

A year later, after the Nazis had obtained more than a third of the total poll at the Reichstag elections of July, 1932, after Hindenburg had replaced the Brüning Government by the pro-Nazi government of von Papen, the Nazi terror reached its height with the murder of a Communist by five Nazis at Potempa in Upper Silesia. Although at that time it was the general rule that political crimes committed by Nazis were treated by the German courts with more leniency than those committed by their opponents, the special court at Beuthen, Upper Silesia, which had been appointed by the Papen Government to combat acts of political terror, had no alternative but to find the five Nazis guilty of murder and condemned them to death.

Potempa was the first occasion for the Nazis to drop completely the pretence of political legality and to declare quite openly their sympathy with the perpetrators of political murder. Thus, Göring sent the following telegram to the condemned murderers of Potempa:

"Embittered and disgusted beyond measure about the verdict of terror I assure you comrades that our whole fight will from now on be devoted to your freedom. Chins up! More than 14 million of the best Germans have made your course their own." (Angriff, 24.8.32).

And Alfred Rosenberg asserted in the "Völkischer Beobachter" of the 25.8.32. "Man is not like man; deed is not like deed. By the verdict Hitler's S.A. men are not only put on an equal basis with Bolsheviki, but where these are Poles as well, they (the S.A. men) are placed below subhumanity (Untermenschentum). Such "justice" is against the national elementary instinct of self-preservation. For National Socialism there is no such thing as law in itself."

Even more cynical in his praise for the Potempa criminals was Goebbels in his article in the "Angriff" of the 24th August, 1932:

"The real culprits are still hiding behind the police cordons. There will come the hour when counsel for the prosecution will have to fulfil other tasks than to protect the traitors to the people against the indignation of the people. Never forget, comrades! Tell yourselves a hundred times a day until it follows you into the bottom of your dreams: The Jews are guilty."

Subsequent events have proved to the world that these threats were anything but empty. But even at that time there was ample evidence that the Nazis not only intended violently to suppress their opponents once they had seized power, but that they had prepared their terroristic plans to the minutest detail. In November, 1931, the Republican Government of Hesse discovered the so-called Boxheim documents which laid down in all particulars what was going to happen when the Nazis would seize power. Inter alia these documents contained the following draft decree:

"Every command given by the S.A. irrespective of rank must be obeyed immediately. Resistance will always be punished by death. All foodstuffs are at the disposal of the leaders and must be handed to their representatives free of charge. Penalty for sabotaging the requisitioning, and for selling or exchanging foodstuffs: in every case confiscation of the entire property, every degree of imprisonment, or the death penalty." (see Frankfurter Zeitung 25.11.31).

It may be noted, that the author of these documents, Dr. Walter Best, became one of the leading Gestapo officials in Nazi-occupied territory during the war.

2. THE PERSECUTION OF POLITICAL OPPONENTS

When the so-called "National Revolution"(1) had succeeded the Nazis' "night of long knives" was put into practice. Immediately the Nazis had taken over the Government, even the slightest pretence of legality was dropped. The political terror against all anti-Nazis was organised by the Government, and the police force was encouraged to act ruthlessly against opponents of the regime. Göring's decree addressed to the police force on February, 17, 1933, is a clear indication of the methods by which the Nazis were to impose their criminal intentions on the German people. It reads as follows:-

"Every man who in pursuance of his duty makes use of his weapons will be protected by me regardless of the consequences of his action. On the other hand, every man who from any foul scruple does not use his weapons can anticipate criminal proceedings against himself. Every officer must at all times remember that omission to take the necessary measures is more serious than a mistake made in applying such measures."

Five days later Göring thought it necessary to put the meaning of this decree beyond any doubt. A further decree dated February, 22, 1933, explained:-

"I assume that it is unnecessary specially to point out that the police must in all circumstances avoid giving even the appearance of a hostile attitude towards patriotic associations (S.A. and Steel Helmet)."

Five further days passed, and on the 27th February, 1933 the Reichstag was set on fire. The Nazi propaganda machine put the blame on the Communists and Socialists, thus trying to provide for themselves a moral excuse for the terror against anti-Nazis of all shades of opinion which then started in full blast.

The Reichstag fire was used as a pretext to issue an emergency decree for "the Protection of People and State" which was based on Article 48, Sub-Section 2 of the Weimar Constitution. This decree was stated to be "a defensive measure against Communist acts of violence endangering the State". This decree "suspended" the fundamental rights of the Weimar Constitution (2) until further notice, and "authorised" restrictions on personal liberty, such as "protective custody" in Concentration Camps. Thus, this Decree became the "legal" basis for the reign of terror since established in Nazi Germany.

The interpretation of this Decree is one of the examples of how the Nazis did not even care to abide by their own laws. The Decree was expressly stated to be a measure against alleged Communist acts of violence, but it was used as a pretext to arrest any person who showed any opposition to the Nazi regime. The Prussian Supreme Administrative Court (Oberverwaltungsgericht) managed to interpret this clause in such a way that it included any activity "hostile to the State"(3). It was held that it was irrelevant whether a person deprived of his liberty by virtue of this decree belonged to the Communist or to the "reactionary" camp. "In this connection one must start from the assumption that any act of a Volksgenosse which is hostile to the State, will further Communist aims"(4).

(1) As to how this "National Revolution" was engineered by the Nazis and their wirepullers in German Heavy Industry, the testimony of Miss Cecilie Müller should be referred to (see Appendix 1)

(2) See Articles 114, 115, 117, 118, 123, 124 and 153 of the Weimar Constitution.

(3) Decisions of the Prussian Supreme Administrative Court, vol. 94, pp. 134 et seq.

(4) See Drews, President of the Prussian Supreme Administrative Court in a lecture on the latest decisions of the Prussian Supreme Administrative Court on General and Special Police Law, quoted by Schweder, Politische Polizei, 1937, pp. 154-55.

Nazi authorities quite openly admit that protective custody and Concentration Camps have no foundation in German law. Thus Geigenmüller (1) declares: "Although the Decree of February, 28, 1933, was issued formally in accordance with the Weimar Constitution, its basis has long since ceased to exist. By virtue of Article 48, Sub-Section 2 the fundamental rights enumerated there may be 'temporarily' suspended wholly or in part 'for the purpose of restoring public order and security'. Neither of these conditions have been present for a long time. After all the actual situation in Germany is sufficient proof to show that public order and security have been restored a long time ago; but the Communist danger which gave rise to the Decree and which has been expressly mentioned in the preamble as the reason for it, is still subsisting in undiminished force".

The "formal" procedure governing protective custody was laid down in a Regulation issued by the Reich Minister for Home Affairs dated April, 12, 1933. This Regulation gave power to the Police Authorities of the Länder to impose "protective custody" and very soon afterwards Decrees were issued in all the German Länder entrusting this task to the newly formed Secret State Police (Geheime Staatspolizei - GESTAPO) (2). By a Decree of the Führer dated June, 17, 1936, the command of the whole German Police was given to the Reichsführer of the SS, Heinrich Himmler.

Although the Nazi propaganda machine tried to dispose of the numerous reports on the terror raging in Germany by describing them as "atrocities" invented by the Jews and other enemies of the regime, the Nazi leaders quite openly admitted that brutal force was used against their opponents. Again and again, they pointed out that Marxism had to be eradicated. Hitler himself in his Reichstag speech of March, 23, 1933, stated: "Treason (which in Nazi terminology means any opposition to the regime) shall in future be blotted out with barbaric ruthlessness". Göring, the author of the two shooting decrees previously mentioned, admits quite frankly: "If you call that murder, then I am a murderer. Everything has been ordered by me; it was only natural that in the beginning excesses were committed. I assume full responsibility for all shootings" (see Göring, Germany Reborn, p.129), and in his speech made at Essen on the 10th March, 1933 (see Vossische Zeitung 11.3.33) "I would rather shoot a few times too short and too wide, but at any rate I would shoot."

The following months witness a rapid liquidation of all non-Nazi political organisations. The first organisation to be outlawed was the Communist Party. Even the election of Communist members to the Reichstag on the 5th March, 1933 was annulled and thus a clear majority assured for the Nazi Party in the Reichstag. On the 2nd May, 1933, the Free Trade Unions were dissolved and their property "taken over" by Dr. Ley's German Labour Front. In an appeal to the public Dr. Ley stated on this day: "The devilish era of Marxism must ignominiously perish (elend krepieren) on the battlefield of the National Socialist Revolution". On the 10th May, 1933 the Angriff reported that an order had been issued for the confiscation of all property of the Social Democratic Party and its newspapers as well as of the property belonging to the Republican "Reichsbanner" and its press. In fact, both, Social Democratic and Reichsbanner Press had been banned since the day of the Reichstag fire. On the 22nd June, 1933, Frick expressly dissolved the Socialist Party as it had to be "considered as subversive and thus could claim no other treatment than the Communist Party". On the 27th June, 1933

(1) Politische Schutzhaft im nationalsozialistischen Staat, 1937, p.10.

(2) Prussia: Laws of April 26, and November 30, 1933, superseded by the Law of February, 10, 1936. Regarding the other German Länder see Schweder, op.cit., p.166, Footnote 2.

the Conservative German National Party dissolved itself "voluntarily", and on the 5th July, 1933, the former Reichs Chancellor Brüning announced the "voluntary" dissolution of the Catholic Centre Party. By the 14th July, 1933, all other non-Nazi parties had either been banned or had declared their "voluntary" dissolution⁽¹⁾. The remnants of the last political non-Nazi organisation the "Stahlhelm" were dissolved in January, 1934 (see Völkischer Beobachter, 28/29.1.1934).

The blood purge of June, 30, 1934, another orgy of terror, once more gave clear evidence of the criminality of the whole gang of Nazi leaders. Thus Dr. Ley's "Westdeutscher Beobachter" of July, 1, 1934, wrote:-

"A parallel case is not to be found in the whole of history. Superhuman leadership such as we have just witnessed, can surely not be repeated. We stand in the awe of this man and his unexampled self-sacrifice. The blood that was shed yesterday will purify all of us".

This time, the Nazi took the trouble of passing a "law" which purported to legalise the innumerable murders committed on June, 30, 1934. This "law" is perhaps one of the most cynical perversions of law and justice which the Nazis have ever brought about. It consists of a single article: "The measures employed on June 30, July 1, and 2, 1934, for the suppression of treasonable attacks are declared to be legal in defence of the State." Signed by the Chancellor of the Reich, Adolf Hitler, by the Minister for the Interior, Frick, and by the Minister of Justice, Gurtner.

As a further illustration of the spirit in which these crimes were committed, the speeches which Hitler, Göring and Blomberg made to justify the "measures" taken on June, 30, 1934, may be quoted. Hitler stated before the Reichstag on July, 13, 1934: "In this hour I was responsible for the fate of the German nation; thereby the Supreme Court of the German people during the 24 hours, consisted of myself." Göring in a speech addressed to the Public Prosecutors of Prussia on the 12th July, 1934 (see Das Archiv, 1934, p.494) stated: "The action of the State leadership in those days was the highest realisation of the legal consciousness of the people", and Blomberg then Minister of War, declared at a Cabinet Meeting held on the 3rd July, 1934 (see Das Archiv, 1934 p.493): "The Leader has shown such greatness as a statesman and soldier that in this difficult hour he has awakened in the hearts of the members of the Cabinet and the whole German people a pledge of achievement, devotion and loyalty."

But besides murdering anti-Nazis or confining and torturing them in "protective custody" and concentration camps, the Nazis issued a number of statutes and decrees designed against their political opponents, and at the same time they interpreted the existing law to suit their own purposes. Thus they tried to keep up the pretence that Germany was a country ruled by law and order. But under the pressure of total war even this pretence had to be dropped. A decree of the Führer dated 20th August, 1942, signed by Hitler and Lammers, by which special powers were granted to the Reich Minister of Justice, provided as follows:

"For the fulfilment of the tasks of the Greater German Reich a strong administration of justice is essential. Therefore I order and empower the Reich Minister of Justice to build up a National Socialist administration of justice according to my directions and in agreement with the Chief of the Reich Chancellery and the Chief of the Party Chancellery, and to take all measures necessary to this end. For this purpose he is not bound by existing law."

(1) Schweder, Politische Polizei, 1937, p.143, admits quite openly that the "Allies" of the 30th January, 1933, were forced to go into "voluntary" liquidation.

3. THE JEWS

The crimes against the Jews which the Nazi leaders instigated, committed or to which they became accomplices were crimes directed against Jewish life, honour and property, against the Jews as individuals and as a community. The motives given for the persecution of the Jews pictured the measures taken as being of a defensive character against a "racial" danger and as being in the true interest of the German people. Their ultimate object, however, was the material, ideological and psychological preparation of the German people for Hitler's criminal war. The methods applied against the Jews were a rehearsal for the methods by which that war was to be conducted: atrocities, pillage, and extermination of whole communities and peoples, always accompanied by lying propaganda. Hitler himself clearly stated his ultimate aims with regard to the Jews in "Mein Kampf"(1): "The inexorable world Jew fights for the domination of the world. Only a forceful national passion could defy the subjugation of all the nations. Such a process, however, is and will be bloody." And the methods of Auschwitz and Maidanek are clearly anticipated on another page (2): "If at the beginning and during the war one had once kept twelve or fifteen thousand of these Hebrew corrupters of the people under poison gas the sacrifice of millions at the front would not have been in vain. * Twelve thousand scoundrels removed in time might have saved a million real Germans of great value for the future."

But a party which proclaims to assume power by "legal" means had, of course, to couch its real aims in a more careful and legal language. Nicolai, the leading Nazi legal theorist, distinguishing between Reich citizens (Staatsbürger) and subjects (Reichsangehörige) foreshadows the Nuremberg laws (3), the party programme in article seven anticipated expulsion of the Jews "if it should not be possible to find enough food for the total population" (4). At a later stage when put into practice expulsion develops from mass expulsion to mass extermination and this ultimate aim was expressed in a hardly veiled form by Goebbels(5): "Certainly, the Jew is also a human being. Never any of us has doubted that. But the flea is also an animal but not a pleasant one. And because the flea is not a pleasant animal we have not a duty to ourselves and to our conscience to guard and to protect it, to make it grow so that it molests and tortures us, but to render it harmless. Just the same applies to the Jew." On numerous occasions the notorious Jew-baiter Streicher proclaimed the same aim: "There will be no war if the world knows that in the next war we shall kill every Jew" (6), and again at a press conference in 1936 "Some people say the Jewish question could be solved without shedding of blood. That is a mistake. The final solution of the Jewish question can only be achieved by bloody means" (7).

Soon after the Nazis had seized power they began to put into effect their plans against the Jews. Immediately after the election of March 5th, 1933 sporadic outbreaks of Jew-baiting started and were reported by the foreign press, (8) and from the second week of March onwards, crowds led by S.A. and S.S. drove Jewish Judges, Magistrates and Lawyers from the law courts all over Germany.

The first concentrated action against the Jews was the boycott on April 1st 1933. Hitler commissioned Streicher to organise the boycott. In an order published in the Völkischer Beobachter, March 30th, 1933 it was declared: "everywhere it must be stressed that the boycott is a measure of

(1) 1933 edition page 738.

(2) op.cit. p. 616

(3) Staatsrechtlicher Aufbau des Dritten Reiches, written in 1931, published in 1933, pp.20-23.

(4) Gottfried Feder: Das Programm der N.S.D.A.P. und seine weltanschaulichen Grundlagen, 1933.

(5) Der Nazi-Sozi, 1932 p.12

(6) Fränkischer Kurier, 20.5.33.

(7) Times, 16.9.36.

(8) Manchester Guardian, 14.3.33., Times 15.3.33.

defence", but Streicher himself told the Press on the same day: "It is not important any more whether the horror propaganda ceases. This propaganda was only the welcome occasion for the boycott which will be carried out. My only fear during the last week was that the attack of destruction against the Jews should not take place." (1)

The Central Committee for the defence against Jewish atrocity and boycott propaganda published the following order signed by Streicher: "... 2) The committees of action have to identify all business firms in Jewish hands.

7) The committees of action have to hand out the lists of Jewish business firms to the S.A. and S.S. in order to enable them to post guards. . .

9) At the doors of Jewish business firms posters with the yellow spot have to be affixed. (2)

An order to all party organisations declared that every local branch had to form at once committees for the boycott of all Jewish business firms, doctors, and lawyers. (3)

The official boycott carried out in accordance with Streicher's orders lasted only one day, the 1st April 1933 - to be replaced by an unofficial boycott. The political purpose of the boycott was stated by Alfred Rosenberg (4) "The boycott of last Saturday has only to be considered as a dress rehearsal for new measures." And on the first of April the official Wolff telegraph agency published the following message from the Nazi Women's league: "Do not underestimate the formidable seriousness of the last fight. The Jew will fight until the German people is annihilated. We shall fight until Jewry is annihilated."

The barbaric methods introduced by the Nazis against the Jews created a wave of indignation and protest all over the world, and the Nazi Government which at that time was still sensitive as to how foreign countries judged their methods was at pains to conceal the beginning of barbarism from the world. It was afraid that foreign trade might suffer and that the rearmament programme which the Nazis put into effect immediately after they had seized power might be adversely affected. Thus in the early days of the Third Reich spokesmen of the so-called "conservative" wing of the Nazi gang had to make declarations to foreign countries explaining that the Nazis really had no bad intentions towards the Jews. On 4th March 1933 Göring stated in an interview to the Swedish Paper "Svenska Dagbladet": "If the Jews behave themselves loyally and pursue their business nobody has to fear anything."; and Lammers, Secretary of State cabled to the German Societies in New York on 2nd April 1933 - one day after the official boycott and five days before the publication of the first anti-Jewish laws - : "German Jews will be treated in the same way as all other citizens according to their position towards the national government." On 15th September 1933 von Neurath, then Minister for Foreign Affairs, stated to the Foreign Press: "I do not doubt that the senseless talk of foreign countries about purely German affairs such as the so-called Jewish question will soon cease when it is recognized that the cleansing of public life which is absolutely necessary may perhaps have caused personal hardship in individual cases, but that its sole purpose was to strengthen the reign of law and justice."

- (1) Völkischer Beobachter 1.4.1933
- (2) Völkischer Beobachter 31.3.1933
- (3) Völkischer Beobachter 30.3.1933
- (4) Völkischer Beobachter 3.4.1933

The new measures Rosenberg had mentioned were contained in the law for the restitution of the Civil Service published on 7th April 1933 which for the first time introduced the "racial" principle into German Law. It distinguished between "Aryans" and "Non-Aryans", the latter being Jews, persons with at least one Jewish grandparent and persons married to Jews. "Non-Aryans" could no longer be Civil Servants, Judges, or act in any other official capacity. As a concession to conservative elements "Non-Aryan" Civil Servants of long standing or those who had served in the front line during the war of 1914 were allowed to retain their positions.

Between summer 1933 and the Party Congress at Nuremberg of September 1935 the law for the restitution of the Civil Service which aimed at the exclusion of the Jews from German public life was gradually extended to all professions, doctors, lawyers, dentists, chemists and even workers and other employees in the service of official or semi-official bodies. At the same time the unofficial boycott of Jewish businesses and those "Non-Aryan" members of the professions who were still allowed to practise under the 1933 laws spread from one district to the other and was carried out by Streicher with particular vigour.

The next stage in the Nazi campaign against the Jews was the elimination of the Jews from the social life of the German people. As always the notorious Julius Streicher was the leading spokesman in this campaign which was conducted by Streicher in his infamous weekly pornographic journal "Der Stürmer". As far back as December 1934 Streicher had demanded the death penalty for sexual intercourse of a Jew with a non-Jewish woman (1). By mid-summer 1935 the German population was generally prepared for radical measures against the social position of the Jews. Before the Party Congress of September 1935 a special issue of "Der Stürmer" was published in a vast circulation. The headline of this issue was "Mass Murderers from the Beginning". This referred of course to the Jews. By a special decree of Dr. Ley this issue was brought to the attention of the millions of members of the Nazi Labour Front. Thus the ground was prepared for the drastic racial laws passed in September 1935 on the occasion of the Nuremberg Party Congress and since notorious as the Nuremberg Laws. These laws codified the social ostracism of the Jews. German Jews were no longer citizens, but merely members of the Protective Union (Schutzverband) of the German Reich. The various exceptions still prevailing under the anti-Jewish laws of 1933 in favour of Jewish ex-Servicemen and civil servants of long standing were abolished with one stroke. But what was perhaps the worst was the introduction of Streicher's pornography to the German Statute Book. Marriages between Jews and non-Jews were forbidden. Extramarital sexual intercourse between Jews and non-Jews was made a criminal offence punishable by penal servitude, and Jews were forbidden to have female "Aryan" domestic servants under the age of 45.

But in the economic sphere a considerable number of Jews still continued to carry on, although the unofficial boycott encouraged by all party organisations (2) drove many of them into bankruptcy or forced sales of their business. By the beginning of 1938 the anti-Jewish boycott had driven the Jews out of most businesses in the country side, and in January of that year a decree was published regarding the sale of Jewish businesses. Nothing had to be paid for the goodwill of these businesses, the only consideration permitted was the actual value of the goods taken over (3) - ascertained of course by Nazi standards.

(1) Fränkische Tageszeitung 14.12.34, see also Rosenberg, Mythus des 20 Jahrhunderts, 1933 p. 579

(2) From 1936 onwards the Nazified law courts supported this boycott by declaring it legal - contrary to the clear provisions of German law still in force. see Angriff, 25.10.36; Völkischer Beobachter, 4.7.37; and Westdeutscher Beobachter 1.7.38.

(3) Frankfurter Zeitung, 24.1.38.

In the meantime Hitler Germany's criminal war preparations were proceeding at a feverish pace. Austria had been annexed and the campaign against Czechoslovakia was in full swing. The financial means for these purposes were provided by Göring's "Four Years Plan". In pursuance of the decree for the execution of this Four Years Plan, on the 26th April 1938 Göring ordered the registration of all property belonging to German Jews in Germany and abroad. Perhaps on no other occasion the intimate connection between Nazi war preparations and the Nazi crimes against the Jews has been demonstrated in such an obvious manner. On the 3rd November 1938, the Schwarzes Korps gave a last warning of what was in store for the Jews: "The Jews in Germany are part of world Jewry. They must share responsibility for any attacks world Jewry launches upon Germany, and they must answer for any injury Jewry inflicts or is likely to inflict upon us."

On the 6th November 1938 a Polish Jew, Herschel Grynszpan fired a shot at von Rath, a German consular official in Paris. It still remains to be explained how in those days of tension a young Polish Jew could succeed in penetrating to the office of a Higher Consular Official at the Nazi Embassy in Paris, and it may well be that a thorough examination of the circumstances will reveal that Grynszpan was a Jewish van der Lubbe. In any event it was only the Nazis who benefited from these shots.

On the 9th November 1938 the German Evening Press announced that von Rath had died. In the middle of the night a sudden outbreak of "popular indignation" occurred - whilst the vast majority of the German people were asleep. "Spontaneous actions" against the Jews were carried out by members of the S.A. and S.S. disguised as civilians all over the Reich. Jewish property was systematically wrecked and plundered, the synagogues burnt and the male Jewish population irrespective of age dragged to concentration camps. On the 10th November 1938 Goebbels proclaimed quite frankly (1): "The justified and comprehensible indignation of the German people about the cowardly Jewish murder of a German diplomat in Paris has resulted in numerous demonstrations during the past night. In numerous towns and villages acts of revenge were carried out against Jewish businesses and buildings." On the 11th November 1938 Goebbels issued an order to stop the "popular indignation" and announced that legal measures would be taken against the Jews (2). On the 13th November 1938 the Völkischer Beobachter gave a report of a meeting of Ministers at which the measures to be taken against the Jews were agreed upon. According to this report Göring was in the chair and apart from him Ministers Frick, Goebbels, Görtner, Schwerin-Krosigk and Funck were present. As the Völkischer Beobachter stated, "complete unanimity was achieved in the analysis of the situation and the measures to be adopted to deal with the question under discussion. A number of vital measures towards the solution of the Jewish Problem were discussed and partly decided." Again, significantly enough on the authority of the decree for the execution of the Four Years Plan, Göring published a decree concerning the atonement (Sühneleistung) by German Jews (3): "The hostile attitude of the Jews towards the German people and Reich which does not even shrink from dastardly murder demands strong measures of defence and drastic punishment." The decree provided that the German Jewish Community had to pay a levy of 1000 million Reichsmarks to the German Reich. By a further decree for the restoration of the streets published on the 12th November 1938 it was ordered that "all damage caused to Jewish businesses and premises by the popular indignation about the propaganda of International Jewry against the new Germany, must be repaired at once by the Jews concerned. The expense of the repairs must be paid by the Jews concerned. Claims for insurance held by German Jews are confiscated in favour of the Reich." The virtual expropriation of Jewish wealth was proclaimed by

(1) Völkischer Beobachter, 10.11.38.

(2) Angriff, 11.11.38.

(3) Reichsgesetzblatt, 1938, I., P. 1581.

a decree dated 3rd December, 1938. Article 1 of that Decree provided for the compulsory sale or winding up of the property belonging to Jewish business men. By Article 2 Jews were no longer allowed to convey real property without permission, and by Article 14 Jews were no longer allowed to sell, pawn or buy objects consisting of gold, platinum, silver, or pearls and jewellery.

On the 15th November, 1938, the Angriff reported that the Jewish children had been excluded from all German schools. Funck, Reich Minister for Economics, admitted quite openly that the death of von Rath was only a welcome occasion to put into effect anti-Jewish decrees which had been prepared a long time before. "The fact that the last forcible explosion of popular indignation caused by a criminal attack against the German people at a time when we were about to complete our measures for the elimination of the Jews from German economic life proves that we did not act in time and not drastically enough." Even more outspoken was Göring's Berliner Börsenzeitung of the 18th November 1938: "Long before the measures now instituted the attentive reader could have seen the impending utilisation of Jewish property in the economic process coming. The registration decree issued earlier this year by the government was such a hint. And with the utilisation of Jewish property he could have anticipated the requisite elimination of Jewish influence from our economic life, to an extent which the government, indeed the German people as a whole, regard as right and necessary. In one form or another, therefore, the special application of Jewish capital to the benefit of our entire national economy, and with it the sterilisation of Jewish influence on our economic life would have taken place sooner or later in any event. . . The shots fired in Paris at an aide of the German Ambassador did indeed prematurely set in motion measures which, in view of the gravity and particular heinousness of this Jewish act of vengeance took on the character of an atonement with any consideration out of the question."

But even the economic elimination caused by the November decrees of 1938 was not enough. "The Jew is not a human being"(1) was the real gospel of Nazism. The last chapter in the tragedy of German Jewry which culminated in the Death Camps of Belsen and Buchenwald, and in the gas chambers of Maidanek and Auschwitz was most cynically foreshadowed by the Schwarzes Korps, the official organ of the S.S., on 24th November 1938: "The programme is clear. It runs complete elimination, absolute separation. What does that mean? It means not merely the elimination of the Jews from German economic life - which they well merit because of their foul murders, their wars and their murderous agitation. It means more than that. No German can any longer be expected to dwell under the same roof with Jews who stand branded as a race of murderers, criminals and deadly enemies of the German people. Jews therefore must be driven from our houses and residences and lodged in streets and blocks where they are amongst themselves and have as little contact with Germans as possible. They must be branded with marks of identification. They must be deprived of the right to own or control real property in Germany, for no German can be expected to be in the power of a Jewish landlord and to feed him with the work of his hands. - In such complete isolation this tribe of parasites will be reduced to poverty since it is both unwilling and incapable of doing its own work. There may still be thousands of millionaires among them; even the so-called poor Jew may still have hidden and hoarded his quota of wealth; but their capital will soon be eaten up, once their parasitic life-blood has been cut off . . . and when, as will prove to be necessary we have forced the rich Jews to support their "poor" brethren then will they all sink into criminality, obeying the inherent blood-conditioned bent. Let no one think that we will follow this development with equanimity. The German people do not have the slightest desire to tolerate within their realm hundreds of thousands of criminals who not only seek to live by crime but who thirst for vengeance."

(1) Major Walter Buch, presiding judge of the Supreme Party Court at Nuremberg Party Congress, September 1936, see Deutsche Justiz, October 1938, p. 1660.

Still less do we desire to see those hundreds of thousands of pauperized Jews become a breeding place of Bolshevism and a receptacle for the criminal sub-human fringes which crumbles off the edge of our own people by natural selection. Were we to tolerate such a thing the result might be a conspiracy of the underworld that might be possible in America but certainly not in Germany. At such a stage of development we would be faced with the harsh necessity of rooting out the Jewish underworld in the same manner in which our State, founded on law, extirpates criminals: with fire and sword. The result would be the actual and final end of Jewry in Germany, its absolute annihilation."

If there should still be any doubt that the extermination of the Jews was planned by Hitler and his gang long beforehand the following quotation from Hitler's Reichstag speech on the sixth anniversary of his accession to power (30.1.39) may be quoted: "Europe cannot have peace before the Jewish question is settled. . . . If international Jewry again succeeded in precipitating a world war, the consequence would not be bolshevisation, and through that the victory of the Jew, but the annihilation of the Jewish race in Europe."

The liberation of Europe has brought to light how the remnants of European Jewry were put to death by the Nazi mass murderers. But it is perhaps less known that right up to the last stage the Nazis added insult to injury inflicted on the German Jews. Shortly after the outbreak of war a law was published putting all Jews under an obligation to wear a yellow star as a distinguishing mark. Before being slaughtered in Maidanek and Auschwitz the Jews were compelled to work for the Nazi war machine in slave gangs, and the law dated 3rd October 1941 governing their conditions of service may be quoted: "Jews who are directed to work are in a service relationship of a special kind. Jews as people of foreign blood cannot enjoy membership of a German works organisation. Jews are not entitled to overtime pay. The Juvenile labour act does not apply to Jewish employees between the ages of 14 and 18. The Factory Safeguards Act does not apply to Jews."

By a law dated 25.11.41 German Jews residing abroad were deprived of their German nationality and whatever had remained of their property in Germany was confiscated for the benefit of the Reich.

The Magna Charta for Auschwitz and Maidanek is to be found in the "law" dated 1.7.43 by which the police (Himmler's Gestapo, which was in charge of all concentration and extermination camps) was given jurisdiction "to try and punish offences committed by Jews." Ominously the law adds that after the death of a Jew his possessions are confiscated for the benefit of the Reich.

4. THE CHURCHES

Towards the churches a different attitude from that adopted towards the Jews and the political opponents had to be applied. The great majority of the German people were religious Catholics or Protestants, and it would have been bad tactics to extend the totalitarian claim of Nazism to the realm of the churches too early. Thus ostensibly tolerance towards the Christian religion was proclaimed and Article 24 of the party programme (1) states: "We demand religious freedom for all denominations so long as they do not endanger the stability of the state or offend against the German people's instincts of morality and decency. The party as such takes its stand on a positive Christianity without committing itself to any particular creed. It combats the materialist Jewish spirit within and without and is convinced that the permanent recovery of our people is possible only from within and must be based on the principle of the common interest before self-interest."

(1) Gottfried Feder, Das Programm der N.S.D.A.P. Munich 1933.

When the Nazis had seized power this pretence of tolerance towards the Christian religion was upheld. Thus Hitler proclaimed in his first Reichstag speech on the 23rd March 1933: "The Government being resolved to undertake the political and moral purification of our public life are creating and securing the conditions necessary for a really profound revival of religious life. The National Government regards the two Christian confessions as the weightiest factors for the maintenance of our nationality. They will respect the agreements concluded between them and the Federal States."

a) The Catholic Church

It was the same spirit (1) which led to the conclusion of the Concordat between the Reich and the Vatican on the 20th July 1933 by which the Nazi State promised absolute protection for Catholic education, complete freedom of religious practice and no interference whatever in church affairs. In exchange the Church promised to take no further part in the political development of the Reich and even to swear allegiance to the State.

But such a demarcation between the sphere of the State and the sphere of the Church is incompatible with the totalitarian principles of National Socialism, and the real aims of the Nazis with regard to the Catholic Church had been stated by Rosenberg: "A German church will gradually replace representations of the Crucifixion in its churches by representations of the spirit of Fire, of the Heroic in the highest sense." (2)

The Catholic press was not banned in the wholesale manner applied to the Socialist and Communist newspapers which had been suppressed en bloc on the day of the Reichstag Fire. A more subtle method was adopted: in December 1933 the editors law (Schriftleitergesetz) was passed which excluded from publication anything likely to weaken the will for union of the German people and German culture. Shortly after this law came into force the Essen "National Zeitung" which was known as Göring's mouthpiece stated (No. 92, of 1934): "It must be maintained with firmness that according to the new editors law which embodies the spirit of the National Socialist State there are no longer Catholic or Evangelical editors but only German editors." On the 24th April 1935 Amann, the president of the Reichspressekammer issued a decree which heralded the complete liquidation of the Catholic daily press: Article 4 of this decree provided that "newspapers in what regards the arrangements of their contents, may not be adapted to suit the preferences of a group of persons, determined or determinable by their denomination, calling or common interest." On the 17th February 1936 Amann went even a step further by issuing a regulation which severely curtailed even publications such as parish magazines and other church periodicals: "It cannot be allowed that the kind of publication which is excluded from the daily and weekly press should find a substitute in the denominational periodicals, and therefore it can no longer be tolerated that these though they omit all political news should contain matter of general interest or of a didactic nature whose selection is influenced by the fact that the subscribers are members of a certain denomination whereas every article ought to have an exclusive religious content." Thus contrary to the express provision of article 4 sub-section 2 of the Concordat which authorized the publication of diocesan Gazettes "in the form hitherto used" the publication even of purely ecclesiastical journals was subject to continuous interference by the State (3).

(1) Another reason which induced the Nazis to make the pretence of a peace with "Rome" was stated by Hesselblatt, Reichskonkordat und Minderheitenschutz, Nation und Staat 1932 - 1933, p.690: "It was thought that the Concordat might mean that the Roman Church would defend German interests beyond the frontiers of the Reich.

(2) Mythos des 20. Jahrhunderts, p.616.

(3) For detailed and authenticated particulars of such interference see: The Persecution of the Catholic Church in the Third Reich, London, Burns Oates, 1940, pp. 71 et seq.

Article 31 of the Concordat expressly protected those Catholic Organisations which pursue "exclusively charitable, cultural or religious ends. . . provided they guarantee to develop their activities outside all political parties."

It should have been thought that this provision would have sufficed to guarantee the further existence of the numerous Catholic organizations established in Germany prior to Hitler's accession to power. But Nazism proclaimed total power over Youth and very soon the Reich Youth Leader Baldur von Schirach plainly expressed what was the intention of the Nazi Government. He stated on the 27th March 1934(1) "the incorporation of the Protestant Youth Associations will sometime or other be followed by that of the Catholic Youth (loud applause). At a time when all are abandoning their private interests, Catholic youth has no longer any right to lead a separate existence". Hardly a year later he became even more threatening(2) "It will be decided in the coming weeks whether the Catholics will possess enough sense to give up of their own accord their cliquish and disloyal system or whether it will be necessary to use force . . . and unless the devil himself is against us, we shall succeed in compelling the Catholics just as we have compelled the hundred and one other clubs and associations."

Whilst no general ban was imposed on Catholic youth associations, methods of intimidation were applied to prevent parents from allowing their children to become members of these organizations. The following order issued by Baron von Holzschuher, District Governor of Nieder-Bayern-Oberpfalz of the 23rd July 1936 (3) was typical: "It is not right for officials and servants of the State to let their children enter denominationally controlled Youth Organizations as long as the ecclesiastical authorities do not succeed in bringing their politically minded clergy to adopt a positive attitude towards the State and the Führer." But the local Nazi officials who in the Führer State must have been certain of the approval of their leaders openly flouted Article 31 of the Concordat. Thus Catholic organizations such as Deutsche Jugendkraft, Neu-Deutschland, Catholic Young Men's Associations were locally banned in various parts of the Reich between 1934 and 1939. As an example of the methods adopted the following decree of the Area Leader of Schweinfurt dated 25th April 1934 signed by Weidling, Area Leader and Rohrbacher, Area Charge d'Affairs (4) may be quoted.

"1) In accordance with the District Order of April 25th 1934 all Catholic Youth and Young Men's Associations are forthwith forbidden in the interest of public peace and order and for the protection of the State and its citizens.

2) The above Order renders void the protection granted with reservations to the said Associations under the terms of Article 31 of the Reich Concordat of July 20th 1933 . . .

3) The prohibition extends to all registered and non-registered Catholic Associations and any bodies resembling such Associations which are devoted to the care of Youth. Associations which according to their constitutions concern themselves with a purely religious training of Youth are likewise included."

Similar methods were applied to the Catholic Religious Adults Organizations whose existence was equally guaranteed by Article 31 of the Concordat. But this express guarantee did not prevent Dr. Ley, the Leader of the German Labour Front, from issuing the following regulation on the 28th April 1934: "There is occasion to point out that members of other vocational and class organizations, especially denominational workers and journeymen's associations, cannot be members of the German Labour Front. In cases of such

(1) Schlesische Volkszeitung 29.3.34.
(2) Leipziger Neueste Nachrichten 9.4.35.
(3) Augsburger Anzeiger 1936 No. 206.
(4) Mainfränkische Zeitung, 26.4.34.

double membership and of one of the above mentioned associations, membership of the German Labour Front must be cancelled forthwith." Although this meant that any member of a Catholic Workers' and Journeymen's Association was debarred from the numerous benefits enjoyed by members of the Nazi Labour Front, these Organizations still carried on their activities until the Nazi Government finally dissolved them by virtue of the emergency decree for the protection of People and State. The Catholic Women Teachers' Union was dissolved in July 1937 by virtue of the same law, and the Catholic Students' Associations "voluntarily" gave up their denominational character early in 1936.

Perhaps the most vital part of the Nazi fight against the Catholic religion was the campaign against the Catholic schools. Article 23 of the Concordat guaranteed retention of the Catholic denominational schools in all parishes where parents requested it if a sufficient number of pupils was available. But denominational schools did not fit into the principles of the Nazi Totalitarian State. Thus Kerrl, Minister for church affairs declared in Fulda on 27th November 1937 (1): "We cannot recognise that the Church has a right to insure that the individual should be educated in all respects in the way which it holds to be right; but we must leave it to the National Socialist State to educate the child in the way it regards as right", or as Rosenberg stated on 7th March 1937 (2): "the education of youth can only be carried out by those who have saved Germany from disaster. It is therefore impossible to demand a united co-ordinated nation as long as education is carried out by forces which are mutually exclusive of each other."

True to these principles the Nazis organised polls all over the country ostensibly to ascertain the will of those parents who desired the establishment of catholic schools for their children. These polls were carried out in such a way that the late Pope Pius XI in his famous encyclical "Mit brennender Sorge" published on the 14th March 1937 strongly complained about "the open war against the confessional schools which were guaranteed by the Concordat and the nullification of the freedom of the ballot for those entitled to a Catholic education" and "an oppression of the conscience of the faithful that has never before been witnessed;" and he further protested: "Laws or other regulations concerning schools which take no account of the rights of the parents given them by natural law or which by threats of violence nullify them contradict the natural law and are essentially immoral. The Church, the chosen Guardian and Interpreter of the natural law cannot do otherwise than declare that the enrolment of pupils which has just taken place in circumstances of notorious coercion are the effects of violence and void of all legality . . . the nominal maintenance of religious instruction especially when controlled and fettered by incompetent people in the atmosphere of a school which in other branches of instruction works systematically and invidiously against this same religion, can never justify a faithful Christian in accepting freely such an anti-religious educational system . . . we know that a free and secret ballot would mean for you an overwhelming majority in favour of the confessional school."

A free and secret ballot is of course incompatible with the principles of Nazi morality, and it was only natural that Wagner, Minister of State in Catholic Bavaria, was able to pronounce in October 1938 (3): "Throughout the Bavarian territory the transformation of denominational schools into community schools has been completed. At this turning point in the history of our public teaching, I want to thank all those who have collaborated in the accomplishment of the task which was put before them". True, in these "community" schools religious instruction was given, but its real aims were disclosed by Alfred Rosenberg's Völkischer Beobachter on the

- (1) Das Archiv 1937, p.1028
- (2) Das Archiv 1937, p.1716.
- (3) Völkischer Beobachter, 27.10.38

29th March 1939: "It is therefore a National Socialist and consequently a religious act for the State to ordain that denominational religious instruction is to be given only by such lay and clerical teachers as can be expected not to abuse the school for denominational controversy and strife . . . it must lead to hypocrisy if young boys and girls are compelled to observe denominational practices which are for them of no religious significance."

An important part in the Nazi struggle against Catholicism was played by show-trials designed to undermine the authority and reputation of Catholic dignitaries and religious orders. In 1935 it was discovered that a number of members of the clergy and of religious orders had carried out transactions which infringed the currency regulations imposed by the Third Reich. The trials of these cases were used by the Nazis to start a general propaganda campaign against the Catholic clergy. Particularly the Nazi press was prominent in this kind of propaganda and it published sensational accounts of these trials under big headlines, e.g. "Brazen blasphemy" (Angriff 18.5.35), "Millions skilfully smuggled from convents" (Angriff 17.5.35), "Martyrs and Clerical Currency Tricksters" (Schwarzes Korps 22.5.35).

An even more serious campaign against Catholicism was commenced in 1936 when numerous Catholics were tried for sexual offences. These trials were systematically organized to suit the purposes of the Nazi propaganda machine. The purpose of these trials - unscrupulous defamation of the Catholic Church - was plainly stated in the Völkischer Beobachter of the 29th May 1937: "In the solid mass of so-called 'regrettable individual lapses' in the overtolerant attitude of clerical superiors, and in the lying propaganda of this international body under the guidance of Roman or Vatican laws, we perceive symptoms of a disease leading to the complete internal decay of an institution which up to now has not achieved its aims amongst us and never shall". The Government considered these trials of such an importance that a leading member of the Cabinet made a speech on the subject which was relayed over all German wireless stations. It was not the Minister of Justice or the Minister for Church Affairs who made this speech but the Minister for Propaganda Dr. Goebbels; in his speech he alleged inter alia (German wireless 28.5.37) "No other class of society has ever come to shelter such depravity . . . In our civilized world no other class of society has contrived to practise immorality and indulge in filth on a scale resembling that achieved by the German clergy in all its ranks. . . . There is no doubt that even the thousands of cases which have come to light represent but a small fraction of the total moral corruption."

When the trials had served their purpose the Nazi Minister for Church Affairs Kerrl disclosed how many thousands of cases "had really come to light" - according to Nazi statistics (1): Persons condemned; Priests 45, brothers and nuns 176, employees etc. 21, total 242. Cases still in progress: Priests 93, brothers and nuns 743, employees 118, total 955. Cases withdrawn or convictions not obtained: Priests 29, brothers 127, employees 31, total 187.

It should be noted that according to figures published by the "Osservatore Romano", the official Vatican paper, on the 9th June 1937, the total number of secular priests in Germany amounted to 21,461 and the number of priests belonging to religious Orders amounted to 4,174. If it is further taken into consideration that the convictions were obtained by the Nazi courts which worked according to the principle "Law is an instrument in the hands of the Führer for the realization of National Socialism(2)" these trials and the capital the Nazis made out of them should be seen in their proper proportion.

(1) Westdeutscher Beobachter 1.12.37, reporting speech at Hagen, Westphalia.

(2) Dr. Hans Frank, Völkischer Beobachter 18.5.1936.

Since 1933 leading Nazis and their organs left no doubt as to their real opinion about Catholicism. Though lip service was again and again paid to the Catholic religion, anti-Catholic propaganda was made in speeches and articles. Thus Adolf Wagner, Minister of State in Bavaria, declared on the 18th June 1936(1): "With a few trustee followers of whom Alfred Rosenberg was one, Adolf Hitler took up the fight against the ever increasing red tide. And when the black International took the place of the dead Bolsheviki, there was no change on the battlefield of the young National Socialist movement. For the enemy was still there; he has merely changed his colours." Hitler himself was more careful in the choice of his words when he referred to the Church question in his Berlin speech on the 1st May 1937: "So long as they (the Churches) concern themselves with their religious problems the State does not concern itself with them. But so soon as they attempt by any means whatever - by letters, encyclical or otherwise - to arrogate to themselves rights which belong to the State alone, we shall force them back into their proper spiritual pastoral activities."

These formulae of Hitler and Wagner together represent a true picture of Catholicism under the Nazis. Whilst it was pretended that the religious sphere of Catholicism was left untouched, the Nazi leaders at heart regarded and treated Catholicism as an enemy. Together with other opponents of the regime, Dr. Klausener, the head of Catholic Action in Germany was murdered in the blood purge of the 30th June 1934; the Catholic Pacifist, Father Rossaint was tried for "high treason" just in the same way as other anti-Nazis, and the Papal encyclical "Mit brennender Sorge" had to express the Pope's praise and thanks to those priests who "had to bear imprisonment and condemnation to concentration camps" - just the same as innumerable Jews, Socialists and Communists.

With the approach of the war, the Nazi press became more outspoken than ever. Thus "Die Bewegung", the organ of the Nazi Union of Students, stated plainly on the 1st November 1938: "The Catholic Church to-day is simply an international party pursuing purely earthly objectives with its problems of eternity and its after-life . . . The Vatican is concerned to uphold, not any particular belief in God, but (with an eye on the profits) the destructive international machinations of Jewry, Freemasonry and Bolshevism which are being more and more hard pressed . . . To-day, the young national powers of Europe are confronted by a solid front of adversaries: World Jewry, World Freemasonry, a World Church and World Bolshevism. National Socialism has conquered Bolshevism, Jewry and Freemasonry. The last international idol will also fall and must fall under the iron hand of National Socialist politics. The States of the new Europe cannot tolerate any disruptive institutions in their midst. But the determination of the Roman Church is not to build but to tear down. Clericalism - we must not mince our words - to-day is our enemy. It is alien to the people, without a Fatherland."

The policy of wholesale confiscation of Catholic property adopted during the war was foreshadowed in the following article of "Schwarzes Korps" of the 17.11.1938: "A morally corrupt and treasonable clerical set indifferent to the welfare of the nation is neither willing nor able to exploit profitably or to administer German resources. If its property is confiscated it merely gives up something to which it has no colourable claim. What pious donors have given was received to be used for the nation's welfare not for its destruction, and still less for the maintenance of an un-Christian life of unbridled luxury. Such a state within a State must no longer exist in Germany."

(1) Münchener Neueste Nachrichten 18.6.36.

The war intensified the persecution of Catholicism, and when Nazi Germany's power was at its zenith, on the 6th April 1941 the German Catholic Bishops stated in a pastoral letter that Catholic youth education, Kindergartens, Schools, religious teaching had been almost completely abolished in Germany and that even the purely religious press such as Sunday papers and diocesan bulletins could no longer be published. In October 1941 Alfred Rosenberg published a thirty point programme for a National Reich Church from which the following extracts may be quoted:

"1) The National Reich Church claims with all decisiveness the sole right and sole power over all churches within the German Reich's boundaries; declares them as National Reich Churches of Germany.

"5) The National Reich Church is determined unswervingly and by all means to annihilate Christian faith which though foreign to our being and character was imported to Germany in the tragic year 800.

"13) The National Reich Church demands that printing and delivery of the Bible immediately be stopped in Germany as well as the further appearance of Sunday papers, writings, lectures and books with churchly content.

"14) The National Reich Church will guard with the utmost strictness against the importation of Bibles and Christian religious literature into Germany.

"15) The National Reich Church declares that henceforth our peoples greatest document and book will be our Führer's Mein Kampf. The National Reich Church is conscious that this book contains not only the greatest but, much more the purest and truest ethics for the present and future life of our people.

"18) The National Reich Church removes from all altars the crucifix, the Bible, and all holy pictures.

"19) On the altars of the National Reich Church will be our all holy book Mein Kampf and on its left a sword consecrating our German people to the same token of God.

"30) On the day of foundation all of the new National Reich Churches, Cathedrals and Chapels within the Reich and its colonial boundaries will remove the Cross of Christ which will be replaced by the Swastika as the only unconquerable symbol of Germany".

These points were not merely academic demands; whilst they were printed and published they were actually being put into effect all over Germany. In a further pastoral letter of the German Catholic Bishops read from all pulpits on the 22nd March 1942 it was stated inter alia: "Pressure is frequently used on those who depend on State or Party positions to force them to conceal their Catholic religion or to compel them to abandon the Church. Through numerous ordinances and laws open worship of the Catholic religion has been restricted to such a degree that it has disappeared almost entirely from public life . . . even worship within the Houses of God is frequently restricted and oppressed. Quite a number of places of worship . . . have been closed by force and even used for profane purposes. Services in rented rooms have been prohibited despite urgent necessity . . . From time to time religious instruction for children and juveniles has been prohibited even in church-owned premises and has been punished. Religious care in Hospitals has been most severely restricted through new laws . . . Catholic priests are watched constantly and suspiciously in their teaching and pastoral duties; priests, without proof of any guilt are banned from their dioceses and homes and even deprived of their freedom and punished for having fulfilled their priestly duties. Clergymen are being punished with expulsion from the country or internment in a concentration camp without court procedure . . . The religious press has been destroyed almost entirely; the reprinting of religious books, even Catechisms, school Bibles and diocesan prayer books is not permitted while anti-Christian writings may be printed and distributed in mass circulation . . . The Catholic Orders have been expelled from schools almost entirely and are being curtailed in their other activities on an ever increasing scale. A large part of their property and their institutions has been taken away from them . . . For months, regardless of war misery, an anti-Christian wave of propaganda, fostered by party meetings and party pamphlets has been carried through the country with the clearly noticeable, even outspoken, aim to suffocate the vigour of the Catholic Church in German lands." Similar complaints were repeated by Cardinal Faulhaber in a sermon held at Munich on the 8th May 1942.

However, these complaints were restricted to the actual oppression of the Catholic religion, and they did not realize that the persecution of the Catholics was in fact an essential part of the criminal Nazi methods of total war. The Catholic Church in Germany as an organization never opposed this criminal war itself, although Catholic individuals like the Munich students Hans and Sophia Scholl had to pay with their lives for their courageous resistance against the Nazi war regime. However, if in the end Rosenberg has not been able to replace the Cross by the Swastika, this is entirely due to the military victory of the armed forces of the United Nations.

b) The Protestant Church.

Another strategy was applied to the forces of the Protestant Church in Germany. For a long time the German Protestant Church had contained a strong element of nationalist and chauvinistic tendencies. The first anti-Semitic movement in Germany in modern times was led by a prominent Protestant Clergyman, Stöcker, in the 1880s. The Protestant Church was the State Church and thus one of the main pillars of Kaiser Germany. The great majority of the Protestant Clergy sympathised with the anti-democratic nationalist forces during the period of the Weimar Republic, and whilst Nazi ideology was intrinsically opposed to the Christian faith of the Protestants, its Nationalist programme appealed to a great part of Protestant believers, all the more as in the early stages the Nazis carefully avoided an ideological conflict with Protestantism. They appreciated that the majority of the German population was Protestant and an open fight against the Protestant Churches would have spoiled all their chances of success. Thus the Nazis adopted a tactic which later on they applied so successfully in many countries of the European continent, the policy of the Trojan Horse. Working within the framework of the German Evangelical Church they formed their own faction, the Faith Movement of German Christians. The aim of this Movement was the gradual infiltration of Nazi doctrines into the Church. At its first conference held after Hitler's accession to power, a resolution was adopted which provided inter alia: "Christian Faith demands the fight against atheist Marxism and against ultramontaniam (the Catholic Church) . . . The Church will never allow that God's Creation which is evident in blood and race be attacked by one of his members." Consequently it demanded that Protestants who married persons of the "Jewish race" should be expelled from the Church(1).

The first step in the process of the Nazification of the Church was the unification of the twenty-eight Churches existing in the various German States (Landeskirchen). This had been a popular demand in all parts of the Evangelical Church a long time before the Nazis seized power. This led to the election of a Bishop for the whole Reich. In May 1933 a Council of Church Federations was called together to elect an Evangelical Bishop for the whole Reich. Instead however of electing Hitler's favourite, the Leader of the German Christians, Wehrkreispfarrer Müller, they elected von Bodelschwingh, a Protestant Clergyman of great reputation to be the first Reich Bishop(2). But the Nazis knew how to organise a wave of spontaneous protests and the German press in the early part of June 1933 daily reported meetings of Nazi-influenced Protestant organisations, protesting against the election of von Bodelschwingh and demanding the appointment of Müller as Reich Bishop(3). Eventually of course, the Nazi Government was "forced" to intervene in this artificially created unrest. Armed with the necessary authority by Göring, then Prime

(1) Frankfurter Zeitung 6.4.33

(2) Frankfurter Zeitung 27.5.33

(3) The most detailed reports of this "Protest" campaign can be found in almost every issue of the Frankfurter Zeitung in the month of June 1933.

Minister of Prussia, Rust, the Prussian Minister of Education, appointed Dr. Jäger, State Commissar for the Evangelical Church in Prussia "to take the necessary measures to remove the confusion".(1) As a result of this State intervention, Bodelschwingh had to resign his Office as Reich Bishop(2).

At the end of August 1933 the Nazi Ministers Frick, Göring and Rust were appointed as members to the Prussian Synod of the Evangelical Church(3). The first great success of the Nazi infiltration into the Church was the election of Müller as Reich Bishop on the 27th September 1933, a few days after he had plainly stated what his intentions were with regard to the Church: "Who does not wish to participate in the construction of this Church, whoever does not wish to fight in the same way as we do in the Third Reich should keep quiet and stand aside. If he does not do this voluntarily, I must force him to do so." (4)

But the oppositional leaders in the Protestant Church who by now realised that the racial doctrines of the "German Christians" were fundamentally incompatible with the true doctrines of Christianity did not submit to Müller's regime and continuously disputed the legitimacy of his appointment as Reich Bishop. They formed themselves into a Pastor's Emergency League, the forerunner of the now famous Confessional Church. The resistance of the oppositional Churchmen became so strong that Müller's adjutant, Bishop Hossenfelder, was forced to resign all his offices shortly before Christmas 1933. But whilst ostensibly giving some way to the claims of the Confessional Church, Müller continued to abuse his office for the benefit of the totalitarian aims of Nazism: on the 22nd December 1933, the Völkischer Beobachter published an announcement by the Reich Bishop that he had sent a telegram to the Führer informing him that he had incorporated the Evangelical Youth into the Hitler Youth. But the resistance of the Pastor's Emergency League did not abate, and on the 25th January 1934, Hitler and other leading members of the Nazi Government had a conference with the opposition Church leaders in which by a mixture of persuasion and black-mail, the Nazis succeeded in creating a temporary split in the Church opposition (5)

On the 23rd September, 1934, Müller was formally installed as Reich Bishop (6), but the Confessional Church, as the Church opposition now called itself, refused to recognise him and the Dean of Chichester reports that by the end of March 1935 he had ceased to be an effective force in the Protestant Church (7).

On the 21st February 1935, the Provisional Church Government appointed by the Confessional Church Movement published a summons to the parishes against the introduction of racial doctrines into the Church. This challenge to the Gospel of Nazism inaugurated a new chapter in the Nazi oppression of the Protestant Church. Müller's method of infiltration from within had proved unsuccessful, and the direct intervention of the State had become necessary. It started at the most vulnerable point, Finance(8).

(1) Kirchliches Gesetz und Verordnungsblatt für die Altpreuussische Union 27.6.33, No.9 p.69.

(2) Deutsche Allgemeine Zeitung, 27.6.33.

(3) Deutsche Allgemeine Zeitung, 31.8.33.

(4) Frankfurter Zeitung, 20.9.33.

(5) A full account of this meeting can be found in Duncan-Jones, Dean of Chichester, The Struggle for Religious Freedom in Germany, 1938, p.70. The German press merely reported that a meeting between the Führer and leading officials of the Church had taken place, Frankfurter Zeitung 26.1.34.

(6) Frankfurter Zeitung 24.9.34.

(7) op.cit. p.87

(8) In this connection it should be noted that in Germany the main income of the Churches is derived from the so-called Church Tax which the States' Tax Collector collects from the believers on behalf of the Church.

On the 12th March 1935 Rust, the Prussian Minister of Education issued a decree providing for the reduction of the Church Tax in Prussia by one fifth, and another decree creating special departments for the administration of Church funds (1). At the same time about 700 Confessional Pastors were arrested or put under house-arrest in Prussia, (2) and four Hessian Pastors were imprisoned in the notorious Dachau concentration camp. (3).

The opposition of the Confessional Church against the Müller regime had hitherto been carried on to a great extent by legal arguments, the main contention being that Müller's election was contrary to the Constitution of the Evangelical Church signed by Hitler and Frick (4). This legal argument was cut short by the Nazi State which on the 26th June 1935 simply published a new law creating a new method for determining legal questions touching the Evangelical Church. All legal questions relating to the Church had to be decided, not by the courts, but by a special bureau set up at the Ministry of Interior (Beschlussstelle). This bureau would settle first if the point raised came within its competence; its decision would be final and would come immediately into force. All legal questions touching points which had occurred since the 1st May 1933 would come within the competence of this bureau.

On the 19th July 1935 Kerrl was appointed Reich Minister for Church Affairs, and on the 3rd August, 1935 he appointed himself President of the Beschlussstelle. On the 24th September 1935 a further decree, the law for the safeguarding of the German Evangelical Church was published which contained one paragraph: "The Reich Minister for Church Affairs is empowered for the restoration of orderly conditions in the German Evangelical Church and the regional Evangelical Churches to issue ordinances with binding legal force. The ordinances will be promulgated in the Reich Law Gazette." This meant the virtual dictatorship of Kerrl and through him of the Nazi Government over the German Protestant Church. But at first Kerrl proceeded rather cautiously. On the 14th October 1935 he appointed a Reich Church Committee for the whole Evangelical Church, and at the head of it Dr. Zöllner, a well-known Lutheran Superintendent (5). It was also provided that over the whole of Germany local Church Committees should be appointed. The real purport of this step became clear by an order of Kerrl dated 2nd December 1935 denying Church Associations and groups the right to exercise executive or administrative functions wherever Church Committees had been set up - this only a few days after the Gestapo had confiscated the funds of the Confessional Movement (28.11.35.) (6)

Whilst during the whole of 1936 Zöllner genuinely attempted the impossible, namely to make peace between totalitarian Nazism and the Protestant Church, the Nazi State continued its campaign against the Church. On the 1st January 1937 the Pastors of the Confessional Church announced from the pulpits that Rust had made a decree to the effect that any theological student who had anything to do with confessional activities, who attended their lectures or was ordained by confessional pastors, would be forthwith expelled from any German University and prevented from studying there. They also announced that the Theological School at Elberfeld, a free college of the Reformed Church, attached to the Confessional Movement, had been closed by Rust's orders (7).

Early in 1937 Zöllner's house was searched by the Gestapo, and Kerrl forbade him to visit Lübeck where German Christian Bishops had dismissed nine pastors belonging to the Confessional Church (8). Under these circumstances,

- (1) Preussische Gesetzes-Sammlung 1935, p.39.
- (2) The Times, 11th, 20th, 24th, and 27th April and 27th May 1935.
- (3) Duncan-Jones, op.cit. p.101.
- (4) Reichsgesetzblatt, 1933, I. p.471.
- (5) Frankfurter Zeitung 16th October 1935.
- (6) Duncan-Jones op.cit. p.114.
- (7) Duncan-Jones op.cit. p.138.
- (8) Duncan-Jones op.cit. p.140.

Zöllner resigned without of course any reasons for his resignation being given in the press (1). Two days afterwards a decree was published that the Church would make a new constitution for itself in complete freedom (2) but the elections which were promised in this decree have never been held. Instead the screw was put tighter on all oppositional movements within the Church. On the 17th June 1937 the Reich Minister of the Interior Frick issued a decree by which it was forbidden to make any financial contributions to the Confessional Church or to any other Church organisations not approved by Kerrl, the Minister for Church Affairs (3). On the 25th June 1937 Finance decrees were issued which put the pastors completely under State control, by setting up Finance Departments for the German Evangelical Church and for each of the Regional Churches. The extent of their power may be judged by the following regulations: "This Department carries on the property administration of the Church. It represents the Church. If any decree of the Church Authority is held up by obstruction, the Finance Department takes control. The Finance Department can itself make regulations having the force of law. In particular it can regulate the conditions of service of all officials of the General Church Administration, of the pastors, of the local parish officials and employees" (4). As the Dean of Chichester reports (5) this stranglehold has been used without mercy.

On the 3rd July 1937 the Völkischer Beobachter reported the arrest of Niemöller, the most prominent spokesman of the Confessional Church whose sermons at the Dahlem Church had become famous. The reason for this arrest was given as "continuous abuse of the pulpit". After having spent 8 months in prison for the investigation of his "offences" to be completed (Untersuchungsschaft), he was finally - on 2nd March 1938 - sentenced to 7 months imprisonment for abuse of the pulpit and fined 200 reichsmarks for an offence under an emergency decree of February 1933. He was given credit for his 8 months imprisonment and released by the court. But the mockery of German Justice under Hitler was demonstrated to all the world when this courageous man was seized by the Gestapo immediately he stepped out of the dock. In spite of the fact that he had been set free by the court, he was detained in numerous concentration camps until at last he was released by the Allied Liberation Armies in 1945.

During the Munich Crisis in December 1938, members of the Provisional Government of the Evangelical Church (Confessional Church) had the courage to arrange a special prayer for peace. It was natural that in due course the Nazi Authorities which were not interested in peace, commenced disciplinary proceedings against them (6). At the same time financial support was withdrawn from all pastors who disobeyed the orders of the Nazi Government (7). In 1939 the Nazis had to issue further drastic decrees in order to cut the last ground from under the feet of the Confessional Church. This time the decree was issued by the Nazified Church Authorities themselves. On the 20th April 1939, the Frankfurter Zeitung reported that Werner, the Nazi president of the Consistorium, the highest Authority in the German Protestant Church, had issued a new decree. This decree empowered the Consistorium - which by that time had everywhere been filled with trusted Nazis - to remove priests from parishes against their will. At the same time it deprived the parishes of their traditional right to elect their parson. By these dictatorial powers the Nazi Authorities were of course put in a position to remove any priest who had made himself "unpopular" by professing adherence to the Confessional Church.

- (1) Cf. Frankfurter Zeitung 14.2.37.
- (2) Reichsgesetzblatt 1937, I 203.
- (3) Frankfurter Zeitung 17th June 1937.
- (4) Reichsgesetzblatt 1937, I p.697.
- (5) op.cit. p.145.
- (6) Westdeutscher Beobachter 11.11.38.
- (7) Westdeutscher Beobachter 19.10.38.

From the scarce reports that leaked out of Germany after the outbreak of war, it appears that the campaign against the Protestant Churches and their institutions was intensified. The Swiss Evangelical Press Service stated on the 4th June 1941 that in the last term of 1940 the number of Protestant theology students in Germany amounted to 402, as compared with about 5,000 in normal times. On 5th September 1941, the Deutscher Reichsanzeiger published a decree signed by Richter on behalf of the Gestapo announcing the confiscation of all property belonging to the nine Berlin Churches of Christian Science by virtue of the law for the confiscation of Communist property of the 26th May 1933 in conjunction with the law for the confiscation of property belonging to enemies of State and people of the 14th July 1933.

At that time when war had actually broken out the sub-ordination of everything to the criminal war machinery of the Nazis became even more evident. The Swiss Evangelical Press Service reported on 24th September 1941 that all the members of the Leadership of the Confessional Church in so far as they had not been called up for the army, were under arrest, and that 86% of the confessional priests had been mobilised for the army so that the activity of this Church had been almost totally paralysed. But still, in December 1942, Dr. Wurm, the Confessional Bishop of Württemberg, published an open letter to Goebbels (1) in which similar to the Catholic Bishops in the pastoral letter of the 22nd March 1942, he protested that the publication of religious literature was impossible in Germany and that even the Bible could not be published although anti-Christian literature was brought out in larger editions. On the side of the Confessional Church again we note no visible opposition against the criminal Nazi war itself; there was opposition only against one of its symptoms, the intensified persecution of Christianity.

The strangling of the Confessional Church went hand in hand with an increasingly outspoken perversion of Christian doctrines by the Nazis in order to fit them into the picture of total war ideology. Rosenberg's National Reich Church (2) was only one example. In 1942 the Evangelical Publishing Firm of Schneider & Co., Weimar, published a Hymn Book on the Authority of the Institute for the Investigation of Jewish Influence on German Church Life (3), entitled "Grosser Gott wir loben Dich". All references to the Bible were omitted and Luther's famous Easter Hymns were dropped. How far the Nazi perversion of the Church into a docile organ of war propaganda had succeeded, may perhaps be illustrated by a proclamation issued by the Nazi Dean of the German Evangelical Church on the 10th anniversary of Hitler's accession to power: "Anyone who has seen how the Churches in Soviet Russia are converted into mineral water factories, grain bearers and electric power plants and who also witnessed the sinister influence of Jewry in the vast country of Soviet Russia must appreciate what the assumption of power by National Socialism means for Germany and possibly for Europe." (4)

5. CONCLUSION.

The persecution of the political opponents of National Socialism, of the Jews, of the Catholics and of the Confessional Church may differ in method, intensity and brutality. But intrinsically they served all one purpose, the mental preparation of the German people for Hitler's criminal war and the removal of all obstacles which any humanitarian ideas - Jewish or Christian, Socialist or Liberal - may have put in the way of the execution of the Nazi gangsters' barbaric war plans. By Article 6 of the Charter for the Trial of Major War Criminals, this persecution has rightly been comprised under the heading "Crimes against Humanity". It is sincerely hoped that this report will assist in bringing to justice all those who have in any way participated in the perpetration of these crimes.

(1) Reported in the Swedish Paper "Trots Allt" 17.12.42.

(2) See supra p.

(3) This Institute had been formed shortly before the war under the Leadership of Professor Grundmann; see Frankfurter Zeitung 9.5.39.

(4) Trans-Ocean (Nazi Press Agency) 29.1.43.

APPENDIX I

Miss Cecilie Müller of 70, Compayne Gardens, London N.W.6. will say:

From 1.1.1921 till 30. September 1934 I was Private Secretary to Baron von Schröder of the famous Banking Institute at Cologne.

In that capacity I was present at all the discussions beginning in October 1932 between Mr. Wilhelm Keppler as representative of Adolf Hitler and Baron von Schröder as representative of the heavy industrialists in Germany. I also was present at the last meeting on January 3rd 1933 which took place in the private home of Baron von Schröder at Cologne when the document of the alliance between Hitler and the leaders of the German industry and finance was signed. Adolf Hitler, Wilhelm Keppler, von Papen and von Schröder were the only persons present, besides myself as Secretary.

The large cheques presented by German industrialists to the National Socialist Movement were sent by me to Holland and Switzerland. I am able to mention all the important leaders of German industry who supported Hitler with money. Amongst them were: v. Schröder, Thyssen, both Röhlings, v. Springgorn, Flick, Vogler, Abraham Frowein, Pönsgen and von Bock (Maria Farina Cologne) etc.

In the last meeting on January 3rd 1933 it was von Papen who suggested the burning of the Reichstag in order to accuse the Communist Party of the responsibility for this crime and so find the pretext for the prohibition of the Party. Göring, Papen said, would be very willing to assist. After some hesitation Keppler and Schröder fell in with this suggestion. Hitler sat silent but did not oppose this plan.

I am willing to appear as a witness before the International Tribunal at Nuremberg.

(signed) Cecilie Müller

London, N.W.6.
4.X.1945

APPENDIX II

The Principal Laws against the Political Opposition.

Date	Name of the Law	Reichsgesetzblatt	Signatures.
28.2.33	Notverordnung des Reichspräsidenten zum Schutz von Volk und Staat	1933.I.83	Hitler Hindenburg Frick, Gürtner
29.3.33	Reichsgesetz zur Bildung von Sondergerichten	1933.I.136	Hitler, Papen
29.3.33	Notverordnung des Reichspräsidenten zur Abwehr heimtückischer Angriffe gegen die Regierung der nationalen Erhebung	1933.I.135	Hindenburg Hitler, Frick, Papen.
31.3.33	Vorläufiges Gesetz zur Gleichschaltung der Länder mit dem Reich.	1933.I.153	Hitler, Frick.
31.3.33	Ausführungsverordnung zum vorläufigen Gesetz zur Gleichschaltung der Länder mit dem Reich.	1933.I.171	Frick.
26.5.33	Gesetz zur Einsiehung kommunistischen Vermögens.	1933.I.293	Hitler, Frick.
7.7.33.	Verordnung zur Sicherung der Staatsführung.	1933.I.462	Frick.
14.7.33	Gesetz gegen die Bildung von Parteien	1933.I.479	Hitler, Frick, Gürtner.
14.7.33	Gesetz zur Einsiehung staatsfeindlichen Vermögens	1933.I.479	Hitler, Frick.
30.4.33	Gesetz zur Schaffung eines Volksgerichtshofs	1933.I.	Hitler, Gürtner, Blomberg.
20.12.34	Gesetz zur Abwehr von heimtückischer Angriffe auf Volk und Reich.	1934.I.1269	Hitler, Gürtner, Hess, Frick.

APPENDIX III

Laws relating to Jews.

Date	Name of Law	Reichsgesetzblatt (or other)	Signatures.
1. 7.4.33	Gesetz über Zulassung zur Rechtsanwaltschaft.	I 188	Gürtner
2. 7.4.33	Wiederherstellung des Berufsbeamtentums	I 175	Hitler, Frick Schwerin.
3. 11.4.33	Durchführungsverordnung zu 2	I 195	Hitler, Frick Schwerin.
4. 24.4.33	Zulassung der Ärzte zu Krankenkassen.	D.R.A.	
5. 22.4.33	Bildung von Studentenschaften.	I 215	Hitler, Frick.
6. 22.4.33	Gesetz über Patentanwaltschaft	I 217	Hitler, Gürtner
7. 25.4.33	Überfüllung deutscher Schulen und Universitäten.	I 225	Hitler, Frick.
8. 25.4.33	Durchführungsverordnung zu 7	I 226	Frick.
9. 4.5.33	2. Durchführungsverordnung zu 2	I 233	Frick, Schwerin
10. 6.5.33	3. dto. dto.	I 245	Frick, Schwerin
11. 10.5.33	Verordnung bezügl. Zulassung von Ärzten zu Krankenkassen	D.R.A.	
12.	Erbhofrecht	Pr.G.S. 33 S 165	
13. 6.5.33	Zulassung als Steuerberater	33 I 257	Hitler, Schwerin.
14. 18.5.33	Ehrenämter in der Sozialverwaltung.	33 I 277	Hitler, Seldte Frick.
15. 20.5.33	Verordnung zu 13	R. Anz.	
16. 6.6.33	Verordnung betr. Ärzte und Zahn- Ärzte bei Krankenkassen.	R. Anz.	
17.	Zulassung als Verwaltungsgerichts- anwälte	33 S 209 Pr.G.S.	
18. 26.6.33	Durchführungsverordnung zu 14	R.A.Z.	
19.	Verordnung über Zulassung ausländischer Bildstreifen	R.M.Bl. 33 S 350	
20. 1.7.33	Gesetz über Beamtenrecht.	33 I 433	Hitler, Frick. Schwerin.
21. 14.7.33	Widerruf von Ehrenämtern	33 I 480	Hitler, Schwerin, Neurath.

Date	Name of Law	Reichsgesetz- blatt (or other)	Signatures.
22. 6.8.33	Vergabung öffentl. Aufträge	V.B.	
23. 21.7.33	Änderung der Rechtsanwaltsordnung	33 I 522	Hitler, Seldte Gürtner.
24. 26.7.33	Widerruf von Einbürgerungen	33 I 538	Pfundtner.
25. 28.7.33	Zulassung von Zahnärzten zu Krankenkassen.		
26. 28.9.33	Patentanwaltsgesetz	33 I 669	Hitler Gürtner.
27. 30.9.33	Reichserbhofgesetz	33 I 685	Hitler Gürtner, Darre.
28. 4.10.33	Schriftleitergesetz	33 713	Goebbels.
29. 1.11.33	Reichskulturkammergesetz	33 797	Goebbels, Schmidt.
30. 20.11.33	Zulassung von Ärzten und Zahn- ärzten zu Krankenkassen.	33 983	Krohn.
31. 9.11.33	Verordnung zum Reichskultur- kammergesetz.	33 969	Hitler, Gürtner.
32.	Zugehörigkeit von Rabbinern zu Schulvorständen	Pr.G.S. 33 S 432	
33. 19.12.33	Schriftleitergesetz	33.I.1085	Göring, Pfundtner, Schlegelberger.
34. 13.2.35	3. Verordnung über Zulassung von Zahnärzten zu Krankenkassen	35.I.192	
35. 11.9.35	Rassentrennung in öffentl. Schulen.	V.B.	
36. 15.9.35	Gesetz zum Schutze deutschen Blutes und deutscher Ehre	35.I.1146	Hitler, Frick, Gürtner, Hess.
37. 15.9.35	Reichsbürgergesetz	35.I.1145	Hitler, Frick, Gürtner, Hess.
38. 14.11.35	Durchführungsverordnung zu 37	35.I.1333	Hitler, Frick, Gürtner, Hess.
38a. 14.11.35	Durchführungsverordnung zu 36	35.I.1334	Hitler, Frick, Gürtner, Hess.
39. 1935	Arische Abstammung von Notaren	Deutsche Justiz No.47	
40. 1935	Verbot von Rassenmischchen	M.Bl. für innere Verw. S.1439	
41. 13.12.35	Verordnung zur Verhütung von Missbräuchen bei der Rechts- beratung.	35.I.1481	Gürtner.

Date	Name of Law	Reichsgesetz- blatt (or other)	Signatures.
42.	Reichsärzte-Ordnung	Das Archiv 36 1446	
43. 23.2.35	Durchführungsverordnung zum Schutze deutschen Blutes und deutscher Ehre.	Pr.Min.Bl.	
44. 19.3.37	Änderung des Reichsarbeits- dienstgesetzes.	I.325	Hitler, Frick, Hess.
45. 6.11.37	Verordnung über erbrechtliche Beschränkungen wegen gemein- schaftswidrigen Verhaltens.	37.S.1161	Hitler, Gürtner.
46. 26.3.36	Verpachtung und Verwaltung von Apotheken.	36.I.317	Pfundtner.
47. 3.4.36	Reichstierärzte-Verordnung	36.I.347	Hitler, Frick.
48. 11.1.36	Verordnung zur Durchführung der Reichsabgabenordnung.	36.I.11	Reinhardt.
49. 29.6.36	Verordnung über die geschäfts- mäßige Hilfsleistung in Devisengesetzen.	36.I.524	Schacht.
50. 26.4.38	Verordnung über die Anmeldung des Vermögens der Juden.	38.I.414	Göring.
51. 26.4.38	Anordnung auf Grund v. 50	38.I.414	
52. 14.6.38	Verordnung zum Reichsbürger- gesetz.	38.I.627	Frick, Hess Funck, Gürtner.
53. 12.11.38	Verordnung zur Ausschaltung der Juden aus dem deutschen Wirtschaftsleben.	38.I.1580	Göring.
54. 23.11.38	Durchführungsverordnung zu 53	I.1642	Ertelner, Gürtner.
55. 21.12.38	Hebeammengesetz	38.I.1893	Hitler, Frick.
56. 31.12.38	Nichtgewährung von Mietsbei- hilfen an Juden.	38.I.2017	Schütze, Engels, v. Manteufel.
57. 11.11.38	Verordnung gegen Waffenbesitz von Juden.	I.1573	Frick.
58. 3.12.38	Verordnung über den Einsatz jüdischen Vermögens.	I.1709	Funck, Frick.
59. 22.4.38	Verordnung gegen die Unterstütz- ung der Tarnung jüdischer Gewerbebetriebe	38.I.404	Göring.
60. 14.6.38	Dritte Verordnung zum Reichs- bürgergesetz.	38.I.627	Frick, Funck, Hess, Gürtner.

	Date	Name of Law	Reichsgesetz- blatt (or other)	Signatures.
61.	25.7.38	Vierte Verordnung wie oben (Ausschaltung der jüdischen Ärzte)	I.969	Hitler, Frick, Hess, Gürtner, Reinhardt.
62.	27.9.38	Ausscheiden der Juden aus der Rechtsanwaltschaft.	I.1403	Hitler, Frick, Hess, Gürtner, Reinhardt.
63.	31.10.38	Verbot des Berufes als Patentanwalt.	I.1545	Hitler, Frick, Hess, Gürtner, Schwerin.
64.	28.7.38	Kein Kartenverordnung für Juden	I.922	Frick.
65.	17.8.38	Änderung der Familiennamen und Vornamen.	I.1044	Stuckart, Frick, Gürtner.
66.	12.11.38	Wiederherstellung des Strassen- bildes auf Kosten der Juden.	I.1581	Göring.
67.	12.11.38	Sühneleistung der Juden	I.1579	Göring.
68.	21.11.38	Durchführungsverordnung	I.1638	Schwerin.
69.	12.11.38	Ausschaltung der Juden aus dem deutschen Wirtschaftsleben.	38.I.1580	Göring
70.	3.12.38	Verordnung über den Einsatz des jüdischen Vermögens.	38.I.1709	Funk, Frick.
71.	28.11.38	Auftreten der Juden in der Öffentlichkeit	I.1676	Heydrich.
72.	3.12.38	Durchführungsverordnung zur Ver- ordnung zur Einsetzung des jüdischen Vermögens.	38.I.37	Brückner, Pfundtner, Hauck.
73.	21.2.39	3. Anordnung zur Anmeldung des Vermögens der Juden.	I.387	Köhler.
74.	17.1.39	Ausübung des Apothekerberufs.	I.47	Pfundtner, Hess.
75.	17.1.39	Ausübung der Gesundheitspflege	I.47	Pfundtner, Hess.
76.	21.2.39	2. Anordnung zur Verordnung über die Anmeldung des Vermögens der Juden.	39.I.282	Göring
77.	15.3.39	Nichtgewährung der Ausgleichs- entschädigung.	I.614	Pfundtner, Hess.
78.	29.3.39	Ausschluss der Juden von der Jagdpatchung.	I.643	Pfundtner, Hess.
79.	30.4.39	Mietsverhältnisse der Juden	I.864	Hitler, Gürtner, Krohn, Hess, Frick.
80.	4.7.39	Verbot der Ausübung der Reise- vermittlung.	I.895	Landfried.

Date	Name of Law	Reichsgesetz- blatt (or other)	Signatures.
81. 1.9.39	Aberkennung der Bestellung als Apotheker.	I.1567	Pfundtner.
82. 15.11.39	Ausübung der Säuglingspflege	I.2339	Frick, Hess, Gürtner.
83. 12.11.39	Verordnung zur Verordnung der Sühneleistung der Juden.	I.2059	Schwerin.
84. 30.11.39	Nichtberechtigung zur Inanspruchnahme der Richter.	I.2329	Frick.
85. 30.10.41	Gesetz über die Behandlung der Juden als Arbeiter.	41.I.675	
86. 1.7.43	13 V.O. zum Reichsbürgergesetz	I.372	Frick, Bormann, Schwerin, Thierack.

APPENDIX IV

Laws Relating to the Protestant Church.

Date	Name of the Law	Reichsgesetz- blatt	Signatures.
14.7.33	Verfassung der Deutschen Evan- gelischen Kirche.	1933.I.471	Hitler, Frick.
26.6.35	Gesetz über Beschlussverfahren in Rechtsangelegenheiten der Evan- gelischen Kirche.	1935.I.774	Hitler, Frick.
27.7.35	Zweite Durchführungsverordnung zum Gesetz über das Beschlussverfahren in Rechtsangelegenheiten etc.	1935.I.851	Kerrl, Frick.
24.9.35	Gesetz zur Sicherung der deutschen evangelischen Kirche	1935.I.1178	Hitler, Kerrl
2.12.35	Fünfte Durchführungsverordnung zum Gesetz zur Sicherung etc.	1935.I.1370	Kerrl
15.2.37	Erlass des Führers über die Ein- berufung einer verrassunggebenden Generalsynode der deutschen evan- gelischen Kirche.	1937.I.203	Hitler
25.6.37	Fünfzehnte Verordnung zur Durch- führung des Gesetzes zur Sicherung der deutschen evangelischen Kirche.	1937.I.697	Kerrl

SECRET

C.153.
30th October 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

War Crimes committed by Enemy Nationals performing Judicial Functions.

The following Memoranda have been received from Colonel Hodgson (United States) and are circulated to the Commission for information.

RESTRICTED

6th April 1945.

MEMORANDUM FOR THE DEPUTY COMMISSIONER, UNITED NATIONS WAR CRIMES COMMISSION,

SUBJECT: War Crimes Committed by Enemy Nationals Performing Judicial Functions.

1. There is inclosed herewith a memorandum stating the principles which, in my opinion, should be applied in disposing of the questions raised in your memorandum of 25 November 1944. These principles may be summarized briefly as follows:

2. While premature annexation of occupied territory is unquestionably a violation of international law, as is the creation of national tribunals of the occupant pursuant to such usurpation of sovereignty, it is unsound and may be unsafe to conclude therefrom that every action taken by a court alleged to be illegally instituted entails ipso facto the criminal liability of all persons associated with the operation of such a court. The circumstances confronting military authorities may justify the creation of new courts staffed with nationals of the occupying country. The precise boundaries between proper and improper action in the domain of judicial administration are extremely difficult to delineate. Whether an alleged "usurpation" is excessive, and whether modifications by an occupant of the local criminal law and procedure step beyond the limitations imposed by international law, may not be apparent. Mere technical violations of that law should not be held, eo ipso, to produce individual criminal responsibility. The decisive consideration would seem to be whether the trial of an accused by the particular court deprived him of the protection to which he was entitled under the law of nations, i.e., whether a given judicial action flouted a specific prohibition of the Hague Regulations, or was in disregard of those fundamental principles of human justice accepted by civilized peoples. Examples of the latter would be: denial to an accused of the right to plead not guilty, to introduce evidence, or to present witnesses, application of principles repugnant to the modern practice of civilized nations, such as "punishment by analogy", imposition of outrageously excessive penalties in relation to the offense committed, and the like. Similarly, the action of a civil or commercial court which results in illegal condemnation, seizure, or destruction of a litigant's property should not protect the judge merely because homage has been done to legal forms. In all cases the substance of the action taken may be scrutinized to determine its propriety under the law of nations.

3. The desired approach to be followed in dealing with this category of "judicial crimes" is set forth in further detail in the accompanying memorandum.

MYRON C. CRAMER
Major General
The Judge Advocate General.

RESTRICTED

5th April 1945.

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL:

SUBJECT: War Crimes Committed by Enemy Nationals Performing Judicial Functions.

1. By memorandum dated 28 November 1944 from the Deputy Commissioner, United Nations War Crimes Commission, the views of The Judge Advocate General were requested as to whether certain factual situations, set forth in detail in paragraph 2 hereof (infra) and which relate to the activity of judicial bodies instituted by the enemy in occupied territory, constitute war crimes. Accompanying this memorandum was an opinion prepared by the Belgian Commissioner, General de Baer, in which these and other cases which had come to the Commission's attention were examined and conclusions expressed as to the amenability of the officials concerned therein to punishment as war criminals.

2. These cases involve, generally, the establishment of criminal courts and military tribunals staffed with enemy nationals, which pronounce and execute sentences, including the death penalty, against nationals of the occupied areas. One category, set forth in paragraph 2a of the basic memorandum, is found in the purported annexation of Luxembourg and Czechoslovak territory. The pronouncements of German Criminal Courts instituted pursuant to this usurpation of sovereignty are, it is claimed, illegal; and, in consequence, the judges rendering them are subject to punishment as war criminals. A second category is presented by the establishment of civilian criminal courts and military tribunals in other areas under belligerent occupation, likewise staffed by enemy officials, for the trial of persons charged with violations either of local laws or of proclamations of enemy military authorities (Paragraph 2b of the basic memorandum). The third category (Paragraph 2c) is similar to the second, except that for violation of military proclamations (as, for example, the prohibition against male Czechs and Poles appearing on the streets at certain hours), relatives of an accused were also subject to punishment, including the death penalty. Relatives in many cases were tried sentenced, and put to death. The criminality of this judicial and administrative action is alleged to exist by virtue of (a) the imposition of a collective penalty, and (b) the outrageously excessive nature of the punishment. Other grounds of complaint against these tribunals are that they imposed sentences in excess of the maximum set by Czech law or by the proclamations themselves; that proceedings were conducted on principles in accordance with Nazi doctrines of law and justice and in derogation of fundamental rules of justice, as, for example, prohibiting an accused to plead not guilty, to introduce evidence, or present witnesses.

3. Basically, the issues in all of these cases are derived from one principal inquiry, viz., whether legislative and judicial action of a belligerent, in violation of the law governing occupation of enemy territory, constitutes a war crime for which officials of the occupying State may be brought to the bar of justice. Stated somewhat differently, it must first be inquired whether specific uses of the power in matters of penal legislation and administration are proscribed by the laws of war. If the answer to this is in the affirmative, it is still necessary to ascertain whether the act complained of amounts to a "war crime."

4. The principles governing a military occupant's powers in this domain of judicial and legislative action are declared very generally in the preamble to Hague Convention IV of 1907 on the Laws and Customs of War on Land and in Articles 43, 46, 50, and 23h of the regulations annexed thereto (TM 27-251, Treaties Governing Land Warfare, 7 Jan 1944, pp. 15 ff.; FM 27-10, Rules of Land Warfare, pars. 282, 299, and 343). The preamble declares that "in cases not included in regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience" (Scott, The Hague Conventions and Declarations of 1899 and 1907, pp. 101-102). The other provisions are as follows:

Art. 43. "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, so far as possible, public order and safety (l'ordre et la vie publics), while respecting, unless absolutely prevented (sauf empêchement absolu), the laws in force in the country."

Art. 46. "Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected."

"Private property cannot be confiscated."

Art. 50. "No general penalty (peine collective), pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they can not be regarded as jointly and severally (solidairement) responsible."

Art. 23h. "(It is especially forbidden) to declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party."

5. Article 43 does not signify that the occupying authority may introduce any legislative changes which appears to be desirable or expedient. From the proceedings of the Hague Conference of 1899, as well as of the earlier preparatory Conference at Brussels in 1874, it is clear that the phrase "unless absolutely prevented" was meant to require genuine military necessity, not mere expediency. Arbitrary changes would be an unlawful usurpation of sovereignty, whereas the sole justification in all cases is a necessity related to the military requirements of the occupant. The original version of the provision in the Brussels draft (Par. 2) had declared that the occupant might "according to the requirements of the war and in the public interest, either maintain in full force the laws existing there in time of peace, modify them in part, or suspend them together" (Correspondence, respecting the Conference at Brussels, Miscellaneous No. 1 (1874), p.12). A substitute text proposed by Baron Baude permitted a modification of the laws "if the occupant was obliged to do so" (Correspondence, Miscellaneous No. 1, 1875. p.228).

The German delegate wanted the propriety of such action by the occupant stated in terms of "necessity" (Ibid., p. 239), a view shared by the Belgian delegate. The Italian delegate (Count Lanza) urged acceptance of the principle that civil and penal laws, not having a political character, remain in force in an occupied territory. "Modification of the legal system, exceptionally admitted, should be confined to laws of a political, administrative, and financial order" (Loc cit.). Debate in a similar vein was continued at the Hague Conference in 1899. Article 2 of the text then under consideration vested the occupant with authority "to take all measures in his power to restore and ensure, as far as possible, public order and safety." Article 3 added: "With this object he shall maintain the laws which were in force in the country in time of peace, and shall not modify, suspend them, or replace them unless necessary." To the suggestion of the Belgian delegate (Beernaert) that the provision "afforded only an apparent guaranty since the invader will have the privilege of modifying, extending, and superseding the existing laws" as he pleases, M. Rolin (Siam) observed that

"..... the idea which predominates in these articles is to set limits which the victor shall not exceed, except in case of the necessities of war" (Proceedings of the Conference of 1899, p. (515)).

The middle path between these two extremes is reflected by adoption of the phrase "unless absolutely prevented."

6. But the specific line between permitted and prohibited action is not clearly drawn. Annexation prior to termination of the war is illegal, as is action which amounts to an exercise of sovereignty over the area (Feilchenfeld, The International Economic Law of Belligerent Occupation, pp. 7, 110; Oppenheim, II International Law, 6th ed., § 169 Spaight, War Rights on Land, p. 322; Fauchille, 2 Droit International Public, p. 216). The test of legitimate action is whether the laws and regulations enacted are justified by military necessity, or by the occupant's duty to maintain law and order. Changes in the institutions, laws or administration not reasonably related to these purposes are violative of international law. To this extent, writers are generally in agreement. Oppenheim is typical:

"..... Although as regards the safety of his army and the purpose of war the occupant is vested with an almost absolute power, as he is not the sovereign of the territory he has no right to make changes in the laws, or in the administration, other than those which are temporarily necessitated by his interest in the maintenance and safety of his army and the realization of the purpose of war. On the contrary, he has the duty of administering the country according to the existing laws and existing rules of administration; he must ensure public order and safety, must respect family honor and rights, individual lives, private property, religious convictions and liberty. It is clear that these and other obligations of the occupant can not be avoided by dint of the additional illegality of prematurely annexing the occupied territory." (Oppenheim, op. cit., § 169, pp. 342-343. Accord: Garner, International Law and the World War, Vol. II, p. 77; Pillet, Les Lois Actuelles de la Guerre, p. 243; Merignac, Le Droit des Gens et la guerre de 1914, Vol. I, p. 355; Wheaton, International Law, 7th ed., Vol. II, p. 97. Bustamante Sirven, Droit International Public, Vol. IV, p. 366).

Overtone of discord appear among the text-writers, however, when an attempt is made to reduce this general principle to more precise terms. Wheaton, for example, declares that the local civil and criminal laws "ought not to be interfered with; unless they are contrary to the martial law enforced" (Op. cit., p. 244). De Louter comments on Article 43 as follows:

"The exception 'unless absolutely prevented', however rigidly formulated, nevertheless permits the occupant to take legislative measures which it deems necessary for its military or political interests In the war of Secession, the victorious Northern armies, penetrating into the revolted States, immediately promulgated the law of June 1, 1863 on the abolition of slavery" (Droit International Public Positif, Vol. II, p. 290. Underscoring supplied. Compare Feilchenfeld, The International Economic Law of Belligerent Occupation, p. 89: "..... New laws must be sufficiently justified." The Russian military authorities during their occupation of Turkish territory in 1877, reorganized the administration of justice in a very fundamental manner, to adapt it to the usual level of European customs then prevailing. This action, according to Professor Korovine, was justified on the ground that the war had been waged precisely to free the Balkan area from the "archaic and intolerable forms of Turkish domination." Internationalrechtliche Abhandlungen, Vol. III, p. 134)

The principle stated by De Louter was recently given application in an opinion by this office holding that the United States, upon occupying Japan, could lawfully take such measures of education and public enlightenment as might be necessary to eliminate fanatical Japanese militarism, as this is not only one of the ends of the war, but would be necessary in the interest of the occupant's security. Similar grounds were invoked to approve reforms in the administration of Japanese justice which would provide greater protection for the rights of an accused. (SPJGW 1945/270, 24 February 1945). Furthermore, in an earlier opinion it was held that changes in German law designed to destroy the privileged status of members of the Nazi party and the inferior position of the Jews came within this category. (SPJGW 1943/18261, 1 Jan. 1944).

7. Oppenheim, whose firm position on the occupant's obligations has already been reproduced, nevertheless recognizes that, where necessary, military courts may be set up instead of the ordinary courts; and even where the occupant allows the ordinary courts to administer justice, he may "so far as it is necessary for military purposes, or for the maintenance of public order and safety, temporarily alter the laws, especially the Criminal Law, on the basis of which justice is administered as well as the laws regarding procedure" (International Law, 6th ed., Vol. II, p. 349). Westlake appears to accept the view stated at the Brussels Conference by the drafting committee, that civil and penal laws affecting the relations of the inhabitants with each other "should" not be touched; but the relation between the invaders and the population, so far as it falls within the criminal department "whether by the intrinsic nature of the acts done or in consequence of the regulations made by the invader," may be referred to martial law (International Law, Vol. II, p. 96. Also Rolin, Le Droit moderne de la Guerre, Vol. I, p. 436). The distinction taken is supported by the British Manual of Military Law of 1929 (par. 364) and by the United States Rules of Land Warfare (FM 27-10), par. 288 of which declares that the occupant.

"..... may create such new laws and regulations as military necessity demands. In this class will be included those laws which come into being as a result of military rule; that is, those which establish new crimes and offenses incident to a state of war and are necessary for the control of the country and the protection of the army."

Halleck asserts that crimes which are not of a military character, nor provided for in the military code of the conquering state, may be punished

by the ordinary courts, or they may be referred to special tribunals administering martial law (International Law, 3rd ed., Vol. II, p. 439). Fauchille flatly states that the jurisdiction of the local courts must not be destroyed; that retention of the criminal laws of the invaded state is more necessary than other laws; and that the inhabitants are not subjected to the criminal laws of the invading State, except as concerns crimes and delicts against the occupying army, its soldiers and officers. (Droit International Public, Vol. II, pp. 227, 232. Accord: Jacomot, Les Lois de la Guerre Continentale, Art. 77, who, however, admits an exception for cases involving injury to the security of the Army). Even the Kriegsbrauch im Landkriege of the German General Staff recognizes that the promulgation of new laws or the abolition or modification of existing laws is justified only when imperatively demanded by the requirements of war. Since civil and criminal jurisdiction continues in force-- adds the Kriegsbrauch-- extraordinary justice (martial law and courts-martial) is to take place "only where behaviour of the inhabitants makes it necessary"; and any sentence of these courts must be based "upon the fundamental laws of justice after they have first impartially examined, however summarily, the facts and have allowed the accused a free defence" ("Fundamentalgesetzen der Gerechtigkeit beruhendes Urteil zu sprechen nachdem sie vorher den Tatbestand, wenn auch nur summarisch, so doch unparteiisch geprüft und dem Angeklagten eine freie Verteidigung gestattet haben." Kriegsgeschichtliche Einzelschriften, 1902, p. 65)

8. For Rolin, unless the occupied territory is of an inferior civilization, there can never be any "absolute necessity" to modify either its civil judicial organization, or its penal laws, except where harsher measures are required for the protection of its troops (Op. cit., p. 437. He consequently condemns the institution by Germany in Belgium during the last war, of special courts to adjudicate the damage claims of German subjects). According to this view, judges of the local criminal courts must be retained in their functions; arbitrary removal of civil causes to special courts instituted by the occupant would violate international law (op. cit., p. 441). Holland says merely "it may be necessary to vary the criminal law." Laws of War on Land, p. 53). American practice is to rely upon the existing tribunals, so far as possible, to administer the ordinary civil and criminal laws (See par. 6 of the Instructions for the Government of Armies of the United States in the Field, G.O. No. 100, 24 April 1863; President McKinley's Letter of Instructions to General Shafter, 18 July 1898, 7 Moore, Digest of International Law, p. 262; Magoon, The Law of Civil Government under Military Occupation, p. 198; Ketchum v. Buckley, 99 U.S. 188; and for the present rule, FM 27-10, Rules of Land Warfare, par. 285). But, says Hyde:

"It must not be inferred that the occupant is deterred by any rule of international law from pursuing a different course if the conduct of the inhabitants, or any other consideration, should render such a step indispensable to the maintenance of law and order. In such a case he may replace or expel native officials in part or altogether, or he may substitute new courts of his own constitution for the existing ones, or create such new and supplementary tribunals as may be necessary." (International Law, 2nd ed., § 690, and compare Korovine's extreme view in Internationalrechtliche Abhandlungen, Vol. III, p. 134. Magoon declares that "when a military government continues as an instrument of warfare, used to promote the objects of the invasion by weakening the enemy or strengthening the invader, its powers are practically boundless." Reports on the Law of Civil Government under Military Occupation, 1902, p. 15. New Orleans v. Steamship Co., 20 Wall; 387, 394, recognizes that limitations on this power exist in the laws and usages of war).

9. These divergences are but a reflection of the uncertainties flowing inevitably from the language of Article 43 itself. (Rolin considers the provisions dealing with military occupation as the most confused portion of the Regulations. Le Droit Moderne de la Guerre, Vol. I, p. 419). Part of the difficulty is no doubt attributable to the varying subjective interpretations which are provoked by a determination of what constitutes military necessity. Article 43 could only trace the broad theoretical principles, no matter how phrased. It remained for State practice to breathe more definite meaning into its provisions. In the light of this practice, Hyde's position appears as the most accurate portrayal of present law. (The right of an occupant to control or close the local criminal and civil courts, and to modify or suspend local criminal and civil laws, is affirmed in the U.S. Manual of Military Government, 22 Dec. 1943, FM 27-5, CPNAV 50E-3, p. 16).

10. It is clear that local laws on conscription and recruiting may be suspended and severe penalties provided for their violation. During the Franco-Prussian War decrees were issued in Alsace-Lorraine subjecting any person leaving the occupied provinces to join the French armies to banishment and confiscation of goods (Hall, International Law, 7th ed., pp. 507-508, note). In other occupied areas, if persons subject to conscription left their place of residence clandestinely, or without sufficient motive, their relatives were fined 50 francs for each day of absence (Loc. cit.). Spaight (War Rights on Land, pp. 355-356) and Hall (Loc. cit.) consider these measures as warranted by the acts punished, which were a direct danger to the occupant's military interests. Abettors and principals could be punished alike. Hall asserts that if milder means are first tried, it is hard to say that any ultimate harshness is too great (op. cit., p. 508) adding that recourse to vicarious punishment (i.e., against relatives) should be had only in the last extremity. Fauchille considers the penalties of banishment and confiscation to have been "iniquitous and exorbitant", but is silent as to the penalty against relatives (Droit International Public, Vol. II, p. 226). That the penalties for violations of the local law may be made more severe by the occupant is admitted by some writers (Thus Fairman, Law of Martial Rule, p. 275), with the qualification that any modification should be applied only to offenses subsequently committed.

11. The practice of modern wars, prior to World War I, was generally to leave such laws in force as were not irreconcilable with a state of occupation. During the Mexican War (1846-1848) General Scott organized special criminal tribunals called "military commissions" in the territory under his occupation and vested them with jurisdiction over specified offenses of the civil law (such as murder, rape, assault, etc.), whether committed by Mexicans or other individuals against members of his armed forces, or vice versa. (Cf. Smith, Military Government, 1920, pp. 59-60; Birkhimer, Military Government and Martial Law, pp. 138, 147; Winthrop, Military Law and Precedents, 2nd ed., p. 832; and Cameron, International Law and the World War, Vol. II, p. 85, note. In The Grapeshot (9 Wall. 129, 1869), the United States Supreme Court upheld the institution in occupied territory (Louisiana) of a Provisional Court in 1862 with power to hear and dispose of all causes, civil and criminal, including suits in admiralty, and to which the litigation at issue had been referred. U.S. v. Reiter, Fed. Cases No. 16146, 1865, recognized the jurisdiction of this provisional court to try the offenses of murder and arson committed against Louisiana Law. Cf. also State ex rel. Rain v. Hall, 65 Tenn. 3, 1873; Pennywit v. Eaton, 15 Wall. 1872, 382, and Burke v. Miltenberger, 9 Wall. 1873, 519. Louisiana ex. rel. O'Hara v. Heath, 20 Louisiana Annual, 1868, 518, affirmed the military commander's power to control the exercise of criminal jurisdiction by the local civil tribunals). General Scott's action was but an application of the general right of a military occupant to deprive the existing courts of their jurisdiction of offenses against

the authority of the occupying power as well as of offenses against persons belonging to his armed forces. During the Spanish-American War, judicial administration at Santiago and Manila remained under the occupation substantially as it had been under Spain (Cf. Magoon, op. cit., pp. 14, 198; Fauchille, op. cit., pp. 233-234). While existing provincial and municipal laws were continued substantially as before in Puerto Rico (Cf. Gen. Orders No. 1, 18 Oct. 1898, Davis, Report on Civil Affairs of Puerto Rico, p. 89, and Gen. Orders No. 8, 4 November 1898, Ibid., p. 90), certain alterations and changes necessary to meet new conditions were ordered after consultation with prominent Puerto Ricans (see Capo-Rodriguez, in 9 A.J.I.L. (1915), 883, 905). Thus, the Supreme Court of Justice, which had to be reorganized due to departure of personnel when American forces took control, was given cognizance over appeals formerly devolving upon the Supreme Court of Madrid (Gen. Orders No. 19, 2 December 1898, Davis Report, p. 90. The tribunal known as the court of appeals (contencioso administrativo) was abolished, and its functions transferred to the Supreme Court (Gen. Orders No. 4, 27 Oct. 1898, Davis Report, p. 90). The civil courts being overcrowded and unable to act effectively against bandits committing crimes of arson and murder, military commissions were appointed (Gen. Orders No. 27, 8 Dec, 1898, Davis Report, pp. 93 and 210). Such commissions also tried offenses by natives against members of the occupant's armed forces. (Ex Parte Ortiz, 100 Fed. 955). A provisional court to replace the military commissions was set up on 1 July 1899, pursuant to Gen. Order No. 88, 27 June 1899 (Davis Report, p. 117. And see the Annual Report of the Military Governor of Puerto Rico on Civil Affairs, part 13, 1902, pp. 65 ff.) But by this time, the treaty of peace had been ratified.

12. During the Boer War (1900), the British authorities dealt with all crimes affecting the occupying army or its interests under the Transvaal Law (Spaight, op. cit., p. 357). Chinese Penal Law was not changed by the Japanese in Manchuria during the Russo-Japanese War, except where it clashed with "martial" law. The threat of collective punishments was frequently contained in proclamations of the Japanese First Army, an attempt being made to sidestep the prohibition in Article 50 of the Hague Regulations by relying upon a system under which all the inhabitants of a given locality were made responsible for certain acts and a collective penalty provided for such violations as were "collectively" attributable to them. One example is the proclamation under which all inhabitants had to bear the burden of preventing destruction of a telegraph or railroad line (Ariga, La Guerre Russo-Japonaise et le Droit International, p. 388). And of Fauchille, Droit International Public, Vol II, §1219. The Germans frequently, in 1914-1918, issued analogous proclamations such as that of 1916 at Neyon, under which towns and villages were to be fined in case fire-arms were found in the possession of any inhabitant after a certain date. Garner, op. cit., p. 154. For German practice on this question in 1870-1871, see Spaight, op. cit., p. 409.

(*) 12. Where the local law is temporarily bankrupt due to anarchical conditions, the occupant may create laws to govern the country. An example of this comparatively uncommon circumstance is provided by the creation in Bulgaria (1877-78) of a completely new social and political regime (Cf. Spaight, op. cit., p. 357). Similarly, where the judicial machinery has become dislocated by events of the war, as where judges have fled or declined to sit, the occupant is entitled to establish special tribunals to try common penal offenses. In 1914 when American forces landed at Vera Cruz, the jefe politico and all other officials fled the city. No courts functioned. General Funston, therefore, in General Order No. 3 of 2 May 1914, appointed his Headquarters Judge Advocate as Administrator of Justice. Although this order provided that the Military Governor was to establish courts for the trial of civil cases, the expedition was withdrawn before civil courts were in fact set up. Criminal (Proyost) courts were established, however, with United

(*) Note manuscript mis-numbered.

States Army or Marine officers as judges (Smith, Military Government, 1920, pp. 66-72; General Funston's Report on Military Government, 30 June 1914, pp. 2 ff. And see U.S. For. Rel., 1914, pp. 481 ff., 600 ff. President Lincoln's Executive Order of 20 Oct. 1862, establishing the Provisional Court in Louisiana, recited that "the civil institutions of the State, including the judiciary and judicial authorities of the Union" having been swept away, "it has become necessary..... that there shall be some judicial tribunal existing there capable of administering justice." See Burke v. Miltenberger, 19 Wall., 1873, p. 519). Lord Roberts found it necessary to establish courts in the Transvaal in 1900. The difficulties encountered by the Germans in 1870-1871 produced a like problem. When some of the French courts suspended their functions on the suspicion that German military authorities wished to interfere with the freedom of the courts and the administration of justice, German judges were appointed in their place (Fauchille, Droit International Public, Vol II, pp. 232-3; Calvo, Droit International Public, Vol. 4, §2186 ff.; Spaight, op. cit., pp. 358-359). Still another example is furnished by the failure of judicial organization in Thessaly, during the Turco-Greek war of 1897 (Fauchille, loc. cit.).

13. When special courts are instituted, the procedure and law applied must conform to the standards of justice envisaged in (a) those provisions enjoining respect for inhabitants' lives, as well as in (b) the preamble which states that they remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience" (Supra, par. 4).

14. German practice in the last war flouted these precepts in a number of ways which appear to have contravened even the German War Manual itself (Cf. supra, par. 7), and which were condemned by writers on international law. In Belgium a new labor code was introduced, along with new laws on health, slaughtering of animals, education, crop harvesting, and hundreds of other matters which, according to Garner, had little or no connection with the maintenance of the public order or the protection and security of the armed forces (International Law and the World War, Vol II, p. 88. For other examples, see Wheaton, International Law, 7th ed., Vol. II, pp. 242-3). Heavy penalties were provided for violation of these laws, and the newly established military courts were given jurisdiction of offenses against them almost without exception. As a result most of the ordinary jurisdiction previously exercised by the Belgian Courts was vested in the occupant's military tribunals. Belgian Courts were even deprived of suits between landlord and tenant, special civil courts being set up to handle such cases. This assertion of sovereignty was held by the Belgian Cour de Cassation to be a violation of Article 43 of the Hague Regulations of 1907 (Decision in International Law Notes, Sept. 1916. However, the Court admitted that the ordinance in question was nevertheless binding upon all persons subject to the jurisdiction of the occupying power. See also 44 Clunet, Journal de Droit International, pp. 1809 ff., and De Visscher in 45 Clunet, op. cit., pp. 1090 ff. Accord: Westlake, International Law, Vol 2, p. 97; Garner, op. cit., Vol. II, p. 89). Garner likewise regards the establishment of these special courts and the withdrawal of a large part of their ordinary jurisdiction from the Belgian tribunals as an infraction of Article 43 (Op. cit., pp. 82-84; Fauchille, op. cit., § 1166; Merignhac, Le Droit des gens et la guerre de 1914, Vol. I, pp. 387-388). In all cases involving offenses against the German authority or against the German troops, the German military code was applied in Belgium. While this extension of German criminal law has been criticized (Cf. De Laval in 52 American Law Review, 253 ff.; Dumont-Wilden, "Du terrorisme judiciaire en Pays d'Occupation Allemande," 44 Clunet, op. cit., pp. 516ff.), Garner implies that it may not have been objectionable under international law (op. cit., p. 89, note).

But the jurisdiction of these military tribunals was not limited to such cases being extended to all cases arising under the various ordinances, decrees and police regulations issued by the Governor-General in the field of ordinary criminal justice. The entire judicial structure was even more drastically altered after the famous court "strike" of 1918. During the course of proceedings against certain German sympathizers before the Brussels Court of Appeals, German authorities intervened, arrested the proceedings and deported several members of the court to Germany for confinement in prison. The remaining members were prohibited from exercising their functions on the ground that they had associated themselves in a "political manifestation." As a consequence, the Court of Cassation adopted a resolution that the German interference with judicial administration was contrary to the law of nations, and suspended its sittings. Similar action was taken by other courts until eventually almost the entire magistrature had ceased to function. Governor-General Falkenhausen thereupon issued two decrees providing that criminal justice should be administered by new, Imperial German tribunals; that the language used should be German; that while Belgian substantive law should apply, the penalties prescribed were to be those of the German Imperial Criminal Code; and that the procedure should also be that of the German code. Similar courts were created for civil cases (Cf. Garner, op. cit., pp. 88 ff.; Wunderlich, Der Belgische Justizstreik, 1930, passim; Oppenheim, International Law, Vol. II, 6th ed., p. 350 note; Merignhac, Le Droit des Gens et la Guerre de 1914, Vol. I, pp. 381 ff.; Wheaton, International Law, 7th ed., Vol. II, p. 245).

15. Trials before the military tribunals were secret, counsel not being permitted to see the accused before arraignment, and there was no right of appeal. The procedure followed in the cause célèbre of Nurse Edith Cavell was typical. There the accused, who was charged with having assisted allied soldiers to escape, was denied all information concerning the charges against her before she was arraigned at the bar; she was not even permitted to see her attorney until brought into the court-room; and, as the proceedings were secret, it is impossible to determine whether the trial was "fair" or not. (See Garner, op. cit., pp. 97 ff.; Oppenheim, International Law, 6th ed. Vol. II, 457, note; and for diplomatic correspondence concerning action of the American Legation in Belgium on Miss Cavell's behalf, U.S. For. Rel., The Lansing Papers, 1914-1920, Vol. I, pp. 48-67). Garner observes that "to an American or English lawyer, this procedure sounds like a mockery of justice" (op. cit. Vol. II, p. 100; and see Merignhac, op. cit., pp. 387-388, who describes the institution of special tribunals as a kind of "judicial terrorism" under which the penal provisions were unknown, and the decisions arbitrary and unrelated to military security); but before condemning it as a violation of international law, one must bear in mind that the preliminary proceedings in that case would seem less offensive to a continental lawyer. Deprivation of adequate opportunity to prepare a defense is a recognized ground of peace-time, State to State responsibility founded upon a "denial of justice" (Cf. Freeman, International Responsibility of States for Denial of Justice, pp. 277 ff.); but conducting proceedings before a military tribunal secretly would hardly seem to warrant complaint in war time, although the peace-time rule is otherwise (Ibid., p. 304). More objectionable would seem to have been the execution of Miss Cavell within a few hours after the trial, to forestall an appeal.

16. The validity of German judicial action in occupied territories was tested in several cases arising after the war. In May 1919, the French Court of Douai held that the action of the German military governor at Maubeuge in November 1914 in creating a tribunal charged with applying French law in civil and correctional matters was contrary to Article 43 of the Hague Regulations, and hence its judgments were invalid (46 Clunet, Journal de Droit International, 770). In In re X, the defendant, who was prosecuted for infanticide committed during the war in France, contended

that since she had been acquitted of the same charge by a court established in the name of the German Empire in occupied France, the previous (German) judgment should bar a second trial. The Court of Appeal of Nancy, noting that the German Court was established for the purpose of suppressing the legally constituted court, held that its judgments could produce no legal effect in France. In its opinion, Article 43 did not authorize the occupying authorities to suppress French courts which safeguarded public order. Moreover, said the court :

"..... The crime of infanticide is not among those reserved in principle by the law of war to the cognizance of the enemy as being likely to jeopardize the security of his army." (Annual Digest of Public International Law Cases, 1919-22, Case No. 334; Hackworth, Digest of International Law, Vol VI, p. 397. In Milaire c. Etat allemand, the German-Belgian Mixed Arbitral Tribunal "queried" whether the German Government could have introduced its law on responsibility for labor accidents into Belgium, in abrogation of the local law of 1903, without violating Article 43. II Recueil des Décisions des Tribunaux Arbitraux Mixtes, 715, 719; Hackworth, op. cit., p. 394).

17. In Ville d'Anvers c. Etat allemand (19 October 1925) awards had had been made against the city of Antwerp by a tribunal established under a German decree of 1915. This decree modified an old Belgian law by which municipalities were made responsible for certain acts of violence committed by mobs against persons or property. The new tribunal was composed entirely of German subjects (Belgians having refused to serve). It was held by the international tribunal that this material change in the law under which German arbitrators favored the claimants, was a violation of Article 43, since no "empêchement absolu" existed, there being no military motive for the decree (Annual Digest, 1925-1926, Case No. 361; Hackworth, Digest, Vol. VI, pp. 395-396. See also Rolin, Le Droit Moderne de la Guerre, Vol. I, p. 438. Compare Commune de Grace-Berlour c. Charbonnages de Gosson Lagasse et Consorts. There a colliery had been ordered to pay taxes imposed by a certain commune in 1913. An order of the German Governor-General of 3 December 1914 substituted the approval of the occupant for that of the national authorities with respect to the levying of the tax. Rejecting the defense's plea that approval of the German Governor-General had not been given by the date required, the Belgian Court of Cassation held the German decree could not be regarded as "a measure for restoring and assuring public order and safety" (Annual Digest, op. cit., pp. 393-394). But a German decree abrogating a moratorium established by Royal Decree of the Belgian King on 2 August 1914, was held valid by the District Court of Rotterdam, which stated that Article 43 did not contemplate special laws enacted during the war, but only those in force prior thereto. The German order was regarded as serving the reestablishment of public order. (Annual Digest, op. cit., Case No. 336; Hackworth, op. cit., p. 395). In Mathot c. Lonruw, a German order of 8 August 1918 prohibiting the sale of vegetables before they had been grown was held illegal, as Article 43 did not give the occupying power a right to legislate. (Annual Digest, 1919-22., Case No. 329, and the Comment at p. 465. See also Hackworth, op. cit., pp. 396-397. But in Malines c. Société Centrale pour l'Exploitation du Gaz, the Brussels Court of Appeal, in a claim for refund of certain increases in the cost of supplying gas which had been made by the occupant, declared that this measure was consistent with Article 43, in view of the wartime needs of the population. Annual Digest, 1925-1926, Case No. 362).

18. It is submitted that some of these decisions (which are in line with the limited French and Belgian view of the powers of a belligerent occupant) construe Article 43 with excessive strictness. An opinion of

the German Reichsgericht in 1920, throws interesting light on the attitude of other national courts (viz., the German high court itself) on the scope of the provision. In that case an accused was sentenced on 3 March 1919 by a British Court-Martial in the Rhineland to two years imprisonment for possessing a loaded revolver, and threatening persons. A German court likewise prosecuted him in the same year for armed robbery. A plea of double jeopardy was dismissed on the ground that the crime had been of a mixed nature, violating both the security of the occupant, and the local criminal law. The significant portion of the opinion, however, is that in which the court stated that although an occupant was bound "except for compelling reasons", to leave intact local courts, it might set up its own courts for the prosecution of criminal acts against the occupying power, against the persons and property of the occupying authorities and of the Army of Occupation, or, generally, against the regulations issued for the security of the occupation (Annual Digest, 1919-1922, Case No. 335; Hackworth, Digest, Vol. VI, pp. 397-398. See also Fraenkel, Military Occupation and the Rule of Law, 1944, pp. 165-166. Compare the position of the Supreme Administrative Court of Czechoslovakia in an opinion of 29 December 1928 in which it observed that although "application of the laws of the occupying State do not..... extend automatically to the occupied territory", the occupant to maintain and safeguard his army, or for prosecuting the war, could extend his own national law to the area occupied. Annual Digest, 1927-1928, Case No. 378; Hackworth, op. cit., p. 400. Accord: Occupation of Cavalla case (1930), Annual Digest 1929-1930, Case 292. In Republic v. Oficynski, the Polish Supreme Court construed Article 43 as prohibiting the occupant from trying by his own courts and within his own territory, crimes committed in occupied territory. Annual Digest, 1919-22, Case No. 338.) In contrast with the view of the Belgian Courts, a decision rendered by the Lithuanian Supreme Court held that a judgment by a court instituted by the Polish military authority was not invalid because the judges had been appointed by the occupying authority (Antanas and Jadviga Cumbiai v. Bernatavicius, 6 June 1929, Annual Digest 1929-1930, Case 293). This holding appears to be a fair application of the general principle that the occupant may set up his own courts when military necessity or the maintenance of public order and safety so warrant.

19. British practice during the last war is illustrated by the action taken while Palestine was under occupation. There "martial law" (military government) was enforced by military courts, while the civil courts dealt with all other offenses according to Ottoman law. Prior to the occupation, the Turks carried away nearly all the judges of the Courts and the Court records. The British authorities therefore used this occasion to reconstruct the judicial system on an improved basis. Local courts were left in the hands of judges of the country, subject to British inspection. Whereas Ottoman law prescribed a five-man court in criminal cases, the British established a three-man court. The substance of the law was, according to Bentwich, "amended only in a very slight measure." He adds :

"Something, too, has been done to make punishments more humane, (1) by abolishing minimum penalties that are prescribed by the Ottoman penal code, and (2) by increasing the discretion which a judge may exercise in the case of a juvenile offender in order to keep him out of prison." (British Yearbook of International Law, 1920-1921, p. 147).

Among other innovations calculated to secure expeditious justice, certain features of English practice were introduced in criminal matters. Witnesses were examined in the presence of the accused; confessions had to be proven to have been made voluntarily; and commercial suits were handed over to the same courts that tried civil suits, rather than being dealt with by

special tribunals. Finally, one large class of cases was withdrawn altogether from the Courts: no action concerning the ownership of land could be heard, and no judgment given for execution upon immovable property. Only possessory rights were adjudicated. The justification for this was the removal of the land registers by the Turks; but the prohibition was retained even after these records had been recovered (Bentwich, op. cit., p. 146. Compare the decision of the Belgian Cour de Cassation, referred to in par. 14, supra, in Ochea v. Hernandez y Morales, 230 U.S. 139 (1913), the U. S. Supreme Court held that a judicial order of General Henry, the military governor of Puerto Rico in 1899, which retroactively reduced the prescriptive period of land ownership from twenty years to six, was a deprivation of property without due process. Said the court: ".....our government was bound by.....international law to.....secure public safety, social order and the guarantees of private property" (p. 159).

20. Of the American occupation of the Rhineland after hostilities had ceased in 1918, it has been said that it "was freer of abuses than any other military government ever exercised by man." (Smith, Military Government, 1920, p. 57) The situation in the Rhineland was unusual. Four armies of different nations, under the supreme command of Marshal Foch, wielded control over four separate zones. The commanding general of each was not designated as a military governor, but all troops in the occupied area were under his command. Administration therein was to conform to the principles and instructions issued to commanding generals on 15 November 1918 by Marshal Foch. (American Military Government of Occupied Germany, 1918-1922 ("The Hunt Report"), pp. 45-48). These instructions provided, inter alia, that laws and regulations in force at the time of occupation were to be respected in so far as they did not affect the occupying power or compromise its security; that all German civil officials were to be temporarily confirmed in their office, but that replacements and transfers would be permitted whenever such action was deemed necessary or advisable by the military authorities. (Ibid., p. 46). In the terms of General Pershing's proclamation of instructions for the American Army entering Germany,

".....so long as the inhabitants conduct themselves peaceably and quietly, the ordinary civil and criminal laws will be continued in force, and will be administered by the local officials, and.... private property and personal rights will be respected." (Smith, op. cit., p. 31. Cf. also General Pershing's proclamation to the inhabitants, 9 Dec. 1918, Hunt Report, p. 31)

The German system of courts was in no way interfered with in the American zone, and they exercised both civil and criminal jurisdiction, just as before the occupation. A system of Provost Courts was instituted to try offenders against the military government for violations of our laws and regulations, but the maximum penalty which they were empowered to impose was six months imprisonment and a fine of 5,000 marks. (Gen. Orders No. 225, 10 December 1918. This order also provided that military commissions could be convened for the trial of inhabitants violating the laws of war or of the military government. C.f. Hunt Report, p. 92. The latter could impose any penalty, but death sentences had to be approved by the commander in chief. Only a few cases, however, were tried by them. (Smith, op. cit., p. 36) It was required that every person tried by a Provost Court be informed of the charges against him, that he be present in person at the trial, and that he be confronted with the witnesses against him. He was permitted to be heard either in person or by counsel. Bail was denied, but a speedy hearing was guaranteed. All evidence had to be given under oath. Sentences were put into immediate execution, without awaiting action by the reviewing authority. When it appeared that a conviction was erroneous, it could be set aside by the Commanding General, whose Officer in Charge of Civil Affairs examined the

Provost Court report in all cases. (Hunt Report, p. 92). In April, 1919, the substance of this policy was adopted by Marshal Foch, who granted to each convicted person the right of informal appeal to the highest commander of the army concerned (Fraenkel, Military Occupation and the Rule of Law, p. 22).

21. No special tribunals were created for civil cases during the period of the armistice. As the German courts had no jurisdiction over members of the occupying forces, the latter could not be sued there at all (Niboyet in Revue de droit international privé et de droit pénal international, vol. 16, 1920, p. 51). But it was found necessary to deny jurisdiction to the local criminal courts in several instances. Thus, when treason proceedings were instituted against one Hedwig, who had been distributing Rhenish independence propaganda in Coblenz, American authorities intervened; prohibited the courts from trying cases under German and Prussian treason laws, and proceeded against the accused before the Provost Courts for violation of American regulations (Hunt Report, p. 289). The right of local officials to extradite persons for the purpose of trial by courts outside the occupied area in treason cases was likewise denied (Ibid., p. 289). It will be recalled that during the German occupation, Belgian courts had attempted to maintain their rights to prosecute for high treason Belgian participants in the German-sponsored Flemish autonomy movement, and that German Occupation officials had prohibited the local courts from exercising judicial functions in these cases, precipitating the famous "strike" of the Judges (par. 14, supra). American authorities are hardly in a position to condemn German officials for something which we ourselves found necessary to do in an identical situation. A recent writer has expressed the view that :

"occupation authorities enforcing a state of martial law are entitled to restrict the jurisdiction of the occupied country's courts in high treason cases. High treason proceedings represent, in legal form, political measures taken by a government against those whom it considers enemies of the state.An occupying power, enforcing a regime of martial law, cannot allow its friends to be treated as enemies by the authorities of the occupied territory." Fraenkel, op. cit., p. 44. "Coblenz was under American jurisdiction and therefore we could not recognize treason against an enemy nation as a crime in our own country." Hunt Report, p. 289)

The position taken is believed to be sound.

22. While Marshal Foch's basic instructions provided that no penalty should be inflicted except by ordinary court procedure (De Jaer, L'Armée belge d'occupation et son droit de juridiction, Liège, 1928, p. 72), this was not construed as depriving military commanders of the right to impose administrative punishments for "reprehensible" conduct, such as expulsion from the occupied territory, the closing of shops, or the levying of a collective fine upon municipalities. None of these acts was reviewable (Fraenkel, op. cit., p. 24). The general policy of the Allied Forces on collective fines is indicated in a special instruction of Marshal Foch of 26 March 1919, suggesting to commanding generals that imposition of such fines be restricted to serious cases in which citizens of the municipality in question had either assisted or sympathized with perpetrators of hostile acts. In the American zone, only one instance of a collective punishment is recorded. In the town of Kell on three nights in succession American soldiers had rocks thrown at them, and it was impossible to discover the culprits. All inhabitants were ordered to be in their houses by 7:00 p.m., and to remain there until daybreak next morning. No further

trouble was experienced after two weeks. But when a French liaison officer whose suitcase was stolen from an automobile applied to the Civil Affairs Department to have a collective fine of 300 francs levied on the town to cover his loss, the Department promptly replied that such a levy would be improper. (Smith, op. cit., pp. 22-23)

23. German practice during the present war is so familiar as to require little extended description. Paragraph two of the present memorandum suggests some of its typical features. Among changes introduced into occupied areas either directly or through puppet governments were: Modification of the Dutch law on citizenship; invalidation of that provision of the Polish Criminal Code whereby a judge could defer execution of penalties or exercise mercy; changes in the family law of Luxembourg, especially as to illegitimate children; substitution of the consent of the Reich Commissioner to marriage of Dutch girls for the parental approval required by the Netherlands Civil Code (Cf. Lemkin, Axis Rule in Occupied Europe, pp. 26-27). But the most startling innovation of all was the principle of "punishment by analogy" which was applied when German Criminal Law was introduced into the incorporated areas; and in the non-incorporated areas German law was applied by German Courts when they were trying inhabitants of the occupied countries. Under this principle an individual may be punished for an act he could not know was a crime at the time it was committed, if that act seemed merely analogous to any other act which was punishable by law. In determining this, the judge is directed to apply "sound popular feeling" (das gesunde Volksempfinden). The original German act was dated 28 June 1935, and was published in the Reichsgesetzblatt, Teil 1, p. 844, Art. I. See, generally, Preuss, in Journal of the American Institute of Criminal Law, 1936, p. 857, and also in 29 A.J.I.L., 1935, p. 217). Guarantees provided by specific wording in a statute are destroyed; the gates are thrown open to all manner of judicial caprice and arbitrariness. Adoption of two decrees containing this principle in Danzig was held by the Permanent Court of International Justice to be inconsistent with the Danzig constitution (Case of the Danzig Decrees, Series A/B, No. 65, p. 51; Hudson, World Court Reports, Vol. III, p. 513). Writers outside Germany consider that such a statute, if applied to aliens, would violate international law (See Freeman; International Responsibility of States for Denial of Justice, pp. 551-2; Lemkin, op. cit., p. 28 note). There is no doubt whatsoever that it also violates the international law governing the treatment of individuals in occupied areas. As Lemkin has pointedly observed:

"If the occupant considered that the local law did not give sufficient protection to his military interests, he could lawfully introduce only the provisions of the German Criminal Code aiming at the protection of such interests. He certainly was not entitled to introduce the Criminal Code in toto relating to non-military matters such as family relations, morality and property rights. On the other hand, if the occupant should decide to substitute some other law for the local law, he may do so only by substituting the one law for the other.....But the German Criminal Code, because of the principle of analogy to which it adheres, cannot be treated as a rule of law.....

"The introduction of German law into the occupied countries cannot be justified by the occupant on the ground of military necessity. The purpose.....is.....to assimilate these areas as soon as possible with the Greater German Reich..... This is obviously a political objective and has no realistic relation to the needs of the army.....German law is not conceived as human justice.....It has divorced law from morality and mercy.

"Consequently, the introduction of German law in the occupied countries is not only in violation of the Regulations of the Hague Convention, but also of the very principles of the law of nations and also of the laws of humanity" (Axis Rule in Occupied Europe, pp. 27-31).

It may be added that the execution of an individual pursuant to such laws would also violate Article 46. Lives are not "respected" thereby; they are on the contrary profaned and destroyed by processes not truly legal.

24. Similar drastic modifications were effected by the Germans in judicial organization. The rights of an accused were prejudiced by the absence of preliminary investigation in some cases; by denial of appeal from decisions of special courts, even from sentences of death (Poland); by serving notice upon a defendant in as short a period as twenty-four hours before trial; by exclusion of members of the local bar as counsel unless specially permitted by the authorities; by administrative reformation of a criminal judgment (Cf. SPJOW 1945/2849, 6 March 1945, and Wolff, "Criminal Justice in Germany", 43 Michigan Law Review, 1944, pp. 171-3); and by the vesting of judicial functions in military commanders in District Governors, and in S.S. Officers who may inflict penalties without judicial procedure. Special courts tried violations of the law requiring the wearing of Jewish insignia and of the regulations concerning the use of the German salute. To the extent that a defendant in ordinary criminal proceedings has been shorn of the safeguards generally deemed essential to the administration of civilized justice, action of the German military authorities in destroying the local judiciary and creating new courts must, again, be regarded as a violation of Article 43 (For an exposition of German judicial measures in occupied territory, see generally, Lenkin, Axis Rule in Occupied Europe, pp. 33-35). Such outrageous devices as refusal of counsel and prohibition of any plea other than guilty could also be viewed as a violation of Article 23(h) of the regulations (see supra, par. 4. In the tribunals employed by the Japanese during the Russo-Japanese war, the accused was given means to defend himself, but contrary to the ordinary rule his guilt was assumed in the absence of proof of innocence. Ariga, La Guerre Russo-Japonaise et le Droit International, p. 385. Spaight considers this transferring of the onus of proving innocence to be a "necessary principle of martial law justice," justified in the interest of law and order. War Rights on Land, p. 349. See quatre).

25. None of the decisions discussed in paragraphs 16-19, supra, nor the authorities previously cited herein, go further than to hold that a departure from the principles governing military occupation is a violation of international law. The cases and writers generally speak in terms of the powers of an occupant, of the legal effect of measures taken. They do not address themselves to whether the officials guilty of illegal action may be punished as "war criminals". The language of individual criminal responsibility is not used. However, the Commission on Responsibilities of the Authors of the War, in 1919, exhibited no such reticence. In its list of 32 separate headings covering violations of the laws and customs of war which were to furnish the basis for prosecuting their authors as criminals, was included "Usurpation of Sovereignty during military Occupation" (Cf. Pamphlet No. 32, Carnegie Endowment for International Peace, p. 38; and 14 A.J.I.L., 1920, p. 114). The particulars under these charges set out, inter alia: (1) Institution of German civil courts in Roumania to try disputes between subjects of the Central Powers, or between a subject of these Powers, and a Roumanian, a neutral, or subjects of Germany's enemies; and (2) suspension

of many Serbian laws and substitution of Austrian law therefor in penal matters, in procedure, in judicial organization (Carnegie Pamphlet No. 32, loc. cit.). Whether every "usurpation of sovereignty" is something which should be classed eo ipso is a "war crime", entailing the criminal liability of individuals who have participated therein, is not free from doubt. Sufficient evidence of international practice has been adduced in the preceding paragraphs to demonstrate that there are broad twilight zones between what is prohibited and what is not, and that the authorities are far from uniform in their appreciation of this problem.

26. The third category of alleged judicial crimes listed in the basic communication from the Deputy Commissioner, United Nations War Crimes Commission, involves the punishment of relatives of an accused where "curfew" regulations were violated (see paragraph 2, supra). This charge is partly based upon the imposition of a "collective penalty". In that connection it may be observed that the Commission on Responsibilities included in its summary of war offenses, the "imposition of collective penalties" (Carnegie Endowment Pamphlet 32, Item 17, p. 44), specifying that German military authorities "held families responsible for the escape of Belgians liable to military service" (Loc. cit. For a detailed survey of the German theory and practice on collective penalties for wrongs committed by individuals, see Garner, International Law and the World War, Vol. II, Ch. XXVI; Merignhac, op. cit., Vol. I, 595, and cf. Fauchille, op. cit., Vol. 2, p. 293). However, it is questionable whether this is a reasonable construction of Article 50 of the Regulations, viz., whether this type of penalty is contemplated by Article 50 at all. That article declares that "no general penalty (peine collective), pecuniary or otherwise, shall be inflicted upon the population on account of acts for which they can not be regarded as jointly and severally responsible" (ubi supra, par. 4). It may be conceded that while Article 50 is located among the provisions relative to levies in money or kind and the treatment of enemy property, it was not intended to exclude punishments other than pecuniary, but on the contrary, embraces every type of collective penalty. Nevertheless, the basic purpose was to prohibit a belligerent from fastening upon an entire community responsibility for acts which were purely individual, and for which, therefore, the whole population should not be made to suffer. This is clear from the Proceedings of the Hague Conference (Proceedings of the Conference of 1899, p. 65; and see also Spaight, War Rights on Land, p. 408; Westlake, International Law, Vol. II, p. 106; Feilchenfeld, International Economic Law of Belligerent Occupation, pp. 47-48; Rolin, Le droit moderne de la guerre, Vol. 1, pp. 481 ff. Neither the question of reprisals nor that of hostages was prejudged by this article.

Proceedings, loc. cit.;

Hyde, International Law, 2nd ed., § 692; FM 27-10, Rules of Land Warfare, par. 334 recognizing that Article 50 does not prohibit "reprisals by the occupant for violations of the laws of war or breach of the occupant's proclamations or regulations by enemy individuals not belonging to the armed forces." See also Wheaton, International Law, 7th ed., Vol. II, p. 261). Article 50 was concerned with general penalties in the social group sense, not in the narrow sense of punishing for a crime committed by B. This latter type of vicarious penal responsibility, as noted above (see supra, par. 10), was deemed unobjectionable by Spaight and Hall in commenting upon the German practice (1870-1871) of fining relatives 50 francs a day for each day an individual subject to conscription was absent from his place of residence. Even if this measure were regarded as a reasonable one, it would not follow that the execution of relatives in such a case would not violate international law. Action of this kind would not, however, be properly chargeable under Article 50. A sounder basis for prosecuting those judicial and administrative officials guilty in this

class would be Article 46, as well as the principles incorporated into the preamble of Hague Convention No. IV of 1907 (Wharton, International Law, 7th ed., Vol. II, pp. 262-263, where the author condemns the execution of whole families of Yugoslavs because a son attacked the occupants, as contrary to the law of nations).

27. During the present war, the Germans on frequent occasions have ordered the seizure of civilians as "hostages", to be executed if certain persons who attacked sentinels were not discovered and arrested. Execution of innocent individuals in this type of circumstance--a perversion of the "hostage" concept--loses its preventive character, and, whether with or without a judicial hearing, becomes part of a regime of terror, assimilable to execution *en masse* (Cf. Kuhn in 34 American Journal of International Law (1942), pp. 271 ff.). Individual criminal responsibility of officials participating in these acts unquestionably exists.

28. From the foregoing survey of the relevant source materials, it is believed that the following principles should govern the disposition of those questions which were referred for consideration to The Judge Advocate General, by the Deputy Commissioner of the United States, United Nations War Crimes Commission:

29. The annexation of occupied territory prior to termination of the war is unquestionably a violation of international law (Oppenheim, International Law, 7th ed., Vol. II, pp. 243, 247; De Jager v. Attorney General of Natal (1907) A.C. 236; Hudson, Cases, p. 1149; Spaight, War Rights on Land, p. 331, and cf. SPJO 1944/5758, 27 May 1944); and, in the view of the Commission on Responsibilities at Paris in 1919 (Carnegie Endowment Pamphlet No. 32, item § 10) the usurpation of sovereignty attendant upon such premature annexation provides a basis for punishment as a war crime. Nevertheless, in the light of the uncertainties reflected in the authorities examined, it is probably unsound and may be unsafe to rest the case against judicial and administrative officials upon the ground that every action by a tribunal illegally instituted under international law entails *eo ipso* the criminal liability of all persons concerned. So to hold would inject the element of criminality into a class of cases in which, while a belligerent may have technically exceeded his powers under international law, the fundamental rights of an accused were at all times respected. It would involve the proposition that, irrespective of the guilt of an accused, a judge who impartially presided at proceedings which provided adequate safeguards for the defendant's rights and which terminated in a just sentence, was nevertheless a war criminal. For a belligerent's technical excess of power in such a case to produce this result would be unconscionable. The situation may be wholly hypothetical; but it assumes greater significance when it is realized that the powers of an occupant in the domain of legislative and judicial action are extremely broad; that, while policy considerations may induce him to refrain from interference in local administration, he is not required to do so (Cf. Hyde, International Law, 2nd ed., § 690; Korovina in Internationalrechtliche Abhandlungen, Vol. III, p. 134; FM 27-10, Rules of Land Warfare, par. 285; FM 27-5, OPNAV 50-3, U.S. Manual of Military Government, p. 16; De Louter, Droit International Public Positif, Vol. II, p. 290). The circumstances confronting military authorities may justify the creation of new courts staffed with enemy personnel. Refusal of local judges to serve, whether because of the attitude of their co-nationals towards such service, or for any other reason, may leave no other alternative. Certainly, the creation of military tribunals manned by enemy judges in occupied areas is an acknowledged right of every belligerent (Spaight, War Rights on Land p. 357; Halleck, International Law, 3rd ed., Vol. II, p. 439;

Fauchille, Droit International Public, Vol. II pp. 227, 232; Westlake, International Law, Vol. II, p. 96; Rolin, Le Droit Moderne de la Guerre, Vol I, p. 436; FM 27-10, Rules of Land Warfare, par. 288; Oppenheim, op. cit., p. 349) as is the right to punish for breach of the occupant's proclamations or regulations (Hyde, International Law, 2nd ed., § 690, 692). On the other hand, there may be cases in which the establishment of new courts or vesting of jurisdiction in enemy appointees is clearly unrelated to military necessity. But the limitations imposed by international law upon a belligerent's conduct are not sharply defined. It may not be easy to determine objectively whether an alleged "usurpation" was an excessive exercise of power. Similar observations apply with respect to modifications of the local criminal law and procedure.

30. It is believed, therefore, that the action of a court itself, rather than any alleged illegality in its inception, should furnish the test of judicial criminality. The decisive consideration would seem to be whether trial of an accused by such a court deprived him of the protection to which he is entitled under international law, viz., whether judicial action produced either a violation of some specific prohibition in the regulations, or was in disregard of those fundamental principles of human justice recognised by civilized peoples and which are incorporated in the preamble of Hague Convention IV of 1907 (Scott, The Hague Conventions and Declarations of 1899 and 1907, pp. 101-102). Thus, for example, denial to an accused of the right to plead not guilty, to introduce evidence or to present witnesses, application of principles of law condemned by the practice of civilized nations such as punishment by analogy (Cf. The Case of the Danzig Decrees, Publications of the P.C.I.J., Series A/B, No. 65, p. 51; Hudson, World Court Reports, Vol. III, p. 513, and generally, Preuss in 29 A.J.I.L., 1935, p. 217); imposition of an outrageously excessive penalty in relation to the offense alleged; imposition of harsh penalties upon relatives of a person charged with acts in which their participation is not established; and such outrageous action as execution of the relatives of one who is accused of violating curfew regulations, all are properly classed as war crimes subjecting every judicial or administrative official associated with the proceedings, the judgment, or execution of the sentence, to punishment as a war criminal. The action of judicial authorities in this respect is on no different plane from that of military or executive authorities. Nor should any greater weight be given to the pleas of "act of State" and superior orders than is given in other situations (Cf. FM 27-10, Rules of Land Warfare, par. 345, G-1, 15 November 1944). Analogous principles should govern the problems raised by illegally constituted civil and commercial courts, whose action results in illegal condemnations, seizure or destruction of a litigant's property. In all cases, the deceptive cloak of a formalistic legality may be pierced to determine whether substantive rights have been violated.

31. Some of the items referred to in paragraph 2c of the basic communication require an especial caveat. Judicial murder of the relatives of an accused should be charged under Articles 43 and 46 of the Regulations annexed to Hague Convention IV of 1907, as well as under the preamble thereof, not, as indicated in the basic communication, under Article 50. The general penalty (peine collective) there contemplated is not believed applicable to this type of situation (Proceedings of the Hague Conference of 1899, p. 65; Spaight, War Rights on Land, p. 408; Westlake, International Law, Vol. II, p. 106). Furthermore, to allege, as a basis for judicial criminality, that a court imposed sentences in excess of the maximum provided by a given local law (Paragraph 2c of the basic communication) may be too fragile a foundation. The mere fact that the penalties contained in the local

law have been increased by the occupant does not necessarily constitute a violation of international law, although any increase should be applied only to acts committed subsequent thereto (Fairman, Law of Martial Rule, p. 275). The reasonableness of the measure, under the circumstances, in relation to the occupant's military security, public order and safety, defines its propriety under international law.

32. The approach recommended in paragraph 29 hereof (under which the criminality of a particular judicial official is not derived from an illegal constitution of his court, i.e., "usurpation of sovereignty") may appear to be a more complex and laborious method of establishing guilt than that suggested in paragraph 2a of the basic memorandum. According to that conception it would suffice to demonstrate (a) that creation of the court was illegal under international law, and (b) that alleged war criminals X, Y, and Z at some time or other were members of that court. But even under the view here taken, it would seem sufficient for purposes of prosecution, after showing that a given judicial body regularly conducted proceedings in disregard of the rights guaranteed to an accused under international law, to establish that X, Y, and Z at a given date sat upon such a court. This evidence should justify a presumption that they participated in its proceedings, which could, in turn, be overcome by the presentation of appropriate testimony.

33. Evidence may be received by the United Nations War Crimes Commission of criminal proceedings which have been conducted in secrecy. The impossibility of determining whether a judicial crime has been committed in this class of cases can be met by compelling the defeated belligerent to submit a complete record of all such proceedings (See Hyde, International Law, 2nd ed § 693).

34. It is therefore recommended that reply be made to the Deputy Commissioner, United Nations War Crimes Commission, by memorandum prepared for the signature of The Judge Advocate General in substantially the following form:

1. There is inclosed herewith a memorandum stating the principles which, in my opinion, should be applied in disposing of the questions raised in your memorandum of 25 November 1944. These principles may be summarized briefly as follows:

2. While premature annexation of occupied territory is unquestionably a violation of international law, as is the creation of national tribunals of the occupant pursuant to such usurpation of sovereignty, it is unsound and may be unsafe to conclude therefrom that every action taken by a court alleged to be illegally instituted entails ipso facto the criminal liability of all persons associated with the operation of such a court. The circumstances confronting military authorities may justify the creation of new courts staffed with nationals of the occupying country. The precise boundaries between proper and improper action in the domain of judicial administration are extremely difficult to delineate. Whether an alleged "usurpation" is excessive, and whether modifications by an occupant of the local criminal law and procedure step beyond the limitations imposed by international law, may not be apparent. Mere technical violations of that law should not be held, eo ipso, to produce individual criminal responsibility. The decisive consideration would seem to be whether the trial of an

accused by the particular court deprived him of the protection to which he was entitled under the law of nations, i.e., whether a given judicial action flouted a specific prohibition of the Hague Regulations, or was in disregard of those fundamental principles of human justice accepted by civilized peoples. Examples of the latter would be: denial to an accused of the right to plead not guilty, to introduce evidence, or to present witnesses, application of principles repugnant to the modern practice of civilized nations, such as "punishment by analogy", imposition of outrageously excessive penalties in relation to the offense committed, and the like. Similarly, the action of a civil or commercial court which results in illegal condemnation, seizure, or destruction of a litigant's property should not protect the judge merely because homage has been done to legal forms. In all cases the substance of the action taken may be scrutinized to determine its propriety under the law of nations.

3. The desired approach to be followed in dealing with this category of "judicial crimes" is set forth in further detail in the accompanying memorandum.

ARCHIBALD KING
Colonel, JAGD
Chief, International Law Division

SECRET

Amendment to C.154
3 November, 1945

UNITED NATIONS WAR CRIMES COMMISSION

Names, Addresses and Telephone Numbers of War Crimes
Liaison Officers attached to War Crimes Branch,
United States Forces, European Theatre.

The APO number of the War Crimes Branch, U.S. Army,
having been changed, the address of Liaison officers
should in each case read:

War Crimes Branch
APO 633, U.S. Army

SECRET

C.154
31 October 1945

UNITED NATIONS WAR CRIMES COMMISSION

Names, Addresses and Telephone Numbers of War Crimes
Liaison Officers attached to War Crimes Branch,
United States Forces, European Theatre.

<u>Nation</u>	<u>Name</u>	<u>Address</u>	<u>Telephone</u>
Belgium	Major Adrien Genicot	War Crimes Branch APO 757 , U.S. Army 633	Wiesbaden 7251 Extension 159
Czechoslovakia	Colonel B. Ecer (absent)	War Crimes Branch APO 757 , U.S. Army 633	Wiesbaden 7251 Extension 119
France	Colonel Pierre Orsat	War Crimes Branch APO 757 , U.S. Army 633	Wiesbaden 7251 Extension 118
Luxembourg	Major Leon Hammes	War Crimes Branch APO 757 , U.S. Army 633	Wiesbaden 7251 Extension -
Poland	Major W. Szuldrzynski	War Crimes Branch APO 757 , U.S. Army 633	Wiesbaden 7251 Extension 120
Yugoslavia	Lieutenant Colonel Andrija Pejovic	War Crimes Branch APO 757 , U.S. Army 633	Wiesbaden 7251 Extension -

(The United Kingdom has no war crimes liaison detachment at the War Crimes Branch, but it is expected that one will be established in the near future.)

21 NOV 1945

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SECRET

C.154
31 October 1945

UNITED NATIONS WAR CRIMES COMMISSION

Names, Addresses and Telephone Numbers of War Crimes
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(The United Kingdom has no war crimes liaison detachment at the War Crimes Branch, but it is expected that one will be established in the near future.)

C.155
14th November, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

COMPOSITION OF COMMITTEES

COMMITTEE I - FACTS & EVIDENCE.

M. de Baer, Chairman.	Belgium
F/O. Bridgland	Australia
Dr. Ečer	Czechoslovakia
Sir Robert Craigie	United Kingdom
Colonel Hodgson	U.S.A.

Secretary - Dr. J. Litawski

COMMITTEE II - ENFORCEMENT.

Col. Hodgson, Chairman.	U.S.A.
F/O. Bridgland	Australia
H.E. Dr. Wellington Koo	China
Dr. Ečer	Czechoslovakia
Professor Gros	France
Commander Mouton	Netherlands
Dr. Zivković	Yugoslavia

Secretary

COMMITTEE III - LEGAL

Dr. Ečer, Chairman	Czechoslovakia
H.E. Dr. Wellington Koo	China
Dr. Schram-Nielsen	Denmark
M. Stavropoulos	Greece
Commander Mouton	Netherlands
Mr. Wold	Norway
Dr. Szerer	Poland
Dr. Zivković	Yugoslavia

Secretary - Dr. E. Schwab

FINANCE COMMITTEE

Sir Robert Craigie, Chairman	United Kingdom
F/O. Bridgland	Australia
Dr. Ečer	Czechoslovakia
Representative of India	India
Colonel Hodgson	U.S.A.

Secretary - Mr. E.H. Lyman
(Acting)

FAR EASTERN COMMITTEE

H.E. Dr. Wellington Koo, Chairman	China
F/O. Bridgland	Australia
Rt. Hon. Vincent Massey	Canada
Professor Gros	France
Sir Samuel Runnaldson	India
Commander Mouton	Netherlands
Mr. Burdett	New Zealand
Sir Robert Craigie	United Kingdom
Colonel Hodgson	U.S.A.

Secretary -

(To supersede previous editions)

EXECUTIVE COMMITTEE

Lord Wright, Chairman	Australia
M. de Baer	Belgium
Colonel Hodgson	U.S.A.
H.E. Dr. Wellington Koo	China
Dr. B. Ečer	Czechoslovakia
Dr. Zivković	Yugoslavia

Secretary - Mr. E.H. Lyman

PUBLIC RELATIONS COMMITTEE

Dr. Zivković, Chairman.	Yugoslavia
Dr. B. Ečer	Czechoslovakia
Colonel Hodgson	U.S.A.

Secretary - Mr. D. Gibson

COMMITTEE ON DOCUMENTS

Professor Gros	France
Commander Mouton	Netherlands
Dr. Szerer	Poland
Sir Robert Craigie	United Kingdom
Colonel Hodgson	U.S.A.

Secretary - Colonel Wade

SECRET.

C.156.
15th November 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

Crime Committed on Czechoslovak Territory at the Beginning
of March 1939. (*)
(Czechoslovak Case No. 26.)

Report by Committee III.

Committee I referred to Committee III the legal questions which had arisen in connection with the Czechoslovak charge No.26 against a German named Sepp Dietz.

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.

The following are the reasons for this recommendation by Committee III:

- I. 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 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 1941 the President of the Czechoslovak Republic made a declaration according to which Czechoslovakia considered herself to have been in a state of war with Germany from the moment Germany had committed acts of violence against the security, independence and territorial integrity of the Republic.

- II. Accordingly it would have been the task of Committee III to which the case had been referred to give its opinion on the following two questions: (a) whether at the beginning of March 1939 a state of war was in existence between Czechoslovakia and Germany and (b) what the position was if the answer to this question was in the negative. The acting Czechoslovak

* The examination and discussion of this case in Committee are recorded in documents III/16, III/21 and III/21 (1), in the Notes on Meetings of Committee III Nos. 9/45, 10/45, 11/45, 12/45 and 13/45 and in the Notes of Meeting of Committee I No.31.

representative declared in the meeting of Committee III held on 9th October 1945 (Minutes No.9/45) 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 confine 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 violations of the laws or customs of war.

Committee III agreed to this proposal and therefore confined its deliberations to the question mentioned sub (b), it being generally understood that this discussion and the conclusion the Committee reached on question (b) was without prejudice to the attitude of the respective governments and their representatives concerning question (a).

- III. Question (b) is primarily a question of the jurisdiction of the United Nations War Crimes Commission. The Commission was constituted at the meeting of Allied and Dominions representatives held in London on the 20th October 1943. One of the primary purposes of the Commission there was mentioned the task that: (1) "It should investigate and record the evidence of war crimes identifying where possible the individuals responsible." (2) "It should report to the Governments concerned cases in which it appears that adequate evidence might be expected to be forthcoming."

These terms of reference, and particularly the expression "war crimes" used therein should, in the view of Committee III, be interpreted in the light of the present state of International Law, particularly as expounded in the Four Power Agreement dated 8th August 1945.

- IV. The United Nations War Crimes Commission has already, in its Doc.C.144, expressed the view that the Agreement and the Charter "are documents which give 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 its member Governments". The Commission has thus emphasised that the Charter "embodies" "important principles of law".

The members of Committee III are therefore of the opinion that the Charter should be regarded as an important document in the formulation of International Law, whether declaratory of existing law or creating new law.

- V. The international documents agreed upon during and on the conclusion of the second world war, used the term "war crime" sometimes in a narrower sense which is restricted to violations of the laws or customs of war, sometimes in a wider sense comprising also "crimes against peace" and "crimes against humanity". The narrower meaning is attributed to the term "war crime" in Article 29 of the Italian Terms of Surrender, in Article 11(a) of the Declaration regarding the Defeat of Germany dated 5th June 1945, in the Potsdam Declaration and in Article 6, paragraph 2, lit (b) of the Charter of the International Military Tribunal. In the wider sense, comprising crimes against peace and crimes against humanity, the term is used in the Armistices with Rumania (Art.14), Finland (Art.13), Bulgaria (Art.6) and Hungary (Art.14), in the Preamble and in articles 3, 4 and 6 of the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, dated 8th August 1945, and in Articles 1, 6 (para.1) and 14 of the Charter of the International Military Tribunal.

In the actual practice of the United Nations War Crimes Commission, the term "war crime" has from the beginning, been understood 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.

VI. What has been said in paragraphs IV and V is particularly true of crimes against humanity committed, like the crimes dealt with in the present case, against allied nationals or on allied territory. These are, both in substance and in procedure, not essentially different from violations of the laws and customs of war. No new machinery or procedure is needed in order to deal with them, if they are treated in the same way as violations of the laws or customs of war. Neither a new procedure of the Commission nor new arrangements regarding surrender and trial are necessary. All war crimes in the wider sense are covered by the Commission's working list of war crimes. (Doc.C.1.)

VII. If the procedure of the United Nations War Crimes Commission were not made available for the listing of persons accused of crimes against humanity committed against allied nationals or on allied territory, no machinery for detaining them would be in existence. The arrangements made by the allied military authorities do not provide for the handing over of criminals other than war criminals. Nor are, in cases like that of Sepp Dietz, extradition treaties applicable even if considered as continuing in force towards the Control Council for Germany, because the extradition treaties concluded, e.g. by Czechoslovakia, did not provide for the extradition, by the contracting parties, of their own citizens.

VIII. The acts of which Sepp Dietz is accused, fall, in the opinion of the majority of Committee III, under "crimes against humanity", namely, "murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war."

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.)

The accused acted, according to the charge, in the interests of the European Axis countries. His crimes were committed on allied territory and against allied nationals.

IX. Crimes against humanity, as defined in paragraph (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.

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.

SECRET.

C.156 (a)
24th November 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

Crime Committed on Czechoslovak Territory at the beginning
of March 1939.
(Czechoslovak Case No.26.)

Formulation of Mr. Terje Wold's opinion.

The following is the text of the minority opinion of Mr. Terje Wold, as to the classification of the crime committed by Sepp Dietz, elaborating in more detail the reference contained in paragraph VIII, sub-paragraph 2 of the majority report Doc. C.156.

" A minority, Mr. Wold, holds the opinion that the acts of which Sepp Dietz is accused pursued a distinct aim, namely to create an "incident" or "incidents" inside Czechoslovakian territory in preparation of a war of aggression. He holds that Sepp Dietz, when in March 1939 he crossed the Czech frontier, started clashes and committed murders on the civilian population, must have realised that he was taking part in a conspiracy for the accomplishment of the initiation of a war of aggression and that, under the circumstances, he must be held responsible as a war criminal. (Of. Art.6(a) of the Charter of the International Military Tribunal and Commission Doc. C.144)."

UNITED NATIONS WAR CRIMES COMMISSION

PRC.157.
Nov.26th,1945.

"THE BATHURST REPORT"

(Taken from the American Journal of International Law)

(July,1945 issue)

On January 13, 1942, an Inter-Allied Conference met in London at St. James's Palace, which had been placed at its disposal by the Government of the United Kingdom. It was the first conference to be convened on the initiative of the Allied Governments established in the United Kingdom. Its purpose, in the words of Mr. Anthony Eden, Secretary of State for Foreign Affairs of the United Kingdom, was "to make plain the attitude of these Governments to the cruel and tragic events taking place in their countries".

Those taking part in the Conference were the delegates of the Governments of Belgium, Czechoslovakia, Free France, Greece, Luxembourg, the Netherlands, Norway, Poland and Yugoslavia. Representatives of Great Britain, Australia, Canada, India, New Zealand, the Union of South Africa, the United States of America, the Union of Soviet Socialist Republics and China, were present as guests at the Conference table. After a speech of welcome by Mr. Eden, and speeches by the delegates representing the Allied countries under enemy occupation, these delegates signed a Joint Declaration on Punishment for War Crimes which read as follows:

"The undersigned representing the Government of Belgium, the Government of Czechoslovakia, the Free French National Committee, the Government of Greece, the Government of Luxembourg, the Government of the Netherlands, the Government of Norway, the Government of Poland and the Government of Yugoslavia:

Whereas Germany, since the beginning of the present conflict, which arose out of her policy of aggression, has instituted in the occupied countries a regime of terror characterized among other things by imprisonments, mass expulsions, the execution of hostages, and massacres,

And whereas these acts of violence are being similarly committed

/by.....

by the Allies and Associates of the Reich and, in certain countries, by the accomplices of the occupying Power,

And whereas international solidarity is necessary in order to avoid the repression of these acts of violence simply by acts of vengeance on the part of the general public, and in order to satisfy the sense of justice of the civilized world,

Recalling that international law, and in particular the Convention signed at the Hague in 1907 regarding the laws and customs of land warfare, do not permit belligerents in occupied countries to commit acts of violence against civilians, to disregard the laws in force, or to overthrow national institutions,

- (1) affirm that acts of violence thus inflicted upon the civilian populations have nothing in common with the conceptions of an act of war or of a political crime as understood by civilized nations.
- (2) take note of the declarations made in this respect on October 25, 1941, by the President of the United States of America and by the British Prime Minister,
- (3) place among their principal war aims the punishment through the channel of organized justice, of those guilty of or responsible for these crimes, whether they have ordered them, perpetrated them, or participated in them,
- (4) resolve to see to it, in a spirit of international solidarity, that (a) those guilty or responsible, whatever their nationality, are sought out, handed over to justice and judged, and (b) that the sentences pronounced are carried out.

In the declaration referred to in Paragraph (2) above, the President of the United States had condemned the practise of executing innocent hostages and had pointed out that frightfulness sowed the seeds of hatred which would one day bring fearful retribution. Mr. Winston Churchill, associating himself with the President's sentiments, had announced that retribution for such crimes "must henceforward take its place among the major purposes of the war".

That a similar attitude was adopted by the Soviet Union was implied in the Molotov note of January 6th, 1942, which indicated that

/German...

German atrocities were being registered. A third note, dated April 27th, 1942, announced that retribution would be exacted.

The Chinese Government accepted the principles laid down in the Declaration of the Allied Governments in a note dated January, 9th, 1942. The Soviet Government subscribed to them on October 14th, 1942, when replying to a note verbal dated July 23rd, from the Governments of the nine Allied Countries under enemy occupation.

On August 21st, 1942, the late President Roosevelt referred to the Joint Declaration in a statement which concluded with the words:

"The United Nations are going to win this war. When victory has been achieved, it is the purpose of the Government of the United States, as I know it is the purpose of each of the United Nations, to make appropriate use of the information and evidence in respect to these barbaric crimes of the invaders, in Europe and in Asia. It seems only fair that they should have this warning that the time will come when they shall have to stand in courts of law in the very countries which they are now oppressing and answer for their acts".

Mr. Winston Churchill, on September 8th, 1942, identified the Government of the United Kingdom and the House of Commons with President Roosevelt's words.

/On...

On October 7th, 1942, the punishment of war crimes was the subject of a debate in the House of Lords. It was introduced by Viscount Maughan, who analyzed the problem and described the position after the first World War.

In the course of the debate, the Lord Chancellor, Viscount Simon, announced, on behalf of His Majesty's Government in the United Kingdom that it was proposed to set up with the least possible delay a United Nations Commission for the Investigation of War Crimes. This decision, he said, had been taken after careful study of the subject and close communication with others of the United Nations.

Lord Simon reminded the House of the difficulty experienced by lawyers in endeavouring to establish the weight and accuracy of a piece of testimony when that testimony had become stale and muddled by the passage of a long time before it was recorded. He told the House that President Roosevelt was issuing a corresponding statement in Washington ^{that afternoon.} He added that the proposal had the joint support of the Governments of the two countries and had been communicated to the other United Nations directly concerned, including the Soviet Union and China, the Dominions and India, and the Fighting French. Replies had already been received from the Allied Governments established in London and from the French National Committee warmly approving and adopting the proposal.

To prevent any misunderstanding and to take away any possible excuse for misrepresentation in enemy quarters, Lord Simon emphasized that the aim was not to undertake or encourage mass executions but to fix the crimes upon those enemy individuals who were proved to be responsible, whether as ring-leaders or as actual perpetrators, for atrocities which violated every tenet of humanity and had involved the murder of tens of thousands of innocent persons.

/Lord Simon...

Lord Simon said that a great deal of attention had been given to the **very** difficult question of the steps to be taken for the production of persons accused. The Treaty of Versailles had failed to secure the effective punishment of the principal criminals after the first World War, partly because provision for the purpose was only contained in the final Treaty of Peace negotiated and signed in June 1919, months after the Armistice. This time it was proposed that named criminals wanted for war crimes should be handed over at the time of and as a condition of the Armistice with the right to require the delivery of others as soon as the supplementary investigations were complete.

In announcing on the same day that the United States Government would cooperate in setting up a United Nations Commission, President Roosevelt declared it to be the intention of the Government of the United States that the successful close of the war should include provision for the surrender of war criminals to the United Nations.

On December 17, 1942, a Declaration was made simultaneously in London, Moscow, and Washington in connection with reports that the German authorities were engaged in exterminating the Jewish people in Europe. In this Declaration, the Governments of Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, the United States of America, the United Kingdom, the Soviet Union, Yugoslavia, and the French National Committee reaffirmed their solemn resolution that those responsible should not escape retribution and their intention to press on with the necessary practical measures to that end.

Some months later, on October 20, 1943, the Commission was brought into being, under the title United Nations War Crimes Commission, at a meeting of Government representatives at the Foreign Office in London.

The Commission was set up to investigate war crimes. In a recent debate in the House of Lords (March 20, 1945), the Lord Chancellor (Lord Simon) said that he regarded the question of dealing with war criminals as something very much more than mere retaliation.

/Justice..

Justice, he said, was the basis of a free life. Civilisation could not advance unless everybody was enabled to feel that the law was strong enough to protect him from hideous wrong. It was absolutely essential to combine to strengthen international law, and no single contribution was more likely to strengthen and put in their proper shape the world-wide rules of right and wrong than that the war criminals should be dealt with on the basis that those who were guilty would be swiftly and justly punished.

The Commission consists of sixteen members - the representatives of the Governments of Australia, Canada, China, Czechoslovakia, France, Belgium, Greece, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, the United Kingdom, the United States of America, and Yugoslavia. These representatives are all distinguished lawyers and diplomatists.

The first Chairman was the United Kingdom representative, Sir Cecil Hurst, Vice-President of the Permanent Court of International Justice, formerly Legal Adviser to the Foreign Office. After his resignation on account of ill health he was succeeded as chairman by Lord Wright, Lord of Appeal in Ordinary, who represents Australia on the Commission. Lord Wright has been Chairman since January 31st, 1945.

The Commission is primarily a fact-finding body, but it has also advisory functions.

Its terms of reference were strictly defined in the Lord Chancellor's statement of October 7th, 1942. Its purpose, he said, is to investigate war crimes committed against nationals of the United Nations, recording the testimony available, and to report from time to time to the Governments of those nations cases in which such crimes appear to have been committed, naming and identifying wherever possible the persons responsible.

After its creation, the Commission was entrusted with advisory functions, namely, to make recommendations to the Governments on the methods to be adopted to ensure the surrender or capture of the persons wanted for trial as war criminals and on the tribunals by which they should be tried.

/Early...

Early in its work the Commission urgently recommended to each of the member nations to establish national war crimes offices to investigate war crimes against the citizens or subjects of their own countries. Each has now a war crimes office which detects, investigates, and records evidence of war crimes. The national offices receive their information from members of their armed forces, refugees, and other sources. The information is checked and collated as far as possible. When a national office feels that a case is reasonably complete it forwards a summary of it to the United Nations War Crimes Commission or its Sub-Commission in the Far East which examines the information and materials.

These bodies, if they believe a war crime has been committed and that the information shows that there is, or will be at the time of trial, sufficient evidence to justify a prosecution, place the name or description of the individual upon their lists.

Under the above system the Commission performs a limited function. The actual investigation, including the detection of crime, interviewing of witnesses, and preparation of cases, is done by the official agencies best suited to conduct investigations within the national boundaries and according to the laws of each country. It is thus unnecessary for an international commission to assume the official police duties of each of the nations and attempt to operate within the jurisdiction of each country.

After lists of war criminals have been prepared and transmitted to the Governments concerned, they are furnished to the apprehending authorities, at present the Military authorities, in order that the persons named may be apprehended and turned over to the proper nation for trial.

The Commission has three committees.

The Committee on Facts and Evidence performs fact-finding functions, examining the evidence in its possession mainly in the light of three questions:

questions:

- (i) Do the charges disclose the existence of a war crime or crimes?
- (ii) Is there sufficient material to identify the alleged offender?
- (iii) Is there good reason to assume that, if put on trial, the alleged offender would be convicted?

Detection and investigation of war crimes were hampered while countries were still occupied by the enemy. Evidence was difficult to obtain and secrecy had to be maintained to prevent alleged offenders from trying to escape and to avoid reprisals on persons in enemy hands or on the families of members of the Commission in occupied territory. For this reason the Commission received only a limited amount of information at first, but a far greater amount has since been submitted.

The Committee on Enforcement and the Committee on Legal Questions are purely advisory. They report their findings to the Commission, which advises member Governments accordingly.

In May, 1944, steps were taken to set up a Sub-Commission or branch of the main Commission at Chungking. It is composed of representatives of Australia, Belgium, China, Czechoslovakia, France, India, Luxembourg, the Netherlands, Poland, the United Kingdom, and the United States. Its Chairman is the Chinese representative, Dr. Wang Chung-Hui, Secretary General of the Supreme National Defense Council. It is examining information against Japanese war criminals and preparing lists for forwarding to all the participating nations.

The main Commission in London is not precluded from receiving evidence of war crimes in the Far East from other channels, and it has considered a number of charges against Japanese.

The Soviet Union is not a member of the War Crimes Commission, but has set up a Commission of its own - the Russian Extraordinary State Commission. Both Commissions are working with the same end in view, and in an interview, on his election as Chairman of the United Nations War Crimes...

Crimes Commission, Lord Wright said that close cooperation between the two commissions was eminently desirable. In his opinion their approaches to the common problem are not radically different.

Members of the Commission have visited the Buchenwald Concentration Camp, at General Eisenhower's invitation. The Commission has also conferred with representatives of the military authorities engaged in the arrest and identification of war criminals in the European theatres of war as well as with United States Congressmen who visited various concentration camps.

As a result of an invitation from the military authorities in Germany, the Commission arranged for certain European Governments to send war crimes investigation officers to Germany. These officers assist the military authorities in collecting evidence of war crimes in the concentration camps and elsewhere.

M. E. BATHURST

First Secretary and Legal Adviser, British Embassy, Washington, D.C.

SECRET

C. 158
8th December, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

Request by CROWCASS for Information on
the Passing of Sentences by Military Tribunals

The following letter has been received from the Director of CROWCASS and is circulated to you, in preparation for the discussion to be held at the meeting of the Commission, on December 12th:

16th November, 1945.

"Dear Lord Wright,

Up to the present time this office has not received any information as to War Criminals upon whom sentences have been passed by Military Tribunals.

As an endorsement to this office is the final object of this organisation it will be appreciated that only by speedy notification of sentences passed can the efficiency of our records be maintained.

It is therefore requested that contact be made with the various members of your Commission requesting them to inform this office of all War Criminals upon whom sentences have already been passed, or are passed in future by Courts of their various countries.

(signed) Geo G. ELMS

Colonel U.S.A.
Director "

C.159
December 10th, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

EXTRACT FROM A BROADCAST BY THE
NETHERLANDS PRIME MINISTER.

Corrected text by the Netherlands Press
Agency, Anep-Aneta Bulletin Vol.18, No.50

The Hague, November 23rd

Broadcasting the weekly Government chat "On the Bridge," the Dutch Prime Minister, Mr. Schermerhorn, spoke tonight on the subject "the tracing and bringing to trial of war criminals."

"For the first time in the history of the world," he said, "the leaders of the vanquished enemy are not killed in revenge, but the entire record of the actions of the responsible persons is drawn up and a sober judgment is pronounced. . . ."

United Nations Justice

"The trials of the war criminals are based on the promise that there is a sense of justice in the United Nations, a sense of justice which is perhaps faintly reflected in some far corners of Germany. This sense is not yet sharply defined and written international law is still in its first stages of development.

"You will know that during the Peace Congress of 1907, held at The Hague, a number of rules were laid down which were intended to see to it that war would not cause more misery than was strictly necessary.

"These rules were also designed to protect the civilian population against needless suffering. In the so-called 'regulations governing warfare on land' it was prescribed what was, and what was not, allowed, and a number of paragraphs dealt in particular with what an occupant was allowed to do with regard to the population of the occupied country.

"You have experienced how the Germans interpreted this agreement, which they signed and ratified. The people who were responsible for this and those who indulged in these evil practices are called war criminals."

Mr. Schermerhorn recalled the meeting at St. James's Palace, London, in January, 1942, at which it was decided that the bringing to trial of war criminals was one of the most important objectives of the war.

The Netherlands, he said, was a signatory to this agreement and thereby undertook certain obligations. He then turned to the organisation of the United Nations' War Crimes Commission. He explained the differences between major war criminals, the people whose actions could not be said to have been perpetrated at a specific place, and the minor war criminals who, it had been agreed in Moscow, would be brought to trial in the country where they had perpetrated their deeds.

An International Duty

Holland had an international duty, but said the Premier "Quite apart from this duty it is one of the fundamental demands of justice that those who, in cold blood, murdered hundreds, even thousands

of our compatriots should be punished at the place where they committed their atrocities.

"It must be made clear to these people that war is not a profitable business. I am convinced that in many a German heart humiliation will be felt because of these trials and that anger will be caused but, without a doubt, there will be others whose eyes will be opened for the first time when reading or hearing the accusation levelled against them."

In reviewing the murderous activities of the occupant Mr. Schermerhorn mentioned the atrocities of Vught and Putten, the murdering of the Jews, and the fact that 50,000 people died of hunger during the 1944-45 winter, because the occupant looted the food stocks and forbade food to be transported to the west by way of the Zuiderzee.

Netherlands Commission

Discussing the organisation, which had been set up, the Premier said: "We have a Commission for War Crimes. That is the central authority, and sub-commissions have been set up in all the provincial capitals and also at Amsterdam and Rotterdam.

"The Burgomasters will announce to the people where they can make known specific acts of war crime.

"If you have been a witness of a crime perpetrated by a German, go to your Burgomaster and your testimony will be taken."

Note by the Netherlands Representative:
Actually the population is asked to hand in their information to the local police - authorities; who will send it on to the sub-committees for screening. Investigation Officers then visit the witnesses to take the affidavits.

Crimes Must Be Punished

The Premier concluded:-

"Humanity must, once and for all be shown that this monstrous misuse of power, this trampling upon all conceptions of civilisation and humanity, cannot be allowed to go unpunished.

"The Germans imagined that they could do what they liked, because, after the previous war, the crimes perpetrated then were left unpunished. If this time an example is made it may serve to prevent recurrence.

It is not our own feeling of justice alone that demands that we help in this gigantic task, but it is also our obligation towards our Allies."

SECRET

C.160
13th December 1945.

UNITED NATIONS WAR CRIMES COMMISSION

Trial of certain persons accused of
committing war crimes at Flossenber
and Mauthausen concentration camps.

The following letter dated December 12th, 1945 received
from Colonel Hodgson, United States Commissioner on the
United Nations War Crimes Commission is circulated to you
for your information.

"I have been informed that the United States
military authorities in Germany are examining the
evidence and preparing for the trial of certain
persons accused of committing war crimes at
Flossenber concentration camp and Mauthausen
concentration camp. While no dates have been
fixed for the trial of these cases, it is probable
that the cases will be tried in the near future.

This information may be of interest to the
Commission."

SECRET

C.161
18th December, 1845.

UNITED NATIONS WAR CRIMES COMMISSION

Questionnaire compiled by Professor Gros regarding
the constitution and activities of
C.R.O.W.C...S.S.

(Translation)

For use at meeting of December 19th, 1945
when a representative of CROWCASS will be present.

1. What is the present constitution of CROWCASS?
To what body is CROWCASS responsible?
2. More than 600 Wanted Reports have been sent to CROWCASS by the Belgian National Office and only one reply returned. More than 3000 Wanted Reports have been submitted by the French and about 150 replies received. Why?
3. How many lists have been compiled and what do they contain? On what information are the lists of "Suspected War Criminals" and "Detained War Criminals" based?
4. What use is made of the reports drawn up by the National Offices? (Especially in the case of a National Office notifying that a German unit is suspected of a Collective crime)
5. At what rate is the information concerning suspects recorded on the index cards?
6. What are the various sources from which information regarding suspects is obtained?
7. When prisoners are transferred from one camp to another, does CROWCASS inform the nations concerned?
8. The purpose of the Governments of the United Nations is to find hundreds of thousands of war criminals from among the seven million prisoners of war and demobilised Germans, already released in Germany. What suggestions are put forward with a view to improving CROWCASS' participation in this task?

SECRET

C.161
18th December, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

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8. The purpose of the Governments of the United Nations is to find hundreds of thousands of war criminals from among the seven million prisoners of war and demobilised Germans, already released in Germany. What suggestions are put forward with a view to improving CROWCASS' participation in this task?

SECRET.

C.162
19th December 1945

UNITED NATIONS WAR CRIMES COMMISSION

Questionnaire compiled by Lord Wright regarding the
constitution and activities of
C.R.O.W.C.A.S.S.

1. How many Wanted lists have been issued and distributed?
2. How many Detained lists " " " " "
3. What are the total number of wanted persons?
4. What are the total number of detained persons?
5. How many enquiries have been received from each National authority and how many satisfactorily answered?
6. Is the registration of Prisoners of War complete?
7. How many war criminals have been located as the result of this registration?
8. What are the principal difficulties which are being encountered?
9. What authority is required for the handing over of war criminals to the Allied Government concerned?
10. By what Allied authority is the registry controlled?

SECRET.

C.163.
1st January, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Delivery of Alleged War Criminals and Witnesses.
Directive issued by H.Q. U.S. Forces European Theatre.

With reference to the discussion in the Commission on Dec. 19th concerning the delivery of War Criminals wanted for trial attention is again drawn to document AG-000.5 GAP-AGO. which was received from the United States Commissioner on 6th October 1945. It was decided at that time (see Minutes of the 81st Session) that the document should be kept in the Secretariat for consultation by Members. In view of the importance of the matter it is now circulated herewith as a Commission Document.

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R E S T R I C T E D

HEADQUARTERS
U.S. FORCES, EUROPEAN THEATER

AG 000.5 GAP-AGO.

(Main) APO 757
13 September 1945.

SUBJECT: Delivery to Other United Nations and Italy of Persons Accused of War Crimes and of Witnesses and Evidence Required in the Trial of War Crimes.

TO : Theater Judge Advocate, Headquarters, U.S. Forces, European Theater.

1. a. You are authorized to act for the Commanding General, U.S. Forces, European Theater/Military Governor, United States Zone, Germany:

- (1) For the delivery of persons in the U.S. zone wanted for trial for war crimes;
- (2) For the delivery of persons in the U.S. zone desired as witnesses in the trial of war crimes, or the taking of depositions of such persons;
- (3) For the delivery of evidentiary material in the U.S. zone for use in such trials.

b. Incident to such authority, you may issue instructions and take action as may be necessary, in the name of the Commanding General, U.S. Forces, European Theater/Military Governor, United States Zone, Germany, relative to the apprehension and delivery of persons, the taking and delivery of depositions, and the collection, copying, photographing and delivery of evidentiary materials.

2. In proper cases, in accordance with apposite directives, you will grant requests for delivery of persons wanted for trial for war crimes. In cases involving persons who have held high political, civil or military position in Germany or in one of its allies, cobelligerents, or satellites, persons requested by two or more nations, or political or other unusual considerations, you will clear the requests with the Legal Division, U.S. Group Control Council, Germany. You will be responsible for such consultation with, or examination of the records of, the United Nations War Crimes Commission, The War Crimes Office in the Office of the Judge Advocate General, the Central Registry of War Criminals and Security Suspects, the Evidence and Investigation Centers and foreign liaison officers therewith, the Central War Crimes Library, the Assistant Chief of Staff, G-2, U.S. Forces, European Theater, and the War Crimes Branch of your office, as may be required or desirable in each case. The Legal Division, U.S. Group Control Council, Germany, will be responsible for any consultation or clearance with the Political Adviser and Director of Intelligence, U.S. Group Control Council, Germany, the United States Chief of Counsel, The Joint Chiefs of Staff, and the Control Council for Germany or its quadripartite agencies which may be required or desirable in each case.

3. Requests for the delivery of persons desired as witnesses may be granted in accordance with apposite directives or, in their absence, upon principles consistent with those governing the delivery of persons wanted for trial for war crimes. Responsibility for consultation or clearance with other agencies will be as prescribed in the case of persons wanted for trial for war crimes.

- 3 -

RESTRICTED

AG 000.5 GAP-AGO

13th September, 1945.

4. You may grant requests for the taking of depositions and for the delivery of evidentiary material upon such conditions as you consider adequate to protect the interests of the United States. In cases involving political or other unusual considerations and in other cases where you deem it desirable, you will consult with the Legal Division, U.S. Group Control Council, Germany, before acting.

5. You will normally require foreign requests to comply substantially with the forms prescribed by this headquarters.

BY COMMAND OF GENERAL EISENHOWER:

Sgd..... R.B. LOVETT
Brigadier General, USA
Adjutant General.

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R E S T R I C T E D

HEADQUARTERS
U.S. FORCES, EUROPEAN THEATER.

AG 000.5 GAP-AGO.

(Main) APO 757
13 September, 1945.

SUBJECT: Delivery to Other United Nations and Italy of Alleged War
Criminals and of Witnesses and Evidentiary Material Required
in the Trial of War Crimes.

TO : Commanding Generals:
U.S. Forces, Austria
U.S. Air Forces in Europe
Theater Service Forces, European Theater
Each Military District
Berlin District

1. Request may be made to the Military Governor, U.S. zone,
Germany, by the authorized representatives of the governments of other
United Nations and Italy:

a. For the delivery of persons in the U.S. zone wanted for
trial for war crimes;

b. For the delivery of persons in the U.S. zone desired as
witnesses in the trial of war crimes, or the taking of depositions of
such persons;

c. For the delivery of evidentiary material in the U.S. zone
for use in such trials.

2. Appropriate blank forms for requests are inclosed.

3. Upon receipt, requests will be routed to the Theater Judge
Advocate. Consideration will be given in each case to determine whether,
in accord with existing directives, the request may properly be granted.
The government which made the request will be informed of action taken.

BY COMMAND OF GENERAL EISENHOWER:

Sgd .. R.B. LOVETT
brigadier General, USA.
Adjutant General.

4 Incls:

1. Request for Delivery of a Person Desired for Trial
2. Request for Delivery of a Person Desired as a Witness
3. Request for Taking of Deposition
4. Request for Delivery of Evidence

REQUEST FOR DELIVERY OF A PERSON
DESIRED FOR TRIAL FOR A WAR CRIME.

Place

Date

To the Military Governor,
United States Zone, Germany.

I, being the authorized representative of the Government of _____ request on behalf of my government that _____, who is believed to be at (give exact location) _____, Germany, be delivered to _____ at _____ for trial for the herinafter described offense.

My government has evidence that the person requested did, at _____ on or about _____, 19 __, commit the following war crime. (Here give a concise description of the acts which constitute the war crime.)

Nationality of person requested:
Nationality of victim:

My government agrees that if the person is not tried and convicted within six months from the date he is so delivered, he will be returned upon request. It is understood that other conditions may be imposed by the Military Governor, United States Zone, upon the delivery of the person requested. If my government accepts delivery subject to such conditions, it agrees to abide by them.

(Name) _____

(Title) _____

Description of person desired will be entered upon the attached
SHAFF-CROWCASS "Wanted Report" Form. *

* "Wanted Report" Form is not being circulated.

INCL. 1.

REQUEST FOR DELIVERY OF A PERSON DESIRED AS
A WITNESS IN A TRIAL FOR A WAR CRIME.

Place.

Date.

To the Military Governor,
United States Zone, Germany.

I, being the authorized representative of the Government of _____, request on behalf of my government that _____, who is believed to be at (give exact location) _____, Germany, be delivered to _____, at _____ on or about _____, 19____, for the purpose of testifying as a witness at the trial herein-after described.

The accused in the trial is/are

who is/are charged with having, at _____, on or about _____, 19____, committed the following war crime (here give a concise description of the acts which constitute the war crime):

Nationality of the accused:
Nationality of the victim:
Nationality of the witness:

My government has good reason to believe that the person requested is a material witness in the case described above.

The deposition of the requested person will not suffice because

My government agrees to treat the person requested humanely, to protect him against acts of violence, insult and public curiosity, to provide him with transportation, quarters and food equal to that furnished its own troops, and to return him promptly upon the completion or abandonment of the trial for which he is desired as a witness, or sooner upon request.

(Name) _____

(Title) _____

Description of person desired will be entered upon the attached SHAEF-CROWCASS "Wanted Report" Form.*

*Wanted report Form is not being circulated.

INCL.2.

REQUEST FOR TAKING OF A DEPOSITION FOR USE
IN A TRIAL FOR A WAR CRIME.

Place

Date

To the Military Governor,
United States Zone, Germany.

I, being the authorized representative of the Government
of _____, request on behalf of
my government that you cause to be taken upon the attached interrogatories,
which are written in the English language, and delivered to me the
deposition of _____,
who is believed to be at (give exact location) _____
_____ for use as evidence in the following case.

The accused in the case is/are

who is/are charged with having, at _____,
on or about _____, 19____, committed the following
war crime (here give a concise description of the acts which constitute the
war crime):

Nationality of the accused:
Nationality of the victim:
Nationality of the person whose deposition is requested:

(Name) _____

(Title) _____

Description of person whose deposition is desired will be entered upon the
attached SIMEF-CRONCLASS "Wanted Report" Form. *

* Wanted Report Form is not being circulated.

INCL 3.

REQUEST FOR DELIVERY OF EVIDENCE FOR USE
IN A TRIAL FOR A WAR CRIME.

Place.

Date.

To the Military Governor,
United States Zone, Germany.

I, being the authorized representative of the Government of _____, request on behalf of my government that the evidentiary material listed below (or copies or photographs thereof) be delivered to _____ at _____ for use as evidence in a trial to be held at _____ on or about _____, 19____.

The accused in the trial is/are

who is/are charged with having, at _____, on or about _____, 19____, committed the following war crime (here give a concise description of the acts which constitute the war crime):

Nationality of the accused:
Nationality of the victim:

My government agrees to return such material, if requested, upon completion or abandonment of the trial or sooner if demanded.

(Name) _____

(Title) _____

Evidence requested (specify whether a copy or photograph will suffice or whether the original document or actual evidence is required):

INCL 4.

SECRET.

C.164.
2nd January, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Extradition of War Criminals.

The following letters, dated 15th and 21st December, 1945, which have been addressed to the Chairman by Monsieur de Baer and Colonel Hodgson respectively, are circulated to members of the Commission for their information:-

1. Monsieur de Baer's letter:

"I am writing to pass you the information which I have received from Brussels concerning the extradition of war criminals.

Our military liaison mission with the British forces has already put in demands for the extradition of 47 war criminals, one of whom has been handed over. I am not certain of the exact figures of the requests for extradition which have been made by our liaison officer with the American forces, but I have heard that 9 criminals have already been handed over by the U.S. authorities to Belgian justice."

2. Colonel Hodgson's letter:-

"With reference to your request for information in respect of the surrender of alleged war criminals in United States custody in Germany to the other Governments, the Deputy Theater Judge Advocate, United States Forces, European Theater, has requested that the following information, compiled as of November 15th, 1945, be transmitted to you.

<u>Nations</u> <u>Requesting.</u>	<u>Number of</u> <u>Requests by</u> <u>Each Nation.</u>	<u>Number of</u> <u>Individuals</u> <u>Requested by</u> <u>Each Nation.</u>	<u>Number of</u> <u>Individuals</u> <u>Delivered to</u> <u>Each Nation.</u>
a. Great Britain	6	12	0
b. France	7	19	6
c. Belgium.	4.	17	9
d. Yugoslavia	10	41	0
e. Czechoslovakia	18	73	45
f. Poland	1	5	0
g. Hungary	3	45	25
h. Greece	1	1	0
TOTAL	50	213	85

SECRET

C.167.
16th January.1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Constitution and activities of C.R.O. C.C.S.S.

It will be remembered that at the 90th meeting of the Commission, held on 19th December, a discussion was held regarding CROWGLASS, and Major Ryan, of CROWGLASS who attended the meeting at the Commission's request, was asked to submit written replies to the questionnaires compiled as a basis for discussion.

The following answers have now been received and are circulated herewith for your information. The questions (which were circulated as document C.162) are repeated for the sake of easy reference.

Questionnaire compiled by Lord Wright regarding
the constitution and activities of C.R.O. C.C.S.S.

Question 1: How many Wanted lists have been issued and distributed?

Reply: 8 Wanted Lists have been issued and distributed. The first 6 Lists contain both Security Suspects and War Criminals. Lists 7 and 8 are composed of War Criminals and Witnesses to War Crimes only. List No.7 consolidated all Wanted War Criminals previously included in Lists 1 to 6 inclusive.

Question 2: How many Detained lists have been issued and distributed?

Reply: 4 Detained Lists have been issued and distributed. List No.4 has not been entirely distributed.

Question 3: What are the total number of wanted persons?

Reply: There are a total number of 62,812 Wanted persons. Of this number 21,474 are wanted for War Crimes or as witnesses thereto. It is believed there are many Wanted persons held by various countries of which we have no record due to failure in furnishing CROWGLASS with Detention Reports.

Question 4: What are the total numbers of detained persons?

Reply: CROWGLASS has 27,000 Detention Reports.

Question: 5: How many enquiries have been received from each National authority and how many satisfactorily answered?

Reply: This question cannot be answered as statistics thereon are not available. There is attached hereto a breakdown of Wanted Lists 7 and 8 showing numbers of War Criminals wanted by each country (See Annex).

Question 6: Is the registration of Prisoners of War complete?

Reply: No.

Question 7: How many war criminals have been located as the result of this registration?

Reply: Practically none.

Question 8: What are the principal difficulties which are being encountered?

Reply:

- a) Lack of a permanent controlling body which hinders improvement of present methods and facilities.
- b) Failure of those concerned to submit Detention Reports when wanted are located. Countries most persistent in demanding results are usually the ones most delinquent in submitting information.
- c) Lack of proper housing accommodations.

Question 9: What authority is required for the handing over of war criminals to the Allied Government concerned?

Reply: CROWCASS has no authority in the matter of the transfer of War Criminals between the Allied Government.

Question 10: By what Allied authority is the registry controlled?

Reply: CROWCASS is presently controlled by joint authority of USPFI and BAOR.

ANNEX.

STATISTICS OF WANTED LIST NO. 7
(War Criminals and Witnesses)

TOTAL NUMBER 16,757

WANTED BY COUNTRIES.....

US (U.S. G-2)	6,986
FR	5,082
U.K. (BR)	2,283
BEL	482
POL	407
CZE	366
NOR	324
YUG	304
UNWCO	267
HOL (NETH)	88
CAN	76
RUSSIA	38
ITALY	4
MISC	39
GREECE	13

* Some wanted by two countries - 16,759

STATISTICS OF WANTED LIST NO. 8
(War Criminals and Witnesses)

TOTAL NUMBER 4,271

WANTED BY COUNTRIES

US (U.S. G-2)	1,097
FR	1,671
U.K. (BR)	492
BEL	204
POL	277
CZE	310
NOR	74
YUG	148
UNWCO	108
HOL (NETH)	12
CAN	11
RUSSIA	2
ITALY	5
GREECE	1
LUX	2

* Some wanted by several countries - 4,217

SECRET

C.166
12th January, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Trial of persons accused of committing
war crimes in the Flossenburg and Mauthausen
concentration camps.

The following letter has been received from Colonel
Hodgson and is circulated to you for information and appropriate
action:-

"5th January, 1946.

Dear Colonel Ledingham,

On December 12, 1945 I informed you that the United
States Military Authorities in Germany were preparing for the
trials of certain persons accused of committing war crimes in
the Flossenburg and Mauthausen concentration camps. This
information was circulated to the members of the Commission
in Commission Document No. 160, dated December 13, 1945.

Yesterday, I received from the Deputy Theater Judge
Advocate in charge of the United States Army's War Crimes
Branch at Wiesbaden, the following letter, dated 22 December
1945, with reference to this subject:

"1. The Mauthausen and Flossenburg concentration
camp cases involving the murder and mistreatment of
nationals of many of the Allied nations are now
being prepared for trial.

2. To expedite the trial of the perpetrators
in these cases the Branch is seeking all available
information relating thereto and it is accordingly
requested that you, as a member of the United Nations War
Crimes Commission, ask all the United Nations
affiliated with your commission who may have in
their possession evidence pertaining to the above
cases to forward as soon as practicable the same to

The Deputy Theater Judge Advocate,
War Crimes Branch, U.S. Army,
APO 633, U. S. ARMY."

Sincerely yours,

Sgt. JOSEPH V. HODGSON,
Colonel, JAGC. "

SECRET

C.165
5th January 1946

UNITED NATIONS WAR CRIMES COMMISSION

Disposal of Documentation collected
for the Nuremberg Trial

The following correspondence is circulated to members for their information:

Letter from the Chairman to the Foreign Ministers of the United States of America, France and the United Kingdom, dated November 12th.

"The United Nations War Crimes Commission understands that, in preparation for the trial of major war criminals at Nuremberg, a very large quantity of documents bearing on war crimes has been collected by the Governments of the Occupying Powers. While a proportion of these documents will be used in the course of the trial, and will thus become public property, there will remain a large quantity of material which may be of the utmost value not only as evidence for the prosecution of other war criminals by the national courts, but also as material for the preparation of a permanent historical record of German war crimes.

The terms of reference of the United Nations War Crimes Commission, as adopted by the Conference of the United Nations, held in London on October 26th, 1943, instructed the Commission both to investigate and to "record", and "report to the Governments" upon war crimes. In view of the obvious importance of such a record being as complete as possible, the Commission have requested me to enquire whether the Governments responsible for the collection of the documents referred to in paragraph 1 would be prepared to make available to the Commission such of them as have direct bearing on war crimes and, if so, what methods would be considered most appropriate for the custody and investigation of the material after the Nuremberg trial has been concluded. The Commission are particularly anxious that a decision on this matter may be taken before this very valuable material is again dispersed or removed to official archives elsewhere so that the matter is, of course, urgent.

It would be equally important for the Commission to obtain access in due course to documents dealing with war crimes assembled at other centres in the European Theatre and I trust that this question may also be taken into consideration at the same time.

A letter in identical terms is being addressed to the Governments of the two other Occupying Powers who are represented on the Commission."

Letter from the Chairman to the Chief Prosecutors at Nuremberg, of the United States, the Soviet Socialist Republics, France and the United Kingdom, dated November 12th.

"The United Nations War Crimes Commission are anxious for information as to what action is proposed for the disposal of the large quantity of documents directly bearing on war crimes which have been collected at Nuremberg, after they have ceased to be required for the trials of the major war criminals.

On behalf of the Commission, I have written to the British, French and United States Governments, pointing out that much of this material will be of value both for the prosecution of other war criminals and for the preparation of a permanent historical record of war crimes, a task which was specially imposed on the Commission by its terms of reference. We are anxious that a decision on this matter may be taken before this very useful material is again dispersed or removed to official archives elsewhere.

While this matter is under consideration by the Governments concerned, I would be particularly grateful if you would let me know, for the information of the Commission, whether the Chief Prosecuting Counsel have any plans for the disposal of this mass of documents after the Nuremberg trial has been concluded. I should greatly appreciate an early reply.

I am addressing a letter in similar terms to the other Chief Prosecuting Counsel at Nuremberg."

Reply received from Mr. Bevin, Secretary of State for Foreign Affairs of the United Kingdom, dated 13th December:

"I have given careful consideration to your letter of 12th November about the interest of the United Nations War Crimes Commission in the documents which have been collected by the Governments of the Powers occupying Germany. I fully appreciate the interest of the Commission in having access to such of these documents as would assist them in preparing a record of war crimes. I am, however, in certain difficulty in replying to your request. In the first place there are very few of these documents which are in the sole possession of His Majesty's Government. The greater part of them were discovered in the American Zone and, though we have an arrangement with the United States Government under which we share the use of them, decisions as to their disposal do not lie with us alone. Secondly, the definition of a war crime under the Nuremberg indictment is so wide as to cover a large part of German external and internal policy. It would not therefore be easy to select those particular documents which have a direct bearing on war crimes. I am also inclined to think that in making a particular collection of documents dealing with war crimes in the narrow sense, there might be a danger of concentrating public attention on what is only one part of Germany's nefarious activities over recent years.

My provisional view is therefore that the best method of dealing with these documents might be to house them all in a proper research centre from which the U.N.W.C.C. and other historians could draw such material as would interest them.

I propose to consult with the United States Government further on this question and to communicate with you again. But I thought you might like to be made aware of my provisional views."

Reply received from Sir Hartley Shawcross, Chief Prosecuting Counsel for the United Kingdom, dated 13th December.

"As you will know, the letter which you addressed to me on the 12th November in regard to the disposal of documents collected at Nuremberg has been greatly delayed in reaching me since it went out to Nuremberg and eventually followed me back here. I am so sorry that for this reason I have not been able to send you an answer before.

The Chief Prosecutors have not yet made any plans for the disposal of the documents, but I will take an early opportunity of raising the matter with my colleagues. I fully appreciate the importance of retaining documents which may be useful either for other prosecutions or for historical purposes, and will consider how this can best be done."

Reply received from Mr. Justice Jackson, United States Chief of Counsel, dated 7th December, 1945.

"Your letter of November 12th inquiring as to the disposal of documents bearing on war crimes is at hand.

The present plan is that this office, when I resign, will be transferred from its present status as an agency operating directly under the President to one operating under Military Government. In that capacity it will continue to deal with defendants not included in the present trial and with organization membership cases and others. I am assuming that the documents or copies or photostats will remain with the organization until its work is complete. Copies of the documents used in the Nuremberg trial will probably be lodged in the United States with the Library of Congress and I presume the British Delegation will lodge copies of the proceedings in a suitable place with your Government.

I believe plans are underway in the United States for a publication of most of the proceedings of the trial, including a good deal of the documentation. This will promote both the preservation and availability of the material."

Reply received from M. Edgar Faure, French Prosecuting Counsel, dated 12th December, 1945.

"I duly received your letter of 12th November and hasten to inform you that I fully agree to your suggestion concerning the preservation of archives collected at Nuremberg.

I will not fail to communicate this point of view to the other prosecuting counsel whom you have also approached."

Reply received from M. Fouques-Duparc, French Ministry for Foreign Affairs, dated 2nd January 1946.

"You were kind enough to inform me in your letter of 12th November that the United Nations War Crimes Commission wished to make use of the documentation collected by the French authorities in connection with the trials of major war criminals now being held before the international military tribunal at Nuremberg.

- 4 -

I have the honour to state that the French Government attaches the highest importance to the work accomplished by the Commission over which you preside, and that it is prepared to grant every facility within its power to enable the Commission to draw up a general report on war crimes. This task was conferred on the Commission by the decisions taken on 26th October, 1943 at the diplomatic meeting.

I therefore take pleasure in giving you an assurance that the necessary instructions will be given by the competent authorities for the documentation used by the French delegation of the international military tribunal to be made available to the Commission when the Nuremberg trial is over, together with all other similar documents relating to war crimes."

- 4 -

SECRET

C. 168
7th February 1946

UNITED NATIONS WAR CRIMES COMMISSION

Forthcoming trials - British zone

The following arrangements for trials to be held in the British zone ~~are~~ circulated to members and National Offices for their information.

It is hoped to circulate further details regarding the holding of trials as soon as information is received.

Monday, 11th February,
Hamburg.

GRUMFELT - The scuttling of submarines after
surrender.

Friday, 15th February,
Wuppertal.

DREIHALDER CASE - The killing of a number
of Air Force officers.

Monday, 25th February,
Hamburg.

TESCH and OTHERS - Use of poison gas at
Concentration camps. To
follow TESCH, - Neungamme
Concentration Camp - 13 accused
at Hamburg.

SECRET

See MW
C.169
8th February 1946.

UNITED NATIONS WAR CRIMES COMMISSION

INSTRUCTIONS ISSUED BY THE HEADQUARTERS
OF THE AUSTRALIAN MILITARY FORCES REGARD-
ING AUSTRALIAN CONDUCTED TRIALS OF MINOR
JAPANESE WAR CRIMINALS.

(Received from F/O Bridgland)

AUSTRALIAN MILITARY FORCES
(Adjutant-General)

HQ, AMF,
Victoria Barracks,
MELBOURNE, S.C.1.

10 Dec. 45.

Quote in reply
...156501 (336/1/98)

TRIALS OF WAR CRIMINALS

Reference HQ AMF 151625 of 26th November, 1945.

1. Further to the above mentioned instruction, when any War Criminal, who is sentenced to death by a Military Court convened under the War Crimes Act 1945 and whose sentence has been confirmed, is required to give evidence in connection with the trials of other war criminals either by other AMF courts or by allied courts, the sentence will not be executed until such evidence has been given.
2. In such cases the War Criminal concerned will be held in custody and HQ, AMF will be notified. If it is believed that the war criminal is required by some other AMF formation or by an allied country as a material witness action will be taken by this HQ to ascertain whether his evidence is still required and, if so, what further action is necessary.
3. Japanese required as material witnesses are included in lists of suspects and material witnesses prepared by other countries which have been and will be distributed to action addresses by this HQ.
4. It is advised that the first AMF list of suspected War Criminals and material witnesses, who are held in custody by AMF formations, is being prepared and it is expected that it will be distributed to all concerned in the near future.

(sgd) W.D. URQUHART
Brig.
for Major-General
Adjutant General

AUSTRALIAN MILITARY FORCES
(Adjutant-General)

Quote in
reply.....151625

HQ AMF
Victoria Barracks,
MELBOURNE, S.C.I.

26th November, 1945.

TRIALS OF WAR CRIMINALS

AUTHORITY:

1. The trial of Japanese or any person charged with the commission of a war crime by Military Courts is authorized by the War Crimes Act 1945. One copy each of the Act, of the Regulations made thereunder and of Instrument appointing a Board of Enquiry (vide Section 3 of the Act) are attached.

DELEGATIONS:

A

2. Delegations are as promulgated in CAG 207 of 25 Oct 45. Delegations with greater powers are anticipated shortly. A draft delegation to GOC 6 Aust Div has been submitted to the Commonwealth Government.

MILITARY COURTS:

3. Subject to provisions of this instruction, delegates will forthwith convene a military court for the trial of any person charged with the commission of a war crime as soon as the charge or charges against such person are ready for trial. Delegates will convene as many courts as are necessary and practicable to deal with the numbers of persons under charge.

CLASSIFICATION OF WAR CRIMINALS:

4. To facilitate AMF administration, suspected War Criminals will be classified as follows:

- Category A. These suspected of /or charged with the commission of a war crime solely against Australian nationals.
- Category B. These suspected of /or charged with the commission of a war crime against both Australian and Allied nationals. (For the purpose of this instruction the term "Allied" wherever it appears will be interpreted as including members of the British Commonwealth of Nations - other than Australian - and any Power allied or associated with His Majesty in any war as defined in War Crimes Act 1945)
- Category C. These suspected of /or charged with the commission of a war crime solely against Allied nationals.

/Persons...

Persons who are suspected of several offences and are classifiable in two or more of these categories will be classified in the category which corresponds to what is regarded by HQs concerned as the suspects' major offence.

PROCEDURE:

5. The President of each Court will be an AIF officer but with approval of their respective service authorities RAN and RAAF officers may be appointed as members of Courts dealing with offences against RAN and RAAF personnel.

6. Suspects in Category A will be brought to trial before a Court consisting solely of officers of the Australian Defence Forces.

7. Suspects in Category B will be brought to trial before a Court consisting of two officers of the Australian Defence Forces and if practicable members to represent each of the Allied Powers whose nationals have been subjects of the alleged crime.

8. Suspects in Category C will not be brought to trial but will be held in custody pending the following action:

(a) Advice will be furnished to HQ AIF of

- (i) the suspect's personal particulars;
- (ii) any United Nations War Crimes Commission and Theatre Lists in which the suspect's name appears;
- (iii) brief particulars of charge or charges for which evidence is held by the HQs holding the suspect.

(b) HQ AIF on receipt of such advice will communicate through appropriate channels with the Allied Government or HQs concerned to ascertain their wishes as to trial or transfer of the suspect, and will then instruct the HQs holding the suspect.

9. Suggested Forms of Oaths are set out in HQ AIF 149691 of 21 Nov 45 to Adv HQ AIF and HQ First Australian Army.

10. HQ AIF will be advised as soon as practicable of the numbers of Allied Officers required for appointment to Military Courts within your area and when required. Unless you otherwise recommend, it is proposed to request Allied authorities to provide officers of the ranks of Major or Captain for this purpose.

REPORTS etc:

11. As soon as practicable after the date of signing of the sentence or acquittal, as the case may be, a copy of the completed proceedings of each Court will be forwarded by fastest means to HQ AIF with a recommendation as to confirmation or otherwise.

12. In the event of an acquittal on all charges before any court HQ AIF will be advised whether it is intended to proceed with any other charge against the suspect.

13. In the event of a petition being lodged by the accused such
/petition...

petition will be forwarded by fastest means to HQ AIF.

14. Pending the issue of delegations containing power to confirm, all confirmations and decisions on petitions will be communicated by HQ AIF to HQs concerned.

REGISTRATION OF WAR CRIMINALS:

15. It is intended to maintain an Australian War Criminals Register at HQ AIF.

16. All suspected war criminals will therefore be registered by the HQs responsible for their custody. Each suspect will be allotted a number with prefix AWC from the following series -

Adv HQ AIF	AWC 1	--	1999
HQ First Army	AWC 2000	-	3999

AWC numbers will be used in all official correspondence relating to suspected or sentenced war criminals, and endorsed on all documents relating to them.

17. HQ AIF will be furnished with a progressive weekly return up to and including each Saturday, showing the consecutive allocations of AWC numbers and particulars as follows:

AWC No.	Category:
Name and Rank:	
Unit etc:	
Date and Place of Birth:	
Brief particulars of charges:	
Reference to any Allied War Crimes or other similar lists in which this person's name appears.	
(Negatives and one print each of full face and profile will be attached - vide Landforces 6217/AG84321 of 12 Oct, 45)	

If any person is removed from the list of suspects after being registered with an AWC No., HQ AIF will be advised with a brief explanation of the reason why it is not intended to proceed with any charge against the individual.

18. Landforces AG94290 of 23 Nov 45 refers.
Landforces AG80217 of 28 September is hereby cancelled.

(sgd.). W.D. URQUHART
Brigadier.

for Major-General
Adjutant-General.

SECRET

C.170
7th February 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Records of trials of war criminals
held by British Military Courts.

The following letter, dated January 30th, has been received from Sir Robert Craigie, United Kingdom representative on the Commission, and is circulated for your information:

"Dear Lord Wright,

In my letter U 10411/29/73 of 7th January I told you that I had once more brought to the notice of the British Military Authorities the importance which the Commission attaches to the prompt receipt of all records of trials held by British Military Courts.

The military authorities have now informed me that they will be pleased as in the past to let the Commission have a transcript of all cases where a shorthand writer is employed but they regret that they have not the necessary staff to prepare summaries of cases in which no shorthand writer has been present.

The proceedings in all cases of the latter category are lodged with the Judge Advocate General's Department and, as a preliminary, the Judge Advocate General will supply the War Crimes Commission with the following extracts in respect of these cases:-

Name of the accused:

Charge:

Plea, finding and sentence:

Whether confirmed or otherwise and by whom confirmed:

Date of carrying out of sentence of death, where appropriate:

Names of President and Members of the Court, including

Legal Member.

If on receipt of these particulars the Commission consider that any case is worthy of particular attention the Judge Advocate General's Department will be prepared to lend the Commission their own copy of the proceedings for perusal and return in order that the necessary notes can be made by the officials of the Commission.

I hope that these arrangements will facilitate the important task of the Secretariat in preparing records of trials of war criminals."

SECRET

UNITED NATIONS WAR CRIMES COMMISSION

C. 171.
February 7th, 1946.

MEMORANDUM ON THE VISIT OF THE SECRETARY, GENERAL
TO THE
BRITISH, AMERICAN AND FRENCH ZONES OF OCCUPATION IN GERMANY,
TO THE FRENCH AND BELGIAN NATIONAL OFFICES AND TO CROWCASS,
PARIS 14th-27th JANUARY AS REPORTED AT THE MEETING OF THE
COMMISSION ON 6th FEBRUARY 1946.

BRITISH ZONE, 14th to 16th January 1946

1047 Wanted Reports have been sent to CROWCASS - No results.

21603 Detained Reports have been sent to CROWCASS, of which 1614 are known to be War Criminals, remainder being "Security Suspects".

Up to date (14th January 1946) 20 cases involving 97 accused have been tried. 25 sentenced to death, 39 imprisoned, 33 acquitted.

The target set by the Attorney General is 500 war criminals to be tried by 30th April.

130 individual cases have been prepared and sent to Corps Districts for trial.

Arrangements have been made for a list of cases for trial to be issued to members of the Commission as received from D.J.A.G. Rhine Army.

40 cases are pending at JAG BAOR awaiting further evidence.

85 cases in preparation involving 142 individuals for trial.

Approximately 75 Wanted individuals have been applied for from other zones where they are known to be. No difficulty is experienced in the transfer of Wanted individuals between the British, French and American Zones.

Several special investigation teams in the field are permanently employed searching for war criminals. This operation is known as "HAYSTACK" and is proving extremely successful although it will be appreciated that practical results take time to achieve, the limiting factor being trained personnel.

Liaison officers representing most of the nations are attached to the War Crimes Branch JAG, of whom I met two, Lieut-Colonel Branders, Belgium, and Captain Bellet, France, the remainder being out on duty at the time of my visit.

The Commission Lists continue to be of great value. The names are transferred to their card index against which are checked the names of all detainees in Civilian Internment Camps and all persons in respect of whom reports are received.

I met the British Investigation Team who had just arrived from

/Narrowy..

-2-

Norway bringing with them several War Criminals with evidence of their crimes against British soldiers and R.A.F. personnel in Norway and elsewhere. These cases will be tried in the British Zone.

War Crimes Branch state they do not receive the Commission's Summary of Information and having seen a copy which I produced, stated that it would be of great assistance to them and hoped that they would be able to receive them regularly. This is being done.

AMERICAN ZONE - 17th to 19th January.

8000-10000 Wanted Reports have been sent to CROWCASS - very few practical results.

The number of Detained Reports was not available.

There have been 28 trials involving 100 accused to date. 61 sentenced to death, 27 imprisoned, 12 acquitted.

Several trials are in course of preparation - Flossenberg in approximately six week's time, then Mauthausen, then a second Dachau.

Investigation teams in the field are also operating in the U.S. zone but on a much larger scale than in the British zone, although a considerable cut in manpower is expected in the immediate future.

I met the following liaison officers at Wiesbaden Headquarters:

Belgium: Major Genicot, Lieutenant Davis
Luxembourg: Captain Schaefer
France: Captain Schermann, Colonel Orsat
Holland: Captain Terspill
Poland: Major Krzyminak
Czechoslovakia: Captain Schwartz.

I was particularly impressed with the Czechoslovakian team - keen, alert and workmanlike.

FRENCH ZONE - 23rd January.

General Fourbie confirmed the statements which were made to me in the other zones that CROWCASS was not of any material assistance owing to their ambitious and long-term policy regarding prisoners of war and that he had to rely almost entirely on his investigation team in the field, which numbered approximately 150 personnel.

General Fourbie would welcome a conference with War Crimes representatives from the other three zones to discuss their respective problems and to prepare and present their agreed recommendations to Berlin for speeding up the machinery to bring war criminals to trial. This suggestion has been passed to the appropriate British and American authorities for their consideration.

NATIONAL OFFICE - PARIS, 24th January.

Colonel Libordé is now actively engaged in tracing and arresting war criminals with investigating teams. 40,000 war crimes have been traced and identified in which 5,500 war criminals are involved. Major criminals at present in custody in France include Abetz, Verner, Count von Hiedt.

/NATIONAL...

NATIONAL OFFICE - BRUSSELS, 26th January.

Lieut-Colonel Wauters informed me that no war trials have yet been held but are expected to start after the elections in February. I handed him a short list of criminals wanted by Belgium which had been traced by CROWCASS.

C R O W C A S S

CROWCASS is operated under instructions contained in Interim Directive dated 20th October, 1945, by joint agreement of USFET and BAOR (see annex)

The instructions contained in this Directive are being carried out but it has been mutually agreed that no further lists of Security Suspects should be compiled in the meantime.

In accordance with the Directive, para 4(c), Prisoner of War Forms of all German POW are to be coded and put on cards for processing on IBM machines. This work, continues to involve approximately 70% of the 400 French civilian employees and accounts for approximately one half of the current operating expenses. Approximately 10,000 forms are being processed daily. To date, about 500,000 forms have been processed and approximately 4,000,000 POW forms are stored in the CROWCASS building awaiting processing. The potential number is approximately 7,000,000.

To process all these forms with present staff and accommodation will take years and to achieve quicker results, more staff, additional accommodation and more machines would be essential. Searches by machine to date have proved negative. It is not known what other useful purpose machine records of POWs can be put to.

A Finger-Print Section, in accordance with the Directive, has been in existence since the organisation of CROWCASS and is engaged in classifying and filing fingerprints cards of detained war criminals. To date, approximately 15,000 sets of fingerprints are on file. Five fingerprint expert classifiers are engaged in this work and occupy four rooms of the main buildings.

So far no use has been made of the results produced by this department and none is foreseen.

If operations continue on the lines of the present directive, the major efforts and expense of CROWCASS will be spent on processing of POW forms for IBM machines which must of necessity be drawn out over a long period, thereby defeating the object for which CROWCASS was created.

It is strongly recommended that the existing directive be modified to discontinue the coding and processing of the POW forms and the fingerprint section. All efforts could then be directed on the Wanted Section and the Detained Section for which there is a great and immediate need. Lists of approximately 20,000 wanted war criminals have already been distributed and could be speeded up considerably. The accommodation problem would be solved as one building would suffice. Colonel Elms the Director, is fully in agreement with me in this recommendation.

At present, with the exception of the pay of the British officers attached to CROWCASS, the entire cost of CROWCASS, amounting to approximately \$55,000 per month, is being borne by the United States Government.

/A...

A Central Directorate has now been set up with representatives of the four nations, Britain, America, Russia and France as members. The future operations of CROWCASS will be determined by this Central Board, a meeting of which is taking place in Paris during the first week in February, when I understand the above recommendations will be submitted for discussion.

ANNEX C.171.
BAOR/3795/39/A(PS4)

Central Registry of War Criminals and
Security Suspects
AFO 887.
US Army

20 Oct 45

INTERIM DIRECTIVE

1. A Central Registry of War Criminals and Security Suspects has been set up in PARIS under the temporary joint control of USFET and BAOR until such time as it is taken over by the Legal Directorate of the Control Commission on a quadripartite basis. Every assistance will be given to the Committee appointed by the Legal Directorate for the purpose of making recommendations for the assumption of control by the Directorate.
2. During this interim period USFET will provide a Colonel to act as Commanding Officer of CROWCASS and BAOR will provide a Lieut-Colonel as his second-in-command. USFET and BAOR will each provide a Major or a Captain thus ensuring equal officer representation on the staff. The existing organisation of CROWCASS will only be altered as a result of agreement between USFET and BAOR. Any applications for additional staff, equipment or accommodation will be made both to USFET and BAOR so that their implementation can be co-ordinated by the two Headquarters.
3. All orders on matters of policy or which affect the working of CROWCASS will be issued by USFET or BAOR, after mutual consultation, to the Commanding Officer who will then be responsible for their implementation. Similarly copies of correspondence between the Commanding Officer and one of the two Headquarters will be sent to the other for information.
4. With effect from the date of receipt of this order the Commanding Officer of CROWCASS will carry out the instructions set out below:-
 - (a) Consolidated Wanted Lists for all known War Criminals will be completed by 31 Dec 45 and similar lists for Security Suspects will be compiled and published as soon thereafter as possible. These two lists will be made out alphabetically. The particulars of individuals will show, inter alia, the nation or nations by whom they are required, separate lists for each nation will therefore not be required. Thereafter these consolidated lists will be republished at six-monthly intervals to bring the subject matter up to date. Supplementary lists of names not included on the consolidated lists together with any necessary amendments will be published on the last day of each month.
 - (b) Separate Detained Lists giving the names and particulars of War Criminals and Security Suspects who are reported to be detained will be published and maintained in an exactly similar manner as set out in para (4a) above.
 - (c) Arrangements will be made to distribute these lists according to instructions received from USFET and BAOR.
 - (d) Any difficulties or delays in arranging publication of the lists will immediately be brought to the notice of USFET and BAOR.
 - (e) Machine records of all German PW and disabled forces will be maintained from information received from the US War Department, the War Office, HQ USFET, HQ BAOR and other authorities.

/f....

(f) A finger-print registry will be set up for the purpose of classifying finger-prints of all war criminals and security suspects, to include a photographic laboratory.

(g) At the request of any National Authority, National Zone Commander or other interested agency, such information as is available with regard to wanted or detained persons will be provided.

(h) On receipt of a request from Zone Commanders or other holding agencies as to whether or not there is any objection to the handing over of a particular war criminal to the authorities of one of the United Nations, it will be ascertained whether or not such person is wanted by any other national authority and advice will be given accordingly.

5. Any financial obligations incurred by USFET and BAOR, with effect from the date of this instruction, will be shared equally by USFET and BAOR.

6. Where these instructions in any way conflict with previous instructions issued to CROMCASS by SHAEF, USFET or BAOR, these instructions will be held to have superseded them.

Commanding General
United States Forces European Theater

Field Marshal,
Commander-in-Chief,
British Army of the Rhine.

Copies to:-
Office of Military Government GERMANY (US)
Central Commission for GERMANY (BE) - Legal Division
USFET
HQ BAOR - JAG(WCS).

UNITED NATIONS WAR CRIMES COMMISSION.

C.172.

First List of Japanese War Criminals submitted by Australia.

On the 5th. February 1946, a special meeting of Committee I was held for the purpose of considering the list of Japanese Major War Criminals submitted by Australia.

The Committee having been of the opinion that Australia's proposal involved the question of general policy which should be considered by the Commission itself, decided to refer the matter to the Commission at its meeting to be held on the 13th. February, 1946.

As no special report of Committee I is to be submitted to the Commission, the enclosed Minutes No.48 of Committee I meeting are circulated to all members of the Commission for their information.

Encl: Committee I Minutes No.48.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE I

Summary Minutes of the Meeting of Committee I held on 5th. February, 1946.

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

There were also present:

Lord Wright,	Chairman of the Commission,
Professor Bailey,	Australia,
F/O Bridgland,	Australia,
Dr. Mayr-Harting,	Czechoslovakia,
Mr. Burdekin,	New Zealand,
Lt. Kintner,	United States of America.

In the absence of M. de BAER, Sir Robert CRAIGIE took the chair,

Lt. KINTNER apologised for the absence of Colonel HODGSON and Captain WOLFF who were prevented from attending the meeting, owing to illness. He said that he had been instructed to attend the meeting as an observer only.

Sir Robert CRAIGIE extended a welcome to Professor BAILEY who was representing Australia.

I. Minutes No. 46.

Minutes No. 46 of the meeting held on 23rd. January, 1946 were approved.

II. First List of Japanese Major War Criminals, submitted by Australia.

Sir Robert CRAIGIE said that the meeting had been convened especially for the purpose of considering the list of Japanese major war criminals submitted by Australia and asked Professor BAILEY whether he had any observations to make.

Professor BAILEY spoke in support of the list submitted by his Government and suggested that the 62 Japanese criminals be put on the Commission's List. He referred to the Agreement of 20th. October, 1943 establishing the United Nations War Crimes Commission, where it was decided that the Commission should investigate and record evidence of war crimes, indentifying where possible the individuals responsible, and report to the Governments concerned cases in which it appeared that adequate evidence might be expected to be forthcoming.

Professor BAILEY also referred to the Minutes of the 33rd. meeting of the Commission, held on 26th. September, 1944 (Minutes 33, page 5), when it was unanimously decided that the names of persons whose crimes consisted less in the perpetration of specific atrocities than in their having acted as ring leaders in the organisation of war crimes, should be included in the Commission's Lists of war criminals. He pointed out that when taking this decision the Commission felt it would be unnecessary to compile a voluminous documentation concerning each of these persons as their activities were notorious. The list submitted by Australia was exactly of that kind, and was prepared in the same principles as those laid down in the introduction to similar Commission Lists Nos. 7 and 9 containing German major war criminals. The list submitted by Australia would of course, be subject to further investigation of those therein listed in accordance with the requirements set up in the said introduction.

Professor BAILEY further on pointed out that the Australian list was submitted in accordance with the recommendations adopted by the United Nations War Crimes Commission on 29th. August, 1945, (Doc.C. 145) and includes criminals falling within the first two categories of those recommendations, which read as follows:

- I. " That those Japanese who have been responsible for the plans or policies which resulted in (these) abominable crimes and atrocities.... These individuals and officials should include those in authority in the Government, in the military and police establishments, in the secret societies and other criminal associations, and in the financial and economic affairs of Japan who by all civilised standards are provable to be war criminals. The case against these major criminals is that they have devised, set in motion and carried out the criminal plans and enterprises which incited or resulted in the aggressions, cruelties and brutalities which have outraged the civilised world. "
- II. " That those Japanese holding key-positions in the civil, military or economic life of Japan who, perhaps, did not devise or set in motion plans which resulted in these crimes and barbarities, but nevertheless directed the carrying out of such plans within Japan or in the territories of more than one of the United Nations, should be surrendered to or apprehended by the United Nations for trial before an international military tribunal. This category of criminals includes those individuals and officials, usually in key-positions in the Government, who have willingly planned the details of and put into execution the monstrous schemes of the Japanese leaders. It also includes those brutal and ruthless criminals who, both inside and outside Japan, have been guilty of mass criminality towards the nationals of many of the United Nations. Among such persons were those in charge of certain prisoner-of-war and civilian internment camps where the people of many nations have been starved, tortured, murdered or otherwise atrociously maltreated. "

All persons indicated in the list submitted by his Government, continued Professor BAILEY, are charged with crimes against peace, war crimes, and crimes against humanity which are within the Four-Power Agreement of 8th. August, 1945.

Summing up and referring once more to the Commission's Lists Nos. 7 and 9, Professor BAILEY requested that the same type of action be taken by the Commission with regard to the Australian List now under consideration.

Lord WRIGHT expressed his regret because of the unfortunate absence of M. de BAER, Chairman of the Committee, and that of the representative of the United States, Colonel HODGSON, and felt it would be most difficult to arrive at any conclusions at this meeting without having them, as well as representatives of other countries interested in the Far Eastern questions, at the discussion.

As the matter submitted by Australia involved a question of general policy, he felt, there were three possibilities of procedure:

- (A) to refer that question and the examination of the list to the Commission, for its plenary session,

- (b) enlarge Committee I for the purpose, so as to include all countries interested, and
- (c) to convene a special ad hoc Committee with representatives of those countries.

As for himself, he would prefer the first course so as to have all members of the Commission present while the Australian proposal was under discussion, and therefore thought it advisable to refer the matter to the Commission.

Sir Robert CRAIGIE suggested whether before deciding on one of the proposals put forward by Lord WRIGHT, it would not be preferable to have the opinion of M. de BAER and Colonel HODGSON.

Dr. MAYR-HARTING was of the opinion that the most important question of competence of the Commission with regard to crimes against peace and crimes against humanity having been already decided at the Commission's meeting on 30th. January, 1946 (Doc.M. 93), Committee I should now consider the individual cases included in the Australian List, if possible in the presence of all Governments interested.

Sir Robert CRAIGIE said that he was not quite sure as to whether it would be a useful service to issue a list such as proposed by Australia in the present circumstances when all necessary steps are now being taken by the team of allied prosecutors in Japan, on which representatives of all countries interested take part. As this task will be now expeditiously discharged by that body, he had some doubt whether also this Commission should make its contribution without having the possibility of undertaking proper investigation into the details. In his opinion, it would be unfortunate to put on the list persons who though not with success had nevertheless opposed the war of aggression. He was also doubtful as to listing people for what they had done before the war.

Professor BAILEY appreciated the reservations made by Sir Robert CRAIGIE, and said that his Government does desire that this Commission should nevertheless exercise its authority and function in this particular matter. He, of course, felt no objection against the Commission carefully examining all details and individuals proposed for listing.

Mr. BURDEKIN referring to the example set up with regard to the Nuremberg trial and the improbability of bringing to trial all the persons included in the Australian List, suggested whether the Australian representative could not eventually reconsider the practicability of putting on the list so many people.

Sir Robert CRAIGIE suggested whether it would not meet the Australian Government's intention if similar procedure be agreed upon as that adopted recently by Committee I with regard to the proposed further list of Germans holding key-position (Committee I Minutes, No.44, p. 7(a) para. VI), namely to circulate the Australian List to all members of the Commission for information as a Commission Document but not to publish it in the same way as Commission's Lists nos. 7 and 9, with the proviso that those listed should not be charged with war crimes.

Taking into account that the Australian proposal involved a question of general policy which should be considered by the Commission, the Committee finally decided to refer the matter to the Commission at its plenary session, to be held on 13th. February, 1946.

SECRET.

C.173.

12th February, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

JAPANESE WAR CRIMINALS CONVICTED BY
AUSTRALIAN MILITARY COURTS

The following extract from a news bulletin issued by Australian News and Information Bureau has been sent to the Commission by F/O Bridgland, and is circulated to members and National Offices for information:-

"DEATH SENTENCES ON 8 JAPANESE CONFIRMED."

"Death sentences passed on eight of the Japanese convicted of war crimes by Australian Military Courts have been confirmed by the Acting C-in-C. of the Australian Military Forces, Lieutenant General Vernon Sturdee. The Minister for the Army, Mr. Forde, who announced this today, said that the Japanese would be executed. Some executions would be delayed as the criminals might be required to give evidence in other trials. He also revealed that Australia had prepared cases against 384 Japanese suspected war criminals and 772 other cases were still being investigated. The total number of Japanese suspects held by the Australian authorities was 1,298."

SECRET

C.174(3)
11th March, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Paragraphs IV et seq. of Doc. C.174.

(Report on the Alsatian Deserters
Case.)

Redrafted.

TEXT AND MEMORANDUM.

In view of the divergencies of opinion between the report submitted by Committee III (Doc. C.174) and the remarks circulated by Dr. Zivković (Doc. C.174 (B) the Chairman of the Commission charged the Legal Officer, Dr. Schwelb, with the preparation of a re-draft of the report and a paper on the subject, in order to facilitate the proceedings in the Commission.

The Legal Officer's Draft and his memorandum are circulated to the Commission by order of Lord Wright.

PART I: DRAFT TEXT OF PARAGRAPHS IV. et seq.

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 for desertion in consequence of the fact that inhabitants of Alsace-Lorraine were, contrary to International law, compulsorily enlisted into the German army.

In this connection, the Commission considers it necessary to draw attention to the fact that the document appears to proceed 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 discussions on the assumption that the judges, whose criminal responsibility is in question, knew that the victims had been both French citizens from Alsace-Lorraine, and that they had been compulsorily called up for service with the German Army. If the judges - through no fault of their own - did not know that the accused were French nationals who had been enlisted into the German army against their will, no problem of criminal repression against these judges would arise, because a German judge does not commit a war crime in sentencing, in war time, a German soldier for desertion from the German army.

V. In considering the action of persons holding judicial function, the Commission considers it 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.

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 principles 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 done 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.

VII. In the present case, positive provisions of the Hague Regulations, and generally recognised rules of customary law have been violated by the judicial action in question.

Under Art. 23 of the Hague Regulations a belligerent is forbidden to compel the subjects of the hostile party to take part in the operations of war directed against their own country. Under Art. 45, it is forbidden to force the inhabitants of occupied territory to swear allegiance to the hostile Power. Art. 52 prohibits the requisition of services involving the inhabitants in the obligation to take part in military operations against their own country.

The alleged deserters, who were tried by the German military judges, had been enlisted into the German army in flagrant violations of these provisions. The death sentences passed on these alleged deserters were substantially nothing but the enforcement of the continuation of this flagrantly illegal position. They also amounted to causing the death of the alleged deserters without justification.

It follows from what has been said that the death sentences, even if not arrived at in the course of an outrageous procedure, flouted the quoted provisions of conventional and customary International law.

VIII. The fact that the illegal call-up of French nationals from Alsace-Lorraine into the German army had been ordered by the leaders of the German Nazi Government does not free the military judges from responsibility because superior order is no defence if the order is illegal.

IX. It will, of course, be a matter for the prosecuting authorities to decide in every individual case whether the circumstances are such that they are likely to lead to a verdict of guilty against the judge and it will be a matter for the court considering the guilt of each individual judge, to have regard, if it thinks fit, in mitigation of punishment, to the fact that the German judges were acting under superior orders, namely orders from their Government. There will certainly be cases where the judge may successfully plead that he acted under duress or under a mistake of fact, but this is for the court to consider and not for the United Nations War Crimes Commission who is called upon to express its opinion whether or not *prima facie* a war crime has been committed.

Such a plea will hardly be open to the judges in cases where, instead of considering the fact that the alleged deserters became German soldiers against their will as an extenuating circumstance, they judged the cases with particular severity.

PART II: MEMORANDUM ON THE CASE.

1. Both the members of Committee III who adopted the report C.174 and Dr. Zivković agree 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, etc. Both also agree that the judge may be guilty of a war crime if he judged the cases of Alsatian deserters with particular severity.

2. Though the result, as far as the actual case is concerned, is not a subject of divergence of opinion, no unanimity exists as to the principle from which this result should be derived.

With great respect and expressing my regret that I cannot fully agree with the opinion of those learned members of Committee III whose opinion is laid down in the report I do not consider it convincing to make the final outcome of such a case dependent on a comparison between the judge's treatment of genuine German nationals on the one hand, and Alsations on the other. Either the judge was entitled to hold that the men before him were deserters from the German army: then he cannot be held liable as a war criminal for awarding punishment applicable to the case of deserters in war time by the law which he was administering.

Or, the men were in law not deserters from the German army: in this case the judges could not lawfully pass on them either a death sentence or any lesser punishment. (This is the view expressed by N. Stavropoulos in the meeting of Committee III held on 8th January 1946; (Committee III Minutes No.1 of 1946., page 5).

3. Document C.174 says in paragraph 5 that 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. An objection is raised by Dr. Zivković against this formulation because he considers it possible that there may be circumstances where the mere sitting on a court may, as such, constitute a war crime.

I believe that it is not necessary to express an opinion on this question in this connection because, in the present case, the judges did not restrict themselves to the mere fact of sitting on the court, but they actually passed death sentences which were eventually executed. By way of illustration reference is made to Exhibit A of the United Kingdom charge No.2547 which, by direction of Committee I,

has been circulated as No. 29 of the Documents Series, edited by the Research Office. It is stated there that the sentence most frequently pronounced by the REICHSKRIEGSGERICHT was capital punishment, which this court applied almost automatically. During the last year from April 1944 to April 1945 about 200 Frenchmen have been condemned to death and executed, among them are included a great number of Alsacians and Lorraines, enlisted by force in the German Army, who later deserted. Dr. Zivkovic's alternative proposal to delete this sentence seems therefore to be preferable.

4. Paragraph V. of Doc. C.174 goes on stating that the mere fact that a judge considered the annexation of Alsace Lorraine as established, does not constitute eo ipso, a war crime. This sentence is, in my submission, equally unnecessary because if the judge held an opinion without acting upon it, he cannot be punished for having held that opinion. In the present case the judges did not restrict themselves to having a certain opinion on some political or constitutional fact, but they acted in a certain way. It is therefore not necessary to speculate what the position would have been if they had only held the opinion and not acted upon it.

5. Paragraph V. of Doc. C.174 further states that the judge is 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 of this annexation, German citizens.

No authority is adduced for this proposition which was opposed by Mr. Justice Mansfield in Committee III, where he stated 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 can be considered legal, and the judges must have known it. (Committee III Minutes No. 1 of 1946, page 5.)

(a) There is no principle either in International law or in municipal criminal law to the effect that if a crime has been committed by person A person B is entitled "to act upon the consequences necessarily connected with this" crime. The law does, e.g., not provide that every person who receives any property knowing the same to have been stolen, is entitled to "act upon the consequences necessarily connected with the" theft, but is, on the contrary, guilty of the crime of receiving stolen property.

It is, in my submission, a very dangerous doctrine to be promulgated by the United Nations War Crimes Commission to say that "acts of State" of criminal enemy leaders entitle the subordinate authorities of the enemy administration and judiciary to act upon them with impunity.

(c) The statement of the report is not quite correct with regard to the facts stated. I could not find an enactment of the Hitler Government annexing Alsace-Lorraine to the Reich. Nor did I find any provisions emanating from the German authorities providing that the citizens of Alsace-Lorraine became German citizens.

As far as the German legislation for occupied Alsace-Lorraine is accessible to me it precisely distinguished between German nationals on the one hand and the local population of Alsace and Lorraine on the other. (Cf. e.g. the Regulations regarding the compulsory schooling, of 14th February 1941, printed in Leakin, Axis Rule in Occupied Europe, page 386.)

6. In my submission the principle upon which cases like these should be decided was elaborated in Doc. C.153 (Memorandum by Major-General Cramer, the United States Judge Advocate General, and Colonel Archibald King, Chief of the International Law Division of the United States Judge Advocate General's Department).

The opinion expressed in this document is to the effect that while premature annexation of occupied territory is unquestionably a violation of International law, it is unsound and may be unsafe to conclude therefrom that every action taken by a Court alleged to be illegally instituted entails ipso facto the criminal liability of all persons associated with the operation of such a court. Mere technical violations of International law should not be held, eo ipso, to produce individual criminal responsibility. The decisive consideration would seem to be 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 a specific prohibition of 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 merely because homage has been done to legal forms. In all cases, the substance of the action taken may be scrutinised 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. Nor should any greater weight be given to the pleas of "act of State" and "superior orders" than is given in other situations.

7. If the trials of the Alsatian deserters were conducted in disregard of those fundamental principles of human justice which have been accepted by civilised peoples, if, e.g. the accused were denied the right to introduce evidence, or to present witnesses, particularly in proving their Alsatian origin and French nationality, or if principles repugnant to the modern practices of civilised nations were applied, outrageous penalties inflicted, and the like, then the criminal responsibility of the judges could certainly not be in doubt. But I am of opinion that the judges should not escape personal responsibility even in such cases where "homage has been done 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.

8. In the present case, positive provisions of the Hague Regulations and generally recognised rules of customary International law have been violated by the judicial action in question.

Under Art. 23 of the Hague Regulations a belligerent is forbidden to compel the subjects of the hostile party to take part in the operations of war directed against their own country. Under Art. 45, it is forbidden to force the inhabitants of occupied territory to swear allegiance to the hostile Power. Art. 52 prohibits the requisition of services involving the inhabitants in the obligation to take part in military operations against their own country.

The alleged deserters, who were tried by the German military judges, had been enlisted into the German Army in flagrant violation of these provisions. The death sentences passed on these alleged deserters were substantially nothing but the enforcement of the continuation of

this flagrantly illegal position.

It follows from what has been said that the death sentences, even if not arrived at in the course of an outrageous procedure, flouted the quoted provisions of conventional and customary International law.

9. It may be objected to this argument that the German judges in sentencing to death persons accused of having deserted from the German army, did nothing but their duty as military judges, and cannot, therefore, be guilty of war crimes. I do not consider this defence sound because

(a) the compulsory enlisting of French nationals into the German army was illegal even under German law and it was the duty of the judge, when trying the alleged deserter, to ascertain whether he had legally become a member of the army.

(b) Even if the compulsory enlistment of Alsations were legal under German law, it would not make any difference because the Four-Power Agreement of 8th August 1945 is based on the general principle that the domestic law of a European Axis country is irrelevant to the question whether or not a certain set of circumstances does or does not constitute a war crime in the wider sense. This is expressly stated with regard to crimes against humanity in Art. 6 (c) of the Charter, where it is said that the activities described there are criminal "whether or not in violation of the domestic law of the country where perpetrated". Moreover, Art. 8. of the Charter provides that the fact that the defendant acted pursuant to order of his Government shall not free him from responsibility, but may be considered in mitigation of punishment if the tribunal determines that justice so requires.

(c) The plea that a German citizen cannot be punished for complying with German law, particularly the laws about the incorporation of Czechoslovakia and Poland into the German Reich, was raised by the defence in the Belsen trial, particularly by Prof. H.A. Smith acting as Counsel for the Defence, who pleaded that crimes against Czechoslovak and Polish citizens could not be considered war crimes because Poles and Czechoslovaks were German subjects under German law. This plea was not upheld by the Lüneburg Court.

10. If compliance with domestic law and superior order do not free from criminal responsibility administrative officials and members of military and para-military forces, it may be doubted whether it is possible to recognise such defence in the case of judges whose position vis-a-vis their own Governments and their statutory orders is certainly stronger and more independent than that of an administrative official or of a member of the forces.

Any other interpretation would lead to the inadequate result that any Axis judge or authority who was careful enough to stick to some minimum forms of legal procedure would be freed from responsibility for illegal acts clothed as judgments or official decisions. If he was allowed, with impunity to sentence to death allied nationals as "deserters" from the German army, this would mean that he was also allowed to sentence allied nationals for "high treason" against Germany, for offences against the "new political order" and the like.

11. It will, of course, be a matter for the prosecuting authorities to decide in every individual case whether the circumstances are such that they are likely to lead to a verdict of guilty against the judge and it will be a matter for the court considering the guilt of each individual judge, to have regard, if it thinks fit, in mitigation of punishment, to the fact that the German judges were acting under superior orders, namely orders from their Government. There will certainly be cases where the judge may successfully plead that he acted under duress or under a mistake of fact, but this is for the court to consider and not for the United Nations War Crimes Commission who is called upon to express its opinion whether or not *prima facie* a war crime has been committed.

It is from these reasons that I submit the draft text of Paragraph IV and the following, contained in Part I of this paper.

SECRET.

C.175.
14th February 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

This report by Committee III to Committee I is circulated to the members of the Commission for information. *

Denationalisation by dismissing employees.

Report by Committee III to Committee I on the Czechoslovak case No.1962.
(Reinhold Boecker.)

- I. In its meeting held on 6th December 1945, Committee III decided to put the accused Reinhold Boecker on list 'A' on the second and third counts mentioned in Doc.III/23, paragraph I. With regard to the first count, namely attempts to denationalise the inhabitants of occupied territory, Committee I adjourned the case and referred it to Committee III asking for its opinion:
- (a) whether count 1 of the charge No.1962 is covered by Doc.C.149, and
 - (b) whether the facts under count 1 of the charge constitute a war crime.

- II. The question is whether the war crime of attempts to denationalise the inhabitants of occupied territory can be committed by systematically removing employees and workers of the nationality of the occupied State and by replacing them with employees and workers of the nationality of the occupying State. Committee III refers to Paragraph VI of its report Doc.C.149, where it has been stated that under denationalisation in the 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 an occupied territory of their national characteristics and/or transforming the ethnological character of the region.

From this it follows that in order that there be the war crime of denationalisation, two conditions must be given: (a) there must be a general policy of the occupying Power aiming at depriving the inhabitants of their national characteristics, etc., and (b) the power wielded by the occupant must have been made subservient to this general policy.

If these two sets of circumstances are established then it can be said that a prima facie case for a charge for this crime has been established, irrespective of the particular way in which the criminal policy of denationalisation has been pursued, and in which way the de facto power of the occupant has been abused to such criminal purposes, provided that the accused played a rôle of a certain importance in planning or executing the said policy.

- III. In the case before the Committee only one of these two elements constituting the war crime of denationalisation has so far been prima facie established, namely the fact that the actual power of the occupant was used. It is stated in the charge that the accused as a functionary appointed by the German Wehrmacht used the power thus vested in him for the systematic removal of Czechoslovak employees and workers.

* The examination and discussion of this case in Committee III are recorded in the Notes on the Meetings of Committee III, Nos. 1, 2 and 5 and in the Documents III/26 and III/27

But the facts stated in the Czechoslovak case do not, as yet, establish also the second element of this war crime, namely the existence of a policy aiming at denationalisation and the fact that the accused was an instrument of this policy.

Committee III, therefore considers it appropriate to advise Committee I to ask the Czechoslovak National Office for additional information.

- IV. This additional information should prove, if possible, that the actual number of dismissals for which the accused is responsible was such that his activities had a chance to reach the alleged objective, namely the denationalisation of inhabitants of Slovakia.

In this connection it would be certainly relevant to learn:

- (a) the numbers of employees of the factory when the accused became its superintendent,
- (b) the number of workers of Czechoslovak nationality who were dismissed during his term of office.

It would also be useful to know exactly the length of the total period during which Boecker was superintendent of the factory.

In order to establish that a policy of denationalisation was being applied, it would be further useful if information could be furnished showing that activities similar to those with which Boecker is charged were not restricted to the one factory at Prodbrezová, but that similar activities had been recorded also with regard to other factories, either in the region or in the province or in the whole of Czechoslovakia.

To enable Committee I to decide whether there was a prima facie case for the charge of denationalisation, it would also be of interest to know what positions the dismissed employees actually occupied in the factory, whether they were leading employees, (managers, foremen and so on), or whether the dismissals were not restricted to persons of responsibility and influence.

To round up the picture, it would be of considerable use to learn how the dismissals were effected, whether due notice was given to the workers and employees or whether they were simply dismissed without notice.

- V. Two further facts should be cleared up before Committee I comes to a conclusion about this case, namely:

- (a) whether the factory was a State factory or was privately owned,
- (b) whether it was engaged in the manufacture of war material.

Question (a) is of interest in view of Art. 55 of the Hague Regulations, according to which the occupying State shall be regarded as an administrator and usufructuary of public buildings, landed property, forests and agricultural undertakings belonging to the hostile State and situated in the occupied country. From this it may be deduced that the rights of the occupying Power with regard to a State factory are more extensive than in the case of a privately owned plant and that certain measures which would be illegal in the case of a privately owned factory can be considered covered by Art. 55 in the case of a State factory.

The question sub (b) is of interest for two reasons: the one is related to that dealt with in the immediately preceding paragraph and is based on Art.53 of the Hague Regulations which give power to an army of occupation to take possession, inter alia, of depots of arms, stores and supplies which may be used for military operations. The second aspect of this question is based on Art.52 of the Hague Regulations which forbid requests of services of such a nature which would involve the inhabitants in the obligation of taking part in a military operation against their own country. It has been often said that by virtue of Art.52 of the Hague Regulations, in connection with Art.31 of the Geneva Convention of 1929, civilians must not be compelled to work in munition factories, the output of which is used against their own country. This is of course, not to say that the dismissal of employees from a munition factory must under all circumstances be considered legal.

VI. During the considerations of Committee III a further aspect of the problem was mentioned and Committee III should deal with it in replying to question (b).

In para.VI of C.149, it was said that denationalisation in the wider sense would also comprise such activities as, inter alia, the colonisation of the occupied territory by nationals of the occupant, exploitation and pillage of economic resources, confiscation of property, permeation of the economic life by the occupying State or individuals of the nationality of the occupant. Many of the activities mentioned here will also fall under other headings of the war crimes list, e.g. pillage and confiscation. The protection which International criminal law affords to the economic rights of the inhabitants should not be restricted to rights of property in the narrower sense like, real property and chattels, but should cover also the protection of the economic interest of the working classes, i.e. of those of the inhabitants of the occupied territory whose means of subsistence are based on their work and employment. Wholesale and indiscriminate interference with such economic rights of the inhabitants of occupied territory should also be protected by International criminal law, even if the respective activities are not ancillary to the policy of denationalisation.

C.176.
21st February 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Note on the Allied Bodies Established in Japan by the Moscow
Conference of December 1945.

The following is the text of a note by
the Legal Officer, Dr. Schwelb, read by
the Chairman in the meeting of the
Commission, held on 20th February 1946.

In connection with the decision arrived at at the meeting of the
Commission on 13th February 1946, to send the Australian paper concerning
the first list of Japanese major war criminals to the Allied Commission
in Tokio, I should like to draw attention to the fact that the Moscow
Conference of December, 1945, has established two allied bodies in
Tokio, (1) The Far Eastern Commission, and (2) The Allied Council for
Japan.

The Far Eastern Commission is composed of the representatives of
11 States and its functions are, inter alia, to formulate the policies,
principles and standards in conformity with which the fulfilment by
Japan of its obligations under the Terms of Surrender may be accomplished
and to review directives issued and actions taken by the Supreme
Commander, involving policy decisions.

The Allied Council for Japan consists only of four representatives,
(U.S.A., U.S.S.R., China and the British Empire). In the Allied
Council is vested the right, inter alia, of consulting with and advising
the Supreme Commander in regard to the implementation of the Terms of
Surrender, the occupation and control of Japan and directives
supplementary thereto.

SECRET

C. 177.
22nd February, 1946

UNITED NATIONS WAR CRIMES COMMISSION

PROCEDURE FOR SURRENDER OF WAR CRIMINALS

R e s o l u t i o n

Adopted by the Commission on 20th February, 1946.

The following resolution was passed by the Commission as a result of information which was discussed at its meetings held on 6th, 13th and 20th February, 1946.

The United Nations War Crimes Commission is unable to accept the view which has been suggested by the authorities of one of its Member States that it is unnecessary for a case to be referred to the Commission before a request is made to the military authorities for the surrender of a war criminal for trial. Such a view would not be in accordance either with the International Resolution defining the duties of the Commission or with the practice of the American authorities as explained by Colonel Hodgson in his letter of September 3rd, 1945, or with the practice of the British authorities, as stated in a letter from the Foreign Office dated 20th August, 1945. The normal procedure is for the Commission after due investigation to put the accused on their list and it follows that it is departed from when an accused person is handed over without being listed by the Commission. Such a departure under existing directives, is only justified as an exceptional measure and after careful examination of each case on its merits by the Commanding Officer of the forces by whom the accused is held. It is the hope of the Commission that in any such cases the member governments will at the same time forward a copy of the dossier to the United Nations War Crimes Commission.

SECRET.

C. 178.
February 22nd, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

AVAILABILITY OF DOCUMENTS USED AT
NUREMBERG TRIAL

The following letter has been received by the Chairman from Mr. Byrnes, U.S. Secretary of State and is circulated to members in connection with the discussion held at the meeting on February 20th relating to the proposals made by the Committee on Documents.

(See also in this connection document C.165 which reproduced the replies received from other Foreign Ministers and Chief Prosecutors)

Copy.

"Department of State,
Washington,
February 5, 1946.

My dear Lord Wright,

I regret the delay in replying to your letter of November 12, 1945 regarding the possibility of making available to the United Nations War Crimes Commission the documents bearing on war crimes collected at Nuremberg.

As you may know, President Truman by executive order dated January 16, 1946 authorized the United States Chief of Counsel, in addition to his present duties, to proceed against other Axis adherents including members of such groups and organizations as may be declared criminal by the International Military Tribunal. Upon vacation of office by the present Chief of Counsel, Mr. Justice Jackson, his functions will be vested in a Chief of Counsel for War Crimes to be appointed by the United States Military Governor for Germany or his successor. I should suppose that such documents as are now in United States custody in Nuremberg will accordingly be needed there or elsewhere in Germany for some time to come by Mr. Justice Jackson and his successor.

I of course agree with you as to the historical importance of the documents which have been collected but under the present circumstances it does not appear possible to determine their ultimate disposition.

Sincerely yours,

(s) JAMES F. BYRNES."

Annex to C. 178.

IMMEDIATE RELEASE

JANUARY 17th, 1946.

EXECUTIVE ORDER

AMENDMENT OF EXECUTIVE ORDER NO. 9547⁺ OF MAY 2nd, 1945, ENTITLED
"PROVIDING FOR REPRESENTATION OF THE UNITED STATES IN PREPARING
AND PROSECUTING CHARGES OF ATROCITIES AND WAR CRIMES AGAINST THE
LEADERS OF THE EUROPEAN AXIS POWERS AND THEIR PRINCIPAL AGENTS
AND ACCESSORIES"

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

1. In addition to the authority vested in the Representative of the
United States and its Chief of Counsel by Paragraph 1 of Executive Order
No. 9547 of May 2, 1945, to prepare and prosecute charges of atrocities and
war crimes against such of the leaders of the European Axis powers and
their accessories as the United States may agree with any of the United
Nations to bring to trial before an international military tribunal, such
Representative and Chief of Counsel shall have the authority to proceed
before United States military or occupational tribunals, in proper cases,
against other Axis adherents, including but not limited to cases against
members of groups and organizations declared criminal by the said inter-
national military tribunal.

2. The present Representative and Chief of Counsel is authorized
to designate a Deputy Chief of Counsel, to whom he may assign responsibility
for organizing and planning the prosecution of charges of atrocities and
war crimes, other than those now being prosecuted as Case No. 1 in the
international military tribunal; and, as he may be directed by the Chief of
Counsel, for conducting the prosecution of such charges of atrocities and
war crimes.

3. Upon vacation of office by the present Representative and Chief
of Counsel, the functions, duties, and powers of the Representative of
the United States and its Chief of Counsel, as specified in the said
Executive Order No. 9547 of May 2, 1945, as amended by this order, shall be
vested in a Chief of Counsel for War Crimes to be appointed by the United
States Military Governor for Germany or by his successor.

4. The said Executive Order No. 9547 of May 2, 1945, is amended
accordingly.

HARRY S. TRUMAN

THE WHITE HOUSE,
January 16, 1946.

⁺ Note by The Secretary General: This order was circulated as document C.112.

SECRET

C.179
February, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

PROBLEMS OF WAR CRIMES ON THE AGENDA
OF THE FIRST SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

I

Resolution passed on the 13th February 1946
regarding the surrender of war criminals.

THE GENERAL ASSEMBLY

Taking note of the Moscow Declaration of 1 November 1943 by President Roosevelt, Marshal Stalin and Prime Minister Churchill concerning enemy atrocities in the course of the war, and of the declaration by certain Allied governments of 13 January and 18 December 1942 concerning the same matter; and

Taking note of the laws and usages of warfare established by Fourth Hague Convention of 1907; and

Taking note of the definition of war crimes and crimes against peace and against humanity contained in the Charter of the International Military Tribunal dated 8 August 1945; and

Believing that certain war criminals continue to evade justice in the territories of certain states,

RECOMMENDS

That members of the United Nations forthwith take all necessary measures to cause the arrest of those war criminals who have been responsible for or have taken a consenting part in the above crimes, and to cause them to be sent back to the countries in which their abominable deeds were done, in order that they may be judged and punished according to the laws of those countries; and

CALLS UPON

the governments of States which are not Members of the United Nations also to take all necessary measures for the apprehension of such criminals in their respective territories with a view to their immediate removal to the countries in which the crimes were committed for the purpose of trial and punishment according to the laws of those countries.

.....

II

Resolution passed on the 12th February 1946 regarding the surrender of war criminals, quislings and traitors in connection with the question of refugees and displaced persons.

THE GENERAL ASSEMBLY

recognising that the problem of refugees and displaced persons of all categories is one of immediate urgency and recognising the necessity of clearly distinguishing between genuine refugees and displaced persons, on the one hand, and the war criminals, quislings, and traitors referred to in paragraph (d) below, on the other:

- (a) DECIDES to refer this problem to the Economic and Social Council for thorough examination in all its aspects under item 10 of the Agenda for the First Session of the Council and for report to the Second Part of the First Session of the General Assembly;
- (b) RECOMMENDS to the Economic and Social Council that it establish a special committee for the purpose of carrying out promptly the examination and preparation of the report referred to in paragraph (a); and
- (c) RECOMMENDS to the Economic and Social Council that it take into consideration in this matter the following principles:
 - (i) this problem is international in scope and nature;
 - (ii) no refugees or displaced persons who have finally and definitely, in complete freedom, and after receiving full knowledge of the facts including adequate information from the governments of their countries of origin, expressed valid objections to returning to their countries of origin and who do not come within the provisions of paragraph (d) below, shall be compelled to return to their country of origin. The future of such refugees or displaced persons shall become the concern of whatever international body may be recognised or established as a result of the report referred to in paragraphs (a) and (b) above, except in cases where the government of the country where they are established has made an arrangement with this body to assume the complete cost of their maintenance and the responsibility for their protection;
 - (iii) the main task concerning the displaced persons is to encourage and assist in every way possible their early return to their countries of origin. Such assistance may take the form of promoting the conclusion of bilateral arrangements for mutual assistance in the repatriation of such persons, having regard to the principles laid down in paragraph (c) (ii) above.

- (d) CONSIDERS that no action taken as a result of this resolution shall be of such a character as to interfere in any way with the surrender and punishment of war criminals, quislings and traitors, in conformity with present or future international arrangements or agreements;
- (e) CONSIDERS that Germans being transferred to Germany from other States or who fled to other States from Allied Troops, do not fall under the action of this declaration in so far as their situation may be decided by allied forces of occupation in Germany, in agreement with the Governments of the respective countries.

III

The Uruguyan delegation submitted a Draft Resolution against the infliction of the death penalty on war criminals.

In the meeting of the General Committee held on 6th February 1946, the delegates for the UKRAINIEN SSR and the SOVIET UNION expressed themselves as being strongly opposed to the inclusion of this item on the agenda. The Chairman asked the delegate for Uruguay if he would not reconsider this application in view of the protracted and difficult debate to which it would give rise in the General Assembly at the present time.

The delegate for Uruguay stated that he would consult with his Government and inform them of the views expressed in the Committee. Pending further instructions, therefore, he agreed to withdraw provisionally the application, without prejudice to his right to re-introduce it at a later stage.

In the meeting of the General Committee held on 11th February 1946, the delegate for Uruguay stated that after consultation with his Government, and in view of the sentiments expressed at a previous meeting, he was willing to accept the decision of the General Committee as to the inclusion of this item on the agenda, but requested that a vote be taken.

The Committee decided, by 10 votes to 1 (three members being absent) not to recommend the inclusion of the item on the agenda of the General Assembly.

SECRET

C.180

February 28th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

RECOMMENDATION FOR THE ESTABLISHMENT OF
A RESEARCH CENTRE FOR DOCUMENTS

Adopted by the Commission

on February 27th, 1946.

THE COMMISSION,

having considered the replies (+) that have been received to the Chairman's letters of November 12th, 1945, from the Ministers for Foreign Affairs of France and Great Britain and the United States Secretary of State, concerning the disposal of documents relating to European War Crimes collected at Nuremberg and elsewhere in the European Theatre for purposes of prosecutions,

RECOMMENDS that all such documents or copies thereof, excepting those over which Governments possessing them desire to retain control, should be collected after the completion of the trials and housed in a Research Centre under the control of an appropriate International authority. The Commission is of opinion that London would be the most suitable place for the establishment of such a Research Centre.

(+) See documents C.165 and C.178.

SECRET

C.181
28th February 1946

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT OF TWO CENTRAL
ENCLOSURES FOR PERSONS SUSPECTED
OF OR WITNESSES TO WAR CRIMES

The following letter, addressed to the Secretary General, which was read at the Commission meeting of February 27th, is circulated for your information.

Attention is drawn to the fact that, as stated in the letter, all sheets referring to the 3,700 persons indicated have already been distributed by the U.S. War Crimes Branch to all national liaison officers or Governments and therefore it is not intended to make further distribution from this Secretariat.

"20th February, 1946."

"I have been informed that the United States military authorities in Europe have established two central enclosures to which are being transferred all persons suspected of or witnesses to war crimes. One of these enclosures is located in the Third United States Army area at Dachau and is known as PWE No. 29. The other is located in the Seventh United States Army area at Ludwigsburg and is known as IC No. 78. At the present time approximately six thousand persons are detained in these two enclosures.

This segregation of suspects and witnesses is the result of a so-called screening which was conducted by war crimes investigating personnel during the past two months in regard to all persons detained in the various United States Zones of Occupation in Europe or detained under the control of the United States in liberated areas. In performing this task, the United States military authorities made extensive use of the lists of war criminals issued by the Commission, as well as CROWCASS Wanted List No. 7, the first consolidated list published by the Central Registry which was devoted solely to individuals wanted as war criminals or as witnesses to war crimes. The purpose of this screening process was to separate and segregate in the two central enclosures all persons named in one or more of these lists who are being detained by the United States military authorities, irrespective of whether such persons were listed at the request of the United States or some other member of the United Nations.

As each suspect or witness was received in a central enclosure, a mimeographed "Identification of Prisoner sheet" was prepared and forwarded to the War Crimes Branch, Office of the Deputy Theater Judge Advocate, United States Forces, European Theater. The War Crimes Branch distributed copies of each sheet to all war crimes liaison detachments representing other United Nations assigned to the War Crimes Branch. If a detained individual was believed to be of special interest to one of the United Nations (as a result of information gathered from the lists of the Commission, CROWCASS Wanted Lists or other sources) and if no war crimes liaison detachment representing such government was present, the War Crimes Branch communicated directly with the government concerned requesting that it be advised if the surrender of such person was desired.

Transmitted herewith are "Identification of Prisoner sheets"

for approximately 5,700 individuals now segregated in the two central enclosures as a result of the screening process outlined above. These sheets have been separated into two categories. Category 1 refers to individuals detained at the Dachau Enclosure and Category 2 refers to individuals detained at the Ludwigsburg Enclosure. Each category is, in turn, divided into two parts. Part a. includes those individuals who, it is believed, do not appear on Lists 1 - 15, inclusive, of the United Nations War Crimes Commission. Part b. includes those individuals who are believed to have been listed by the Commission. There appears on the face of each sheet in Part b. a symbol in blue pencil indicating the list and page where the name of the individual is believed by the War Crimes Branch to appear. For example, "WCC 9-8" indicates that the name in question appears on page 8 of List No. 9.

It is expected that "Identification of Prisoner sheets" on the remaining individuals detained in the two central enclosures will be completed in the near future. I have been informed by the War Crimes Branch that as soon as these additional sheets are received and categorized in the manner described in the preceding paragraph, they will be transmitted to this office.

Sincerely yours,

(s) Joseph V. Hodgson.

JOSEPH V. HODGSON.
Colonel, JAGD!

SECRET

G. 182
March 1st, 1946

UNITED NATIONS WAR CRIMES COMMISSION.

SPECIAL PROCLAMATION
OF THE SUPREME COMMANDER FOR THE ALLIED POWERS
establishing an
INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST
and
CHARTER OF THE TRIBUNAL.

received from the U.S. Commissioner

SPECIAL PROCLAMATION
ESTABLISHMENT OF AN INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST

WHEREAS, the United States and the Nations allied therewith in opposing the illegal wars of aggression of the Axis Nations, have from time to time made declarations of their intentions that war criminals should be brought to justice;

WHEREAS, the Governments of the Allied Powers at war with Japan on the 26th July 1945 at Potsdam, declared as one of the terms of surrender that stern justice shall be meted out to all war criminals including those who have visited cruelties upon our prisoners;

WHEREAS, by the Instrument of Surrender of Japan executed at Tokyo Bay, Japan, on the 2nd September 1945, the signatories for Japan, by command of and in behalf of the Emperor and the Japanese Government, accepted the terms set forth in such Declaration at Potsdam;

WHEREAS, by such Instrument of Surrender, the authority of the Emperor and the Japanese Government to rule the state of Japan is made subject to the Supreme Commander for the Allied Powers, who is authorized to take such steps as he deems proper to effectuate the terms of surrender;

WHEREAS, the undersigned has been designated by the Allied Powers as Supreme Commander for the Allied Powers to carry into effect the general surrender of the Japanese armed forces;

WHEREAS, the Governments of the United States, Great Britain and Russia at the Moscow Conference, 26th December 1945, having considered the effectuation by Japan of the Terms of Surrender, with the concurrence of China have agreed that the Supreme Commander shall issue all Orders for the implementation of the Terms of Surrender.

NOW, THEREFORE, I, Douglas MacArthur, as Supreme Commander for the Allied Powers, by virtue of the authority so conferred upon me, in order to implement the Terms of Surrender which requires the meting out of stern justice to war criminals, do order and provide as follows:

ARTICLE 1. There shall be established an International Military Tribunal for the Far East for the trial of those persons charged individually, or as members of organizations, or in both capacities, with offenses which include crimes against peace.

ARTICLE 2. The Constitution, jurisdiction and functions of this Tribunal are those set forth in the Charter of the International Military Tribunal for the Far East, approved by me this day.

ARTICLE 3. Nothing in this Order shall prejudice the jurisdiction of any other international, national or occupation court, commission or other tribunal established or to be established in Japan or in any territory of a United Nation with which Japan has been at war, for the trial of war criminals.

Given under my hand at Tokyo, this 19th day of January, 1946.

/s/ Douglas MacArthur
/t/ DOUGLAS MacARTHUR
General of the Army, United States Army
Supreme Commander for the Allied Powers

A TRUE CERTIFIED COPY:

(S) HAROLD FAIR,
Lt. Col., AGD,
Asst Adjutant General.

16 Jan 46.

CHARTER OF THE
INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST

I.

- CONSTITUTION OF TRIBUNAL

Article 1. Tribunal Established. The International Military Tribunal for the Far East is hereby established for the just and prompt trial and punishment of the major war criminals in the Far East. The permanent seat of the Tribunal is in Tokyo.

Article 2. Members. The Tribunal shall consist of not less than five nor more than nine Members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender.

Article 3. Officers and Secretariat.

(a) President. The Supreme Commander for the Allied Powers shall appoint a Member to be President of the Tribunal.

(b) Secretariat.

(1) The Secretariat of the Tribunal shall be composed of a General Secretary to be appointed by the Supreme Commander for the Allied Powers and such assistant secretaries, clerks, interpreters, and other personnel as may be necessary.

(2) The General Secretary shall organize and direct the work of the Secretariat.

(3) The Secretariat shall receive all documents addressed to the Tribunal, maintain the records of the Tribunal, provide necessary clerical services to the Tribunal and its Members, and perform such other duties as may be designated by the Tribunal.

Article 4. Quorum and Voting.

(a) Quorum. The presence of a majority of all Members shall be necessary to constitute a quorum.

(b) Voting. All decisions and judgments of this Tribunal, including convictions and sentences, shall be by a majority vote of those Members of the Tribunal present. In case the votes are evenly divided, the vote of the President shall be decisive.

II.

JURISDICTION AND GENERAL PROVISIONS

Article 5. Jurisdiction Over Persons and Offenses. The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offenses which include crimes against Peace.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes against Peace: Namely, the planning, preparation, initiation, or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) Conventional War Crimes: Namely, violations of the laws or customs of war;

(c) Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

Article 6. Responsibility of Accused. Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 7. Rules of Procedure. The Tribunal may draft and amend rules of procedure consistent with the fundamental provisions of this Charter.

Article 8. Counsel.

(a) Chief of Counsel. The Chief of Counsel designated by the Supreme Commander for the Allied Powers is responsible for the investigation and prosecution of charges against war criminals within the jurisdiction of this Tribunal, and will render such legal assistance to the Supreme Commander as is appropriate.

(b) Associate Counsel. Any United Nation with which Japan has been at war may appoint an Associate Counsel to assist the Chief of Counsel.

III.

FAIR TRIAL FOR ACCUSED.

Article 9. Procedure for Fair Trial. In order to ensure fair trial for the accused, the following procedure shall be followed:

(a) Indictment. The indictment shall consist of a plain, concise and adequate statement of each offense charged. Each accused shall be furnished in adequate time for defense a copy of the indictment, including any amendment, and of this Charter, in a language understood by the accused.

(b) Hearing. During the trial or any preliminary proceedings the accused shall have the right to give any explanation relevant to the charges made against him.

(c) Language. The trial and related proceedings shall be conducted in English and in the language of the accused. Translations of documents and other papers shall be provided as needed and requested.

(d) Counsel for Accused. Each accused shall be represented by counsel of his own selection, subject to disapproval of such counsel at any time by the Tribunal. The accused shall file with the General Secretary of the Tribunal the name of his counsel or of counsel whom he desires the Tribunal to appoint. If an accused is not represented by counsel, the Tribunal shall designate counsel for him.

(e) Evidence for Defense. An accused shall have the right through himself or through his counsel to present evidence at the trial in support of his defense, and to examine any witness called by the prosecution, subject to such reasonable restrictions as the Tribunal may determine.

(f) Production of Evidence for the Defense. An accused may apply in writing to the Tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located. It shall also state the facts proposed to be proved by the witness or the document and the relevancy of such facts to the defense. If the Tribunal grants the application, the Tribunal shall be given such aid in obtaining production of the evidence as the circumstances require.

Article 10. Applications and Motions before Trial. All motions, applications or other requests addressed to the Tribunal prior to the commencement of trial shall be made in writing and filed with the General Secretary of the Tribunal for action by the Tribunal.

IV.

POWERS OF TRIBUNAL AND CONDUCT OF TRIAL

Article 11. Powers. The Tribunal shall have the power

(a) To summon witnesses to the trial, to require them to attend and testify, and to question them,

(b) To interrogate each accused and to permit comment on his refusal to answer any question,

(c) To require the production of documents and other evidentiary material,

(d) To require of each witness an oath, affirmation, or such declaration as is customary in the country of the witness, and to administer oaths,

(e) To appoint officers for the carrying out of any task designated by the Tribunal, including the power to have evidence taken on commission.

Article 12. Conduct of Trial. The Tribunal shall

(a) Confine the trial strictly to an expeditious hearing of the issues raised by the charges,

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

(c) Provide for the maintenance of order at the trial and deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any accused or his counsel from some or all further proceedings, but without prejudice to the determination of the charges,

(d) Determine the mental and physical capacity of any accused to proceed to trial.

Article 13. Evidence.

(a) Admissibility. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value. All purported admissions or statements of the accused are admissible.

(b) Relevance. The Tribunal may require to be informed of the nature of any evidence before it is offered in order to rule upon the relevance.

(c) Specific evidence admissible. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(1) A document, regardless of its security classification and without proof of its issuance or signature, which appears to the Tribunal to have been signed or issued by any officer, department, agency or member of the armed forces of any government.

(2) A report which appears to the Tribunal to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person who appears to the Tribunal to have personal knowledge of the matters contained in the report.

(3) An affidavit, deposition or other signed statement.

(4) A diary, letter or other document, including sworn or unsworn statements, which appear to the Tribunal to contain information relating to the charge.

(5) A copy of a document or other secondary evidence of its contents, if the original is not immediately available.

(d) Judicial Notice. The Tribunal shall not require proof of facts of common knowledge, nor of the authenticity of official government documents and reports of any nation or of the proceedings, records and findings of military or other agencies of any of the United Nations.

(e) Records, Exhibits and Documents. The transcript of the proceedings, and exhibits and documents submitted to the Tribunal, will be filed with the General Secretary of the Tribunal and will constitute part of the Record.

Article 14. Place of Trial. The first trial will be held at Tokyo and any subsequent trials will be held at such places as the Tribunal decides.

Article 15. Course of Trial Proceedings. The proceedings at the Trial will take the following course:

(a) The indictment will be read in court unless the reading is waived by all accused.

(b) The Tribunal will ask each accused whether he pleads "guilty" or "not guilty."

(c) The prosecution and each accused may make a concise opening statement.

(d) The prosecution and defense may offer evidence and the admissibility of the same shall be determined by the Tribunal.

(e) The prosecution and counsel for the accused may examine each witness and each accused who gives testimony.

(f) Counsel for the accused may address the Tribunal.

(g) The prosecution may address the Tribunal.

(h) The Tribunal will deliver judgment and pronounce sentence.

V.

JUDGMENT AND SENTENCE.

Article 16. Penalty. The Tribunal shall have the power to impose upon an accused, on conviction, death or such other punishment as shall be determined by it to be just.

Article 17. Judgment and Review. The judgment will be announced in open court and will give the reasons on which it is based. The record of the trial will be transmitted directly to the Supreme Commander for the Allied Powers for his action thereon. A sentence will be carried out in accordance with the order of the Supreme Commander for the Allied Powers, who may at any time reduce or otherwise alter the sentence except to increase its severity.

.. CERTIFIED TRUE COPY:

Sgd.....HAROLD FAIR.

HAROLD FAIR,
Lt. Col., AGD,
Asst Adjutant General.

SECRET

C.183.
March 13th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Invitation to the Commission from the United States military authorities to send official observers to Dachau for the trial of approximately sixty major perpetrators in the Mauthausen concentration camp.

"London, March 12th, 1946.

Dear Lord Wright:

I have been asked by the United States military authorities in Germany to convey to the United Nations War Crimes Commission an invitation to send one or two official observers to Dachau, Germany, to be present throughout the course of the trial of approximately sixty major perpetrators in the Mauthausen Concentration Camp who are charged with murder and other mistreatment of civilian nationals and members of the armed forces of nations then at war with Germany. This trial, which will be held before a general military government court convened by the Commanding General of the Third United States Army, is scheduled to begin on or about March 28, 1946.

I will be obliged if this invitation is brought to the attention of the Commission at an early date. In the event of its acceptance, Headquarters, Third United States Army, APO 403, U.S. Army, should be advised as soon as possible and not less than three days prior to arrival, of the date each observer may be expected to arrive and the probable duration of his stay so that appropriate accommodations may be assured.

Each of the seven governments having War Crimes Liaison Detachments at the War Crimes Branch, United States Forces, European Theater, has been invited through such detachments to send one or two observers to attend the Mauthausen trial. Like invitations are also being extended to five other governments not represented by detachments at the War Crimes Branch.

Sincerely yours,

Sgd... Joseph V. Hodgson,

JOSEPH V. HODGSON,
Colonel, JAGD."

SECRET.

C.184.
March 20th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

THE TRIAL OF KARL HERMANN FRANK

The following letter has been received by the Secretary-General from Dr. Mayr Harting and is circulated to members for their information:-

"Dear Colonel Ledingham,

The Czechoslovak Ministry of Foreign Affairs informs me that the trial of K.H. Frank at the Special People's Court in Prague has been fixed for March 22nd, 1946.

I am instructed to convey to the United Nations War Crimes Commission an invitation to send observers to this trial.

May I ask you to bring this invitation to the notice of the Commission, to let me know as soon as possible which members of the Commission wish to join the delegation and at what date they intend to arrive in Prague. I shall then arrange for appropriate accommodation, which would be available for six visitors.

Yours sincerely,

Sgd... H. Mayr-Harting. "

SECRET

C.185.
29th March, 1946

UNITED NATIONS WAR CRIMES COMMISSION

Statement on the Case of Sepp Dietz

(Czechoslovak Case No.26)

By the Secretary to Committee III.

I. At the meeting of the Commission held on 27th March, 1946 (M.101) it was decided to postpone the decision on the listing of Sepp Dietz as a war criminal demanded by the Czechoslovak Government.

Simultaneously it was decided that the Secretariat should circulate a statement summarising the position regarding this case and referring to the relevant Commission and Committee documents and Minutes.

Proceedings in Committee I.

II. The case was presented to the Commission by the Czechoslovak National Office on 22nd February, 1944.

Committee I decided on 1st March, 1944, to put the accused on List B 2.

On 19th September, 1944, the case was again considered by Committee I and it was decided to leave the accused for the present on List B 2.

In September, 1945, the Czechoslovak National Office presented an addendum to the original charge. Committee I considered this charge, as thus amplified, in its meeting of 12th September, 1945, and decided to adjourn it for further consideration until 19th September, 1945.

On the 19th September, 1945, the case was again considered by Committee I; the opinion of members of Committee I on this case was divided and it was decided to refer the question to Committee III (Committee Minutes No. 34).

Proceedings in Committee III.

III. The examination and discussion of the case in Committee III are recorded in Documents III/16, III/21, and III/21(1) and in the Minutes of Committee III, Nos. 9/45, 10/45, 11/45, 12/45 and 13/45.

IV. As the result of these discussions in Committee III the report C.156 was presented to the Commission on 15th November, 1945. A minority report by M. Wold, then acting Chairman of Committee III, was circulated as Document C.156(a).

It may be pointed out that M. Wold's minority opinion differs from that of the majority of Committee III only as to the legal qualification of the crime charged against Sepp Dietz. The decision of Committee III to recommend that, provided Committee I are satisfied as to the facts stated in the charge, Sepp Dietz be listed as a war criminal, was carried in Committee III unanimously.

General Discussion in the Commission

IV. The Commission discussed the question of the competence to consider charges of crimes against peace and crimes against humanity in its meeting of January 9th, 1946 (H.91) in a general way, not restricted to the case of Sepp Dietz. In the meeting of the Commission held on January 23rd (H.92) Dr. Mayr-Harting, as acting Chairman of Committee III, suggested that the Commission should consider and adopt Committee III's report on the Sepp Dietz case, (Document C.156). He added that the minority view held by M. Wold did not affect the question of competence, but merely the technical aspect of whether Sepp Dietz's crime was one against peace or against humanity. In this meeting several delegates expressed their view on the general question. Only Mr. Beaumont, Captain Wolff, Lord Wright and Dr. Mayr-Harting dealt with the particular case of Sepp Dietz.

Mr. Beaumont (United Kingdom) felt certain that his Government would be prepared to accept Document C.156.

Captain Wolff (United States) read the following statement prepared by Colonel Hodgson:

"I believe that we are greatly indebted to Committee III and M. Wold for the reports which they have so kindly prepared for the Commission. I have studied both of them with much interest, and have been especially impressed by the clear and thorough manner in which both present the issues in respect of crimes against the peace and crimes against humanity.

"Both reports point out very clearly that the crimes in question were committed within Czechoslovakia on Czech soil, and both, I believe, proceed on the basis that it is unnecessary to determine whether the crimes were committed during a period of war. In this regard, it can be presumed, I believe, that the massacres, murders, assaults and other crimes were contrary to then existing Czech criminal laws.

"Inasmuch as the crimes were committed on Czech soil, contrary to its criminal laws - presumably during peace - Dietz, upon apprehension, can be surrendered and taken to Czechoslovakia for trial before the Czech Courts for crimes committed contrary to the Czechoslovak criminal laws. Therefore, my Government believes that the most practicable way of handling the case would be to suggest to the Czechoslovak Government that it request Dietz' surrender for trial in Czechoslovakia where Dietz committed the criminal acts.

"Insofar as the reports suggest that crimes against humanity and crimes against peace as defined in Articles 6a and c of the Charter should be considered as war crimes in the same category as violations of the Laws and Customs of War, it would seem that two questions are involved: First, whether the mentioned crimes are crimes in international law, second, whether the United Nations War Crimes Commission has jurisdiction over those crimes. As regards the first question, the position of my Government is indicated by the London Agreement and by the trial now in progress at Nuremberg. As regards the second question, it is the opinion of my Government that irrespective of the question of jurisdiction, the United Nations War Crimes Commission, pending developments in the next stage of the Nuremberg trials, should continue to restrict itself to listing only persons accused of violations of the Laws and Customs of War, as it has done in the past."