

SECRET

M.17

UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF SEVENTEENTH MEETING

held on

May 9, 1944

Chairman - Sir Cecil HURST (United Kingdom)

There were also present:

Mr. PELL	- United States of America
Mr. OLDHAM	- Australia
M. DE BAER	- Belgium
Dr. LIANG	- China
Dr. BENESH	- Czechoslovakia
M. GROS	- France
M. STAVROPOULOS	- Greece
Sir David MEEK	- India
M. BLUM	- Luxembourg
Dr. DE MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia
accompanied by M. RISTITCH	

CORRECTIONS IN MINUTES OF 15th MEETING

The Commission, at the request of the Chinese representative, sanctioned the insertion in these Minutes of revised versions of two speeches by Dr. Wellington Koo, and directed the Secretary General to circulate these corrections.

MINUTES OF LAST MEETING

These Minutes were approved and signed subject to the substitution of the following text for lines 15 - 24 on p.3:

"Dr. de MOOR saw objections. What would be the legal basis for the work of the Commission in connection with war crimes committed against Danes: would not this work be done better by the Danes themselves?

"M. de BAER said he had thought the Danes would welcome such intervention.

"On the close of the discussion the CHAIRMAN undertook to prepare and lay before the Commission at its next meeting the draft of an appropriate recommendation to the Governments of the United Nations."

CRIMES NOT COMMITTED AGAINST UNITED NATIONS: DRAFT
RECOMMENDATION PREPARED BY THE CHAIRMAN (C.16).

The CHAIRMAN presented his draft.

In the resulting discussion it appeared that some members had not felt the Commission to have reached a positive conclusion at the last meeting. The extension of the Commission's competence to war crimes against Italians was opposed on several grounds. ~~They were themselves war criminals.~~ It would be shocking that the Commission should concern itself with crimes against Italian victims of German war crimes at a time when certain United Nations representatives felt they had been improperly denied the means of dealing with Italian war crimes against their own nationals. War crimes on Italians were likely to be committed by other Italians as well as by Germans. The Italian position was too confused, and its future development too uncertain for it to be wise for the Commission to concern itself with it.

On the other hand, it was urged that the Chairman's draft merely brought the Commission into line with the attitude of the military authorities, as revealed in Colonel Clark's statement at the Joint Meeting of Committees I and III on 5 April, 1944, and with the text of the Moscow Declaration of 1 November, 1943. If co-belligerents and neutrals were excluded from the Commission's protection, how could it claim to do justice? The Commission, under the declarations of the leading United Nations statesmen, ought to deal with war crimes as such, irrespective of who the authors might be. The suggestion was made that if the Chairman's text was accepted Austria also should be included.

The CHAIRMAN proposed, and it was agreed, that further consideration of the subject should be postponed as unanimity could clearly not be obtained at present for any recommendation.

POLISH PROPOSAL
REPORT OF COMMISSION

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POLISH PROPOSAL FOR ADDING NEW ITEMS TO THE LIST OF WAR CRIMES
REPORT OF COMMITTEE III (C 15 (1)).

Dr. GLASER, Chairman of Committee III, introduced the report.

The first proposal, that the following item, namely:

"Indiscriminate mass arrests for the purpose of terrorising the population, whether described as taking of hostages or not."

should be added to the List, was discussed and adopted.

As regards the second proposal which related to the adoption of "procedures aimed at lowering human dignity," the Commission felt it to be sufficient for it to declare that Committee I was competent to entertain cases of this nature, and in examining them would be at liberty to take account of the terms of the Preamble of the International Convention of 18 October, 1907, concerning the Laws and Customs of War on Land.

MEASURES TO ENSURE CAPTURE OF WAR CRIMINALS: RECOMMENDATIONS TO
THE GOVERNMENTS PREPARED BY COMMITTEE II.

The recommendations were before the Commission in two forms, Document C.17 and an alternative version by M. de Baer (C. 17 (1)).

Mr. PELL, Chairman of Committee II, presented the Recommendations.

He said that in the Committee difficulty had been seen in holding the officers of the German army in custody, on the ground that the United Nations Supreme Command would need their help in disbanding the army. It was for this reason that the phrase "keep under control" was used. Personally, he thought the whole German army would have to be held as prisoners for a considerable time.

M. DE BAER presented his draft which was the same in substance but sought to make the object of the recommendation more intelligible.

The CHAIRMAN said the whole recommendation might fail if the military authorities rejected the part relating to the army and asked if the Committee had had any contact with them.

Dr. DE MOOR said the Committee had felt it should give the advice it considered necessary and leave the Governments responsible for accepting or rejecting it.

Dr. LIANG asked if the recommendation could be given a more general form by using general terms, dropping the reference to the year 1939 and making it plain the Japanese were covered by it. It would be submitted to his Government, as well as to the other Governments, and as it stood it was hardly suitable for approval by China.

M. MILANOVITCH made, from the point of view of his own Government, the same observation in regard to the omission of Hungary and other Axis satellites.

It was agreed that the Recommendation should be referred back for further consideration by Committee II at its next meeting.

The Commission decided to meet again on Tuesday, 16 May, at 3 p.m.

P. C. G. B. Hurst
May 16/4

SECRET

C.16
4 May, 1944

UNITED NATIONS WAR CRIMES COMMISSION

EXTENSION OF THE COMMISSION'S COMPETENCE TO CRIMES NOT
COMMITTED AGAINST UNITED NATIONS NATIONALS

RECOMMENDATION TO BE FORWARDED BY EACH MEMBER OF THE
WAR CRIMES COMMISSION TO HIS OWN GOVERNMENT

Draft prepared by the Chairman of the Commission

At the time when the governments of the United Nations were invited to join in the establishment of the War Crimes Commission, its suggested functions were limited to cases of war crimes committed by the enemy against nationals of the United Nations.

The circumstances of the war have changed considerably since the institution of the Commission. Italy has fallen out of the group of Axis powers, and is now co-operating with the Allies. The enemy policy towards Denmark has changed, and the regime of ruthlessness pursued in other countries is now followed also in Denmark.

These facts are recognised in the Three Power Declaration adopted at Moscow in October, 1943, as to the punishment of war criminals.

The Commission is of opinion that its work should be brought into line with the policy of the Allied Powers as set forth in the Moscow Declaration, and that where evidence is submitted to it of war crimes committed against nationals of the powers mentioned in that Declaration, such cases should not be regarded as lying outside its terms of reference.

The Commission recommends that the Governments of the United Nations should concur in its pursuing its work in future in conformity with the above proposal.

SECRET

C. 15 (1)
9 May 1944.

UNITED NATIONS WAR CRIMES COMMISSION

PROPOSAL BY THE POLISH REPRESENTATIVE FOR
ADDING NEW ITEMS TO THE LIST OF WAR CRIMES

REPORT OF COMMITTEE III
(As amended by the Committee on 8 May 1944.)

Committee III has considered the Polish proposal (Doc. III/3) for adding two new items to the List of War Crimes which was provisionally adopted by the Commission on 2 December, 1943, (Doc.C.1). The first item related to "taking hostages" and the second to the adoption in occupied territory of "procedures aimed at lowering human dignity," many examples of which were quoted from the experience of Poland. The Committee begs to make the following recommendations upon these proposals.

I As regards the first proposal:

The following item should be added to the List of War Crimes:

"Indiscriminate mass arrests for the purpose of terrorising the population, whether described as taking of hostages or not."

II As regards the second proposal:

The following item should be added to the List of War Crimes:

"Acts violating family honour and rights, the lives of individuals, religious convictions and liberty of worship."

The Commission should authorise Committee I to deal with such cases, when submitted to it by the National Offices, in the light of the last paragraph but one of the Preamble of the International Convention concerning the Laws and Customs of War on Land of 18 October, 1907, which reads as follows:

"Until a more complete code of the laws of war can be drawn up, the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience."

SECRET

C.17(1)
9 May, 1944

UNITED NATIONS WAR CRIMES COMMISSION

C 17
6 May, 1944

UNITED NATIONS WAR CRIMES COMMISSION

MEASURES PROPOSED BY M. DE BAER TO ENSURE

CAPTURE OF WAR CRIMINALS

DRAFT RECOMMENDATIONS TO THE GOVERNMENTS
prepared by
COMMITTEE II

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The mere establishment of lists of persons presumably guilty of war crimes can never be sufficient, but the process should be continued.

The governments, through their national offices or otherwise, should compile and have ready lists of all enemy civil and military persons in authority in each occupied district since 1939, such as Gauleiter, Governors, Chiefs of the S.S. and Gestapo, with as complete particulars as possible regarding these persons' identity.(1)

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On the conclusion of the armistice the military authorities should put and keep under control all members of the Gestapo, all commanding and higher officers of the German army and of German military organisations above the rank of major, and all civil servants having held a position in the occupied territories at a salary above

.) The description of the persons intended is the same as in the Commission's resolution of 4th April 1944 (Burnay resolution).

SECRET

C.17(1)

9 May, 1944

UNITED NATIONS WAR CRIMES COMMISSION

MEASURES PROPOSED BY M. DE BAER TO ENSURE

CAPTURE OF WAR CRIMINALS

DRAFT RECOMMENDATIONS TO THE GOVERNMENTS PROPOSED BY
M. DE BAER IN PLACE OF THOSE CONTAINED IN DOCUMENT C.17

If those who have committed major crimes are not to escape punishment, all persons who have held a responsible position in the occupied countries or in the army or military or police organisations should be available, immediately after the armistice, to be examined upon any crimes which may have been committed in their sector or command.

It is suggested therefore that on the conclusion of the armistice the military authorities of the United Nations should put and keep under control all persons who are or have been members of the Gestapo, all commanding and higher officers of the German army and of German military organisations above the rank of major, and all devil servants having held a position in the occupied territories at an annual salary above 4000 Rm. or assimilated to a rank which is at least that of a major.

With a view to facilitating the task of the United Nations Military Authorities, it is suggested that the Governments, through their National Offices or otherwise, should compile and have ready lists of all enemy civil and military persons in authority in each occupied district since 1939, such as Gauleiters, Governors, Chiefs of the S.S. and Gestapo, with particulars as complete as possible regarding these persons' identity.

SECRET

M.18

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Eighteenth Meeting

held on

May 16, 1944

Chairman - Sir Cecil HURST (United Kingdom)

There were also present:

Mr. PELL	- United States of America
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
Dr. WELLINGTON KOO	- China
accompanied by Dr. LIANG	
Dr. ECER	- Czechoslovakia
M. GROS	- France
M. STAVROPOULOS	- Greece
Sir David MEEK	- India
M. BLUM	- Luxembourg
Dr. de MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia
accompanied by M. RISTITCH	

MINUTES OF THE LAST MEETING

On Page 2, lines 4 - 5, the sentence "They were themselves war criminals" was deleted, and the Minutes, so amended, were signed by the Chairman.

APPOINTMENT OF LIEUT. COLONEL H.H. WADE

The CHAIRMAN reported that to meet the need for additional staff resulting from the Commission's decision to collaborate actively with the National Offices in seeking certain kinds of evidence against leading war criminals (Minutes of Sixteenth Meeting pages 2 - 3), and to give general assistance to the Secretary General, he had secured the services of Lieut.-Colonel Wade at a salary approved by the Finance Committee.

MEASURES TO EN
OF RECOMMENDAT
(DOC. 17(2)).

Mr. PELL

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MEASURES TO ENSURE CAPTURE OF WAR CRIMINALS: SECOND DRAFT
OF RECOMMENDATIONS TO THE GOVERNMENTS DRAWN UP BY COMMITTEE II
(DOC. 17(2)).

Mr. PELL, Chairman of Committee II, presented the draft.

Paragraph 2 was incorporated in paragraph 1, and that paragraph, so amended, was adopted.

Paragraph 4 was made paragraph 2. After discussion it was adopted in the following form:

"2. For this purpose the Governments, through their national offices, should compile and communicate to the Commission when they think it expedient, lists of all enemy civil and military persons in authority in each occupied district, including Gauleiters, Governors, Chiefs of the S.S., Chiefs of the Gestapo etc., with as complete particulars as possible regarding these persons identity and some of the more important crimes committed in the provinces, districts, towns or camps where they are or were in authority. The surrender of these persons by the enemy at the moment of the armistice may be demanded."

It was agreed that the lists referred to were made by each Government for its own use and communicated to the Commission, as and when the Government thought fit to do so, and that they might lead to action by either the Governments which drew them up or the Commission.

Paragraph 3 was adopted in the following form:

"3. It is particularly necessary that on the conclusion of the armistice the military authorities should put and keep under control all persons whom they find to have been members of the S.S. or the Gestapo."

The last paragraph of the draft was adopted without change as paragraph 4 of the Recommendations.

REPORT OF DR. WELLINGTON KOO, CHAIRMAN OF THE COMMITTEE ON
THE ESTABLISHMENT OF A FAR EASTERN AND PACIFIC SUB-COMMISSION
(DOC. C.19).

Dr. WELLINGTON KOO presented the report.

A discussion took place on the penultimate paragraph which read as follows:

* Doc C21

26
144

"The question of bringing cases of Japanese war crimes before the War Crimes Commission in London was left open and it was also agreed that the conclusions adopted by the Committee did not preclude the possibility of creating other branches of the Commission. In respect to these two points, the general opinion seemed to be that it would be best to wait until the Sub-Commission was established and began functioning in order to enable consideration of them in the light of the working experience of the Far Eastern organ."

The omission of the last sentence was proposed by Mr. OLDHAM on the ground that it made the creation of other branches conditional on what happened at Chungking, whereas in the committee Australia had agreed to the creation of the Chungking Sub-Commission on the clear understanding that the creation of other branches, at any time and any place, e.g. for the Lower Pacific, would not be prejudiced thereby. Dr. WELLINGTON KOO considered that, taken in conjunction with the first sentence, the second sentence did not prejudice creation of other branches, which, if proposed, would always be considered by the Commission, and he felt it would be wise to profit by the experience which would be obtained at Chungking. China, he said, had joined the War Crimes Commission for two reasons - firstly, because in the interests of international solidarity, it desired the co-operation of the other nations in dealing with war crimes; and secondly, because it desired to have all war crimes by the same enemy treated in the same manner. After further discussion, in which other members joined, Dr. WELLINGTON KOO agreed to Mr. Oldham's amendment which was adopted.

Sir David MEEK said he had made it clear that Indian cases would go to London, and suggested that in the first sentence the word "mentioned" should be substituted for "left open", but he did not press this amendment.

The report, as amended, was adopted.

Cecil W. Hurst
May 23/44

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C.17(2).
12 May, 1944

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UNITED NATIONS WAR CRIMES COMMISSION

MEASURES PROPOSED BY M. DE BAER TO ENSURE

CAPTURE OF WAR CRIMINALS

RECOMMENDATIONS TO THE GOVERNMENTS

Second Draft submitted by Committee II

1. The mere establishment of lists of persons presumably guilty of war crimes, by building up and preparing complete cases and dossiers containing the proof of their guilt, can never suffice completely, - though this was the original basis for our work.
Those Governments in particular, whose territories are completely or almost completely occupied by the enemy lack the machinery, personnel and the necessary information.
Although they may cover a certain number of cases, they can not adequately deal in this way with the mass-criminality now existing in their countries. This first task should, however, be continued, and at the same time other means should be applied.
2. If those who have committed major crimes are not to escape punishment, all persons who have held a responsible position in the occupied countries or in the army or military or police organisations should be available, immediately after the armistice, to be examined upon any crimes which may have been committed in their sector or command.
3. It is particularly necessary that on the conclusion of the armistice the military authorities should put and keep under control all members of the Gestapo.
4. The governments, through their national offices, should compile and have ready lists of all enemy civil and military persons in authority in each occupied district, such as Gauleiter, Governors, Chiefs of the S.S., Gestapo etc., with as complete particulars as possible regarding these persons' identity and some most important crimes committed in the provinces, districts, towns or camps where they are or were in authority. The surrender of these persons from the enemy at the moment of the armistice may be demanded.
5. Analogous measures are recommended as regards other Axis Powers and satellites.

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C.21
18 May 1944

UNITED NATIONS WAR CRIMES COMMISSION

MEASURES TO ENSURE CAPTURE OF WAR CRIMINALS

RECOMMENDATIONS TO THE GOVERNMENTS

ADOPTED BY THE WAR CRIMES COMMISSION ON 16 MAY, 1944

1. The mere establishment of lists of persons presumably guilty of war crimes, by building up and preparing complete cases and dossiers containing the proof of their guilt, can never suffice completely - though this was the original basis for the work of the Commission.
Those Governments in particular, whose territories are completely or almost completely occupied by the enemy lack the machinery, personnel and the necessary information.
Although they may cover a certain number of cases, they can not adequately deal in this way with the mass-criminality now existing in their countries. This first task should, however, be continued, and at the same time other means should be applied.
If those who have committed major crimes are not to escape punishment, all persons who have held a responsible position in the occupied countries or in the army or military or police organisations should be available, immediately after the armistice, to be examined upon any crimes which may have been committed in their sector or command.
2. For this purpose the governments, through their national offices, should compile and communicate to the Commission when they think it expedient, lists of all enemy civil and military persons in authority in each occupied district, including Gauleiters, Governors, Chiefs of the S.S., Chiefs of the Gestapo etc., with as complete particulars as possible regarding these persons' identity and some of the more important crimes committed in the provinces, districts, towns or camps where they are or were in authority. The surrender of these persons by the enemy at the moment of the armistice may be demanded.
3. It is particularly necessary that on the conclusion of the armistice the military authorities should put and keep under control all persons whom they find to have been members of the S.S. or the Gestapo.
4. Analogous measures are recommended as regards other Axis Powers and satellites.

SECRET

C.19(1)
15 May 1944

UNITED NATIONS WAR CRIMES COMMISSION

Report of Dr. Wellington Koo, Chairman of the
Committee on the Establishment of a Far Eastern and Pacific

Sub-Commission

At a meeting held on May 4th, 1944, and attended by the representatives of Australia, China, France, Great Britain, Holland, India, New Zealand, and the United States, the Committee carefully considered the question referred to it of the establishment of a Far Eastern Panel of the Commission to deal with the war crimes committed by the enemy against the United Nations in the war with Japan. The different points involved in the question such as the designation and function of the proposed organ, the scope of its authority, the seat of its establishment, the relation with the Commission in London, the need of close contact between the two bodies, were fully discussed. It was agreed that the branch of the Commission to be established in the Far East should be called "The Far Eastern and Pacific Sub-Commission" of the United Nations War Crimes Commission. The conclusions resulting from the discussion of other points were summarized and unanimously adopted in the following form:-

- "1. That a Far-Eastern and Pacific sub-commission of the Commission be established in Chungking with the function of dealing with war crimes committed by Japan.
- "2. The Sub-Commission may sit at such other place as its work may require.
- "3. Recommendations as to any modification of the principles and rules adopted by the United Nations War Crimes Commission which may be required by special local conditions shall be reported to the Commission for approval.
- "4. Recommendations to the Governments must be made through the War Crimes Commission."

As regards representation on the Sub-Commission, some members stated that as yet their Governments had no cases ready for presentation pending the liberation of their Far Eastern territories from enemy occupation, and some pointed out that the distance separating the different theatres of war in the Far Eastern and Pacific area might make it difficult to present all cases to the Sub-Commission.

The Chinese representative expressed the hope that as many as possible of the Governments directly interested in the Far Eastern and Pacific war would participate in the work of the Sub-Commission in order to obtain the maximum of uniformity in the treatment of Japanese war crimes.

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The question of bringing cases of Japanese war crimes before the War Crimes Commission in London was left open and it was also agreed that the conclusions adopted by the Committee did not preclude the possibility of creating other branches of the Commission.

There was also considered the question of finance for the Sub-Commission, and the Chairman of the Committee was asked to arrange for the Finance Committee, in collaboration with those of the Committee members desiring to attend, to consider it and report to the Commission for its decision. In accordance with this conclusion, I have made the necessary arrangement with the Chairman of the Finance Committee.

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UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Nineteenth Meeting

held on

May 23rd 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present:

Mr. PELL	- United States of America
Mr. OLDHAM	- Australia
M. DE BAER	- Belgium
accompanied by M. DUMON	
Dr. WELLINGTON KOO	- China
accompanied by Dr. LIANG	
Dr. ECER	- Czechoslovakia
M. GROS	- France
M. STAVROPOULOS	- Greece
Sir David MEEK	- India
M. BLUM	- Luxembourg
Dr. DE MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. RISTITCH	- Yugoslavia

MINUTES OF LAST MEETING

The reading of the Minutes was dispensed with and they were signed by the Chairman.

LEAKAGE OF INFORMATION

Attention was called to paragraphs in the Evening Standard of May 18, 1944, which appeared to show knowledge of the Minutes of the Commission's last meeting.

It was decided that the Commission's members should do all they could to maintain the secret character of the Minutes, and that the Secretary General should once more issue a notice on the subject with the Minutes.

REPORT OF THE FINANCE COMMITTEE ON FINANCING THE FAR EASTERN AND PACIFIC SUB-COMMISSION (Doc. C.22)

The report was adopted without discussion.

c. 24

MEMBERSHIP OF COMMITTEES II AND III

M. René Blum (Luxembourg) was elected a member of these committees.

REPORT BY THE CHAIRMAN OF COMMITTEE I

M. DE BAER, Chairman of Committee I, said he had no report to make. He wished, however, to ask that members of the Commission would urge their National Offices to transmit to the Commission cases of war crimes which did not involve violation of their national criminal law. They appeared to be avoiding doing this, and it was important to find out how numerous such cases were, as this had a bearing on the question of setting up an international criminal court.

This proposal was accepted.

REPORT BY THE CHAIRMAN OF COMMITTEE II

Mr. PELL, Chairman of Committee II, said the Committee desired that the Chairman of the Commission and himself should endeavour to establish contact with the United Nations' military authorities for the purpose of ascertaining their attitude on the question of establishing an office dealing with war crimes in occupied enemy territory (Doc. C.14).

This request was noted and the action to be taken was left to the Chairman.

MEASURES TO ENSURE THE CAPTURE OF WAR CRIMINALS: ACTION ON THE RECOMMENDATIONS TO THE GOVERNMENTS ADOPTED ON 16 May, 1944. (Doc. C.21)

It was decided that each member should draw his own Government's attention to these recommendations, and that the Chairman, in the communication which he addressed to the United Kingdom Secretary of State for Foreign Affairs, should request Mr. Eden, if he had reason to think consultation between the Governments to be necessary, to be good enough to take appropriate steps for that purpose. Owing to the ban on sending messages in cipher to places outside the United Kingdom, some members might be unable to act on the decision for the time being.

Finis 6.11.44

SCOPE OF THE RETRIBUTIVE ACTION OF THE UNITED NATIONS:
RESOLUTION PROPOSED BY COMMITTEE III (Doc. C.20)

Professor GLASER presented and supported the resolution. He explained the reasons which had led Committee III to ask Dr. Eder to write the report (Docs. III/4 and III/4(a)), on which the resolution was founded. He considered that what was controversial in the proposal was not the objects sought but the question whether they involved an enlargement of the Commission's functions which it was not competent to effect.

Dr. ECER supported and commented on the resolution.

A general discussion followed in which doubts were expressed as to whether the Governments would concur in the Commission's adopting the course proposed, and as to the expediency of its taking up the cases covered by categories 1, 3 and 4 of the last paragraph of the resolution, while other members had no doubts on these points and regarded the enlargement of the Commission's scope as essential.

It was finally decided that the Chairman should present to the next meeting of the Commission a communication to be addressed to Mr. Eden which, referring to the pledge of retribution for the persecution of the Jews which was given by the Governments of Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, the United States of America, the United Kingdom, the Union of Soviet Socialist Republics and Yugoslavia in the statement published on 17 December, 1942, and read by him in the House of Commons on that date (Hansard 385, 17 December 1942, col. 2032), would indicate the Commission's readiness to study this question and make recommendations upon it, unless another method of dealing with it was being applied or was contemplated.

Further consideration of points 1 and 4 was postponed.

Cecil J. Howard
May 30/44

SECRET

C.22.
20 May, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT OF A FAR EASTERN AND PACIFIC SUB-COMMISSION

REPORT OF THE FINANCE COMMITTEE

The report of the Committee on the establishment of a Far Eastern and Pacific Sub-Commission which was adopted by the Commission on May 16, provided that the Finance Committee, in collaboration with those of the former committee's members who desired to attend, should consider how this Sub-Commission should be financed.

The Finance Committee, consisting of Dr. de Moor (Chairman), Dr. Eder and Mr. Colban, accordingly held a meeting which was also attended by Dr. Wellington Koo, Sir Cecil Hurst and Mr. Pell. Two alternatives were considered - one that the expenses of the Sub-Commission should be met in the same manner and out of the same budget as those of the Commission, and the other that only Governments directly affected by Japanese war crimes should be required to contribute to them. It was unanimously decided to recommend the first method. (1) Its adoption would be a practical demonstration of the fact that it is the common policy of all the nations represented on the Commission to punish all war crimes, whether committed in the Western or in the Eastern hemisphere. Hesitation might have been felt if the result would be to impose an undue burden on the occupied countries of Europe. But this is not to be anticipated. It can be seen from the appended Table that, under the method adopted by the Commission for dividing its expenses among its members, no member can be liable for more than £4.00 per annum until the annual budget exceeds £6,000, and that after this figure has been attained the contributions due from occupied countries increase so slowly that the Commission's budget would have to reach a high figure before they would become onerous. The expenses to be borne are only those involved in the actual operation of the Sub-Commission itself, for the expenses of representatives sitting on it or attending it, and the cost of preparing and transmitting cases, will fall on the Governments concerned as is the case for the Commission. Dr. Wellington Koo, has moreover, been so good as to say that his Government will endeavour to provide the Sub-Commission with suitable premises free of charge, as the United Kingdom Government is doing for the Commission.

(1) Sir David Mook, who was unable to attend the meeting, asked the Secretary-General to state that India approved this method.

APPENDIX

SECRET

Variation of the contributions of member Governments according to the size of the Commission's budget

	£	£	£	£
Amount of budget	6,000	10,000	30,000	50,000
Excess above basic contributions	none	4,000	24,000	44,000
Size of Unit	none	2.63	15.82	29

	No. of Units	Contributions payable ⁽¹⁾			
1. Australia	30	400	478.9	874.6	1,273.5
2. Belgium	20	"	452.6	716.4	969.0
3. China	100	"	663.0	1982.0	3,305.0
4. Czechoslovakia	20	"	452.6	716.4	969.0
5. French Committee of National Liberation	80	"	610.4	1665.6	2,726.4
6. Greece	10	"	426.3	558.2	684.5
7. India	80	"	610.4	1665.6	2,726.4
8. Luxembourg	1	"	402.63	415.8	428.43
9. Netherlands	30	"	478.9	874.6	1,273.5
10. New Zealand	6	"	415.78	494.9	510.68
11. Norway	6	"	415.78	494.9	510.68
12. Poland	20	"	452.6	716.4	969.0
13. United Kingdom	550	"	1846.5	9101.0	16,347.5
14. U.S.A.	550	"	1846.5	9101.0	16,347.5
15. Yugoslavia	14	"	436.82	621.5	858.32
	1,517				

(1) Calculated to two decimal points.

UNITED NATIONS

Scope of the Retribution

Resolution proposed

The United Nations War Crimes Commission has declared that the main allied declaration of crimes committed by the Commission and its committee Allied governments and the this examination, the Commission the scope of its work, its into line with the principal declarations.

Accordingly the United Nations considers it its duty to governments in respect of accomplices in connection war in violation of the or otherwise affected, of general principles of crimes, or of the laws of public conscience as provided.

From this general principle Crimes Commission considers crimes are within the scope

1. the crimes committed launching the war, crimes have been committed
2. crimes committed in committed against citizens of the United Nations, whatever may be
3. crimes committed against nationality, state nationality, religion where they have been
4. crimes that may be restoration of peace

SECRET

C.20
16 May, 1944

UNITED NATIONS WAR CRIMES COMMISSION

Scope of the Retributive action of the United Nations.

Resolution proposed by Committee III

The United Nations War Crimes Commission has examined the main allied declarations concerned with the punishment of crimes committed by the enemy, new facts submitted to the Commission and its committees by representatives of various Allied governments and the results of its own work. After this examination, the Commission came to the conclusion that the scope of its work, its methods and principles must be brought into line with the principles expressed in the Allied declarations.

Accordingly the United Nations War Crimes Commission considers it its duty to make suggestions to the United Nations' governments in respect of crimes committed by the enemy and their accomplices in connection with or incidental to the present world war in violation of the criminal laws of the countries invaded or otherwise affected, of the laws and customs of war, of the general principles of criminal law as recognised by civilised nations, or of the laws of humanity and the dictates of the public conscience as provided in the Hague Preamble.

From this general point of view the United Nations War Crimes Commission considers that the following categories of crimes are within the scope of its work :

1. the crimes committed for the purpose of preparing or launching the war, irrespective of the territory where these crimes have been committed;
2. crimes committed in the allied countries and crimes committed against members of the armed forces or civilian citizens of the United Nations abroad, in the air or on the sea, whatever may be the rank of the accused;
3. crimes committed against any person without regard to nationality, stateless persons included, because of race, nationality, religious or political belief, irrespective of where they have been committed;
4. crimes that may be committed in order to prevent the restoration of peace.

SECRET

M.20

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twentieth Meeting

held on

30th May, 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present:

Mr. PELL	- United States of America
accompanied by Lt. Col. HODGSON	
Mr. OLDHAM	- Australia
M. DE BAER	- Belgium
accompanied by M. DUMON	
Dr. WELLINGTON KOO	- China
accompanied by Dr. LIANG	
Dr. ECER	- Czechoslovakia
M. GROS	- France
M. STAVROPOULOS	- Greece
Sir David MEEK	- India
M. BLUM	- Luxembourg
Dr. DE MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
M. MILANOVITCH	- Yugoslavia
accompanied by M. RISTITCH	

MINUTES OF LAST MEETING

Reading of the Minutes was dispensed with and the Minutes were signed by the Chairman.

SCOPE OF THE RETRIBUTIVE ACTION OF THE UNITED NATIONS:
CHAIRMAN'S DRAFT OF A LETTER TO MR. EDEN (Doc. G.23)

The CHAIRMAN read the draft. It was, he said, an attempt to take account of the various tendencies within the Commission in such a manner as to secure general agreement. No reference was made to the pledge by Mr. Eden which had been mentioned at the last meeting, since perusal of the full official report showed it to deal only with occupied territory.

After discussion certain changes were made in the letter and it was approved. It was agreed that the members of the Commission should bring it to the notice of their Governments, and that copies

would be circulated to them for this purpose (Doc. C.23(1)).

Dr. ECER asked to have it recorded in the Minutes that he had voted for the original text of the sixth paragraph, namely:

"The Governments of the United Nations may already have in view some plan for bringing the authors of these crimes to justice, but if that is not the case, it would probably be convenient that the work of investigating these crimes and of preparing lists of the responsible persons should be undertaken by the Commission. It is therefore right that you should know that the Commission is prepared to take up this task if by so doing it can assist the Governments of the United Nations."

Dr. ECER asked and it was agreed that points 1 and 4 of the last paragraph of the draft resolution regarding the scope of the retributive action of the United Nations (Doc. C.20) should be discussed by the Commission at its next meeting.

ARTICLE ON SURRENDER OF WAR CRIMINALS TO BE INSERTED IN TERMS OF ARMISTICE WITH GERMANY (Doc. C.13)

The CHAIRMAN observed that this draft required some modification in order to bring it into harmony with the "Recommendations to the Governments" which the Commission had adopted at its last meeting. He had also some drafting changes to propose.

Mr. COLBAN said that he also wished to suggest some modifications.

It was decided that the Chairman should be handed Mr. Colban's proposals and should submit a revised text at the next meeting.

Cecil B. Hurst

SECRET

C.23(1)

1 June, 1944

UNITED NATIONS WAR CRIMES COMMISSION

SCOPE OF THE RETRIBUTIVE ACTION OF THE UNITED NATIONS

LETTER FROM THE CHAIRMAN OF THE COMMISSION TO THE
RT. HON. ANTHONY EDEN, HIS BRITANNIC MAJESTY'S
PRINCIPAL SECRETARY OF STATE FOR FOREIGN
AFFAIRS IN THE UNITED KINGDOM

31st May 1944

Sir,

At the time when agreement was reached between the Governments of the United Nations for the institution of this Commission, the paramount consideration was the need to establish machinery for bringing to justice members of the enemy forces and officials in the enemy administrations, who had been guilty of violations of the laws and customs of war against members of the Allied forces or against inhabitants of Allied territory temporarily occupied by the enemy.

I have been asked by members of the Commission to inform you that in their view it would now be convenient to know whether it is the desire of the Governments of the United Nations that the activities of the Commission should be restricted to the investigation of war crimes "stricto sensu", of which the victims have been allied individuals.

Technically, a distinction can well be drawn between atrocities committed by the enemy which are violations of the laws and customs of war and those which are not, but it will probably be the general view that the need to exact retribution is as great in the one case as in the other.

A category of enemy atrocities which has deeply affected the public mind, but which does not fall strictly within the definition of war crimes, is undoubtedly the atrocities which have been committed on racial, political or religious grounds in enemy territory.

The publicity which was given to the appointment of the Commission for the Investigation of War Crimes led many people to assume that it would be part of the duties of the Commission to investigate atrocities of this character committed by the enemy in enemy territory as well as in occupied territory. I have been approached on occasions by bodies and individuals desirous of knowing whether they could help the Commission in this part of its work. If some other machinery for dealing with the above category of cases is to be set up, the Commission feels that a public announcement to this effect would be helpful, in order that the public at large may understand that effective steps will be taken to ensure that the authors of these atrocities are brought to justice.

/The Governments

SECRET

The Governments of the United Nations may already have in some plan for bringing the authors of these crimes to justice, if that is not the case, it is right that you should know that the Commission is prepared to take up this work if by so doing it can assist the Governments of the United Nations.

In conclusion, I would say that it is the hope of the Commission that you will take the initiative in promoting any further discussion between the Governments of the United Nations which the suggestions made in this letter may be thought to require.

I am,

etc.

(Sgd.) Cecil J.B. HURST

Chairman.

UNITED NATIONS

Minutes of

held

June

Chairman: Sir

There were also present

Mr. PELL

accomp

M. De BAER

Dr. WELLINGTON

accomp

Dr. ECER

accomp

M. GROS

M. STAVROPOUL

Sir David MEE

accomp

M. BLUM

Dr. De MOOR

Mr. COLBAN

Dr. GLASER

M. MILANOVIT

accomp

MINUTES OF LAST MEETING

Professor GLASER

presented his apology

Commission for his

The reading of

they were signed by

FINANCIAL AND ADMINISTRATIVE

The SECRETARY-

by the Finance Comm

to put them on the

to examine them and

to the members.

SECRET

M.21
June 7, 1944

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-first Meeting

held on

June 6th 1944.

Chairman: Sir Cecil HURST - United Kingdom

There were also present :

Mr. PELL	- United States of America
accompanied by	Lt.Col. HODGSON
M. De BAER	- Belgium
Dr. WELLINGTON KOO	- China
accompanied by	Dr. LIANG
Dr. ECER	- Czechoslovakia
accompanied by	Dr. BENESH
M. GROS	- France
M. STAVROPOULOS	- Greece
Sir David MEEK	- India
accompanied by	Mr. S.N. DUTT.
M. BLUM	- Luxembourg
Dr. De MOOR	- Netherlands
Mr. COLBAN	- Norway
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia
accompanied by	M. RISTITCH.

MINUTES OF LAST MEETING

Professor GLASER asked to have it recorded that he had presented his apologies through the Secretary General to the Commission for his unavoidable absence from the last meeting.

The reading of the Minutes was then dispensed with and they were signed by the Chairman.

FINANCIAL AND ADMINISTRATIVE REGULATIONS

The SECRETARY-GENERAL said that draft Regulations drawn up by the Finance Committee were being circulated. It was decided to put them on the Agenda of the next meeting but one, so that time to examine them and consult their Governments might be allowed to the members.

REPORT BY THE CHAIRMAN OF COMMITTEE I : THE DESTRUCTION AND MASSACRES OF LIDICE AND LEZÁKY

The CHAIRMAN OF COMMITTEE I reported that in the course of its work the Committee had listed certain persons as responsible, among others, for the destruction and massacres of Lidice and Ležáky.

DR. ECER made the following statement which he asked to have entered in the Minutes :

"I have the honour to request the Commission to approve the decision by which Committee I has put on the list of war criminals the men responsible for the destruction of the Villages of Lidice on June 10th and Ležáky on June 24th, 1942, and for the extermination of their male population and the imprisonment of their women and children in concentration camps.

Further I have the honour of informing the Commission that the Czechoslovak Government has the intention of broadcasting to Czechoslovakia that the authors of the above-mentioned crimes have been put on the list of war criminals. I beg the Commission to agree.

The Czechoslovak Government proposes to take this course for the following reasons :

1. At this decisive moment of the war all possible moral help must be given to the oppressed peoples, who are required by the Allied Supreme Command to help the armies of liberation by resistance to the Germans and by active combat against them.
2. In order to uphold the prestige of and the confidence felt in the United Nations War Crimes Commission, it is necessary for the oppressed peoples to know that the Commission is giving effect to the promises of the United Nations Governments and leaders concerning the punishment of crimes committed by the invaders.
3. The Czechoslovak Government has received information from our country that the perpetrators of the crimes of Lidice and Ležáky are preparing a new mass crime. They have ordered the arrest of over 2,000 hostages in Moravia. The Czechoslovak Government hopes that the radio announcement that the men responsible for the crimes of Lidice and Ležáky have been put on the list of war criminals will mean a great moral help for the relatives of the persons thus arrested and a strengthening of the whole underground movement.

Moreover it might deter the Germans from executing the hostages.

4. On May 27th, 1942, one of the most cruel murders of the Czechs and other peoples, Píseň, was committed by the Czech patriots. On June 10th the second anniversary of Lidice and on June 24th the second anniversary of Ležáky will be commemorated.

The British Broadcasting Corporation considered these events as so important that on June 4th a special commentary was devoted to them by it.

The Czechoslovak Government forms of commemoration of the would be the announcement that on the list of war criminals Crimes Commission and that now the business of the United Nations War Crimes Commission.

The Commission agreed understanding that it should part would be a statement that considered certain persons, responsible, with others, in two crimes. In the second United Nations War Crimes Commission persons on the list of war criminals mentioned.

The CHAIRMEN OF COMMITTEE progress.

ESTABLISHMENT IN ENEMY TERRITORY

The CHAIRMAN reported that M. de Baer he had had a most persons connected with the matter that a proposal for giving effect shortly be drawn up in a form.

LT. COLONEL HODGSON said summoned him to a meeting on forward and another meeting would be held at an early date.

ESTABLISHMENT OF A FAR EASTERN LETTER TO THE GOVERNMENTS -

The draft letter was approved.

It was decided that it members of the Commission, should establishment and maintenance might desire to avail themselves of it.

The Czechoslovak Government thinks that one of the best forms of commemoration of the martyrs of Lidice and Lesáky would be the announcement that the murderers have been put on the list of war criminals by the United Nations War Crimes Commission and that retribution for these crimes is now the business of the United Nations as a whole".

The Commission agreed to the proposed broadcast on the understanding that it should consist of two parts. The first part would be a statement that the Czechoslovak Government considered certain persons, whom it would designate by name, as responsible, with others, under Czechoslovak Law, for the two crimes. In the second part it would be announced that the United Nations War Crimes Commission had put the responsible persons on the list of war criminals, but no names would be mentioned.

The CHAIRMEN of COMMITTEES II and III also reported progress.

ESTABLISHMENT IN ENEMY TERRITORY OF A WAR CRIMES OFFICE (C.24)

The CHAIRMAN reported that in company with Mr. Pell and M. de Baer he had had a most satisfactory informal meeting with persons connected with the military authorities. He expected that a proposal for giving effect to the objects in view could shortly be drawn up in a form acceptable to those authorities.

LT. COLONEL HODGSON said the Supreme Command had yesterday summoned him to a meeting on the subject. Work was going forward and another meeting with the Commission's representatives would be held at an early date.

ESTABLISHMENT OF A FAR EASTERN AND PACIFIC SUB-COMMISSION: DRAFT LETTER TO THE GOVERNMENTS - C.25

The draft letter was approved without discussion.

It was decided that it should be sent to all the Governments members of the Commission, since all were concerned in the establishment and maintenance of the Sub-Commission and any of them might desire to avail themselves of its services.

ARTICLE ON SURRENDER OF WAR CRIMINALS TO BE INSERTED IN TERMS
OF ARMISTICE WITH GERMANY : REDRAFT BY THE CHAIRMAN

Before presenting this document, the CHAIRMAN gave certain explanations from which it appeared that a misunderstanding had arisen as to the effect of the original text. The subject was, therefore, adjourned until the next meeting.

SCOPE OF THE RETRIBUTIVE ACTION OF THE UNITED NATIONS :
RESOLUTION PROPOSED BY COMMITTEE III (C.20) *

A discussion took place on points 1 and 4 of the last paragraph of the resolution, which had been reserved at the last meeting of the Commission. It was decided to refer these points back to Committee III for further consideration.

The Commission decided to hold its next meeting on Tuesday, 13th June, at 3 p.m.

*Eril 113 Hurd
June 13/4*

SECRET

UNITED NATIONS
ESTABLISHMENT IN
Draft

The War Crimes Commission is
desirable to have an agency
or established as part of the
in each enemy territory
regarding this agency
practicable by the U

1. Functions and Field of Activity

The agency is to be established in the
Nations which utilise the

(1) To identify war criminals and ascertain their whereabouts

(ii) To place and keep them in custody

(iii) To ensure such persons are brought before competent courts.

(iv) To provide a service for the collection of evidence from abroad since this method of proceeding is the most effective. With this object the agency will examine witnesses, make surveys on the evidence admissible

(v) To issue search warrants

(vi) To collect information on other crimes or facts

2. Organisation

The agency should have tasks analogous to those of the police to be assisted by police forces, and modern criminological methods and of the occupying powers.

The agency should be or form part of the Commission and through the Commission

3. Method of Establishment

The Commission should be created by a clause in the armistice

* Annexed to H. 19 of 23rd May 1944

N TERMS

SECRET

C.24
30 May, 1944

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT IN ENEMY TERRITORY OF WAR CRIMES OFFICES

Draft Report by the Commission

submitted by Committee II

The War Crimes Commission considers that it would be desirable to have an agency to deal with war crimes attached to or established as part of the Commander-in-Chief's Headquarters in each enemy territory. The following recommendations are made regarding this agency, subject to their being found to be practicable by the United Nations Military Authorities.

1. Functions and Powers

The agency is to render the following services to the United Nations which utilise it :

- (i) To identify war criminals named or described by United Nations and ascertain their whereabouts in the enemy territory.
- (ii) To place and keep in custody persons accused of war crimes.
- (iii) To ensure such persons being handed over for trial by the competent courts.
- (iv) To provide a substitute for the normal method of obtaining evidence from abroad by "Commissions rogatoires" (letters of request) since this method cannot successfully be applied to enemy territory. With this object the agency is to be organised for hearing and examining witnesses and experts in the enemy territory, and for making surveys on the spot, under conditions rendering the resulting evidence admissible in the court concerned.
- (v) To issue search warrants.
- (vi) To collect information which might lead to the discovery of other crimes or further evidence.

2. Organisation, Method of Operation, Relationship to the War Crimes Commission

The agency should consist of say 20 lawyers qualified to perform tasks analogous to those of juges d'instruction (examining magistrates), to be assisted by a staff of clerks, and adequate detective or police forces, and have at its disposal the outfit and staff of a modern criminological laboratory. The assistance of the local police and of the occupying forces would also be necessary.

The agency should be an organ of the War Crimes Commission attached to or forming part of Army Headquarters, and operating as part of and through the occupying forces.

3. Method of Establishment.

The Commission feels that it is desirable that the agency should be created by an Order of the Commander-in-Chief or a clause in the armistice terms.

SECRET

C.25
2 June, 1944

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT OF A FAR EASTERN AND PACIFIC SUB-COMMISSION

Draft Letter to the Governments submitted by
the Committee on the Establishment of a Far
Eastern and Pacific Sub-Commission.

Sir,

It has been contemplated from the outset that the execution of the United Nations' policy of punishing war crimes might necessitate the creation, in addition to the main Commission in London, of regional branches or panels for the investigation of such crimes. The United Nations War Crimes Commission has now decided to establish such a branch at Chungking for the investigation of Japanese war crimes under the name of the Far Eastern and Pacific Sub-Commission.

I have been requested by the Commission to bring this decision to the notice of the member Governments which are directly affected by the war with Japan and to give the following further information regarding the Sub-Commission.

2. The United Nations War Crimes Commission has agreed that :
 - (i) The Sub-Commission may sit at places other than Chungking as its work may require.
 - (ii) Recommendations for modifications of the principles and rules adopted by the main Commission which may be required by local circumstances shall be reported to the main Commission for approval.
 - (iii) Recommendations to the Governments must be made through the Commission.
 - (iv) The expenses of the Sub-Commission shall be met in the same manner as those of the Commission, that is to say, that each Government will pay the expenses of its representatives and the cost of preparing and transmitting cases to it, and the expenses incurred in the operation of the Sub-Commission itself will be met out of the budget of the main Commission. His Excellency the Chinese Ambassador in London, Dr. Wellington Koo, has been so good as to promise that his Government will provide the Sub-Commission with premises in China as is done in London for the main Commission by His Majesty's Government in the United Kingdom.

The question of bringing Japanese war crimes before the main Commission was left open, but some members envisaged the possibility of their Governments bringing certain cases before the Commission. It was also the view of the Commission that the establishment of the Sub-Commission does not preclude the creation of other branches of the Commission.

33
SECRET

UNITED NATIONS

Min

3. The first task of the Far Eastern and Pacific Sub-Commission will be to study the numerous Japanese war crimes which some Governments are understood to desire to bring before it - cases evidence of which is in their possession and ready for examination. While some other interested Governments may not at present be in a position yet to transmit cases to the Sub-Commission, it is the hope both of the Chinese Government as expressed by its representative and of the War Crimes Commission as a whole, that as many of those Governments as possible will appoint representatives on the Sub-Commission, and in this manner both demonstrate the common interest of the United Nations in the punishment of war crimes and co-operate in ensuring that all war crimes committed by the same enemy shall be dealt with in accordance with the same principles.

4. If, as is hoped, your Government intends to be represented on the Sub-Commission, the decision and eventually the name of the first representative should be notified to the Chinese Government and to the Secretary-General of the Commission.

5. The Commission has invited the Chinese Government to be so good as to arrange for the organizing meeting of the Sub-Commission at an appropriate time.

6. I beg to request that you will be so good as to bring the foregoing to the attention of your Government.

I am,
Sir,
Your obedient Servant,

Chairman.

Chairman

There were also

Mr. PELL
acco
Mr. OLDF
M. de B
Dr. WEL
acco
Dr. BEN
M. GROS
Mr. DUT
Dr. de
Mr. CO
acc
Dr. GL
M. MIL
acc

MINUTES OF L

Reading

signed by th

REPORT OF CH

M. de B

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Committee

and submit

COMMITTEE

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Dr. ECER

SECRET

M.22

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-second Meeting

held on

13 June, 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present:

Mr. PELL	- United States of America
accompanied by Lt. Col. HODGSON	
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
Dr. WELLINGTON KOO	- China
accompanied by Dr. LIANG	
Dr. BENESH	- Czechoslovakia
M. GROS	- France
Mr. DUTT	- India
Dr. de MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia
accompanied by M. RISTITCH	

MINUTES OF LAST MEETING

Reading of the Minutes was dispensed with and they were signed by the Chairman.

REPORT OF CHAIRMAN OF COMMITTEE I

M. de BAER, Chairman of Committee I, reported progress.

It was agreed that the questions how far (i) the act of inflicting excessive punishments upon the population of occupied territory and (ii) the act of pronouncing penal sentences as a member of a tribunal not authorised by the laws and customs of war, should be regarded as war crimes, should be brought before Committee III by a memorandum which M. de Baer would draw up and submit to his colleagues of Committee I.

COMMITTEE II: ELECTION OF DR. ECER

On the proposal of Mr. PELL, Chairman of Committee II, Dr. ECER was elected a member of the Committee.

REPORT OF CHAIRMAN OF COMMITTEE III

Dr. GLASER, Chairman of Committee III, reported the appointment of two Sub-Committees to study the two matters referred back to Committee III at the Commission's last meeting. These were: (i) the question whether preparation for and launching of a war of aggression and individual acts of preparation for such a war were crimes, and (ii) what recommendations the Commission could usefully make to the Governments to meet the probability of the Axis powers resorting to criminal measures to prevent a stable peace being established. The members of the Commission on both Sub-Committees were Dr. Eger, Dr. de Moor and Lt. Colonel Hodgson.

ARTICLE TO BE INSERTED IN ARMISTICE WITH GERMANY
(REDRAFT BY THE CHAIRMAN - Doc. C.27)

This draft was adopted in the form shown in Document C.³¹~~30~~
The amendments made were drafting changes with one exception. This was point (c) in Section 2 introducing a new provision, namely, that Germany should

"forthwith take and keep under control all property
- both moveable and immoveable - belonging to
persons whose surrender is demanded, and hold it
at the disposal of the authorities of the United
Nations".

This addition was adopted by 6 votes to 4 and 2 abstentions. Its advocates urged that it corresponded to provisions which appeared in the recommendations of the "Comité interallié pour l'étude de l'Armistice" which expressed the view of nine Governments, and that it was necessary to enable punishment in the form of confiscation of their property, which was normal under the criminal law of continental Europe, to be effectively inflicted on war criminals or to allow of reparation to their victims. Opponents of the addition felt it was out of place in an instrument whose object was to secure control of the persons of war criminals and that it might create a bad impression.

M. MILANOVITCH called attention to the necessity of making it clear that the Article which the Commission had drawn up was recommended for insertion, not merely in the armistice with Germany, but also in those granted to the European satellites of Germany, subject only to (a) replacement of the name "Germany" by the name of the satellite concerned, and (b) insertion in Section 2 (d) of the names of the forces which in that satellite's territory corresponded to the Gestapo and Schutzstaffeln.

It was decided that this should be made clear in a covering note to the text just adopted, which should go to the Governments as soon as possible. The recommendations for adapting it to the individual satellites would follow as soon as the forces to be named in Section 2 (d) were ascertained. The Chairman promised to take measures to ascertain what those forces were, consulting the Commission if any difficulty arose.

ESTABLISHMENT IN ENEMY TERRITORY OF A WAR CRIMES OFFICE:
NOTE BY THE CHAIRMAN OF THE COMMISSION (C.28).

The Commission adopted the text proposed in this Note as the recommendation which it would make to the Governments.

M. COLBAN and Dr. de MOOR said their respective Ministers of Justice were afraid of military control of the arrest and punishment of war criminals. They had assured them this was not intended and that in practice the proposed Agency would represent the United Nations War Crimes Commission. They suggested that the last paragraph should say the Agency would "be under the direction of" or "would represent" instead of "would be in touch with" the Commission.

The CHAIRMAN felt it was desirable to keep the existing text, in order to avoid suggesting the idea of an external organisation which might intrude upon the field of the military authorities.

The Commission decided not to meet in the following week, unless it were specially convened by the Chairman.

Doc. C.30

Carol B. Hurst
June 27

C.31
16 June, 1944

UNITED NATIONS WAR CRIMES COMMISSION

SURRENDER BY THE AXIS POWERS OF PERSONS WANTED FOR
TRIAL AS WAR CRIMINALS

NOTE by the CHAIRMAN to the GOVERNMENTS REPRESENTED ON
THE COMMISSION

It is the declared policy of the United Nations to require the armistice granted to each Axis Power that persons wanted in connection with war crimes shall be surrendered to the United Nations by that Power.

The United Nations War Crimes Commission begs to submit herewith to the Governments represented on the Commission the text of a draft armistice article which it considers to contain the provisions necessary for this purpose.

The text now submitted is that of an article for insertion in the armistice with Germany.

In the Commission's opinion the same text should be suitable for use in the armistice granted to each of Germany's European satellites subject only to :

- (1) substitution of the name of the State concerned for that of Germany, and
- (2) insertion in section 2 at (d) of the names of the forces which in that State correspond to the Geheime Staats polizei (Gestapo) and Schutzstaffel (SS).

Recommendations on these points will be made to the Governments by the Commission as soon as possible.

Different provisions may be necessary in the case of Japan, and the text will be submitted at a later date.

DRAFT ARTICLE FOR INSERTION IN THE ARMISTICE WITH GERMANY

1. The United Nations may, if they so decide, bring to trial before any Tribunal, national or international, any persons accused of crimes connected with, or incidental to, hostilities conducted by Germany against any one or more of the United Nations. This provision shall apply notwithstanding any procedure or prosecution before a

P.T.O.

rt, military or civil, of Germany or of any State or political entity acting in alliance or in concert with Germany, irrespective of whether such proceedings have ended in a conviction or in an acquittal, provided that if a sentence has been imposed the penalty already undergone shall be taken into account in fixing any sentence which may be imposed;

To this effect Germany shall :

-) take all necessary steps to hand over forthwith to the authorities of the United Nations any persons whose surrender is demanded either at the time when this instrument becomes effective or at some subsequent date;
-) give such assistance as may be required to the authorities of the United Nations in all measures necessary to give effect to the obligations recognised in Section 1;
-) forthwith take and keep under control all property, both moveable and immoveable, belonging to persons whose surrender is demanded, and hold it at the disposal of the authorities of the United Nations;
- d) give such assistance as may be required to the authorities of the United Nations in internment forthwith and keeping in custody until such time as the authorities of the United Nations may otherwise direct, any or all members and former members of the Geheime Staats polizei (Gestapo) and of the Schutzstaffel (SS);

The right to apprehend the persons referred to in Section 2 may be exercised by any Agency, military or civil, acting on behalf of some or all of the United Nations which may be in control of German territory, or which may be appointed to give effect to the present provisions.

Such German authorities as may be allowed by the United Nations to continue or to exercise their functions shall take all necessary steps :

- (a) to comply forthwith with all requests of the said agencies and authorities relating to the identification, discovery, apprehension, arrest and delivery of accused persons without regard to their nationality and without any right to examine the case upon its merits. Such agencies and authorities shall be given every facility to supervise the way in which their orders are carried out;
- (b) to disclose and produce any records or documents or any other things the production of which may be considered necessary to ensure the full knowledge of the acts with which the accused are charged and the just appreciation of responsibility, to obtain the presence of witnesses and to assist in any other way in which such assistance may be required;

Germany will on demand surrender to the civil or military authorities of the United Nations for trial before such tribunal as the United Nations may appoint for the purpose :

- (a) any person accused of obstructing the execution of the foregoing provisions or failing to comply with any direction relating thereto. For this purpose the German authorities shall, when requested to do so, provide the United Nations with the names of the officials who are responsible for the execution of the provisions of this instrument;

- (b) any persons accused of aiding and abetting a person whose surrender has been demanded, in evading apprehension, arrest or surrender;
- (c) any person accused of destroying or concealing documentary evidence, impeding or obstructing the calling or the examination of witnesses, or of attempting to do so;
- (d) any persons inciting another to resist in any way the provisions concerning the surrender and the punishment of criminals covered by these provisions;
- (e) any German official accused of prosecuting or punishing or any individual accused of molesting anyone in any way for having reported to the authorities or agencies of the United Nations any evasion of - or resistance to - the foregoing provisions concerning the surrender or punishment of persons accused of crimes covered by these provisions;

The offences enumerated in Section 5 shall not be subject to the jurisdiction of German courts.

RET

C.28
9 June 1944

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT IN ENEMY TERRITORY OF A WAR CRIMES OFFICE

Note by the Chairman of the Commission

It will be remembered that when Committee No. II was discussing the proposal to set up in enemy territory an agency to assist the work of the Commission (Doc. C.24), it was agreed that no such step could be carried into effect without the concurrence of the military authorities. It was therefore proposed that the subject should be discussed with S.H.A.E.F.

The question has been discussed at an informal and unofficial meeting with some members of the Commander-in-Chief's staff, and it seems probable that the military authorities will agree to the appointment of the proposed agency or group.

The text set out below represents the conclusions reached at the meeting. The text could serve as the basis for a recommendation by the Commission, and for a "directive" by the Combined Chiefs of Staff.

When the Allied forces are established in enemy territory, it will be of great assistance to the War Crimes Commission if a group or agency could be attached to, or form part of, the appropriate section of the Supreme Allied Command in order to help the Commission in the task with which it has been entrusted. The institution of such a group or agency would also relieve other branches of the army of many duties connected with the apprehension and collecting of evidence against men who are to be put on trial.

Proceedings against war criminals in territory restored to the control of Allied Governments will in general necessitate some action which must be taken in enemy territory, and must therefore be taken under the general control and direction of the Supreme Allied Command.

Men who are wanted for trial for acts in connection with the war must be identified, and their whereabouts ascertained; they must be arrested, kept in custody and handed over for trial by the competent courts. Evidence must be obtained in a form which will enable it to be used at the trial. Information must be collected as to cases of war crimes of which the perpetrators have not yet been identified.

The above work can only be done by men who are acquainted with the language and the legal system of the country in which the trial will take place.

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SECRET

UNITED NATIONS WAR CRIMES

The number of men who will be required for this work, qualifications, and the powers which they will be authorized to exercise are details which can be considered at a later date. They could be specified in the Order of the Commander-in-Chief which would be issued for the creation of the group or agency proposed above.

Subject to the general control of the Commander-in-Chief, which must be safeguarded, the proposed group or agency must be in touch with the War Crimes Commission.

Minutes of Twenty-third Meeting

held on

27 June 1946

Chairman: Sir Cecil HURST

There were also present:

Mr. PELL	- United States
accompanied by Lt. Col.	
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
Dr. LIANG	- China
Dr. ECER	- Czechoslovakia
M. STAVROPOULOS	- Greece
Mr. DUTT	- India
M. BLUM	- Luxembourg
Dr. de MOOR	- Netherlands
Mr. BURDEKIN	- New Zealand
Mr. COLBAN	- Norway
accompanied by Mr. Edvard	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia
accompanied by M. RIST	

MINUTES OF LAST MEETING

Reading of the Minutes was approved and signed by the Chairman.

DEATH OF LORD ATKIN

Mr. PELL, Chairman of the Commission, as a member, moved the following resolution:

"The United Nations Commission expresses its deep regret the sad news of the death of its Representative of Austria, a man of the Law, his high character and his perception of fact made him a valuable member of the Commission."

"Not only his profound knowledge of the Law, but his sense of humour deserved and received the respect of his colleagues. He was a valuable member of the Commission, to his country and to the United Nations."

"Members of the United Nations Commission unite in expressing their sympathy to the family of the late Lord Atkin."

Dr. LIANG, on behalf of the Chinese members of the Commission, associated themselves with the Chairman's statement.

SECRET

M.23.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-third Meeting

held on

27 June 1944.

Chairman: Sir Cecil HURST - United Kingdom

There were also present:

Mr. PELL	- United States of America
accompanied by Lt. Col. HODGSON	
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
Dr. LIANG	- China
Dr. ECER	- Czechoslovakia
M. STAVROPOULOS	- Greece
Mr. DUTT	- India
M. BLUM	- Luxembourg
Dr. de MOOR	- Netherlands
Mr. BURDEKIN	- New Zealand
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia
accompanied by M. RISTITCH	

MINUTES OF LAST MEETING

Reading of the Minutes was dispensed with and the Minutes signed by the Chairman.

DEATH OF LORD ATKIN

Mr. PELL, Chairman of Committee II of which Lord Atkin was a member, moved the following resolution:

"The United Nations War Crimes Commission has heard with deep regret the sad news of the death of Lord Atkin, the Representative of Australia. Lord Atkin's great knowledge of the Law, his high consideration for justice and his clear perception of fact made him one of our most valuable members.

"Not only his profound learning, but his invariable good humour deserved and received the affection and the respect of his colleagues. His death is a great misfortune to the Commission, to his country and to the world.

"Members of the United Nations War Crimes Commission unite in expressing their sympathy to his mourning family."

Dr. LIANG, on behalf of Dr. Wellington Koo, Mr. COLBAN and the CHAIRMAN associated themselves with the resolution and

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expressed their high sense of Lord Atkin's character, abilities and services.

A letter expressing the sympathy of the Polish Government and himself was handed to the Chairman by Professor GLASER.

The resolution was adopted. The CHAIRMAN directed that it should be inserted in the Minutes. He requested Mr. Oldham to communicate a copy to the High Commissioner for Australia, and the Secretary General to send a copy to Lord Atkin's family.

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FINANCES OF THE COMMISSION

The SECRETARY GENERAL reported that seven Governments - those of the United Kingdom, Belgium, Luxembourg, Norway, India, Yugoslavia and China had formally approved the Resolution on Financial Administration of 21 March, 1944.

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He further reported that Australia, France and Belgium had paid their "basic contributions" for the fiscal period ending 31 March, 1945, and that similar payments had been promised him by the representatives of Poland and the United States.

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COLONEL WADE'S APPOINTMENT

The CHAIRMAN reported that, with the approval of the Finance Committee, it was proposed to continue Colonel Wade's appointment and grant him a subsistence allowance to cover the cost of his residence in London.

The Commission concurred in this course.

REPORTS OF THE COMMITTEE CHAIRMEN

There was nothing new to report as regards Committees I & II.

Professor GLASER, Chairman of Committee III, said that the Commission's request for an opinion as to whether certain acts were war crimes (Doc. III/6) had been referred by the Committee to a sub-committee composed of M. Blum, M. de Baer and Colonel Hodgson.

ITALIAN WAR CRIMES

The CHAIRMAN said he had reasons to believe it to be important for the National Offices to put forward cases of war crimes by Italians. A long time had elapsed since the armistice with Italy and yet the number of such cases transmitted to the Commission was very small indeed.

M. STAVROPOULOS explained the difficulties which had prevented Greece from putting forward such cases.

M. MILANOVITCH said Yugoslavia was experiencing similar difficulties, but he was expecting the arrival at an early date of a member of the National Office at Cairo who would bring particulars of a large number of cases.

FINANCE COMMITTEE'S REPORT SUBMITTING DRAFT
FINANCIAL AND ADMINISTRATIVE REGULATIONS (C.26)

The Chairman of the Finance Committee, Dr. de MOOR, presented the report.

Mr. DUTT having stated that he had several suggestions for amendment of the draft, it was decided that he should in the first place discuss them with the Finance Committee, and the subject was adjourned.

TREATMENT OF WAR CRIMINALS WHO ARE PRISONERS OF WAR (C.33)

This document contained a communication from Mr. PELL submitting a request from Brigadier General Betts (U.S. Army, Judge Advocate for the European Theatre of Operations) for an expression of the Commission's opinion on the above subject.

After a general discussion, the request was referred to Committee III with the understanding that the Committee would take it up as a matter of urgency and submit a draft opinion for the Commission's consideration.

DATE OF NEXT MEETING

The Commission decided to hold its next meeting on Tuesday, 11 July, unless it were convened earlier by the Chairman.

Cecil B. Hurst

SECRET

C.26
5 June, 1944

UNITED NATIONS WAR CRIMES COMMISSION

FINANCIAL AND ADMINISTRATIVE REGULATIONS.

Report by the Finance Committee

Paragraph 3 of the "Resolution on Financial Administration" which was adopted by the Commission on 21 March, 1944, provides:

"The Commission shall make regulations governing its financial and general administration."

The draft regulations which are submitted herewith to the Commission do not require any commentary. The Committee will be glad to give explanations on any point that may be raised. Attention may be called to the provisions regarding the amount of working capital to be accumulated and the purposes for which it may be used, and (Article 4) to the transitional provisions contained in Articles 12 and 13.

Draft Regulations

General Provision

Article 1

The present regulations are made in execution of the Commission's Resolution on Financial Administration of 21 March, 1944, (hereinafter called the Resolution) and their application is subject to the provisions of that Resolution.

The Budget

Article 2

The Secretary General shall prepare the draft budget for each fiscal year and after submitting it for examination and revision to the Finance Committee (Article 5) shall present it to the Commission with the Committee's report.

Allocation of Expenses

Article 3

After the budget has been adopted by the Commission the Secretary General shall determine and notify to each member government the amount due from it, and shall request that payment may be made promptly, in accordance with paragraph 2 of the Resolution, and if possible within thirty days of receipt of the notification. Such notification may be made by telegram.

Working Capital Fund

Article 4

1. Until otherwise decided by the Commission, the amount of the working capital to be accumulated in accordance with paragraph 2 of the Resolution shall be £6,000. It shall be administered as a separate fund, known as the "Working Capital Fund" in the manner set out in the following paragraphs.
2. Until the full amount of the fund has been provided, the following rules shall apply:
 - i) An amount for working capital shall be included in the budget for each fiscal year.
 - ii) If in any fiscal year the sum voted for the Commission's expenses is less than the total amount payable annually as basic contributions under the Resolution, the balance shall be collected as a contribution to working capital, without prejudice to the voting of an additional sum for that purpose.
 - iii) Any surplus realised on the budget shall automatically be paid to the Working Capital Fund.

3. As soon as a contribution is received from a member government Working Capital Fund shall be credited with a part thereof commensurate to the ratio between the amount voted for the fund in the fiscal question and the total amount voted for that year.

4. i) The Working Capital Fund may be drawn upon by the Secretary General to meet expenditure which is authorised by the budget of the current year but cannot be met out of the contributions hitherto received. The amounts so withdrawn shall be reported at once to the Finance Committee, and shall be repaid to the fund as soon as possible.

ii) The Commission, by a vote of two thirds of its members, may apply part of the working capital for purposes not provided for in the budget. The budget of the next fiscal year shall make provision for the repayment to the fund of the amounts so withdrawn from it.

5. No part of the Working Capital Fund may be repaid to any member government until the Commission's assets are liquidated, except with the consent of all the member governments. Any amount repaid shall be divided among the governments which are then members of the Commission in the proportion in which they have contributed to the creation of the fund.

Financial Control

Article 5

1. There shall be a Finance Committee of not less than three and not more than five persons appointed by the Commission from among its members. It shall have power to nominate not more than two financial experts to sit as members, but without the right to vote.

2. The Finance Committee shall perform the functions given to it by these Regulations and any other functions relating to the Commission's administration which may be conferred on it by the Commission, and shall supervise the administration of the Commission's affairs, report thereon, when necessary, to the Commission.

Article 6

1. The Secretary General is authorised to incur expenditure and to make or authorise payments for the purposes and within the limits specified by the budget. All payments, as made, shall be appropriated to the proper item of the Budget and a record of such appropriations and liabilities incurred shall be kept, showing at all times the amount available under each item.

2. In case of doubt as to whether a particular expenditure is provided for in the budget, the Secretary General may consult the Finance Committee whose decision, if unanimous, shall be final.

Article 7

The amount of all salaries and professional fees shall be fixed by the Commission, or in accordance with rules made by it.

Article 8

1. The Commission's bankers shall be Messrs. Barclays Bank Ltd., 19 Fleet St., E.C.4. It may change them at any time.

2. Payments exceeding £10 shall be by cheques signed by two persons authorised by the Finance Committee.

1. The Secretary General shall be responsible for the Commission's accounts.

2. The accounts shall be audited by an Accountant and Auditor General of the United Kingdom. The audit shall be subject to the establishment of the Commission's accounts.

3. The audited accounts shall be laid before the Commission's Committee's report.

A fidelity guarantee shall be required of the official dealing with the Commission's accounts.

1. Engagements shall be subject to the approval of the Commission. A person authorised to sign engagements on either the Secretary General's or the Commission's behalf shall give one week's notice according to the Commission's regulations.

2. All engagements are subject to the Commission's approval.

3. Members of the staff shall be subject to the Commission's proceedings of the Commission. A breach of this shall be treated as a breach of the Commission's one week's or one month's notice.

4. The hours of attendance of the Secretary General. Overtime, if any, shall be paid at the rate of the attendance during the day.

5. Leave of absence shall be subject to the requirements of the Commission. The Commission is entitled to 18 working days of leave in addition to any days of leave with pay on the ground of illness or on the ground of ill-health. In the case of a member of the staff on the ground of ill-health, the Commission may, at its discretion, grant leave of absence to the Finance Committee. The person in question shall be paid during the absence at the rate of the Commission's regulations.

Pending the entry of the Commission's first budget, the expenditure which the Commission shall be liable to pay shall be paid by the Commission on behalf of the Commission.

Article 9

1. The Secretary General shall be responsible for keeping the Commission's accounts.
2. The accounts shall be audited annually by His Britannic Majesty's Accountant and Auditor General, if H.M. Government in the United Kingdom consents. The first accountancy period shall run from the establishment of the Commission down to 31 March, 1945.
3. The audited accounts, after examination by the Finance Committee, shall be laid before the Commission by the Secretary General, with the Committee's report.

Article 10

A fidelity guarantee insurance shall be taken out in respect of each official dealing with the Commission's funds or keeping its accounts.

Staff

Article 11

1. Engagements shall be made by the Secretary General, with the approval of the Commission, and shall be in writing and signed by him or a person authorised to sign on his behalf. They shall be terminable by either the Secretary General or the employee at one month's or one week's notice according as the salary is payable by the week or by the month.
2. All engagements are subject to the terms of these Regulations.
3. Members of the staff must observe secrecy with regard to the proceedings of the Commission. The Commission may, in its discretion, treat a breach of this obligation as justifying immediate dismissal, with one week's or one month's salary, as the case may be, in lieu of notice.
4. The hours of attendance at the office are fixed by the Secretary General. Overtime, if allowable, will be paid only after 44 hours attendance during the current week.
5. Leave of absence may be granted by the Secretary General, subject to the requirements of the Commission's work. A member of the staff is entitled to 18 working days' leave with pay in every 12 months, in addition to any days on which the office is closed. Before granting leave with pay on the ground of ill-health, the Secretary General may require production of a doctor's certificate. After 14 consecutive days' leave on the ground of ill-health has been granted, and in cases of repeated illness of a member of the staff, the Secretary General shall refer the case to the Finance Committee which shall decide whether the services of the person in question shall be retained.

Transitional Provisions

Article 12

Pending the entry into force of the Resolution, and the adoption of its first budget, the Commission will from time to time determine the expenditure which the Secretary General is authorised to incur on its behalf.

Article 13

SECRET

1. As soon as possible after the adoption of these Regulations, in anticipation of the entry into force of the Resolution, those governments which are willing to do so shall pay to the Secretary General their basic contributions for the fiscal year 1944/1945, to subsequent readjustment if the Resolution is not approved by governments in its present form. These payments shall be credited to the Working Capital Fund until the amount of £2,000 has been reached.

2. When the Commission, on the advice of the Finance Committee, that its financial position justifies its doing so, it will assume responsibility for meeting its expenditure out of the contributions of the member governments and terminate the existing arrangements with H.M. Foreign Office.

Liquidation of Assets

Article 14

On the dissolution of the Commission its assets shall be divided among the governments which are then members of the Commission, nearly as possible in the proportion in which they have contributed to create them.

Amendment of the Regulations

Article 15

These Regulations may be amended by the Commission; provided always that the proposal to amend any provision, and the text of amendment proposed, shall be communicated to the Secretary General in time to enable him to give at least one clear week's notice to representative of each member government, or, if the amendment is proposed at a meeting of the Commission, that the decision shall be taken at the next meeting after notice given by the Secretary General to all representatives of member governments not present when the amendment was proposed.

Provisional application and final entry
into force of the Regulations

Article 16

Pending entry into force of the Resolution, these Regulations shall be applied provisionally, so far as is appropriate. They shall enter finally into force at the same time as the Resolution.

UNITED NATIONS

COMMUNICATION

DAY

Dear Sir Cecil,

Recently Brigadier General European Theatre of Operations has been concerned with the question of whether, in the event of war, respecting the treatment of prisoners of war, it should be denied a prisoner of war the right to be accused as a war criminal.

A copy of his letter is enclosed for the enclosure mentioned.

The mentioned authorities, due to military to apprehend and in view of the fact that calling the same to be considered by the Court.

Enclosure: Letter from Brigadier General for the

.... As you are aware, provides, inter alia

"Prisoners of war, except as provided in this measure, shall be treated in accordance with the U.S. WD, FM 2

"Prisoners of war, and of the power." (Article 1)

"Punishment for acts for soldiers upon prisoner of war courts of the U.S. WD, FM 2

SECRET

C.33.
23 June 1944

UNITED NATIONS WAR CRIMES COMMISSION

COMMUNICATION FROM MR. PELL TO THE CHAIRMAN

DATED 22nd JUNE, 1944

Dear Sir Cecil,

Recently Brigadier General E.C. Betts, Judge Advocate, European Theatre of Operations, United States Army, addressed me concerning whether the conventional protection of a prisoner of war, respecting imprisonment and punishment, may lawfully be denied a prisoner of war who is charged by a responsible accuser as a war criminal?

A copy of his letter, dated 14 June, 1944, together with the enclosure mentioned therein, is enclosed.

The mentioned question is of concern to the military authorities, due to the Commission's recent request to the military to apprehend, detain and investigate war criminals, and in view of the concluding paragraph of the letter I am calling the same to your attention in order that it may be considered by the Commission.

I am, etc.

Signed: HERBERT PELL

Enclosure: Letter dated 14 June, 1944, to Mr. Pell from Brigadier General Ed. C. Betts, Judge Advocate for the European Theatre of Operations, U.S. Army.

.... As you are aware, the Geneva Prisoners of War Convention provides, inter alia, that:

"Prisoners of war ---- may not be confined or locked up except as an indispensable measure of safety or sanitation, and only while the circumstances which necessitate this measure continue to exist." (Art. 9; par. 82, U.S. WD, FM 27-10); and

"Prisoners of war shall be subject to the laws, regulations, and orders in force in the armies of the detaining power." (Art. 45; par. 118, U.S. WD, FM 27-10); and

"Punishments other than those provided for the same acts for soldiers of the national armies may not be imposed upon prisoners of war by the military authorities and courts of the detaining power." (Art. 46; par. 119, U.S. WD, FM 27-10); and

/"Preliminary

"Preliminary judicial proceedings against prisoners of war shall be conducted as rapidly as the circumstances permit. Imprisonment pending trial shall be restricted as much as possible.

"In all cases the period of imprisonment pending trial shall be deducted from the disciplinary or the judicial punishment inflicted, in so far as such deduction is allowed for national soldiers." (Art. 47; par. 120, U.S. WD, FM 27-10);

"Belligerents shall see that the competent authorities exercise the greatest leniency in deciding the question of whether an infraction committed by a prisoner of war should be punished summarily or judicially." (Art. 52; par. 125, U.S. WD, FM 27-10); and

"In no case may prisoners of war be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) there to undergo summary punishment." (Art. 53; par. 129, U.S. WD, FM 27-10); and

"At the opening of a judicial proceeding directed against a prisoner of war, the detaining power shall advise the representative of the protecting power thereof as soon as possible, always before the date set for the opening of the trial -- least 3 weeks before the opening of the trial." (Art. 60; par. 133, U.S. WD, FM 27-10); and

"Sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining power." (Art. 63; par. 136, U.S. WD, FM 27-10); and

"Sentences pronounced against prisoners of war shall be communicated to the protecting power immediately." (Art. 65; par. 138, U.S. WD, FM 27-10); and

"If the death penalty is pronounced against a prisoner of war, a communication setting forth in detail the nature and circumstances of the offence shall be sent as soon as possible to the representative of the protecting power for transmission to the power in whose armies the prisoner served.

"The sentence shall not be executed before the expiration of a period of at least 3 months after this communication." (Art. 66; par. 139, U.S. WD, FM 27-10); and

"No prisoner of war may be deprived of the benefit of the provisions of article 42 of the present convention as a result of the sentence or otherwise." (Art. 67; par. 140, U.S. WD, FM 27-10). (Art. 42 provides the right of complaint to the protecting power.)

It will be important to the military authorities responsible for aiding your Commission in performance of its functions to know what authority they may lawfully exercise, in the light of the foregoing provisions, respecting (a) the confinement, and (b) the custody and punishment of persons charged with war crimes who are taken into custody and originally detained by them as prisoners of war -- as distinguished from persons apprehended and detained originally as war criminals.

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It is recognized that military authorities may involve combatants who may be decided the immediate may confine (in crimes by respect Nations War Crimes been first taken

In short, concern to such apprehend and

May the respecting of war crimes criminal?

These provisions because of the on the one part of War Convention in so far as thereto"; and, internees according Convention, in this connection to Hartle, at

According criminals will limitations upon war who are war

It will any, views your

(1) Not representative

It is recognised that the question as to whether such military authorities should undertake the trial of war criminals may involve considerations other than military - and consequently may be decided on different levels. Nevertheless, there remains the immediate problem of whether such military authorities may confine (imprison), pending trial, persons charged with war crimes by responsible agencies (as, for instance, the United Nations War Crimes Commission) irrespective of such persons having been first taken into custody as prisoners of war.

In short, there remains the very practical question, of concern to such military authorities who may be called upon to apprehend and detain persons charged with war crimes -

May the conventional protection of a prisoner of war, respecting imprisonment and punishment, be denied a prisoner of war who is charged by a responsible accuser as a war criminal?

These problems are of special concern to our military authorities because of the agreement between the United States and Germany - on the one part "to apply the provisions of the Geneva Prisoners of War Convention to any civilian enemy aliens that might be interned in so far as the provisions of that Convention may be adaptable thereto"; and, on the other part, "to treat American civilian internees according to the principles of the Prisoners of War Convention, in so far as those principles apply to civilians." (in this connection see copy of letter of January 25, 1943, from Matthews to Hartle, attached). (1)

Accordingly, so far as concerns the United States, civilian war criminals will enjoy the same protection against confinement and limitations upon trial and punishment as do military prisoners of war who are war criminals.

It will be greatly appreciated if you will advise me what, if any, views your Commission holds respecting these questions.

ED. C. BETTS,
Brigadier General, U.S.A.,
Theatre Judge Advocate

(1) Not reproduced.

SECRET

M. 24.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-fourth Meeting

held on

11 July, 1944.

Chairman: Sir Cecil HURST - United Kingdom

There were also present:

Mr. PELL	- United States of America
accompanied by Lt. Col. HODGSON	
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
Dr. WELLINGTON KOO	- China
accompanied by Dr. LIANG	
Dr. ECER	- Czechoslovakia
M. GROS	- France
Mr. DUTT	- India
M. BLUM	- Luxembourg
Mr. Edward HAMBRO	- Norway
M. MILANOVITCH	- Yugoslavia
accompanied by M. RISTITCH	

MINUTES OF LAST MEETING

Reading of the Minutes was dispensed with and they were signed by the Chairman.

LETTER FROM THE LATE LORD ATKIN'S DAUGHTER

The CHAIRMAN read a letter from the late Lord Atkin's daughter, the Hon. Mrs. Morison, thanking the Commission for its expression of sympathy with Lord Atkin's family in its bereavement.

FINANCES OF THE COMMISSION

The SECRETARY GENERAL reported the receipt of "basic contributions" for the current fiscal period from the United States, Poland, Luxembourg, Norway, India and New Zealand, and said that the United Kingdom "basic contribution" would be set off against the sum owed to it by the Commission.

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REPORTS OF COMMITTEE CHAIRMEN

The Chairmen of Committees I and II had nothing to report.

Professor Glaser, Chairman of Committee III, apologised through the Secretary General to the Commission for being unable to attend the meeting. Mr. PELL, who had replaced him as Chairman, had no report to make on behalf of the Committee.

ARTICLE TO BE INSERTED IN ARMISTICES WITH
AXIS POWERS AND SATELLITES

The CHAIRMAN, who had been asked by the Commission on June 13 to make enquiries as to what organisations analogous to the German Gestapo and S.S. ought to be mentioned in the armistices with Germany's satellite states, said the information he had obtained appeared to show that while the German Gestapo had itself operated in those states to some extent, there were no native organisations analogous to the Gestapo and S.S. in Rumania, Bulgaria and Hungary.

M. MILANOVITCH said that the state and military police of the satellite countries, namely, Hungary, Bulgaria, Albania etc., had committed in Yugoslavia the same kind of crimes as the German S.S. and Gestapo had committed in occupied territories, and the consequences to the population had been exactly the same. Proof of this fact would be given to Committee I in due course. The occupation had been exercised in a highly illegal manner and horrible suffering had been inflicted on the population. He recommended that the draft article which the Commission had recommended for insertion in the armistice with Germany, (C.31), should be adapted for use in connection with each satellite state by making paragraph 2, point (d), refer to all or any members of the state police of the satellite state who were or had been district chiefs of civil or military police in any of the occupied countries.

Dr. ECER expressed the same view.

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REPORTS OF COMMITTEE CHAIRMEN

The Chairmen of Committees I and II had nothing to report.

Professor Glaser, Chairman of Committee III, apologised through the Secretary General to the Commission for being unable to attend the meeting. Mr. PELL, who had replaced him as Chairman, had no report to make on behalf of the Committee.

ARTICLE TO BE INSERTED IN ARMISTICES WITH
AXIS POWERS AND SATELLITES

The CHAIRMAN, who had been asked by the Commission on June 13 to make enquiries as to what organisations analogous to the German Gestapo and S.S. ought to be mentioned in the armistices with Germany's satellite states, said the information he had obtained appeared to show that while the German Gestapo had itself operated in those states to some extent, there were no native organisations analogous to the Gestapo and S.S. in Rumania, Bulgaria and Hungary.

M. MILANOVITCH said that the state and military police of the satellite countries, namely, Hungary, Bulgaria, Albania etc., had committed in Yugoslavia the same kind of crimes as the German S.S. and Gestapo had committed in occupied territories, and the consequences to the population had been exactly the same. Proof of this fact would be given to Committee I in due course. The occupation had been exercised in a highly illegal manner and horrible suffering had been inflicted on the population. He recommended that the draft article which the Commission had recommended for insertion in the armistice with Germany, (C.31), should be adapted for use in connection with each satellite state by making paragraph 2, point (d), refer to all or any members of the state police of the satellite state who were or had been district chiefs of civil or military police in any of the occupied countries.

Dr. ECER expressed the same view.

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It was agreed that the Chairman would find an appropriate formula under which in the armistice terms with each of the satellite powers provision would be made for taking and keeping in custody any members of the German Gestapo or S.S. who were found in that country; and also any member of the police force of that country, whether civil or military, who had served or were still serving as district chiefs of police in any country occupied by Nazi forces. The formula would be agreed with M. Milanovitch.

TREATMENT OF WAR CRIMINALS WHO ARE PRISONERS OF WAR

The Commission adopted, and directed the Secretary General to despatch, its reply to the question which had been addressed to it on this subject.

USE BY GERMANY OF PILOTLESS PLANES

Mr. PELL moved that consideration should be given to the question whether the use by Germany of the pilotless plane, a weapon which could not be aimed with any degree of precision and was thus wholly indiscriminate in its effects, was not a war crime.

It was decided to refer this question to Committee III.

APPOINTMENT OF A PUBLICITY COMMITTEE

Mr. PELL raised the question whether the time had not come to appoint a committee to issue communiqués from time to time regarding the Commission's work. The policy of avoiding publicity had been adopted at a moment when the Commission's proceedings could best be conducted in strict secrecy, but it was now, in his opinion, putting the Commission in a false position. The general public did not understand that the Commission had at present a strictly limited task.

The Commission decided to set up such a committee and appointed the Chairman, M. de Baer and Mr. Pell as its members.

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DR. ECER'S REPORT (C.32)

The CHAIRMAN reported that Part I of this document dealing with the origin, organisation, purpose and activity of the Gestapo and S.S., was being printed by the Foreign Office with a view to sending it to the Governments as a justification of the Commission's recommendations for internment of the members of these organisations (Docs. C.21 and C.31). He asked and received the Commission's consent to steps for this purpose being taken so soon as the document was available in printed form.

DATE OF NEXT MEETING

The Commission decided not to meet in the following week.

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July 25*

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No. 33

UNITED NATIONS WAR CRIMES COMMISSIONOPINION

The question upon which the opinion of the Commission is asked is: "May the conventional protection of a prisoner of war, respecting imprisonment and punishment, be denied a prisoner of war who is charged by a responsible accuser as a war criminal?"

The answer involves a legal side and a practical side, but the Commission is only invited to express an opinion on the legal question.

The Geneva Prisoners of War Convention (27 July, 1929) applies to prisoners of war, qualitate qua, i.e. to persons whose relations with the detaining power are merely those of a prisoner of war. As soon as those relations change (e.g. when, for any reason, the relations become those existing between persons accused of an offence and the authority which is to judge that offence, then judicial proceedings (including imprisonment pending trial and punishment) are permissible (Geneva Convention, art 47 and art. 75).

If this were not so, the fact of being a prisoner of war would confer immunity or exoneration from prosecution, and it is certainly not the object of the Geneva Convention to confer such a privilege upon prisoners of war, but only to ensure a fair, just, and humane treatment to those who have behaved as honourable combatants.

From the legal point of view, the perpetration of a war crime prior to capture attaches to the perpetrator the status of an offender, which cannot be altered by the fact that he subsequently becomes a prisoner of war.

The Commission is, therefore, of opinion that the conventional protection of a prisoner of war respecting imprisonment and punishment may be denied a prisoner of war who is charged by a responsible accuser with the commission of a war crime. The provisions of the Geneva Prisoners of War Convention do not confer immunity on prisoners of war against the consequences of crimes committed by them in violation of the laws of war prior to their becoming prisoners of war, nor govern the procedure, nor fix the tribunals before which they may be brought to justice.

Precedents:

There are numerous precedents:

1. The enemy has proceeded in this way in many instances, such as that of Capt. Fryatt who was imprisoned, tried, and shot in Belgium by the Germans after capture, on July 27th, 1916, for an act which had been done in June 1915.
2. During the 1914-18 war the Allies imprisoned and tried several war criminals. A case is mentioned by J.W. Garner in the American Journal of International Law, namely that of a German soldier sentenced to death on February 26th, 1915

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by a French Military Court at Rennes for pillage, arson and assassination (A.J.I.L., vol. 14 - 1920, pp. 77, note 1). Other cases are mentioned in "Le Temps" of Paris of 28 February and 1st March, 1915, in the "Journal de Droit International" 1915, p. 54 at seq., and in a study by [redacted] in the "Revue Pénitentiaire" of 1916, p. 23-24. A French Military Court at Toulouse charged a German prisoner of war, Lieutenant Willi Erler, with having burnt down a house in September 1914, and sentenced him on July 16th, 1915, to 20 years' hard labour (Mérignhac - "Revue Générale de Droit International", t. 24, 1917, p. 35). The British in September 1918 imprisoned in the Tower of London the Captain of a German U-boat (Capt. Kieseewetter) who was accused of sinking the British hospital ship "Glenart". This was in accordance with an announcement which had been made by the Board of Admiralty on March 8th, 1915, that prisoners of war who had attacked and sunk - or attempted to sink - without warning British merchantmen "would be debarred from certain privileges and courtesies that are extended to honourable combatants."

Doctrine:

Extract from Wheaton's International Law (7th English Edition, 1944, p. 180): "If men are taken prisoner in the act of committing, or who had committed, violations of international law, they are not properly entitled to the privileges and treatment accorded to honourable prisoners of war."

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UNITED NATIONS WAR CRIMES COMMISSION

M.25

Minutes of Twenty-fifth Meeting

held on

25 July, 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL	- United States of America
accompanied by Lt. Col. HODGSON	
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
Dr. WELLINGTON KOO	- China
accompanied by Dr. LIANG	
Dr. ECER	- Czechoslovakia
M. STAVROPOULOS	- Greece
Mr. DUTT	- India
M. BODSON	- Luxembourg
Dr. de MOOR	- Netherlands
Mr. BURDEKIN	- New Zealand
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia

MINUTES OF LAST MEETING

Reading of the Minutes was dispensed with and they were signed by the Chairman.

MEMBERSHIP OF THE COMMISSION

The CHAIRMAN read a letter from the High Commissioner for Australia stating that his Government had appointed Lord Wright to act as Australian representative in succession to the late Lord Atkin.

He also read a letter from M. Bodson stating that M. Blum could no longer represent Luxembourg on the Commission, having been appointed Minister in Moscow, and that pending a new appointment he would himself, as far as possible, attend the Commission's meetings on behalf of his Government.

REPORTS FROM COMMITTEE CHAIRMEN

M. de BAER, Chairman of Committee I, gave some particulars regarding its work and answered questions from members of the Commission.

Mr. PELL, Chairman of Committee II and acting Chairman of Committee III, reported progress. He said Committee II was much inconvenienced by the fact that no reply had yet been received to the Chairman of the Commission's letter of 31 May last to Mr. Eden concerning the problem of German atrocities against German Jews. The CHAIRMAN promised to do what he could in the matter.

PUBLICITY

The CHAIRMAN reported on an interview which he had had with the Secretary General of the recently established United Nations Information Organisation, (successor to the Inter-Allied Information Committee), and with the Secretary General of the corresponding United Nations institution in New York. They had offered their assistance to the Commission in connection with its publicity, and, acting on their advice which he had ventured to ask, he proposed that a press conference should be held at which a statement on the history, methods, etc. of the Commission would be released. He would ask the Commission's Publicity Committee to meet to examine the draft of such a statement and to consider what use should be made of the Organisation's offer of help.

Mr. COLBAN asked, and the CHAIRMAN agreed, that the identity of the members of the Commission should not be disclosed.

DEPUTATION FROM THE BRITISH SECTION OF THE WORLD JEWISH CONGRESS

The CHAIRMAN said he had received and had had a long and frank confidential conversation with a deputation from this organisation which, although British, claimed to voice the views of numerous organised groups of Jews throughout the world. The delegation understood and did not greatly complain of the fact that the competence given to the Commission by the Governments did not cover the whole field of Nazi persecution of the Jews. The requests which it made to the Commission were presented to

him in a long memorandum, the gist of which was contained in the following passages:

"The World Jewish Congress in London beg to request that the Commission of the United Nations for the Investigation of War Crimes take steps with a view to a comprehensive investigation of and report on the war crimes perpetrated by Germany, her allies and satellites upon the Jewish community in Europe.

"For these reasons we urge upon the representatives of the United Nations on the Commission for the Investigation of War Crimes that the war crimes committed by Germany and her associates upon the Jews of Europe are in a most material sense in a category of their own and that it is proper and desirable that they be made the subject of a separate investigation and of a comprehensive report. We submit that no adequate picture can be obtained of the crime of extermination of European Jews by merely assembling the evidence as put forward by the Governments of the various United Nations in respect of crimes committed upon persons of Jewish race in their respective territories occupied by Germany. We believe that in most cases such evidence will be sufficient to bring about the punishment of persons guilty of instigating, ordering and executing these crimes. But we also hold the view that the horror of the war crimes of Germany in so far as they affect the Jews of Europe transcends the problem of punishing the war criminals directly responsible. Punishment cannot alleviate the sense of loss and of horror which has afflicted members of the Jewish race everywhere in consequence of these crimes. The full knowledge, brought about by an authoritative investigation and report, of the enormity of these crimes in all their ramifications would in itself be a deterrent as potent as retribution itself. We attach paramount importance to the view that the design to murder an entire people must be branded and penalised as such, and that the thoroughness with which that design has been accomplished must be revealed fully, authoritatively, and in all its implications.

"There are, in our submission, two ways in which an investigation of and report upon the war crimes which Germany, her allies and satellites have committed upon Jews could take place:

- (1) the first is that the United Nations appoint a special commission for that purpose;
- (2) the second is the setting up by the Commission for the Investigation of War Crimes of a Committee of its own members entrusted with that task.

It appears to us that the clear balance of advantage is in favour of the latter course. The object of the Committee, in addition to the presenting of a comprehensive report on the policy of extermination, would be the study of any legal problems connected with the punishment of this aspect of German war crimes. These include such questions as the desirability of any special international jurisdiction having regard to the magnitude of German war crimes against Jews, or the absence of national jurisdiction for reasons of statelessness and the like, or the fact that the crimes against Jews, not being confined to Jews of one nationality, render an international procedure appropriate. These questions may also include the necessity of defining the crime of

with a view to discussing all
proposal.

FAR EASTERN AND PACIFIC SUB.

The CHAIRMAN read a letter from Dr. Wellington Koo, (C.38), who had appointed Dr. Wang Chung-hua as his representative and sometime Judge of the International Court of Justice, as its representative. The CHAIRMAN would be glad to provide a platform for the course call the organising committee.

Other questions on the
were adjourned to the next

In the resulting discussion it was observed that the enquiry did not fall directly within the Commission's functions and Mr. BURDEKIN said the New Zealand Government, which also felt the Commission was unduly enlarging its scope, would be disposed to agree to it. The majority of the members were in favour of considering the matter further.

Dr. WELLINGTON KOO suggested that the Commission should pass a resolution declaring that the enquiry ought to be made but could not be made by the Commission, and should bring this resolution to the attention of the Governments. Other members were in favour of having the proposal referred to a committee for consideration, or of setting up a committee to conduct the enquiry. It was ultimately agreed that the CHAIRMAN and Dr. GLASER, together with any other members who chose to attend, should have a discussion with Mr. Easterman, a member of the delegation and Political Secretary of the Jewish Organisation.

with a view to discussing all the aspects of the delegation's proposal.

FAR EASTERN AND PACIFIC SUB-COMMISSION

The CHAIRMAN read a letter from the Chinese ambassador, Dr. Wellington Koo, (C.38), stating that his Government had appointed Dr. Wang Chung-hui, former Minister of Foreign Affairs and sometime Judge of the Permanent Court of International Justice, as its representative on the Sub-Commission; that it would be glad to provide suitable quarters and would in due course call the organising meeting of the Sub-Commission.

Other questions on the Agenda, (Docs. C.35 and C.36), were adjourned to the meeting of the following week.

Cecil J. M. Hurst
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C.38
26 July 1944

UNITED NATIONS WAR CRIMES COMMISSION

ESTABLISHMENT OF THE FAR EASTERN AND PACIFIC
SUB-COMMISSION

LETTER FROM THE CHINESE AMBASSADOR
TO THE CHAIRMAN OF THE COMMISSION,
dated 25th July, 1944

Dear Sir Cecil,

I beg to inform you that the Chinese Government has appointed Dr. Wang Chung-hui, former Minister of Foreign Affairs and sometime Judge of the Permanent Court of International Justice, as the Chinese representative on the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission. It will be glad to provide suitable quarters for the Sub-Commission, and wishes to assure this body of a cordial welcome to Chungking. It will also be pleased to call the organizing meeting of the Sub-Commission in due course.

Yours sincerely,

(Signed) V.K. WELLINGTON KOO

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UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-sixth Meeting

held on

1 August 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL	- United States of America
accompanied by Lt. Col. HODGSON	
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
Dr. LIANG	- China
Dr. ECER	- Czechoslovakia
M. GROS	- France
Mr. DUTT	- India
Dr. de MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia

MINUTES OF LAST MEETING

Reading of the Minutes was dispensed with and they were signed by the Chairman.

COMMUNICATION TO THE PRESS

certain
~~to the~~ members on the subject of a communication to the Press, explained that he had not been able to agree with Dr. Eöer's view that the Commission was already competent to concern itself with crimes committed by Germany in her own territory against her own citizens, seeing that no answer had yet been received from the Foreign Office to the Commission's offer to undertake the consideration of such matters. It had been found desirable to hold a Press Conference, in order to correct mis-statements as to the Commission's mandate and activities which had been published in some newspapers. The communication would not be meant for publication but for the information of the Press, which had always shown itself responsible in regard to statements of the kind.

/ Mr. PELL

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Mr. PELL said that he had instructions from his Government whose view was that publicity was undesirable for the Commission which was an advisory body, and that no statement to the Press should be issued by the Commission without the approval of the Governments and Army authorities, nor should it touch on the persecution of races. He would be unable to participate in the issue of statements outside those limits.

The CHAIRMAN observed that the statement in question would be subject to the British censorship.

Mr. COLBAN thought that if it kept within the bounds indicated by the Chairman the statement would not conflict with the United States point of view.

FINANCES OF THE COMMISSION

The Secretary General stated that "basic contributions" had been received from Czechoslovakia and the Netherlands.

REPORTS OF COMMITTEE CHAIRMEN

M. de BAER, Chairman of Committee I, produced a table containing statistics regarding the number of cases which Committee I had classified as B.1 down to August 1st. It was decided that the table should be circulated to members of the Commission with a covering note by the Chairman, asking that members would draw Governments' attention to the table and emphasising certain facts which it revealed.

Mr. PELL and Dr. GLASER reported progress on behalf of their respective Committees.

DRAFT RECOMMENDATION REGARDING THE S.A., S.S. AND GESTAPO (Doc. C.35).

Dr. ECER presented the recommendation.

A discussion followed in which doubt was expressed as to whether the recommendation added anything to those already made in Doc. C.35 regarding the organisations in question. Some members also asked whether it was wise for the Commission to pronounce itself upon the controversial subject of ex post facto legislation. It was decided

that as regards procedure should be regulated by the national legislatures, and that such legislation should be enacted, and final approval given by the foreigners contrary to that if there was to be no legislation it would have to be left to the previous recommendation from its value for recommendation would be left to the previous recommendation.

As regards the fear that certain members might be treated as undesirable recommending membership whereas some members

It was decided

(a) Paragraph 1 of the Commission's new

"1. Each member on the basis of his own legislation of the State Geheime Staatspolizei as members

"Each member on the basis of his own legislation of the State Geheime Staatspolizei as members

(b) M. Gros a

Mr. COLBAN

ground that he made in Doc. C.35

that as regards proceedings in national courts, this matter was regulated by the national law. Some countries could and had enacted such legislation. In others there was a constitutional bar to its enactment, and finally some countries considered its application to foreigners contrary to international law. It was suggested, however, that if there was to be an interallied court, a rule on the subject would have to be laid down for its guidance. On the other hand, it was argued that the recommendation dealt with punishment, whereas the previous recommendations dealt with internment, and that, apart from its value for the Governments, the first paragraph of the recommendation would serve as a guide to Committee I.

As regards the drafting of the recommendation, some members feared that certain passages had or might be interpreted as having an undesirable restrictive effect. Thus, paragraph 2 spoke of treating membership of the organisations named as henceforth a crime, whereas some members considered it to be a crime already.

It was decided that:

- (a) Paragraph 1 would be circulated for consideration at the Commission's next meeting in the following amended form:

"1. Each of the United Nations has the right, either on the basis of its present criminal law or on the basis of new legislation, to punish its own nationals who became members of the Sturmabteilungen (S.A.), Schutzstaffeln (S.S.) or Geheime Staatspolizei (Gestapo), irrespective of their rank as members and of the territories in which they served.

"Each of the United Nations has also the right to punish German or foreign members of the above-mentioned organisations who have committed crimes in their territories."

- (b) M. Gros and Dr. Eöer should agree upon a text of paragraph 2.

Mr. COLBAN abstained from voting for this decision on the ground that he considered the recommendation to duplicate that made in Doc. C.31 and to be therefore unnecessary.

Cecil B. Hurst
Aug 8/44

S.S. AND GESTAPO

SECRET

C.35
24 July, 1944

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UNITED NATIONS WAR CRIMES COMMISSION

DRAFT RECOMMENDATION REGARDING THE STURMABTEILUNGEN (S.A.),
SCHUTZSTAFFELN (SS) AND GEHEIME STAATSPOLIZEI (GESTAPO)

Presented by Committee III.

Committee III submits to the Commission the following
conclusions

- (a) to be voted as a guiding rule for the work of the Commission and its Committees, and
- (b) to be forwarded to the Governments as legal advice and as a recommendation of the Commission.

1. Each of the United Nations has the right to punish its own nationals who became members of the Sturmabteilungen (S.A.), Schutzstaffeln (SS) or Geheime Staatspolizei (Gestapo), irrespective of their rank as members and of the territories in which they served, and either on the basis of its present criminal law or on the basis of new legislation.

Each of the United Nations has also the right to punish Germans or foreigners who in its territory served as members of the above mentioned organisations and committed crimes there.

2. The United Nations authorities in occupied Germany and her satellite States are authorised by International Law to take any measure admissible by the International Law in order to ensure the safety of their Armies and to maintain public order and peace.

The character and activity of the S.A., SS., and Gestapo are such that in accordance with this principle, it would be justifiable for the United Nations authorities, among other measures, to disband these organisations, intern their members, make membership in them henceforth a crime and punish it as such.

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UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-seventh Meeting

held on

8 August 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL	- United States of America
accompanied by Lt. Col. HODGSON	
Mr. OLDHAM	- Australia
M. de BAER	- Belgium
Dr. LIANG	- China
M. GROS	- France
M. STAVROPOULOS	- Greece
Mr. DUTT	- India
Dr. de MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia

MINUTES OF LAST MEETING

Reading of the Minutes was dispensed with and they were signed by the Chairman.

RECOMMENDATION REGARDING ARMISTICES GRANTED TO GERMANY'S EUROPEAN SATELLITES

At M. MILANOVITCH'S request it was resolved to record in the Minutes that, as provided by the Commission's decision of 11 July 1944, the Chairman and M. Milanovitch had drawn up an agreed text of the recommendation to be made to the Governments regarding the armistices with Germany's European satellites, and that this recommendation had been communicated to the members of the Commission for the information of their Governments, in the Document C.34 of 18 July, 1944.

TIME OF MEETING OF COMMITTEE II

It was announced that Committee II would in future meet on Thursdays at 3 p.m.

REPORTS OF COMMITTEE CHAIRMEN

The Chairmen had nothing special to report.

INTERVIEW WITH REPRESENTATIVES OF THE WORLD JEWISH CONGRESS (1)

The CHAIRMAN referred to the discussion at the Commission's last meeting of the desiderata of this organisation, and reported that with Professor Glaser he had received Mr. A.L. Easternman, its Political Secretary, and two other members of this organisation, Mr. F.R. Bienenfeld and Mr. A. Steinberg. He had had to point out that the help the Commission could give them was limited to what could be done within the scope of its primary function, which was the investigation of individual cases of war crime, and did not embrace crimes against the Jews committed on Axis territory. But within those limits he had indicated lines of action along which the World Jewish Congress could assist the Commission and the Commission would be able, at least in part, to satisfy the desires of the Congress. The Congress had collected a mass of information about the campaign of extermination waged against the Jews. Most of this material was now in New York, but it could be put at the disposal of the Commission. He had explained that it was the National Offices which transmitted cases to the Commission and therefore it was by the National Offices that the information which could be provided by the Jewish World Congress should first be considered. Fortunately the material collected by the Congress was classified according to the countries in which particular incidents had occurred. Mr. Easternman said the Congress would place the material it had collected at the disposal of any National Office to which it would be useful. Professor Glaser had explained to Mr. Easternman that the Polish National Office had already instituted a special section to deal with atrocities committed against the Jews in Poland, and was in touch with the Jewish organisations. The Polish National Office would welcome any help the Jewish World Congress could give. There remained, however, according to Mr. Easternman, a considerable quantity of material collected by the World Jewish Congress which he did not think could be utilised by the National Offices, and could

(1) The address of this organisation is Congress House, 55 New Cavendish St. W.I.
(Telephone Welbeck 1514)

only be utilised, if at all, by the Commission. The Chairman said that he had given no undertaking that the Commission would be able to utilise this information but there might be ways in which it would be possible and desirable to do so. He had in mind the possibility of the Commission's issuing reports dealing with special categories of the atrocities committed by the Axis Powers. One of these reports might well deal with this campaign for the extermination of the Jews as a whole, so as to link together the particular acts committed against the Jews in the various occupied countries and make the public at large more readily understand the situation. The Chairman added that he had been careful to emphasise that scrutiny of the material by non-Jewish sources was essential in the interests of the object the World Jewish Congress had in view. Mr. Easternman had quite understood this.

For the present all he could do was to express the hope that any of the National Offices which had already transmitted to the Commission, or were intending to transmit, cases concerned with crimes committed against Jews would accept any help that was offered them by the Jewish World Congress. He would keep the Commission fully informed as to any further developments that might take place.

He concluded by saying that the Congress appeared to have contact with the U.S.S.R., which might be useful.

M. MILANOVITCH said that about a fifth of the cases of war crime collected by the Yugoslav Government related to Jews, who were treated on the same footing as other Yugoslav nationals. If the World Jewish Congress could help, its help would be welcomed. The real problem, however, was that of finding a legal basis for punishing the Axis persecution of their own Jews within their own territory.

AMENDED TEXT OF PARAGRAPH 1. OF COMMITTEE III'S
DRAFT RECOMMENDATION REGARDING THE S.A., S.S.
AND GESTAPO (DOC. C.35(1)).

Several members expressed doubt as to the wisdom of adopting this text.

Dr. LIANG urged that, if not adopted, it should not be rejected in Dr. Eöer's absence, and this was agreed to.

Referring to the other paragraph (para. 2) of Document C.35, M. GROS said he did not want to have the text altered, but simply to have the paragraph considered by and embodied in the report of the sub-committee set up by Committee III to recommend measures for dealing with criminal activities intended to prevent the establishment of a stable peace.

SUGGESTIONS BY COMMITTEE II REGARDING CO-OPERATION
WITH GENERAL EISENHOWER'S HEADQUARTERS (Doc. C.36)

This document stressed the need for "direct and close co-operation" between the Commission and General Eisenhower's Headquarters, and proposed that the Combined Chiefs of Staff should be approached, through the Foreign Office, with a view to their giving appropriate instructions or authorisation to General Eisenhower regarding the execution of the Commission's existing recommendations for creation of a War Crimes Office and internment of the S.S. and Gestapo, and of a new recommendation for the appointment of a liaison officer for permanent co-operation between the General's Headquarters and the Commission.

The discussion showed all the members of the Commission to be anxious for the fullest possible co-operation with the military headquarters, not merely in Western Europe but in all the fields of operations; but the opinion prevailed that the wisest course would be for the Chairman to endeavour to explore the ground and, if possible, arrange further informal talks between himself, Mr. Pell and M. de Baer, and representatives of S.H.A.E.F. for the purpose of ascertaining to what extent, and in what form, the proposed closer co-operation with General Eisenhower's Headquarters could usefully be sought. The CHAIRMAN said such conversations would also throw light on the question of co-operation with the supreme commands on other fronts.

DRAFT CONVENTION FOR THE SURRENDER OF WAR CRIMINALS
AND OTHER WAR OFFENDERS (Doc. C.37).

The Chairman of Committee II presented this draft.

M. COLBAN, Colonel HODGSON and Mr. DUTT stated that acceptance of the draft would involve legislation in their respective countries.

Dr. LIANG considered that if not acceptable to all the United Nations, the Convention could nevertheless be useful to those which accepted it.

Dr. de MOOR suggested that the title should be "Convention for the mutual surrender between the United Nations of war criminals and other war offenders."

M. de BAER objected to the substitution by Committee II of the word "surrender" for the word "transfer" which the Committee had originally adopted to show that extradition of the normal character was not intended.

Colonel HODGSON said he had proposed the change, and defended it on the ground that it clearly expressed what was implied e.g. showed that an agent would have to be sent to receive the person to be handed over to the requesting state.

M. COLBAN proposed insertion of the words "or convicted" between the word "alleged" and the word "offender" in all the passages of Articles V and VI in which the phrase "alleged offender" was used.

This amendment was adopted.

M. COLBAN further said that the Norwegian Ministry of Justice had raised the questions whether as regards Article V, second paragraph it would be the law of the requesting state which would determine whether an offence was committed within that state's jurisdiction, and whether the case of an offender who at the moment when the request was made was undergoing trial or investigation for the same offence as that for which the request was made, was covered by Articles V and VI. He had consulted the Secretary General and

DRAFT CONVENTION FOR THE SURRENDER OF WAR CRIMINALS
AND OTHER WAR OFFENDERS (Doc. C.37).

The Chairman of Committee II presented this draft.

M. COLBAN, Colonel HODGSON and Mr. DUTT stated that acceptance of the draft would involve legislation in their respective countries.

Dr. LIANG considered that if not acceptable to all the United Nations, the Convention could nevertheless be useful to those which accepted it.

Dr. de MOOR suggested that the title should be "Convention for the mutual surrender between the United Nations of war criminals and other war offenders."

M. de BAER objected to the substitution by Committee II of the word "surrender" for the word "transfer" which the Committee had originally adopted to show that extradition of the normal character was not intended.

Colonel HODGSON said he had proposed the change, and defended it on the ground that it clearly expressed what was implied e.g. showed that an agent would have to be sent to receive the person to be handed over to the requesting state.

M. COLBAN proposed insertion of the words "or convicted" between the word "alleged" and the word "offender" in all the passages of Articles V and VI in which the phrase "alleged offender" was used.

This amendment was adopted.

M. COLBAN further said that the Norwegian Ministry of Justice had raised the questions whether as regards Article V, second paragraph, it would be the law of the requesting state which would determine whether an offence was committed within that state's jurisdiction, and whether the case of an offender who at the moment when the request was made was undergoing trial or investigation for the same offence as that for which the request was made, was covered by Articles V and VI. He had consulted the Secretary General and

accepted his view that the answer to both questions was affirmative. In Article IV the Ministry of Justice would have preferred that provision should be made for surrender being effected by the decision of a court, but he was instructed not to press this point.

M. de BAER said that the Belgian Government was of opinion that in Article IV the provision I.A. ought to be amended by introducing into it certain safeguards which appeared in the original draft prepared by the five Ministers of Justice and had been omitted by Committee II.

Objection was made to this proposal and it was argued that the text as it stood covered the same ground as the Ministers of Justice text.

M. de BAER said he did not press his proposal but wished it to be mentioned in the Minutes.

The CHAIRMAN having suggested that the draft ought to be presented to the Commission and to the Governments with an explanatory memorandum showing, for example, what were the states to which signature of the Convention was open, and explaining the objects and provisions of the draft, Dr. Liang was asked and agreed to draft and submit such a memorandum to the Commission.

The Commission decided not to meet in the following week, unless specially convened by the Chairman.

Ernest B. Hurst
Aug. 22/44

SECRET

UNITED NATIONS WAR C

SURRENDER BY THE AXIS POWER
TRIAL AS WAR

SECOND NOTE by
TO THE GOVERNMENTS REPRESENTED

In his first Note on the a draft Article which it was armistice with Germany (Doc War Crimes Commission states

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SECRET

C.34
18 July 1944

UNITED NATIONS WAR CRIMES COMMISSION

SURRENDER BY THE AXIS POWERS OF PERSONS WANTED FOR
TRIAL AS WAR CRIMINALS

SECOND NOTE by the CHAIRMAN

TO THE GOVERNMENTS REPRESENTED ON THE COMMISSION

In his first Note on this subject submitting to the Governments a draft Article which it was suggested should be inserted in the armistice with Germany (Doc. C.31), the Chairman of the United Nations War Crimes Commission stated that:

"In the Commission's opinion the same text should be suitable for use in the armistice granted to each of Germany's European satellites subject only to:

- "(1) substitution of the name of the State concerned for that of Germany, and
- "(2) insertion in section 2 at (d) of the names of the forces which in that State correspond to the Geheime Staatspolizei (Gestapo) and Schutzstaffel (S.S.)"

The Chairman now begs to place before the Governments the Commission's recommendation that in the armistice with each European satellite the text of section 2 point (d) should make provision for taking and keeping in custody any members or former members of the German Gestapo and S.S. who were found in that country, and also any members of the police forces of that country, whether civil or military, who had served or were still serving as district chiefs in any country occupied by Nazi forces.

As stated in the first Note, different provisions may be necessary in the case of Japan, and the text will be submitted at a later date.

C.36
24 July 1944

UNITED NATIONS WAR CRIMES COMMISSION

C.35(1)
4 August 1944

SECRET

UNITED NATIONS WAR CRIMES COMMISSION

PARAGRAPH 1. (AMENDED TEXT) OF COMMITTEE III'S DRAFT
RECOMMENDATION REGARDING THE S.A., S.S. AND THE GESTAPO
(DOCUMENT C.35)

"1. Each of the United Nations has the right, either
"on the basis of its present criminal law or on the basis
"of new legislation, to punish its own nationals who
"became members of the Sturmabteilungen (S.A.),
"Schutzstaffeln (S.S.) or Geheime Staatspolizei (Gestapo),
"irrespective of their rank as members and of the
"territories in which they served.

"Each of the United Nations has also the right to
"punish German or foreign members of the above-mentioned
"organisations who have committed crimes in their
"territories."

... the combined Chiefs of Staffs will accept our offer of
collaboration and that they will give appropriate instructions
to General Eisenhower. The elaboration of detailed schemes
would be the task of General Eisenhower's Headquarters and of our
Commission here in London, but General Eisenhower must have at
least a general authorisation for the purpose from the combined
Chiefs of Staffs.

/ In view

SECRET

C.36
24 July 1944

UNITED NATIONS WAR CRIMES COMMISSION

SUGGESTIONS BY COMMITTEE II REGARDING
CO-OPERATION WITH GENERAL EISENHOWER'S HEADQUARTERS

Certain quarters in London and even some newspapers in London have been informed that the Nazis are preparing a big organisation for the purpose of helping Nazi war criminals to escape. False documents are already being fabricated and other measures being taken for this purpose.

The United Nations War Crimes Commission had realised this danger. We have recommended two measures to the Governments for the purpose of ensuring the arrest of war criminals: firstly the establishment of a War Crimes Office attached to the Commander-in-Chief's Headquarters, and secondly the internment of the S.S. and the Gestapo. But we must realise that the United Nations Governments are not an executive body authorised and able to carry out decisions. An example is the fate of the enquiry concerning the extermination of Jews which the Commission on May 30th asked the Chairman to address to the Foreign Office. Up to date no reply has been received.

The only body capable of action is the Supreme Command of the expeditionary forces in Europe, i.e. General Eisenhower's Headquarters.

We understand that the Chairman of the Commission, together with Mr. Pell and General de Baer, have had informal informative talks about collaboration between the War Crimes Commission and General Eisenhower's Headquarters. We are all convinced that without direct and close collaboration between the Commission and those headquarters the work of the Commission will be a failure.

We understand that there are already liaison officers at General Eisenhower's Headquarters for all kinds of business but there is no liaison officer for the punishment of war criminals. It is believed that the establishment of collaboration between the Commission and General Eisenhower's Headquarters, and especially the establishment of a War Crimes Office, is possible only through the combined Chiefs of Staffs in Washington. We feel confident that the combined Chiefs of Staffs will accept our offer of collaboration and that they will give appropriate instructions to General Eisenhower. The elaboration of detailed schemes would be the task of General Eisenhower's Headquarters and of our Commission here in London, but General Eisenhower must have at least a general authorisation for the purpose from the combined Chiefs of Staffs.

/ In view

SECRET

UNITED NATIONS WAR CRIMES

CONVENTION FOR THE SURRENDER

AND OTHER WAR OFFENSES

Draft presented by

(Enumeration of the

Having resolved to conciliate
of achieving the surrender of
offenders,

have appointed as their
(list of Plenipotentiaries)
Who, having communicated
and due form, have agreed

Article

The High Contracting Parties
each other according to the
the purposes of trial or
persons found within their
convicted of war crimes,
and customs of war, which
jurisdiction of the request
its nationals or the army

The High Contracting Parties
surrender to each other
hereinafter, for the purpose
or judgment, all persons
requesting state who are
charged with or convicted
or of an offence committed
of the enemy or of a
opportunity afforded
by hostile occupation

The surrender
effected notwithstanding
a political character

In view of the fact that the war is approaching its end and especially in view of recent events in Germany, the Commission asks the Commission to take immediate steps to establish direct and close co-operation with General Eisenhower's Headquarters and to submit through the British Foreign Office to the Chiefs of Staffs the Commission's recommendations concerning

- a) Establishment of a War Crimes Office;
- b) Internment of the S.A., S.S. and Gestapo;
- c) Establishment of permanent collaboration through a liaison officer between the Commission and General Eisenhower's Headquarters.

SECRET

C.37
25 July 1944

UNITED NATIONS WAR CRIMES COMMISSION

CONVENTION FOR THE SURRENDER OF WAR CRIMINALS

AND OTHER WAR OFFENDERS

Draft presented by Committee II

(Enumeration of the Heads of States)

Having resolved to conclude a Convention with the object of achieving the surrender of war criminals and other war offenders,

have appointed as their Plenipotentiaries the following:
(list of Plenipotentiaries)

Who, having communicated their full powers, found in good and due form, have agreed on the following provisions:

Article I

The High Contracting Parties mutually agree to surrender to each other according to the procedure hereinafter provided, for the purposes of trial or of execution of sentence or judgment, persons found within their jurisdiction who are charged with or convicted of war crimes, including offences against the laws and customs of war, which were committed either within the jurisdiction of the requesting state or against that state or its nationals or the armed forces of the state.

Article II

The High Contracting Parties further mutually agree to surrender to each other according to the procedure provided hereinafter, for the purposes of trial or of execution of sentence or judgment, all persons, nationals or former nationals, of the requesting state who are within their jurisdiction and are charged with or convicted of giving aid or comfort to the enemy or of an offence committed with the intent to further the cause of the enemy or of an offence committed by means of the power or opportunity afforded by a state of war or armed hostilities or by hostile occupation of territory of the requesting state.

Article III

The surrender provided for by Articles I and II shall be effected notwithstanding any contention that the offence was of a political character.

/ Article IV

Article IV

The request for surrender shall be transmitted through diplomatic channel, and shall be executed by the appropriate executive or administrative authorities of the requested state. The person whose surrender is requested under the terms of the Convention shall in no case have recourse to any form of procedure provided in the extradition treaties, laws or regulations of the requested state. The request shall contain in any

1. In the case of an alleged offender:

- A. (1) the identity, nationality (if known) and description of the alleged offender;
- (2) the description of the alleged offence and the maximum penalty which can be inflicted for that offence.

B. The Government requesting surrender shall in every case give written assurances to the Government from whom the surrender is requested to the effect:

- (1) that the trial will be conducted in accordance with legal procedure;
- (2) that judgment or findings and sentence will be pronounced in open court;
- (3) that the alleged offender will be afforded the assistance of counsel both before and during the trial.

2. In the case of a convicted offender:

- (1) the identity, nationality (if known), and description of the convicted offender;
- (2) the description of the offence and the penalty imposed;
- (3) the original or an authenticated copy of the judgment or findings and sentence given by the appropriate court in respect of the offence and in the presence of the offender.

The term "court" as used in this article shall include a military commission or other military tribunal.

Article V

The High Contracting Parties may decline to surrender to each other their own nationals and former nationals.

A High Contracting Party may refuse to surrender an alleged offender, if the offence for which his surrender is requested was committed within that Party's jurisdiction.

In all cases where two or more High Contracting Parties request the surrender of the same alleged offender, such person shall be surrendered first to the Government of the State whose national legislation contains the heaviest maximum penalty in respect of the alleged offence regarding which surrender is requested.

Where the maximum penalties in respect of

for which surrender is requested first be effected to the Government of the requested state.

Article V

If at the time when the offender is undergoing investigation, the courts of the requested state are not, which is punishable more than that for which the surrender is requested, the surrender may decline to surrender him and the request shall be terminated.

In the event of sentence having been pronounced, the surrender shall be suspended, if the sentence is not in accordance with the request.

A sentence of death pronounced by a court of the requested state shall not be executed if the offender is not a national of the requested state.

When an alleged offender has been sentenced by two or more High Contracting Parties, the states concerned in the request shall, if the offender is not a national of the requesting states, agree on the state for execution.

The Governments concerned shall allow the transit through their territories of the offender being surrendered in accordance with the Convention to another state, if the surrender is obtained from the state of origin, and may be accompanied by the offender's family.

The High Contracting Parties may serve as process for the surrender of the offender.

The request for a surrender shall be made in accordance with the Convention.

for which surrender is requested are the same, surrender shall first be effected to the Government which first requested the surrender.

Article VI

If at the time when the request is made the alleged offender is undergoing investigation or is on trial in the courts of the requested state for a crime, whether a war crime or not, which is punishable with a higher maximum penalty than that for which the surrender is requested, that state may decline to surrender him until the proceedings are terminated.

In the event of sentence of detention in a penal institution having been pronounced, the execution of the sentence shall be suspended, if the surrender of the convicted person is requested in accordance with Articles I or II.

A sentence of death shall however be executed notwithstanding that one or more of the High Contracting Parties have requested the surrender of the offender.

When an alleged offender whose surrender has been requested by two or more High Contracting Parties has been tried and sentenced by their courts, the sentences shall be executed in the states concerned in the order of their dates; provided that, if the offender has been sentenced to death in one of the requesting states, he shall be surrendered to that state for execution.

Article VII

The Governments of the High Contracting Parties agree to allow the transit through their territories of persons who are being surrendered by one of the Parties to the present Convention to another Party, on production of a certificate emanating from the Government of the State from whom the surrender is obtained. During the passage through such territories the person who is being surrendered and his escort may be accompanied by officials designated by the Governments concerned.

Article VIII

The High Contracting Parties agree to produce at the time of surrender all documents, exhibits, or any other thing which may serve as proof of the alleged offence.

Article IX

The requesting state shall bear all costs arising out of a surrender made at its request under the terms of this Convention.

/ Article X

Article X

The present Convention constitutes an exceptional measure and shall not affect the operation of any treaty of extradition between or among the High Contracting Parties except as may be expressly provided by the terms of this Convention.

Article XI

(Denunciation and termination: Text provisionally reserved).

Article XII

The present Convention shall be ratified and the ratifications shall be deposited as soon as possible with who will notify such deposit to all the signatories.

Article XIII

The present Convention shall come into force one month after the date on which it shall have been ratified on behalf of two of the High Contracting Parties. Thereafter it shall take effect in the case of each High Contracting Party one month after the date of the deposit of the ratification on its behalf with

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UNITED NATIONS

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Mr. PELL
accompanied
Lord WRIGHT
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M. de BAER
Dr. WELLINGTON
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Dr. ECER
M. GROS
M. STAVROPOULO
Mr. DUTT
M. BODSON
Dr. de MOOR
Mr. COLBAN
accompanied
Dr. GLASER
M. MILANOVIT
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MINUTES OF LAST MEET

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UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-eighth Meeting

held on

22 August 1944.

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL	- United States of America
accompanied by Lt. Col. HODGSON and Major COWLES	
Lord WRIGHT	- Australia
accompanied by Mr. OLDHAM	
M. de BAER	- Belgium
Dr. WELLINGTON KOO	- China
accompanied by Dr. LIANG	
Dr. ECER	- Czechoslovakia
M. GROS	- France
M. STAVROPOULOS	- Greece
Mr. DUTT	- India
M. BODSON	- Luxembourg
Dr. de MOOR	- Netherlands
Mr. COLBAN	- Norway
accompanied by Mr. Edward HAMBRO	
Dr. GLASER	- Poland
M. MILANOVITCH	- Yugoslavia
accompanied by M. ZIVKOVIC	

MINUTES OF LAST MEETING

At the request of Mr. DUTT and another member, lines 4 and 5 on page 5 were amended to read as follows:

"Certain members stated that acceptance of the draft would involve legislation in their respective countries. Mr. DUTT said the same might be the case in his country."

At M. MILANOVITCH'S request, the record of his speech on page 3 was replaced by the actual words, which were:

"M. MILANOVITCH said that the large majority of Jewish cases, perhaps four-fifths, were already covered by the Commission's work, as these Jews were subjects of the States represented on the Commission. The cases of the Jews in Yugoslavia, who had always been treated there on an absolutely equal footing with other Yugoslav nationals, would of course be submitted to the Commission together with other Yugoslav cases. If the World Jewish Organisation had any additional data about crimes against the Jews in Yugoslavia, the Yugoslav National Office would very readily receive them.

"The only problem that really remains in abeyance is how to punish the Axis crimes against their own Jews within their own territories. M. Milanovitch thought that the whole Commission would sympathise in these cases too and that something should be done, but the real difficulty was to find the legal basis."

FAR EASTERN AND PACIFIC SUB-COMMISSION

The Secretary General reported that the Indian and French Governments had appointed representatives on the Sub-Commission.

FINANCES OF THE COMMISSION

The Secretary General reported the payment of China's basic contribution for the current fiscal year.

REPORTS OF COMMITTEE CHAIRMEN

It was reported that Committee I had decided to meet both on Tuesday and on Wednesday mornings at 10.30.

The Chairman of Committee II said that body would henceforth meet twice on Thursdays, at 11 a.m. and 3 p.m.

The Chairman of Committee II also reported that the proposal for United Nations Military Tribunals, which had been circulated to all the members of the Commission in the Document II/26(1), was "ordered out" to the Commission to be taken up by it when the Chairman thought fit.

The Chairman of Committee III said that after considering a report by Dr. Liang on the plea of obedience to superior orders, that body had appointed Mr. Hambro and Major Cowles as a sub-committee to investigate the subject further.

MATTERS RAISED BY THE CHAIRMAN

After welcoming the new representative of Australia, Lord Wright, and a new member of the United States delegation, Major Cowles, and stating that the Secretary General would shortly be obliged to be absent for an operation and had made arrangements for carrying on the work during his absence, the CHAIRMAN said he had a number of matters to put to the Commission:

Date for completion of first list of war criminals.

In the first place the war with Germany was plainly reaching a climax and, as the Commission must have a first definitive list of war criminals ready when the armistice was granted, the Chairman suggested the fixing of a date to which it should work. Purely as the result of his personal appreciation of the situation, he suggested 10 November next. This was agreed to.

Looting of art treasures and destruction of monuments.

The Chairman said that the Secretary of the Vaucher Committee,⁽¹⁾ a body appointed by the Allied Ministers of Education, had sought contact with the Commission. It could provide valuable material regarding criminal looting and destruction of art treasures and monuments, and contact with it seemed desirable.

Mr. DUTT pointed out that there was another body with much the same function - the Roberts Committee, which was supported by the United Kingdom and the United States Governments and, as he believed, that of India. The Chairman said the two bodies were trying to work together. Professor GLASER proposed that a letter should be sent to the National Offices pointing out the possibility of getting from the Vaucher Committee information regarding war criminals guilty of looting art treasures or destroying monuments, and it was decided that the Secretary General should do this.

Co-operation with War Office

The Chairman reported that he established contact with the United Kingdom War Office and that a high official of that ministry would attend a meeting of Committee I in order to judge what help it could give.

Co-operation with General Eisenhower's Headquarters

The Chairman also reported that he had not yet been able to see a representative of SHAEF in connection with the proposals for co-operation put forward in Document C.36 (See Minutes of 8 August, 1944, p. 4).

Production by the Commission of reports on different classes of Axis' war crimes, such as crimes directed against Jews as such etc.

Referring to his suggestion at the Commission's last meeting that reports of this kind should be produced with the object of linking together the war crimes of different categories committed by the Axis Powers and making the public at large more readily

(1) This body is a sub-committee of the Conference of Allied Ministers of Education.

understand the situation, (Minutes of 8 August 1944, p.2), the Chairman asked a general endorsement of this idea from the Commission, while warning it that its execution would cost money. The statements made must be well supported by evidence and the work must be done by persons well qualified both to test the material and present it in an attractive form.

Mr. COBURN said he agreed on the understanding that the reports were related to the Commission's work and not exhaustive historical studies. Other members spoke in favour of the Chairman's proposal, which was adopted.

Expansion of the Secretariat

The Chairman asked the Commission to agree to such increase in the staff of the Secretariat as the Finance Committee might approve. Such an increase was necessary, particularly in relation to the work of Committee I and the Chairman's own work. This was agreed.

Press Conference

The Chairman stated that the adjourned Press Conference would take place in the following week.

Mr. COBURN said leakages of information were still occurring, as appeared from a letter he had received from a Mr. Laurence Kidd and had sent to the Secretary General.

The Chairman had received a similar letter from the same source. It was, in his opinion, only a repetition of a statement in the newspapers. He regarded the Press Conference which was to be held as the best antidote.

Temporary absence of Dr. Wellington Koo and Dr. Liang

The Chairman expressed the Commission's regret at losing the assistance of Dr. Wellington Koo and Dr. Liang during their coming mission to Washington.

Dr. WELLINGTON KOO said his place on the Commission would be taken by Dr. King, Chinese Ambassador to ~~Belgium~~ *the Netherlands*.

MEMORANDUM BY DR. DE MOOR ON THE TASK OF COMMITTEE I, ON
THE EXPANSION OF THE SECRETARIAT OF THE COMMISSION, AND ON
THE NECESSITY OF DRAWING UP A MINIMUM PROGRAMME (C.42).

In presenting this memorandum, Dr. de MOOR said that the figures given at the bottom of p. 1 required correction. The number of cases received down to date was 255 and the number of criminals placed on list B.1 was 335. The Chairman's proposal regarding the Secretariat had already covered part of his own proposals. He urged that the Commission should itself prepare "dossiers" against Hitler and other arch-criminals, since the National Offices were apparently not prepared to do so. He also urged that the time had come for settling by a vote the points on which differences of opinion still prevailed. He moved the adoption of the conclusions set out on p.3 of his memorandum.

Dr. de Moor's proposal regarding arch-criminals received support from many members, but no formal decision was taken.

After comments had been made on other points of the memorandum, the proposals on p.3 were examined with the following results:-

Proposal (a) - It was agreed not to circulate Dr. de Moor's memorandum in its present form, copies being already available to the members of the Commission for communication to their National Offices or Governments.

Proposal (b) - 1) Dr. de Moor agreed that the work contemplated should be done by Committee I.

2) It was agreed that the Chairman of the Commission and the Chairmen of Committees I, II and III should form a committee to draw up and submit to the Commission the draft of a report to the member Governments on the progress of the Commission's work. This "progress report" would not merely indicate the results attained but also the matters which the Commission had under consideration, and in general the objects to which it felt it should direct its efforts. Other progress reports might follow.

/ ADOPTION

ADOPTION OF FINANCIAL AND ADMINISTRATIVE REGULATIONS

The draft Regulations drawn up by the Finance Committee (Doc. C.26) were amended by the adoption of certain changes proposed by Mr. Dutt and approved by the Finance Committee (Doc. C.41) and, as so amended, were adopted by the Commission (Doc. ~~C.41~~ ^{C.45}).

Cecil J B Hurs
Aug 29 / 44

SECRET

C.45
26 August, 1944

UNITED NATIONS WAR CRIMES COMMISSION
FINANCIAL AND ADMINISTRATIVE REGULATIONS

Adopted by the Commission on 22 August, 1944.

General Provision

Article 1

The present regulations are made in execution of the Commission's Resolution on Financial Administration of 21 March, 1944 (hereinafter called the Resolution) and their application is subject to the provisions of that Resolution.

The Budget

Article 2

The Secretary General shall prepare the draft budget for each fiscal year and after submitting it for examination and revision to the Finance Committee (Article 5) shall present it to the Commission with the Committee's report.

Allocation of Expenses

Article 3

After the budget has been adopted by the Commission the Secretary General shall determine and notify to each member Government the amount due from it, and shall request that payment may be made promptly, in accordance with paragraph 2 of the Resolution. Such notification may be made by telegram.

Working Capital Fund

Article 4

1. Until otherwise decided by the Commission, the amount of the working capital to be accumulated in accordance with paragraph 2 of the Resolution shall be £6,000. It shall be administered as a separate fund, known as the "Working Capital Fund" in the manner set out in the following paragraphs.
2. Until the full amount of the fund has been provided, the following rules shall apply :

- i) An amount for working capital shall be included in the budget for each fiscal year.
- ii) If in any fiscal year the sum voted for the Commission's expenses is less than the total amount payable annually as basic contributions under the Resolution, the balance shall be collected as a contribution to working capital, without prejudice to the voting of an additional sum for that purpose.
- iii) Any surplus realised on the budget shall automatically be paid to the Working Capital Fund.

P.T.O.

3. As soon as a contribution is received from a member Government, the Working Capital Fund shall be credited with a part thereof corresponding to the ratio between the amount voted for the fund in the fiscal year in question and the total amount voted for that year.
4.
 - i) The Working Capital Fund may be drawn upon by the Secretary General to meet expenditure which is authorised by the budget of the current year but cannot be met out of the contributions hitherto received. The amounts so withdrawn shall be reported at once to the Finance Committee, and shall be repaid to the Fund as soon as possible.
 - ii) The Commission, by vote of two thirds of its members, may apply part of the working capital for purposes not provided for in the budget. The budget of the next fiscal year shall make provision for the repayment to the fund of the amounts so withdrawn from it.
5. No part of the Working Capital Fund may be repaid to any Government until the Commission's assets are liquidated, except with the assent of all the member Governments.

Financial Control

Article 5

1. There shall be a Finance Committee of not less than three nor more than five persons appointed by the Commission from among its members. It shall have power to nominate not more than two financial experts to sit as members, but without the right to vote.
2. The Finance Committee shall perform the functions given to it by these Regulations and any other functions relating to the Commission's administration which may be conferred on it by the Commission, and shall supervise the administration of the Commission's affairs, reporting thereon, when necessary, to the Commission.

Article 6

The Secretary General is authorised to incur expenditure and to make or authorise payments for the purposes and within the limits fixed by the budget. All payments, as made, shall be appropriated to the proper item of the Budget and a record of such appropriations and of liabilities incurred shall be kept, showing at all times the amount available under each item.

Article 7

The amount of all salaries and professional fees shall be fixed by the Commission, or in accordance with rules made by it.

Article 8

1. The Commission's bankers shall be Messrs. Barclays Bank Ltd., 19, Fleet Street, E.C.4. It may change them at any time.
2. Payments exceeding £10 shall be by cheques signed by two persons authorised by the Finance Committee.

Article 9

1. The Secretary General shall be responsible for keeping the Commission's accounts.

2. The accounts shall be audited annually by the Comptroller and Auditor General of the Public Accounts of the United Kingdom. The first accountancy period shall run from the establishment of the Commission down to 31 March, 1945.

3. The audited accounts, after examination by the Finance Committee, shall be laid before the Commission by the Secretary General, with the Committee's report.

Article 10

A fidelity guarantee insurance shall be taken out in respect of each official dealing with the Commission's funds or keeping its accounts.

Transitional Provisions

Article 11

Pending the entry into force of the Resolution, and the adoption of its first budget, the Commission will from time to time determine the expenditure which the Secretary General is authorised to incur on its behalf.

Article 12

1. As soon as possible after the adoption of these Regulations, and in anticipation of the entry into force of the Resolution, the member Governments shall pay to the Secretary General their basic contributions for the fiscal year 1944/1945, subject to subsequent readjustment if the Resolution is not approved by the Governments in its present form. These payments shall be credited to the Working Capital Fund until the amount of £2,000 has been attained.

2. When the Commission, on the advice of the Finance Committee, decides that its financial position justifies its doing so, it will assume responsibility for meeting its expenditure out of the contributions of the member Governments and terminate the existing arrangements with H.M. Foreign Office.

Liquidation of Assets

Article 13

On the dissolution of the Commission its assets shall be divided among the Governments which are or have been members of the Commission, as nearly as possible in the proportion in which they have contributed to create them.

Amendment of the Regulations

Article 14

These Regulations may be amended by the Commission; provided always that the proposal to amend any provision, and the text of the amendment proposed, shall be communicated to the Secretary General.

in time to enable him to give at least one clear week's notice to the representative of each member Government, or, if the amendment is proposed at a meeting of the Commission, that the decision shall be taken at the next meeting after notice given by the Secretary General to all representatives of member Governments not present when the amendment was proposed.

Provisional application and final entry
into force of the Regulations

Article 15

Pending entry into force of the Resolution, these Regulations shall be applied provisionally, so far as is appropriate. They shall enter finally into force at the same time as the Resolution.

SECRET

M.29.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Twenty-ninth Meeting
held on
29 August 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL - United States of America
accompanied by Lt. Col. HODGSON and Major COWLES
Lord WRIGHT - Australia
accompanied by Mr. OLDHAM
M. de BAER - Belgium
Mr. WUNSZ KING - China
accompanied by Mr. DAO
Dr. ECER - Czechoslovakia
M. GROS - France
M. BODSON - Luxembourg
Dr. de MOOR - Netherlands
Mr. COLBAN - Norway
Dr. GLASER - Poland
M. MILANOVITCH - Yugoslavia

MINUTES OF LAST MEETING

The Minutes were adopted and signed with the following
corrections:

Page 4, last line: The words "Ambassador to Belgium" should
be "Ambassador to the Netherlands".

Page 6, last line: The words "(Doc. G.41(1))" should be
"(Doc. G.45)".

PREPARATION OF EVIDENCE AGAINST NAZI "ARCH-CRIMINALS"

Dr. de MOOR raised this subject. It was agreed that under
the supervision of Committee I evidence should be collected for
the framing of well-considered statements of the charges which can
be made against Hitler and other arch-criminals. These statements,
after being submitted to the Commission, would be kept available
for use at the proper moment.

Mr. COLBAN said he recognised no distinction between arch-
criminals and the others, but, as the National Offices failed to
prepare charges against Hitler and other chief Nazi leaders, the
Commission should collect information which the Governments would
be able to utilise.

COMMITTEE CHAIRMEN'S REPORTS

The Chairmen of Committees I and II reported progress.

STATEMENTS BY THE CHAIRMAN

The CHAIRMAN brought the following matters before the Commission:-

Interview with Mr. Lambert of the United Kingdom War Office

A number of difficulties had been cleared up in an interview between Committee I and Mr. Lambert, one of the high officials of the War Office who dealt with prisoners-of-war. The prisoners-of-war organisation of that Department was anxious to co-operate in every possible way.

Absence of the Secretary-General

The Chairman had asked the Foreign Office to supply an official to take the Secretary-General's place during the period of about two months for which the latter would be incapacitated by an operation.

Weekly meetings of the Commission

The Chairman proposed, and it was agreed, that for the present the Commission should meet weekly irrespective of the state of its agenda.

Proposal regarding Committee III

The need to make the most of the time which members of the Commission could devote to its work made it desirable, in the Chairman's opinion, to alter the method of dealing with legal questions. At present they were dealt with by Committee III which appointed sub-committees whose reports it had to approve before passing them on to the Commission. Would it not be preferable for the Commission itself to appoint the sub-committees and receive their reports? The Chairman regretted having been unable to consult the Chairman of Committee III and did not ask for a decision at the present meeting.

Interview with Mr. Harvey, Secretary of the "Vaucher" Commission
(Commission for Protection and Restitution of Cultural Material)

The Chairman had had a second interview with Mr. Harvey who was anxious to co-operate.

Proposal for United Nations Military Tribunals (Doc. II/26(1))

The Chairman promised to bring this subject before the Commission as soon as he thought it could usefully be discussed.

Progress Report

The Chairman announced that a draft was in preparation. No time would be lost in getting it ready for the Commission.

Enlargement of the staff

The Chairman announced that the Finance Committee had approved in principle the incurring of expenditure on the reports contemplated by the Commission and agreed to the immediate appointment of a secretary to assist the Chairman and two typists, at the necessary salaries.

CONVENTION FOR THE SURRENDER OF WAR CRIMINALS AND OTHER WAR OFFENDERS (DOC C. 37) AND EXPLANATORY MEMORANDUM (DOC. C. 44)

The Explanatory Memorandum was adopted, subject to the substitution of "Poland" for "France", "some" for "five" and the addition of the word "notably" in the first paragraph.

The draft Convention was also adopted. The following members of the Commission made reservations regarding the attitude of their Governments:-

Colonel HODGSON said that the second sentence of Article IV was probably incompatible with the Constitution of the United States and might oblige the United States to reject the Convention or make a reservation when signing it.

M. de BAER repeated the statement which he had made at the Commission's meeting of 8th August, 1944, to the effect that the Belgian Government wished to see the provision I.A. of Article IV amended by introducing into it certain safeguards which appeared in

the original draft prepared by the Ministers of Justice (1)
It was decided that the members of the Commission should transmit
the Draft Convention and Explanatory Memorandum to their respective
Governments.

Mr. COLBAN expressed the hope that the Chairman would ask
Mr. Eden to convene the diplomatic meeting necessary for
negotiating and signing the Convention.

PARAGRAPH 1 (AMENDED TEXT) OF COMMITTEE III'S DRAFT RECOMMENDATION
REGARDING THE S.A., S.S. AND THE GESTAPO (Doc. C.35(1)).

Dr. ECER gave his reasons for urging the Commission to adopt
this recommendation, although he was not satisfied with the text as
it stood. After discussion paragraph 2 was struck out and paragraph
1 was referred back to Committee III.

*Encl J34 msc
Snp 6/44*

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- (1) These safeguards are contained in Article 2 of the Ministers' draft, paragraph I.A., and are as follows:
- 3 the indictment or warrant for the arrest of the alleged offender in respect of the alleged offence;
 - 4 summary evidence of the alleged offence and of the alleged offender's intent to further the cause of the enemy or of his having had recourse to the power, opportunity or means afforded by the state of war or the fact of the enemy occupation;
 - 5 the appropriate court before which the alleged offender will be tried.

SECRET

C.47
4 September, 1944.

UNITED NATIONS WAR CRIMES COMMISSION
CONVENTION FOR THE SURRENDER OF WAR CRIMINALS AND
OTHER WAR OFFENDERS

EXPLANATORY MEMORANDUM

The draft "Convention for the surrender of War Criminals and other War Offenders" which the United Nations War Crimes Commission presents to its member Governments is an adaptation of a draft made by the Ministers of Justice of some of those Governments, - notably those of Belgium, Luxembourg, the Netherlands, Norway and Poland. This original draft was brought before the competent committee of the Commission (Committee II) by Dr. de Moor (Netherlands) and was accepted by it as a basis of discussion. The present draft differs from the older draft in certain points, both as regards its purpose and as regards its details.

PURPOSE OF THE DRAFT

The Ministers of Justice draft was intended to operate both between the United Nations themselves and between them and neutral states. The present draft is only intended to provide for the surrender by one of the United Nations to another, of persons accused or convicted of war crimes or other war offences. It is not considered that it would be possible to obtain, or wise to attempt to obtain, adherence of neutrals to any formal general agreement regarding surrender of such persons.

A second difference is that the present draft provides for surrender as the result of an executive or administrative procedure, not a judicial procedure as was the case under the Ministers of Justice draft.

Like the Ministers of Justice draft, the present draft covers nationals of the United Nations who have aided the enemy against their own countries - the so-called Quislings. It distinguishes their case from that of war criminals and deals with it in Article II. The term "other war offenders" in the title and in the pre-amble of the Convention refers to them.

The purpose in view is to make it certain that the United Nations will reciprocally transfer to one another persons in their power who are wanted for trial as war criminals or Quislings, or have already been convicted on such charges, and to secure this result in the simplest possible way, avoiding the complications and delays of normal extradition procedure and, in particular, excluding the possibility of refusing surrender on the ground that the acts charged have the character of political offences. Several, if not all, of the United Nations will require to enact legislation in order to accept the Convention. It was urged by one member of Committee II that, for practical purposes, since the persons wanted would be prisoners of war in the hands of the armed forces of the requested state or refugees present in its territory without legal authorisation, all that was required could be done by executive action and there was no need for complicated treaty provisions. This view was not accepted by the

/ Committee

Committee. Moreover, even if not acceptable to, or not needed by some of the United Nations, the Convention can operate between the other United Nations, and, as stated above, it has been considered desirable by the Ministers of Justice of five of the Governments represented on the Commission.

PROVISIONS OF THE DRAFT

Articles I and II provide respectively for the surrender of war criminals and of Quislings.

The description of the offences referred to in Article I as "war crimes, including offences against the laws and customs of war" implies that there are offences which are war crimes without being violations of those laws and customs.

The definition of Quislings in Article II is based on the Ministers of Justice draft.

The expression "execution of sentence or judgment" is a recognition that the offenders in question may be tried by military commissions as well as by civil courts (Cf. Article IV. last paragraph).

Article III is intended to prevent surrender being denied on the ground that the offence was political.

Article IV specifies that surrender is to be effected by the executive or administrative authorities and prescribes how the request for surrender is to be made and the particulars to be given in the request.

Articles V and VI show the cases in which surrender may be refused or postponed; they also provide for the same offender being transferred successively to several states and punished successively by several states, and they regulate these processes.

Article VII regulates transit of surrendered persons through territories of third states which are parties to the Convention.

Article VIII requires production at the time of surrender of documents etc., needed for the trial.

Article IX places all the costs on the requesting state.

The purpose of Article X is to meet in advance possible objections to the Convention on the ground that it may prejudicially affect the operation of extradition treaties. To mark the difference between the Convention and an extradition treaty, it was also at one time proposed to use the word "transfer" instead of the word "surrender" in the title and throughout the text, but the latter word was ultimately preferred, on the ground that its implications were well known.

Article XI. It is proposed that a provision be inserted here under which the Convention will go out of force at a particular date.

Articles XII and XIII need no comment.

The draft is for the members of an ad hoc international co-operation (with the United Nations) through and be taken, the Commission can examine carefully.

It is for the present time to not yet conclude the Nations tribunal at the same meeting.

WHAT IS

It has been as between the United States. What parties to the Convention which opens it for a convention which tribunal to try recommendation.

Having resolved the surrender of war criminals, have appointed (list of persons) Who, having agreed on the terms of the Convention.

The High Commission according to the execution of sentence are charged with the laws and customs of war and requesting state the state.

The High Commission other according to the execution of sentence or of execution of sentence, of the nationals, of the charged with or of offence committed offence committed war or armed host state.

The surrender notwithstanding a character.

OPENING OF THE DRAFT FOR SIGNATURE

The draft is the work of the Government representatives sitting as members of an advisory body, and not of persons empowered to negotiate an international convention and open it for signature. To bring it into operation (with or without amendments) this further process must be gone through and be followed by the deposit of ratifications. Before these steps can be taken, the competent departments of the Governments may require time to examine carefully the somewhat novel provisions of the draft.

It is for this reason that the Commission is sending the draft at the present time to the Governments represented on it, notwithstanding that it has not yet concluded its examination of the question of setting up a joint United Nations tribunal for the trial of war criminals and that it may be desirable for the same meeting of plenipotentiaries to deal with both schemes.

WHAT STATES MAY BECOME PARTIES TO THE CONVENTION?

It has been said above that the Convention is intended to operate only as between the United Nations, and not as between those states and neutral states. What precisely are the states which should be admitted to become parties to the Convention can only be decided by the meeting of plenipotentiaries which opens it for signature. The same question will arise in regard to any convention which may be drafted to provide some form of joint United Nations tribunal to try war criminals. The Commission reserves the right to make a recommendation regarding this matter at a later date.

CONVENTION FOR THE SURRENDER OF WAR CRIMINALS
AND OTHER WAR OFFENDERS

(Enumeration of the Heads of States)

Having resolved to conclude a Convention with the object of achieving the surrender of war criminals and other war offenders,
have appointed as their Plenipotentiaries the following:
(list of Plenipotentiaries)

Who, having communicated their full powers, found in good and due form,
have agreed on the following provisions :

Article I

The High Contracting Parties mutually agree to surrender to each other according to the procedure hereinafter provided, for the purposes of trial or of execution of sentence or judgment, persons found within their jurisdiction who are charged with or convicted of war crimes, including offences against the laws and customs of war, which were committed either within the jurisdiction of the requesting state or against that state or its nationals or the armed forces of the state.

Article II

The High Contracting Parties further mutually agree to surrender to each other according to the procedure provided hereinafter, for the purposes of trial or of execution of sentence or judgment, all persons, nationals or former nationals, of the requesting state who are within their jurisdiction and are charged with or convicted of giving aid or comfort to the enemy or of an offence committed with the intent to further the cause of the enemy or of an offence committed by means of the power or opportunity afforded by a state of war or armed hostilities or by hostile occupation of territory of the requesting state.

Article III

The surrender provided for by Articles I and II shall be effected notwithstanding any contention that the offence was of a political character.

/ Article IV

Article IV

The request for surrender shall be transmitted through the diplomatic channel, and shall be executed by the appropriate executive or administrative authorities of the requested state. The person whose surrender is requested under the terms of this Convention shall in no case have recourse to any form of judicial procedure provided in the extradition treaties, laws or regulations of the requested state. The request shall contain in any event:

1. In the case of an alleged offender:
 - A. (1) the identity, nationality (if known) and description of the alleged offender;
 - (2) the description of the alleged offence and the maximum penalty which can be inflicted for that offence.
 - B. The Government requesting surrender shall in every case give written assurances to the Government from whom the surrender is requested to the effect:
 - (1) that the trial will be conducted in accordance with legal procedure;
 - (2) that judgment or findings and sentence will be pronounced in open court;
 - (3) that the alleged offender will be afforded the assistance of counsel both before and during the trial.
2. In the case of a convicted offender:
 - (1) the identity, nationality (if known), and description of the convicted offender;
 - (2) the description of the offence and the penalty imposed;
 - (3) the original or an authenticated copy of the judgment or findings and sentence given by the appropriate court in respect of the offence and in the presence of the offender.

The term "court" as used in this article shall include a military commission or other military tribunal.

Article V

The High Contracting Parties may decline to surrender to each other their own nationals and former nationals.

A High Contracting Party may refuse to surrender an alleged offender, if the offence for which his surrender is requested was committed within that Party's jurisdiction.

In all cases where two or more High Contracting Parties request the surrender of the same alleged offender, such person shall be surrendered first to the Government of the State whose national legislation contains the heaviest maximum penalty in respect of the alleged offence regarding which surrender is requested.

Where the maximum penalties in respect of the offences

for which surrender is first be effected to the surrender.

If at the time offender is undergoing courts of the request or not, which is pur than that for which may decline to surrender terminated.

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for which surrender is requested are the same, surrender shall first be effected to the Government which first requested the surrender.

Article VI

If at the time when the request is made the alleged offender is undergoing investigation or is on trial in the courts of the requested state for a crime, whether a war crime or not, which is punishable with a higher maximum penalty than that for which the surrender is requested, that state may decline to surrender him until the proceedings are terminated.

In the event of sentence of detention in a penal institution having been pronounced, the execution of the sentence shall be suspended, if the surrender of the convicted person is requested in accordance with Articles I or II.

A sentence of death shall however be executed notwithstanding that one or more of the High Contracting Parties have requested the surrender of the offender.

When an alleged offender whose surrender has been requested by two or more High Contracting Parties has been tried and sentenced by their courts, the sentences shall be executed in the states concerned in the order of their dates; provided that, if the offender has been sentenced to death in one of the requesting states, he shall be surrendered to that state for execution.

Article VII

The Governments of the High Contracting Parties agree to allow the transit through their territories of persons who are being surrendered by one of the Parties to the present Convention to another Party, on production of a certificate emanating from the Government of the State from whom the surrender is obtained. During the passage through such territories the person who is being surrendered and his escort may be accompanied by officials designated by the Governments concerned.

Article VIII

The High Contracting Parties agree to produce at the time of surrender all documents, exhibits, or any other thing which may serve as proof of the alleged offence.

Article IX

The requesting state shall bear all costs arising out of a surrender made at its request under the terms of this Convention.

Article X

Article X

The present Convention constitutes an exceptional measure and shall not affect the operation of any treaty of extradition between or among the High Contracting Parties except as may be expressly provided by the terms of this Convention.

Article XI

(Denunciation and termination: Text provisionally reserved).

Article XII

The present Convention shall be ratified and the ratifications shall be deposited as soon as possible with who will notify such deposit to all the signatories.

Article XIII

The present Convention shall come into force one month after the date on which it shall have been ratified on behalf of two of the High Contracting Parties. Thereafter it shall take effect in the case of each High Contracting Party one month after the date of the deposit of the ratification on its behalf with

In faith whereof etc.

UNITED NATIONS WAR CRIMINALS COMMISSION

Minutes of Thirtieth

held on

5th September

Chairman: Sir Cecil H.

There were also present

Mr. PELL
accompanied by Lt.
Lord WRIGHT
accompanied by Mr.
M. de BAER
Mr. WUNSZ KING
M. GROS
M. STAVROPOULOS
Sir David MEEK
accompanied by M.
Dr. de MOOR
Major SINCLAIR THOM
Mr. COLBAN
accompanied by
Dr. CLASER
M. MILANOVITCH
accompanied by

MINUTES OF LAST MEETING

Colonel HODGSON obtained substitution of the following paragraph on page 3.

"Colonel HODGSON stated of Article IV was possibly the United States, particularly effective after the conclusion of the United States in this regard."

It was then agreed to a

THE CHUNGKING SUB-COMMISSION

The CHAIRMAN said that its intention of being representative of the

PROGRESS OF THE COMMITTEE

Mr. PELL said that Commission was held by September 13th.

The CHAIRMAN said that

REVISED

M. 30

SECRET

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Thirtieth Meeting

held on

5th September 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL
accompanied by Lt. Col. HODGSON and Major COWLES
Lord WRIGHT
accompanied by Mr. OLDHAM
M. de BAER
- Belgium
Mr. WUNSZ KING
- China
M. GROS
- France
M. STAVROPOULOS
- Greece
Sir David MEEK
- India
accompanied by Mr. DUTT
Dr. de MOOR
- Netherlands
Major SINCLAIR THOMSON
- New Zealand
Mr. COLBAN
- Norway
accompanied by Mr. Edward HAMBRO
Dr. GLASER
- Poland
M. MILANOVITCH
- Yugoslavia
accompanied by M. ZIVKOVIC

MINUTES OF LAST MEETING

Colonel HODGSON obtained the assent of the meeting for the substitution of the following passage in place of the penultimate paragraph on page 3.

"Colonel HODGSON stated that in his opinion the second sentence of Article IV was possibly incompatible with the Constitution of the United States, particularly if the Convention was to be effective after the conclusion of peace. The attitude of the United States in this regard was not expressed."

It was then agreed to adopt the Minutes without their being read

THE CHUNGKING SUB-COMMISSION

The CHAIRMAN said that the United States Government had announced its intention of being represented on the Chungking Sub-Commission.

PROGRESS OF THE COMMITTEES

Mr. PELL said that Committee II hoped to have its draft ready by September 13th.

The CHAIRMAN said that Committee I was now examining the

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cases on List B.1, with a view to placing them on List A. He suggested that, in order that the Commission might take cognizance of, and assume responsibility for, the Committee's recommendations, M. de Baer should make an oral report on the A. List at the next meeting, but the names would not appear in the Minutes.

This was agreed to.

PROGRESS REPORT

The CHAIRMAN explained that the Progress Report, prepared by himself and the Chairmen of Committees, was in draft but was not yet ready. As a fact, it dealt not only with the past, but with the tasks which the Commission hoped to undertake later.

It was agreed that the report should be circulated as soon as possible, and discussed at the next meeting.

PROPOSAL FOR UNITED NATIONS MILITARY TRIBUNALS (Docs. II/26(1) and C.46).

The CHAIRMAN questioned the expediency of forwarding the project for a Military Court before the plans for the civil, or "Treaty" court were ready. He agreed that there was need of both courts, though not simultaneously. True, the cases so far submitted could all be tried by national courts, under the "Moscow" system; but there was a class of persons who had directed criminal policies on the high level, or who could not be adequately punished by some national courts, and for them an inter-allied court was needed. These cases would probably not exceed 30 - 50. But a civil court could only be set up by a convention, with consequent delay. This gap could be filled by the Military Court, which could be promptly set up by the Commander-in-Chief. The two courts should be on the same lines, so that cases could be transferred.

Mr. PELL said the idea of a Military Court commended itself to certain states because of their judicial habits. He emphasised that it would not be permanent, and that it could only try cases that were freely submitted to it by an applicant state. It could not oust the jurisdiction of a national court. He

believed a Military Court could start work within two months of the approval of the Governments, whereas the delay inseparable from a civil court, requiring a treaty and ratification, might impose an intolerable strain on the patience of aggrieved peoples. Speed was essential. He maintained that both in Anglo-American and "continental" jurisprudence there were precedents favouring the right of a Commander-in-Chief to set up such a Court. Moreover, in other theatres of war - e.g. the Pacific - the countries most concerned definitely desired to have such a court.

Lord WRIGHT said that at this stage only military courts can do the job effectively and speedily. He could see no practical alternative at this stage. The Supreme Commander should investigate and try cases. The Governments should press this upon the military authorities. The military commander had jurisdiction to punish any war criminals who were in his custody, quite apart from when or where their war crimes were committed. Therefore no treaty was needed.

Mr. COLBAN made a reservation against the views expressed by Lord Wright. He thought that the Governments would need to know more of the nature and conditions of the Military Court and its work; he would prefer that both the projects should be on the same lines and be forwarded together.

M. de BAER and Dr. de MOOR concurred in Mr. Colban's view.

M. MILANOVITCH associated himself with the Chairman's view, and thought there was no need to discuss the theoretical question of the Commander-in-Chief's powers.

M. GROS questioned the value of arguments about "speed": for both courts the agreement of the Governments must be obtained, whether by a treaty or otherwise, because some states on the Continent were not prepared to admit the power of a Commander-in-Chief to set up a military court in their territories, except to try offences against his armies. In any case, there was little possibility of speed, since there would be large numbers of cases

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for trial, and the offenders prepared.

Colonel HODGSON agreed showed that a Commander-in-Chief could set up such a Military Court.

Mr. WUNSZ KING said Military Court unless a person was appointed to fill the gap in functioning.

Sir David MEEK, who thought there was no difference between the two proposals. That was a matter of opinion as to the propriety of the proposal. That the Chairman would meet with approval of the Continental countries. The Chairman would meet with approval of the Continental countries. The Chairman would meet with approval of the Continental countries. The Chairman would meet with approval of the Continental countries.

The CHAIRMAN drew a distinction between the Anglo-American points on this matter and that of the mechanical effect to their views.

The discussion meanwhile he would give his views.

Mr. PELL said

DELEGATES LEAVING

The CHAIRMAN said that each country would confer with its own people of their states or

for trial, and the offenders must first be arrested and the cases prepared.

Colonel HODGSON agreed with Mr. Pell that the precedents showed that a Commander-in-Chief possessed the power enabling him to set up such a Military Court.

Mr. WUNSZ KING said he would support the project for a Military Court unless a better plan were proposed, as it was essential to fill the gap before a "Treaty" court could begin functioning.

Sir David MEEK, who supported the proposal, pointed out that there was no difference of opinion regarding the substance of the proposal. That was accepted unanimously, but there was a divergence of opinion as to the procedure which should be adopted. He thought that the Chairman would be able, in consultation with the representatives of the Continental countries, to evolve a procedure which would meet with approval by all. It had been mentioned that the Continental countries had delegated certain powers to the Commander-in-Chief and he thought that, by an exchange of letters, the power to set up military courts in the countries of Europe ^{could} also be delegated to the Commander-in-Chief if it was held that he did not already possess such powers.

The CHAIRMAN deprecated the view that there was a divergence between the Anglo-American and the continental juridical standpoints on this matter. The issue was mainly one of expediency, that of the mechanism which could best assist the states to give effect to their wishes.

The discussion would be adjourned till September 12th, and meanwhile he would try to find common ground between the different views.

Mr. PELL said he would ask for a vote at the next meeting.

DELEGATES LEAVING FOR THE CONTINENT

The CHAIRMAN asked that delegates who were leaving the country would confer with him about the future representation of their states on the Commission.

Cecil M. H. Hunt
Sept 19/44

SECRET

M.31.

UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Thirty-first Meeting

held on

12th September 1944

Chairman: Sir Cecil HURST - United Kingdom

There were also present

Mr. PELL - United States of America
accompanied by Lt. Col. HODGSON and Major COWLES
Lord WRIGHT - Australia
accompanied by Mr. OLDHAM and Lt. Col. CRISP
M. de BAER - Belgium
Mr. WUNSZ KING - China
Dr. ECER - Czechoslovakia
M. GROS - France
Mr. DUTT - India
Dr. de MOOR - Netherlands
Mr. COLBAN - Norway
accompanied by Mr. Edward HAMBRO
M. CYPRIAN - Poland
M. MILANOVITCH - Yugoslavia

MINUTES OF LAST MEETING

Lord WRIGHT having asked that the text of his remarks should be inserted in the Minutes, and Mr. COLBAN, M. de BAER and Dr. de MOOR having asked, in that case, to append a reservation, it was agreed that the Minutes should be circulated afresh, and approved at the next meeting.

The CHAIRMAN said that M. Bodson had sent apologies for his absence, which was due to his approaching departure from England.

The CHAIRMAN then referred to Dr. Ecer's report on Russian penal law, which he said would assist members in gaining an understanding of the Russian system.

REPORT OF COMMITTEE I

M. de BAER said that the Committee had now reviewed the Dutch, Belgian and Luxembourg cases, but had still to review the French, Polish, Czech and Norwegian cases. He gave oral information concerning the details, types and number of cases accepted for List A.

/ In reply

In reply to questions, he explained that Governments would always be informed if a case were rejected; and would, of course, be free to prosecute a case before their national courts even if the Commission had not placed the war criminal upon the Commission's list.

PROPOSAL FOR UNITED NATIONS MILITARY TRIBUNALS (Docs. II/26(1) & C.46.)

The CHAIRMAN said he had not been able, as he had hoped, to find common ground between the members who had differed at the previous meeting; but he hoped that an agreement would now emerge from the debate.

Mr. PELL observed that the scheme was desired by certain Governments, especially those fighting Japan. He recapitulated the safeguards which the scheme provided for any Government not wishing to avail itself of the Military Court.

Dr. ECER supported the proposal, as - for one thing - it would enable criminals to be tried on the spot, instead of being transported long distances to a national court.

M. GROS submitted a written statement of his point of view.

Translation:

"At the last meeting of the Commission I explained in detail the technical reasons which made me doubt the practical value of the plan advocated by the delegates of the United States, Australia, India and New Zealand. However, as it appears from many of the speeches in the general discussions that some members believe that, if the Commission failed to adopt the scheme for a Military Court to be set up by the Commander-in-Chief, it would be rejecting the only plan by which swift and effective justice could be dispensed, I think it desirable to make the following observations:

- 1) Although the notion of swift justice is found in manuals of military law, "justice" is something that does not admit of qualifying adjectives. The peoples who have suffered by the war desire "justice"; and the crimes have been committed, over a period of six years, by hundreds of thousands of persons. The Commission can hardly believe that the Military Court is going to dispose of these cases in a few weeks, or months. Even if it is thought that the public believes in this notion of swift justice, it would still be the duty of the Commission to make it clear that the object in view is not just to get an awkward problem out of the way in the shortest possible time, but to establish it as a firm precedent in international law, that crimes committed during a war "do not pay".

2) I would next observe that this proposal for a Military Court, to be established by the Commander-in-Chief, has been laid before the Commission without, apparently, any previous consultation with the Commander-in-Chief or his organs. But a Military Court, sitting in Germany, raises problems of inter-Allied co-operation concerning which a little more information would be desirable: for otherwise, the proposal for a Military Court would be a mere gesture, without any practical significance. If Germany is going to be occupied by British, American and Soviet forces, such a tribunal could hardly function unless it included representatives of those three forces. The Commission will not be in a position to make really practical proposals for setting up a Military Court so long as it is without information on these essential points.

3) The numerous discussions on the proposal for a Military Court have shown that some delegates feel an objection, in principle, to the creation of an inter-Allied court of a civil character. In fact, it is clear that the creation of an inter-Allied Military Court would render the subsequent setting up of an international court superfluous, whether one wants it or not. But this problem of the creation of an international court is too important to be settled by an indirect approach. The Commission must give a direct decision on it.

4) In fact, the Commission has reached a point where it has to choose between the methods of awarding punishment for war crimes. There is unanimous agreement as to the competence of the national courts; indeed that view is imposed on us by the Moscow Declaration. But there remain to be considered:

(a) The arch-criminals: for whom the method of punishment will be laid down by the Governments.

(b) The criminals whom the Governments are unable to punish (owing to the lack of national laws), or whom they do not wish to try in their own courts - preferring to send them before an international court.

The Commission is hampered in its investigations by the absence of any indication as to the treatment reserved for the arch-criminals - for the arguments in favour of an international court are strengthened or weakened according as it is decided, or not, to punish these men by an administrative decision of the Governments.

It appears, therefore, that the Commission might submit these parallel schemes:

(a) A scheme for an International Civil Court, which is now ready.

(b) A scheme for an inter-Allied Military Court.

In regard to the latter point, it is desirable that the Governments should be informed as to what is intended with more details than have been given in the purely theoretical statements hitherto submitted to the Commission. The Governments need to know - just as in the case of the civil court - the rules that are to govern the appointment of judges, the law that is to be applied, the penalties that can be awarded, etc.

It seems to me that a great advance in the clarification of these questions would be made if a Memorandum were drawn up to which the Governments could then be invited to assent.

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provide for the multiplicity of courts that would be wanted. This need could be met by the Military Courts. For these reasons, both of principle and of practice, he supported the scheme for Military Courts. The draft had gone far in safeguarding the susceptibilities of different nations. The immediate practical problem was to secure the punishment of as many criminals as possible.

Dr. de MOOR said that unfortunately at the last meeting he could not say much about the question of Military Tribunals, as he knew nothing about the opinion of his Government on this subject. Since then he had had the opportunity of seeing one of his Ministers, and could say that his Government's point of view was as follows:

1) In view of the progress of the war, several Allied Nations were convinced that it would be of the greatest importance to set up these tribunals.

2) In these circumstances ^{his Government} they would certainly not object to the setting up of these tribunals jointly. ^{his Government} They recognized that there were certain advantages attached to them, although the Netherlands legal system made it difficult, and perhaps even impossible to use them.

3) However, he had to make some reservations:

- (a) as already mentioned the Allied National Tribunals must have the preference, and there should be no interference with their rights;
- (b) it would be necessary to agree about some further details on the constitution and the machinery of the Military Tribunals. For instance, how would they be composed? Would there be a civil President? And more civil judges? And what about the rules of evidence? This was very important, because after all they had to do justice;
- (c) in the third place he must make the reservation that acceptance of the setting up of these inter-Allied Military Tribunals did not mean acceptance of the Anglo-Saxon or American view on International Law on this point;
- (d) the Military inter-Allied Courts must not interfere with the setting up of an International Civil Penal Court.

To sum up: he could vote for the proposal (Dec. II. 26(1)) subject to the above-mentioned reservations

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Mr. COLBAN said it was superfluous to go on discussing whether a Commander-in-Chief had power to try these cases, since it was agreed that he would not do so without being asked to. He had, as yet, no instructions from his Government; but, in his view, if some indications of the organisation and procedure of the Court were added, the scheme would be practical. But, he thought, they should work out plans for both kinds of Court, and offer the Governments the choice.

M. de BAER said he was not opposed to Military Courts, and he agreed with the United States Memorandum that war criminals were the concern of the United Nations as a whole; therefore, the more courts they had, the better. The scheme should, however, provide guarantees regarding the composition of the Courts and the independence of the judges. The latter should include representatives of those countries which had suffered most. They could not simply declare their blind confidence in a Commander-in-Chief, since individuals might be replaced and policies might change. Therefore, on behalf of his Government, he would support the scheme provided that it were amplified in the way he had indicated.

Mr. PELL assured the speakers that he was not seeking to 'sabotage' the 'Treaty' Court, of which he was a convinced advocate. The intelligence of a Commander-in-Chief could surely be relied on to appoint judges belonging to the country concerned, and acquainted with the languages of witnesses. The Committee had not specified the law to be applied by the Military Courts, because the military law already existed, whereas for the 'Treaty' Court no such precedent existed. He did not agree with M. Gros that they ought to consult the Commanders-in-Chief; the Commission was recommending the Governments to give certain instructions to the Commanders-in-Chief.

Mr. DUTT said the suggestion for a Military Court was not revolutionary, and it was not put forward as the only plan. Countries in the East were faced with certain difficulties, and he could not see why they should be denied the means of overcoming them.

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He did not agree that the Military Court was an Anglo-American conception. In his own country there were precedents for it, anterior even to the British connection with India. In regard to the composition of the Courts, and similar points, he felt sure they could trust the intelligence of the Commanders-in-Chief, who would not endanger their reputations by appointing unsuitable judges. He therefore hoped the scheme, which was simply a recommendation to the Governments, would be adopted without a vote.

Mr. WUNSZ KING said he believed the Commission, as a whole, favoured the scheme, though some members had made reservations. He felt that, in the draft, the national courts were sufficiently safeguarded. In China, if they did not wish to employ the Military Court, they would simply refrain from doing so. Certain misgivings might perhaps be allayed by saying specifically in the text that the Military Court was meant to supplement, not to replace, the 'Treaty' Court. In regard to the composition of the Courts, the Chairman had made it clear that both Courts would be on the same lines; this should aid the acceptance of the Military Court, since the principle of the 'Treaty' Court was already accepted. He would support the recommendation.

The CHAIRMAN asked if those members who accepted the principle of the Military Court, but who wished for more details and guarantees, could not agree to regard their votes as an acceptance in principle, it being understood that in a covering letter, which might accompany the recommendation, there would be an explanation that if the idea were acceptable to the Governments, the Commission would be prepared to make recommendations on points of detail. He could indicate, in the covering letter, the reservations made in that day's discussions.

Mr. COLBAN said that he could agree if the conclusions: (a), (b), (c), (d) and (e), alone were to be forwarded together with the "rider" suggested by the Chairman. But he could not accept the "whereas" clauses in the draft.

/ H. de BAER

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M. de BAER said he could accept the Chairman's proposal only if the first paragraph on page 2 of Doc. II.26(1) were omitted.

The CHAIRMAN said that some members accepted the principle but desired guarantees on certain points. Would the authors of the draft (Col. Hodgson and Mr. Dutt) allow him to introduce certain simplifications in the text, or would they prefer that the text should stand, but be accompanied by some explanations in a covering letter?

Mr. PELL said that no members had moved any amendments. They had only made general suggestions. He therefore moved that a vote should be taken, not later than 4.30 p.m. on Tuesday, September 19th.

Mr. OLDHAM said he had asked, at the last meeting, that the discussion of this question should come first on the Agenda. Unfortunately, it had been preceded by M. de Baer's report, which had taken till 3.40 p.m. He now moved that the Commission should meet at 2.30 p.m. on September 19th, and the discussion of this question should begin at 3 p.m. at latest.

M. MILANOVITCH thought it was unnecessary to issue such an "ultimatum"; the arrangements could well be left in the hands of the Chairman.

The CHAIRMAN said he would withdraw his proposal, as it had not been accepted. The Commission would meet at 2.30 p.m. on September 19th, the discussion of this question would begin at 3 p.m. and a vote would be taken not later than 4.30 p.m.

STATEMENTS BY THE CHAIRMAN

The CHAIRMAN informed the Commission that he hoped his Government would give him the assistance of a colleague.

The CHAIRMAN also referred to the reports to be prepared by the Commission. The principle of publishing such reports had been accepted by the Commission at the time of the discussion of Dr. de Moor's report. He now explained the scheme in greater

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detail. He had provisionally arranged for three reports, viz:

- (a) Concentration Camps,
- (b) The destruction of villages (e.g. Lidice);
- (c) Executions of hostages.

He had also the following subjects in view, on which no action had yet been taken:

Atrocities against the Jews;
Deportation of workers;
Starvation of countries, for the benefit of Germany;
Prisoner-of-war Camps;
Methods of the Gestapo and S.S.

He would welcome suggestions for other topics.

The Chairman's proposals met with no objections.

PROGRESS REPORT

The CHAIRMAN said that the text had not been submitted for approval because the question of the inter-Allied Tribunals was still unsettled. But he would now circulate the text. It had not been easy to draft, as it was not an expression simply of his own views, but had to take account of different points of view.

Cecil B. Hurst
Sept 19th 1944

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UNITED NATIONS WAR CRIMES COMMISSION

Minutes of Thirty-second Meeting

held on

19th September 1944

Chairman: Sir Cecil HURST - United Kingdom
accompanied by Lord SCHUSTER -

There were also present

Mr PELL - United States of America
accompanied by Lt. Col. HODGSON

Lord WRIGHT - Australia
accompanied by Mr. OLDHAM

Mr. WUNSZ KING - China

Dr. ECER - Czechoslovakia

M. GROS - France

M. STAVROPOULOS - Greece

Sir David MEEK - India
accompanied by Mr. DUTT

Dr. de MOOR - Netherlands

Sir Cecil DAY - New Zealand

Mr. COLBAN - Norway
accompanied by Mr. Edward HANBRO

Dr. GLASER - Poland

M. MILANOVITCH - Yugoslavia

The MINUTES of the 30th and 31st meetings were adopted subject to the following alterations:

30th meeting: Sir David MEEK's statement on page 4 line 19 -
for "would" read "could"

31st meeting: M. Gros' statement on page 3, 6th para., second-last line - before the words "to punish" add the words "to try or"; and in the penultimate paragraph, second-last line after the word "judges" add "and their competence". Dr. de Moor's statement, page 5, para. numbered 2), first and second lines, for "they" read "his Government"

The CHAIRMAN informed the Commission that he had obtained the services of Miss Fisher, formerly of the Greffe of the Hague Court, as his Secretary, on terms agreed on by the Finance Committee.

Professor GLASER asked to make the following declaration:

"May I make the following statement, or rather announcement, on behalf of my Government.

"The members of this Commission are aware of the unbelievable cruelties which the Germans have committed in Poland, atrocities without any precedent in the history of mankind. The extermination

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of about 3 million Jews in Poland and of hundreds of thousands of Poles, including, in particular, our intellectuals, is a fact known to all of you today. In the last few days it has been disclosed what has happened in only one of the concentration camps in Poland - at Majdanek, near Lublin - where about one million and a half Poles and Jews were most barbarously tortured to death. On September 15th of this year - that is, a few days ago - our Government received a telegram from Poland informing it about the present state of affairs in the concentration camp in Oswiecim. There are in that camp now 40,000 people of all nationalities, Poles, Belgians, Dutch, Czechs, etc., etc., of whom about 95% are accused of political offences, and only 5% are ordinary criminals. They all have been tortured in a most incredible manner. The Germans have now made it clear that all these victims will be killed before they leave Poland. Our Government is now informing the Governments of the United Nations about this matter in order to consider with them what steps can be taken to prevent the execution of this monstrous plan.

"Bearing in mind this state of affairs our Government will submit to the Commission, in the very near future, information, as detailed as possible, about these acts of mass criminality, and will at the same time ask the Commission in writing to appoint a delegation, composed of competent members of the Commission, to go to Poland and examine the true situation on the spot, to collect trustworthy information, and to secure evidence at the places where these abominable crimes were perpetrated. This information will be of immense value, not only for the trials before the competent courts in the future, but also that public opinion may be aware of the facts before the armistice terms for Germany have been established.

"We understand that such an examination of the different places in Poland where these crimes have been committed could start at once, for instance in the district of Lublin, and could continue elsewhere as soon as those places are liberated."

The CHAIRMAN introduced to the Commission Lord Schuster who had come to assist him as a colleague.

UNITED NATIONS MILITARY TRIBUNALS (Doc II/26(1))

The CHAIRMAN reminded the Commission that, as agreed at the previous meeting, the draft had to be voted upon before 4.30 p.m. He now offered the following observations (which lack of time had prevented him from giving at the last meeting). He did so in his capacity as British representative - not as Chairman. The majority of the members were, he believed, in favour of a Military Court and recognised that it was necessary to fill the inevitable gap before any Treaty Court could be agreed upon and set up. His own view was in favour of the creation of a Military Court on the same lines as the Treaty Court. It had, however, been justly pointed out that a Military Court would also require an agreement;

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for the Commander-in-Chief would not be disposed to move without instructions from the Combined Chiefs of Staff, who would, no doubt, await directions from the Governments. The latter when apprised of the proposal for a Military Court, would require details, and unless these were given, no time would have been saved. The Commission must, therefore, be clear what kind of court they wanted. For instance, the sentences of a Military Court normally required confirmation; but for trials of war criminals, sentences should be final and unappealable. That point needed consideration.

Again, it was unlikely that a Commander-in-Chief could set up a Court which could survive when the system under which he held command had been replaced by some other system, such as Military Government under a Control Commission, for the control of Germany. To enable the Military Court to continue under the new system would require a decision by the Governments. There would in fact be three jurisdictional periods: A "SHARF" period, a Military Government period, and a Treaty Court period.

The present document would not give the Governments the information they needed. For that reason he would prefer that both projects should be sent together to the Governments, who could then, if they accepted the idea of an Inter-Allied Court, authorize the Commander-in-Chief to create a Military Court on the same general lines as the Treaty Court. In regard to an explanatory note, to be sent with the project, they must remember that Committee II had cut out the provision as to "Superior Orders" and had decided that if that matter were dealt with it should be the subject of a separate recommendation.

Lord WRIGHT considered that point was a question of law and of fact, which a court would naturally decide on its own responsibility.

M. GROS said that, after consulting the French Government, he could state that his remarks at the last meeting represented the French standpoint. Accordingly his Government would support

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a scheme for a Military Court, provided that it showed what was intended regarding the appointments of judges, competence and rules. He moved that a small drafting-committee be formed, with - say - Mr. Pell as Chairman, and two members, to extract from the project for a Treaty Court such clauses as would be applicable to a Military Court. The result would be more authoritative than the present document (II/26(1)) as it now stood.

Mr. PELL thought they could not very well advise the Commander-in-Chief as to Military Law, which, unlike the law to be applied by a Treaty Court, already existed and was recognised. They should now vote on this draft; after that he would gladly participate in the drafting-committee proposed by M. Gros.

Mr. COLBAN observed that there was a difference between a United Nations and a national Military Court. They might well recommend, for instance, that the judges should be of three nationalities, and that at least three of them should have legal training. To offer such suggestions was no reflection on the intelligence of the Commander-in-Chief.

M. MILANOVITCH said that Military Courts were already in being; the only need was to adapt them, so that the States might use them. That involved providing for three points: (1) the judges, (2) the prosecutors, and (3) legislation and penalties.

Mr. COLBAN having explained that he, like Dr. de Moor, could vote for the draft if the first paragraph on page 2 were omitted, the CHAIRMAN said the draft would be voted on by paragraphs.

Page 1. The first, second, third and fourth paragraphs were unanimously adopted. In regard to the fifth paragraph M. COLBAN and M. GROS desired to omit the words "prescribe their composition, power and procedure", for the Commander-in-Chief's powers were in fact limited by what was said later in the draft.

Col. HODGSON and Lord WRIGHT held, on the contrary, that the Commander-in-Chief had discretion to act as stated in the clause, so long as he retained his office

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On a vote being taken, ~~8~~ members voted to maintain the words and 5 for the omission. The words were, therefore, maintained.

Page 2. Mr. COLBAN, supported by M. GROS, moved to omit the first paragraph on page 2, which appeared superfluous, as it was already provided that the Military Court could not try a case except on application by the injured state.

Professor GLASER thought the paragraph was inconsistent with the Moscow Declaration.

Lord WRIGHT and Col. HODGSON considered that there was no inconsistency as the proviso, "upon the following conditions" prevented any uncertainty.

Mr. WUNSZ KING suggested, as a compromise, to insert "without prejudice to the Moscow Declaration". This suggestion, not being accepted, was withdrawn.

On a vote being taken it was decided to omit the paragraph by 7 votes (United Kingdom, France, Netherlands, Poland, Yugoslavia, Norway, Greece) against ~~2~~ ^{6 Australia} (China, India, New Zealand, Czechoslovakia, United States).

In the second paragraph of page 2 M. GROS moved to omit the last line - "and thereafter in addition to such court or tribunal" - so as to leave open the question of the continuation of the military court after the Treaty Court was set up. He feared that Governments might regard the creation of the Treaty Court as superfluous if the Military Court was to continue in being.

Sir David MEEK and Mr. DUTT pointed out that if the Military Court were not continued, India would have to transfer her cases to the far distant Treaty Court.

Col. HODGSON pointed out that some states which had not ratified the Treaty Court might be glad to go on employing the Military Court.

Mr. COLBAN realised the difficulty of having Treaty Courts available everywhere, and moved as a compromise to insert "if circumstances so require".

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Mr. OLDHAM feared that some Governments, far off in the Pacific, might be perplexed as to the intention of those words.

M. GROS having withdrawn his proposal in favour of Mr. Colban's, a vote was taken; 6 members voted for and 6 against the insertion. The Chairman then gave his casting vote for the retention of the original text, which was, therefore, maintained.

The sub-paragraphs (a), (b), (c), and (d) were then adopted unanimously.

Lord SCHUSTER proposed that sub-paragraph (e) should be omitted as he did not see how a Commander-in-Chief could, in practice, decide how a sentence of imprisonment should be executed. Lord WRIGHT concurred.

On a vote being taken, 8 members voted to suppress the clause, which was, therefore, omitted.

Before a vote was taken on the draft as a whole, Mr. COLBAN said he could only support it subject to it being made clear in the covering note that the Governments would give the Commander-in-Chief directions regarding the competence, composition and procedure of the Military Courts.

The CHAIRMAN preferred that the Commission should vote, first, on the adoption of the amended draft, and, secondly, as to whether the text, when communicated to the Governments, should be accompanied by a Memorandum giving general indications regarding the composition and procedure of Military Courts. If the text were forwarded with a number of individual reservations the Governments would feel that the Commission spoke with an uncertain voice.

Dr. ECER said that only two important reservations concerned the composition of the Courts, and the requirement of national prosecutors. His Government could not accept the Military Courts unless it was clear that they would be mixed courts.

The CHAIRMAN suggested that in order to meet Mr. Colban's difficulty the text should first be voted, and that then M. Gros should move the appointment of a small drafting-committee to select the points on which assurances were needed.

Mr. COLEMAN having agreed, the Commission adopted the amended draft by a unanimous vote.

M. GROS moved the appointment of a small drafting-committee to consider what points in the draft for a Treaty Court should be mentioned in the covering letter to be sent to the Governments with the draft for Military Courts, taking account also of M. Milanovitch's suggestions, and others, concerning composition, competence, law, prosecution and execution.

Mr. PELL feared that procedure would be too difficult without military advisers. The Courts would naturally apply military law, which already existed; it should suffice to report in quite general terms that most of the Committee desired the Military Courts to be mixed courts; and that there was some opposition to these courts being permanent.

M. GROS did not agree that the military Courts would apply military law, as it did not cover a number of cases. They would use international law.

The CHAIRMAN said M. Gros had moved to set up a small committee to consider what points in the draft for a Treaty Court should be mentioned in the covering letter sent to the Governments with the scheme for Military Courts.

That being agreed to, he expressed the hope that the drafting-committee, of which it was agreed that the nomination should be left to him, should begin work at once.

After discussion, it was agreed that the Commission should meet on September 26th to receive the drafting-committee's report on the draft text of the Convention for establishing the Treaty Court.

PROGRESS REPORT

Subject to the introduction of some verbal changes in the concluding paragraphs, the draft of the Progress Report was unanimously adopted.

The Commission then adjourned.

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Consent with the principle is that, with the exception of no particular geographical apprehension, will crimes were committed of such countries right to such crimes. The recommendation of these principles

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The United Nations Crimes Court or it recognizes the proposed convention affecting the order deemed necessary interim to try

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It appears that the United Nations military tribunals and is entitled to composition, position

It is believed that an expeditious establishment of the tribunals thereafter in

Carol M. Hurst
Sept. 26/44