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SECRET

No. 1/1945

UNITED NATIONS WAR CRIMES COMMISSION

Committee III

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

Mr. Terje WOLD (Norway) in the Chair

There were also present:

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

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

1. Appointment of an Acting Chairman

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

This was agreed.

2. Appointment of a Secretary

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

This was agreed.

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

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

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

Dr. MAYR-HARTING agreed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

M. STAVROPOULOS seconded this proposal.

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

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

The Committee decided unanimously:

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

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

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

Dr. ZIVKOVIC agreed.

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

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

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

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

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

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

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

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

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

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

SECRET

2/1945

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE III

Notes of Meeting held on 27th August,
1945

Chairman: M. Terje Wold (Norway)

There were also present:

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

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

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

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

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

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

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

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

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

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

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

Other Questions

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

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

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

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

SECRET

3/1945.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE III

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

Chairman: Mr. TERJE WOLD (Norway)

There were also present:

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

DISCUSSION ON DOCUMENT C.144

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

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

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

After some discussion this was agreed.

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

P.T.O.

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

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

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

SECRET.

No. 4/1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

Chairman: Dr. Ecer (Czechoslovakia)

There were also present:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No. 5/45.
11th September 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

Chairman,

Dr. Ecer, Czechoslovakia,

There were also present:

Mr. Terje Wold,	Norway,
Captain Wolff,	U.S.A.,
Commander Mouton,	Netherlands,
Dr. Schram-Nielsen,	Denmark,
Dr. Zivković	Yugoslavia,
Major Panderlik,	Czechoslovakia,
Dr. Mayr-Harting,	Czechoslovakia,
M. Stavropoulos,	Greece.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6/45.
19th September 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

Chairman

Dr. Ecer (Czechoslovakia)

There were also present:

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

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

I. NEW QUESTION REFERRED TO COMMITTEE III.

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

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

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

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

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

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

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

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

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

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

A complete list of Italianised geographical names can be produced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7/45.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

Chairman.

Dr. Ecer, Czechoslovakia,

There were also present:

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

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

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

Paragraph I.

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

Paragraph II.

This paragraph was agreed to without comment.

Paragraph III.

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

Paragraph IV.

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

Paragraph V.

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

Paragraph VI.

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

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

8/45.
3rd October 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

In the Chair: Dr. Zivković, Yugoslavia,

There were also present:

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

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

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

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

The following amendments were decided upon:

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

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

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

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

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

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

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

II. War Crimes Law Reporting.

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

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

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

9/45.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

In the Chair,

M. Stavropoulos, Greece.

There were also present:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. LAW REPORT SERIES No.1.

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

10/45.

24th October 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

In the Chair,

Dr. Zivković, Yugoslavia.

There were also present:

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

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

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

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

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

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

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

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

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

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

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

Discussion of Document III/20.

Paragraph I.

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

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

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

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

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

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

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

Sir Robert CRAIGIE: That is what I was thinking.

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

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

Paragraph II.

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

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

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

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

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

Paragraph V. It was decided to delete this paragraph.

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

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

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

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

II. LAW REPORTS SERIES Nos. 1 and 2.

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

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

TUESDAY 30th OCTOBER, at 2.30 P.M.

11/45.
1st November 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

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

There were also present:

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

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

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

I. MINUTES OF THE LAST MEETING.

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

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

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

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

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

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

Sir Robert CRAIGIE expressed his agreement with this proposal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXAMINATION OF DOCUMENT III/21.

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

Paragraph II. was agreed to without objections.

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

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

Tuesday 6th November 1945 at 3.0 p.m.

12/45.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

In the Chair,

Dr. Mayr-Harting, Czechoslovakia,

There were also present:

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

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

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

I. Minutes of the Last Meeting.

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

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

Paragraph IV.

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

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

Paragraph V.

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

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

Paragraph V. was agreed.

Paragraph VI.

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

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

task with which Committee III was charged.

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

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

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

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

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

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

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

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

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

Paragraph VII.

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

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

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

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

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

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

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

or:

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

Sir Robert CRAIGIE suggested an addition as follows:

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

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

Paragraph VIII.

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

Paragraph IX.

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

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

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

Paragraph X.

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

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Paragraph XI.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. WOLD was in agreement with this proposal.

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

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

13th November 1945, at 3.0 p.m.

13/45.
15th November 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

In the Chair,

Dr. Mayr-Harting (Czechoslovakia),

There were also present:

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

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

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

I. MINUTES OF THE LAST MEETING.

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

Page 2, second paragraph will read:

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

Page 2, 8th paragraph will read:

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

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

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

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

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

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

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

Dr. ZIVKOVIC moved that a vote should be taken.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

in line 1, strike out "important",

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

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

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

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

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

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

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

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

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

Paragraph VII. was agreed to without comment.

Paragraph VIII was agreed to without comment.

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

III. LAW REPORTS SERIES:

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

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

13/45.
15th November 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

In the Chair,

Dr. Mayr-Harting (Czechoslovakia),

There were also present:

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

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

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

I. MINUTES OF THE LAST MEETING.

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

Page 2, second paragraph will read:

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

Page 2, 8th paragraph will read:

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

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

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

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

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

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

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

Dr. ZIVKOVIC moved that a vote should be taken.

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

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

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

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

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

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

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

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

14/45.
11th December 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

3.0 p.m.

There were present:

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

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

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

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

13/45.
15th November 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

In the Chair,

Dr. Mayr-Harting (Czechoslovakia),

There were also present:

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

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

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

I. MINUTES OF THE LAST MEETING.

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

Page 2, second paragraph will read:

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

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

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

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Dr. ZIVKOVIC moved that a vote should be taken.

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

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

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in line 1, strike out "important",

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

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

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

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

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

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

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

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

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

Paragraph VII. was agreed to without comment.

Paragraph VIII was agreed to without comment.

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

III. LAW REPORTS SERIES:

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

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

14/45.
11th December 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

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

3.0 p.m.

There were present:

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

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

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

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