whether merely a German law incorporating Alsace-Lorraine would be a sufficient defence for the judges. It can be argued that the case before us must be considered in the same light if the most important consequences of annexation were brought about without a law expressly incorporating Alsace-Lorraine - above all if there was a general conferment of German nationality, - but the Foreign Office denied that this occurred.

On the other hand, Count I of the Nuremberg indictment states that the Civil Servants of Alsace-Lorraine were forced to swear allegiance to the occupying power. Count G.J. speaks of Germanisation of Alsace-Lorraine and states as the method of Germanisation, annexation followed by conscription. Apart from that it speaks of imposing by force German nationality on French citizens. If we are to accept this as the opinion of the indictment, we have to go into the question of whether the illegal annexation is a sufficient defence for the judges concerned.

Dr. LITAWSKI said that the indictment did not imply that Alsace-Lorraine had been annexed. It was only a question of conscription which was enforced according to the German domestic law.

Dr. MAYR-HARTING: The word "annexation" is expressly used in paragraph J (5).

Dr. LITAWSKI: Only as to methods. It was annexed for the purpose of Germanisation.

Dr. MAYR-HARTING: We should, for the time being, restrict our discussion to the question of whether Alsace-Lorraine has been annexed or not and whether, in view of the Indictment, it is advisable to pass an opinion on this point at present. If there was an annexation, it was certainly a War Crime for which the German Government was responsible. It might not seem appropriate to acquit the German Government of such a charge before the Nuremberg court has had the opportunity to decide.

Sir Robert CRAIGIE said that on the basis of such information as the Committee had, there was no decree of annexation and that such acts as were committed by the German authorities were entirely illegal and on that basis, we considered that the shooting of these people was a war crime because they were not German nationals.

Although the inhabitants of Alsace-Lorraine had had these various things imposed upon them, they had not been given the benefits of German nationality. Therefore, what had happened was that the obligations had been imposed upon them, without the benefits, but we have to investigate the two orders imposing German nationality of which mention is made in the indictment.

Dr. SCHRAM-NIELSEN asked if it were known whether the French inhabitants of Alsace-Lorraine had had to pay taxes. Denmark, for instance, had been occupied, but the Danish people had not had to pay taxes.

Commander MOUTON remarked that the Germans did not charge taxes, they merely took what they wanted.

Dr. SCHRAM-NIELSEN said that although they did not in Holland, they may have done so in Alsace-Lorraine, and asked what the French Government had said on this subject. There was no doubt that from the German point of view they were German nationals at the time that they deserted and at the time they were brought before the court.

Dr. MAYR-HARTING thought it best for the Committee to say that the question whether or not Alsace-Lorraine had been annexed was doubtful and that it would hardly be appropriate to offer an opinion on this point before the conclusion of the Nuremberg trial.

Dr. SZERER wondered whether it was so important for us to decide this question because either Alsace-Lorraine was annexed and that was a war crime, or there was no form of annexation of Alsace-Lorraine, but there were these orders and then these orders were a crime, because they were not based on anything. Therefore, he thought we had not to discuss the question of the annexation of Alsace-Lorraine, because in either case we had a legal ground for the prosecution of the men. To prove that the persons were German citizens, there were orders and not laws. In Poland and in Czechoslovakia an order must start by invoking a law. "According to this and that law, I order, etc". There was no mention of a law.

Sir Robert CRAIGIE, in referring to the call up for service in the Wehrmacht, said that first of all it was illegal to call up the inhabitants and secondly it was not done by virtue of annexation. The Germans had not called up all the inhabitants of Alsace-Lorraine, but had picked out the people who could fight, and then said "you can become a German in order to fight for Germany."

Dr. MAYR-HARTING thought it quite possible that in the end it would turn out that even according to German law, Alsace-Lorraine could not be considered as part of the German Reich. At any rate the report should take this question into consideration and only after the Nuremberg trial would it be possible to submit such a report without prejudicing the Nuremberg findings.

It had been suggested that we should base our report on the assumption that even according to German law, Alsace-Lorraine did not form part of the German Reich. It would be better to wait for the end of the Nuremberg trial and so avoid starting our report on an assumption only.

In the meantime, as it was impossible to keep the French National Office waiting, we could communicate with them that in our opinion the question whether there was an annexation was relevant and that we felt it would not be proper to offer an opinion until the Nuremberg trial had been finished because the indictment spoke expressly about the annexation of Alsace-Lorraine.

Dr. SZERER said that what he could not understand was why the Committee should decide the question and why we should adopt any legal attitude to the question of the annexation of Alsace-Lorraine. Was it necessary? We must start from the question of calling up French citizens and this order was illegal. We say that whether there was annexation or not, the order was illegal in both cases. If there was annexation, then the annexation was illegal, and otherwise the order was illegal.

Sir Robert CRAIGIE said he understood the proposition before us was as follows: even if there had been formal annexation, such an act was necessarily illegal and therefore the judges who interpreted the law as if it had been legal were guilty of a war crime. To accept such a proposition would, he thought, carry us a very long way. It would amount to declaring that every judge, when interpreting the municipal law of his country, must first make sure that there was no possible conflict with international law.



He believed that in this country the duty of a judge was to interpret the law as passed by Parliament, without regard to its possible wider implication. He thought therefore that it was relevant to establish first whether or not there had been a formal annexation of Alsace-Lorraine and a law which the judges could have held to be binding upon them.

Dr. SZERER thought that this might be dangerous in other cases. He said that we accepted that no orders exculpate men who commit illegal acts.

Sir Robert CRAIGIE enquired whether we were to say that a judge who seeks to apply justly the law of the land, is to be tried and perhaps shot because that law was considered by some, perhaps most, international lawyers, to be illegal.

Dr. SZERER thought that perhaps he ought not to be, but if this were so, what about the man who was ordered by his superiors to shoot someone? Could we expect him to have so much courage that we asked him to disobey this order? He thought it was not a legal question, but the suggestion that we treat judges differently from ordinary people.

Dr. MAYR-HARTING said that a crime against humanity did not cease to be one because a municipal law had ordered it. The same could not be stated about every War Crime in the wider sense.

Dr. SZERER asked whether it was a moral right to expect more from a simple guard in a concentration camp than from a judge.

Dr. SCHRAM-NIELSEN then referred to the case of the "Moray Firth" which, he said, was similar to the present case. The British Government, by an Act of Parliament, had extended its rights to part of the sea territory over which they had no jurisdiction. The court decided that even if the British Act of Parliament did not follow international law, the court had to follow the Act of Parliament. If the State did not know that the judges would always follow the law, the Court would not keep its independence. If the court did not follow the law, the sentences would be replaced by decrees. But the courts had always been able to keep their independence because the Governments always knew that the courts followed the law.

Dr. MARKOVIC agreed with Dr. Szerer that there was no doubt that if there was an annexation it was against international law. The judges had in front of them French citizens pretending to be not German citizens but French citizens. They examined the case only from the point of view of German law and according to international law they could not treat a French citizen as a German citizen on the basis of the German law. They should examine the question before applying this German law. The safe thing was to take into account the extenuating circumstances. This was for the French court to decide.

Dr. SZERER said that in the Scottish case a life was not in the balance, to which Dr. SCHRAM-NIELSEN responded that it was the principle which was involved.

Dr. MAYR-HARTING said that the Committee was divided on this subject, and thought it should avoid giving a majority vote on such a question. Whether or not we arrived at the conclusion that Alsace-Lorraine had not been illegally annexed, it would be better to avoid going into the question on which we were divided.

Sir Robert CRAIGIE suggested that the Committee re-draft Part I of C.174(C) and wondered whether it would not be acceptable to the Committee if we prefaced it by saying that it was on the assumption that there was no annexation.



Dr. MAYR-HARTING: We can expect a Judge not to take municipal law into consideration only if its application would lead to a crime against humanity.

Sir Robert CRAIGIE said he would certainly say that, if in the process of applying the municipal law an inhumane act had been accomplished, such as illegal shootings, torture and the concentration camps, then he thought there was no doubt that the judge would be guilty of a war crime, but where we were dealing simply with an interpretation of municipal law and no obviously inhumane act had been committed as a result of it, one could hardly expect the judge to question the validity of his own law.

Dr. MARKOVIC pointed out that Frenchmen had been forced to join the German army and to fight for their enemies, to fight against their own nationals, and this amounted to an atrocity on the part of those who attempted to enforce it.

Dr. MAYR-HARTING said that the term "atrocity" was not clear enough. A crime against humanity was something which was even forbidden to a sovereign State.

Commander MOUTON: Where a sovereign state would not have been entitled to do it, then it does not matter that a municipal law has been made to that effect.

Sir Robert CRAIGIE: To call up a British subject and force him to fight against his own country would be an act which no sovereign state should commit with impunity and it would be a crime against humanity. Sir Robert thought that the judges should have questioned the validity of the ordinances before having the men shot, but wondered whether they would have been equally guilty if the law had been on the Statute Book of Germany. In some cases a law, although on the Statute Book, was an inhumane law, contrary to human instincts and therefore even the judges applying the law would be guilty. Had there been formal annexation, it would be going far to say that they should have questioned it. There may have been other cases where annexation had taken place during a war.

Dr. MAYR-HARTING: There is no doubt that the annexation of Alsace-Lorraine would also have been illegal if it was brought about in accordance with any Municipal law. Some of us are, however, of the opinion that such illegal annexation would be a sufficient defence for the judges involved in our case.

Dr. SZERER: What has Nuremberg to decide?

Dr. MAYR-HARTING: Whether Alsace-Lorraine was illegally annexed or not and if in the opinion of some of us such an illegal annexation would be a sufficient defence in a special case, it would be helpful at least to know the opinion of the Nuremberg Tribunal.

Dr. MARKOVIC: If we find out that Germany has signed the international convention which forbids annexation of occupied territory during the war, this question of international law becomes municipal German law and the judges must know the law.

Dr. MAYR-HARTING: Such a convention does not exist.

Sir Robert CRAIGIE: I am wondering whether in this particular case we cannot say that on the facts before us, it seems quite evident that these men were still French nationals and that the German courts should have recognised that fact and in sentencing them to death, they committed a war crime. It is a very fine distinction really whether we divide on the point whether there had been annexation, which would have been in any case, illegal. Those judges declared either on the basis of annexation

or on the basis of orders given by the Führer that the accused were deserters from the German army and the question is whether they are to be considered to have committed a war crime because they carried out what they understood to be German law at the time. We have to consider each case on its merits and cannot apply any general rule. I would not oppose the view that these judges who had these men shot as deserters committed a war crime, whether they were acting on the basis of the orders given by the Führer or not.

Sir Robert CRAIGIE: I should say: decide now because judgment of the Nuremberg trial may not throw much more light on this particular point.

Dr. MAYR-HARTING summed up that the Committee was unanimously prepared to submit the report based on the assumption that Alsace-Lorraine even according to German law, could not be considered as part of the German Reich and that whatever our opinion might be in the case of illegal annexation, the sentences concerned constituted War Crimes. It was decided that Dr. Mayr-Harting should re-draft Dr. Schwelb's report C.174(C) on the assumption that neither according to International nor to German law could Alsace-Lorraine be considered as incorporated into the German Reich and that it was, therefore, superfluous to go into the question of whether in the case of an illegal annexation (an annexation according to German Law only) was there a prima facie case against the judges.

The next meeting will be held after the Easter holidays.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 7th May 1946.

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

There were also present:

Major Fanderlik,	Czechoslovakia,
Commander Mouton,	Netherlands,
Sir Robert Craigie,	United Kingdom,
Dr. Szerer,	Poland,
Dr. Zivković,	Yugoslavia.

The case of the Alsatian Deserters.

The Committee continued their re-consideration of the report on the Alsatian Deserters' case.

The Chairman, (Dr. MAYR-HARTING) summarised the previous proceedings and the Committee agreed that there was no further comment necessary on paragraphs I, II and III of the report.

Commander MOUTON suggested that reference should be made in the report on the present case, to the resolution passed by the United Nations Assembly on 13th February, 1946. (See Doc.C.179).

Dr. MAYR-HARTING replied that the Commission had agreed to the proposed attitude that it should refrain from expressing an opinion to whom the criminals should be surrendered. A reference to the Assembly resolution would imply preference for the principle of territoriality.

Dr. ZIVKOVIC expressed the opinion that to press the claim of the country having jurisdiction on the principle of territoriality would, in a case like the present one, go too far.

In view of the fact that paragraphs I, II and III of the report were not being re-considered by the Committee, and because in view of Dr. Zivković's opinion there was even no unanimity on the merits, it was decided to refrain from a reference to the Assembly resolution in the proposed report.

The Committee then proceeded to discuss paragraphs IV and the following of the Draft prepared by Dr. Schwelb (see Doc.C.174(C)) with the modifications proposed by Dr. Mayr-Harting (Doc.III/46).)

Paragraph IV.

After discussion, it was decided to divide paragraph IV of the Draft III/40 into two parts, provisionally numbered IV and IV(a) and that these two paragraphs should read as follows:

" IV. The question of substantive law has been raised in what circumstances members of a German Military Court can be considered to be guilty of a war crime if they tried French nationals from Alsace-Lorraine, ("des Alsaciens-Lorrains citoyens français"), for desertion in consequence of the fact that they were, contrary to International law, compulsorily enlisted into the German Army.



The Commission examined in the first instance whether Alsace-Lorraine was, contrary to International law, annexed by Germany after its occupation in 1940. As there existed no Reich law incorporating Alsace-Lorraine into the German Reich, and as there was no general conferment of German nationality on the French nationals inhabiting Alsace-Lorraine, the Commission is of the opinion that even under German law, nothing could justify the assumption that Alsace-Lorraine formed part of the German Reich. This opinion is offered without prejudice to any opinion which may subsequently be expressed by the International Military Tribunal or any national court.

IV(a) The letter of the French National Office having proceeded on the assumption that the French nationality of the victims was "a fact which must necessarily have been pointed out by the defence" and on the further assumption that the judges could not be ignorant of the victims' Alsatian origin, the Commission decided to base its discussion on the same assumptions."

Paragraph V.

The Committee, after discussion, decided to re-draft paragraph V to read as follows:

"V. In considering the action of persons exercising judicial functions in a case such as that now under discussion, it appears to the Commission to be decisive whether the trial of an accused by a particular court deprived him of the protection to which he was entitled under the Law of Nations, i.e:

- (a) whether a given judicial action flouted the specific prohibition of a conventional or customary provision of International Law, e.g., the Hague Regulations, or was,
- (b) in disregard of those fundamental principles of human justice accepted by civilised peoples.

The action of a court which results in the illegal condemnation, seizure or destruction of property should not protect a judge because homage has been paid to legal forms.

In all cases the substance of the action taken must be scrutinized to determine its propriety under the Law of Nations. The action of judicial authorities in this respect is on no different plane from that of military or executive authorities. "

Paragraph VI.

The Committee then agreed to paragraph VI of Doc.III/40 with some modifications, to read as follows:

"VI. If the trials of the alleged deserters of French nationality were conducted in disregard of those fundamental principles of human justice which have been accepted by civilized peoples, if, e.g., the accused were denied the right to introduce evidence or to present witnesses or if methods repugnant to the modern practices of civilized nations were applied, outrageous penalties inflicted and the like, then the criminal responsibility of the German military judges could not be in doubt.

The Commission is of the opinion that the military judges should not escape personal responsibility even in such cases where homage has been paid to legal forms. Even where the trial was conducted properly it must be examined whether the judicial action, although formally correct, produced a violation of some specific rule of International Law. "

Paragraph VII.

The Committee approved paragraph VII of the report as it is contained in Doc.III/40.

Paragraphs VIII and IX.

The Committee further decided to adopt Art.VIII in the words contained in Doc.C.174(C) and it agreed to paragraph IX without alteration.

The Committee decided that the Secretary should send a copy of the report, as adopted in to-day's meeting, to the members of the Special Ad Hoc Committee and ask whether they agree with the report as now re-drafted or whether they wish to convene a meeting of the Special Ad Hoc Committee.

If the members of the Special Ad Hoc Committee agree to the new text, it can then be presented to the Commission, as a unanimous report of Committee III and of the Special Ad Hoc Committee.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of Committee III held on 14th May 1946  
at 3.0 p.m.

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

There were also present:

Major Fanderlik,	Czechoslovakia,
Commander Mouton,	Netherlands,
Dr. Szerer,	Poland,
Sir Robert Craigie,	United Kingdom,
Dr. Zivkovic.	Yugoslavia.

I. Approval of Minutes Nos. 8 and 9 of 1946.

The Minutes Nos. 8/46 and 9/46 were approved, the latter with the addition that Dr. ZIVKOVIC had, in the general discussion of the case of the Alsatian Deserters, also remarked that we should not have referred to German law, but we should have had regard only to International Law, because otherwise it would be implied that German law has any bearing on the matter.

II. General Propositions defining the term "Crime against Humanity".

The General Propositions as re-drafted in Doc.III/39 were discussed.

Paragraph 1.

After a discussion in the course of which the question whether the Note should be added to paragraph 1 was examined, it was decided that the note should be retained but placed as a foot note at the bottom of the page, and should read as follows:

" It might be argued that in a purely scientific system violations of the laws and customs of war should not be included in the term "crimes against humanity", which should be restricted to such offences as do not fall under the term of violations of the laws and customs of war. "

Paragraph 2.

After discussion, this paragraph was re-drafted to read as follows:

"2. Under the basic documents there are two different types of crimes against humanity which, with a few exceptions, are subject to the same provisions, namely:

- (a) crimes of the murder type, (murder; extermination, enslavement, deportation and other inhumane acts). The words "other inhumane acts" may be held to cover only serious crimes of a character similar to murder, extermination, enslavement and deportation - eiusdem generis rule of interpretation;
- (b) persecutions (on political and racial, under the Charter of 8th August 1945, also religious, grounds.)



Paragraph 3.

After discussion, it was decided that the Secretary to Committee III should re-draft the wording of paragraph 3 to the effect that it should appear from the wording that the fact that the major war criminals acted in the interest of the European Axis countries or that they were "Far Eastern War Criminals", was a basic assumption rather than a condition of the criminality of acts falling under the term "crime against humanity" committed by major war criminals.

Paragraph 4.

In the discussion regarding Paragraph 4 of the General Propositions, Dr. ZIVKOVIC mentioned two examples of non-civilian victims of crimes against humanity committed in recent times, namely the Yugoslav partisans from the Julian march who, though technically Italian citizens, had joined the Yugoslav Liberation Army, and Chinese Guerrillas who had risen against régimes imposed by the Japanese.

It was decided to adjourn the formulation of this paragraph until after the examination of the Yugoslav cases Nos. 1323 and 1462, which are on the Committee's agenda.

Paragraph 5.

This paragraph was agreed to with the alteration that the words in brackets in the second line should read as follows: "(under the European Charter also religious)".

Paragraph 6.

In the discussion of paragraph 6 of the propositions, Sir Robert CRAIGIE mentioned that in his opinion and the opinion of the United Kingdom Foreign Office, the first thought when examining the notion of crime against humanity should be that it was a systematic authoritative mass action. After discussion, it was unanimously decided that Dr. Schwelb should re-draft the wording of paragraph 6 having regard to the following considerations: A crime must, in order to fall under the term of "crime against humanity" excel either by its magnitude and savagery or by its mass character or by the fact that it has been committed at various times in various places according to a similar pattern. In the case of a "pattern" the problem of time and space is eliminated. Systematic mass action of a character indicated in Art.6(c) constitutes a crime against humanity particularly if it can be shown to be authoritative. but cases are also conceivable in which the authorisation does not emanate from a government.

Paragraph 7.

It was decided to strike out this paragraph.

Paragraph 8.

It was decided to strike out the second sub-paragraph of paragraph 8 and re-draft the first sub-paragraph to the effect that paragraph 8 will read as follows:

" It is irrelevant whether a crime against humanity has been committed before or during the war."

Paragraph 9.

It was decided to strike out the note.

Paragraph 10.

The wording was agreed to with the insertion, between "the" and "perpetrators", of the word "actual".

Paragraphs 11 and 12.

Paragraphs 11 and 12 were agreed to without alterations.

III. The case of the Alsatian Deserters.

Dr. SCHWELB reported that he had received from M. de Baer and from Lt. Earl W. Kintner, the following letters dated 13th May 1946, referring to the second report by Committee III, Document III/41.

" Office of the Representative of Belgium  
on the  
United Nations War Crimes Commission,

315 Lansdowne House,  
Berkeley Square,  
1820/W.C. London, W.1.

13th May, 1946.

Dear Dr. Schwelb,

With reference to your letter of 11th May, I have studied the second report of Committee III on the matter of the Alsatian deserters, as contained in Doc. III/41, and am in full agreement with the present draft.

So far as I am concerned, therefore, I agree that we should follow the procedure proposed by Committee III, and provided the other members of the Special Ad Hoc Committee approve the present draft, can see no reason for summoning a meeting of the latter committee.

Yours sincerely,

/s/ M. de Baer.

"

" The Commissioner for the United States of America  
on the  
United Nations War Crimes Commission.

Aldford House,  
Park Lane, W.1.  
13th May, 1946.

Dear Dr. Schwelb,

I have your letter of May 11th with respect to the Special Ad Hoc Committee appointed to consider the Alsatian Deserters matter. I have studied the document III/41 enclosed with your letter and find myself in complete agreement with the substance of the report and with the procedure proposed by Committee III on this matter. Insofar as this office is concerned, there is no reason for convening a meeting of the Special Ad Hoc Committee.

" Colonel Hodgson before his departure had given much consideration to the Alsatian deserters matter and I know that the views expressed in document III/41 would also meet with his complete approval.

Yours sincerely,

/s/ Earl W. Kintner

/t/ EARL W. KINTNER,  
Lieutenant, USNR,  
Deputy United States Commissioner. "

It was decided that Professor Gros's secretary should be asked by Dr. Schwelb to inform Professor Gros of the present state of this case and to ask him to inform the Committee of his opinion from Paris, if possible by telegram.

Sir Robert CRAIGIE remarked that he had some amendments to the final text of the report III/41 which he would hand to the Secretary. They do not affect the substance and are only matters of a stylistic nature.



Committee III Minutes

No.11/46.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the meeting of Committee III held on 28th May 1946 at 3.0.p.m.

In the Chair:

Dr. Mayr-Harting (Czechoslovakia)

There were also present:

Dr. Fanderlik,  
M. Stavropoulos,  
Commander Mouton,  
Sir Robert Craigie,  
Dr. Zivković,

Czechoslovakia,  
Greece,  
Netherlands,  
United Kingdom,  
Yugoslavia.

Dr. Szerer sent apologies for his absence.

I. Minutes No.10/46.

Minutes No.10/46 were agreed to.

Note: In Minutes No.8/46 relating to the meeting held on 9th April 1946, the words "Dr. Markovic pointed out" in the 3rd paragraph of the 6th page, should be replaced by the words "Commander Mouton pointed out..." and in paragraph 5 of the same page, the words "Commander Mouton" should be replaced by the words "Dr. Markovic".

II. General Propositions defining the term: "Crime against humanity".

The document III/42 was discussed.

Note to paragraph 1.

Sir Robert CRAIGIE proposed and the Committee unanimously agreed that the following words should be added to the footnote: "...but the Committee's task is to interpret the basic documents."

Paragraph 3.

The text as redrafted by Dr. Schwelb was agreed to.

Paragraph 4.

On the motion of Dr. ZIVKOVIC the committee decided to reverse its previous procedural decision which had been to the effect that the formulation of this paragraph should be adjourned until the examination of the concrete cases referred to the Committee.

Paragraph 4 as contained in the document III/39 was accordingly redrafted to read as follows:

" Under the terms of the Charters of the International Military Tribunals, "crimes against humanity" of the murder type are offences committed against civilian populations.

" Crimes against members of belligerent forces are outside the scope of this type of crime; as regards crimes of the persecution type, the Committee assumes that the intention is to exclude also this type of crime, though the wording is not quite clear. "

Paragraph 6.

The text of paragraph 6 as redrafted by Dr.Schwelb was agreed to with the following amendments:

In line 4, for "becoming" insert "which thus becomes";

in line 8, instead of "intervention of States", insert "intervention by States".

Paragraph 6 will therefore read as follows:

" Isolated offences do not fall within the notion. As a rule systematic mass action, particularly if it can be shown to be authoritative, will be necessary to transform a common crime, punishable merely under municipal law, into a crime against humanity which thus becomes also the concern of International Law. Only crimes which either by their magnitude and savagery or by their great number or by the fact that a similar pattern is applied at different times and places, endanger the international community or shock the conscience of mankind, warrant intervention by States other than that on whose territory the crime has been committed, or whose subjects have become their victims. "

III. The Czechoslovak Case No.2553. (Christoph Manner)(Doc.III/30.)

Paper III/30 was discussed. It was pointed out by several speakers that the notion of "a similar pattern" mentioned in paragraph 6 of the General Propositions (supra II) came in in this case.

Sir Robert CRAIGIE pointed out that the United Kingdom legal authorities were of the opinion that the pattern must be on a fairly large scale and that it therefore would be necessary for the Czechoslovak National Office to produce prima facie evidence of as many similar cases as possible showing the committing of similar crimes by German agents on Czechoslovak territory and/or on the territory of other States.

The Committee decided to adjourn this case in order to enable the Czechoslovak National Office to submit prima facie evidence on crimes committed on a similar pattern.

IV. The Yugoslav Cases Nos.1323 and 1462.

Dr. ZIVKOVIC proposed that the consideration of the Yugoslav cases be adjourned because he intended to submit a number of new charges concerning similar crimes to illustrate the scope of the criminal activities concerned. This was agreed to.

Dr. Zivkovic also drew attention to the Charge No.1461. The CHAIRMAN pointed out that that case had not been referred to Committee III by Committee I. (Committee I Minutes No.54).

V. The Czechoslovak Case No. 2677. (Dressler and others) (Doc. III/35).

The paper III/35 was discussed and it was pointed out by several speakers that it was considered doubtful whether a crime against property could fall within the notion of a crime against humanity.

Dr. MAYR-HARTING replied that he shared this doubt but that it was not the property aspect of the activities which were objectionable from the point of view of a crime against humanity, but the threat concerning the fate of the relatives of Mr. Tanzer who were at the time on German occupied territory.

The consideration of this case was adjourned in order to enable the Czechoslovak National Office to present additional information as to the kind of these threats.

VI. Further proceedings as to "crimes against humanity".

The Committee decided to present the paper III/42, (as amended in to-day's meeting) to the Commission and to explain in a covering note the reasons why the Committee, before giving its opinion on the individual cases referred to it, had found it necessary to formulate some general statements.

From the general statements thus elaborated, the necessity to get additional information on the question of the "similar pattern" in the Manner case, had arisen. In the covering note of the report by Committee III, members of the Commission should also be invited to place at the Committee's disposal material substantiating the proposition that crimes committed on a pattern similar to that of the Manner case had been committed by German agents on their territory or against their citizens.

VII. The Alsatian Deserters' Case.

Dr. SCHWELB informed the Committee that Professor Gros's secretary had informed him of Professor Gros's attitude, which was to the effect that as the representative of the member State who had asked for the Commission's opinion, it was not upon him to express an opinion on the report. He agreed with the view that the summoning of a meeting of the Special Ad Hoc Committee was not necessary. Dr. Schwelb had asked Professor Gros's secretary to confirm this message in writing.

The Committee decided to go ahead with the Alsatian deserters' case and to circulate the report to the Commission as the unanimous opinion of Committee III and of the Special Ad Hoc Committee, adding Professor Gros's attitude as it will be formulated in writing.

VIII. The next meeting of Committee III.

It was decided that the next meeting of Committee III will be convened as soon as the material promised by Dr. Zivkovic comes in, but that the meeting will not take place before the 18th June 1946.



UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the meeting of COMMITTEE III held on 4th June 1946 at 2.30 p.m.

In the Chair,

Dr. Mayr-Harting, (Czechoslovakia),

There were also present:

Sir Robert Craigie,  
Major Dr. Fanderlik,  
M. Stavropoulos,  
Commander Mouton,  
Dr. Lachs.

United Kingdom,  
Czechoslovakia,  
Greece,  
Netherlands,  
Poland.

Publication of War Crimes Trial Reports.

The Committee discussed the tentative proposals regarding the publication of war crimes trial reports (Doc.C.200) referred to it by the Commission in its meeting held on 29th May, (M.106).

Paragraphs 1 and 2 of Doc.C.200 were accepted in principle.

When paragraph 3 and the following were discussed, Sir Robert CRAIGIE raised the point that Dr. Schwelb would need the assistance of a qualified English lawyer in order that rapid progress in producing the annotated summaries could be attained. Sir Robert also pointed out that the annotated summaries should be published either through H.M. Stationery Office or through a reliable and responsible publishing firm like Messrs. Hodges. He was of the opinion that publication by Hodges would probably secure a wider publicity than publication through the Stationery Office. In addition, the great experience of Messrs. Hodges in presenting the reports could be utilised.

Other members of the Committee were in agreement with Sir Robert Craigie's view.

The Committee adopted paragraphs 3 and 4 of Doc.C.200, the former with the proviso that until Lord Wright's return, Committee III will perform the duties which eventually will be imposed upon a special committee.

As far as paragraph 5 of Doc.C.200 is concerned, the opinion of the Committee was that preference should be given to publication of the annotated summaries through Messrs. Hodges and that the Commission should fall back on the Stationery Office if Hodges should not be prepared to print and publish the annotated summaries, produced by the Commission's secretariat, under conditions agreeable both to the Commission and to the interested governments.

The consideration of paragraphs 6 to 8 of Doc.C.200 was adjourned.

The Committee therefore decided to make the following recommendations to the Commission:

1. The Commission to publish, for the use by serious students of International Law and Politics annotated summaries of trials of war criminals, to be prepared by the Secretariat from the material submitted to it by the respective national offices and to be approved by the Commission, the procedure for giving the approval being outlined under Nos. 3 and 4 below.
2. The publication should aim at covering all the trials of other than "major war criminals" regarding which the necessary information will be available. In the case of trials where the facts are simple and no legal problems are involved, the summary could be very short, possibly one page or even less. In the case of more important trials the annotated summary will be on the lines of the sample summary circulated as Doc.C.199 ("Peleus" Case). Another sample

of the envisaged report; arranged somewhat differently, is the paper on the case of the United States v. General Dostler (Trial and Law Reports Series No.14.)

3. After Lord Wright's return, a small committee should be appointed, consisting of the Chairman of the Commission and two or three members of the Commission with power to co-opt representatives of interested National authorities. Dr. Schwelb to act as Secretary to this Committee, with the services of the Research and Legal Staff available to assist in its work; an addition to the legal staff is proposed under 5) below.

The terms of reference of this Committee to be, within the framework of the general policy laid down by the Commission,

- (a) to decide the order in which the summaries are to be prepared and published,
- (b) to decide, which trials shall be reported and analysed extensively, (on the lines of the two samples) and which shall be recorded only summarily,
- (c) to approve the draft summaries prepared by the Secretariat,
- (d) to advise the Commission on matters of policy.

Provisionally, until the return of Lord Wright and the appointment of a smaller committee, it is recommended that Committee III will perform the task outlined under (a), (b), (c), (d), as referred to it by the Commission in its meeting of 29th May 1946. (M.106).

4. When exercising its functions under No.3(a), (b) and (c), the Committee should consult the members of the Commission representing those States, the courts of which have rendered the decisions to be published (if they are not already members of the Committee.)

No publication should be undertaken against the wish of the member representing the State, whose court has given the decision.

5. Committee III further recommends to the Commission the appointment of an English lawyer as an assistant to Dr. Schwelb for the performance of his duties connected with the trial reporting.

Colonel Ledingham and Dr. Schwelb were asked to contact both Messrs. Hodges and the Stationery Office on the question of publication of the annotated summaries prepared by the Commission, and to report to the next meeting of the Committee.

It was decided that the next meeting of Committee III should be held on Thursday 13th June at 2.30 p.m.



SECRET.

Committee III Minutes  
No. 15/46.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the Meeting of Committee III

held on 18th June 1946, at 3.0 p.m.

In the Chair:

Dr. Mayr-Harting, (Czechoslovakia),

There were also present:

Sir Robert Craigie,  
M. de Baer,  
Major Fanderlik,  
Dr. Schwam-Nielsen,  
Dr. Lachs,  
Lt. Cdr. Kintner.

United Kingdom,  
Belgium,  
Czechoslovakia,  
Denmark,  
Poland,  
United States of America.

I. Details of publication of the annotated summaries.

Sir Robert CRAIGIE informed the meeting that the Secretary General had had an interview with Mr. Plumbley of H.M. Stationery Office regarding the publication of the summaries. Sir Robert was impressed by what the Stationery Office were prepared to do in this matter. His opinion was that the Stationery Office could provide wider publicity than any private firm, in addition to which publication by the Stationery Office would appear to be more official.

Accordingly, as the widest possible publicity was aimed at, Sir Robert had modified his views in favour of publication by the Stationery Office. Messrs. Hodges had said that they could publish the annotated summaries, but not as cheaply as the Stationery Office could do. Mr. Hodge was more concerned with the fuller edition and a decision on this point would not be prejudiced by a decision regarding the short summaries. The Stationery Office would be responsible for the form, but not for the contents of the reports. On the question of finance, Sir Robert's personal view was that the Stationery Office would suggest an all-in price; if there was a profit or a loss, the Commission would gain or lose accordingly.

THE REPRESENTATIVE OF H.M. STATIONERY OFFICE, MR. PLUMBLEY, WAS INVITED TO MEET THE COMMITTEE AND WAS INTRODUCED BY THE SECRETARY GENERAL.

Mr. PLUMBLEY: The Stationery Office would act as the Commission's agents. The Stationery Office would prefer to publish the reports individually as they become available, at a selling price of, say, one shilling each. The maximum size for a shilling would be 72 pages, which would contain about the same matter as 72 pages of typed foolscap.

Mr. Plumbley suggested 2,500 as a first print, or perhaps 5,000 if the price were one shilling. 2,500 could be sold in Great Britain alone and was a normal average sale for Stationery Office publications. If the price were to be at a shilling and 2,500 were sold, with about 60 pages each, the cost would be cleared. He suggested that if the Commission could supply a title for the cover, the Stationery Office could furnish a proof. 72 pages would be more convenient for publication than a smaller number. The Peleus case would cover about 20 pages.



Dr. SCHWELB: A publication of 72 pages would allow the whole of trials like the Belsen case to go into one volume. Indexes covering 10 volumes or so could be made.

Mr. PLUMBLEY then outlined the arrangements which the Stationery Office would make for advertising the publications and indicated that the time between the manuscript coming in and the publication, would be two or three weeks.

AFTER MR. PLUMBLEY HAD LEFT, THE COMMITTEE AGREED TO RECOMMEND THAT THE SECRETARY GENERAL SHOULD NEGOTIATE AN AGREEMENT WITH THE STATIONERY OFFICE, UNDER WHICH THE STATIONERY OFFICE WOULD PRINT AND PUBLISH THE SUMMARIES FOR THE COMMISSION.

When the discussion was continued, Sir Robert CRAIGIE favoured the publication of volumes of approximately 140 pages at a price of 2/-d. or 2/6d.. This would be a more imposing document. It may be more useful for a student for the cases to be classified from a legal standpoint, but common readers would prefer the cases in each volume to be mixed. Indexes could in any case be provided. Later publications could be reduced in size if necessary.

THE COMMITTEE AGREED TO RECOMMEND THE PUBLICATION OF APPROXIMATELY 140 PAGES at 2/6d, BOUND IN BOOK FORM, WITH A COVER SIMILAR TO THAT OF "ATOMIC ENERGY", WHICH MR. PLUMBLEY HAD SUPPLIED AS AN EXAMPLE. THE SECRETARY GENERAL AND DR. SCHWELB WERE ASKED TO CONSIDER A TITLE FOR SUBMISSION TO THE COMMITTEE.

## II. Further consideration of Doc. C.200: Point 6.

M. de BAER: It would be difficult to estimate what the foreign demand would be until one volume had been published in England.

The CHAIRMAN agreed and suggested that point 6 should be held over. Nevertheless it would be helpful if Committee members could clear the ground with their governments and find whether the governments were, in principle, interested in the publication of translations of the Commission's summaries.

THE COMMITTEE AGREED WITH THE CHAIRMAN.

## III. Publication of more extensive and fuller reports.

The SECRETARY GENERAL said that Messrs. Hodge were prepared to undertake the editing and publishing of fuller works as soon as the Commission's summaries were ready. They would require access to all available documents and they would take the financial risk. The Commission's part would be limited to supplying the transcripts and other material required, and would be responsible for reviewing the proofs.

Mr. Hodge proposed to make his own arrangements for publication in the United States. He had said that editors should be free to put forward their own opinions. The Secretary General had answered that this might be admissible in Great Britain, but might lead to controversy where trials of different countries were involved.

Dr. SCHWELB pointed out the controversy which had been caused by certain remarks by the editor of the publication of the Joyce trial by Messrs. Hodges.

After some discussion on the question of how far the Commission should take the responsibility for the publication of these fuller reports, both in English and other languages, Sir Robert CRAIGIE said that the Commission should indicate to governments that it was quite prepared to undertake this task should the governments wish it to do so.

Otherwise governments could be left to make their own arrangements. The Commission would be in a better position to discover discrepancies and incorrect comments. Each government might, in any case, if it gave a publisher the right to publish the reports, request the Commission to scrutinise the reports before publishing. He proposed that the Commission should undertake the task of assisting in and supervising the publication of the full reports in order to achieve uniformity and impartiality of reporting, provided it were asked to do so by the individual governments.

THE COMMITTEE AGREED TO THIS PROPOSAL AND DECIDED TO DRAFT A RESOLUTION TO THAT EFFECT AT ITS NEXT MEETING.

Sir Robert CRAIGIE: The United Kingdom authorities have informally agreed that the Commission should undertake the supervision of the editing and setting up of the fuller reports, other than the Nuremberg trial, for publication in English. The financial arrangements will be made between the Stationery Office and the publishers.

Sir Robert suggested that the Commission should proceed with the British publications when formal approval had been given by the appropriate authorities. It would be easier for representatives on the Commission to talk to their own governments after the report in English had been published. When this approval had been received, Messrs. Hodges could then be asked to meet the Committee and a representative from the Stationery Office to discuss the publication of these reports.

THE COMMITTEE AGREED TO SIR ROBERT CRAIGIE'S SUGGESTION.

#### IV. Publication of popular editions for the general public.

The SECRETARY GENERAL suggested that Messrs. Penguins might be prepared to undertake the responsibility of producing the popular editions of selected reports, and while the Commission should help in supplying the facts, it should take no responsibility for publication. The publishers could use the summaries and could rely on receiving all the necessary assistance to enable them to obtain accurate information.

Sir Robert CRAIGIE thought it was difficult to say how far the Commission could facilitate publication without taking any responsibility. There was no reason why the Commission should not take some moral responsibility in connection with a reliable firm such as Penguins. He suggested that the Secretary General should explore the ground with the latter.

THIS WAS AGREED.

#### V. Invitation to the United States and Belgian Representatives to join Committee III.

The CHAIRMAN thanked M. de Baer and Lt. Commander Kintner for attending the meeting of Committee III and hoped they would continue to give the Committee their help.

#### VI. Detailed examination of summary C.199.

This question was adjourned.

The next meeting of Committee III will be held on Tuesday 25th June, at 3.0 p.m.



COMMITTEE III MINUTES  
14/46.

UNITED NATIONS WAR CRIMES COMMISSION.

Notes of the meeting of Committee III held on 26th June 1946,  
at 3.0 p.m.

---

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

There were also present:

Sir Robert Craigie,	United Kingdom,
Dr. Fanderlik,	Czechoslovakia,
Dr. Schram-Nielsen,	Denmark,
Dr. Lachs.	Poland.

I. Minutes No. 13/46.

The Minutes of the last meeting were approved, after the following alterations had been made on the suggestion of Sir Robert Craigie.

Page 1, line 4. between "opinion" and "was", insert "now".

Page 2, line 16. in place of "the common reader", insert "the ordinary reader."

Page 2, para. II, 2nd sub para, line 3. between "find" and "whether", insert "out".

II. Doc. C. 200. (Tentative proposals regarding the  
Publication of War Crimes Trial Reports.)

The discussion of this paper was continued.

Point 6.

The Committee accepted Sir Robert CRAIGIE's offer to approach Professor Gros, or, in his absence, the French Embassy on the matter of the French translations.

Point 7.

Dr. SCHWELB: Mr. Hodge had accepted the invitation to attend the meeting of Committee III when it was convenient for the Committee to ask him. The Secretary General had drafted a memorandum on the present state of affairs. (L.R.2.)

The CHAIRMAN informed the committee that he had seen the London editor of Messrs. Hodge, who had said that the firm was interested in the Frank trial. The Chairman thought that Messrs. Hodge would allow supervision by the Commission, but that in practice this supervision would be limited. The editors would want a free hand on the whole, and would accept only advice from the Commission.

Dr. LACHS: The Commission should make sure that the final texts were subject to review by the Commission.

Sir Robert CRAIGIE suggested that the Commission would be interested in the comment and not in the reproduction of the facts. It was doubtful whether the Commission should accept responsibility for all comment because that task would be too great. It might have to include certain



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. PLUMBLY 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 discussion 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 Mr. 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.

- L) 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 SECRETARY.

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 those 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 SPEDNJI 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 shown 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 Gruppelt 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 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 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 Renziano)

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 summarized 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.

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.

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. 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.