

Other: III

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SECRET

No. 1/1945

UNITED NATIONS WAR CRIMES COMMISSION

Committee III

Notes of Meeting held on 20th August, 1945, at 10.30 a.m.

Mr. Terje WOLD (Norway) in the Chair

There were also present:

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| Captain WOLFF | - United States of America |
| Major FANDERLIK | - Czechoslovakia |
| Dr. MAYR-HARTING | " |
| M. STAVROPOULOS | - Greece |
| Dr. ZIVKOVIC | - Yugoslavia |
| Dr. SCHRAM-NIELSEN | - Denmark |

Dr. LIANG (China) had sent his apologies for not being able to attend.

1. Appointment of an Acting Chairman

M. STAVROPOULOS proposed and Captain WOLFF seconded a proposal to elect Mr. Terje WOLD as Acting Chairman of the Committee in the absence of Dr. Ecer.

This was agreed.

2. Appointment of a Secretary

Mr. McKINNON WOOD, Secretary-General, suggested that Mr. Schvelb, Legal Officer of the Commission, should act as Secretary to Committee III.

This was agreed.

3. Discussion of Documents C.141 and III/12 and related subjects.

The CHAIRMAN proposed that there should be a general discussion of the documents and that an examination should be made of Article 5 of the Four-Power Agreement dealing with the adherence of the individual United Nations to the Agreement.

Major FANDERLIK proposed a discussion of the papers before the Committee and added that the discussion on the Charter should be prepared in a similar way as the discussion on the Potsdam decision had been.

Dr. MAYR-HARTING agreed.

Dr. ZIVKOVIC informed the Committee that the United Kingdom Government had already sent or were sending the Agreement to the interested Governments through diplomatic channels.

Mr. WOLD wanted to have the opinion of this Committee before he made any suggestions to his Government. It would be useful if the Committee would say in one form or the other that they recommended that the other United Nations adhere to the Agreement.

Dr. SCHRAM-NIELSEN said that his Government also would be interested to have the opinion of the Commission on Article 5 of the Agreement.

Dr. ZIVKOVIC mentioned that Mr. Justice Jackson and the then Attorney-General had come to the Commission and invited the Governments to collaborate in the prosecution of the major war criminals. The four signatories would appoint prosecutors; the other Governments would present charges to the four prosecutors. The Four Powers would undertake the whole procedure on behalf of the whole of the United Nations.

Mr. McKINNON WOOD read Articles 14 and 15 of the Charter.

Mr. SCHVELB drew attention to the distinction made in the documents between signatories and adherents.

M. STAVROPOULOS expressed the opinion that Article 5 of the Agreement had only an academical meaning. It made no difference from the practical point of view whether an Allied Nation adhered or did not adhere.

Dr. ZIVKOVIC asked whether a United Nation was entitled to present a charge to the Chief Prosecutor without having previously adhered to the Agreement.

Mr. WOLD asked whether there were any means of getting some more information in regard to what Article 5 of the Agreement implied for the individual United Nations. He particularly asked whether it would be possible to approach Mr. Justice Jackson or the British Foreign Office.

Mr. McKINNON WOOD said that the difficulty was that none of the Four Powers would be prepared to interpret alone the Four Powers' Agreement, but he said that he could ask the Foreign Office informally.

Mr. WOLD asked whether the Commission could have the letter which was being sent by the British Foreign Office to the individual United Nations. He also suggested that the American Representative should try to get as much information as possible from Mr. Justice Jackson.

Captain WOLFF promised to take the matter up with Colonel Hodgson.

M. STAVROPOULOS suggested that Professor Gros should also be asked his opinion and invited to attend the Committee's next meeting.

Mr. WOLD said that he had told his Government that he would report on the question of adherence to the Agreement, but not before the Commission had dealt with it.

Dr. ZIVKOVIC said, in this connection, that he had obtained some information from his National Office saying that they had apparently been requested by the Military Authorities to present particulars of evidence against those whom they wanted to have surrendered. In his opinion, this was a matter of principle because the Commission had always understood that the listing of a person on the Commission's Lists presented a kind of warrant. If each of the requesting Governments had to start afresh, all their work would have been waste of time.

Major FANDERLIK explained the actual practice of the American Military Authorities in Germany which requested a so-called "Wanted" Report. If it was found out that the wanted person had already been listed by the Commission, then there were no difficulties.

Dr. ZIVKOVIC said that it seemed that there were cases where they were asked once more to produce evidence.

Mr. WOLD raised the question of surrender of major war criminals to the military authorities for trial before the International Military Tribunal. He said that both this question and the question raised by Dr. Zivkovic should be taken up as special cases by this Committee.

Dr. MAYR-HARTING, while endorsing the proposal to approach the British Foreign Office, the American authorities and Professor Gros, said that at the same time we should arrive at an interpretation of our own and ask the Secretary of the Committee (Mr. Schwelb) to prepare a paper about the consequences of adherence to the Agreement.

M. STAVROPOULOS seconded this proposal.

Dr. SCHRAM-NIELSEN expressed the opinion that the interpretation by the Committee should be postponed until they had the interpretation from the British Foreign Office.

Dr. MAYR-HARTING said that as lawyers, Committee III should come to an interpretation of their own.

The Committee decided unanimously:

1. That the Secretary-General should try to get informal information from the British Foreign Office, that the American representative should try to get similar information from Mr. Justice Jackson, and that Professor Gros should be asked to give his opinion.
2. That the Secretary to Committee III should prepare the paper mentioned above.

The Committee then proceeded to the examination of document C.141.

Dr. MAYR HARTING drew attention to the implications of the Potsdam decisions on the preparation of our Lists, particularly the Lists of "Keymen", and moved that this question should be referred to Committee I.

Dr. ZIVKOVIC agreed.

Mr. WOLD said that what interested them were war criminals, whereas they were not interested in questions of administration (persons to be arrested and interned), and persons mentioned in paragraph 6 of the Potsdam principles. This was not the business of the War Crimes Commission.

Dr. ZIVKOVIC agreed. No doubt paragraphs 5 and 6 of the Potsdam principles dealt with (1) war crimes and war criminals, and (2) security suspects and security measures.

M. STAVROPOULOS agreed with Dr. Zivkovic and added that it was no task of the Commission to produce Lists dealing with security suspects. He thought that the production of "keymen" Lists should be discontinued, because people in Germany know much more about it than they (i.e. the Commission) did.

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Dr. MEYER-HARTING said the Commission had not restricted themselves to criminals in the narrow sense, and the Potsdam decision should not induce them to abandon the preparation of "keymen" Lists, and that the Potsdam decision should be a guidance for preparing further lists. He repeated the proposal to refer the question to Committee I.

Captain WOLFF said that his understanding of the "keymen" Lists was that there was no substantial difference between them and the ordinary Lists of the Commission. The Commission was satisfied that the evidence of crimes committed by these keymen would come later. Even in regard to the "keymen" Lists, there was a prima facie case enabling the Commission to say that they must have taken a leading part in the organisation of the reign of terror in Europe.

The question whether the Commission should go on with the preparation of "Keymen" Lists was a matter for Committee I to decide.

The Committee unanimously decided to send this question on to Committee I.

The Committee then discussed the notion of major war criminals as understood in the Moscow Declaration, the Potsdam principles and the Four Power Agreement.

Dr. SCHWELB drew attention to the saving provision contained in Article 4 of the Agreement and to the fact that Article 1 of the Charter referred to the Agreement and thus provided that major war criminals within the meaning of the Agreement were only those whose crimes had no geographical localisation.

Mr. WOLD concluded the meeting by stating that he would convene another meeting as soon as possible.

SECRET

2/1945

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE III

Notes of Meeting held on 27th August,
1945

Chairman: M. Terje Wold (Norway)

There were also present:

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| Major Fanderlik | Czechoslovakia |
| Dr. Mayr-Harting | " |
| Captain Wolff | United States of America |
| M. Stavropoulos | Greece |
| M. Malezieux | France |
| M. Zivkovic | Yugoslavia |
| Dr. Schram-Nielsen | Denmark |
| Commander Mouton | Netherlands. |

Apologies for unavoidable absence were received from Dr. Liang and Colonel Hodgson.

Agreement of 8th August 1945, for the prosecution and punishment of major war criminals of the European crimes.

The SECRETARY-GENERAL reported that he had ascertained from Mr. Beaumont of the Foreign Office that adherence to the Agreement of 8th August for the prosecution of the major war criminals of the European Axis conferred no rights under the agreement and entailed no obligations. Invitations to adhere were being addressed to all the States which were entitled to sign the Charter of the United Nations.

Captain WOLF reported that Mr. Sidney S. Alderman, assistant to Mr. Justice Jackson, had informed Colonel Hodgson as follows about the memorandum (III/13) prepared by Dr. Schulb:

"In our view the memorandum is a very accurate analysis of the situation, and we find ourselves in entire accord with the views expressed in the memorandum."

The CHAIRMAN asked what advice, if any, the Commission should give to the member Governments who were invited to adhere to the Agreement.

From the resulting discussion it appeared that there was a general opinion in favour of adherence, which had been recommended to the Governments by several of the members present. There might, therefore, be need for a recommendation in favour of adherence. Nevertheless it was decided that the Commission the influence of those discussions and proposals was to be seen in the agreement should place itself on record as recommending adherence.

The Agreement must be recognised as constituting a great advance in international law and in the adoption of measures to prevent aggressive war.

The CHAIRMAN observed that the Foreign Office letter inviting the adherence of Governments represented on the Commission, also contained a request that the member Governments would furnish reports and evidence for use in the trials of the major war criminals. He suggested that the Commission should also recommend the giving of such assistance.

The Secretary General was instructed to draft a report and recommendation for consideration at a further meeting at 5 p.m. on Tuesday, August 28th.

Other Questions

The CHAIRMAN suggested that it might be of interest for Committee III to discuss what persons should be treated as major war criminals, but it was felt that it was a matter for the "Chief Prosecutors" to decide.

M. ZIVKOVIC proposed that a summary of the legal aspects of the Commission's work should be produced - possibly after the war criminal trials had been held and the principles applied in them could be studied. Much that was new in international law would be shown to have been created.

M. STAVROPOULOS supported this proposal. The Commission would have to make a final report on its work. One matter of interest would be the influence of its work on the provisions of national criminal law.

It was agreed that the Legal Officers might be asked to work up material for such a report.

SECRET

3/1945.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE III

NOTES OF MEETING HELD ON 28TH AUGUST,
1945, at 5 p.m.

Chairman : Mr. TERJE WOLD (Norway)

There were also present :

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| Lord WRIGHT | - | Chairman of the Commission |
| Colonel HODGSON | - | United States of America |
| Captain WOLFF | - | " " " " |
| Major FANDERLIN | - | Czechoslovakia |
| Dr. MAYR-HARTING | - | " |
| Dr. MALEZIEUX | - | France |
| Commander MOUTON | - | Netherlands |
| Dr. ZIVKOVIC | - | Yugoslavia. |

DISCUSSION ON DOCUMENT C.144

The SECRETARY-GENERAL presented and read the draft Report, together with the proposed Recommendation which he had been asked at the previous meeting to prepare.

The CHAIRMAN expressed his thanks to the Secretary-General and proposed the discussion of the draft, although he himself saw no objection to the text as it stood.

Colonel HODGSON suggested omitting from the text all passages which had already been made part of the Agreement and the Charter, thus avoiding emphasis on any special part of the Agreement.

After some discussion this was agreed.

Colonel HODGSON proposed also to mention in and attach to the Report the notes prepared on this subject by the Legal Officer, Dr. Schwelb, which had already been circulated as Documents No. III/13 and III/13A. He suggested this more especially in view of the fact that Mr. Justice Jackson had expressed his agreement with the conclusions elaborated in those notes.

P.T.O.

Dr. MAYR-HARTING felt that those notes were too long and detailed to be attached to a recommendation which was intended to be issued by the Commission.

The Committee agreed to Colonel Hodgson's proposal and decided to mention Dr. Schwelb's notes in the draft proposal, as well as to attach them to the report (See Document C.144(1)).

Lord WRIGHT mentioned that he was also in favour of the issue by the Commission of a separate clear-cut declaration on law endorsing the principles embodied in article 6 of the Charter.

SECRET.

No. 4/1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of Meeting held on 3rd September 1945 at 3.0 p.m.

Chairman: Dr. Ecer (Czechoslovakia)

There were also present:

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| Mr. Wold, | Norway, |
| Dr. Schram-Nielsen, | Denmark, |
| M. Stavropoulos, | Greece, |
| Dr. Mayr-Harting, | Czechoslovakia, |
| Commander Mouton, | Netherlands. |

Apologies for unavoidable absence were received from Colonel Hodgson and Captain Wolff.

Discussion of the draft proposal for the declaration by the Commission approving the rules of criminal responsibility contained in the Charter of the International Military Tribunal.

The Committee discussed Lord Wright's proposal which read as follows:

" The United Nations War Crimes Commission, consisting of members from the United States, Australia... etc., hereby declares that the acts and any of them which are specified in Article 6 (a), (b) and (c) of the Charter of the International Military Tribunal which forms part of the Agreement of 8th August 1945, for the Prosecution and Punishment of the Major War Criminals of the European Axis are crimes in international law for which individual criminal responsibility must be recognised to exist. "

M. STAVROPOULOS said that the sources of International law were, inter alia, International agreements. Why should the Commission decide what has already been decided, by the Four-Power Agreement of 8th August. In his opinion, the Commission was not qualified to do so.

Dr. MAYR-HARTING explained that he understood that what Lord Wright had had in mind was that the 17 member Governments represented on the Commission should endorse what the four Powers had done.

Dr. SCHRAM-NIELSEN seconded M. Stavropoulos' proposal and added that there was no reason to make this declaration.

Dr. MAYR-HARTING said that adherence to the Four-Power Agreement meant only that the adhering Governments endorsed the trials to be held at Nuremberg. The declaration proposed by Lord Wright puts the agreement on a broader basis.

The CHAIRMAN (Dr. ECER) said he understood the objections raised by M. Stavropoulos and Dr. Schram-Nielsen, were in effect objections against our assumption of the function of an international legislator. The agreement will become International Law by adherence to it of the

Governments of the United Nations. We are an advisory body and as such we should support the agreement by recommending the other Governments to adhere to it, as we have already done.

Mr. WOLD agreed with the opinion expressed by Messrs. Stavropoulos and Schram-Nielsen. He said that the Commission was not a legislative body, but was only advisory to the Governments represented on the Commission. None of the Governments would adopt something as a crime which was not a crime in International law. In accepting the proposed declaration, the Commission would to a certain extent be outside the scope of its business. The fact remains that these principles have already been laid down and the guilty persons will be tried accordingly.

Mr. WOLD also asked whether the resolution C.144 had been published.

The SECRETARY GENERAL replied that a Press Communiqué would be discussed on Wednesday 5th September at the meeting of the Commission.

Mr. WOLD was of opinion that the meeting ought to hear whether Lord Wright, who was not present that afternoon, had had a special reason for proposing the declaration.

Dr. ECER recalled that the Commission had sent a letter to Mr. Eden on 31st May 1944 stating that they felt that crimes against humanity should be punished. Later, the then Minister of State, Mr. Richard Law stated on behalf of the British Government, that they would be punished. Dr. ECER further recalled that with regard to the crime of starting an aggressive war, the Commission had adopted Colonel Hodgson's proposal, recommending to the Governments to interpret the Briand-Kellogg pact in the sense that the starting of an aggressive war is an International crime. If the Governments of the United Nations adhered to the Four-Power agreement, they will thereby accept our recommendation, which has already been agreed upon. The proposed declaration seems to be a superfluum, if limited to the agreement, but Lord Wright certainly had special reasons in proposing the declaration.

Mr. WOLD drew the attention of the Committee to the fact that this agreement was an agreement between the four great Powers and that its scope would be enlarged if adhered to by the United Nations, but it was restricted to the trial and punishment of persons who acted in the interests of the European Axis countries, and some sort of other agreement would, therefore, be necessary in the case of Japan. In Mr. Wold's opinion, it was, for the time being, superfluous for the Commission to make statements on International law.

Dr. ECER said that this agreement was an ad hoc agreement for a special case. What Lord Wright might have had in mind was to make it a general rule of international law. We might consider a further recommendation to our Governments to lay down as general rules what has been laid down for the special case of the European Axis criminals in the Four-Power Agreement.

Commander MOUTON said that the Commission should wait until the Governments decide about the question of adherence to the Agreement before proceeding to the further recommendation.

Dr. SCHRAM-NIELSEN pointed out that most rules of International law were rules ad hoc.

Dr. MAYR-HARTING suggested that the Commission might discuss whether a further step should be taken.

Dr. ECER said it would be fair to discuss the question in Lord Wright's presence because the Committee was only guessing his intention.

It was decided that Dr. Ecer, and if he should have to leave the country before Wednesday, Mr. Wold, will approach Lord Wright to inform him of the views expressed by the members of the Committee.

Committee III will suggest to the Commission the publication of the Recommendation C.144.

No. 5/45.
11th September 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of meeting held on 11th September 1945 at 3.0 p.m.

Chairman,

Dr. Ecer, Czechoslovakia,

There were also present:

Mr. Terje Wold,
Captain Wolff,
Commander Mouton,
Dr. Schram-Nielsen,
Dr. Zivković
Major Panderlik,
Dr. Mayr-Harting,
M. Stavropoulos,

Norway,
U.S.A.,
Netherlands,
Denmark,
Yugoslavia,
Czechoslovakia,
Czechoslovakia,
Greece.

The Chairman presented to the Committee the note III/15. It was decided to postpone the discussion on this paper until members had had time to study it.

Dr. ZIVKOVIC recalled the main contents of the charge No. 1434 and described the oppression of the Yugoslav minority in Italy before the war and the oppression of the population of those parts of Italian occupied Yugoslav territory which, as e.g. Dalmatia, Italy wanted to annex. What Italy had done was really unprecedented. The Yugoslav delegation thinks that what has been done was a war crime and everybody taking part in it a war criminal. Dr. Zivković recalled the discussion of Committee III concerning the question whether the launching of an aggressive war was a war crime. At that time the majority held that de lege lata it was not, and now the view held by the minority had been adopted in the Four-Power Agreement.

Mr. WOLD spoke of similar cases that happened in Norway, where the Quisling party, backed by the Germans, introduced into the schools new methods against which children, teachers, parents and the whole country revolted. That resistance was one of the most remarkable signs of resistance on the Home Front.

Dr. ZIVKOVIC pointed out the difference meted out by the Axis to Eastern countries on the one hand, and Northern and Western countries on the other. In Yugoslavia the Italians did not even disguise their ruthless policy behind kind manners.

Dr. SCHRAM-NIELSEN said that the main point must be the question of compulsion. The closing of schools and opening of others was not, in his opinion, sufficient to constitute a crime, but if there was compulsion to attend foreign schools this must be considered a war crime.

M. STAVROPOULOS drew attention to the fact that attempts at denationalisation happened always in territories which one of the belligerents wanted to annex, e.g. Italians in Yugoslavia, Bulgarians in Macedonia, Germans in Alsace.

Dr. SCHRAM-NIELSEN: Also the Germans in Southern Denmark.

M. STAVROPOULOS went on to point out that this was a kind of practical annexation. It was, in his view, a "family right" to consider oneself a Greek and to want one's children to be educated as Greeks. This was, in his opinion, family life within the meaning of Article 46 of the Hague Regulations.

Dr. ZIVKOVIC quoted Articles 43 and 46 of the Hague Regulations.

Mr. SCHWELB drew attention also to Article 56, as interpreted in Paragraph XI of the paper III/15.

Commander MOUTON asked whether Mr. Schwelb had been able to find some explanation for the introduction of the Crime No.12 into the 1919 list.

Mr. SCHWELB replied that he had not so far found any explanation.

Dr. ECER said that it could probably be found in the memoranda submitted by the individual governments in 1919.

Commander MOUTON drew attention to the provisions of the Agreement of the 8th August 1945, which make violations of treaties criminal acts.

Dr. ZIVKOVIC recalled the discussions of the Committee, conducted some time ago, concerning the criminality of such acts as imposing on Jews the duty to wear the yellow star. One cannot isolate one thing, but must have in mind the whole scheme and the actors as instruments of the general policy.

Dr. ECER reminded the Committee of Professor Glaser's report on the question. It had been pointed out at the time, that International Law protects also the spiritual life and did not permit mental enslavement and humiliation. He also recalled the preamble to the Hague Regulations which covers cases which had not been foreseen.

Dr. SCHRAM-NIELSEN said that many of these actions were punishable under national law. Propaganda itself was, in his opinion, not sufficient to constitute a crime, but as soon as compulsion enters, the crime begins.

The meeting was adjourned for Wednesday 19th September 1945, at 3.30 p.m.

Amendment of Minutes No.4. The first paragraph of page 3 of Minutes No.4/1945 should read as follows:

"Dr. SCHRAM-NIELSEN pointed out that most rules of International Law started as rules ad hoc."

6/45.
19th September 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of Meeting held on 19th September 1945 at 3.30 p.m.

Chairman

Dr. Ecer (Czechoslovakia)

There were also present:

Captain Wolff,
Commander Mouton,
Dr. Schram-Nielsen,
Dr. Zivković,
Dr. Mayr-Harting.

U.S.A.,
Netherlands,
Denmark,
Yugoslavia,
Czechoslovakia.

I. NEW QUESTION REFERRED TO COMMITTEE III.

The Secretary (Mr. SCHWELB), informed the Committee that Committee I had decided to refer to Committee III a legal question which had arisen in connection with the Czechoslovak Charge No. 26 against the German criminal Sepp Dietz who is alleged to have committed crimes on Czechoslovak territory at the beginning of March 1939.

The Committee decided that it would deal with this question at the next meeting and that it was not necessary for the matter to pass through the plenary meeting of the Commission before Committee III starts its work.

II. CRIMINALITY OF ATTEMPTS TO DENATIONALISE THE INHABITANTS OF OCCUPIED TERRITORY.

Dr. ZIVKOVIC stated that the Secretary General of the Yugoslav War Crimes Commission had brought to London in connection with the meeting of the five Foreign Secretaries, a special report drawn up by the Yugoslav War Crimes Commission which gives the whole picture of the attempts of denationalisation practised by the Italian fascists on Italian occupied Yugoslav territory. At the very beginning, special laws were introduced and the Italian fascist legislation was extended to the occupied territory, as if it were Italian territory proper. The economic, cultural and social life of the occupied territory was organised on Italian fascist lines.

As a first measure, the Commander of the Italian Second Army, the Italian Army of Occupation, consisting of five army corps, imposed the Italian language everywhere in the Italian occupied territory. The Italian language was not introduced exclusively but the administration of the territory was governed on bi-linguist principles. Everything printed, including hoardings of commercial firms, had to be written both in Yugoslav and Italian. The names of the inhabitants, Christian names and surnames, have been Italianised, as well as geographical names of islands, rivers, towns, villages, harbours, streets and squares.

Dr. Zivković gave some examples of the Italianisation of geographical names. Even "In Memoriam" posters had to be printed in Italian. The Italian language was imposed on the administration; affidavits, receipts etc. were to be written in Italian. The Italian Minister of Education stated in a speech delivered in Rome that the Italian schools in Dalmatia

would achieve their aim, the Italianisation of the Dalmatian population. The Italian Carta della Scuola was introduced in Yugoslav territory. The whole tuition in the schools was altered and the fascist system of tuition introduced. A great number of Italian professors and teachers were brought to the occupied territory, even into the smallest villages. Some Yugoslav teachers were kept, but they were removed wherever possible. The Yugoslav teachers were authorised to teach only two hours weekly, and for all other matters the children were to be taken by Italian teachers. Since the Yugoslav children did not know the Italian language, their tuition consisted in singing Italian national and fascist songs, and in other entertainment, intended to influence them. The attendance at the schools was compulsory for the elementary schools (for children from 6 - 10 years), but not compulsory in the secondary schools. The tuition was entirely fascist and Italian, all children were forced to salute in the fascist way and those who declined to do so or omitted to do so, were punished. Pupils in secondary schools, if they could not speak Italian, were forbidden to talk at all. During two school years, not less than 35 pupils were expelled from one secondary school alone because they declined to salute in the Italian fashion.

The printing of Yugoslav literature was entirely prohibited and even the selling of Yugoslav books already in existence was forbidden, books in the Serbo-Croat language were taken away and burned and even Quisling Croat papers were forbidden in part of the territory by the Italian General Dalmazzo.

Membership of the Ballila and of the GIL was compulsory for Yugoslav children and youths.

In the churches of the "Old-Catholic" denomination, where it was usual to hold the Holy Mass in Serbo-Croat instead of Latin, this was forbidden. All priests who were suspected of being too patriotic were removed from office and even priests were forced to swear the oath of allegiance to the Italian King and to the Italian Government. The Italian constitution and elementary Italian laws were introduced into the occupied territory. Barristers had also to swear the oath to the Italian Government. All workers had to join the Italian organisation Doppo Lavoro.

A complete list of Italianised geographical names can be produced.

These details may satisfy the suggestion made by Dr. Schwelb who, in Doc. III/15, page 5, Paragraph 11, suggested that the Yugoslav National Office should provide further particulars.

Dr. SCHRAM-NIELSEN said that in view of what Dr. Zivković had said, he did not doubt the compulsory character of the Italian denationalisation activities and, consequently, their criminal character. He said that Committee III should make a more general statement and not a special one referring to the particular Yugoslav case.

Dr. MAYR-HARTING proposed that Committee III should base its report on the following two considerations: (1) that denationalisation was a war crime and (2) that which acts or omissions constituted this crime could only be decided on the particular facts of each individual case.

Dr. SCHRAM-NIELSEN replied that the Committee had to attempt a sort of definition.

Captain WOLFF said that the question arose in Committee I when the Yugoslav National Office brought charges against four individuals. The situation was a novel one and therefore the case was adjourned and referred to Committee III. In his opinion Committee III should confine itself to a discussion of the particular case. If the Committee would deal with purely hypothetical definitions, it could get into difficulties. The Committee was dealing with a practical situation and its first task was to explore the legal question of that one case.

Dr. MAYR-HARTING said that the Yugoslav case had given rise to this question; the majority of Committee I had been of the opinion that denationalisation could never be a crime. This Committee III was not a court of appeal to Committee I. Committee III should, therefore, restrict itself to the expression of a principle.

Commander MOUTON was inclined to hold that the Committee should try to give a definition. Denationalisation could be defined as a crime insofar as it was in violation of the Hague Regulations. As in the Agreement of 8th August 1945, a violation of International Treaties was being treated as a crime, the Committee would be justified in doing so.

Dr. ZIVKOVIC said that it was not by accident that in 1919/1920 denationalisation was considered a war crime, and that it was foreseen as a crime by the United Nations War Crimes Commission. It was not difficult to say in which facts it consisted. The facts which Dr. Zivkovic had been able to present are of a general character and may serve as an illustration. Removal of national symbols and names, foreign tuition in the schools, denomination of geographical localities, the introduction of compulsory education in the language of the occupying power, the renaming of places and changes in Christian and surnames of inhabitants, all these constitute denationalisation.

Dr. MAYR-HARTING: We should not restrict ourselves to the milder types of denationalisation. Such activities as the extermination of the intellectual class, the taking out of people from the professions and sending them to unskilled labour and their physical extermination, all fall under the heading of "Denationalisation". It is a crime on a higher level, a criminal policy which involved a series of crimes.

Dr. ZIVKOVIC: We must distinguish the policy of transforming a population for the purpose of annexation, from other crimes. Dr. Mayr-Harting's is too large a concept. There is a notion of denationalisation in a narrower sense, which does not consist in murdering and killing people but in transforming their spiritual and cultural life.

Dr. SCHRAM-NIELSEN proposed that Committee III should reply to Committee I on the following lines:

- (1) We ought to have a summary of Dr. Schwelb's report.
- (2) We should say that denationalisation constitutes a war crime.
- (3) That mere propaganda did not constitute a crime but that a war crime was established whenever the element of compulsion came in.
- (4) We ought to mention the different types of acts of which we have heard.

Dr. ZIVKOVIC agreed to the form proposed by Dr. Schram-Nielsen but in his opinion it was difficult to make a precise distinction between mere propaganda on the one hand and criminal denationalisation on the other.

He, Dr. Zivković, would be in favour of saying that denationalisation was always a crime and to give some examples.

Dr. MAYR-HARTING agreed with Dr. Zivković and proposed to leave out the question whether mere propaganda constituted a crime, but he admitted that the element of force was necessary.

Dr. ECER: If we regard the problem from the point of view of classic criminal law against individuals, we need a mens rea and actus reus, deception or force, vis or metus. There must be an attack against the free will of the victim, compulsion, psychological or physical.

What we have in mind is not so much individual cases, but the system aiming at the transforming of the occupied nation into a part of the occupying nation. This policy is a criminal one. You must have in your mind that the policy is carried out by the occupying Power which involves all means of pressure from psychological compulsion to physical violence. It is impossible to give a catalogue of what an occupying Power can do in this respect. The Hague Regulations said that it was illegal to extort contributions under certain circumstances and to compel the inhabitants to perform certain services. What is not allowed by the provisions of the law of belligerent occupation is illegal. Dr. Schwelb is right in pointing out that at the present state of International law, it is necessary to draw a distinction between civil wrongs (tort) and crimes. Statements such as that by Strupp were the necessary consequences of a state of International law where States were the only subjects of International law. From this it followed that it was not necessary to distinguish between criminal and non-criminal offences because in both cases, only the State was responsible and liable for damages. At the moment we establish the personal responsibility of the persons acting on behalf of the State, the distinction between crimes and non-criminal wrongs is an important one. Who could help us in drawing the distinction? In Dr. Ecer's opinion only criminal law could do it. International law refers directly to the general principles of criminal law. Bellot realizes that general principles of criminal law must be applied. The element of compulsion which is a very important element of criminal law is given by the fact of occupation. The governing of the country by the occupant government consists in compulsion; compulsion, not persuasion is the substance. We must have in our minds the policy aiming at the transforming of the occupied population into a part of the occupying Power. Establishment of private German schools in peace time, the bribing of parents into sending their children to German schools, that is not a crime. If a man persuaded a father to send his child to an Italian school, this was no crime, but if, in executing the policy of the occupying Power aiming at transforming the occupied population into a part of the occupying nation, the compulsory measures of the State administration should be applied towards achieving this end, this would constitute a crime.

We have to stigmatise the policy of a foreign government which invades foreign territory and uses its power to ends not permitted by International law.

Dr. Ecer agreed with the opinion that as to the particular charges, their character as a crime always depended on the merits of the individual case. Dr. Ecer concluded by proposing that Committee III should express its opinion on the following lines:

- (1) The attempt of the occupying force to transform the occupied nation culturally and spiritually into a part of the occupying nation by using the position and means given to the occupying force, is, in principle, a war crime.

- (2) Whether an individual should be listed as a war criminal or not depends on the merits of the individual case.

Captain WOLFF proposed that the Committee should ask one of the legal officers to draft a paper summarising the opinions expressed in the discussion, which paper should be circulated to members of Committee III.

Dr. EGER, Dr. ZIVKOVIC and Dr. SCHRAM-NIELSEN agreed that this should be done.

Dr. ZIVKOVIC proposed that Committee III should add to the general definitions the quotation of some examples.

Dr. EGER asked Dr. SCHMELB to frame the final text. He himself will go through it and then it will be submitted to the Committee. This was agreed to.

The next meeting of Committee III will be held on Tuesday 25th September 1945, at 3.0 p.m.

7/45.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of Meeting of Committee III held on 25th September 1945
at 3.0 p.m.

Chairman.

Dr. Ecer, Czechoslovakia,

There were also present:

Captain Wolff,
Commander Mouton,
Dr. Schram-Nielsen,
M. Stavropoulos,
Dr. Zivković,
Dr. Mayr-Harting,

U.S.A.,
Netherlands,
Denmark,
Greece,
Yugoslavia,
Czechoslovakia.

The Committee discussed the draft report III/17 on the criminality of attempts to denationalise the inhabitants of occupied territory.

Paragraph I.

After discussion, it was decided to bring the wording of this paragraph into line with the decision of Committee I, as recorded in the minutes No. 29 of Committee I.

Paragraph II.

This paragraph was agreed to without comment.

Paragraph III.

This paragraph was agreed to without alteration, except that the word "national" should be inserted before the word "municipal" in line 5, and the latter word be put in brackets.

Paragraph IV.

After discussion it was decided to leave out the reference to the Four-Power Agreement of 8th August 1945.

Paragraph V.

It was decided to leave out the quotation of Professor Lauterpacht, but to retain the substance of Paragraph V, particularly the reference to the general principles of criminal law and to the sanctity of human personality.

Paragraph VI.

It was decided to leave out the word "belligerent" in line 2, and to alter the basic definition of denationalisation to the effect that it would read: "the policy of an occupant aiming at depriving or transforming the national character of the inhabitants of the occupied territory, or of the territory itself, particularly by means of..." It was further decided to shorten the paragraph if possible.

The discussion was adjourned till Tuesday 2nd October at 3.0 p.m. and the secretary to Committee III was asked to redraft paragraphs I - VI of the paper, according to the discussion recorded above, and to circulate it to the members of Committee III before the next meeting.

8/45.
3rd October 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of Meeting of Committee III held on 2nd October 1945
at 3.0 p.m.

In the Chair: Dr. Zivković, Yugoslavia,

There were also present:

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| Major Dr. Fanderlik, | } | Czechoslovakia, |
| Dr. Mayr-Harting, | | Greece, |
| M. Stavropoulos, | | Netherlands, |
| Commander Mouton, | | Poland. |
| Dr. Szerer, | | |

In the absence of the Chairman, Dr. Ečer, and the acting
Chairman, Mr. Wold, Dr. Zivković took the chair.

I. Criminality of attempts to Denationalise the
Inhabitants of Occupied Territory.

Dr. ZIVKOVIC recapitulated the proceedings of Committee III
dealing with this problem and the Committee continued the discussion
of the draft report III/17 as amended in Doc. III/17(1).

The following amendments were decided upon:

Paragraph II. Add: "...dignity, which in the words of the Preamble
to the 1907 Convention Concerning the Laws and Customs
of War on Land, "remain under the protection and
governance of the principles of the law of nations, derived from the
usages established amongst civilised peoples, from the laws of humanity,
and from the dictates of the public conscience".

Paragraph VI. The text of the introduction of Paragraph VI as
formulated in Doc. III/17 (1) will read as follows:
"Under denationalisation in a criminal sense Committee
III understands the use of the de facto power wielded by an occupant
in execution of a policy aiming at depriving the inhabitants of the
occupied territory of their national characteristics and/or transforming
the ethnological character of the region, particularly by means of...."

Paragraph VII. In line 11 of the text contained in Doc. III/17, the
words "a great many municipal legal orders" are to be
struck out and the following words are to be inserted
in lieu thereof: "some national (municipal) legal orders."

Paragraph VIII. This paragraph will read as follows: "In the light of the customary and conventional provisions of International law, the illegal character of the denationalisation of the inhabitants by applying the force vested in the occupying Power stands out even more clearly. It is the duty of occupants to respect, unless absolutely prevented, the laws in force in the country (Art.43 of the Hague Regulations.). Inter alia, family honour and rights and individual life must be respected (Art.46.) The right of a child to be educated in his own native language, the right of a man to retain his own Christian name and surname, the right to use one's own language, fall certainly within the rights protected by Art.46 ("individual life"). Article 56 of the Hague Regulations protects the property, inter alia, of institutions dedicated to public worship, charity, education, science and art, historic monuments and works of science and art. It is the rationale of Art. 56 to protect spiritual values. If the belligerent occupant must not confiscate, seize, destroy or wilfully damage the property of educational and scientific institutions, he is the less entitled to apply force in interfering with the spiritual and intellectual life of such institutions, the only possible legitimate exception being considerations of the safety of the occupying force. "

Paragraph IX. This paragraph will read as follows: "The question whether an alleged offence falls within the terms of criminal denationalisation and whether the liability of a particular individual is involved should be decided in each case on its own merits. "

With the amendments recorded above, the draft report III/17 as amended by Doc.III/17 (1), was carried unanimously.

In his concluding statement, the Chairman, Dr.ZIVKOVIC, expressed his thanks to all who had taken part in the discussion and contributed to the successful conclusion of the work of the Committee on this difficult question. He pointed out that the author of a book which had become available after the last meeting of this Committee (Raphael Lemkin: "Axis Rule in Occupied Europe") had, in a chapter called "Genocide" arrived at the same conclusions which this Committee had embodied in its present report, without knowing Mr.Lemkin's publication previously.

II. War Crimes Law Reporting.

The Committee discussed the proposal concerning the starting of a series of law reports presented by the Secretary, (III/18). It was carried unanimously. The Secretary of Committee III was asked to begin the work on the law report of the Lüneburg trial and to present it to Committee III. It was, therefore, decided that the Public Relations Committee should be informed of this decision forthwith in view of the agenda of its meeting of 4th October.

III. Classification of Crime committed in Czechoslovakia in March, 1939.

The consideration of the Document III/16 (Classification of Crime Committed in Czechoslovakia in March 1939) was adjourned to the next meeting of Committee III which will be held on Tuesday 9th October at 3.0 p.m.

9/45.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of Meeting of Committee III held on 9th October, 1945 at 3 p.m.

In the Chair, M. Stavropoulos, Greece.

There were also present:

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| Dr. Mayr-Harting, | Czechoslovakia, |
| Dr. Erik Schram-Nielsen, | Denmark, |
| Commander M.W. Mouton, | Netherlands, |
| Dr. Radomir Zivković, | Yugoslavia. |

In the absence of the Chairman, Dr. Eder and the Acting Chairman, Mr. Wold, M. Stavropoulos took the chair, the Committee having unanimously ruled, that in the absence of the Chairman and the Acting Chairman, the other members of Committee III will take the chair in turn.

I. Criminality of attempts to Denationalise the Inhabitants of Occupied Territory.

Dr. MAYR-HARTING referred to the report carried in the last meeting of the Committee, and in the meantime distributed as Doc. C.149 and submitted for consideration, whether Committee III should not, in addition to this report, propose to the Commission an alteration in the working list of War Crimes by replacing the present item "denationalisation" by the term Genocide as proposed by Dr. Lemkin in Chapter IX of his book "Axis Rule in Occupied Europe."

M. STAVROPOULOS pointed out that Dr. Lemkin's term is wider than the term "denationalisation". He said the Committee were concerned with other aspects. In the case of murder it could be ignored that the general intention was denationalisation.

Dr. MAYR-HARTING did not agree with this view and referred to Dr. Lemkin's distinctions between physical and cultural "genocide" etc. The same distinction is drawn in Doc. C.149, Par II.

Dr. ZIVKOVIC also declared that in his view genocide was the wider term. Committee III should not propose any addition to its report, but should leave it to the members of the Commission to use the term "genocide". In his view this notion of "genocide" should not be identified with denationalisation. If one starts from the fundamental motive of an aggressor to kill either the body or the soul of the nation then anything that has been done by Germany, or to a certain extent, by Italy, towards some of the United Nations would fall within the term "genocide".

The discussion was concluded with the general assent to the proposition that it should be left to the Commission as such to consider the possibility of replacing or supplementing the working list of war crimes, and Committee III would deal with this question if it were referred to it by the Commission.

II. The Czechoslovak Case No.26 (Classification of Crime committed in Czechoslovakia in March 1939.)

The Committee discussed the question referred to it by Committee I as stated in Doc.III/16 and in the Minutes No.31, of the Meeting held by Committee I on the 19th September 1945.

The Chairman, (M. STAVROPOULOS) pointed out that the problem before the Committee was whether or not the Four Power Declaration of 8th August, 1945, had made a change in the relevant provisions of International Law.

Dr. MAYR-HARTING said: The question arose in connection with the Czechoslovak charge No.26 which dealt with a case the type of which occurred very frequently between the Munich Conference (29th September 1938) and the occupation of the rest of Czechoslovakia (15th March 1939). - SS gangs came to Czechoslovakia to provoke "incidents" which served the German propaganda machine with samples of the alleged terrorisation of the remnants of the Germans left in Czechoslovakia after Munich. These incidents purported to be one of the pretexts for the occupation of the remnants of the Republic. During the beginning of March 1939 (i.e. before the occupation of the rest of the Republic) Dietz came with a band of SS men to the Moravian town of Jihlava, and with the help of local German Youth Organisations provoked a clash with the Czechoslovak Police and members of the local Czechoslovak population. Both amongst the Police and the Czechoslovak population were victims of this outrage. According to a declaration of the President of the Czechoslovak Republic made by virtue of the Czechoslovak Constitution Czechoslovakia has considered herself in a state of war with Germany since September 1938. The Czechoslovak National Office therefore considers the present case as a war crime in the technical sense. When the case was considered in Committee I last year, some of its members felt that they could not accept this view. The criminal was therefore listed on B2 only. In the opinion of the Czechoslovak authorities the position in International law has been changed by the Four Powers Agreement of 8th August 1945. Dr. Mayr-Harting particularly referred to Article 6, paragraph c, of the Charter of the International Military Tribunal dealing with crimes against humanity, enumerating murder and other crimes committed against any civilian population, before or during the war. If the major criminals are to be prosecuted for crimes against humanity in the same way, we have to prosecute the minor criminals too not only for war crimes in the technical sense but also for crimes against humanity. If war crimes and crimes against humanity of the major criminals are dealt with in the same way as far as procedure is concerned, it is a matter of course that also the crimes against humanity of the minor criminals are dealt with in the same way as their war crimes. The consequence is that minor criminals are to be surrendered for their crimes against humanity as well to the State in the territory of which these crimes were committed. Before this can be done they have to be charged at and listed by the Commission. Dr. Mayr-Harting went on to state that the United Kingdom delegate, had, in Committee I, disagreed with this view, and this was the reason why the question had been brought before Committee III. Dr. Mayr-Harting proposed that Committee III should not deal with the aspect of the case based on the consideration whether or not Czechoslovakia was at war at the beginning of March 1939, but that Committee III should restrict itself to the question whether crimes against humanity committed against allied subjects or on allied territory should be dealt with in the same way as war crimes.

Dr. MAYR-HARTING recalled the lengthy discussions conducted in this Commission in the matter of crimes committed against the Jews in Germany and quoted the following paragraph from the letter from the then Lord Chancellor, to Sir Cecil Hurst, dated 23rd August, 1944:

" Thirdly, in your letter of 31st May you refer to a "Category of enemy atrocities which does not fall within the definition of war crimes, namely, atrocities committed on racial, political or religious grounds in enemy territory. This would open a very wide field. No doubt you have in mind particularly the atrocities committed against the Jews. I assume there is no doubt that the massacres which have occurred in occupied territories would come within the category of war crimes and there would be no question as to their being within the Commission's terms of reference. No doubt they are part of a policy which the Nazi Government have adopted from the outset, and I can fully understand the Commission wishing to receive and consider and report on evidence which throw light on what one might describe as the extermination policy. I think I can probably express the view of His Majesty's Government by saying that it would not desire the Commission to place any unnecessary restriction on the evidence which may be rendered to it on this general subject. I feel I should warn you, however, that the question of acts of this kind committed in enemy territory raises serious difficulties, and it would probably be better that the Commission should not concern itself with these until the matter has been fully considered in the light of your recent recommendations. His Majesty's Government do attach very great importance to the investigation which they feel sure is proceeding of the massacres committed in the occupied territories and the identification of those responsible. "

Dr. MAYR-HARTING, commenting on this paragraph, said that the then Lord Chancellor distinguished between two categories of crimes against humanity, namely, (1) crimes committed in occupied territories and (2) crimes committed in Germany. If for a moment we admitted that, at the beginning of March, 1939, there was no war, we find in the Czechoslovak case No. 26, a third category of crimes against humanity, namely crimes committed in Allied territory, not occupied, before the war.

Dr. MAYR-HARTING further quoted the statement made on January 31st, 1945, in the British House of Commons by the then Minister of State, Mr. Richard Law, as follows: "Crimes committed by Germans against Germans are in a different category from war crimes and cannot be dealt with under the same procedure. But in spite of this, I can assure my Hon. friend that His Majesty's Government will do their utmost to ensure that these crimes do not go unpunished. It is the desire of His Majesty's Government that the authorities in post-war Germany shall mete out to the perpetrators of these crimes the punishments which they deserve." "The authorities to which I refer are the authorities who will be in control in Germany when the war comes to an end. I think I can leave it to my hon. and learned friend to imagine who those authorities will be."

If we now investigate, Dr. MAYR-HARTING continued, in which direction this programme has been fulfilled and in which direction it has not been fulfilled, we find the following: From the provisions regulating the establishment of Military Government Courts in Germany, as summarised and commented upon in Dr. Schwelb's paper Doc. C. 132, it can be seen that these Courts are competent to try crimes against humanity especially those committed by Germans against Germans in Germany. The programme outlined by Mr. Richard Law, has been given effect as far as minor criminals are concerned in two directions. A machinery has been created for the punishment of crimes against humanity and the procedure is different from that applied in the case of war crimes in the narrower sense.

Through the Agreement of the 8th August 1945, again machinery has been created, but in this case the procedure is the same for war crimes and for crimes against humanity. The question arises whether the "3rd category"

of crimes against humanity in the sense mentioned previously, i.e. crimes against humanity committed before the war on Allied territory or against Allied nationals is to be dealt with in the way as category I is being dealt with, or in the way Category II is being dealt with. The question is, are crimes against humanity committed before the war on Allied territory, to be treated like war crimes, or like crimes committed against Germans?

Dr. MAYR-HARTING went on to point out that the Nazis have before and during the war committed crimes which form part of a policy adopted by the Nazi government from the outset. The reason which led to the Moscow Declaration that war criminals are to be surrendered to the countries where they have committed their crimes, holds good also as to crimes against humanity. The crimes against humanity are part of the same policy from which the war crimes proper emanated. In the meeting of Committee I on 19th September 1945, the United Kingdom representative declared: We fully agree, however, that Dietz, who was guilty of a crime on Czechoslovak soil, should be transferred to the Czechoslovak authorities as a criminal, but not as a war criminal.

Commenting on this statement, Dr. MAYR-HARTING said: I am just wondering how that can be managed because the Continental Extradition Treaties are not applicable, under them no State surrenders its own subjects: a criminal like Sepp Dietz can only be surrendered if he is dealt with like a war criminal. Dr. Mayr-Harting further dealt with Mr. Beaumont's view which was to the effect that Article 6 of the Charter of the International Military Tribunal was only an indictment and did not as yet constitute a tried and accepted principle of International law. He said that he did not agree with this view and that in his opinion a new law had been created by the Four Power Agreement. Apart from this, the Czechoslovak National Office did not ask the Commission for a sentence against Dietz; the submitting of a charge to the Commission is certainly not more than an indictment. Whether there is a law making, what Dietz had done, a criminal offence would be found out by the Czechoslovak Courts as well as it will be found out by the International Military Tribunal with regard to the major war criminals.

M. STAVROPOULOS said that Dietz had, no doubt, committed a crime. There was no German Government in existence, and why do not the Czechoslovak authorities ask the American, British, French or Russian Military authorities to hand the man over to them in order that he should be tried as a common criminal.

Dr. MAYR-HARTING replied that there was no legal basis for that.

M. STAVROPOULOS referred to the papers containing statements by the British and American authorities according to which the Allied Governments could ask the military authorities for surrender.

Dr. MAYR-HARTING replied that he thought that all of us were opposed to the idea that persons should be handed over who are not on our lists, but apart from that there was no mention in the correspondence in question of other criminals than war criminals.

M. STAVROPOULOS said that if it was not a war crime, it was outside our authority.

Dr. ZIVKOVIC said that the question was whether offences committed before September 1939 were war crimes. The reply depended on whether the Czechoslovak Republic was then in a state of war. If the reply is given from the traditional point of view of International law, it is: no,

and then the reply to our question is: it is not a war crime. If it is not a war crime, we have to consider the statements by the Lord Chancellor and by Mr. Richard Law, and we have now before us the Agreement of 8th August, 1945. In Dr. Zivković's view Article 6 of the Charter has to be read in connection with the Articles of the Agreement, particularly with Articles 4 and 6. The whole paper (Cmd. 6668) speaks of war crimes. Article 6 of the Charter speaks of persons "who committed any of the following crimes." It is not by accident that the war criminals are held responsible for all three types of crimes which are akin. There is no intention to separate the three categories of Article 6 (a, b, c) into water-tight compartments. Articles 4 and 6 of the Agreement do not refer to the narrow group of war crimes within the meaning of Article 6, paragraph (b). Crimes against peace (Paragraph (a)) are the exclusive specialty of the major war criminals, but not only the planners, i.e. the major war criminals, but also the actual perpetrators are to be punished, but how can any government say we want to try the perpetrators of war crimes, but we do not want to try the perpetrators of crimes against humanity? Dr. Zivković fully agreed with Dr. Mayr-Harting's opinion that crimes falling under paragraph (b) and crimes falling under paragraph (c), should be dealt with on the same footing. It was more difficult for him to accept the view that Czechoslovakia was at war with Germany before the rest of the United Nations were at war. In his opinion we have here a conspicuous case of a crime against humanity. Dr. Zivković believed that the War Crimes Commission was entitled to register such charges and to supply the names of the registered criminals to the Allied military authorities for surrender to the requesting Government. Had this Agreement of 8th August been signed before the War Crimes Commission was formed, there would not have been any doubt for this Commission to deal with all these crimes. Dr. Zivković said lists of key men had been produced and charges against major war criminals had been listed, regardless of the fact whether the demanding Governments will be able to try the major war criminals. Dr. Zivković's conclusions were: Crimes against humanity fall within the competence of the United Nations War Crimes Commission, the crimes committed by Dietz are crimes against humanity, therefore they are to be registered by the War Crimes Commission.

Dr. SCHRAM-NIELSEN said that he was in agreement with Dr. Zivković's conclusions, but that he arrived at them by a different argument. In his view the relevant point was that a crime had been committed in circumstances which are corresponding to war. Nowadays war starts in a different way from what it started in previous times, e.g. no declaration of war. The circumstances under which the crime of Dietz was committed corresponded to war, it was a fight between men belonging to armed formations of different nations.

Dr. MAYR-HARTING pointed out that there had also been committed crimes against humanity in circumstances not corresponding to war, e.g. raids by Germans on Czechoslovak territory in order to murder the political opponents of Nazism who had found refuge in Czechoslovakia.

Dr. ZIVKOVIC said that the Commission could open a new file for the listing of criminals against humanity.

M. STAVROPOULOS: We consider them criminals and propose something new.

Dr. MAYR-HARTING: All crimes falling under Article 6 (c) are on our working list of war crimes. We could list Dietz, e.g. for murder.

M. STAVROPOULOS: A list should be produced of people who have committed crimes against humanity, which will enable the respective Governments to go to the military authorities and ask for their surrender.

Dr. MAYR-HARTING: In our opinion there is no reason why they should not be surrendered, and therefore the Commission must list them. If we start a list we must start from the opinion that the people listed therein shall be surrendered.

Dr. ZIVKOVIC: The principle is that the perpetrators of crimes against humanity should be surrendered to the Governments concerned.

Dr. SCHRAM-NIELSEN: Is a German who has committed a murder in Denmark say in 1925 also to be surrendered?

Commander MCUTON: What is the time limit back to history?

Dr. MAYR-HARTING: The crimes must be part of the policy adopted by the Nazis.

Dr. SCHRAM-NIELSEN: There must be a sort of relation to the policy which led to the war.

Dr. ZIVKOVIC: We have to cover 1) all the cases of crimes which were committed against the inhabitants of the Axis countries prosecuted by their own Governments, Jews, Anti-Fascists and so on, 2) Allied nationals who either during or before the war fell into the hands of the Axis powers were unpleasant to the Axis Governments and were ill-treated or exterminated, they also should be listed and surrendered. The question of jurisdiction was, of course, more complicated.

Dr. ZIVKOVIC mentioned the Yugoslav cases which were now before Committee I where Italians were accused of having committed crimes against Italian citizens of the Yugoslav race.

Dr. SCHRAM-NIELSEN: We ought to call them war criminals in the wider sense, it is always necessary that they were "acting in the interests of the European Axis countries". A war crime may be committed before the war.

Dr. MAYR-HARTING: We can come to the conclusion that the case in question falls under (b) and not (c).

Dr. ZIVKOVIC: We can classify that charge as alleging a war crime according to paragraph (b) and not as a crime against humanity under paragraph (c), then we need not discuss whether crimes against humanity are to be listed.

Dr. SCHRAM-NIELSEN: The whole agreement deals with War Criminals, therefore the crimes under Article 6, a, b, c, are all war crimes in the wider sense, and the crimes falling under Article 6, paragraph (b) are war crimes in the narrower sense.

Dr. ZIVKOVIC said that cases like the Yugoslav cases against Italians for crimes against Italian nationals should also be examined and listed by the Commission. Whether they can be listed formally in the same way as war crimes in the narrower sense and surrendered to the Yugoslav Courts is a different matter.

Dr. ZIVKOVIC would like Committee III to reach a conclusion in principle that the Commission should list: (1) Crimes against Axis citizens, these have to be listed somehow. (2) Crimes against Allied Nationals. These have to be listed as War Criminals. They have to be surrendered to the Governments concerned in the same way as war criminals proper. (3) To leave it to Committee I, to determine the practical way how to advise the Military Authorities, etc. etc.

Dr. MAYR-HARTING felt that Committee III would prejudice the Yugoslav cases which will come up to it, if it comes to so wide a conclusion today. He would prefer Dr. Schram-Nielsen's opinion and the wider question should be the subject matter of a new meeting at a time when Committee III will have received from Committee I, the material relating to the Yugoslav cases. The committee should not go further than is necessary at present.

Dr. ZIVKOVIC: You are attaining a principle only for the sake of a particular case. We should try to reach a principle for a series of cases which may be brought before the War Crimes Commission.

Dr. MAYR-HARTING: The principle covers all crimes against humanity, committed against Allied Nationals or on Allied territory.

Dr. SCHRAM-NIELSEN: We can never go further than to say that all crimes mentioned under Article 6, are war crimes in a wider sense. If they have acted in the interests of the European Axis they are war criminals in the wider sense.

Dr. ZIVKOVIC: This principle cannot do anybody any harm.

Dr. MAYR-HARTING: It could be argued that para (c) covers only crimes against enemy nationals and that the analogous crimes committed against Allied subjects or on Allied territory fall under para (b).

Commander MOUTON asked the Secretary whether any material was available as to the discussions which led to the formulation of Article 6 of the Charter.

Mr. SCHWELB said that to his knowledge nothing had been published except the statement by Mr. Justice Jackson in "The Times" of 9th August 1945.

Commander MOUTON: The present case does not constitute a war crime within paragraph (b). Are we entitled to give an interpretation to Article 6, which deals only with the jurisdiction of the International Military Tribunal?

M. STAVROPOULOS: If the case falls within (b) our task is finished.

Commander MOUTON: In my opinion it does not fall within (b)

Dr. ZIVKOVIC: It does not fall within (b) but the question is whether or not it is to be treated as if it were falling under (b). In my opinion it falls under (c).

M. STAVROPOULOS summed up that the Commission's opinion appeared to be that crimes against Allied Nationals committed before the war fell under paragraph (c), first sentence. The question was whether Committee III should say that the terms of reference of the United Nations War Crimes Commission covered war crimes in the wider sense or whether Committee III should make a suggestion that the Commission ought to have their terms of reference extended.

Dr. ZIVKOVIC: In the opinion of Committee III, they are war crimes in the wider sense, and if this should not be acceptable to the Commission, the Commission should ask for the extension of the terms of reference.

M. STAVROPOULOS: We can say that since the Agreement exists, we must compile a list of people who have committed crimes against humanity.

Dr. MAYR-HARTING: We have to decide that this type is so similar to war crimes in the narrower sense that we assume it was within our terms of reference. I do not think we should propose that the Commission ask for the extension of **their** terms of reference.

Commander MOUTON: I disagree completely with the view expressed by Mr. Beaumont that the agreement of the 8th August was only an indictment.

Dr. ZIVKOVIC: Article 6 was an agreement "constitutif de droit."

Dr. SCHRAM-NIELSEN: If what is said in Article 6, is not the law, what has the tribunal to act upon?

M. STAVROPOULOS contrasted the position in 1919 where the question had only been studied with the position created by the Agreement of 8th August. What is stated in Article 6 of the Charter purports to be law today.

Dr. SCHRAM-NIELSEN: Every sentence of the Court must be based on the law laid down in the Agreement.

Dr. SCHNEELB was asked to prepare a report of Committee III based on the views expressed in today's discussion.

III. LAW REPORT SERIES No.1.

The consideration of Document III/19 and the Law Reports Series No.1. was adjourned to the next meeting of Committee III which will be held on 16th October 1945 at 3 p.m.

10/45.
24th October 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 23rd October 1945
at 3.0 p.m.

In the Chair,

Dr. Zivković, Yugoslavia.

There were also present:

Lord Wright,
Sir Robert Craigie,
Dr. Mayr-Harting,
Commander Mouton,
Mr. Wold,

Chairman of the Commission,
United Kingdom,
Czechoslovakia,
Netherlands,
Norway.

I. THE CZECHOSLOVAK CASE No. 26 (CLASSIFICATION OF
CRIME COMMITTED IN CZECHOSLOVAKIA IN MARCH 1939).

Dr. ZIVKOVIC summarised the proceedings of the last meeting (see Minutes No. 9/45) and added that in his opinion crimes against humanity were not essentially different from war crimes proper, that the Commission should deal with them and open a new list containing the names of the perpetrators of such crimes.

Lord WRIGHT said: As I read the indictment against the 24 major war criminals, its framers treat the crimes against Jews and political Germans as part and parcel of the preparation for the war. They were committed in order to get the German State fully mobilised for the war. We ought not to be too technical on the matter. The indictment refers to all classes of war crimes. When I came to this Commission, I said that these crimes against humanity ought to be treated as war crimes. That view has found favour with higher quarters. The Charter is not only an indictment but an International Document.

Sir Robert CRAIGIE: If we adopt a different modus procedendi in the matter of minor criminals, we would get into difficulties. We should not do so without very cogent reasons.

Commander MOUTON again put the question whether we were allowed to extend the jurisdiction laid down in the Charter to the smaller fry. As to the substance, he, Commander Mouton, was in favour of it.

Lord WRIGHT had no objection. The Commission could make their own rules of procedure, and were entitled to treat all such people as war criminals. He said: "Why should we be narrow in our handling of the matter? In an earlier stage strong objections and a narrow definition had been advocated. Why should we act on that now? At one time, we were asked by Mr. Eden why we construed our task so narrowly."

Sir Robert CRAIGIE: I cannot see why we should distinguish this case from crimes which were committed before the war had broken out.

Commander MOUTON proposed that the Committee should vote on the question whether they extend the principle applied to the big criminals also to the smaller fry.

Dr. ZIVKOVIC again explained his interpretation of the charter as laid down in the minutes No. 9/45, pages 4/5 and proposed that the Committee now should discuss Document III/20.

Discussion of Document III/20.

Paragraph I.

Sir Robert CRAIGIE pointed out that Article 6 of the Charter was limited to the jurisdiction of the tribunal.

Dr. MAYR-HARTING replied that in adopting Paragraph I, the Committee would not express an opinion on what the contracting governments thought of it, but would only express the opinion of the Committee.

Dr. SCHWELB drew attention to the Commission Doc.C.144(1) sponsored by Mr. Wold on behalf of this Committee, where it had been laid down by the Commission that the Agreement and the Charter were documents which gave effect to far-reaching principles which have been long and fully discussed in the Commission and have been embodied in recommendations made by it or have obtained the assent of a number of the member Governments. This was particularly true of Articles 6 (a) and (c), 9 and 10 of the Charter. Doc.C.144(1) expressly spoke of the principles of law embodied in the Charter.

Dr. ZIVKOVIC said that Committee III should make reference to this document in its report on the present case.

Mr. WOLD: I should deny that the Charter is an indictment. I disagree with the view expressed to this effect. The charter contains principles of International law which the members of this Commission have recognised.

Commander MOUTON: The Charter is not an indictment at all. The Committee should express its disagreement from this opinion.

Mr. WOLD: Is the present case not rather dealing with a crime against peace?

Sir Robert CRAIGIE: That is what I was thinking.

Dr. MAYR-HARTING: We are not so much concerned with Sepp Dietz but with the question whether the Commission has to deal with crimes against humanity and if so in which way.

After Mr. WOLD had said that Paragraph I was superfluous and Commander MOUTON had recommended that it should be left as it stood, except that the word "only" was to be dropped, it was decided to discuss paragraph I later on.

Paragraph II.

After a discussion in which Commander MOUTON, Dr. ZIVKOVIC, Dr. MAYR-HARTING, Mr. WOLD and Sir Robert CRAIGIE took part, the following wording of Paragraph

II was unanimously agreed:

"Crimes against peace and crimes against humanity as defined in paragraphs (a) and (c) of Article 6 of the Charter of the International Military Tribunal should be considered as war crimes in the same way as violations of the laws and customs of war, as defined in paragraph (b) of that article."

Paragraphs III & IV. After a discussion in which Dr. ZIVKOVIC, Commander MOUTON, Sir Robert CRAIGIE, Dr. MAYR-HARTING and Mr. WOLD took part, it was unanimously decided to merge paragraphs III and IV of Doc. III/20 to the effect that they will read as follows:

" Persons charged with crimes against humanity committed against Allied nationals or on Allied territory should be listed by the United Nations War Crimes Commission and surrendered to the Allied Government concerned. "

It was further decided that in the report introducing this proposal it should be said that arrangements should be made by the United Nations War Crimes Commission to list criminals against humanity not covered by the present conclusions which have been raised by the Czechoslovak case.

Paragraph V. It was decided to delete this paragraph.

Paragraph VI. It was decided to omit this paragraph from the conclusions but to insert it into the report of Committee III on the present question.

Paragraphs VII & VIII. It was decided to delete these paragraphs.

Paragraph I. It was decided to leave out this paragraph but to insert into the report of Committee III the statement that its members had expressed the view that they do not agree with the opinion expressed in Committee I to the effect that the Charter was only an indictment.

Dr. SCHWELB was charged with the task of preparing a paper embodying the report of Committee III and the conclusions reached according to the discussions held in this and in the last meeting and to circulate the draft report to members of Committee III.

II. LAW REPORTS SERIES Nos. 1 and 2.

The consideration of the Law Reports Series Nos. 1 and 2, circulated to the Committee by its secretary, was adjourned until next week. It was unanimously decided to charge Dr. SCHWELB with the task of continuing his work on the preparation of this Law Reports Series and to go on with the preparation of No. 3, which again is to be circulated to members of Committee III and will be sent to the Commission and to the National Offices when considered and approved by Committee III.

III. The next meeting of Committee III will be held on:

TUESDAY 30th OCTOBER, at 2.30 a.m.

11/45.
1st November 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the meeting of Committee III held on 30th October 1945
at 2.30 p.m.

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

There were also present:

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|----------------------|-----------------------------|
| Lord Wright, | Chairman of the Commission, |
| Sir Robert Craigie, | United Kingdom, |
| Major Dr. Fanderlik, | Czechoslovakia, |
| Dr. Schram-Nielsen, | Denmark, |
| Mr. Wold, | Norway, |
| Commander Mouton, | Netherlands, |
| Dr. Cyprian. | Poland. |

M. Stavropoulos, Dr. Szerer and Dr. Zivković had sent their apologies for not being able to attend.

On the motion of Mr. Wold, Dr. Mayr-Harting was elected chairman for this meeting.

I. MINUTES OF THE LAST MEETING.

On the motion of Sir Robert Craigie, the following corrections were made in the notes No. 10/45 of the meeting held on 23rd October 1945:

Page 1, line 4 from the bottom, instead of "after" insert "before".

Page 2, the sentence introducing the notes on the discussion of Document III/20 should read as follows:

"Sir Robert Craigie pointed out that Article 6 of the Charter was limited to defining the jurisdiction of the tribunal."

With regard to the wording of Paragraph II, at the bottom of page 2, Sir Robert CRAIGIE remarked that there was just the possibility that the International Military Tribunal might take another view. Though this was most unlikely, the Committee should safeguard their position by inserting the words "subject to any contrary opinion which might be expressed by the International Military Tribunal."

Dr. MAYR-HARTING proposed that this amendment should be discussed when the substance of the draft report III/21 will be considered.

Sir Robert CRAIGIE expressed his agreement with this proposal.

II. THE CZECHOSLOVAK CASE No. 26 (CLASSIFICATION OF
CRIME COMMITTED IN CZECHOSLOVAKIA IN MARCH 1939.)

Mr. WOLD remarked that he had been unable to be present at the first meetings in which this case had been dealt with, and at the last meeting, held on 23rd October, he had not intervened in the debate because he was then not sufficiently informed. He had now considered the matter and

arrived at the conclusion that Committee III had taken the wrong approach to the whole matter. Quoting the terms of reference, as recorded in Doc.III/16, Mr. Wold pointed out that only one question had been referred to Committee III, namely whether the facts referred to in Doc.III/16 constituted a war crime or not. This is what Committee I was asking of Committee III. In Mr. Wold's opinion the Committee should by no means try to say anything in general. The War Crimes Commission have already stated that they endorse the Charter as consistent with International Law. Nothing would be gained by elaborating on that any more. The right answer in Mr. Wold's opinion would be to refer to the terms of reference and then to state that in the opinion of Committee III, the facts, as referred, constitute a war crime provided that they have been committed in the interests of the European Axis Countries, because they constitute a conspiracy for the accomplishment of a war of aggression.

Mr. Wold did not think the facts could be considered to constitute a crime against humanity. He was much more inclined to hold that they were a crime against peace. It was not the Committee's business to give any interpretation of the Charter. He further thought that the reply should be sent only to Committee I and not to the Commission. Conclusion (1) of Doc.III/21 was really nothing new. As to Conclusion (2), Mr. Wold remarked that the Committee had not been asked to state anything in that connection. If it is a war crime, the consequence would be that Committee I would have to list the criminal. As to Conclusion (3) of Doc.III/21, Mr. Wold remarked that the Committee should simply refer to the fact that it was a war crime.

Mr. SCHRAM-NIELSEN seconded what Mr. Wold had said. He added that the Commission was not interested in wider statements from Committee III. On the other hand, the Committee must have a short theoretical conclusion and a short theoretical starting point.

Sir Robert CRAIGIE said that he agreed that some reason for the Committee's conclusion will have to be given.

Mr. WOLD suggested that the following reply be given to Committee I:

" At its meeting of 19th September 1945, Committee I of the War Crimes Commission referred the following question to Committee III of the same Commission:

The Czechoslovak National Office has presented to the Commission a charge against Sepp Dietz, SS-Standartenfuhrer and C.O. of the 52nd SS Banner, Krems on the Danube, Austria. In this charge, Sepp Dietz is accused of having, at the beginning of March 1939, invaded with a group of selected S.S. men, Czechoslovak territory from Austria and having, in the Moravian town of Jihlava, provoked clashes with members of the Czechoslovak State police and with the local Czech population. During these clashes, Czech people as well as members of the Czechoslovak State police were massacred and a number of persons were killed and seriously wounded. It was further stated in the "Particulars of Alleged Crime" that shortly before 15th March 1939, armed raids on Czechoslovak territory were made by German SS forces. The purpose of these raids was to provoke clashes with the Czechoslovak population and with the Czechoslovak police organs. These instances were welcome to the German propaganda service in whose interest they had to be manufactured. In an addendum to this case, of September 1945, the Czechoslovak National Office refers to a declaration by the President of the Czechoslovak Republic to the effect that Czechoslovakia considered herself in a state of war with Germany since September 1938.

The Czechoslovak National Office maintains that Sepp Dietz has committed a War Crime and requests the case to be entered on the lists of the United Nations War Crimes Commission. The question referred to Committee III is whether the acts which Sepp Dietz is accused of having committed are to be considered as War Crimes.

After discussion Committee III decided to answer the question as follows:

Provided that it is proved that Sepp Dietz has committed the acts of which he is accused in the interests of the Nazi Government of Germany, it would be considered as a participation in a conspiracy for the accomplishment of the initiation of a war of aggression and as such a war crime. (Cf. Charter of the International Military Tribunal, Article 6 (a).) "

Dr. MAYR-HARTING: There was no doubt in Committee I that the acts of the accused constituted a crime against humanity. There was no difficulty in the problem whether they were crimes against humanity or against peace. They were, in the view of the governments who did not share the view that in March 1939, there existed a state of war, not violations of the laws and customs of war. The question to which Committee III was called upon to reply was not simply to say "yes" or "no" as to whether Sepp Dietz should be listed, but the Committee must interpret the terms of reference of the Commission in order to establish whether crimes against humanity were within these terms of reference. Committee I was of the opinion that what Sepp Dietz had done were crimes against humanity. What Committee I was not certain about was whether crimes against humanity were within the Commission's terms of reference. In Dr. Mayr-Harting's opinion it is not the idea underlying the establishment of Committee III that it should decide particular cases. The idea was for Committee III to attempt to find the solution, if legal points of principle arose which were relevant not only for one case, but for a whole type of cases.

Mr. WOLD replied that in his opinion, the position was just as he had stated; if Committee I wanted a general statement why did they not say so.

Dr. MAYR-HARTING said that the discussions in Committee I showed clearly that it was the general question which should be dealt with by Committee III.

Mr. WOLD: The only question is: shall we put Sepp Dietz on the list of war criminals.

Sir Robert CRAIGIE repeated that Committee III would have to state their reasons. He personally could not accept one of the reasons mentioned in Committee I, namely, that a state of war was in existence when the incident occurred, but there may be other grounds justifying the listing of the accused. Sir Robert Craigie had never understood that Committee III was a kind of court of appeal to Committee I. This Committee III was a committee which recommended the law which is to be applied. On the other hand, in his view, Committee III had to be a little bit careful before it lays down the law too definitely.

Dr. SCHWELB remarked that there was no controversy about the facts which will have to be recorded in the report submitted by Committee III. The formulation proposed in this respect by Mr. Wold could easily be inserted instead of paragraph I of his (Dr. Schwelb's) Draft III/21, which gave only a short outline. There was also no controversy between Mr. Wold and the other members of the Committee as to conclusion No. 3, namely that Sepp Dietz should be listed and the wording of that

conclusion (3) could easily be adapted to the wording proposed and preferred by Mr. Wold. But between the description of the facts and this conclusion, some minimum of legal reasoning seemed to be necessary and Dr. Schwelb submitted that his draft should be taken as a basis for the discussion on this legal reasoning, and that those parts of his draft which the Committee considered superfluous should be struck out or shortened, and that all the alterations should be made therein which the Committee considered expedient, but he submitted that what the English Common Lawyers called ratio decidendi should be contained in the report of Committee III because Committee I would not be helped if the report was restricted to the description of the facts and the simple answer to the question whether Sepp Dietz should be listed.

Dr. CYPRIAN referred to the lengthy discussions conducted in the Commission some time ago with regard to, e.g., crimes of Germans against Germans. What must be decided is whether the Committee or the Commission should go as far as the Charter goes. We must decide the scope of the activities of the Commission before we decide on the listing of Sepp Dietz.

Sir Robert CRAIGIE said that we should avoid, if possible, having a different procedure for major war criminals and a different procedure for minor war criminals. One of the main reasons for which Sir Robert Craigie would be prepared to list Sepp Dietz would be the consideration that cases falling under (a) or (c) of Article 6 of the Charter should be treated like cases falling under (b).

Commander MOUTON drew attention to the fact that always, when a question was referred to Committee III, doubts about the scope of Committee III's jurisdiction arose and he advocated that the scope of the activities of Committee III should be precisely defined.

Mr. WOLD said that the correct way would be to refer the matter back to Committee I.

Dr. SCHWELB read to the Committee the relevant passages of the Minutes of Committee I, No. 35, dealing with four Yugoslav cases which were adjourned until the opinion of Committee III on the present case No. 26, would be available. From this it follows that what Committee I wanted was the elaboration of some general principle which could be applied also to other cases. In his view, the reference back to Committee I was therefore not necessary.

Dr. SCHRAM-NIELSEN said that Committee III has to have the result endorsed by the Commission.

Mr. WOLD: As far as I understood the Commission's decision in the denationalisation case and the opinion expressed by Lord Wright, the best thing for this Committee would be to ask for clear terms of reference. Committee III should not give general interpretations of International Law.

Sir Robert CRAIGIE: It does seem that there must be a sub-committee which assists the Commission in the solution of legal questions. He understood that this was the work for which Committee III was designed.

Lord WRIGHT: Committee III should reply to the question and give its reasons in the present case. The question of classification of crimes against humanity, admits of a more general answer than, e.g. the question of denationalisation. The fact that certain acts constituted crimes against humanity does not take them out of the category of war

crimes. In the view of the indictment against the 24 major war criminals, activities of the kind described were all part and parcel of the preparation of the war and in this sense they could be regarded as war crimes. Crimes against peace involved State acts. In Lord Wright's opinion the present case comes within the term "war crime", within the scope of the Commission. The jurisdiction of the Commission is not subject to the doctrine of ultra vires. This doctrine applies in English law only to statutory bodies and it has recently been proposed by the Committee of Company Law Reform that the doctrine should not apply even in the case of companies. The War Crimes Commission is not tied down by hard and fast rules. The Commission ought to act upon the fact that there was a latitude in the scope of its activities. In Lord Wright's view the Committee ought to give the widest possible import to the idea of war crimes. Lord Wright also recalled Mr. Eden's letter to his predecessor.

As to the kind of reply Committee III should give Lord Wright said that the Committee must give their reasons, explaining why they are satisfied that what the accused has done is a war crime.

Sir Robert CRAIGIE: We may get into difficulties if we have the International Military Tribunal proceeding against major war criminals for crimes against peace, war crimes and crimes against humanity, whereas the Commission restricts itself to war crimes proper.

Dr. MAYR-HARTING said that the Committee will have to state the general principle and deduce from the general principle the solution of the actual case before it.

Lord Wright explained the difference between the approach of the common lawyers to such questions from what he understood to be the usual approach of lawyers educated in other systems. It would be in accordance with the common law approach to reply to the question whether Sapp Dietz should be listed, but to give the reasons for this reply. From this or similar opinions of the Committee legal principles would be abstracted on which Committee I would act in similar cases.

Dr. SCHRAM-NIELSEN again drew attention to Commander Mouton's proposal that the competence of this Committee should be brought before the Commission.

Dr. MAYR-HARTING summed up and said that the Committee should now make up their minds whether they would ask Committee I for further explanation or whether they would proceed with the examination of the draft reply forthwith.

The Committee thereupon unanimously decided to proceed with the examination of the draft report.

The Committee further approved Lord Wright's proposal that the report should start with the acts of Sapp Dietz, reply to the question whether or not he should be listed and give the reasons for this reply. The Committee then proceeded to the examination of Doc. III/21.

EXAMINATION OF DOCUMENT III/21.

In Paragraph I, sub paragraph 3, it was decided to strike out the first and the last sentences.

Paragraph II. was agreed to without objections.

In Paragraph III, sub paragraph 3 (page 2, at the top) it was decided, on the motion of Sir Robert CRAIGIE, that the word "must" should be replaced by the word "should" and that the words "laid down" should be replaced by the word "expounded."

When paragraph IV was discussed Sir Robert CRAIGIE remarked that this was the decisive point. His charter for listing Sepp Dietz would be if the Committee came to the conclusion that the Charter either constitutively or declaratorily expounded international law. Further consideration of Paragraph IV of the draft and the discussion of the following paragraphs was adjourned for the next meeting which will be held on

Tuesday 6th November 1945 at 3.0 p.m.

12/45.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of Meeting of Committee III held on 6th November 1945 at 3.0 p.m.

In the Chair,

Dr. Mayr-Harting, Czechoslovakia,

There were also present:

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|----------------------|-----------------|
| Sir Robert Craigie, | United Kingdom, |
| Major Dr. Fanderlik, | Czechoslovakia, |
| M. Stavropoulos, | Greece, |
| Mr. Wold, | Norway. |

Commander Mouton, Dr. Szerer and Dr. Zivković had sent their apologies for not being able to attend.

Dr. Mayr-Harting was elected Chairman for this meeting.

I. Minutes of the Last Meeting.

There were no observations with regard to the Minutes No. 11/45.

II. The Czechoslovak Case No. 26 (Classification of a Crime Committed in Czechoslovakia in March 1939.)

Paragraph IV.

The Committee continued the examination of Document III/21 (see Minutes No. 11/45, pages 2 and 3). After discussion it was decided that paragraph IV should be altered to the effect that its last sentence would read as follows:

" The members of Committee III are of the opinion that the Charter is an important document in the formulation of international law, whether declaratory of existing law or creating new law. "

Paragraph V.

When paragraph V of the Doc. III/21 was discussed, Mr. WOLD pointed out that paragraphs V, VI and VII were not within the terms of reference of Committee III.

Sir Robert CRAIGIE, on the other hand, pointed out that the argumentation contained in paragraph V. was very useful in building up the case.

Paragraph V. was agreed.

Paragraph VI.

During the discussion of paragraph VI, Mr. WOLD recommended its simplification.

Dr. MAYR-HARTING said that there was apparently no unanimity about the

task with which Committee III was charged.

Sir Robert CRAIGIE said that the main idea was that in the documents quoted in paragraphs V and VI of the paper, the term "war crime" was used not only in the narrower sense, but also in the wider sense.

Mr. WOLD again pointed out the difference of opinion about the approach to the whole matter. In his opinion the most important thing was to refer to the facts. He said that the different approach was shown for instance in paragraph I, sub-paragraph 2, of Doc.III/21, where the facts of the case were given "roughly" whereas in his opinion they ought to be given in full.

Sir Robert CRAIGIE repeated that it was necessary to elaborate the point about crimes against humanity because it builds up the case for using the term "war crime" in the wider sense.

Mr. WOLD said that it must not be misunderstood that in his mind there was no doubt that crimes against humanity were war crimes and no doubt that they were within the terms of reference of the Commission. He only considered it to be unnecessary to point it out in the document.

Sir Robert CRAIGIE said that many people justified the inclusion of crimes against humanity within the wider term of "war crimes", but some people had doubts about it and therefore the opinion on this question should be expressed in the paper.

M. STAVROPOULOS also said that it was necessary to deal with this problem because Committee III was compelled to give a good explanation for the conclusion at which it arrives.

Sir Robert CRAIGIE: The point we want to make is that there is plenty of authority admitting the view that "war crime" should not only be considered in the narrower sense, but also in the wider sense.

Dr. SCHWELB stated that the shortening of the paper could be achieved if paragraphs V and VI were melted into one paragraph where it would be simply said that the different international documents drawn up during and on the close of the second world war used the term "war crime" both in the narrower and in the wider meaning.

The Committee decided that Dr. SCHWELB should draw up a new text for paragraphs V and VI in the way suggested by Sir Robert Craigie.

Paragraph VII.

During the discussion of paragraph VII of the paper, Sir Robert CRAIGIE pointed out that the essence of paragraph VII was to state that we have solid grounds now for taking the wider sense of the words "war crime".

M. STAVROPOULOS said that perhaps the second sub-paragraph of paragraph VII should be more elaborated.

Dr. MAYR-HARTING suggested that the paragraph formed out of paragraphs V and VI should be concluded by a sentence corresponding to what is said in the second sub-paragraph of paragraph VII.

Sir Robert CRAIGIE: Once it is admitted that the term "war crime" is to be interpreted in the wider sense, it is not necessary to refer to the Commission's terms of reference.

Mr. WOLD said: These acts are war crimes and we are not interpreting anything.

Dr. MAYR-HARTING said that the argumentation should be concluded by a sentence which makes it clear that for the purposes of listing, we accept the term "war crime" in the wider sense. He proposed alternatively the following wording:

"It is therefore necessary to accept the wider interpretation of the words "war crime",

or:

"It is necessary to understand the term "war crime" in the wider sense."

Sir Robert CRAIGIE suggested an addition as follows:

"... in a wider sense indicated by the foregoing examples".

It was decided that Dr. SCHWELB should include the essence of what had been said about paragraph VII into the new text of the paragraph corresponding to paragraphs V and VI.

Paragraph VIII.

As regards Paragraph VIII, Dr. MAYR-HARTING pointed out that this was rather an important paragraph because it showed that there were no practical difficulties. The paragraph was agreed to without alterations.

Paragraph IX.

With regard to paragraph IX of the paper, Dr. MAYR-HARTING said that he agreed with the substance but that in his view it was not necessary to have it in this paper. He proposed that in the minutes it should be expressly stated that he was in agreement with the substance of this paragraph.

Dr. SCHWELB explained that he was fully aware that this paragraph was obiter from the point of view of the case of Sepp Dietz. This fact was also shown in the text proposed by him where it was only said that it had been advocated in Committee III that arrangements should be made by the United Nations War Crimes Commission to list those criminals against humanity who are not covered by the conclusions which had been raised by the Czechoslovak case No. 26. He had inserted this paragraph because Dr. Zivković had expressed the wish to this effect.

The Committee decided to strike out paragraph IX and to record in the minutes that Dr. MAYR-HARTING had expressed his agreement with the substance.

Paragraph X.

As regards Paragraph X, Dr. SCHWELB explained that this paragraph was a corollary to paragraph VIII. It said that not only did no practical difficulties arise, as was said in paragraph VIII, but that the procedure recommended was unavoidable. Paragraph X showed that the conclusion at which Committee III had arrived was not the application of doctrinaire principles, but that it was meeting a practical necessity.

-4-

Paragraph XI.

Referring to Paragraph XI, Mr. WOLD pointed out that in his view it was unnecessary. He added that no reason was given in the paper why we considered the case as a crime against humanity, as distinguished from a crime against peace. In his view, it was more satisfactory to say that it was a crime against peace and it was this difference of opinion about the category to which the crime belonged that led him, (Mr. Wold), to his different approach.

Dr. MAYR-HARTING repeated that as Lord Wright had already pointed out, the difference between crimes against peace and crimes against humanity was not a clear one.

Sir Robert CRAIGIE said that in the case of crimes against peace, the whole emphasis was on planning and conspiracy. He considered Sepp Dietz one of the instruments rather, as distinguished from the planners. He was a mere executant, but Sir Robert Craigie added that we ought to say something about this question.

Dr. MAYR-HARTING suggested that the Committee will have to start with conclusion No. 3.

Mr. WOLD repeated that in his view this was not a crime against humanity. In order to be a crime against humanity a crime must have been committed in accordance with certain plans, with a certain policy, e.g. against Jews, against the political opposition in Germany, etc. If in pursuing such policy, crimes are committed, they are crimes against humanity. The present instance had nothing to do with that sort of Nazi policy. It was part of the Nazi plan of aggression. Article 6 (c) speaks of civilian populations as such. Mr. WOLD finds in this wording a confirmation of his view. A crime against peace on the other hand, is a crime which is part of a plan of aggression.

Sir Robert CRAIGIE said that Sepp Dietz may also have committed a crime against peace, provided it turned out that he had taken part also in the planning.

Mr. WOLD insisted that the paramount legal question before the Committee was whether the crime of the accused person constituted a crime against peace or a crime against humanity.

Dr. FANDERLIK remarked that crimes against peace are probably restricted to the planners.

Sir Robert CRAIGIE: We must be careful not to open the door too wide with respect to crimes against peace, if we can avoid it.

Dr. MAYR-HARTING said that it was not necessary for the present purposes to state whether Sepp Dietz, in addition to committing a crime against humanity, had also committed a crime against peace.

Sir Robert CRAIGIE suggested that the Committee should agree that the crime, as stated in the charge, constituted a crime against humanity. In addition, it should be made clear in the minutes that Mr. WOLD considered it a crime against peace.

Mr. WOLD replied that he did not consider it a crime against humanity at all. Mr. Wold questioned whether the words "which is a question for Committee I to decide" were necessary in conclusion 3.

Dr. SCHWELB said that he had inserted these words in order to make it

clear that Committee III did not assume the competence to judge the facts. When Committee I referred a case to Committee III, then the situation created therewith and the division of functions was somewhat similar to that of judge and jury in English procedure. Committee I wields the fact finding power and to Committee III is referred the task not to decide, but to advise on questions of law. Committee III must, therefore, always insert a proviso to the effect that its opinion was given provided Committee I was satisfied as to the facts, as stated in the charge.

Sir Robert CRIGIE pointed out that Committee III should recommend that Sepp Dietz be listed as a war criminal because he has committed a crime against humanity as defined in Article 6 (c)

Mr. WOLD was in agreement with this proposal.

As to conclusions 1 and 2 of the paper, it was decided that they should form paragraph XI of the reasons.

After discussion it was decided that the whole paper, redrafted by the Secretary according to the decisions of the meetings of Committee III held on 30th October and 6th November, should be circulated to members of the Committee and again discussed at the next meeting which will take place on

13th November 1945, at 3.0 p.m.

13/45.
15th November 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 13th November 1945
at 3.0 p.m.

In the Chair,

Dr. Mayr-Harting (Czechoslovakia),

There were also present:

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|----------------------|-----------------|
| Major Dr. Fanderlik, | Czechoslovakia, |
| Dr. Schram-Nielsen, | Denmark, |
| M. Stavropoulos, | Greece, |
| Mr. Wold, | Norway, |
| Dr. Zivković | Yugoslavia. |

Sir Robert Craigie, Commander Mouton and Dr. Szerer had sent their apologies for not being able to attend.

Dr. MAYR-HARTING was elected Chairman for this meeting.

I. MINUTES OF THE LAST MEETING.

Sir Robert CRAIGIE in a letter to the Secretary of Committee III proposed the following amendments of the Minutes No.12/45, which were agreed to:

Page 2, second paragraph will read:

" Sir Robert CRAIGIE said that the main idea was to bring out that in the documents quoted in paragraphs V and VI of the paper, the term "war crime" was used not only in the narrower sense, but also in the wider sense".

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" Sir Robert CRAIGIE: The point we want to make is that there is plenty of authority for holding the view that "war crime" should not only be considered in the narrower sense, but also in the wider sense. "

Page 2, 9th paragraph: insert "merged" instead of "melted".

Page 3, 6th paragraph: insert "in the wider sense" instead of "in a wider sense".

Page 4, 3rd paragraph, last sentence, insert "probably" between "he was" and "a mere executant".

II. DISCUSSION OF DOC. III/21 (1)

The wording of the decision of Committee III was again discussed. Mr. WOLD repeated his objections to the classification of the crime committed by Sepp Dietz as a crime against humanity. Mr. Wold added that though all members of the Committee agreed that Sepp Dietz had committed a war crime, he personally found it difficult to consider it

a crime against humanity. The only way to have a unanimous decision, as far as he was concerned, was to state simply that it is a war crime. Mr. Wold could not vote for the statement that it was a crime against humanity.

Dr. ZIVKOVIC explained his view about the notion of "crimes against peace" on the one hand and "crimes against humanity" on the other. He also referred to the terms of reference and to the fact that it was necessary to add the classification "crime against humanity" because it was controversial whether in March 1939 a state of war had been in existence between Czechoslovakia and Germany.

The SECRETARY informed the Committee that Sir Robert Craigie, in his letter, had indicated that he was ready to abide by any draft which the Committee finally adopts, assuming, of course, the general substance remains the same. Sir Robert Craigie had, throughout the discussions, held the view that he could not agree to the statement that what Sepp Dietz had done was a war crime in the narrower sense, but that he could see his way towards recommending his listing if his crime could be classified as a crime against humanity.

M. STAVROPOULOS proposed that it should be mentioned in the report that there was a minority opinion that what Sepp Dietz had committed was a crime against peace. He personally did not share this view, because Article 6 (a) presupposed a participation in the planning.

Dr. ZIVKOVIC moved that a vote should be taken.

Dr. MAYR-HARTING asked whether Mr. Wold would see his way towards voting for the report if his dissenting opinion regarding the classification as crime against peace were mentioned in paragraph VI of the report.

Dr. SCHWELB proposed that the decision of the Committee, as distinguished from its reasons (it is the second underlined paragraph of the Doc.III/21 (1)), should be divided to the effect that it would be made clear that the decision as to the first part was unanimous and that as to the second part (starting from the word "because") it was a majority decision.

Mr. WOLD agreed and accordingly the Committee decided that paragraph 2 of the Report should read as follows:

" After discussion, Committee III unanimously decided to recommend that, provided Committee I are satisfied as to the facts stated in the charge, Sepp Dietz be listed as a war criminal
because
in the opinion of the majority of the Committee, he has committed a crime against humanity, as defined in Article 6, paragraph 2(c) of the Charter of the International Military Tribunal. "

In the next line, the number I will be replaced by the number III.

Mr. WOLD formulated his view with regard to the classification of the crime as follows:

" The acts of which Sepp Dietz is accused should be presumed to have been committed in the interests of the Nazi Government of Germany. When Sepp Dietz at the beginning of March 1939, with a group of selected SS men, invaded Czechoslovak territory, he pursued a distant aim, namely, to create an incident or incidents inside Czechoslovakia which in due course could be used by the Nazi

Government as a pretext for aggression. As the circumstances were at that time, when no formal state of war existed between the two countries, it must have been this that was the underlying intention behind Sepp Dietz's acts. Sepp Dietz was no common soldier. He held the rank of SS Standartenfuhrer, corresponding to Colonel, and under the circumstances, he must be considered responsible for taking part in a conspiracy for the accomplishment of the initiation of a war of aggression. He and his men were not only allowed, but also probably ordered to cross the Czechoslovak frontier to start clashes and to commit murders on the civilian population. Without prejudice to officers or other military persons' responsibility for participation in the Nazi war, I find that Sepp Dietz, under the circumstances, must be considered as a war criminal. Cf. Charter of International Military Tribunal, Article 6 (a) and the United Nations War Crimes Commission's decision of 29th August 1945, Documents M.77 and C.144. Conclusion: Provided that it is proved that Sepp Dietz has committed the acts of which he is accused in the interests of the Nazi Government of Germany, he is to be considered as a war criminal and his name should be listed by the Commission. "

The Committee then discussed the reasons for this recommendation, as submitted in Doc.III/21(1) paragraphs I to IX, as follows:

Paragraph I. The Secretary stated that Sir Robert CRAIGIE suggested the omission of the word "roughly" and an amplification of the statement of facts.

Mr. WOLD seconded this proposal and it was decided that instead of the first sub-paragraph of paragraph I of Doc.III/21 (1), the text as proposed by Mr.Wold in Minutes 11/45 page 2, last paragraph should be inserted, beginning with the words "The Czechoslovak National Office" and ending with "had to be manufactured".

The words "in the Particulars of Alleged Crime" in line 10 are to be struck out.

Sub-paragraph 1 of paragraph I will, therefore, read as follows:

" The Czechoslovak National Office has presented to the Commission a charge against Sepp Dietz, SS-Standartenfuhrer and C.O. of the 52nd SS Banner, Krems on the Danube, Austria. In this charge, Sepp Dietz is accused of having, at the beginning of March 1939, invaded with a group of selected SS men, Czechoslovak territory from Austria, and having in the Moravian town of Jihlava, provoked clashes with members of the Czechoslovak State police and with the local Czech population. During these clashes, Czech people as well as members of the Czechoslovak State police were massacred and a number of persons were killed and seriously wounded. It was further stated that shortly before 15th March 1939, armed raids on Czechoslovak territory were made by German SS forces. The purpose of these raids was to provoke clashes with the Czechoslovak population and with the Czechoslovak police organs. These instances were welcome to the German propaganda service in whose interest they had to be manufactured. "

Sub-paragraph 2 of paragraph I was agreed to with an amendment proposed by Sir Robert CRAIGIE to the effect that in the second line, between "herself" and "in", the words "to have been" should be inserted.

Paragraph II. This paragraph was agreed to with the following amendment proposed by Sir Robert CRAIGIE: Sub-paragraph 1, line 10, insert "confine" instead of "restrict". Sub-paragraph 2, line 4 and line 5, delete in both places the article "the" before "question".

Paragraph III. Sub-paragraph 1 was agreed with the modification proposed by Sir Robert CRAIGIE that the words "the" and "supra" should be struck out in line 1. Sub-paragraph 2 of paragraph III was struck out on the proposal of Sir Robert Craigie. Sub-paragraph 3 of Paragraph III, which will now be sub-paragraph 2, was agreed to.

Paragraph IV. The SECRETARY reported that Sir Robert Craigie suggested either the insertion of the word "thus" between "has" and "emphasised" or the deletion of the last sentence. The Secretary explained that the reference to the fact that the charge embodied principles of law was a quotation from Doc. C.144. It was therefore decided, that the last sentence of paragraph IV sub-paragraph 1 should read as follows:

" The Commission has thus emphasised that the charter "embodies" "important principles of law". "

The second sub-paragraph of paragraph IV was agreed to with the modification proposed by Sir Robert CRAIGIE that instead of the word "is" in line 2, the words "should be regarded as" should be inserted.

Paragraph V. The first sub-paragraph was agreed to with the following modifications proposed by Sir Robert CRAIGIE and Dr. MAYR-HARTING respectively:

in line 1, strike out "important",

in line 9, insert "lit (b)" instead of "lit (c)",

in line 10, strike out the word "also".

As to sub-paragraph 3 of paragraph V, the Secretary reported that Sir Robert CRAIGIE proposed the following wording: "In view of the above, the Committee considered that for the purpose of listing criminals, the term "war crime" should be interpreted in the wider sense indicated by the examples mentioned in paragraph V. "

Sir Robert CRAIGIE also proposed that this sub-paragraph should be transferred to the end.

On the proposal of Dr. MAYR-HARTING, the following text which should replace sub-paragraphs 2 and 3 of paragraph V. was agreed to:

" In the actual practice of the United Nations War Crimes Commission, the term "war crime" has been understood from the beginning in the wider sense indicated by the foregoing examples. The Commission has not restricted itself to the listing of persons accused of violations of the laws and customs of war and has acted for example on the assumption that what, in the Charter of the International Military Tribunal is called "crimes against peace", falls within its jurisdiction. "

Paragraph VI. The Secretary reported that Sir Robert CRAIGIE had expressed the view that he would have a preference for putting paragraph VI at the end because this was the first time the Committee speak of the Sopp Dietz case individually and apply their principles to him. In all the other paragraphs, including paragraphs VII and VIII,

the Committee are dealing in a general way with the desirability of treating crimes against humanity as war crimes. This proposal was agreed to and it was decided to transfer paragraph VI between the present paragraph VIII and paragraph IX. Having regard to the minority opinion held by Mr. Wold, it was decided to insert the words "the majority of" between line 1 and line 2 of paragraph VI and to add the following sub-paragraph to paragraph VI:

" Mr. WOLD holds that Sepp Dietz must be considered as having participated in the planning of a war of aggression. (cf. Art. 6(a) of the Charter of the International Military Tribunal, and Commission Doc. C.144.)

Paragraph VII. was agreed to without comment.

Paragraph VIII was agreed to without comment.

Paragraph IX was agreed to without comment, with the proviso that before it the present paragraph VI, as amended, will be inserted.

III. LAW REPORTS SERIES:

The Committee then discussed the Law Reports Nos. 1 and 2 which had been circulated to the members of Committee III as a basis for elaborating the method of dealing with this part of the Commission's task. In the discussion all members of the Committee stressed the importance of this work and it was decided to ask the Secretary to continue the preparation, and circulation to the members of Committee III of these preliminary reports which the members consider interesting and informative. The consideration of a final report on the Belsen trial was necessarily adjourned until the conclusion of the trial.

Mr. WOLD and Dr. ZIVKOVIC also stressed the importance of preparing a bibliography of the legal literature on War Crimes published during and on the conclusion of the second World War.

13/45.
15th November 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 13th November 1945
at 3.0 p.m.

In the Chair,

Dr. Mayr-Harting (Czechoslovakia),

There were also present:

| | |
|----------------------|-----------------|
| Major Dr. Fanderlik, | Czechoslovakia, |
| Dr. Schram-Nielsen, | Denmark, |
| M. Stavropoulos, | Greece, |
| Mr. Wold, | Norway, |
| Dr. Zivković | Yugoslavia. |

Sir Robert Craigie, Commander Mouton and Dr. Szerer had sent their apologies for not being able to attend.

Dr. MAYR-HARTING was elected Chairman for this meeting.

I. MINUTES OF THE LAST MEETING.

Sir Robert CRAIGIE in a letter to the Secretary of Committee III proposed the following amendments of the Minutes No. 12/45, which were agreed to:

Page 2, second paragraph will read:

" Sir Robert CRAIGIE said that the main idea was to bring out that in the documents quoted in paragraphs V and VI of the paper, the term "war crime" was used not only in the narrower sense, but also in the wider sense".

Page 2, 8th paragraph will read:

" Sir Robert CRAIGIE: The point we want to make is that there is plenty of authority for holding the view that "war crime" should not only be considered in the narrower sense, but also in the wider sense. "

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Page 4, 3rd paragraph, last sentence, insert "probably" between "he was" and "a mere executant".

II. DISCUSSION OF DOC. III/21 (1)

The wording of the decision of Committee III was again discussed. Mr. WOLD repeated his objections to the classification of the crime committed by Sepp Dietz as a crime against humanity. Mr. Wold added that though all members of the Committee agreed that Sepp Dietz had committed a war crime, he personally found it difficult to consider it

a crime against humanity. The only way to have a unanimous decision, as far as he was concerned, was to state simply that it is a war crime. Mr. Wold could not vote for the statement that it was a crime against humanity.

Dr. ZIVKOVIC explained his view about the notion of "crimes against peace" on the one hand and "crimes against humanity" on the other. He also referred to the terms of reference and to the fact that it was necessary to add the classification "crime against humanity" because it was controversial whether in March 1939 a state of war had been in existence between Czechoslovakia and Germany.

The SECRETARY informed the Committee that Sir Robert Craigie, in his letter, had indicated that he was ready to abide by any draft which the Committee finally adopts, assuming, of course, the general substance remains the same. Sir Robert Craigie had, throughout the discussions, held the view that he could not agree to the statement that what Sepp Dietz had done was a war crime in the narrower sense, but that he could see his way towards recommending his listing if his crime could be classified as a crime against humanity.

M. STAVROPOULOS proposed that it should be mentioned in the report that there was a minority opinion that what Sepp Dietz had committed was a crime against peace. He personally did not share this view, because Article 6 (a) presupposed a participation in the planning.

Dr. ZIVKOVIC moved that a vote should be taken.

Dr. MAYR-HARTING asked whether Mr. Wold would see his way towards voting for the report if his dissenting opinion regarding the classification as crime against peace were mentioned in paragraph VI of the report.

Dr. SCHWELB proposed that the decision of the Committee, as distinguished from its reasons (it is the second underlined paragraph of the Doc.III/21 (1)), should be divided to the effect that it would be made clear that the decision as to the first part was unanimous and that as to the second part (starting from the word "because") it was a majority decision.

Mr. WOLD agreed and accordingly the Committee decided that paragraph 2 of the Report should read as follows:

" After discussion, Committee III unanimously decided to recommend that, provided Committee I are satisfied as to the facts stated in the charge, Sepp Dietz be listed as a war criminal because in the opinion of the majority of the Committee, he has committed a crime against humanity, as defined in Article 6, paragraph 2(c) of the Charter of the International Military Tribunal. "

In the next line, the number I will be replaced by the number III.

Mr. WOLD formulated his view with regard to the classification of the crime as follows:

" The acts of which Sepp Dietz is accused should be presumed to have been committed in the interests of the Nazi Government of Germany. When Sepp Dietz at the beginning of March 1939, with a group of selected SS men, invaded Czechoslovak territory, he pursued a distant aim, namely, to create an incident or incidents inside Czechoslovakia which in due course could be used by the Nazi

Government as a pretext for aggression. As the circumstances were at that time, when no formal state of war existed between the two countries, it must have been this that was the underlying intention behind Sepp Dietz's acts. Sepp Dietz was no common soldier. He held the rank of SS Standartenfuhrer, corresponding to Colonel, and under the circumstances, he must be considered responsible for taking part in a conspiracy for the accomplishment of the initiation of a war of aggression. He and his men were not only allowed, but also probably ordered to cross the Czechoslovak frontier to start clashes and to commit murders on the civilian population. Without prejudice to officers or other military persons' responsibility for participation in the Nazi war, I find that Sepp Dietz, under the circumstances, must be considered as a war criminal. Cf. Charter of International Military Tribunal, Article 6 (a) and the United Nations War Crimes Commission's decision of 29th August 1945, Documents M.77 and C.144. Conclusion: Provided that it is proved that Sepp Dietz has committed the acts of which he is accused in the interests of the Nazi Government of Germany, he is to be considered as a war criminal and his name should be listed by the Commission. "

The Committee then discussed the reasons for this recommendation, as submitted in Doc.III/21(1) paragraphs I to IX, as follows:

Paragraph I. The Secretary stated that Sir Robert CRAIGIE suggested the omission of the word "roughly" and an amplification of the statement of facts.

Mr. WOLD seconded this proposal and it was decided that instead of the first sub-paragraph of paragraph I of Doc.III/21 (1), the text as proposed by Mr.Wold in Minutes 11/45 page 2, last paragraph should be inserted, beginning with the words "The Czechoslovak National Office" and ending with "had to be manufactured".

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" The Commission has thus emphasised that the charter "embodies" "important principles of law". "

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III. LAW REPORTS SERIES:

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Mr. WOLD and Dr. ZIVKOVIC also stressed the importance of preparing a bibliography of the legal literature on War Crimes published during and on the conclusion of the second World War.

14/45.
11th December 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 11th December 1945 at

3.0 p.m.

There were present:

| | | |
|----------------------|---|-----------------|
| Major Dr. Fanderlik, | } | Czechoslovakia, |
| Dr. Mayr-Harting, | | |
| Dr. Schram-Nielsen, | | Denmark, |
| Commander Mouton, | | Netherlands. |

The Committee having eight members and only three being present, it was decided to adjourn the meeting till Tuesday 18th December 1945 at 3.0 p.m.

The members present at the meeting were unanimous in the view that to have a quorum it would be necessary for at least a majority of the members of Committee III to be present, that is at least five members. The following is a list of the countries at present represented on Committee III:

China,
Czechoslovakia,
Denmark,
Greece,
Netherlands,
Norway,
Poland,
Yugoslavia.

13/45.
15th November 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 13th November 1945
at 3.0 p.m.

In the Chair,

Dr. Mayr-Harting (Czechoslovakia),

There were also present:

| | |
|----------------------|-----------------|
| Major Dr. Fanderlik, | Czechoslovakia, |
| Dr. Schram-Nielsen, | Denmark, |
| M. Stavropoulos, | Greece, |
| Mr. Wold, | Norway, |
| Dr. Zivković | Yugoslavia. |

Sir Robert Craigie, Commander Mouton and Dr. Szerer had sent their apologies for not being able to attend.

Dr. MAYR-HARTING was elected Chairman for this meeting.

I. MINUTES OF THE LAST MEETING.

Sir Robert CRAIGIE in a letter to the Secretary of Committee III proposed the following amendments of the Minutes No. 12/45, which were agreed to:

Page 2, second paragraph will read:

" Sir Robert CRAIGIE said that the main idea was to bring out that in the documents quoted in paragraphs V and VI of the paper, the term "war crime" was used not only in the narrower sense, but also in the wider sense".

Page 2, 8th paragraph will read:

" Sir Robert CRAIGIE: The point we want to make is that there is plenty of authority for holding the view that "war crime" should not only be considered in the narrower sense, but also in the wider sense. "

Page 2, 9th paragraph: insert "merged" instead of "melted".

Page 3, 6th paragraph: insert "in the wider sense" instead of "in a wider sense".

Page 4, 3rd paragraph, last sentence, insert "probably" between "he was" and "a mere executant".

II. DISCUSSION OF DOC. III/21 (1)

The wording of the Decision of Committee III was again discussed. Mr. WOLD repeated his objections to the classification of the crime committed by Sepp Dietz as a crime against humanity. Mr. Wold added that though all members of the Committee agreed that Sepp Dietz had committed a war crime, he personally found it difficult to consider it

a crime against humanity. The only way to have a unanimous decision, as far as he was concerned, was to state simply that it is a war crime. Mr. Wold could not vote for the statement that it was a crime against humanity.

Dr. ZIVKOVIC explained his view about the notion of "crimes against peace" on the one hand and "crimes against humanity" on the other. He also referred to the terms of reference and to the fact that it was necessary to add the classification "crime against humanity" because it was controversial whether in March 1939 a state of war had been in existence between Czechoslovakia and Germany.

The SECRETARY informed the Committee that Sir Robert Craigie, in his letter, had indicated that he was ready to abide by any draft which the Committee finally adopts, assuming, of course, the general substance remains the same. Sir Robert Craigie had, throughout the discussions, held the view that he could not agree to the statement that what Sepp Dietz had done was a war crime in the narrower sense, but that he could see his way towards recommending his listing if his crime could be classified as a crime against humanity.

Mr. STAVROPOULOS proposed that it should be mentioned in the report that there was a minority opinion that what Sepp Dietz had committed was a crime against peace. He personally did not share this view, because Article 6 (a) presupposed a participation in the planning.

Dr. ZIVKOVIC moved that a vote should be taken.

Dr. MAYR-HARTING asked whether Mr. Wold would see his way towards voting for the report if his dissenting opinion regarding the classification as crime against peace were mentioned in paragraph VI of the report.

Dr. SCHWELB proposed that the decision of the Committee, as distinguished from its reasons (it is the second underlined paragraph of the Doc. III/21 (1)), should be divided to the effect that it would be made clear that the decision as to the first part was unanimous and that as to the second part (starting from the word "because") it was a majority decision.

Mr. WOLD agreed and accordingly the Committee decided that paragraph 2 of the Report should read as follows:

" After discussion, Committee III unanimously decided to recommend that, provided Committee I are satisfied as to the facts stated in the charge, Sepp Dietz be listed as a war criminal
because
in the opinion of the majority of the Committee, he has committed a crime against humanity, as defined in Article 6, paragraph 2(c) of the Charter of the International Military Tribunal. "

In the next line, the number I will be replaced by the number III.

Mr. WOLD formulated his view with regard to the classification of the crime as follows:

" The acts of which Sepp Dietz is accused should be presumed to have been committed in the interests of the Nazi Government of Germany. When Sepp Dietz at the beginning of March 1939, with a group of selected SS men, invaded Czechoslovak territory, he pursued a distant aim, namely, to create an incident or incidents inside Czechoslovakia which in due course could be used by the Nazi

Government as a pretext for aggression. As the circumstances were at that time, when no formal state of war existed between the two countries, it must have been this that was the underlying intention behind Sepp Dietz's acts. Sepp Dietz was no common soldier. He held the rank of SS Standartenfuehrer, corresponding to Colonel, and under the circumstances, he must be considered responsible for taking part in a conspiracy for the accomplishment of the initiation of a war of aggression. He and his men were not only allowed, but also probably ordered to cross the Czechoslovak frontier to start clashes and to commit murders on the civilian population. Without prejudice to officers or other military persons' responsibility for participation in the Nazi war, I find that Sepp Dietz, under the circumstances, must be considered as a war criminal. Cf. Charter of International Military Tribunal, Article 6 (a) and the United Nations War Crimes Commission's decision of 29th August 1945, Documents M.77 and C.144. Conclusion: Provided that it is proved that Sepp Dietz has committed the acts of which he is accused in the interests of the Nazi Government of Germany, he is to be considered as a war criminal and his name should be listed by the Commission. "

The Committee then discussed the reasons for this recommendation, as submitted in Doc.III/21(1) paragraphs I to IX, as follows:

Paragraph I. The Secretary stated that Sir Robert CRAIGIE suggested the omission of the word "roughly" and an amplification of the statement of facts.

Mr. WOLD seconded this proposal and it was decided that instead of the first sub-paragraph of paragraph I of Doc.III/21 (1), the text as proposed by Mr.Wold in Minutes 11/45 page 2, last paragraph should be inserted, beginning with the words "The Czechoslovak National Office" and ending with "had to be manufactured".

The words "in the Particulars of Alleged Crime" in line 10 are to be struck out.

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" The Czechoslovak National Office has presented to the Commission a charge against Sepp Dietz, SS-Standartenfuehrer and C.O. of the 52nd SS Banner, Krems on the Danube, Austria. In this charge, Sepp Dietz is accused of having, at the beginning of March 1939, invaded with a group of selected SS men, Czechoslovak territory from Austria, and having in the Moravian town of Jihlava, provoked clashes with members of the Czechoslovak State police and with the local Czech population. During these clashes, Czech people as well as members of the Czechoslovak State police were massacred and a number of persons were killed and seriously wounded. It was further stated that shortly before 15th March 1939, armed raids on Czechoslovak territory were made by German SS forces. The purpose of these raids was to provoke clashes with the Czechoslovak population and with the Czechoslovak police organs. These instances were welcome to the German propaganda service in whose interest they had to be manufactured. "

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Paragraph II. This paragraph was agreed to with the following amendment proposed by Sir Robert CRAIGIE: Sub-paragraph 1, line 10, insert "confine" instead of "restrict". Sub-paragraph 2, line 4 and line 5, delete in both places the article "the" before "question".

Paragraph III. Sub-paragraph 1 was agreed with the modification proposed by Sir Robert CRAIGIE that the words "the" and "supra" should be struck out in line 1. Sub-paragraph 2 of paragraph III was struck out on the proposal of Sir Robert Craigie. Sub-paragraph 3 of Paragraph III, which will now be sub-paragraph 2, was agreed to.

Paragraph IV. The SECRETARY reported that Sir Robert Craigie suggested either the insertion of the word "thus" between "has" and "emphasised" or the deletion of the last sentence. The Secretary explained that the reference to the fact that the charge embodied principles of law was a quotation from Doc. C.144. It was therefore decided, that the last sentence of paragraph IV sub-paragraph 1 should read as follows:

" The Commission has thus emphasised that the charter "embodies" "important principles of law". "

The second sub-paragraph of paragraph IV was agreed to with the modification proposed by Sir Robert CRAIGIE that instead of the word "is" in line 2, the words "should be regarded as" should be inserted.

Paragraph V. This first sub-paragraph was agreed to with the following modifications proposed by Sir Robert CRAIGIE and Dr. MAYR-HARTING respectively:

in line 1, strike out "important",

in line 9, insert "lit (b)" instead of "lit (c)",

in line 10, strike out the word "also".

As to sub-paragraph 3 of paragraph V, the Secretary reported that Sir Robert CRAIGIE proposed the following wording: "In view of the above, the Committee considered that for the purpose of listing criminals, the term "war crime" should be interpreted in the wider sense indicated by the examples mentioned in paragraph V. "

Sir Robert CRAIGIE also proposed that this sub-paragraph should be transferred to the end.

On the proposal of Dr. MAYR-HARTING, the following text which should replace sub-paragraphs 2 and 3 of paragraph V. was agreed to:

" In the actual practice of the United Nations War Crimes Commission, the term "war crime" has been understood from the beginning in the wider sense indicated by the foregoing examples. The Commission has not restricted itself to the listing of persons accused of violations of the laws and customs of war and has acted for example on the assumption that what, in the the Charter of the International Military Tribunal is called "crimes against peace", falls within its jurisdiction. "

Paragraph VI. The Secretary reported that Sir Robert CRAIGIE had expressed the view that he would have a preference for putting paragraph VI at the end because this was the first time the Committee speak of the Sopp Dietz case individually and apply their principles to him. In all the other paragraphs, including paragraphs VII and VIII,

the Committee are dealing in a general way with the desirability of treating crimes against humanity as war crimes. This proposal was agreed to and it was decided to transfer paragraph VI between the present paragraph VIII and paragraph IX. Having regard to the minority opinion held by Mr. Wold, it was decided to insert the words "the majority of" between line 1 and line 2 of paragraph VI and to add the following sub-paragraph to paragraph VI:

" Mr. WOLD holds that Sepp Dietz must be considered as having participated in the planning of a war of aggression. (cf. Art. 6(a) of the Charter of the International Military Tribunal, and Commission Doc. C.144.)

Paragraph VII. was agreed to without comment.

Paragraph VIII was agreed to without comment.

Paragraph IX was agreed to without comment, with the proviso that before it the present paragraph VI, as amended, will be inserted.

III. LAW REPORTS SERIES:

The Committee then discussed the Law Reports Nos. 1 and 2 which had been circulated to the members of Committee III as a basis for elaborating the method of dealing with this part of the Commission's task. In the discussion all members of the Committee stressed the importance of this work and it was decided to ask the Secretary to continue the preparation, and circulation to the members of Committee III of these preliminary reports which the members consider interesting and informative. The consideration of a final report on the Belsen trial was necessarily adjourned until the conclusion of the trial.

Mr. WOLD and Dr. ZIVKOVIC also stressed the importance of preparing a bibliography of the legal literature on War Crimes published during and on the conclusion of the second World War.

14/45.
11th December 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of the Meeting of Committee III held on 11th December 1945 at

3.0 p.m.

There were present:

| | | |
|----------------------|---|-----------------|
| Major Dr. Fanderlik, | } | Czechoslovakia, |
| Dr. Mayr-Harting, | | |
| Dr. Schram-Nielsen, | | Denmark, |
| Commander Mouton, | | Netherlands. |

The Committee having eight members and only three being present, it was decided to adjourn the meeting till Tuesday 18th December 1945 at 3.0 p.m.

The members present at the meeting were unanimous in the view that to have a quorum it would be necessary for at least a majority of the members of Committee III to be present, that is at least five members. The following is a list of the countries at present represented on Committee III:

China,
Czechoslovakia,
Denmark,
Greece,
Netherlands,
Norway,
Poland,
Yugoslavia.

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:

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|------------------------|-----------------|
| 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 recognize 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 Alsatians 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 Alsatians 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-HARTING 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 :

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|----------------------|-----------------|
| 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 Doc.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.

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:

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|----------------------|-----------------|
| 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 MCUTON 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 Alsatians, 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 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, 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 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 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.

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. CYPRIAN 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. CYPRIAN 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.Schram-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. Luchs,

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:

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|----------------------|-----------------------------|
| Lord Wright, | Chairman of the Commission, |
| Sir Robert Craigie, | United Kingdom, |
| Major Dr. Fanderlik, | Czechoslovakia. |
| Dr. Schran-Nielsen, | Denmark, |
| Commander Mouton, | 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 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 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 "crimes 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. 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 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, Doc. 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.

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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:

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|----------------------|-----------------------------|
| Lord Wright, | Chairman of the Commission, |
| Sir Robert Craigie, | United Kingdom, |
| Major Dr. Fanderlik, | Czechoslovakia. |
| Dr. Schran-Nielsen, | Denmark, |
| Commander Mouton, | 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 ^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. 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.

Minutes No.8/46.

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. Schwelb 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 Fuhrer 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 Fuhrer 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:

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| 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/40).)

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:

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| 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 summing up 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.

Committee III Minutes.
No.12/46.

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 ("Peless" 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. 13/46.

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:

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| Sir Robert Craigie, | United Kingdom, |
| M. de Baer, | Belgium, |
| Major Fanderlik, | Czechoslovakia, |
| Dr. Schram-Nielsen, | Denmark, |
| Dr. Lachs, | Poland, |
| Lt. Cdr. Kintner, | 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:

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| 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