

FORTHCOMING TRIALS IN THE UNITED STATES ZONE.

The United States Commissioner has informed the Chairman as follows:

"Notice has been received by this office; from the American Deputy Theater Judge Advocate, American Zone in Germany, that the Buchenwald and Nardhausen Concentration Camp cases are presently being prepared for trial.

If the Commission or any of the Commissioners have information or material which may be of possible value in these trials, it will be appreciated if the same is transmitted either to my office or direct to:

The Deputy Theater Judge Advocate,
7708 War Crimes Group, USFET,
APO 178, U.S. Army,
Attention: Prosecution Section.

Information relative to names, places of detention and addresses of suspects and witnesses is particularly desired".

A. 35
25th February 1947.

UNITED NATIONS WAR CRIMES COMMISSION

Extradition of a War Criminal from a neutral country

At the request of the acting Czechoslovak representative, the following letter addressed by him to the Secretary General is circulated to members for their information.

Czechoslovak War Crimes Office,
Czechoslovak Embassy,
8 Grosvenor Place. S.W. 1.

42, Wilton Crescent. S.W. 1.

February 24th, 1947.

Ref.No: 65/47

To the Secretary General of the U.N.W.C.C.
Lansdowne House,
Berkeley Square,
London. W.1.

Dear Colonel Ledingham:

I should like to ask you to draw the attention of the Commission to the case described below because it concerns not only the Czechoslovak interest, but it is a pattern-case how some neutral countries deal with cases concerning war criminals.

The Czechoslovak Representative charged Wilhelm BRUENING who has committed war crimes in Czechoslovakia. The charge No. 2981 was accepted by Committee I. in its meeting on the 2nd of May, 1946 and the accused has been placed on the list of UNWCC for illegal arrest.
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Because according to information received from the Czechoslovak Government the accused was believed to be in Switzerland, the Czechoslovak Representative on the UNWCC, by his letter of June 12th 1946 asked the Commission to issue a certificate that the accused Wilhelm Bruening has been found, prima facie, guilty of a war crime, that there was a prima facie case against him in respect of the charge for illegal arrest and that, accordingly, he has been placed on the List of the UNWCC.

The extradition certificate of the UNWCC was issued on the 26th June 1946 and sent to the Czechoslovak Foreign Office in Prague.

The Czechoslovak Foreign Office in Prague informs me now that they asked the Swiss Government through the Czechoslovak Legation in Berne for information about the whereabouts of Bruening and for his surrender.

The Czechoslovak Legation in Berne reports that having not received any written answer, they asked for more information about the whereabouts of the above-mentioned, but the Officer of the Czechoslovak Legation has been informed orally by the Department of the Swiss Government concerned that the Swiss Authorities do not feel authorised to give any information to foreign authorities on foreign nationals, who are not of the same nationality as the government who asks for the information.

When the Czechoslovak Officer mentioned the fact, that Bruening had been listed as a war criminal by the UNWCC and produced the certificate issued by the Secretariat of the UNWCC he was told it was necessary in this case that the Swiss Government passed a decision not only on the question of extradition, but also whether the Swiss Authorities are authorised to give any information about the whereabouts of the individual concerned. The Swiss Government are bound by the laws of the country and giving information about a person who has found refuge in the country would be an exceptional case to be decided by the Government.

Switzerland is not represented on the UNWCC but is a neutral country who always stands by in questions of international collaboration and mutual assistance.

The UNWCC has always been recognised as an independent and impartial body by both the governments represented on it as well as by those who are not, and the decisions of the UNWCC have always been considered as decisions of an important international authority.

By refusing the mere giving of information about an individual who has been listed as a war criminal by the UNWCC, the Swiss Government interferes with the whole policy of the United Nations to get hold of, and to punish, war criminals. By this procedure the authorities of the countries represented on the UNWCC lose any possibility of tracing a listed criminal and can never make sure about his whereabouts in case he is alleged to be on the territory of a neutral country. Because any information about the person is being refused, the neutral authorities protect not only persons who are on the territory of their country but also those whose whereabouts are unknown.

I should be very grateful to you if you could pass this letter to the meeting of the UNWCC and ask the representatives to draw the attention of their respective governments to this practice and procedure.

At the same time I should like to propose that the UNWCC pass a resolution concerning this problem so important to all the governments represented and take necessary steps to approach the Swiss Government in order to change this policy.

Yours sincerely,

Sgd. L. Neumann.

A.36.

1st March, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

Memorandum by the Chairman of Committee I on the case of
General MARINOV.

The charge (3669) brought by the Greek Government against General Ivan MARINOV, Commanding Officer of the 15th Bulgarian Division in Monastir, was received by the United Nations War Crimes Commission on 29th July 1946. It was examined by Committee I on 31st July 1946.

Three groups of charges were brought against the accused:

- 1) Attempts to denationalist the inhabitants of occupied territory and to transform the ethnological composition and character of the region.
- 2) Murder, massacres and systematic terrorism.
- 3) Pillage.

The first group of charges concerned General MARINOV's connection with the Bulgarian committees established in Western (Greek) Macedonia to bring about the denationalisation of the Greek population by means of various criminal methods, especially during the years 1942, 1943 and 1944.

The second and third groups of charges concerned a series of atrocities which had been committed by Bulgarian troops in Western Macedonia in 1944; these forces had allegedly acted on the orders and under the responsibility of the accused.

The case was supported by the testimonies of a dozen witnesses and also by a report of a special commission of enquiry, instituted by the University of Athens, drafted in 1945. After examining the case in the usual way, Committee I reached the unanimous conclusion that there was a good "prima facie" case against the accused and that he should be placed on the next UNWCC list of accused.

Some time after this the Committee was informed that General MARINOV, who was diplomatic representative of Bulgaria in Paris and representing his Government at the Peace Conference, had come to learn through the Press that he had been placed on the list of war criminals; he intended to lodge a protest with the UNWCC and a formal request for revision of the case had been forwarded through the channel of the Allied Control Commission in Sofia. Furthermore, General MARINOV had approached various ambassadors in Paris, asking them to convey his protest through the channels of their respective Governments, Bulgaria not being a member of the UNWCC. These circumstances were brought to the notice of Committee I on 16th October, 1946, and it was decided that consideration of the matter should be suspended until the official documents had been received by the Commission through the appropriate channels. The Greek representative was informed of these developments.

In the meantime, General MARINOV himself had forwarded to the Chairman of the UNWCC a letter dated 22nd September, 1946, and this letter, with two annexes, was circulated to the members of the Committee in Document I/70.

The matter was again discussed at the meeting of Committee I held on October 31st. At this meeting it was found that since the request for reconsideration of the case had been submitted in a form which was offensive to the Greek Government, it should not be considered until the obnoxious remarks had been removed. However, in view of General MARINOV's protests, supported by the Bulgarian Government, and especially in view of General MARINOV's affirmation that he had never, with the exception of one short visit, been present in the region where the denationalisation and atrocities had taken place, it seemed important that the Committee should have at hand the detailed evidence upon which the case was based, in order to substantiate more fully the responsibility of the accused in the crimes which had been perpetrated. At this meeting the Yugoslav representative was present and he was asked whether, during his stay in Yugoslavia, the accused had ever given cause for complaint. The reply was that the behaviour of General MARINOV had not always been correct, but that so far nothing had been established by the Yugoslav National Office against him for acts in Yugoslavia. The Committee's final decisions at this meeting were briefly:- to advise the Secretary General simply to acknowledge receipt of General MARINOV's letter and enclosures, saying that the matter would receive the Chairman's attention; to await the opinion of the United Kingdom and United States Governments and lastly to keep the Commission informed in a general way of any action taken. Furthermore, it was agreed that this matter should receive an even more detailed examination than is customary, since it presented some unusual features (X) and that the Committee should retain an open mind in considering further evidence, irrespective of the fact that General MARINOV had already been placed on the list of accused. (Minutes No. 79 and 79 annex). It should be mentioned here that, on a few occasions in the past, Committee I has reconsidered its decisions, either on account of mistaken identity or for other reasons and in some cases this has led to the removal from the lists of persons who had originally been accused.

In the beginning of December, 1946, a copy of the correspondence and memorandum of the Bulgarian Government, from which obnoxious accusations against the Greek Government contained in the first memorandum had been removed, was received by the Commission and it was circulated on December 11th as Document I/72. On 19th December, Committee I decided to adjourn consideration of the matter until the next meeting in order to examine Document I/72 in conjunction with further evidence to be submitted by the Greek National Office.

At the meeting of 23rd January, 1947 (Minutes No. 86) the case was again examined. It was felt that General MARINOV's arguments concerning the first group of charges (connections with the Comitadjis)

(X) It was stated that, from September, 1944, on, General MARINOV had participated in the war against Hitlerite Germany as Commander in Chief of the Bulgarian Forces and that he had in this capacity made a valuable contribution to the cause of the Allies.

were not sufficient to alter the original decision of Committee I. With regard to the second group, although this charge had been considerably strengthened, Committee I felt that in view of the fact that General MARINOV denied having had any connection with the unit which was operating in Western Macedonia, it was desirable to obtain more evidence as to the actual directions he had given in respect of its criminal activities. The Committee expressed some surprise that, whereas the atrocities had allegedly been committed by the Bulgarian unit under the immediate command of Colonel TCHANEFF (or TSANEV), neither this unit nor Colonel TCHANEFF himself had been charged with war crimes. The Greek delegate answered that the case against TCHANEFF had indeed been prepared, that it had arrived from Athens and would be submitted to the Commission in the near future. The Committee then adjourned further discussion of the case for three weeks.

In consequence of this, the case was brought up at the meeting on 12th February (No. 89) when the Greek representative requested a further postponement of two weeks, more substantial evidence having been received. However, as the evidence was at hand and the matter was urgent, the Committee asked the Greek representative to hasten the preparation of the documents for discussion not later than 26th February.

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Before summing up the evidence which has been produced, it should be pointed out that, after the enquiry instituted by the University of Athens, the greater part of the evidence was collected on the authority of the Judicial Committee of the Greek National War Crimes Commission, whose decision to charge General MARINOV, together with others, before the competent courts, has been circulated as Document I/74 on 14th January, 1947.

I. As to the Charge of Denationalisation in the regions of Florina and Kastoria from 1942 to 1944.

The evidence submitted leaves no doubt that denationalisation of the inhabitants of the Greek part of Western Macedonia was actually carried out in a way contrary to the laws of war, including systematic terrorism and murder. There is also strong "prima facie" evidence to show that this denationalisation was carried out by Bulgarian agents, whose names are known and who acted in close connection with local committees composed of Bulgarian elements (Comitadjis).

There is evidence that MARINOV, whose permanent headquarters were in Monastir (Yugoslavia), less than 10 miles from the Greek border, created there a Bulgarian centre of education, where 2000 youngsters from Greek Macedonia received a monthly sum of money; also that, at a banquet held at Kastoria (Greece), he spoke of "eternally Bulgarian Kastoria" and that after the meal, speaking in Bulgarian to Bulgarian Comitadjis at their headquarters in Kastoria, he recommended that they should help the Axis, promising to help them in his turn.

There is also some evidence that during that same visit to Kastoria, in May, 1943, MARINOV proposed to the Italian Military authorities that Bulgarian officers should be despatched to lead the Comitadjis in that district, and that this offer was rejected on account of the disturbances

which such action might create. There is also evidence that officers of the Bulgarian Army and important Bulgarian intellectuals actually served as liaison between the Comitadjis and some authority residing in Monastir, where they often went, and for which purpose they held free passes.

There is evidence that the said authority was General MARINOV, to whom they reported and from whom they received money, arms etc., but even if such evidence is disputed, it still remains that General MARINOV was, for more than two years, the Commander in charge of the district of Monastir; as such he could not have been ignorant of what appears to have been one of the most important activities of the Bulgarian officers and agents in the neighbouring districts of Western Macedonia, which were not under Bulgarian occupation.

There is no reliable evidence that MARINOV paid more than one visit to Western Macedonia, and it cannot be disputed that this one visit was a short one, which may have lasted only a few hours, but Monastir lies only a few miles from the Greek border and as he resided there, the possibility of his having directed the activities of the Comitadjis from that place is not excluded.

It is true that the chief of the Bulgarian Army Staff has affirmed, in a certificate dated 24th December, 1946, that General MARINOV's authority covered only Yugoslav territory, that it did not extend to Greek Macedonia, and that he was never charged with any tasks outside the limits of his divisional district, but even if the Army Staff never charged MARINOV with such tasks, this is not conclusive as MARINOV may have been commissioned by some other authority, or he may have acted on his own initiative, in what he may have believed to have been in the interest of his own country.

It is stated in another certificate, delivered by the same authority on 28th January, 1947, that Bulgarian interpreters in Greek Macedonia were subordinate solely to the Bulgarian Liaison Staff in Salonika; nevertheless, if there were no actual contacts with Monastir, which lies north of Greek Macedonia, whereas Salonika lies south-east, then one cannot see why the interpreters were provided with permanent passes to Monastir, which seems to indicate that some contacts existed possibly outside the knowledge of the Bulgarian Army Staff.

II. As to the responsibility of General MARINOV in the crimes committed in Western Macedonia in January and February, 1944, by Bulgarian troops which were or had been under his direct command.

It is fact that in January, 1944, after the Italian collapse and the subsequent stiffening of Greek resistance in Western Macedonia, Bulgarian units belonging to General MARINOV's 15th Division entered Western Macedonia, and there is evidence that they committed there a large number of crimes. Colonel TSANEV, who was in direct command of these units, has now been charged by the Greek Government with having taken part in - permitted - ordered - or failed to prevent and to punish the crimes in question, and Committee I has accepted the charges brought against him.

General MARINOV, however, denies that these troops were during the relevant period under his command; he contends that they were under the exclusive authority of Colonel TSANEV, who in his turn was temporarily under the command and at the disposal of the German Wehrmacht. In support

of this denial the Bulgarian Government has submitted copies of some army orders dated January 3rd and 11th, 1944, by which it is established that the German General FLUCHAT was in command of the operation. This obviously means that General FLUCHAT was solely responsible for the tactical and strategical plan of operations, that the orders for the execution of this plan were transmitted by him direct to Colonel TSANEV and that General MARINOV had no responsibility therein. However, in accordance with military practice, anything that was outside the plan of operations (such as for example, any contravention of the Bulgarian military law, or of the Laws of War) remained the concern of the Bulgarian military authorities, i.e. in the first place of General MARINOV. Such is, at least, the generally accepted military theory, and the consequence thereof is that a tactical command of General FLUCHAT does not necessarily exclude all responsibility of Bulgarian commanders in other respects.

Whereas there is no direct evidence that MARINOV actually gave orders to commit crimes or to behave ruthlessly, there are good reasons to presume that he had a precise and complete knowledge of all that happened in the Greek districts of Western Macedonia where Colonel TSANEV's troops were operating. These reasons are as follows:-

1. It is a priori impossible to accept the view that a general takes neither interest or concern in the action and behaviour of his own troops who are operating a few miles away, and have been for a short time placed under the command of another General.
2. From the last sentence of the Bulgarian Army order of January 11th, 1944, it appears that daily reports were to be submitted to the Bulgarian Army Staff during the operation. It may be assumed that this order was actually carried out, that daily reports were transmitted by Colonel TSANEV in the customary manner, i.e. through the usual hierarchical channels, being the Commander of the 15th Infantry Division (MARINOV) to the G.O.C. 5th Bulgarian Army, who in turn transmitted them to the Bulgarian Army Staff. The fact that daily reports were actually transmitted each afternoon by two despatch riders and that TSANEV himself motored daily to Monastir, is confirmed by the evidence submitted. These detailed daily reports obviously included some reference to the behaviour of the Bulgarian units, especially in view of the fact that this behaviour became notorious. MARINOV therefore must have had full information of the crimes committed and took no action to stop them.
3. Furthermore at the time when the Bulgarian units returned under his command, General MARINOV must have been once more informed of the reasons why the Germans had requested their withdrawal, these reasons being the allegedly abominable conduct of the Bulgarian units towards the population. There is no evidence to show that he took any action against TSANEV or against any other member of the Bulgarian units, nor is TSANEV's name mentioned

name mentioned among those who were punished by the Bulgarian Government, either for his own responsibility in the atrocities or for having failed to inform his commander that such atrocities had taken place.

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The UNWCC has neither the function nor the machinery to determine guilt, but merely to find whether the elements submitted suffice to make a prima facie case. Committee I had unanimously found that there is against General MARINOV a prima facie case for a trial.

It is therefore respectfully submitted that this Commission adopt the resolution contained in Doc. C. 246.

UNITED NATIONS WAR CRIMES COMMISSION.

A.37

4th March, 1947.

4th March, 1947.

The Secretary-General,
The United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square,
London, W.1.
ENGLAND

Dear Sir,

In confirmation of my conversation with you today, and acting on behalf of General Marinov, I respectfully request the Commission to postpone their final decision on the case of General Marinov for two or three months or until such time as the Bulgarian Government is diplomatically represented in London when discussions could be opened with the Greek Government and the Commission. Alternatively, I ask the Commission to consider the possibility of appointing a special body selected from members of the Commission for the purpose of hearing evidence from both sides before a final decision of the Commission is taken, and to whom oral and written explanation can be made by the accused himself or by his legal representative after all the evidence of the Greek Government has been transmitted to General Marinov or to the Bulgarian Government.

Yours truly

(A. SCHLISSELMAN)

March 11, 1947.

Polish Progress Report and Plans relating to War Criminals.

The following copy of a letter addressed to Lord Wright by the Polish Representative dated 6th March 1947 is circulated to members for their information.

Polish Representative on the U.N.W.C.C.
Room 401, 40, Queen Anne Street,
London. W. 1.

6th March 1947.

My dear Lord Wright:

Having just been appointed Polish representative on the United Nations War Crimes Commission, I have the honour to bring to your attention some points concerning the problem of the administration of justice in Poland with regard to war criminals.

Some people consider that the principle of meting out punishment to the Nazi war criminals proceeds only from the need to satisfy the human instinct for revenge, and to prevent criminals, who had undoubtedly committed crimes on a large scale, from escaping scot free.

Other people consider only the penal and pedagogic aspect of the problem. They are intent on the purpose embodied in the punishment, on re-education of humanity according to international law, on bringing by means of sanctions fear into the minds of those individuals who might be tempted to follow the path of crime.

Both are right. Nevertheless, this problem goes deeper and cannot be considered entirely from the psychological or education viewpoints.

The problem of meting out punishment to war criminals is considered in our country on the basis of war having been declared on every vestige of fascism, as a struggle against all the remaining elements which might constitute a source of new wars and new crimes, consequently, as a struggle for peace. We have lost about a quarter of our population and approximately half of our national economic and cultural possessions as a result of the crimes committed by the Hitlerites, and therefore it is easy to understand the feelings of our people towards war criminals and their desire to assume their punishment as a guarantee of our future security.

But although the number of war criminals in our country reached thousands and even hundreds of thousands of Hitlerites, it is clear that as a consequence of the conditions during the occupation it will be impossible to have a true picture of the crimes committed by the Nazis in Poland, or compile accurate statistical figures and evidence sufficient for prosecution. Immediately after the liberation of our country, the most important matter was to settle the problem of the traitors and only when a solution to this was reached could we take steps for the punishment of German war criminals.

The Main National Office for War Crimes in Warsaw is preparing some treatises concerning the activities of German war criminals in Poland but in most of the cases we are unable to build up judicial evidence because usually the victims did not know the names of their persecutors and most of them, having been tortured and murdered, cannot be resurrected and used as witnesses. Also, the removal to the West of the Polish population from the eastern territories, administered by Poland until 1939, and the slow process of repatriation of Poles deported to Germany, do not facilitate the establishment of evidence by witnesses.

These are the reasons why, up till now, we have submitted to the Commission only about thirteen hundred cases. Nevertheless, on the basis of the work of our main National Office and our investigation teams in Germany, which have been operating since April last year, we expect to be able to prepare several thousand judicial cases during 1947-48.

The first trials organised in Poland were those of the major war criminals, such as Greiser, Amon Goeth, Fischer, Daume, Meissinger, Loist and Hoess. The trial of Hoess is scheduled to begin on the 11th March, and those of Bühler, Burgsdorf, Feerster and some other major criminals will be held later.

In the early summer we plan to start mass trials of the personnel of several camps and Gestapo groups. Therefore, we intend to present several collective charges against such personnel for listing by the Commission, as soon as possible. We do not doubt that the Commission will accept these and list them promptly, thus helping us in obtaining the extradition of the wanted people, most of whom are in Germany, and it is necessary that we should bring charges against them so that they will not be released from the internment camps.

Up till now we have received from the different zones of Germany about 800 war criminals, but we are preparing cases in respect of several thousands and hope that some of them may be extradited for trial.

Concerning the Auschwitz camp personnel, we have received up to the present moment about 250 war criminals. We hope to find some others from this camp, and then those responsible for the camps in Treblinka, Plaszow, Majdanek, Sztutow and those who ordered the executions carried out by Gestapo men in Warsaw, Radom and other Polish cities.

All war criminals are tried according to the decree published in the Official Gazette No. 69 of 15th December 1946, which superseded and unified all previous legislation concerning war criminals and now conforms to the verdict in the Nuremberg Trials.

In the case of trials which may be of interest to other nations, we shall invite representatives of their governments to attend, as in the Hoess trial to which we expect several observers and an expert from France.

As far as possible, all the documentation concerning the trials of war criminals will be translated and made available to the Commission.

The English translation of our latest war crimes enactment is now prepared and will be sent to the Secretariat of the Commission as soon as possible.

I am,

Yours very sincerely,

Sgd. Dr. Marian Muszkat,
Colonel,

Polish Representative on the
United Nations War Crimes Commission.

The Rt. Hon. Lord Wright, PC., LL.D.,
Chairman,
United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square,
London. W. 1.

20th March 1947.

UNITED NATIONS WAR CRIMES COMMISSION

BUCHENWALD CONCENTRATION CAMP

The trial of Josias Prince Zu Waldeck, Hermann Pister and twenty nine other accused who are charged with having participated, pursuant to a common design, in the Buchenwald Concentration Camp mass atrocity, will take place before a General Military Government Court at Dachau, Germany commencing 11 April 1947, the second anniversary of the liberation of the Buchenwald Concentration Camp.

Colonel C. E. Straight, United States Deputy Theatre Judge Advocate for War Crimes, has extended to all members of the United Nations War Crimes Commission, an invitation to be present at this trial, which is expected to last for approximately six weeks.

Colonel Straight considers this case to be of international importance by virtue of the fact that the inmates and victims of the Buchenwald Concentration Camp included nationals of most of the United Nations.

Facilities for accommodation and messing will be available.

Members of the Commission who wish to take advantage of this invitation to attend the trial are requested to notify the Secretary General at least one week prior to their anticipated arrival in Dachau and the probable length of their stay.

The Provisions of the Peace Treaties
with Germany and Austria regarding
War Criminals.

Draft suggestions to be made to the Member Governments of the United Nations
War Crimes Commission.

Submitted by Dr. R. Zivković, the Yugoslav Representative.

The United Nations War Crimes Commission has considered the question of the provisions regarding the apprehension and surrender of war criminals which ~~it understands will be inserted~~ in the Peace Treaties with Germany and Austria, now under consideration by the Conference of the Foreign Ministers of the United Kingdom, the United States of America, the Soviet Union and France, assembled in Moscow.

While not expressing an opinion on the problem of the prosecution of nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war, the United Nations War Crimes Commission presents to its Member Governments for consideration its views on the provisions of the Peace Treaties with Germany and Austria dealing with war criminals.

In doing so the United Nations War Crimes Commission has taken into account the provisions inserted in the Peace Treaties signed with Italy (Art 45), with Roumania (Art. 6), with Bulgaria (Art. 6), with Hungary (Art. 6), and with Finland (Art. 9). It has also taken account of the suggestions adopted by its members on the 18th September, 1946, with regard to these provisions as the United Nations War Crimes Commission's document C.227 of the 19th September, 1946, and presented to the Member Governments.

In the opinion of the United Nations War Crimes Commission the provisions regarding war criminals in the Peace Treaties with Germany and Austria should be drafted bearing in mind the basic fact that, as far as the European war is concerned, it is the German and Austrian war criminals who perpetrated the larger number and the most heinous types of crimes, and who inspired war criminals of the other ex-enemy States to follow their lead in this respect.

The United Nations War Crimes Commission is consequently of the opinion that the obligations to be imposed upon Germany and Austria should be made more strict and more precise in the relevant provisions than was the case with the provisions in the five Peace Treaties with the ex-Satellite States.

The latter provisions are general in terms, laying upon the ex-satellite governments a duty "to take all necessary steps" to ensure the apprehension and surrender for trial of the persons concerned. For the reasons given above, in the case of Germany and Austria it would appear to be more preferable to depart from such a general obligation and not to take any risks of a recurrence on the part of these two countries of the negative attitude displayed by the German Government after the first World War in respect of the surrender and punishment of war criminals.

Therefore the United Nations War Crimes Commission considers that it would be most valuable if the provisions of the Peace Treaties with Germany and Austria could be drafted in such a way as to take account of the following points:

1. The duty to take all necessary steps to ensure the apprehension and surrender of war criminals should be made applicable notwithstanding any proceedings or prosecution before a German or Austrian Court. An express provision to this effect was contained in Art. 228 of the Peace Treaty of Versailles.

2. The German and the Austrian Governments should be required to comply with all requests of the United Nations Governments concerned relating to the identification, discovery, apprehension, arrest and surrender of the accused persons, without any right to examine the cases on its merits wherever the names of the accused persons appear in the lists of the United Nations War Crimes Commission. The United Nations Government concerned should be fully and promptly informed of the manner in which effect is being given to its request.

3. There should be a special provision securing the testimony of witnesses, as in the Peace Treaties signed with the five ex-Satellite States, supplemented however by a provision corresponding to Art. 230 of the Peace Treaty of Versailles and the German and Austrian Governments should undertake to disclose and produce any records, documents or other evidence, the producing of which may be considered necessary to secure the full knowledge of the acts with which the accused is charged, and to assist in any other way in which assistance may be required.

4. In the opinion of the United Nations War Crimes Commission, there should be some provisions safeguarding the loyal and conscientious collaboration of the officials of Germany and Austria, who will be responsible for the execution of the provisions of the Treaties. Germany and Austria should undertake to pass and enforce legislation making it a penal offence:

- (a) to obstruct the execution of the foregoing provisions or to fail to comply with any direction relating thereto;
- (b) to aid or abet a person whose surrender has been demanded in evading apprehension or surrender;
- (c) to destroy or conceal documentary evidence, to impede or obstruct the calling or examination of witnesses;
- (d) to incite another person to resist in any way the provisions concerning the apprehension and surrender of such persons;
- (e) for any ex-enemy official to prosecute or punish any person for having reported to the authorities or agencies of any of the United Nations, any evasion of, or resistance to the foregoing provisions.

5. Under the Peace Treaties signed with the five ex-Satellite States any disagreement concerning the application of the relevant provisions is to be referred to the Diplomatic envoys of the four Great Powers concerned at the Capital of the ex-Satellite States.

Without wishing to prejudice any other possible arrangement in the Peace Treaties with Germany and Austria, the United Nations War Crimes Commission is of the opinion that a strict control over the application of the relevant provisions by Germany and Austria should in any case be secured. In this respect the United Nations War Crimes Commission suggests that with regard to demands for the apprehension and surrender of accused persons, a difference could be made between the apprehension of such persons on the one hand and their surrender for trial on the other. While the surrender, in the event of disagreement, should remain dependent on the decision of the controlling authority, the apprehension of wanted persons by the enemy government should be compulsory and the latter should not be entitled to leave the accused person at large until the decision of the controlling authority has been given. The Commission therefore suggests that whenever the surrender of a person is asked for by a United Nations Government, the person concerned should be apprehended and kept in custody until such time as the controlling authority reaches agreement with regard to the difficulty.

It should, however, be understood that the German and Austrian Governments would in no case be entitled to disagree on the subject of prima facie guilt established by the United Nations War Crimes Commission.

The Commission trusts that the above suggestions will be taken into favourable consideration by the governments of the United Nations.

A.41

March 26th, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

Extradition of a War Criminal from a neutral country

The following letter from the acting
Czechoslovak representative to Lord Wright, is
circulated to members for their information.

Ref: No: 110/1947

Czechoslovak War Crimes Office,
Czechoslovak Embassy,
42, Wilton Crescent,
London. S.W. 1.

24th March 1947.

The Rt. Hon. Lord Wright, PC., LL.D.,
Chairman, United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square, London. W. 1.

My dear Lord Wright: Re: Extradition of a war criminal from a
Neutral Country (Doc. A.35)

May I express my regret for not having been able to be
present at the Commission's meeting on 12th March when a very
valuable discussion has been going on about the very important,
urgent and rather delicate problem.

I should like to thank all members for their comments
on the subject and particularly to Sir Robert Craigie for his
suggestion to approach the governments of the Great Powers.
Nevertheless I should like to see the Commission's resolution which
should be sent to the Swiss Government. If a strong unanimous
resolution by this international body should fail to have practical
results then according to my opinion this unfortunate policy
of neutral countries cannot be remedied.

I am in favour of an individual and, of course, of
a general recommendation as suggested by General de Baer.

I am,

Yours very sincerely,

Sgd. L. Neumann.

CONFIDENTIAL.

A. 42.

March 1947.

UNITED NATIONS WAR CRIMES COMMISSION

WAR CRIMES TRIALS IN THE FAR EAST.

The following extract from a report concerning the trial of Major War Criminals before the International Military Tribunal at Tokyo, and other trials, has been communicated by the United Kingdom Commissioner and is now circulated to heads of delegations.

I. THE TRIAL BEFORE THE I.M.T., TOKYO.

From the 2nd January to the 17th January the atrocity phase was continued. The witness TANAKA stated that it was TOJO who ordered the hard labour of prisoners-of-war, and the same witness absolved KIMURA of responsibility for the imposition of this hard labour on prisoners. Quotations were given from an interrogation of TOJO soon after he was taken into custody, in which he assumed blame for the execution of prisoners-of-war and denied any responsibility on the part of the throne.

From the 20th to the 24th January the Prosecution deposited a number of documents which linked defendants to the clauses of the indictment and which the Prosecution themselves described as "tidying up".

On the 27th January the Defence introduced a motion challenging the jurisdiction of the Court. They were told that "the end of the trial was the proper time to make such a motion." Another Defence motion challenged the authority of the Supreme Commander to establish the Court, while a third, on behalf of eleven of the defendants, alleged mis-trial. Sir William Webb stated that the latter motion was unnecessary, unless shown by the Defence case to be in the interests of justice. The Supreme Commander's authority was disputed with the argument that a United States citizen is not allowed to accept any foreign office or title without the consent of Congress. No effort had been made to seek from Congress consent in approving or ratifying action for General MacArthur's title to establish an international tribunal. The jurisdiction motion was argued by the statement that the Potsdam Declaration itself does not set up the Court nor give the Tribunal any legal right to judge the indictment. The mis-trial motion was argued on the grounds that as the defendants were in various offices during a period when there were 15 Cabinets, there could be no question of conspiracy. All these motions were rejected. Then individual motions were made for each of the defendants and these were answered by the Prosecution. On February 3rd Sir William Webb announced that after due consideration "the Tribunal finds the motions not well founded and therefore overruled and denied." He then announced that the Court would recess for three weeks. This was an extension by one week, at the request of the Defence, of the recess that had already been announced. The defence will therefore start their case on February 24th and it will be presented in six phases.

The number of the defendants has been reduced to 26 by the death on January 5th of NAGANO, of pneumonia. OKAWA remains in a lunatic asylum. Several defendants were absent from Court for odd days during the month through sickness.

II. ...

II. OTHER TRIALS.

In the period from 15th November to 15th December, 1946, one Japanese concerned with war crimes against British prisoners was given a life sentence at the Minor War Criminals Trial at Yokohama. During the period from 15th December 1946, to 15th January, 1947, two further Japanese concerned with British prisoners-of-war received sentences of 15 and 22 years.

UNITED NATIONS WAR CRIMES COMMISSION

Amendments to Document A. 43 submitted by

Monsieur P. Maillard

- (1) Para. 2, line 9, omit "however unwittingly".
- (2) End of para. 4 add: "It would seem, moreover, hardly justifiable to grant them, though they are accused of crimes of a particularly heinous and international character, the privilege of a treatment which is, according to the common practice of international law, generally denied to an ordinary criminal".
- (3) Last para., line 1, substitute for "recommends" the words: "asks therefore".

line 4, substitute for "in the hope that" the words: "in order that".

UNITED NATIONS WAR CRIMES COMMISSION

Draft Recommendation by the United Nations War Crimes Commission

(Prepared by the Drafting Committee)

The attention of the United Nations War Crimes Commission has been drawn to the disinclination shown by the Governments of certain neutral countries to hand over for trial, before a court of one of the United Nations, persons accused of having committed war crimes. Governments have hesitated to surrender war criminals even in cases where the names of the wanted persons appear on the lists issued by the Commission.

It may perhaps assist the Government of a Neutral State which is considering a request for the surrender of a war criminal if it were to be informed that names are only placed on the Commission's lists after careful weighing of the evidence produced in each case by the prosecuting government. The presence of a name on the list indicates that, in the opinion of an important international body, a prima facie case has been established against the accused which justifies his being brought to trial before the appropriate court. By failing to hand over the accused for trial, the Neutral Government concerned would be impeding, however unwittingly, the performance of the task for which the United Nations War Crimes Commission was created.

In cases where the presence of a war criminal in a particular neutral country is suspected, but not known for certain, it would be greatly appreciated by the Commission if the enquiring United Nations Government could be informed whether or no the accused person is in fact residing in that country. Failure to give this information may impede the prosecution of enquiries elsewhere, with the result that the perpetrator of some heinous crime may escape detention and trial.

Persons appearing on the Commission's lists are, in the majority of cases, accused of crimes of a revolting and inhuman character and it would be most unfortunate if such criminals were to be shielded from well-merited punishment as a result of an over-generous interpretation of the law of asylum. Such men have no valid claim to the protection normally accorded to a political refugee. This point is well brought out in the following passage from the Inter-Allied Declaration signed at St. James's Palace on January 13, 1942: "... acts of violence committed at the expense of civilian populations have nothing in common with the notion of an act of war or with that of a political crime as understood by civilised nations".

When considering requests for the surrender of war criminals, neutral Governments will no doubt also bear in mind the Resolution passed at the first session of the United Nations General Assembly on February 13, 1946, the relevant section of which runs as follows: "The Assembly calls upon the Governments of States which are not Members of the United Nations also to take all necessary measures for the apprehension of such criminals in their respective territories with a view to their immediate removal to the countries in which the crimes were committed for the purpose of trial and punishment according to the laws of those countries."

The United Nations War Crimes Commission recommends that the above considerations be brought to the attention of the Governments of those neutral countries in which war criminals are believed to be sheltering, in the hope that the early surrender of such persons, in response to a request from a Government of the United Nations, may thereby be facilitated.

I

Office of the Belgian Commissioner on the
United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square, London, W. 1.

Ref: 2633/C/R

7th May, 1947.

Dear Lord Wright:

Following the conversation which I had on the 5th May with Lieut. Colonel Draper of War Crimes Group, N.W. Europe, I feel I must take up with you again the question of the trial of the personnel of Wolfenbüttel Prison.

You will recall that I first raised this matter in my letter No. 3028/C/R of 27th September 1946, when I sent you a translation of a Belgian newspaper article entitled "Scandal of Wolfenbüttel". I followed this by my letter No. 2122/C/R of 4th November, 1946, to which I attached copies of reports which I had received from Brussels. In this last letter I suggested that these documents should be circulated to the Commission, but left that matter to your discretion. After this there were many conversations on the subject and on several occasions the matter of Wolfenbüttel was brought by me before the Commission. I now feel that the documents attached to my letters to you of the 27th September and 4th November last should be circulated to members of the Commission, together with a copy of the present letter, so that they have a complete picture of the representations made by the Belgian Government.

After my numerous requests to see the dossier of the Wolfenbüttel Prison trial, and after having made it clear that my Government took a great interest in this matter, I had hoped that I should be able to go to Brunswick to examine the files on the spot. You will remember that Dr. Schwelb and I were ready to leave for Germany at a moment's notice. The hearing of the case in appeal, however, was postponed indefinitely, and our visit to Brunswick never materialised.

I now learn that the surrender of some of the accused - for which application has been made by the Belgian Liaison Mission - may be refused by the Control Commission on the grounds that 14 of them have already been tried in Brunswick for the same offences. In this connection, I should like to point out that Brigadier Paton Walsh, in the presence of Colonel Ledingham and Dr. Schwelb, assured me that these 14 Germans had only been tried for disciplinary offences against the penal regulations in force in German prisons and not with war crimes committed by the jailors against persons of Allied nationality. It was because the charges were only for crimes committed by Germans against Germans, and that offences against Allied nationals had not been involved, that the Control Commission, had given permission for the trial to be heard before a German court. Having obtained this information from high authority I naturally considered it as entirely reliable and accordingly reported to my Government that only charges concerning ill-treatment of Germans had been dealt with by the German court.

Later, we were informed by Colonel Rathbone that although the charges mainly concerned bodily harm against German internees, there were also a small number of minor charges of ill-treatment of Allied nationals, and we understood that they were little substantiated, hence the relatively light penalties imposed. Now I understand that all charges of ill-treatment of Belgians may have been considered by the court, so that the surrender of the 14 accused may be refused on the grounds that they should not be tried twice for the same offences.

My Government, however, is not satisfied that the case was properly conducted before the German court, and in this respect one fact is certain: although the German court did hear one or two Belgian witnesses,

it failed to take into account the evidence which could have been given by many more Belgian ex-prisoners. Apparently the German Staatsanwalt himself was not satisfied, and he would have been interested to obtain their deposition, but although he formally requested on 13th September, 1946, that the evidence of 14 Belgians residing in Belgium should be taken on commission, nothing was done from the German end to obtain this evidence, as appears from a letter of the Belgian Minister of Justice dated 27th December 1946, whom the request never even reached.

Whatever the facts may be, it is inconceivable that the Wolfenbüttel case should be split, as would happen in the event of the British authorities agreeing to the surrender of the 18 accused and refusing the surrender of the 14 others, because it is obvious that the 18 accused then tried in Belgium would plead that all the crimes with which they are charged had been committed by the 14 leading members of the prison staff. It would also be detrimental to the good repute of the administration of justice in general if heavy sentences were imposed in Belgium on the minor members of the prison staff, while the leading officials had got away in Germany with loss of civil rights and relatively short sentences of imprisonment.

Another point which I must make is that the Brunswick judgment is invalid because, by virtue of Control Council Law No. 10, Art. 3(1)(d), each occupying authority has the right to authorise a German court to try Germans accused of crimes against other Germans and stateless persons, which obviously excludes such rights when the victims were Allied nationals. This is clear not only in the English text, but perhaps even more so in the French and German texts. Otherwise the provisions would have run: "Such provision may, in the case of crimes committed by persons of German citizenship or nationality, be a German court, if authorised by the occupying authority". I am well aware that in the Wolfenbüttel case the authorisation is stated to have been given by virtue of Art. VI of Military Government Law No. 2, but I respectfully submit that this law had been superseded by Control Council Law No. 10. This was confirmed by Colonel Rathbone at the meeting of the United Nations War Crimes Commission of October 16th, 1946 (M.114), when he said, quite rightly, that trials by German courts were held in pursuance of Law No. 10. (Minutes M.114, pages 4 and 5).

Quite apart from the present circumstances, as outlined, above, I do feel that the Commission should express to the Control Commission its strong recommendation that German courts should never be allowed to handle cases where there is any question of Allied nationals having been implicated as victims.

I understand that this has actually been, for some time, the policy of the Control Commission. Nevertheless, this has never been confirmed, and, in view of the protest which I have made, on instructions from my Government, against the Wolfenbüttel procedure, I believe that it is necessary for the Commission to express its views in the matter.

Hundreds of Belgian "Nacht und Nebel" prisoners have been murdered at Wolfenbüttel, all of them for their highly patriotic behaviour or for having helped the Allied cause, some for having given shelter and assistance to British airmen. If the British authorities in Germany were now to refuse the surrender of the murderers on the grounds that they have allowed a German court to judge whether the Belgian charges were founded or not, then the Belgian public would fail to understand.

However, I am confident that this is impossible and that the Control Commission will accept the view that:-

- 1) the Brunswick judgment was invalid;
- 2) the Belgian charge of murder of hundreds of my people is not covered by the charge of mere bodily harm brought at Brunswick and that the accused have therefore not been in jeopardy.

In view of the importance which my Government attaches to this Wolfenbüttel case, I feel duty-bound to take some precautions. I would therefore suggest that the matter should be placed on the agenda for the next meeting, and submit that the following action should be taken by the Commission:

- 1) that the attention of the Control Council should be drawn to the Wolfenbüttel case and to the deplorable effect that a refusal to surrender the members of Wolfenbüttel Prison staff would have on the rightful course of justice and also on public opinion in Belgium.
- 2) that the Commission should recommend that, in the future, no German court should be allowed to handle cases in which there is any question of allied nationals having been among the victims.
- 3) that the Commission should recommend that the judgment of the personnel of the Wolfenbüttel case by the Landgericht Brunswick be annulled as invalid.

Yours sincerely,

Sgd. H. de Baer.

II.

Office of the Belgian Commissioner on the
United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square, London, W. 1.

Ref: 3028/C/R

27th September 1946.

Dear Lord Wright:

I have just received from my Foreign Office a letter whose translation runs as follows:-

"I should be glad to know whether you have any information about a fact cited by M. Paul M.G. Levy in an article entitled "We must Speedily Judge our War Criminals" in the current number of the newspaper "La Cité Nouvelle" of 15th/16th September.

"After having set out the necessity of amending our legislation as rapidly as possible, as well as seeking out the war criminals, M. Paul M.G. Levy writes as follows, under the sub-title:-

'The Scandal of Wolfenbüttel'

'And then there is the scandal of Wolfenbüttel. Wolfenbüttel was that prison in the south of Brunswick where so many of our "Nacht und Nebel" were executed. Its regime was comparable to that of the concentration camps .. But the English judicial authorities have given up their responsibility in the case of Wolfenbüttel and have handed it over to a German tribunal.

'This tribunal, before which some of our compatriots have been called to bear witness in German has acquitted or

sentenced with ridiculously mild penalties the guilty persons. Those who have been sentenced to imprisonment have been provisionally left at liberty, because the camp where they should be interned is not yet set up. Furthermore, the only guard who showed some kindness to the allied political prisoners has been charged by German common criminals and, in spite of evidence provided by Belgians, has been condemned to a heavy sentence of imprisonment.

'It is the comedy of Leipzig which begins all over again, only this time more seriously.

'The British military court of Lüneburg which condemned KRAMER, Irma GREESE and their colleagues did show adequate severity. But those times are now far behind. The British who judged them had actually fought the war and seen the horrors of the camps. One wonders whether those who are responsible for the scandal of Wolfenbüttel have ever heard of their sentence.

'A Wave of Lunacy'

'The British have tried the war criminals of Bergen-Belsen; the Americans have tried those of Dachau, of Mauthausen and of the Ardennes and the coming trial by the Russians of the staff of Buchenwald has been announced. We have confidence in our allies. But we have no confidence in German tribunals.

'And how are we to know whether those whom we have had to return to their German prison, owing to lack of legislation, will not, following the precedent of Wolfenbüttel, be "tried" tomorrow by their compatriots?'

"I should be grateful to you if you would let me have all the information which you possess, or which you can collect on the subject of the disassociation by the British judiciary in favour of a German tribunal, in the case of the prison of Wolfenbüttel."

I wonder if you have any information on this subject which I can transmit to my Government.

In this connection it would be useful for the United Nations War Crimes Commission if it could obtain some information about the courts which are contemplated by the Commission of Control to try some of these cases.

Yours sincerely,

Sgd. M. de Baer.

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III

The Belgian Commissioner on the
United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square, London, W. 1.

Ref: 2122/C/R

4th November, 1946.

Dear Lord Wright:

Further to my letter of the 27th September concerning the trial of the personnel of Wolfenbüttel prison, I have now received more detailed reports on the subject from my Government, and am sending you herewith

translations of these reports.

My Government has asked me to bring this matter officially to the notice of the United Nations War Crimes Commission and to ask that steps may be taken to rectify, if possible, the present apparent injustice and to take action to ensure that it is not repeated.

Yours sincerely,

Sgd. M. de Baer.

P. S. This letter had already been dictated when Colonel Ledingham passed me a copy of the letter from Colonel Rathbone (Reference Legal/MOJ/52343). I saw with great pleasure that the Legal Division of the Control Commission is fully aware of the danger and is taking steps to meet it. I was going to suggest that these papers should be circulated to members of the Commission for their information, but in view of the spirit of co-operation which Colonel Rathbone and his colleagues are showing, I do not want to create any difficulties for them, and leave the circulation of these documents to your discretion.

The Rt. Hon. the Lord Wright of Durley, P.C. LL.D.,
The United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square,
London. W. 1.

IV TRANSLATION

Letter from the President of the Belgian War Crimes Commission to the Belgian Minister of Justice, dated 3rd October 1946.

The Head of my Liaison Mission to the British zone has sent me a report on the working of a German tribunal at Brunswick.

If it seems normal to allow German tribunals to try the cases of certain of their compatriots when only German interests are at stake, this policy gives rise to many difficulties when the individuals to be tried are already inscribed, or else are liable to be inscribed, on the list of war criminals.

That, in effect, is what has happened at Brunswick. Brigadier Paton Walsh of the Penal Division of the Control Commission for Germany at Lübeck decided to hand over the trial of the personnel of Wolfenbüttel prison to the local German court.

It is not necessary for me to deal at length with the nature of the prison at Wolfenbüttel. It was one of the most terrible prisons in Germany and it can, without fear of exaggeration, be compared with the worst of the extermination camps.

Among the prisoners, there were at least seven hundred "Nacht und Nebel" and it is calculated that of the Belgians, roughly 250 to 300 in number, who passed through this prison, about half did not come out alive.

The sentences given by the German court were quite out of proportion to the crimes which had been committed.

The penalties inflicted are only of some months' imprisonment, the longest being three years. The only person against whom the tribunal showed itself adamant was a medical orderly who received a sentence of 18 months imprisonment, although the Belgian prisoners who gave evidence could not speak too highly of his conduct. This shows the mentality of the tribunal.

I think that you will agree with me that there is justification for the Belgian Government to make an official protest to the United Nations War Crimes Commission, with a view to preventing a repetition of such a travesty of justice.

I think that the Belgian Government will not tolerate the fact that the parents of the victims are scorned in this manner, and that this is the moment to demand that every war criminal, or any person who might be regarded as such, should answer for his crimes in front of an allied military tribunal, before being judged for the same acts, or acts of a similar nature, by a German tribunal.

TRANSLATION

Report of Captain Vekemans, head of an investigation team, to Colonel Branders, Belgian Liaison Officer, BAOR, dated 12th July, 1946:-

Here is the information which I have been able to obtain at short notice. I only heard incidentally that a German tribunal, sitting in Brunswick, had pronounced judgment concerning 15 ex-members of the personnel of Wolfenbüttel prison.

The following are my sources from which I drew the information for this report:-

- a) an enquiry which I made at the prison itself.
- b) the statement of Souslieutenant Hene.
- c) the interrogation of the ex-guard WEDEKIND.

It is difficult to give even an approximate figure of the number of prisoners who passed through the prison. There was a constant going and coming between the prison and the external commandos, which prevents any accurate calculations being made. The prison consisted, apart from a certain number of German criminals, of political prisoners, particularly Polish, French, Belgian and Dutch.

These prisoners seem to have been treated exactly the same as if they were in concentration camps (the documents which I have been able to seize prove this).

Among the prisoners were at least 700 "Nacht und Nebel" (among the lists which I have seized I note the figures running to the 670s..). These records have, in the case of the "Nacht und Nebel" only a number, which prevents any identification; the indication of the weights of the prisoners, on the other hand, is eloquent and the figures are the best evidence of the treatment which they had to undergo. 50% of the prisoners weighed between 50 and 60 Kgs. (about 120 lbs.). The examination of these figures is most edifying; most of the deaths are shown as due to tuberculosis, some of the patients coming into the hospital on 2nd February and dying on 3rd February, the weight being shown on entry as 50 Kgs., the description of the illness being "Swach" (Feeble), c.f. statement COLLARD etc.

The "Nacht und Nebel" prisoners were not allowed to be operated on, but a Belgian "Nacht und Nebel", Surgeon-Doctor de Meirsman, with the complicity of the medical orderly WEDEKIND (whom the German tribunal has

just condemned to 18 months) managed to collect some surgical instruments (from the outside) and carried out more than 30 clandestine operations, thus saving many lives. Thanks to WEDEKIND I was able to find the entry relating to the doctor "Nacht und Nebel" 579; he also gave me his address, which is:

Docteur-Chirurgien de Meirsman, Schoostaat, Lokeren.

His evidence would be of the greatest interest.

Here are the different commandos which came under the prison of Wolfenbüttel:

- | | |
|----------------|---|
| A. WESENDORF | Near Gifforn; levelling work for airfield, about 200 prisoners; external commando. |
| B. WALBECK | near Helmstedt, salt mines, tunnelling; about 200 prisoners; external commando. |
| C. HEERTE | near Wattenstedt; Goering works; from 100 to 200 prisoners, all Dutch; independent commando depending on Wolfenbüttel only for administration and discipline. |
| D. OKER | In the Harz, chalk quarry; from 30 to 60 prisoners; external commando; very severe conditions, many victims. |
| E. Quarry I. | at Wolfenbüttel, chalk quarry; 30 prisoners; slept in the prison. |
| F. Quarry II | at Wolfenbüttel, chalk quarry; 30 prisoners; slept in prison. |
| G. BUSSING-NAG | at Brunswick, lorry and motor works; 45 prisoners; slept in prison. |
| H. HUTTENWERK | at Brunswick; foundries; 50 prisoners, slept in the prison. |
| I. VOIGTLANDER | Commando in the prison itself; optical precision works; 250 to 300 prisoners. |
| J. HOHENROHR | Commando in the prison itself; stove and sheet metal works; 10 to 15 prisoners. |

Apart from the files which are mentioned earlier, it has been impossible to seize other documents. The sick record which EHARON mentions in his statement has mysteriously disappeared.

Here are details obtained concerning the personnel of the prison:

The following appeared before the German tribunal:

- | | |
|--------------------|---|
| ROBBELING, Willy | internal administration. |
| PUCHMULLER, Alfred | (probably BUCHMULLER of our List 4), guard at Voigtlander and Oker. |
| | No decision concerning them, their cases are to be reconsidered. |
| BULL, Friedrich | Oker - 3 years. |
| MULLER, Friedrich | Quarry I, Bussing-Nag - 18 months. |
| HAHN, Willy | No definite post - 18 months. |

WILLIE, August	Clothing store - 2 years.
WEDEKIND, Karl	Medical orderly, a saint and hero according to Belgian prisoners - 18 months.
WALTER, Ludwig	Oker - one year.
KLAGES, Wilhelm,	Hauptmeister - one year.
WEGENER, Erich	Vortreter - acquitted.
NIEWERTH, Heinrich	Internal administration - 6 months.
HELMKECKE, Karl	Internal administration - 6 months.
KAMINSKY, Franz	10 months
SCHARE	20 months
KANZY	Internal administration.
<u>Other persons:</u>	
TONOWSKY, Hans	Inspector of the prison. Arrested and sent to Sennelager.
SCHNECK	Wirtschaftinspektor. Arrested and sent to Sennelager.
RITMEYER, Karl	Oker. Accused by Belgian evidence, will probably be the subject of a future trial by the same tribunal; at liberty; lives Fischerstrasse 20, Wolfenbüttel.
BOTHE, Wilhelm	Antmann, the same remarks; at liberty; Kommissstrasse 6, Wolfenbüttel.
LEHRLING	Hilfsauscher; same remarks; Vendomestrasse 1, Braunschweig.
BOSSE, Gustav	Internal administration; later mobilised as an SS officer; probably at Sennelager.
Other guards, who have not been disturbed; but who could if necessary form the object of enquiries:	
SCHRADER, Paul	Werkmeister
MARSCHAL, Karl	Internal administration
TRAGER	Without a definite post
MESEBERG, Fritz	Kitchen
NICHOFF, August	Internal administration
WEBER, Hermann	Hauptwachtmeister
MULLER (11)	Oberwachtmeister
SCHARGE	"
SCHWARTZ, Ernest	Außseher.

KOCH P on list 5 seems to be unknown to everyone. Lastly, HAHNE Fritz, Oker Oberwachtmeister, was tried with those in paragraph 1, but I do not know the tribunal's decision in his case.

RIPPES and ZWIN, on 1st 2, are unknown to the witnesses.

The prison of Wolfenbüttel is of interest to the Belgian Commission; the number of Belgian witnesses shows this, as well as the number of our victims (by the one transport of 29th September 1943, 71 out of 186 Belgians died).

I send you herewith:

- a) the report of S/Lt. Hene on the subject of the tribunal.
- b) copies of the statements made by: Lt. Col. de Wilde, Hoffman Jean; Ledieu Franz; Verschuere L; Charon André; Maigret A (these were not sent to the office of the Belgian Commissioner).

COMMENTS.

The witness Charon will arrive in Brunswick on 20th July. Comparing the gravity of the evidence sent herewith (ill-treatment resulting in death), the penalties ordered by the German tribunal on the accused (several of whom formed the object of this evidence), are ridiculously inadequate. It would be interesting to know on what facts Brigadier Paton Walsh of the Penal Division of the C.C.G., Lubecke, was acting when he only charged certain of the guards and in one case the best of them WEDEKIND, who always helped the political prisoners and at the trial the only evidence against him was that given by German common law criminals.

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TRANSLATION

Report from Sub Lieutenant Joseph Hene to Captain Vekomans, Commanding the Hanover detachment of the Belgian War Crimes Mission, dated 9th July, 1946.

Object: Guards at the Prison of Wolfenbüttel.

During the war years hundreds of political prisoners passed through the prison of Wolfenbüttel, in the south of Brunswick. As a result of the ill-treatment received in this prison, particularly by Jews and Poles, many of my fellow-prisoners died. Very lightly clad, with insufficient nourishment, the allied political prisoners were mixed with ordinary criminals, most of them German; these latter had complete priority over us, receiving extra rations and having the right to ill-treat us, the allied political prisoners were thus reduced to the work of slaves, often beyond their physical capacity. They worked in Commandos, either in the prison or outside it, leaving in the morning and returning in the evening to their cells or their rooms, or else at Oker, a chalk quarry situated in the village of that name near Bad Harzburg. This was the most terrible place of all: the attached reports (not forwarded to the U.K.) give only a small picture of the daily hell in which the prisoners existed. Daily for petty offences, and often without reason at all unless it was the ill-humour of the guard, we were beaten with truncheons, bunches of keys, sticks, bars or iron and any object which our convict guards might have in their hands.

On the other hand, there were certain rare guards who were good to us, as for example, the Hauptwachtmeister WEDEKIND, who was in charge of the infirmary.

Among the numerous statements received, that of Mr. André Charon, student of the University of Medicine at Liège, is certainly the most important. This boy spent more than three years in the prison and by virtue of his functions, he was really the only doctor in the infirmary, knew all that was going on in the prison.

In my capacity as a member of the Military Police attached to the British army of occupation, I sent a report on this subject, last February, to Major Grant of 120 Mil. Gov. Detachment at Brunswick. Brigadier Paton Walsh of the Penal Division CCG at Lubeck decided to place the whole affair in the hands of the German local court. This in spite of the fact that those executioners should be treated in exactly the same way as those of Belsen and Buchenwald, since they deserve no better treatment. On 1st July I was summoned by the 120 Mil. Gov. to be a witness at the trial. Arriving at Brunswick on the same day as the sentence was to be given, this is what I found:-

1) The persons most responsible for the outrages at the prison, such as the Deputy Director Antman BOTHE, as well as cruel guards, like RITTEMEYER and LEHRLING, were not only not on trial, but circulated freely and without restraint. According to information taken at the tribunal they will be the object of a further trial.

2) The accused present did not seem to be under guard, although I am not certain of this, since one persons told me one thing and another something different, but it is a fact that on arriving at the Landsgericht I saw standing on the corner of a street a guard who, during the trial, had been seated among his old colleagues in the dock.

Before giving my evidence I gave the tribunal my word of honour as an officer, adding that my reports had been established not only as an ex-political prisoner, but also as an officer of the Military Police. I then stated that WEDEKIND (of the Infirmary), who was one of the accused, was absolutely innocent and that he had done all he could, risking his job and his freedom, to give all assistance in his power to those who were ill. I myself had been two and a half months in hospital and thus knew what I was talking about. Moreover, if further proof were needed in this matter, A. Charon, who had lived day and night for three years with this guard, could bear me out. THEY PAID NO ATTENTION TO MY STATEMENT CONCERNING THIS GUARD, BUT SOME OF THE GERMAN EX-PRISONERS, who were mostly criminals, and neither respecters of honour nor of law, STATED THAT THEY HAD BEEN ILL-TREATED BY HIM and this guard WAS CONDEMNED TO 18 MONTHS IN PRISON, while others, who had done much more harm, only received a sentence of 6 to 10 months. I regard this action of the court in not setting any store by the sworn statement of an officer, who gave evidence not only as an eye-witness but also by virtue of his functions as a member of the police as a flagrant insult. On this account I demand, through you, the annulment pure and simple of this judgment, on the grounds of faulty procedure.

Moreover, a second fault in the procedure seems to have given this trial the air of comic opera.

A) After having given my evidence I gave my word as an officer. After the evidence for the defence, the sitting was suspended, the court retiring to decide the penalties and when the three judges returned the Chairman, having the text of the judgment in his hands, asked me to make in German the ordinary oath: "I promise to tell the truth and may God defend me".

B) After their sentences, 3 years, 2 years, 18 months, etc. the court closed and the condemned left freely surrounded by their friends and relations. I did not see this myself, because I was busy putting my papers together, but an English officer who had accompanied me privately as a spectator assured me that this was so.

C) Finally, at this trial of war criminals judged by their own compatriots, no military authority was present, representing if not the United Nations at least the local military government.

The present report has been made out in triplicate: I copy for the Polish War Crimes Mission, concerned in the affair since many Polish

- 11 -

subjects died there; one copy for the Belgian War Crimes Mission; one copy for my retention; a similar report has been sent to the English Lieutenant Mason No. 330872 of the War Crimes, who agreed to bring these facts to the attention of his superiors.

BRUNSWICK, 9th July, 1946.

A. 44

May 14th, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

WOLFFENBUTTEL TRIAL

Observations by Monsieur de Baer, Belgian Representative
on the United Nations War Crimes Commission.

The following correspondence is circulated to Members at
the request of Monsieur de Baer:-

- I Letter from Monsieur de Baer to Lord Wright
dated 7th May, 1947.
- II Letter from Monsieur de Baer to Lord Wright
dated 27th September, 1946.
- III Extract from letter from Monsieur de Baer to
Lord Wright dated 4th November, 1946.
- IV Translation of letter referred to in III.

A. 45
May 15th, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

United Nations,
Lake Success,
New York,
U. S. A.

Reference: 704-1-1

6th May, 1947.

Dear Lord Wright:

On my return to Lake Success, I discussed with M. Henri Laugier, the Assistant Secretary-General in charge of Social Affairs, the question of possible cooperation between the Division of Human Rights and the War Crimes Commission in the matter of the collection and publication of information concerning human rights arising from trials of war criminals, quislings and traitors and, in particular, from the Nuremberg and Tokyo trials. M. Laugier agrees with me that the War Crimes Commission is in a better position to undertake this work than is the United Nations Secretariat and, if the Secretariat of the Commission is prepared to accept responsibility for this work, we would be very pleased to have you do it for us.

As you know, the Secretary-General was requested to make arrangements for the collection and publication of this information by a resolution which was adopted by the Economic and Social Council on 21 June 1946 (Journal No. 29 of the Economic and Social Council, page 521). If it is possible, we would like to be able to submit the manuscript to the next meeting of the Commission on Human Rights which is to meet at Geneva on 25 August next. I do not want to press you in the matter, however, and would arrange to have the manuscript submitted at the following meeting of the Commission, should it be impossible for you to complete the work for August. In any event, I would very much appreciate hearing from you and having your views at your earliest convenience.

I would like to take this opportunity to thank you for your kind hospitality while I was in London. I shall look back to my visit to Lansdowne House as one of the most interesting and fruitful parts of my recent trip to Europe.

Yours sincerely,

Sgd. John P. Humphrey,
Director,
Division of Human Rights.

Lord Wright,
Chairman, United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square,
London. W. 1. ENGLAND.

CONFIDENTIAL.

A. 46.

May, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

WAR CRIMES TRIALS IN THE FAR EAST.

The following extract from a report concerning the trial of Major War Criminals before the International Military Tribunal at Tokyo and other trials has been communicated by the United Kingdom Commissioner and is now circulated to heads of delegations.

I.- THE TRIAL BEFORE THE I.M.T., TOKYO.

The Major War Criminals Trial was resumed on the 24th February with the opening of the defence case. However, before defence counsel were able to begin reading their statement the President of the Tribunal asked for the editor of the "Stars and Stripes", the local American army newspaper, to appear for contempt of court, for having published that morning, before the court sat, an article purporting to describe the events in court. The editor appeared later in the morning (after the defence statement had started) and made his apology. Nothing of the matter that had been described in the offending article was allowed to be read in court.

The defence case was opened by Dr. KIYOSE, the leading defence counsel, with a statement in five parts, namely, general problems, Manchuria, China, the U.S.S.R., and the Pacific war. Before starting the Prosecution established that SHIGEMITSU, HIRANUMA, HIROTA, DOIHARA, and SUZUKI opposed the statement, while other defendants disagreed with it in parts. Dr. KIYOSE argued that Japan's naval and military preparations had not been aggressive in nature; even the Sino-Japanese and Russo-Japanese wars had been conducted by Japan in the interests of peace; Japan had had no intentions of world conquest in league with Italy and Germany, whatever the intentions of the latter might have been; Japanese education did not try to foster extreme nationalism; there was no fundamental difference between "the Imperial Way" and democracy; and, (quoting from John Bassett Moore's "Appeal to Reason"), it was impossible to define aggression. Later in the case, Dr. KIYOSE said each of the accused would present evidence on his own behalf.

On the 25th February an appeal by Professor TAKAYANAGI to read a statement attacking the court's jurisdiction was overruled. American defence counsel then argued that Japan was forced to fight in self-defence against economic strangulation. Next day the Defence went on to defend the non-aggressive nature of the Tripartite Pact and claimed that Russia had commenced hostilities against Japan in April 1945. Japan's troop landings in French Indo-China had violated no treaty. On the 27th February the Soviet prosecutor objected, unsuccessfully, to the introduction of documents giving the text of the fishery convention between Japan and the U.S.S.R., and claimed that the Defence was trying to treat the U.S.S.R. as "an accused at the trial". The month's proceedings were concluded by a witness explaining the complicated Japanese administrative organization, and maintaining that its continually changing policy allowed no room for a charge of conspiracy.

II. ...

II.- OTHER TRIALS IN JAPAN.

In the Minor War Crimes Trials at Yokohama, during the period from the 15th January to the 15th February, 1947, eight Japanese facing charges in which British Prisoners of War were involved received sentences varying from two years to life imprisonment, while one was condemned to death.

CONFIDENTIAL.

A. 47

May, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

WAR CRIMES TRIALS IN THE FAR EAST.

The following extract from a report concerning the trial of Major War Criminals before the International Military Tribunal at Tokyo has recently been communicated by the United Kingdom Commissioner and is now circulated to heads of delegations.

THE TRIAL BEFORE THE I.M.T., TOKYO.

The defence section at the International Military Tribunal had become so behindhand in the preparation of its case that a special recess of one week from 26th March was granted to it. This recess was granted on two conditions. The first was that all future witnesses should present their evidence in affidavit form. The Tribunal has during March on a number of occasions expressed impatience at the appalling slowness of the direct examination of defence witnesses, and has several times had to reprove defence counsel for the irrelevance of the evidence being thus slowly brought out. It is also worth recording at this point that a number of defence documents have been rejected during the month now under review on the grounds of irrelevance. The second condition was that no further application for a recess should be made until June. This shows that the President of the Tribunal has revised his estimate of the probable duration of the trial.

On 5th March Mr. Smith, the American defence counsel for Hirota, took exception to the "undue interference of the Tribunal" in directing that the direct examination of a witness follow certain lines in order that the testimony elicited might have probative value. The President immediately requested the withdrawal of and an apology for the phrase quoted. Mr. Smith refused to comply with this request and was consequently excluded from further proceedings until such time as he withdrew the phrase. This he has not done.

The general phase of the defence case continued until the 19th March, on which day the Manchuria phase was started. At the beginning of April the defence were adducing evidence to try to prove that no Japanese cabinet fell as the consequence of the actions of the military, as a section of Japanese society, but only as the result of the actions of certain military individuals. Other points of interest that arose were as follows. The Tribunal, by a majority decision, refused to accept evidence on violations of international law by the "Big Three", but agreed to "take judicial notice" of alleged violations, particularly of violations of the Pact of Paris of 1928. It was contended that the puppet states set up by Japan were independent. Testimony was offered to try to disprove the prosecution evidence on the imposition of economic controls in Japan before Pearl Harbour. The general phase concluded with evidence on the introduction of compulsory military training in the schools.

The main points so far brought out in the Manchuria phase have endeavoured to prove that there existed a separatist movement in

Manchuria ...

Manchuria, which had been started by dissident Chinese, and not by the Japanese, that the Japanese seizure of Manchuria was "self-defensive", because Japan, as the Lytton report showed, was the foreign country having the most to lose there, and that the Kwantung Army had acted on their own, without orders from Tokyo, and, in the case of their advance into North Manchuria, in direct defiance of orders from Tokyo.

Doc. A. 48

June 2nd, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW.

CO-OPERATION WITH THE UNITED NATIONS

The following letter from the Director Division on the Development and Codification of International Law to the Chairman of the Commission is herewith circulated for the information of members.

UNITED NATIONS,
Lake Success,
New York. N.Y.

New York, 30 May 1947.

Dear Lord Wright:

It gave the Legal Department of the United Nations Secretariat and particularly myself much pleasure to welcome the visit of Dr. M. de Baer to Lake Success for Secretariat consultation on subjects of common interest to the War Crimes Commission and to the United Nations Secretariat. Since his arrival Dr. de Baer has had conversations with Dr. Ivan Kerno, Assistant Secretary-General in charge of Legal Affairs, and myself. He also visited meetings of the Committee on the Development and Codification of International Law, now being held to consider the methods for the encouragement of the progressive development of international law and its eventual codification.

I regret very much that the proceedings of the Committee have not reached the stage where its consideration of the formulation of the principles of the Nuremberg Charter and Judgment would make it desirable to invite expert advice and information from such organizations as the War Crimes Commission. At a later stage of the work of the Committee, however, the subject of cooperation with bodies, national and international, concerned with the international law will be thoroughly examined, and the Committee will establish a plan according to which in the formulation of the principles of the Nuremberg Charter and Judgment the expert assistance of such bodies as the War Crimes Commission will be invited. I have asked Dr. de Baer to explain to you in person the possibilities of the cooperation of the War Crimes Commission with the United Nations in the near future.

Yours sincerely,

Sgd. Yuen-li Liang
Director, Division on the
Development and Codification
of International Law.

CONFIDENTIAL

A. 49.

June, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

WAR CRIMES TRIALS IN THE FAR EAST.

The following extract from a report concerning the trial of Major War Criminals before the International Military Tribunal at Tokyo has recently been communicated by the United Kingdom Commissioner and is now circulated to heads of delegations.

THE TRIAL BEFORE THE I.M.T., TOKYO.

Proceedings were resumed at the International Military Tribunal for the Far East on 2nd April, after a seven-day recess which had been granted to enable the defence to prepare further evidence. The Japanese defence counsel attempted to show that a movement for the restoration of Pu Yi to the throne of Manchuria had existed for some time before the Japanese took control and further that the Japanese were obliged to take control in order to protect Japanese subjects and Japanese interests from Chinese military forces as well as from Chinese bandits. The Kwantung Army had acted in self-defence and in order to restore peace and order.

The case against one of the accused, OKAWA Shumei, was ordered by the Tribunal on 9th April to be dropped, as the Court was not satisfied that he had recovered sufficiently to be capable of standing trial. Okawa has been confined to a mental institution since the early stages of the trial.

On the same day objections by the prosecution to testimony concerning the Nanking Incident of 1st February, 1932, when Japanese naval forces were landed there, on the grounds that it was covered in the Lytton Report, were over-ruled and Sir William Webb observed that the Court was not bound by the findings of the Lytton Report.

On 11th April the first defendant was called—General MINAMI Jiro, who was War Minister at the time of the Mukden Incident. Before Minami's affidavit was presented to the Court, the prosecution pointed out that it would be irregular for the witness to be called upon to testify again later, in the individual phase. After long debate the Tribunal decided to abide by the rule invoked at the Nuremberg trials permitting each of the accused only a single opportunity to appear on the stand. Minami stated that he had done what he could to prevent the expansion of the Mukden Incident; he had never at any time supported a policy of aggression against Manchuria and had co-operated fully with the Wakatsuki Cabinet in its attempt to localise the incident. The despatch of reinforcements by the Korean Army to the Kwantung Army had been undertaken independently by the Japanese commander in Korea against the orders of the High Command in Tokyo. The Imperial Command order for this move was issued subsequently and he did not know who had advised its issue. Concluding his testimony on 17th April, Minami claimed to have been instrumental in terminating the Pacific War, having advised Prime Minister Suzuki a week before the war ended that it was better to cease hostilities than to fight to the last man. At that time he was leader of the Japan Political Association and his followers held a majority in the Diet.

The ...

The second defendant, KAGOSHIMA Torao (Vice-Chief of the Imperial Household Ministry of Manchukuo from 1939 to 1943), stated that no attempt had ever been made by Japan to institute Shintoism as the national religion of Manchuria. He denied that Manchurian officials were compelled to worship at Shinto shrines and that the people of Manchuria were compelled to worship the Japanese Emperor.

One of the defence witnesses, NAMBA Tsunekazu, who was stationed in Manchuria as an official of the Taxation and Monopoly Bureau from 1933 to 1937, was questioned in connection with Japan's use of narcotics to facilitate the subjugation of Manchuria. It was admitted that after 1936 the proceeds of the opium trade amounted to over 20 million yen, and the prosecution produced a telegram to show that the Kwantung Army had pressed the Tokyo Government to increase the revenue from the opium monopoly in order to meet excess expenditure.

The scene moved to China on the 22nd when the defence attempted to prove that between August 1936 and August 1937 the China Garrison Army had striven to promote cordial relations with China and that the Incident had been provoked by the Chinese. Strong anti-Japanese movements in China as well as a national boycott which constituted economic warfare provoked the Japanese to resort to military action. The Japanese forces had not laid plans for aggressive action against the Chinese Army. It was ruled by the Court that evidence of an actual attack, or evidence of the threat of an attack, on Japanese nationals and property might be given in justification of Japan's acts.

The Lytton Report was again the subject of controversy when the Tribunal over-ruled objections raised by the prosecution against the introduction by the defence of excerpts from the Report disclosing that the Chinese Government supported the anti-Japanese boycott. The prosecution contended that, because Japan had violated the Nine-Power Treaty in 1937 as well as the Pact of Paris, the extracts were irrelevant to the issue. Sir William Webb pointed out that it had not been agreed by the Court that Japan as a whole was guilty of those breaches, and categorised this as an attempt to shorten the trial by getting piece-meal decisions on issues; he stated that the Court would give decisions on evidence but not on issues until the end of the trial.

During the month of April the Court sat on the following days:
2nd, 3rd, 4th, 8th, 9th, 10th, 11th, 14th, 15th, 16th, 17th, 18th, 24th,
25th, 28th, 29th, 30th.

Collection and Publication of Information
concerning Human Rights

Amendments to Document C.259 presented to the Commission by the Chairman of
Committee III - Sir Robert Craigie.

Re-arrangement of sections IV, V and VI of Doc. C.259. *

IV. On the preliminary question whether the United Nations War Crimes Commission has jurisdiction to collect information concerning human rights arising from the trials of quislings and traitors, Committee III is of the opinion that, for the reasons given below, the question of jurisdiction does not immediately arise because, according to the proposals of Committee III (see section V(a)), the Commission should confine its initial enquiries to the trials of quislings and traitors accused of war crimes or crimes against humanity in addition to their other treasonable activities.

Such trials fall unquestionable within the Commission's jurisdiction. The Commission has frequently listed allied nationals accused of violations of the laws and customs of war or of crimes against humanity committed against allied nationals. Crimes against humanity committed by enemy nationals against enemy nationals or against stateless persons on enemy territory have less frequently been submitted to the Commission for listing; but it has formed part of the functions of the Commission from the outset to collect evidence and to report from time to time to the Governments on certain classes of atrocities showing where possible the connection between individual crimes of each type and the common policy which they expressed. It has been the view of the Commission from the beginning that this part of its functions includes the consideration of crimes against humanity of this type. (cf. letter from the Lord Chancellor to Sir Cecil Hurst, dated 23rd August 1944, Doc. C.78 and Progress Report Doc. C.48(1)).

V. In case, however, the question of jurisdiction should come up again for consideration at a later stage, it may be convenient to record here the results of the Committee's deliberations on the question whether the Commission's terms of reference would permit it to deal with the trials of quislings and traitors other than those accused of war crimes and crimes against humanity (cf. section V(a), last paragraph).

The terms of reference of the Commission, as stated in its inaugural meeting held on 20th October 1943 (Doc. C.229) cannot, in the opinion of Committee III be interpreted in the sense that they form an obstacle to the Commission's complying with the request made by the United Nations Secretariat for the following reasons:

(a) the United Nations War Crimes Commission is an international organisation with the legal capacities of a body corporate (cf S.R. & O. 1945, No. 211).

(b) the question of the possible expansion of the scope of the Commission's investigations and functions was reserved for future consideration on 20th October 1943 (Doc. C.229).

(c) the Commission was subsequently charged with a task which, according to the original proposals, would have been tested in the technical committee on legal questions. (Doc. C.229).

In consequence of this re-arrangement, Section V of the original draft of C.259 will become Section VII and so on to the end of the paper.

(d) the request from the United Nations Secretariat is a matter sui generis. It is made to the Commission by an organ of the United Nations which, in requesting the Commission's collaboration, acts on behalf of its 55 member States, among whom there are also all the members of the United Nations War Crimes Commission.

(e) in considering the question of jurisdiction it is also necessary to remember that it is not suggested that the Commission should take any steps connected with the investigation of crimes committed by quislings and traitors in preparation for their prosecution, trial and punishment. What the Commission is being asked to do is to examine the results of trials which have taken place without the Commission having any part in their preparation, and to collect information concerning human rights arising out of such trials. If the Commission undertakes this task it does not assume jurisdiction in connection with the prosecution and trial of quislings and traitors. It only uses its experience in collecting and sifting material which, though it has not directly arisen out of the Commission's work, is in many respects akin to the Commission's jurisdiction which comprises war crimes, including crimes against humanity.

While the Commission's terms of reference would undoubtedly permit the performance of the task, the fact remains that the Commission has not collected the material concerning quislings and traitors who have not been accused of war crimes. If the Commission undertook the collection of information arising from the trials of quislings and traitors, it would be necessary to ask the member governments to make the relevant information available to the Commission and to assist in the collection of material from such countries as are not members of the Commission.

VI. Other arguments used in Committee III in favour of extending the enquiries of the Commission so as to include the trials of quislings and traitors may be summarised as follows:

Information concerning human rights arising from the trials of war criminals, and similar information arising from the trials of quislings and traitors, is so closely inter-related that a report based only on trials of war criminals proper, or a report based only on trials of quislings and traitors would not give an adequate picture.

In many international documents, including draft conventions prepared by the United Nations War Crimes Commission before the end of the war, so-called quislings and traitors have, to some extent, been placed in the same category as war criminals. In its resolution on the question of refugees, the General Assembly of the United Nations decided on 12 February 1946, that "no action taken as a result of this resolution shall be of such a character as to interfere in any way with the surrender and punishment of war criminals, quislings and traitors". The constitution of the International Refugee Organisation, annexed to the Resolution of the General Assembly of 15 December 1946, in the part devoted to "definitions and general principles" provides that "war criminals, quislings and traitors will not be the concern of the organisation"; the same applies to persons who have assisted the enemy forces, which term is circumscribed in some detail.

The Treaties of Peace with Italy, Roumania, Bulgaria, Hungary and Finland, impose on the defeated States the duty to ensure the apprehension and surrender for trial not only of persons who are accused of having committed war crimes and crimes against peace and humanity, but also nationals of any allied or associated power accused of having violated their national law by treason or collaboration with the enemy during the war."

(Continue as from page 4, second paragraph - "The Human Rights ...")

Page 9, section XIV, (new section XVI) sub-section (4)

(4) Representatives of member governments on the Commission, and through them the Governments themselves, should be asked for their assistance in procuring for the Commission that part of the material which is not yet available, i.e. such relevant war crimes trials, reports and transcripts as have not yet been furnished to the Commission. Such requests will require to be clearly and succinctly defined and will relate only to such trials as are considered likely to be of special interest for the purpose of the proposed survey.

The penultimate paragraph of section V (new section VII) (page 5), second paragraph from the top, should be replaced by the following text;

"Committee III therefore recommends to the Commission that in the task to be undertaken at the request of the United Nations Secretariat there should be included in the first instance the examination of records and reports of trials of quislings and traitors who were accused of war crimes or crimes against humanity in addition to their other treasonable activities".

In section XIV (new section XVI) sub-paragraph 4 on page 9, the following sentence should be added after the word "humanity":

It is particularly necessary that a careful selection should be made of the material to be digested and that the report should not be overloaded with detail. The survey should cover only important cases illustrative of the present state of the law and relevant to its further development.

The words "member governments should be asked" down to "accessible" should be omitted.

The last paragraph of sub-para 4 of old section XIV (new Section XVI) and the whole of sub-para (5) of that section should be omitted.

CONFIDENTIAL.

A. 51.

July, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

WAR CRIMES TRIALS IN THE FAR EAST.

The following extract from a report concerning the trial of Major War Criminals before the International Military Tribunal at Tokyo has been communicated by the United Kingdom Commissioner, and is now circulated to heads of delegations.

THE TRIAL BEFORE THE I.M.T., TOKYO.

Japan's Constitution Day, 3rd May, 1947, marked the first anniversary of the commencement of the International War Crimes Trials. The prosecution case was concluded on 24th January; the defence case opened on 24th February; and on this date the end of the trials appeared to be still as far ahead as it was thought to be one year ago.

Progress during the month was slow. Continuing the China phase of the investigations, the defence maintained that an encroachment by Chinese armed forces on territory that had been demilitarised under the 1932 truce agreement had endangered the position of the International Settlement in Shanghai. A statement by Foreign Minister ARITA in December 1938 to the effect that the formation of a bloc between Manchuria, China and Japan was "an imperious necessity as a measure of self-defence against the Communist menace" was quoted as evidence that Japan's military operations in China during 1937 and 1938 were directed in the interest of economic and social stabilisation of the Far East. It was alleged by the defence that aid to Chiang Kai Shek from without had rendered the solution of the China Incident more difficult.

With reference to the prosecution evidence of the ruthless aerial attacks on Chinese and on Third Powers' shipping and special installations, the defence pointed out that there were only a few vague conventions concerning aerial warfare, which prohibited indiscriminate bombing of cities and non-military objectives, and that Japan had had to create its own rules. Strict instructions had been issued specifying the legitimate targets; rules were established for the search of ships, and Japanese soldiers were subject to stiff penalties for rape or other serious crimes of a military or moral nature. The introduction of testimony to this effect represented a partial victory for the defence after a spirited legal argument.

All defence counsel, both American and Japanese, were requested by Sir William Webb to be present at 9.30 a.m. on 3th May as he had an important announcement to make. On this occasion he rebuked the Defence Counsel for wasting the Court's time in repeatedly tendering "statements in the nature of propaganda", and mildly censured the attorneys as a group for failure to attend the trial regularly. He recalled that the Tribunal had many times ruled against the introduction of "propaganda". He earnestly invited the Counsel to study the decisions of the Tribunal on the evidence, with a view to saving material and time. The Japanese were expressing themselves at great length in their affidavits and there was a great shortage of both paper and ink. The Court agreed to a recess on the following day as the affidavits required for the next phase could not be made available owing to shortage of paper.

On ...

On 19th May the defence entered on the Russian phase of their testimony. Rejection by the Tribunal of affidavits intended to show the spread of Communism in China as a valid reason for Japan's signing the Anti-Comintern Pact with Germany led to a vigorous debate between the President, Sir William Webb, and one of the defence attorneys. Sir William Webb reiterated the Court's previous ruling that reference to documents cannot be accepted unless the documents in question are presented or their absence accounted for. The defence attorney complained of the delay in processing documents for production in Court owing to the necessity of furnishing the Press with copies. Sir William Webb refused to permit the curtailment of publicity regarding the trial, as it was the purpose of the Supreme Commander to give the trial the widest publicity.

Attempting to refute the charge of having planned aggression against Soviet Russia, the defence alleged that the Soviet military force in the Far East had been increasingly strengthened since the Manchurian incident, and that the border fighting in 1939 was started by the Soviets. Among the documents produced as evidence were excerpts from Mr. Litvinov's diary regarding his conversation with Shigemitsu on 7th August, 1938, in which the latter charged that the Soviet air force had bombed undefended areas on the Japanese side of the border, and excerpts from the 1924 treaty between China and the Soviet Union in which the USSR undertook to regard Outer Mongolia as an integral part of the Chinese Republic. However, a plan was produced in Court by the Soviet prosecutor with recommendations which one of the witnesses, Lieut.-General Kasahara, submitted to the Japanese General Staff in 1931, when he was military attaché at Moscow, urging immediate attack upon Russia.

On the 27th the Defence Counsel were ordered by the Tribunal to furnish to the prosecution copies of the affidavit testimony of witnesses 24 hours in advance of their appearance on the stand. All other documentary evidence has been under the 24-hour advance service rule since the trial opened, and by enabling the prosecution to make an advance study this should result in a saving of time; but the ruling was bitterly contested by the defence on the grounds that it destroyed the "surprise" element of defence testimony.

Sir William Webb called for an in-chambers hearing in the near future after the defence, submitting a motion for the production as witness of former Lieut.-General Kenji Tominaga, former War Vice-Minister, had again charged that the Russians were still holding prisoner Japanese army officers whose presence was required at the trial. Soviet prosecutor Ivanov, however, retorted that the defence had not made any attempt to comply with the Court's suggestion last autumn that interrogations be submitted rather than bring the prisoners to Tokyo.

Finally, on the 29th, after rejecting another defence attempt to introduce excerpts from Joseph Grew's book "My Ten Years in Japan", Sir William Webb requested the presence in the witness box of ex-ambassador Grew "if he is well enough to come here". If Mr. Grew was unable to make the trip, he would like to see him interrogated fully.

During the month of May the Court sat on the following dates:
1, 2, 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29.

UNITED NATIONS WAR CRIMES COMMISSION,

A, 52

Lansdowne House,
Berkeley Square,
London. W. 1.

August 1st, 1947.

Sir:

I have the honour to acknowledge receipt of your letter
No: 735-UN(WCC) dated 31 July 1937.

The position as outlined in paragraph 3 is correct and
confirms the statement made to your Excellency by Lord Wright at
an interview here on the 1st May, 1947.

The request of the Imperial Ethiopian Government to
present its case before the Commission will be laid before the
Commission at its next meeting in September.

As requested by you, your letter referred to above, is
being circulated to members.

I have the honour to be, Sir,

Your obedient servant,

Colonel.
Secretary General.

His Excellency,
The Minister,
Imperial Ethiopian Legation,
6, Princes Gate.
London. S.W. 7.

A. 52

August 1st, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

IMPERIAL ETHIOPIAN LEGATION,
6, Princes Gate,
London. S.W. 7.

No: 735-UN(WCC)

31st July, 1947.

Sir:

With reference to our previous conversations, I have the honour to confirm herewith our conversation of to-day, the 31st July, 1947, in the course of which I asked you if the discussion by the United Nations War Crimes Commission on the Ethiopian charges against crimes committed by the Italians during the war in Ethiopia was going to take place in the near future, whereupon you informed me that it had already taken place on March 26th last.

I stated that the Minutes of the meeting of the United Nations War Crimes Commission held on the 26th March show that the discussion on the Ethiopian charges was postponed until the next meeting.

In reply you told me that the position was that, at a previous meeting which took place on the 12th March, 1947, representatives of various governments, after discussing the Ethiopian case, felt that they should consult their governments before arriving at any final conclusion. The President, Lord Wright, thereupon proposed that the matter be postponed to the next meeting of the Commission so as to give time for the delegates to consult their governments. The Commission accordingly met on the 26th March and decided by vote that they could not assume jurisdiction on the case presented by the Imperial Ethiopian Government.

I then intimated to you that my Government wish to be heard by the Commission before the question can be disposed of. You therefore suggested that the Imperial Ethiopian Government present in writing their request to be heard, in order that it may be discussed at the next meeting of the Commission which is expected to take place in September next.

In order that the Imperial Ethiopian Government may be able to present their case at the September meeting dealing with the subject matter, I proposed that the request should now be made by letter and that you would circularise the letter to the Governments concerned, to which proposition you agreed.

I should appreciate it if you would confirm the foregoing résumé of our conversation of this morning.

I am, Sir,
Yours faithfully,

(Blatta) EPHRAIM TEWELEDE MEDHEN
Minister,

Colonel G. A. Ledingham,
Secretary General,
United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square,
London. W. 1.

CONFIDENTIAL.

A. 53.

August 12th 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

WAR CRIMES TRIALS IN THE FAR EAST.

The following extract from a report concerning the trial of the Major War Criminals before the International Military Tribunal at Tokyo has been communicated by the United Kingdom Commissioner, and is now circulated to heads of delegations.

THE TRIAL BEFORE THE I.M.T., TOKYO.

It was mentioned in the preceding report (see Document A.51, July 1947) that the statement of the defence case in the major war crimes trials had reached the Russian phase. Continuing the evidence for the defence in this phase at the beginning of June, Lt. General Tanaka, Chief of the General Staff operations section in 1941, stated that the calling up of reserves in July 1941 was for defence purposes only, though he admitted that the decision of the Imperial conference to make preparations for war with Britain and the United States as well as against the Soviet Union was already known. Introduction by the defence of Japanese general staff estimates on the strength of the Soviet armed forces in the Far East brought a protest from the Russian associate prosecutor, who said he would supply such data if it were required. His objection was over-ruled. The Tribunal also admitted into evidence, but only after a three-hour debate, the affidavit of an American major-general who testified to Russia's preparations for war against Japan from 1943 onwards. The Japanese defence also introduced an American State Department document showing a tremendous increase in Soviet army and navy expenditure in 1938.

The general answer to the Russian accusations has been that Japan, throughout the China incident and during the protracted border troubles along the Manchurian frontier, was motivated by fear of the Soviet 'menace' on the border. Although the Tribunal rejected scores of documents offered for the purpose of showing the basis for this 'fear', it did admit other documents to prove the strength of Soviet forces in the Far East. The most intense argument provoked during the Russian cross-examination of defence witnesses revolved around the uncertainties of the Manchurian boundary, which each accused the other of violating.

Evidence on the tripartite pact between Germany, Italy and Japan opened the Pacific war phase on 12th June, 1947. The defence announced that they would set out to show that there had been little or no cooperation between the Japanese Government and the German Government, whose 'bad faith' had constantly angered and shocked the Japanese (for example, in concluding the non-aggression pact with Russia without communicating their intention to the Japanese Government). Germany had wanted Japan to go to war against Soviet Russia when the German Army was outside Moscow. She did not want a Japanese-American war and Japan had acted independently in going to war with the U.S. Prince Konoye's memoirs were quoted as evidence that the Japanese Government had concluded the tripartite pact for defensive purposes.

After months of protests by the defence counsel that the Russians were failing to comply with the subpoena issued last autumn by the Tribunal

to

to bring to Tokyo for cross-examination the Japanese captured when the Soviet Army overran Manchuria in August 1945, the Tribunal, on 17th June, ordered the Russians to produce within two months "or such longer period as may on the cause shown be approved" for cross-examination five former Japanese generals whom they were holding as war prisoners; if they failed to do so their evidence on affidavits would be struck out in the trial records. The affidavits of these Japanese war prisoners were introduced last autumn by the Russian prosecution section during the evidence about the border incidents of 1938-39 and the alleged plans of the Kwantung Army for attacks against the Soviet Union.

Two affidavits in favour of defendant Oshima, formerly military attache and later ambassador in Berlin, were admitted as evidence by the Tribunal. The first, by Heinrich Stahmer, formerly German ambassador in Tokyo, stated that Oshima was 'in complete retirement' during the negotiations for the Tripartite Pact and that he took no part in the discussions. It described Matsuoka as the leader of the Japanese interested in making the alliance with the Nazis. Oshima seemed to have taken little personal interest and merely to have conveyed messages from Tokyo to the German Foreign Office. The second affidavit, by von Ribbentrop, also cleared Oshima of taking any prominent part in the negotiations.

On 19th June, 1947, the Tribunal adjourned until 4th August. The defence had applied for a six-week recess on the ground that time was needed for preparing the rest of the defendants' case; this was granted after the Tribunal had been assured by the defence that such a recess was absolutely necessary to enable them to complete their case.

During the month of June the Court sat on the following days: 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, and 19.

A. 54
August 18, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

The following letter which has been received from the United States Representative on the Commission is circulated to members for their information.

The Commissioner for the United States of America
on the
United Nations War Crimes Commission,
27, Aldford House,
Park Lane. W. 1.

London, August 15, 1947.

Dear Lord Wright:

I have been requested by the U. S. War Crimes Group authorities to extend to all members of the United Nations War Crimes Commission an invitation to be present during a portion of the trial in the Dora-Nordhausen Concentration Camp Case commencing on 31 July, 1947, before a General Military Government Court at Dachau, Germany.

This case is considered to be of international importance because of the fact that the inmates and victims of the Nordhausen Concentration Camp included nationals of most of the United Nations. Twenty two accused are charged with having participated pursuant to a common design in mass camp atrocities.

Facilities for messing and quarters for members of the Commission not exceeding eight in number at any one time will be available. It is necessary that the authorities at Dachau have at least three days notice of the expected arrival of any member of the Commission. I should be pleased to notify the U. S. War Crimes Group of the desire of any member of the Commission to attend this trial, and should appreciate your inviting the attention of the members of the Commission to this invitation.

Sincerely yours,

Sgd. Robert H. Springer,
Colonel, USA,
United States Commissioner
United Nations War Crimes Commission.

The Rt. Hon. Lord Wright,
Chairman, United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square.
London. W. 1.

A. 55

August 20, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

The following letter which has been received from the Imperial Ethiopian Legation is circulated to members for their information (See also Document A.52 dated 1st August 1947).

Imperial Ethiopian Legation,
6, Prince's Gate,
London. S.W. 7.

Ref: No: 750-W(5)

12th August, 1947.

My Lord:

In accordance with instructions received from my Government, I have the honour to transmit to Your Lordship the following communication:

"The Imperial Ethiopian Government has the honour to request the United Nations War Crimes Commission to allow it to present through its representatives at the next meeting of the Commission in September, 1947, convened for examining the jurisdiction of the Commission on War Crimes and Crimes Against Humanity committed by the Italians during the war, its views on the question in so far as that concerns hostilities and crimes committed by Italians in Ethiopia.

"In presenting this request, the Imperial Ethiopian Government refers to Articles 38 and 45 of the Peace Treaty with Italy and to the following facts. The Ethiopian state has the position of an ally and associated power. Ethiopia has adhered to the London Agreement of 1945 and to the Charter of the International Military Tribunal. The United Nations War Crimes Commission has already made a record of Japanese war criminals with respect to crimes committed before 1939.

"Knowing that the Commission is on the point of terminating its activity, the Imperial Ethiopian Government desires to inform the Commission that the cases in course of completion are directed against only a few of the chief Italian criminals. Their number does not exceed ten."

I avail myself of this opportunity to express to Your Lordship the assurance of my highest consideration.

(Blatta) EPHREM TEWELDE MEDHEN
Minister.

The Rt. Hon. the Lord Wright of Durley,
Chairman,
United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square,
London. W. 1.

A. 56.

14th October 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

The following letter has been received by Lord Wright from Erik Leijonhufvud, Advocate General of the Imperial Ethiopian Government, and is circulated to members of the Commission for their information (See also Docs. A. 52 and A. 55, dated 1st and 20th August, 1947).

KEJSERLIGA ETIOPISKA LEGATIONEN
STOCKHOLM.

Stockholm, 8th October 1947.

My Lord,

I have been informed of the contents of the letter dated the 25th September in which the Secretary General of the United Nations War Crimes Commission informs the Ethiopian Minister in London that the Commission has deferred a final decision as regards jurisdiction over war crimes committed in Ethiopia until the Members have had an opportunity of considering the matter further and if necessary consulting their Governments.

Gathering from this that the Members of the Commission may feel a need for information additional to that which was given by me at the Meeting of the Commission, I have the honour to submit the following note, and I most respectfully request Your Lordship to let it be forwarded as soon as possible to the different Members of the Commission.

As far as I have been able to ascertain, Ethiopia was not invited to participate in the Conference at which the Commission was created; but it appears from the file on War Crimes at the Imperial Ethiopian Legation in London, that the Commission was approached by the Legation as early as July 1945 (by a letter - No. 932 - dated the 26th July, acknowledged by the Secretary General in his letter dated July 28th 1945).

The difference between the Italian invasion and occupation of Ethiopia, and the Axis Powers' aggressive wars and subsequent occupation of other countries, is very small. The League of Nations was not prepared in 1935 and 1936 to bring the victim of Fascist aggression any effective help in spite of the obligations of members, and most countries even recognized its so-called annexation. That, it is true, is a difference; but as I said, the Emperor never surrendered his sovereignty, and the patriots never ceased fighting. There was a continuity in all the happenings after the 3rd October 1935, when the Italians crossed the borders of Ethiopia. First an aggression, then an occupation, during which an active resistance movement was maintained, as is confirmed by many Italian documents which have been seized, and then the liberation, in which Ethiopian forces took part under the leadership of the Emperor. It is submitted that a "subjugation" resulting from the crime of aggressive war can give no rights to the aggressor; but should

any person feel disinclined to consider as war crimes the Italian atrocities committed in Ethiopia after the capture of Addis Ababa in May 1936, they are in any case to be regarded as crimes against humanity.

I beg to refer again to the Peace Treaty with Italy and its stipulations as regards the commencing date and the surrender of criminals. The Peace Treaty is the formal basis for the Ethiopian Government's request to use the machinery which the United Nations have set up for investigating evidence and listing war criminals.

As to the Court to be established for the trial of the major Italian war criminals - only ten are to be charged - I mentioned that it should be a kind of International Court, including foreign (and perhaps neutral) Judges. Ethiopia has adhered to the Charter of the International Military Tribunal, expecting such a Court to be set up for the trial also of the major Italian war criminals. Article 5 of the Charter providing for the setting up of other Tribunals seems at present not to be suited to the purpose. The idea of Quasi-international Courts, adjudicating upon war crimes, has been developed by Professor Lauterpacht in his article upon the "Law of Nations and the Punishment of War Crimes" in the British Year Book of International Law, 1944. I would mention that foreign Judges have been since 1942 employed by the Ethiopian Government as Judges of the High Court of Ethiopia, of which the President is a British Judge. In this special case the Government will compose the Court with a majority of foreign Judges.

As regards the law to be applied and the procedure to be followed by the Court to be established in Ethiopia the intention is to draft rules which follow the rules drafted for the Nuremberg Tribunal. This would also be consistent with Ethiopia's adhesion to the Charter of that Tribunal.

I have the honour to be
Your Lordships most obedient Servant,

(Sgd) Erik Leijonhufvud.)

Advocate General of the Imperial Ethiopian
Government.

The Right Hon. Lord Wright,
President of the United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square,
London,
W.I.

22nd October, 1947

UNITED NATIONS WAR CRIMES COMMISSION

WAR CRIMES COMMITTED IN ALBANIA

^{from}
(Communication of the Albanian Ministry for Foreign Affairs)

(Note by Dr. J. Litawski)

The following communication received by Lord Wright, the Chairman, from the Albanian Ministry for Foreign Affairs is circulated to Members of the Commission for their information and consideration at the next meeting of the Commission.

^{from}
The two previous communications of Albania mentioned in the present letter are attached for convenience of members in the Annex under I and II.

As regards the first communication of 23 February, 1945, the question was considered by the Commission in its meeting of 16 May, 1945, when it was decided to confine the Commission's action simply to a formal and courteous acknowledgment of the letter. This decision was based on the fact that some of the member Governments had not then recognised the Democratic Government of Albania, while others were still at war with Albania, whereas the latter had never declared war on Italy.

The second communication of 22 June, 1945, was considered by Committee I in its meeting of 9th January, 1946, when it was decided that in view of Albania not being a member of the United Nations, the Secretary-General should simply acknowledge the letter and inform the Albanian Commission that General Dalmazzo is wanted also by Yugoslavia.

To the present communication of the Albanian Ministry for Foreign Affairs dated 25 September, 1947, three lists of alleged war criminals have been attached, which contain 63 names of Germans; 105 of Italians; and 170 of Albanians, together with some personal data and brief statements of the alleged facts.

Letter of 25th September, 1947

Translation

REPUBLIQUE POPULAIRE D'ALBANIE
MINISTERE DES AFFAIRES ETRANGERES

25 September, 1947

No. B.IV. 460/20

Dear Mr. Chairman,

I wish to remind you that on two occasions, on 23 February and 22 June, 1945, the Central Albanian Commission for the Punishment of War Crimes, addressed itself to the United Nations War Crimes Commission in London to ask, in the name of the people of Albania, that a certain number of Albanian and Italian war criminals, guilty of having committed crimes in Albania during the second world war, should be handed over. Meanwhile, to date, not only have none of the war criminals asked for been surrendered to the Albanian authorities, but an answer on this subject has not even been given to the Central Albanian Commission for the Punishment of War Crimes.

Albania has the same right as any other country which took an active part on the side of the Allies in the war against Fascism, and which suffered grave losses in material goods and human lives, to demand the surrender of war criminals, by virtue of the Declaration of Moscow of October, 1943, and the Resolution of 13 February, 1946, of the General Assembly of the United Nations. The German, Italian and Albanian war criminals claimed by the Albanian Government are all in the hands of the Governments of the United States of America and Great Britain in their zones of occupation in Austria, Germany, Italy and Greece. The People's Republican Government of Albania considers it is the duty of the United Nations War Crimes Commission, as well as of the Governments of the United States and Great Britain who signed the above-mentioned Declarations, to hand over these criminals to the Albanian authorities as soon as possible.

For this reason, Mr. Chairman, the Albanian Government once more addresses itself to the United Nations War Crimes Commission, and presents herewith three lists of German, Italian and Albanian war criminals who committed crimes in Albania during the second world war. It requests that the United Nations War Crimes Commission take the necessary steps to ensure that these war criminals and quislings are handed over without delay to the Albanian authorities. These lists are more complete than those previously submitted by the Central Albanian Commission for the Punishment of War Crimes. They can be further supplemented in the future, as each day new crimes are discovered and fresh information is received concerning these brutes who for six years perpetrated the most terrible atrocities and most monstrous crimes against the people of Albania.

The People's Republican Government of Albania, Mr. Chairman, requests instantly the surrender of the war criminals who feature on the attached list, and likes to think that the United Nations War Crimes Commission will act in an energetic and rapid manner in granting the people of Albania legitimate satisfaction in this matter.

Please receive, Mr. Chairman, assurances of my highest esteem.

(Sgd.) Hysni Kapo
Assistant Minister for Foreign Affairs

A N N E X

I. Letter of 23rd February, 1945

Translation

DEMOCRATIC GOVERNMENT OF ALBANIA

The Central Investigation Commission
of Crimes, War Criminals and Enemies
of the People

No. 151

Death to Fascism -
Freedom for the People

TIRANA, February 23, 1945

The Albanian Central Investigation Commission of Crimes, War Criminals and Enemies of the People, expressing the will of the whole Albanian people, who, loyal to the great Alliance of the Anti-Fascist block, has fought and is still fighting against the common enemy, the Nazi Germany, fully relying on the high principles of Justice which have inspired this war, has the honour to request for trial the following persons:

1) FRANCESCO JACOMONI, former Lieutenant General of the King of Italy in Albania; 2) SALVATORE MELLONI, ex-Secretary General of the Italian Representation (Luogotenenza) in Albania; 3) General Crispino Agostinucci, former chief of the Italian police in Tirana. These three men are the most responsible for the miseries suffered by the Albanian people during the time of the Fascist occupation of our country.

Some of these war criminals are being tried at present before an Italian court in Rome, which is opposed to the principles of the Atlantic Charter and the decisions made by the Teheran and Moscow Conferences, where it was decided that "war criminals must be tried in the places they committed the crimes". Apart from this point, for a better investigation and well-conducted trials it is necessary that the aforesaid war criminals must be present before the Courts of the Albanian People.

The criminal acts of the three persons above named are as follows:

1) FRANCESCO JACOMONI, before our country was invaded by military force, as Envoy Extraordinary and Plenipotentiary of the Italian Fascist Government to Albania, went quite beyond his diplomatic mission in interfering in the affairs of our country: he prepared the grounds for the invasion of the country first by a series of political and financial agreements, then by the penetration of the Italian instructors into all the ranks of the Albanian army, as well as into the Albanian youth organisations wherein they spread the Fascist propaganda; by bribery through some Albanian traitors they spread the Fascist propaganda among the people.

After April 7, 1939, Jacomoni, as Lieutenant General of the King of Italy in Albania, organized thoroughly the Fascist machine in our country, incorporating the Quisling Albanian armed forces into the Italian forces, created a Fascist police force and formed Quisling governments to press the Albanian people in war against our neighbour States, Greece and Yugoslavia and the great Allied Powers (France, Great Britain, the United States and Russia), declaring war upon them. Jacomoni ordered a reign of terror on Albania in order to crush the resistance of the people. He ordered many military operations on large scale against the Albanian National Liberation Army and the Albanian people as a whole who were helping the army of liberation. Moreover, Jacomoni ordered the burning, plundering and destruction of the entire Albanian provinces as far as the forces of resistance had extended their activities. He, Francesco Jacomoni, ordered imprisonment and confinement in the concentration camps, in and out of the country, en masse of Albanian population. He ordered people in large numbers to be tortured, hung, killed. As a result of his orders, many persons have mysteriously disappeared. Jacomoni gathered around him a group of corrupted persons, Italians and Albanians, and together with them he suppressed and exploited the economic life of the Albanian people. He instilled corruption into the apparatus of the State. Jacomoni inspired and promulgated Fascist laws for the Albanian people. He initiated and financed the organization of the traitors of the Balli Kombetar (National Front). He has had an active part in every abused Fascist commercial and industrial agreement. Francesco Jacomoni has robbed and at the expense of the Albanian people has accumulated an immense fortune. He has used every method to divide the Albanians from one another and therefore has caused fratricides among them.

2) SALVATORE MELLONI. This man has been the right arm of Francesco Jacomoni and was his closest collaborator in their criminal activities in Albania. Salvatore Melloni has inspired and intentionally ordered the hanging, murdering and mysterious disappearance of people; imprisonment and confinement of a number of persons in concentration camps; burning, plundering and destruction of Albanian towns and villages. He was one of the principal collaborators of the Italian secret service organization (the Servizio Informativo Militare Italiana). Melloni organized a net of civil espionage systems in Albania. He has caused the starvation of the Albanian people. Salvatore Melloni has become fabulously wealthy at the expense of the Albanian people.

3) GENERAL CRISPINO AGOSTINUCCI. Before the Fascist Italian aggression took place in Albania, this man, Crispino Agostinucci, was serving as an instructor general to a boys' organization, and in the meanwhile, masquerading his real plans under the cloak of his civil instructorship, he prepared, in close collaboration with the Italian diplomatic representative in Tirana, the Fascist invasion of Albania. Agostinucci organized the fifth column in Albania, and therefore he sabotaged the resistance of the Albanian people against the Fascist aggression. During the Italian occupation of the country, General Crispino Agostinucci was the organizer of the Italian police force (the Carabinieri). In order to suppress much more ruthlessly the resistance of the Albanian people, Agostinucci incorporated into the Fascist police the Quisling gendarmes and led them into open warfare against the National Liberation Army of the people. He organized and commanded a secret terror organization. He organized also the

secret information service in Albania. Burning, plundering, destruction, tortures, confinement and murders of numerous Albanian people have been criminally committed by General Crispino Agostinucci. He ordered the arrests and confinement of numerous innocent people with the intention of extracting large sums of money from them by using various criminal methods. Crispino Agostinucci also accumulated a large fortune at the expense of the Albanian people.

The Albanian Central Investigation Commission of Crimes, War Criminals and Enemies of the People is fully convinced that this demand of the Albanian people, the first victim of the Fascist aggression, will be taken into consideration, thus giving them the satisfaction they deserve.

For the Central Commission

Chairman

(Sgd.) Manol Konomi
Minister of Justice

It is hereby certified that this is a true translation of the original Albanian text attached herewith

(Sgd.) Kadri Hoxha
Lt. Col.

Head
ANLA MILITARY MISSION

.....

II. Letter of 22nd June, 1945

Translation

Tirana 22-6-45

DEMOCRATIC GOVERNMENT OF ALBANIA

Presidenza del Consiglio (Cabinet ?)

CENTRAL COMMISSION FOR THE PUNISHMENT OF WAR CRIMINALS

TO THE INTERNATIONAL WAR CRIMINALS COMMISSION
LONDON

Owing to the victory of the Allies over Nazi Germany the terrorist fascist apparatus in Europe collapses together with all consequences: one after another its members are falling into the hands of the liberating Allied Forces. The nations which have been victims of this terror learn with joy that the perpetrators of their miseries are being seized and brought before the courts of justice to answer for their crimes in those places where they carried out their misdeeds. The Albanians, who were the first victims of fascist aggression and carried on a sanguinary war with great sacrifices in order to sustain the anti-fascist block, have learned the right to ask that Albanian or alien criminals who organized and inspired the reign of terror so that she should be prevented from contributing her share to her own war of liberation, shall be handed over directly to her. General Dalmazzo, ex-Commander in Chief of the Italian Fascist Troops in Albania, has been arrested in Italy by the Italian authorities. General Dalmazzo, faithful executor of fascist methods, in the Spring of 1943, ordered an action in great style against the national liberating forces in central of southern Albania. As a result of this action, wholesale massacres were carried out and entire villages and hamlets were burned to the ground especially in the neighbourhood of Malakstra (Berat).

During this period, agreements were made with the traitorous organisation of the "National Front", represented by the war criminal Ali Kelcyra, agreements known under the name of "Protocollo Dalmazzo - Kelcyra". According to this agreement the Italian Command promised to give all possible help to this organisation and to its armed forces. In this way the use of all roads of communication were assured for the Italian troops against any attack on the part of the National Forces of Liberation. According to the above mentioned agreement, the fascist occupation forces helped by the traitorous "National Front" under the command of General Dalmazzo, organised throughout Albania a net work of spying and terrorism. After the arrival of General Dalmazzo in Albania terrorism increased evermore. He it was who started Concentration Camps in Albania (Porto Romano, Kavaje, Burrel), where innocent Albanian men, women and children were kept. In these concentration camps the regime of hunger and every other sort of torture ruled supreme.

General Dalmazzo ordered the wholesale internment of families in concentration camps in Italy ... In order to suppress any resistance on the part of the Albanian people, General Dalmazzo ordered the execution of persons chosen amongst the population or in the jails

and concentration camps, as a reprisal for any action taken by the National Liberation Forces against the forces of occupation. Everyone knows of the execution of the heroine Margherita TUPULANI together with her brother and four youths from Valona after Maresciallo Lombardi had been killed; the execution of nine youths taken from the Porto-Romano concentration camps; other similar executions at Ravaje and at Tepelene. These are the criminal acts ordered directly by General Dalmazzo himself.

With horror the population in the neighbourhood of Valona remembers the winter of 1943, when the mercenary dibrani, commanded by the famous criminals Halil Alija and Selim Kaloshi, went there by order of General Dalmazzo to carry out lootings and unmentionable tortures. After the capitulation of Fascist Italy, Gen. Dalmazzo, disobeying the orders of the Badoglio Government as well as those of the National Forces of Liberation, together with General Azzi, commander of the Florence Division, prevented the conjunction of the Italian Forces with the liberating ones on the spot and instead joined up with the German forces.

The slaughters, the destruction of Albanian villages and the organization of all the terrorist apparatus, figure as the crimes committed by General Dalmazzo. The Central Commission for the inquiry into the crimes committed by war criminals, faithful interpreter of the wishes of the Albanian people, begs with insistence for the rapid judgment of war criminals by its own Tribunals, according to the decisions taken by the Allies, and demands that the war criminal General Dalmazzo be handed over so that he may be judged by the Tribunal of the Albanian people.

For the Central Commission,

The President

MANOL KONOMI

UNITED NATIONS WAR CRIMES COMMISSION

The following letter has been received by the Secretary-General from the Minister, Imperial Ethiopian Legation, London, and is circulated to members of the Commission for their information.

IMPERIAL ETHIOPIAN LEGATION,
6, Prince's Gate,
London. S.W. 7.

28th October, 1947.

The Secretary-General,
United Nations War Crimes Commission,
Lansdowne House,
Berkeley Sq.
London. W.1.

Sir:

I have been informed that a Meeting of the United Nations War Crimes Commission will be held this week and will consider the application of the Ethiopian Government to the Commission with regard to jurisdiction over war crimes committed by Italians in Ethiopia. I have just received from the Ethiopian Government further particulars of the war crimes and the names of the Italian military officers and officials who are charged with these crimes. I beg to submit a summary of the information and would ask you to bring it to the notice of the President and members of the Commission at the sitting.

I am, Sir, your obedient servant,

(Blatta) EPHREM TEWELDE MEDHEN
Minister.

SUMMARY OF SUPPLEMENTARY INFORMATION ABOUT WAR CRIMES COMMITTED BY THE ITALIANS.

The information refers to the following specific charges:-

1. Order to use poison gas and burning of hospitals and ambulances causing numerous deaths between October 1935 and March 1936.
2. Order for the bombardment of open towns, between the same dates.
3. Order to destroy churches.
4. Systematic terrorism of the civilian population ending in the notorious outrages which were approved by Graziani in 1937 and caused the death of 3,000 persons.
5. The burning of villages and massacre of the inhabitants, including women and children, as reprisals.
6. The murder of prisoners of war and hostages.

7. The deportation for forced labour of the civil population of the occupied territory.

Names of the Italians charged with these crimes:-

GRAZIANI
BADOGLIO
LESSONA
NASI
GELOSI
MALETTI
LORENZZINI
GALLINA
PIRZIOROLI
PINNA

23th October, 1947.

URGENT

UNITED NATIONS WAR CRIMES COMMISSION

A. 59

Ps/W Division,
Foreign Office,
German Section.
London.

Subject: Repatriation of prisoners of war from
the United Kingdom who are at present
"frozen" as suspect war criminals.

1. The date-line for clearing up the question of Germans held as suspect war criminals was originally set at 1st October, 1947.
2. In so far as that decision affects prisoners of war it applies to men "frozen" because their names appeared on the CROWCASS Registers or on UNWCC lists.
3. Members of the UNWCC were notified by H.Q. in London at the end of September that final lists were required by 1st November 1947 of men wanted as war criminals who were still P/W in the U.K. Unfortunately, the lists of names have not been submitted.
4. The P/W in question have been debarred from repatriation hitherto because of the possibility of a later charge against them, but there has never been sufficient evidence available either of the charge or of the individuals to establish with certainty that the men being held were, in fact, the individuals required.

Moreover, the men concerned are held by the U.K. primarily as prisoners of war and are entitled to be treated as such.

In Germany men whose names appeared on the CROWCASS Registers or on other "wanted" lists but who were not finally claimed by October 1st, 1947, were automatically considered releasable without, however, prejudice to any later charge which might be brought against them.

The repatriation of prisoners of war is rapidly drawing to a close and it is urgent to find a solution to the problem of "frozen" P/W.
5. In view of the above considerations it is proposed to release forthwith for normal repatriation all P/W on CROWCASS or other "wanted" lists for whom a specific claim had not been submitted by 1st November, 1947. In respect of men on the UNWCC lists it is proposed to release these men for repatriation to Germany unless arrangements are made by the country making the charge to claim the individual by 30th November, 1947.
6. Nominal rolls in respect of the P/W released under the above arrangement will be sent to the Discharge Centre in Germany, so that any of the men may be rearrested before final release if necessary.

After final release the P/W concerned, if wanted, will have to be claimed through UNWCC by the usual procedure operative in Germany.
7. It is proposed to put the above plan into operation unless objections are received by November 15th, 1947.

dictated by
Lieut. Col. H. Faulk.

Ref: POW. 1/F/3225
4th November, 1947.

November 24, 1947.

UNITED NATIONS WAR CRIMES COMMISSIONEXTRADITION OF WAR CRIMINALS FROM THE BRITISH ZONE.

At the Commission's meeting on the 24th September, 1947, a question was raised in regard to the extradition from the British Zone in Germany of war criminals wanted by Governments of the United Nations. The impression having been conveyed to some of my colleagues that a change was being made in the arrangements hitherto governing the surrender of war criminals, I undertook to make inquiry and to report to the Commission as soon as the matter had been investigated.

I am now in a position to state that there has been no change in the policy of the United Kingdom Government of accepting listing by the United Nations War Crimes Commission as normally constituting a prima facie case, subject to their right to make further investigations in any particular case where that appears to be desirable.

The Commander-in-Chief in the British Zone states that it is certainly not his intention to minimise the value of listing by this Commission and his practice in general has been to accept such listing as constituting evidence of a prima facie case. He must, however, reserve to himself the right to make any further investigations in any particular case and the Heads of Allied Missions in Germany have been informed that this is the procedure adopted. This practice should not normally result in duplication of work by the United Nations War Crimes Commission and the Legal Division of the Control Commission.

It is possible that the letters from the Zonal Executive Offices, Bad Salzungen, to the Heads of Military Missions, dated July 17th and September 9th, 1947, may, through the use of the word "evidence", have given an incorrect impression of the procedure intended. I understand that a further letter is being addressed to the Heads of Allied Missions making it clear that the Commander-in-Chief regards listing by the United Nations War Crimes Commission as in itself "evidence" - though not necessarily conclusive evidence - that a prima facie case exists for extradition.

I hope that my colleagues will agree that the procedure as described above as entirely satisfactory.

I have further suggested to my Government that the Control Commission should communicate to the United Nations War Crimes Commission a copy or summary of any new evidence against any person whose name had been placed upon the Commission's lists, in order that the matter may then be reviewed by Committee I. The United Kingdom Government fully concur in this proposal and the Control Commission in Germany is being invited to act accordingly.

(Signed) R. L. Craigie.

UNITED NATIONS WAR CRIMES COMMISSION

A. 61.

December 16, 1947.

Polish Embassy,
47, Portland Place,
London. W.1.

Ref: 3187/47.

December 9, 1947.

My dear Lord Wright:

One of the items on the agenda of the meeting of the Commission held on 24th September, 1947, was "The extradition of war criminals from the American and British Zones".

At the meeting the matter was adjourned on the request of the Belgian and Netherlands Commissioners in view of the fact that it was still being investigated by the authorities.

Up to date there has been no important change in the situation referred to in Document Misc. 108 and, since the 1st of November, the War Crimes Group in the American Zone of Germany no longer accepts extradition requests even concerning alleged war criminals listed by Committee I. In consequence, the procedure so imposed nullifies the work of the Commission as regards its value in the province of extradition from the American Zone.

Therefore, in requesting the Secretary General, in my letter No. 3091/47 of 18th November, to bring this matter before the Commission as soon as possible, I expressed the hope that we may attempt to find a way of remedying the very unsatisfactory situation. The whole question was raised at the meeting of Committee I held on 3rd December, when I took the opportunity to emphasize that the explanation of Sir Robert Craigie, given in Document A.60, dated 24th November, 1947, showed an essential improvement regarding the British Zone. The difficulties remaining there, which in practice still affect the extradition of war criminals, are of a less important character and may soon be cleared up as a result of Sir Robert's intervention.

I am sure that, if the Commission would undertake similar steps in connection with the American Zone, passing its opinion to the appropriate authorities there, a satisfactory solution could be reached. That is the reason why I am asking you to bring this matter before the Commission, inasmuch as Colonel Ledingham informed me at the last meeting of Committee I that it would be desirable to approach you personally, also because so far no meeting of the Commission has yet been called as a result of my request made some three weeks ago.

In approaching the Commission regarding this question, I took also into consideration its most important function - formerly delegated to Committee II - to prepare recommendations as to measures of enforcement considered necessary or advisable in order to render effective the prosecution of offenders.

And this is really the primary duty of the Commission - not only to prepare recommendations but to undertake all the necessary steps in order to ensure that such recommendations are carried out. There can be no justification for the work or even the existence of the Commission if the prosecution of war criminals should remain ineffective. Such measures are particularly the duty of the Commission, as already before and since its establishment many authoritative international conferences and agencies have repeatedly urged the apprehension, extradition and

punishment of war criminals, traitors and quislings.

In this connection, one could cite not only the Moscow Declaration and the London Agreement, but also a number of decisions made at the Yalta, Teheran and Potsdam conferences, by the Council of Foreign Ministers, the Allied Control Council in Germany, especially the resolutions of the General Assembly of the United Nations Organisation on 13th February, 1946 and last October, Law No. 10 of the Allied Control Council for Germany, the relevant provisions of the peace treaties with the ex-satellite states, and several resolutions and recommendations of the United Nations War Crimes Commission.

It follows from all these decisions that the extradition of war criminals constitutes a duty which cannot be unilaterally altered, since it is based on obligations still in force, imposed by international agreements.

In the light of this, the refusal to extradite war criminals listed by the Commission or a complete release of these war criminals after a certain date, coupled with refusal to accept further extradition requests - as is mentioned in Document Misc. 108 - should be considered as a grave violation of international obligations, and it is the duty of the Commission to protest against any such prescriptions which produce a situation nullifying its whole work.

After all, the refusal to extradite persons listed by the Commission cannot be justified by arguments that the alleged criminals' guilt has not been proved.

The authority of the Commission is recognised by all those governments whose representatives take part in the Committees, and it should be remembered that, in the words of the Lord Chancellor who presided at the inaugural meeting when the Commission was established on 20th October, 1943, the primary purpose of the Commission should be to "investigate and record the evidence of war crimes, identifying where possible the individuals responsible".

In fulfilling its original task of preparatory investigation and recording the Commission has, since its establishment, examined cases involving suspects and accused persons, and has produced lists of war criminals containing the names of persons against whom a *prima facie* case of the commission of war crimes has been established.

Before the name of a person is placed on the Commission's list there has always been a thorough examination of the material submitted, particularly documents of municipal, military or police authorities and depositions of witnesses.

In examining the charges submitted by the national offices Committee I - recently under the co-chairmanship of the British and American commissioners - decides whether there is a case justifying the arrest and handing over for trial of the persons charged, and accepts only cases in which there appears to be either *prima facie* evidence that a war crime has been committed, sufficient to justify the apprehension and prosecution of the individual accused, or else sufficient grounds to consider the wanted person as a suspect or material witness.

The Control Council Law No. 10 eventually regulated the question of handing over of persons accused of war crimes in its Article IV, on the following lines: "When any person in a zone in Germany is alleged to have committed a crime, as defined in Article II/ crimes against peace, war crimes and crimes against humanity, membership in categories of a group or organisation declared criminal by the International Military Tribunal in a country other than Germany or in another zone, the government of that nation or the commander of the latter zone, as the case may be, may request the commander of the zone in which the person is located for his arrest and delivery for trial to the country or zone in which the crime was committed. Such request for delivery shall be granted by the commander receiving it, unless he believes such person is wanted for trial or as a witness by the International Military Tribunal, or in Germany, or by a nation other than the

one making the request, or the commander is not satisfied that delivery should be made, in any of which cases he shall have the right to forward the said request to the Legal Directorate of the Allied Control Authority."

The listing of wanted persons by the Commission is relevant under this procedure. As a wide discretion is granted to the zone commander to "satisfy himself" whether or not delivery should be made, the fact that a person is on the Commission's lists is evidence of a prima facie case having been made out against him, and disregard of the Commission's decision cannot, therefore, be considered as legally justified.

But, as I mentioned in my note No. 2443/47 of 23rd June, 1947, to the Chairman of Committee I, the commanding officer of the Headquarters of the American 7708 War Crimes Group in Germany, European Command, APO 178, was instructed to state in his letter of 29th May, 1947, to the Commanding Officer of the Polish Liaison Detachment there, that even as to the "category" of war criminals registered with the United Nations War Crimes Commission "evidence affording reasonable support to the charge should be furnished." However, after once more furnishing all the necessary evidence and repeatedly establishing a prima facie case against alleged war criminals, the Polish War Crimes Mission could not obtain a favourable decision to our extradition requests in several cases.

Let me quote, for instance, the cases of Joseph Muehlmann, listed with the UNWCC No. 10/580, Wilhelm Fischer, No. 56/197 and Mikola Terlecki, No. 56/868, the requests for whose extradition have been ignored for several months, also the case of Worobkiewicz charge No. 7048/P/G/1269 who, it has been recently decided, will be released from the Dachau camp although he is wanted for trial in connection with the murder of hundreds of innocent people in Czortków.

The refusal to extradite Muehlmann was justified by the Headquarters of the USA Forces in Austria in the letter No. AG.000.5/ACA/L, dated 17th July, 1947, addressed to the Polish War Crimes Mission, on the grounds that "it is the opinion of this Headquarters that looting and plunder of cultural and art treasures does not constitute a war crime". It must be emphasized that such criminal activities should be considered as war crimes on the basis of the working list of the Commission /pillage, - item xiii, confiscation of property - item xiv, wanton destruction of religious, charitable, educational and historic buildings and monuments - item xx/, as a result of the decisions taken by the International Military Tribunal and even on the basis of American trials of different war criminals tried in Nuremberg and Dachau. The refusal to extradite and, in consequence, to punish Muehlmann - who was responsible for the looting and plundering of the Royal Castle in Warsaw and against whom a prima facie case of committing a war crime was established by the Commission - must be considered as a grave injustice. The reason for no decision being reached up to date regarding extradition in the cases of Fischer and Terlecki and the decision to release the alleged mass-murder Worobkiewicz are justified /according to information received by officers of the Polish War Crimes Mission in the Legal Division, office of Military Government for Germany/US/in Berlin/ by the fact that the material submitted against them "was based mainly on evidence of displaced persons of Jewish origin who cannot be considered as objective and impartial as regards alleged war criminals of Ukrainian nationality".

It seems unreasonable to assess the value of witnesses' testimony on the basis of their race or nationality, also it is obvious that it is the duty of a court to decide if this or that statement is true or false and whether or not it should be taken into consideration in deciding the guilt of the accused.

The administration authorities, in assuming court jurisdiction in the appraisal of witness material generally and especially on racial criteria, abuse their rights and only make it more difficult to establish those guilty of the commission of war crimes. This is especially true in the cases of Terlecki and Worobkiewicz, whose planned escape to the U.S., according to information received from our War Crimes Mission in Germany, has been organised by the Ukrainian Fascist Organisation which has threatened death to everybody who "tried to bring the accused to justice" thus hindering them in resuming their notorious political activity.

As regards the instructions given by the American authorities in Germany to their Deputy Judge Advocate for War Crimes, to stop accepting on the 1st November, 1947, any further requests for the extradition and surrender of alleged war criminals in the U. S. Zone of occupation - a unilateral decision against which protests were raised in the Control Council for Germany by the French and Soviet Representatives as well as by the Polish and other Allied Military Missions accredited there - it is obvious that the decision is contrary not only to international agreements still in force, but, in the first instance, is contrary to all the activities of the Commission in which, after all, the American Commissioner is not only taking part but is playing an important role in reaching decisions which are nullified in practice by his own authorities in Germany.

I should like to point out that my Government is deeply interested in completing the investigations regarding war criminals as soon as possible and our War Crimes Investigation Mission and Liaison Detachments have done their best to comply with the requests of the War Department, Washington, D.C., concerning the date up to which should be filed extradition requests and evidence submitted in their support. But, as it was possible only with great difficulty to submit the requests for extradition of at least the most important war criminals of interest to Poland, now detained in American custody by 1st November, 1947, it does not seem possible to do this regarding those alleged and suspected war criminals who are either freely residing or even hiding in the American Zone of Germany and whose whereabouts are for the time being unknown to the Polish War Crimes Investigation Mission there.

It is obvious that it was impossible to accomplish the apprehension and extradition requests for all the alleged war criminals who could not be located at addresses shown and whose cases have been closed, as per the letter of the American 7708 War Crimes Group to the Polish War Crimes Mission in Germany, of 30th July, 1947.

The same is true concerning those criminals who are still in hiding.

It must not be forgotten that Poland suffered more than any other country, as a result of the Hitlerite occupation, both in her own territory and abroad in relation to Polish nationals deported to Germany for slave labour and to extermination camps.

It is obvious, therefore, that the number of alleged war criminals wanted by Poland, registered on the lists of the Commission and filed with CROWCASS, is still increasing every day as a result of the systematic investigation going on and which cannot be stopped in a mechanical way on the basis of this or that administrative order.

We have not been able to complete this work any earlier, as most of the victims are no longer alive and those who survived very often did not know the names of their persecutors. The work of collecting the relevant evidence, affidavits and other documentation, necessary for the identification of the suspected war criminals, the establishing of a prima facie case against them, their listing and the preparation of apprehension and extradition requests, is, therefore, difficult for our administration of justice and cannot be accomplished in a short time.

The arbitrary stopping of our investigations at a fixed time by administrative authorities before such termination is advisable in the opinion of appropriate legal authorities may result in extreme difficulty in the thorough and fair administration of justice against the accused already detained and make impossible the punishment of elements still hiding, not located and therefore not apprehended - elements not only responsible for the commission of war crimes, but very dangerous for the democratization of Germany, collective security and especially for the development of peaceful relations between Germany and Poland in the future.

The prosecution and administration of justice concerning war criminals is established on legal principles which were for the most part worked out and even partially initiated by the American people during the war. Any reservations as to their application now would result, on the other hand, in discrimination against the Commission - founded and existing

with American support - on the other hand, obstruction in the fight for the assurance of peace by way of punishing those who are, if not actually dangerous, at least undoubtedly hostile to the building up of peaceful relations in the world. So long as no new international convention replaces those agreements still in force in this province, the Commission's right and duty is to ask the American authorities to remedy the situation and make it satisfactory by abolishing time limits for the presentation of further extradition requests, not only in regard to war criminals already located but also in regard to those who are still in hiding.

The cessation of the work of investigating and seeking for the apprehension of war criminals whose whereabouts are not known for the time being, and their further surrender for trial to the countries in which they committed their crimes, cannot be justified even by technical difficulties, as the American authorities are continually seeking for those of interest to themselves. For this purpose they have issued particular instructions to the police and furnished them with special "Rogues Galleries".

It is true that, as is shown in these "Galleries", the American authorities are probably especially interested in those who have knowledge in the field of complicated war technique. This may produce the perhaps incorrect impression that such Germans are sought not for trial but for other purposes; inasmuch as in the "Rogues Galleries" should be included more of those war criminals who are responsible for mass murder at least and the worst crimes committed in countries which were under Hitlerite occupation, and whose apprehension and extradition cannot give any other impression than that they are wanted for trial in connection with their criminal activities.

In none of the issues of the "Rogues Galleries" can one find the names of Walter Toebeens, responsible for massacres in the Warsaw ghetto, who managed to escape from a transport of criminals extradited from the American Zone to Poland, nor of Bohun and his accomplices, responsible for close collaboration with the Gestapo in several massacres of Polish patriots and Jews, or any other names of war criminals hiding in the American Zone. /As regards Bohun, information has been received from our War Crimes Mission in Germany that he took part in Heidelberg in the official screening of demobilized members of the Polish guard companies. Also, in company with American officers, he took the salute at a march-past of these guards. However, the American authorities have refused his apprehension and extradition on the grounds that he cannot be located, although an order to apprehend him has been issued by the Legal Division in Berlin/.

Neither can one find in the "Rogues Galleries" the names of criminals filed in the Commission's priority lists, or cases closed as not being located in extradition requests, but one finds, inter alia, the following persons:

"Rogues Gallery" No. 26.

1. Dr. Eng. A. Schoff, expert in acoustic torpedoes and housing devices.
2. Aulock, expert on torpedoes.
3. Baara, expert on batteries.
4. Bogart, metals expert.
5. Braumberg, in charge of research for Reichs Air Ministry
6. Bunzel, ballistics expert.
7. Croy, batteries specialist.
8. Decker, aerodynamics engineer.
9. Domenger, jet engine development.
10. Dreyhupt, research group, Diesel and combustion engine specialist.

"Rogues Gallery" No. 27.

1. Hecht, authority on acoustics.
2. Kleen, specialist in electronics.
3. Niemann, automatic weapons research.

"Rogues Gallery" No. 28.

1. Dr. Beerwald, specialist in magnesium alloys.

2. Gorth, gyroscopes.
3. Kenzele, research work on welded machines.
4. Reisch, gyroscopes, etc.

"Rogues Gallery" Nos. 31 and 32.

1. Dr. Ing. Kluge, specialist in light current.
2. Dr. Ing. Kroh, specialist in development of mix-computers.
3. Ing. Schultz, designer of rocket test stand.
4. Ing. Goebel, rocket laboratory at Kiel.
5. Schroeter, research department, Telefunken.

But it is not only in the American Zone of Germany that the situation regarding the apprehension and extradition of war criminals is unsatisfactory. As I quoted in my letter to Sir Robert Craigie /No. 3176, of 6th December/, there are some difficulties, which should be overcome, in the British Zone also.

It is true that the British authorities have not stopped the acceptance of further extradition requests according to international obligations, recently emphasized in the House of Commons by the Under-Secretary of State for Foreign Affairs, Mr. Mayhew, as "quite clear international commitments."

This statement, on the 1st December, as well as the information given by Sir Robert Craigie in Document A.60, that the Commander-in-Chief of the British Zone regards listing by the United Nations War Crimes Commission in principle and usually as in itself evidence, also the ruling that further evidence should be asked for only in exceptional cases, mainly where new facts were available, is of the greatest value, and help for the work of the Commission and the Allied War Crimes Investigation Missions in Germany.

But, as in practice there are some difficulties in the province of the apprehension and extradition of alleged war criminals now in hiding, war criminals accused of certain specific crimes described in the Commission's working list, or difficulties resulting from perhaps incorrect impressions of the procedure described in different letters of the Bad Salzungen zonal executive offices, I am taking this opportunity to inform you of the under-mentioned concrete facts.

A. In the British Zone several cases have been closed and no investigation undertaken if the whereabouts of the accused are not expressly indicated by the Allied Mission interested. This obviously creates conditions favourable to the concealment of notorious war criminals, their freedom from punishment and escape.

For instance, the alleged criminal Narevska /UNWCC No. 56/598/, responsible for crimes committed as a capo in Ravensbrueck, and Smolenska, /charge No. 1129/6702/, involved in crimes of selection and deportation of Polish children/, who hid for some time in the Service Transit Camp BAOR No. 10, according to information of our War Crimes Mission in Germany, managed probably to escape from Germany to Britain and maybe to go over from this country to the U.S.A.

The APE 4 QG CCB/BE/BAOR decided to close the cases of SS Gruppenfuehrer Friedrich Hildenbrandt /UNWCC 1/307/, Kreisleiter Teodor Daniel /UNWCC 1/249/, Gen. der Polizei Leon Falkowski /UNWCC 1/260/, Gauleiter and Reg. President Fritz Bracht /UNWCC 1/240/, Gen. Pol. Wilhelm Koppl /UNWCC 1/340/, Kom. BIKO Grosskopf /UNWCC 1/290/, and many others, because in the extradition requests the Polish War Crimes Mission was unable to show definitely their location.

But Allied War Crimes Missions in Germany, of those countries who are not partners in the Control Council have no executive power, no right to have a detective staff or agency, and it is obvious that responsibility for the apprehension of the wanted persons rests with the military or occupational authorities in the relevant zones.

The general principle has been, as it is expressly stated in Doc. UNWCC A.32, of 29th January, 1947, that the respective commanders or occupational authorities shall comply with requests for the handing over of

- wanted persons provided they have no reason to doubt the bona fides of the Allied requests for the alleged war criminals in question and provided the persons wanted were not required as defendants or witnesses for trials before the International Military Tribunal or before the courts of the respective zones themselves.

Persons listed as war criminals on the lists compiled by the United Nations War Crimes Commission were to be handed over without question, subject to the general requirements indicated.

Therefore, the decisions to close cases and not order investigation action nor the seeking for purposes of apprehension of the above quoted war criminals, if no further material should justify the reopening and reconsideration of their cases, cannot be considered in any other way than as a discrimination against the Commission and all obligations legally justified and based on international agreements in the province of the prosecution of war criminals.

B. But cases of refusal to carry out extradition requests are known even where the location of the accused is indicated. The Allied Liaison Branch of the Zonal Executive Offices, BAOR, in letters No. ALB/17997/10/EE, dated 13th October, 1947, and No. ALB/17497/6/EE, dated 5th September, 1947, refused the Polish War Crimes Mission in Germany the extradition inter alia of the following located war criminals, listed with the Commission:

1. SCHOEPS, Fritz	UNWCC List No. 53/440
2. WESTPHAL, Richard	UNWCC List No. 53/546
3. KOEN, Friedrich	UNWCC List No. 53/234
4. VOSS, Friedrich	UNWCC List No. 53/521
5. STEVENS, Bernhardt	UNWCC List No. 44/511
6. GRZEGORCZYK, Robert	UNWCC List No. 44/180
7. ZIELSCH, Gustaw	UNWCC List No. 53/565
8. KAHNERT, Ewald	UNWCC List No. 51/154
9. KIPPE, Wilhelm	UNWCC List No. 44/272
10. SCHMIDT, Robert	UNWCC List No. 57/1010
11. SELB, Friedrich	UNWCC List No. 44/506
12. MICHELS, Heinz	UNWCC List No. 45/378
13. BEREUR, Georg	UNWCC List No. 45/71.

although up to date the above-mentioned have not been tried in any other way and are responsible for committing grave crimes against Polish nationals.

C. The extradition of a certain Hermann Eyer /UNWCC List No. 53/87/ - responsible for the devastation of the Institute of Pathological Medicine in Cracow, the pillage of public and private property, destruction of public and private libraries and deportation of some Poles to concentration camps - was refused, in a letter of the War Crimes Group, North West Europe, /No. WCG/1665/X/A-BAOR, on the grounds that "a case had not been made out".

The extradition of Gerhard Hoppe and Fritz Weiss was refused last October in letters of the Allied Liaison Branch BAOR ALB/174977/10/EE, for the reason that the cases have no war crimes interest, although the accused are responsible for orders to shoot prisoners of war: full evidence was collected against them from German and Norwegian witnesses and for the same charges sentences have already been passed by British and American Courts, in the cases of Yamashita, Gen. Student and others.

The extradition of the accused Dering, listed with the UNWCC No. 50/67, is not yet settled although the extradition request was presented several months ago and the alleged war criminal is in British custody.

D. In BAOR Allied Liaison Branch letter ALB/17477/7/WE, of 17th July, 1947, it was stated in para. 1 that "All war criminals claimed by Allied Governments and under arrest in the British Zone will be released on 1st October, 1947, unless they have been taken over by the Allied Governments concerned before that date."

But the handing over of authority in war crimes matters from War Crimes Group to CCG Legal Division has caused a complete stoppage in all arrests and extraditions for over two months, from the 15th May until the end of July.

The lists informing the Allied War Crimes Missions in the British Zone of the names of all war criminals under arrest there, whom they were to receive as under para. 2 of the above-mentioned letter, have not reached them in sufficient time, with the exception of one or two relating to Fischbeck camp.

In these circumstances, it was impossible to complete the checking of war criminals wanted by the Allied Nations before the 1st October, 1947, inasmuch as the new procedure was not explained clearly. BAOR Allied Liaison Branch letter No. 17477/7 WE, of 17th July 1947, stated in para. 5: "All applications for the extradition of war criminals must be made direct to War Crimes Group, N.W. Europe, c/o HQ."

BAOR Allied Liaison Branch letter No. 17477 /7WE of 29th August 1947, stated in para. 1: "Applications for extradition will in all cases be forwarded to Allied Liaison Branch for onward transmission to Legal Division."

I hope that you will agree with me that the above-quoted facts cannot be regarded as helpful in the task of bringing to trial alleged war criminals, a task based not only on international obligations but also undertaken on behalf of principles of justice and in the interests of world peace, which cannot be assured without the punishment of those responsible for crimes against peace, conventional war crimes and crimes against humanity. If such remained unpunished for their former criminal activity in this field, they would obviously try to instigate similar crimes in the future. Therefore, it should be a primary duty of the Commission to intervene in these questions and, by passing its opinion on to the appropriate authorities, to eliminate further difficulties in the field of the extradition of war criminals.

It is true that the Commission has no executive power, but recommendations made by the Commission in the province of its essential field of activities should carry at least moral weight with those Governments whose representatives take part in its work.

There cannot be a logical and constant fight against war criminals, nor is it in the interests of justice and world security, if the same Governments should, by their representatives in one international body, approve the prosecution of offenders and their listing for surrender, and then, by their representatives in another body, render impossible such apprehension and extradition for trial.

An appeal by the United Nations War Crimes Commission to the member states to overcome the difficulties mentioned, to re-establish the value of the Commission's lists in extradition procedure, to avoid any limitation of date for the acceptance of further extradition requests, and to take urgent action for the apprehension and surrender of war criminals residing or hiding in different zones, would be of great help to the work of the Commission and its moral value on an international scale, in the last stage of its existence.

I think this can be achieved only as a result of discussion and reaching a decision by the Commission as a whole and, therefore, I hope that you will, as soon as possible, call a meeting for this purpose, even if no other items should be presented for discussion.

Yours very sincerely,

Sgd.
/Marian Muszkat, LL.D/
Polish Delegate to the
United Nations War Crimes Commission.

The Rt. Hon. the Lord Wright of Durley, P.C., LL.D.,
Chairman,
United Nations War Crimes Commission,
Lansdowne House,
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London. W.1.

CONFIDENTIAL.

A. 62

December, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

WAR CRIMES TRIALS IN THE FAR EAST.

The following extracts from reports concerning the trial of Major War Criminals before the International Military Tribunal at Tokyo, and other war crimes trials in Japan, have been communicated by the United Kingdom Commissioner and are now circulated to heads of delegations.

THE TRIAL OF THE MAJOR JAPANESE WAR CRIMINALS.

When the International Military Tribunal reconvened on 4th August [1947] after its six-week recess, Sir William WEBB had a comment to make on "unfavourable comparisons" which had been made of the Tokyo trial with the Nuremberg trial. He pointed out that the wars with which the Tokyo Tribunal was concerned began eleven years before HITLER's war.

In their opening statement the defence announced that they would set out to prove that Japan had been driven by economic blockade and military pressure to fight a war of self-defence.

Restriction of her international trade, begun in 1931, had steadily increased until, with the oil embargo in July 1941 and the freezing of assets, all her non-Asiatic trade had been completely stopped. She had had to strike in order to secure materials necessary to her continued existence. Furthermore, her security had been threatened by military encirclement by the U.S., Britain and Russia: e.g., the movement of the U.S. fleet to Hawaii and of troop reinforcements to the Philippine Islands and the fortification of Singapore. The U.S. had aided China in her war against Japan, and Britain, the Netherlands, the U.S. and China had drawn up strategic plans against her. In other words, the war had begun before Pearl Harbour and the question was not who had lit the fuse which started a major conflagration but who had lit the first fuse.

The record revealed by the Congress Pearl Harbour enquiry of secret American-Dutch-British conversations held at Singapore in April 1941 was quoted for evidence of British activities against Japan eight months before Pearl Harbour. Excerpts were produced which referred to alleged British revelations that by April 1941 they were already organising guerilla forces in China and "subversive activities, sabotage and corruption in Japan and in Japanese-occupied territories."

Japan, it was alleged, had made many efforts to bring about successful negotiations with the U.S., but the latter's attitude had steadily hardened. During August and September 1941 great efforts had been made to arrange a meeting between Prince Konoye and President Roosevelt but the question of the stationing of troops in China had proved the stumbling-block. The delay in delivery of the President's message to the Emperor had been brought about without the knowledge of the Ministry of Foreign Affairs or the Cabinet.

The ...

The defence repeatedly emphasised that the Japanese declaration of war on the U.S. was not intentionally delayed until after the Pearl Harbour attacks; the delay was due to circumstances beyond the control of any of the defendants, being attributed by one witness to the slow typing of an Embassy secretary in Washington (!). An attempt was made to detract from the importance of the delay by the testimony of a U.S. Army intelligence officer who was subpoenaed by the office to testify that the text of the Japanese message had been decoded and made known to senior U.S. officials some five hours before Pearl Harbour. The Japanese witnesses all described in careful detail the instructions which were given to break off operations even at the last minute if word was received of a Japanese-American agreement. But they went into such detail about the planning and training for the Pearl Harbour attack that Sir William WEBB enquired whether what they were trying to prove was that the attack was successful. The defence answered that the testimony was for the purpose of showing that the attack was hurriedly planned.

Maintaining that Japan had not made advance preparations for war, the defence attempted to introduce a mass of statistical reports designed to show Japan's increase in industrial capacity between 1931 and 1941 to be merely a normal growth necessitated by the increase in population; but prosecution objections to most of these were sustained by the Court. Evidence of Japan's over-population was likewise rejected because evidence was also available to show that it had been Japan's intention to increase her population to 100 million.

An attempt to file the results of the interrogation of TOJO resulted in debate on the handling of evidence favourable to one of the defendants while unfavourable to others. It was decided that evidence of this kind should be reserved for the individual phase of the trial. The same controversy was re-started by the introduction, by Counsel for Shigenori TOGO, of the affidavit testimony of Kumaichi YAMAMOTO, head of the East Asia and American bureaus of the Foreign Ministry under Togo, which purported to give a detailed picture of the part played by the various members of the Tojo Cabinet and the heads of the Japanese armed services at that time. There was considerable opposition from some of the defence attorneys to the introduction of this testimony which was regarded as an attempt to exculpate Togo at the expense of other defendants.

The defence stated that Tojo's appointment as Premier in October 1941 was far from representing a "victory of extremist opinion". He had set aside the Imperial conference decision of 6th September establishing a limit beyond which Japan could not go by way of concessions towards America and secured the Army High Command's acquiescence in withholding the war plan until further negotiations had been begun on the basis of earlier American proposals. It was revealed, however, that he had opposed a personal meeting of Prince KONOYE with President ROOSEVELT unless KONOYE would pledge himself to support Japan's expansionist programme and agree to embark on a war with the U.S. if the conference failed to achieve a settlement favourable for Japan.

The defence was also at considerable pains to whitewash the Japanese navy. They asserted that Japan did not engage in indiscriminate submarine warfare. She had refused outright to co-operate with Germany; and former Nazi naval attaché Wenneker testified by affidavit that pre-war naval co-operation between Japan and Germany was practically non-existent. There was never any common conspiracy between the navy and the army and the government for aggressive war. The navy, which was well instructed in international law, had consistently exercised a restraining influence on the military.

Responsibility ...

Responsibility was, however, laid on the late Admiral Isoroku YAMAMOTO, then commander of the Japanese Combined Fleet, for the surprise attack on Pearl Harbour, which TOJO was stated to have opposed.

Explaining the absence of Japanese war records, the defence testified that in the haste to burn all secret files practically the entire files of the War Ministry were burnt. The prosecution charged, however, that investigation undertaken since the opening of the defence case had revealed numerous official documents which the Japanese Government had reported to be missing. One of the key documents discovered was an "Outline of future diplomatic measures vis-à-vis the U.S.", from which guidance had been taken in determining the Government's attitude during the last few days before Pearl Harbour. The defence had introduced numerous documents which the prosecution would have liked to scan, and it was possible there were other documents on which they might think it imperative to cross-examine the witness YAMAMOTO, in which event it would be necessary to have him recalled later.

Presentation of the defence case continued throughout September.

Several witnesses gave evidence concerning the treatment of prisoners of war. The trial in Shanghai of the eight airmen taken prisoner after the Doolittle raid (a trial in which it was admitted that the judges did not have the power of acquittal) was stated to have been in compliance with orders from Tokyo which Field-Marshal Shunroku HATA had no alternative but to obey. Sir William Webb qualified this as "Nonsense" and said the defendants could not offer as a defence to the charge of violating international law the plea that they were obeying the orders of their superiors: "The Japanese Army has no authority to make valid an order which is invalid according to international law." Similarly, it was the War Ministry which directed the employment of POW in the construction of the Burma-Siam railway; but Tojo was not responsible for the Bataan death march or the mistreatment of POW in Malaya after the fall of Singapore, as these incidents occurred while the POW were still under the jurisdiction of the Supreme Command. It was maintained by the defence that shipping losses had been responsible for the failure to supply adequate food for Allied POW.

The Apostolic Delegate to Japan told the Tribunal that in order to arrive at an "impartial judgment" on the treatment of POW it was necessary to consider "that the Japanese do not have that idea of a prisoner that a long Christian culture has given us." No Japanese soldier was permitted under any circumstances to allow himself to be captured and prisoners were naturally despised. He had visited more than 30 POW camps and found the condition of prisoners' quarters and clothing to be the same as that of the 'common people' of Japan.

Before the hearing of individual statements by the defendants commenced on 10th September there was some argument over the question of the number of additional witnesses to be allowed to individual defendants. The prosecution argued firmly that the length of time each defendant should spend on the witness stand must be limited, and

later ...

later announced that its cross-examination would be brief and confined for the most part to new matters. Chief Prosecutor Keenan told the Press that he was determined to dispense with 'argument' with defendants in an effort to speed up the case.

The first defendant to give evidence in his own behalf was General Sadao ARAKI, who insisted that every military move in Manchuria and China after he became War Minister in December 1931 was made in compliance with the policies of the Cabinet in Tokyo. He complained that in the prosecution evidence against himself single sentences had been lifted out of his speeches which without their context did not truly represent his attitude. He admitted that he had been a prominent figure in the Kokuhonsha (National Foundation Society), but denied that the organisation was an "extreme rightist movement". It was formed for the purpose of making "plain to the people of Japan ... that His Imperial Majesty was constantly concerned with the welfare of his people", and it had no political significance whatever. When defence attorney objected, with reference to one prosecution statement: "I see no relevancy when testimony involves the Emperor", Sir William Webb remarked sharply: "Objection is most emphatically overruled." On a later occasion Chief Prosecutor Keenan indirectly absolved the Emperor from any intimation of war guilt when he stated that the prosecution believed that the people in the dock were really responsible for the war—if there had been any others they would have been in the dock too.

General Kenji DOIHARA, who was not called to the witness stand himself, was stated to have been 'surprised' when Hitler decorated him with the Grand Cross in 1941; he had taken no part in the formation of the tripartite coalition. It was denied that the 'Special Organ' headed by Doihara in Mukden was a "far-flung network" engaged in nefarious practices.

Colonel Kingoro HASHIMOTO, under cross-examination, admitted that in January 1941 he had advocated that the Japanese should seize control of the Pacific and dominate continental Asia as far west as the Persian Gulf.

Field-Marshal Shunroku HATA, former War Minister and C.in.C. of Japanese troops in China, was stated to have issued an order when he became War Minister in the Abe Cabinet, forbidding the participation of Army officers in politics. He had opposed the Doolittle trial and the execution of the airmen, but the Japanese General Staff had obtained Imperial sanction for the promulgation of a law providing the death penalty for airmen who attacked the Japanese home islands or territory under Japanese control. HATA had been in favour of the withdrawal of all troops from China and in September 1941 had sent his Chief of Staff to Tokyo to discuss the possibility of this, but TOJO had replied that peace would be secured if America would accept Japan's demands.

Naoki HOSHINO, chief Cabinet Secretary under TOJO, did not take the witness stand. A witness stated that Hoshino had always opposed the Japanese invasion of China, but the prosecution quoted extracts from a speech made in 1938 in which he described the invasions of Manchuria and China as divinely inspired steps in the awakening of East Asia.

An affidavit by former U.S. Ambassador Grew stating his belief that Baron Kiichiro HIRANUMA, Hirota and Shigemitsu were innocent of war crimes, and another by Major General Piggott in defence of Hiranuma, were rejected on the grounds that they constituted opinion and had no probative value. Former premier Admiral Keisuke Okada gave evidence that Hiranuma, who resigned the premiership in 1939 after the German-Russian non-aggression pact became

known ...

known and later became a member of the elder statesmen group, had opposed the Tojo régime and the opening of the Pacific war.

On the other hand, the Tribunal admitted evidence by Mr. Grew that Koki HIROTA had told him in September 1933 that the corner-stone of his policy would be the development of better relations with the U.S. Evidence was given that Hirota had almost succeeded in working out a settlement of Chinese-Japanese problems with Chiang-Kai-Shek when the so-called 26-2-36 incident occurred; he had several times warned the military authorities in Tokyo that the Kwantung army and Japanese officers in N. China were endangering the negotiations. Japan's policy in Manchuria under Hirota was designed 'to reap the fruits of happiness through peaceful exploitation'(!).

Good progress continued to be made during the month of October.

In refutation of HIROTA's evidence the prosecution produced official documents to show that Hirota as Foreign Minister in October 1937 had agreed with the Army and Navy Ministers that Japan should rely on the armed forces "combined with a timely diplomatic action" to settle the China conflict, and furthermore that Japan would reject arbitration until her military objectives were almost attained. Another document produced by the prosecution, the record of a Cabinet meeting on 24th December, 1937, set forth in great detail the Cabinet's decision, taken while the Japanese Government was assuring other world powers that Japan's "true motives" towards China were not understood, to establish a new government in China and take over the Chinese economy.

The most interesting part of the month's proceedings was undoubtedly the deposition of Marquis Koichi KIDO, former Lord Privy Seal and one of the Emperor's closest advisers, who in a 297-page affidavit denied guilt on all counts of the indictment and sought to prove that his Court career had been devoted to "fighting the militarists". At the end of November 1941, and on several other occasions, he had warned the Emperor of the seriousness of committing the nation to war; and he had advised the selection of Tojo as Prime Minister only after Japanese leaders had decided on war unless the United States gave Japan a free hand in the Pacific, and because he thought Tojo would be most obedient to the Emperor's wishes to delay hostilities until every possible peace effort had been made. With reference to the Emperor's powers under the Constitution, Kido admitted that if a Cabinet had agreed on war the Emperor would have no power to prevent it. It had been the custom since Meiji for the Emperor not to veto a measure once decided upon by the Government. The decision of the Imperial Conference of 6th September 1941 was made formally in the Emperor's name but was really taken by other people. Kido's diary kept day by day, furnished the basis of his evidence and is a document of great historical importance with reference to the Showa era; in it the Emperor is portrayed as a timid and cautious ruler, painfully aware of his terrible responsibilities.

KIDO maintained that he had known nothing of the Pearl Harbour plan until after the attack, and that he had opposed the Pacific War from beginning to end. He had noted in his diary that the enemy's objective was to overthrow the militarist clique and that

the ...

the country could not afford to wait until the Military decided it was beaten. Peace talks in inner Court circles had been carried on with great secrecy from early in 1945 and he had advised the Emperor that there was no alternative but to accept the Potsdam Declaration.

Other defendants who gave evidence were: General Seishiro ITAGAKI, who was in charge of the intelligence section of the Kwantung Army General Staff when the Manchurian Incident broke out and who denied any fore-knowledge of plans for the conquest of Manchuria. A witness, while contending that Allied POW sent to Korea in 1942 were well treated, admitted that the purpose of sending them there was to carry out a plan of Itagaki's approved by Premier Tojo to stamp out the "respect and admiration of the Korean people for Britain and America." Okinori KATA, Finance Minister in 1937-8 and 1941-44, who was credited with having succeeded in cutting military budget requests even after the outbreak of the China incident and with having administered financial regulations in such a way as to allow private business "as much freedom as possible". General Heitaro KIMURA who, the defence maintained, as vice War Minister under Tojo, did not formulate policies but merely assisted in "purely administrative matters". His only connection with the trial of the eight Doolittle airmen was in handling routine orders issued by his superiors.

The defence charged the prosecution with unfair tactics in attempting to introduce new evidence during the cross-examination of defendants. Sir William Webb gave an assurance that ample opportunity would be afforded to defendants to rebut at a later stage if in the cross-examination of witnesses some new matter was brought out which prejudiced the case of any of the defendants. And in response to requests from both the prosecution and the defence the Tribunal ruled that the whole of documents admitted by the Court rather than merely the Court transcript should be weighed as evidence.

Toshio Shiratori, former Ambassador to Rome, was absent from the trial during the last week. He was in hospital with laryngeal tuberculosis.

MINOR WAR CRIMES TRIALS.

In the Minor War Crimes Trials at Yokohama during the period from 16 August to 16 September, 16 Japanese faced charges in which British POW were involved and of these 15 were convicted: two received life sentences and one was sentenced to death. Of 101 accused upon whom verdicts have been passed since 15 February, only five were acquitted; seven were sentenced to death and four were given life sentences.

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In the Minor War Crimes Trials at Yokohama during the period from 16th September to 15th October, twenty Japanese faced charges in which British prisoners of war were involved. Of these one was acquitted, the remainder receiving sentences varying from six months to twenty years.

CONFIDENTIAL.

A. 63

February 10th, 1948.

UNITED NATIONS WAR CRIMES COMMISSION

WAR CRIMES TRIALS IN THE FAR EAST.

The following extract from a report concerning the trial of the Major War Criminals before the International Military Tribunal at Tokyo has been communicated by the United Kingdom Commissioner, and is now circulated to heads of delegations.

THE TRIAL BEFORE THE I.M.T., TOKYO.

Kuniaki KOISO, who had entered the witness box on the last day of October alleged that the fighting speeches which he had made as Premier were what any man in the same position would have had to make. His real motives, from as early as September 1944, had been to "try to conclude hostilities by negotiation, direct in the case of China, and through Russia in that of Great Britain and the United States. With this object the Supreme War Direction Council had been formed, in order to strengthen the Cabinet's hand over the army, but the Council "did not come up to my expectations and was ineffective" and "the army Supreme Command was prone to develop into unexpected directions without the least knowledge of the Premier." He had been negotiating with a Chinese for the cessation of hostilities in the Spring of 1945, but had broken off the negotiations (of which YONAI, SHIGEMITSU and SUGIYAMA had approved) on the 2nd April on the orders of the Emperor. His feelers through the Russians had been ignored. During examination on the Manchurian section of the indictment he admitted the genuineness of a damaging document obtained from the top secret files of the Kwantung Army, in which Major General Shun TADA, the "adviser to the Military Government of Manchukuo" had written in 1934 that Japanese advisers "are now practical rulers of both local and central governments." KOISO said that he had not seen the document himself before, having ceased to be Chief of Staff to the Kwantung Army in 1933. This document was admitted by the Tribunal only after vigorous opposition by the defence.

Testimony on General MATSUI was heard in the defendant's absence, as he was sick in bed with bronchitis, but he himself entered the witness box later in the month when he had recovered. He denied that the Japanese army staff planned the rape of Nanking. As commander of the troops in the Shanghai campaign and again of the group that captured Nanking (where he stayed only five days) he said he had repeatedly given orders that cultural objects should be spared and the people kindly treated. He heard of "only a few cases" of outrages, and immediately ordered that those responsible should be punished. Cross-questioned by the acting President of the Tribunal on this point the next day he said: "In the strict legal sense I did not have power to give detailed orders about discipline." He said that the Chinese were sympathetic to the Pan Asia programme which he tried to promote in China, which was no different in kind to Pan-American proposals or to those for a United States of Europe, and he denied having said that his objective was the expulsion of Great Britain and the United States from Asia. He was the eighth of the 25 defendants to testify, five (DOIHARA, HATA, HIROTA, HOSHINO, and KIMURA) having refused to do so.

In ...

A. 64.
10th February 1948.

UNITED NATIONS WAR CRIMES COMMISSION.

Submission of the Government of Albania
to consider cases of war crimes committ-
ed in that country.

(Previous Documents: A. 57 and Minutes 131).

The following letter received from the Albanian
Ministry for Foreign Affairs is circulated to Members of the
Commission for consideration at its meeting on 18th February,
1948.

Translation

The Albanian Peoples Republic.

Ministry for Foreign Affairs.

TIRANA, 8.1.1948.

The Government of the Albanian Peoples Republic has taken note of your letter No. 2956 of 30th October, 1947. It is correct that the transfer of war criminals and quislings whose surrender is demanded is not within the powers or duties of the Commission. Nevertheless, having regard to the powers which have been conferred on the United Nations War Crimes Commission, the Albanian Government has the honour to request it to be good enough to examine the three lists of German, Italian and Albanian war criminals attached to our letter of September 25th, 1947, and to declare, at the earliest possible moment, that the persons referred to in the said lists are war criminals.

I have, etc.,

(signed) HYSNI KAPO

Deputy Minister for
Foreign Affairs.

To: The Secretary General,
United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square,
London, W.1.

The reply which, in accordance with the Commission's
decision taken on 29th October, 1947, has been sent to the Albanian
Government on 30th October, 1947, reads as follows:

October 30th 1947.

Sir,

This Commission has carefully considered the request made in your letter dated 25th September 1947 that the necessary

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-2-

steps should be taken that the war criminals and quislings mentioned in the attached lists should be handed over without delay to the Albanian authorities.

As the measures which you propose fall outside the jurisdiction of the Commission it is regretted that it will not be possible to accede to your request.

I have the honour to be,

Sir,

Your obedient servant,

(signed) G.A. LEDINGHAM.
Colonel.
Secretary-General.

Ministère-Adjoint aux Affaires
Etrangères d'Albanie,
République Populaire d'Albanie,
Tirana,
ALBANIA.

CONFIDENTIAL.

February 24th, 1948.

UNITED NATIONS WAR CRIMES COMMISSION.WAR CRIMES TRIALS IN THE FAR EAST.

The following extract from a report concerning the trial of the Major War Criminals before the International Military Tribunal at Tokyo has been communicated by the United Kingdom Commissioner, and is now circulated to heads of delegations.

THE TRIAL BEFORE THE I.M.T., TOKYO.

Little further of interest emerged from the examination of OSHIMA, which was continued from the previous month (November, see Document A.63), except the fact that the Nazis had given the Japanese hints of their intention to attack Soviet Russia as early as March, 1941. OSHIMA denied having told ERDMANSDORFF, of the German Foreign Office, on the 18th October, 1941, the date of the formation of the TOJO cabinet, that Japanese plans for an advance to the south were already prepared.

The defendants SATO and SHIGEMITSU declined to enter the witness box. Affidavits were read testifying to SHIGEMITSU's opposition to military aggression from a number of prominent British and American diplomats and others, including Lord Killearn, Lord Hankey, Mr. R.A. Butler, Major General Piggott, Mr. Nelson Johnson, Mr. Joseph Davies and Mr. Joseph Kennedy.

The Defendant SHIMADA stated that he considered Mr. Cordell Hull's note of the 26th November, 1941 as an ultimatum, and it was that which decided him to elect for war. He had accepted the Navy Ministry against his will, and only on condition that every effort would be made to avoid war. The time chosen for war was that which gave the Japanese Navy its best chance, but there had been no deceit in the despatch of Kurusu as a special envoy to Washington. He put the blame for the delay in the delivery of the final Japanese note in Washington on TOGO. He admitted that though a mistake there had been no warning of hostilities given to the British in the Singapore area, and expressed his regret.

Counsel for SHIRATORI claimed that he was quite within his rights as a private citizen to give lectures in 1940 advocating a closer alignment of Japan with Germany and Italy and a former Japanese Foreign Office official, SATO, stated that SHIRATORI knew little of the preparations for the pact between the three powers, the negotiation of which MATSUOKA had handled himself. SHIRATORI himself said that he had earned a pro-military reputation undeservedly because, as chief of the press section of the Gaimusho, he had had to put as bright a complexion on military activities as possible.

An affidavit from former Prince Higashikuni stated that SUZUKI had attempted to get Higashikuni appointed as Premier instead of TOJO in 1941, in an attempt to check the power of the militarists. SUZUKI himself, answering questions about China, admitted that the

Japanese

Japanese army organised and financed attempts to set up anti-Chiang Kai Shek puppets. General Wu Pei-fu was to have been set up, with funds seized from China Customs Revenue, but he died suddenly, so increasing contact was made with Wang Ching-wei, who was eventually installed.

An interesting phase was opened on the 16th December, that of the former Foreign Minister TOGO. A witness named Katsushiro, of the Japanese Foreign Office, testified that after TOGO entered the TOJO cabinet he several times asked the Russians to reaffirm their neutrality (the Japanese having asked the Russians as early as August 1941 for an assurance, which was given, that no foreign military bases would be allowed on Russian soil). The Russians on their own initiative repeated assurances of their neutrality on the 1st and 6th December, 1941. In his affidavit TOGO admitted that the note delivered in Washington by the Japanese after the attack on Pearl Harbour had actually started was not a declaration of war, but it was good enough for that purpose, and in any case the U.S.A. and Great Britain should have been prepared for any eventualities. The Japanese Navy had wanted the negotiations to be left untruncated so that it might get off to a flying start. He blamed the army authorities for the delay in the delivery of President Roosevelt's note to the Emperor. TOGO himself considered the Hull note of the 26th November, 1941 tantamount to an ultimatum. He admitted some Japanese duplicity when he stated that the High Command were willing to agree to the withdrawal of the Japanese forces from China (one of the stipulations of the Hull note) "in principle" although they had taken the decision to keep them there in fact for 25 years. He stated that the "Liaison Conferences", which have featured so much in the evidence on the planning of aggressive war, were illegal; they were created in 1940 by the military who always had a voting majority therein.

Prior to the Imperial Conference of the 1st December, 1941, at which the decision for war was taken, TOGO had told Nomura and Kurusu to keep the negotiations in Washington going, as their failure would make inevitable the war which up till then had been probable. He had won the High Command's agreement to a complete cancellation of all plans if agreement could be reached in the negotiations. At the first Liaison Conference after the 1st December he had expressed his "assumption" that the usual practice of a declaration of war would be followed and had met immediate opposition from NAGANO and the Vice Chief of the Naval Staff, Ito, who wanted a surprise attack. As it was it was at the Navy's request that the planned delivery of the last note was delayed from 12.30 to 1.00 Washington time.

TOGO admitted that he had not told the elder statesmen on either the 20th or the 29th November, 1941 of the suggestion by the Japanese envoys in Washington that the President and the Emperor should exchange notes, but he had told KIDO. On the other hand KIDO was not told in any detail of the contents of the President's note when it finally came. He (TOGO) and TOJO had drafted the Emperor's reply to it. TOGO stated that he had not heard till July 1942 of the Emperor's desire, expressed in April 1942, for an early peace. His testimony was characterised by more frequent reference than hitherto to his co-defendants. In particular he named TOJO, SHIMADA and SUZUKI as having voted for war at a Liaison Conference on the 1st November. He himself and KAYA had agreed within twenty four hours.

The hearing of TOJO's case started on the 26th December and continued until the 7th January and will form the subject of a separate report.

During December, the Tribunal sat on the following dates:
1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 26, 29, 30, 31.

OTHER WAR CRIMES TRIALS IN THE FAR EAST.

In the Minor War Criminals Trials from the 16th October to the 15th December, 34 Japanese were tried for cases involving British prisoners of war, of whom two were acquitted and 32 received sentences ranging from 18 months' to 30 years' imprisonment.

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RESTRICTED

UNITED NATIONS WAR CRIMES COMMISSION

A.66

February 16, 1948.

The following correspondence is circulated to members of the Commission.
for their information.

January 29th, 1948.

Dear Colonel Muszkat:

In your letter of December 6th (3176-47) you quoted, in response to my invitation, certain cases in which difficulties had arisen as regards the extradition of war criminals from the British Zone of Germany to Poland. In order to dissipate any possible misunderstanding in regard to these matters, I asked the proper British authorities to be so good as to let me have chapter and verse on these cases. The results of their investigations have been summarised in the enclosed memorandum. This speaks for itself and I would only add a few comments of my own:-

CATEGORY A.

It seems there is some misunderstanding as no trace can be found of any requests having been made for the extradition of the persons mentioned. But as regards one, Fritz Bracht, there is a record that your authorities stated that they were no longer interested in him.

In the matter of the procedure for tracking down accused persons, I have more than once stated on the Commission that our investigating staff in Germany is unfortunately far too small to permit of the tracking down of war criminals wanted by other Allied Governments. Subject to this, however, they are always ready to give such help as they can to Allied nations in their task of discovering the whereabouts of the accused persons in whom they are interested.

CATEGORY B.

All the crimes mentioned were committed in Germany and I think you will agree with me that, wherever practicable, such trials should take place in the country where most of the witnesses are likely to be found. The British authorities are prepared to consider trying these cases before Control Commission Courts, provided that they are furnished with full evidence in each case, and the Polish Liaison Mission has been so informed. Moreover of the cases you mention, three were voluntarily withdrawn by the Polish authorities. As your letter simply states that in all these cases extradition was "refused", it occurs to me that you have not been given the full story in regard to this category.

I would point out in passing that, of the 13 names mentioned under this category, 8 were incorrectly spelt or have wrong christian names and this of course makes it rather more difficult for our Authorities to trace persons in whom the Polish Government are interested.

CATEGORY C.

You will see that the case of Hermann Eyer, Gerhard Hoppe and Fritz Weiss were the subject of careful investigation by the British authorities, who reached the conclusion that the prima facie evidence submitted was insufficient to justify extradition. As you know, my Government considers that the final responsibility in this matter of extradition rests in the Commander-in-Chief. You will also observe that only one of the three names mentioned had been listed by Committee I.

CATEGORY D.

The fact that many persons who may be wanted by Allied Missions have been released from prisoner of war camps for want of a timely application does not mean that they cannot be re-arrested and extradited if a really good

- 2 -

prima facie case can be made out against them. These men had already remained too long in confinement without a specific charge being preferred against them. But they are usually traceable and I cannot see that Allied Governments interested have any real grievance in this matter.

I hope that after looking into the matter again, you will feel able to agree generally with my conclusions. I am impressed with the great effort which Poland is making to bring war criminals to trial and to see that impartial justice is done. I feel sure also that the Polish Government can rely on our Authorities on the spot to do what they can to facilitate matters for their Polish colleagues, subject always to their unfettered responsibility for deciding, in the last resort, whether in a particular case the evidence justifies extradition.

Yours sincerely,

(Sgd) Robert Craigie.

Colonel Dr. Marian Muszkat,
Polish Representative on the UNWCC
Polish Embassy,
47, Portland Place,
London. W.1.

encl: memo. as stated.

MEMORANDUM

respecting applications from the Polish Authorities for the extradition from the British Zone in Germany of persons accused of war crimes.

In Colonel Muszkat's letter to Sir Robert Craigie of December 6th, 1947, cases are quoted under four categories in which Polish requests for extradition are stated to have been refused.

From the enquiries made in regard to these cases it appears that the position is as follows:-

CATEGORY A.

War Crimes Group (N.W. Europe) has no trace of the persons named under "cases closed" having been asked for by the Polish Authorities. The only exception is Fritz Bracht who was released after War Crimes Group had been informed that the Polish Authorities were no longer interested in him. War Crimes Group point out that the letter reference APS4 QG CCG/BE/BAOR is not one of its references.

CATEGORY B.

The facts of the 13 cases mentioned are as follows:-

(a) cases 1 to 8 were all considered for trial before Control Commission Courts in Germany. The Polish authorities were so informed and were requested to submit detailed evidence to the Director of Prosecutions direct. In cases Nos. 5 and 6, the Polish War Crimes Mission wrote on the 7th and 10th November respectively that, as most of the prosecution witnesses in these cases had in the meantime left the British Zone for Poland, the Mission was forced to abandon the cases against these accused.

(b) in the cases 9 to 13, the alleged crimes were likewise committed in the British Zone of Germany and all the witnesses were in Germany. It was therefore decided that these cases should be tried before Control Commission Courts. The cases were therefore passed to the Director of Prosecutions, the Polish War Crimes Mission being informed and requested to submit all relevant evidence to the Director of Prosecutions to enable trials to take place.

CATEGORY C.

These are cases of refusal to extradite as follows:-

(a) Hermann Eyer.

Very full defence statements and other evidence was submitted in this case. On the 25th September 1947, a letter was received on behalf of the Deputy Military Governor agreeing that there was no prima facie case for the extradition of this man; that he should be released after normal intelligence clearance; and that the Polish Authorities should be informed that, in the absence of evidence of guilt in this case, their request could not be granted. This decision was approved by the Secretary of State for Foreign Affairs.

(b) Gerhard Hoppe and Fritz Weiss.

The application made by the Polish authorities was for an alleged war crime committed in Norway against escaping Polish P.O.Ws. Neither of these cases had been listed with UNWCC. On the 4th September the Polish authorities were informed that they should apply for UNWCC listing and report if these were accepted. They were also asked at the same time to give the location of the witnesses and also to state further particulars of the charge and particularly what part each accused played personally in the alleged crimes. A reply was received with further evidence of

CATEGORY C. (continued)

(b)

interrogations carried out in January 1946. At the same time, the Polish authorities informed the Legal Division that the witnesses, when interrogated, were in British custody in Norway as P.O.Ws. and that their present address was unknown. From a perusal of the available evidence and in view of the fact that they were never listed with UNWCC and that the witnesses' location was not known, it was decided that neither of these cases had a war crimes interest and that extradition should be refused. Orders were therefore given that they should be released in due course.

(c) The case of Dering, UNWCC List 50/67, is understood to be under discussion through the Diplomatic channel.

CATEGORY D.

See observations in Sir Robert Craigie's letter.

Office of the British Representative,
United Nations War Crimes Commission,

January 29th, 1948.

Polish Delegation to the
United Nations War Crimes Commission

47, Portland Place,
London, W.1.

Ref. No. 3176/47.

6th December, 1947.

Dear Sir Robert,

As I stated at the meeting of Committee I held on 3rd December, I am in full agreement with you concerning your explanation published in Document A.60 on 24th November, that the procedure for the extradition of war criminals from the British Zone should be considered as satisfactory.

The information that the Commander-in-Chief regards listing by the United Nations War Crimes Commission in principle and usually as in itself evidence, also the ruling that further evidence should be asked for only in exceptional cases where new facts are available, is of the greatest value and help for the work of the Commission and the Allied War Crimes Investigation Missions in Germany.

But, as in practice there are some difficulties in the province of the apprehension and extradition of alleged war criminals now in hiding, war criminals accused of certain specific crimes described in the Commission's working list, or difficulties resulting from perhaps incorrect impressions of the procedure described in different letters of the Bad Salzungen zonal executive offices, I am taking this opportunity to inform you of the under-mentioned concrete facts.

A. In the British Zone several cases have been closed and no investigation undertaken if the whereabouts of the accused are not expressly indicated by the Allied Mission interested. This obviously creates conditions favourable to the concealment of notorious war criminals, their freedom from punishment and escape.

For instance, the alleged criminal Narevska /UNWCC No. 56/598/, responsible for crimes committed as a capo in Ravensbrueck and Smolenska /charge No. 1129/6702/, involved in crimes of selection and deportation of Polish children/, who hid for some time in the Service Transit Camp BAOR No. 10, according to information of our War Crimes Mission in Germany, managed to escape to Britain and to go from this country to the U.S.A.

The APS 4 QG CCB/BE/BAOR decided to close the cases of SS Gruppenfuehrer Friedrich Hildebrandt /UNWCC 1/307/, Kreisleiter Teodor Daniel /UNWCC 1/249/, Gen. der Polizei Leon Falkowski /UNWCC 1/268/, Gauleiter and Reg. President Fritz Bracht /UNWCC 1/240, Gen. Pol. Wilhelm Koppl /UNWCC 1/340/, Kom. SIFO Grosskopf /UNWCC 1/290/, and many others, because in the extradition requests the Polish War Crimes Mission was unable to show definitely their location.

Sir Robert Craigie,
United Nations War Crimes Commission,
Lansdowne House,
Berkeley Square,
London, W.1.

But Allied War Crimes Missions in Germany of those countries who are not partners in the Control Council have no executive power, no right to have a detective staff or agency and it is obvious that responsibility for the apprehension of the wanted persons rests with the military or occupational authorities in the relevant zones.

The general principle has been, as it is expressly stated in Doc. UNWCC No. A.32, of 29th January, 1947, that the respective commanders or occupational authorities shall comply with requests for the handing over of wanted persons provided they have no reason to doubt the bona fides of the Allied requests for the alleged war criminals in question and provided the persons wanted were not required as defendants or witnesses for trials before the International Military Tribunal or before the courts of the respective zones themselves.

Persons listed as war criminals on the lists compiled by the United Nations War Crimes Commission were to be handed over without question, subject to the general requirements indicated.

Therefore, the decisions to close cases and not order investigation action nor the seeking for purposes of apprehension of the above quoted war criminals, if no further material should justify the reopening and reconsideration of their cases, cannot be considered in any other way than as a discrimination against the Commission and all obligations legally justified and based on international agreements in the province of the prosecution of war criminals.

B. But cases of refusal to carry out extradition requests are known even where the location of the accused is indicated. The Allied Liaison Branch of the Zonal Executive Offices BAOR, in letters No. ALB/17997/10/EE, dated 13th October, 1947, and No. ALB/17497/6/EE, dated 5th September, 1947, refused the Polish War Crimes Mission in Germany the extradition inter alia of the following located war criminals, listed with the Commission:

1. SCHOEPS, Fritz	-	UNWCC List No. 53/440
2. WESTPHAL, Richard	-	" " " 53/546
3. KOEN, Friedrich	-	" " " 53/234
4. VOSS, Friedrich	-	" " " 53/521
5. SIEVENS, Bernhardt	-	" " " 44/511
6. GRZEGORCZYK, Robert	-	" " " 44/180
7. ZIELSCH, Gustaw	-	" " " 53/565
8. KAHNERT, Ewald	-	" " " 51/154
9. KIPPE, Wilhelm	-	" " " 44/272
10. SCHMIDT, Robert	-	" " " 57/1010
11. SELB, Friedrich	-	" " " 44/506
12. MICHELS, Heinz	-	" " " 45/378
13. BEREUR, Georg	-	" " " 45/71

although up-to-date the above-mentioned have not been tried in any other way and are responsible for committing grave crimes against Polish nations.

C. The extradition of a certain Hermann Eyer /UNWCC List No. 53/87/ - responsible for the devastation of the Institute of Pathological Medicine in Cracow, the pillage of public and private property, destruction of public and private libraries and deportation of some Poles to concentration camps - was refused, in a letter of the War Crimes Group /North West Europe/ No. WCG/1665/X/A-BAOR, on the grounds that "a case had not been made out".

The extradition of Gerhard Hoppe and Fritz Weiss was refused last October in letters of the Allied Liaison Branch BAOR ALB/174977/10/EE, for the reason that the cases have no war crimes interest, although the accused are responsible for orders to shoot prisoners of war; full evidence was collected against them from German and Norwegian witnesses and for the same charges sentences have already been passed by British and American courts, in the cases of Yamashita, Gen. Student and others.

The extradition of the accused Dering, listed with the UNWCC No. 50/67, is not yet settled although the extradition request was presented several months ago and the alleged war criminals is in British custody.

D. In BAOR Allied Liaison Branch letter ALB/17477/7/WE, of 17th July, 1947, it was stated in para. 1 that "All war criminals not claimed by Allied Governments and under arrest in the British Zone will be released on 1st October, 1947, unless they have been taken over by the Allied Governments concerned before that date".

But the handing over of authority in war crimes matters from War Crimes Group to CCG Legal Division has caused a complete stoppage in all arrests and extraditions for over two months, from the 15th May until the end of July.

The lists informing the Allied War Crimes Missions in the British Zone of the names of all war criminals under arrest there, whom they were to receive as under para. 2 of the above-mentioned letter, have not reached them in sufficient time, with the exception of one or two relating to Fischbeck camp.

In these circumstances, it was impossible to complete the checking of war criminals wanted by the Allied Nations before the 1st October, 1947, inasmuch as the new procedure was not explained clearly. BAOR Allied Liaison Branch letter No. 17 477/7/WE, of 29th July, 1947, stated in para. 5: "All applications for the extradition of war criminals must be made direct to War Crimes Group, NW Europe, c/o HQ."

BAOR Allied Liaison Branch letter No. 17477/7/WE, of 29th August, 1947, stated in para. 1: "Applications for extradition will in all cases be forwarded to Allied Liaison Branch for onward transmission to Legal Division".

I hope that you will agree with me that the above-quoted facts cannot be regarded as helpful in the task of bringing to trial alleged war criminals, a task based not only on international obligations but also undertaken on behalf of principals of justice and in the interests of world peace, which cannot be assured without the punishment of those responsible for crimes against peace, conventional war crimes and crimes against humanity. If such remained unpunished for their former criminal activity in this field, they would obviously try to instigate similar crimes in the future.

Yours sincerely,

(Signed) Muszkat,

Marian Muszkat, LL.D.

Polish Delegate to
the UNWCC.

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CONFIDENTIAL.

March 10th, 1948.

UNITED NATIONS WAR CRIMES COMMISSION.

WAR CRIMES TRIALS IN THE FAR EAST.

The following extract from a report concerning the trial of the Major War Criminals before the International Military Tribunal at Tokyo has been communicated by the United Kingdom Commissioner, and is now circulated to heads of delegations.

THE TRIAL BEFORE THE I.M.T., TOKYO.

The individual phase of the defendant TOJO before the International Military Tribunal lasted from the 26th December until the 7th January, the Court having been in recess on the 27th and 28th December and on the 1st, 3rd and 4th January.

In an opening statement which preceded the reading of TOJO's 250 page affidavit, a document which took two full days to read, his Japanese counsel, Dr. Kiyose, enumerated seven points which he said that that affidavit would bring out. They were:

"1. That Japan had neither planned nor prepared beforehand for the war against the United States, Britain and the Netherlands.

"2. That hostilities against the United States, Great Britain and the Netherlands were provoked by the allied nations, and the attacks were unavoidably instituted by Japan in self-defence and for her very existence.

"3. That the Japanese Government had scrupulously prepared to deliver the lawful notification of war to the United States of America prior to the commencement of hostilities.

"4. The true purport and significance of the Greater East Asia Policy.

"5. The non-existence of the so-called "Militarist Clique".

"6. The independence of the High Command and the functions of the Liaison and the Imperial Conferences.

"7. That the dominant characteristics of the military administration exercised by TOJO consisted in a just control and discipline of the military system, and he gave neither orders for, tolerated nor connived at any inhuman acts."

Points 1, 2, 4 and 5 in particular were expanded at length in the affidavit in a recapitulation of Japanese pre-war and wartime propaganda. The war was forced on Japan by the economic pressure and military encirclement exerted on her by America, Britain, China and the Netherlands. Japan had no desire to dominate the countries of the Far East; this was witnessed by the independence of the Empire of Manchukuo, the Wang Ching-wei regime in China, and the "independence" accorded to Burma and the Philippines. Extensive quotation was made from the speeches of the principle delegates to the "Greater East Asia Conference" held in Tokyo in November, 1943. In view of the numerous changes of government there had been in the decade pre-

ceding the outbreak of the war, it was ridiculous to contend that there had been a sustained war policy administered by a sinister "militaristic clique". Taken out of the context of Japan's actions, particularly in China, during that decade - as it must have been TOJO's intention that his Japanese audience should take it - the affidavit was a well reasoned and plausible statement of Japan's case.

One point of interest emerged during a brief direct examination by other defence counsel before cross-examination. KIDO's counsel asked TOJO whether KIDO had ever acted or given advice contrary to the Emperor's wishes for peace. TOJO denied that he had or that any Japanese subject, particularly a high government official, would, and the President commented "well, you know the implications from that reply."

On one occasion Mr. Keenan tried to get an admission from TOJO that wars are crimes, and in sustaining defence objection to the question the President called attention to the fact that only one defendant at Nuremberg was found guilty of aggressive war alone, and he was not sentenced to death. TOJO showed very evident interest at this remark, and it may be indicative of the way some members of the Tribunal are thinking of the judgment they will eventually give. On another occasion, when Japanese activities in French Indo-China before the war were under discussion TOJO revealed Japanese failure to get the Germans to bring pressure to bear on Vichy, and then, given an inch, took an ell and drew comparison with the present American Occupation of Japan.

In the section of his affidavit dealing with Greater East Asia, TOJO stated "The 'Emancipation of East Asia', one of the prerequisites of the Great East Asia policy, aimed at the liberation of the countries of East Asia from the intolerable position or status of colonies and semi-colonies under the control of the Powers, so that they might secure and enjoy identical freedom with other racial states....", but the prosecution surprisingly enough did not take up the question of the status of Formosa and Korea. Much of the questioning naturally centred round the Cordell Hull note of the 26th November, 1941. TOJO contended that if the United States had conceded even one of the points asked by the Japanese in their note to which the Hull note was a reply, there might not have been any war in the Pacific. But, when Mr. Keenan took him through the Hull note point by point he could not get him to agree that there was nothing objectionable to Japan in the proposals there made; TOJO persisted in saying that there was nothing objectionable in the words as words, but that they could not be considered out of the context of circumstances at the time, in which he contended that Japan was under military and economic threat from Britain and America.

Taken all in all, the TOJO phase of the trial will probably be of more use to the historian and the student of pre-war Japanese politics than as convincing proof of the guilt or innocence of TOJO and his fellow defendants. That TOJO has regained much of the respect he had lost in Japanese eyes is undoubted; his defence of the Emperor has certainly won approval, and his offer of himself as a scapegoat for defeat has probably given comfort. Japanese press comment has been uniformly critical of TOJO but this uniformity in itself prompts the suspicion that writers are merely saying what they think their Allied masters want them to say. On the other hand, members of the staff who attended the court during this phase were impressed by the evident sympathy aroused among Japanese spectators by both the matter and manner of TOJO's testimony, while much of the private comment we have heard from Japanese has been to the effect that he has stood up to his accusers "like a true Japanese".

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The last of the individual defendant phases, that of UMEZU (last Chief of the Japanese General Staff, and one of the two Japanese signatories of the surrender), was heard before the International Military Tribunal in Tokyo from January 7th to January 9th. UMEZU presented no affidavit, and the testimony of witnesses was principally directed to trying to prove that UMEZU's actions as Commander of the Kwantung Army was not part of a conspiracy to wage war and that no reports of atrocities by Japanese front line troops ever reached the High Command.

On the 9th January the defendant SHIMADA made a brief return to the witness box to deny that he had (since his incarceration) "threatened" TOGO and recommended him to omit from his testimony reference to navy desires that there should be no declaration of war. He also denied that the navy had had such intentions. The defence closed its case on January 13th.

A slight stir was caused on the 12th January when it transpired that one of the defence witnesses, a former colonel in the Kwantung Army, was an associate defence counsel, although not a licensed lawyer. The President directed that all persons participating in the defence who were not qualified lawyers should submit records of their past activities to the Tribunal.

From the 13th January until the end of the month the Prosecution has been engaged in presenting "rebuttal" evidence against the defence case. The quotation marks are used deliberately, for on the 14th January the Tribunal by a majority decision decided to admit new evidence, with the stipulation that it should be "important" and have probative value. The President admitted that this might mean the lengthening of the trial but said that it would be a matter "largely up to the Prosecution". A press report stated that this decision had caused alarm to "informed sources" because of the extra cost that might be involved. Expenditure on the trial was so far estimated to be "between six and a half and seven million United States dollars and more than 40,000,000 yen".

Rebuttal evidence started with quotation from a Japanese "Top Secret - Plan for disposing of the Incident" of the 7th August, 1937, to refute testimony that the Japanese ever intended to settle the "China Incident" by negotiation, and from a United States War Department report of a conversation between an American officer in China and the defendant MUTO, two months before Pearl Harbour. MUTO had said then that if an understanding was not reached between Japan and America "you will be fighting us in six weeks in Manila".

Thereafter, much time was taken up in quoting from the diary of Prince Saionji, kept for him by his private secretary Baron Harada. Excerpts were used: to refute the earlier personal testimony of the former Vice Minister for Foreign Affairs, Horinouchi Kensuke, that he had no knowledge of the proceedings at a liaison conference in February, 1938, wherein the army had wanted to conclude hostilities quickly so that they might make preparations against Russia; to refute SHIRATORI's testimony that he had not advocated withdrawal from the League of Nations; to prove ARAKI's endeavours to get heavy appropriations for the army in 1932-33 for an adventure on the Asiatic mainland; to prove ITAGAKI's opposition in 1938 to the Emperor's wish to conclude the China war as quickly as possible; to prove ITAGAKI's opposition to the Emperor's expressed wish not to conclude a military alliance with Germany.

Further evidence presented during the rebuttal phase quoted TOJO's speeches to the Diet proclaiming Japan's readiness to meet all eventualities and secret German documents showing OSHIMA's and SHIRATORI's approval and support for German plans to divide the world into two areas, ruled by Germany and Japan respectively. Other evidence was heard on Japanese forti-

fications

fication of the mandated islands, and Japanese submarine atrocities. The Tribunal unanimously agreed that Japanese claims that they had no territorial ambitions in Eastern Siberia were not sufficiently important to require rebuttal.

On the 30th January the Tribunal rejected a defence request for a ten days recess to prepare an answer to the rebuttal evidence.

During the month the Court sat on the following dates: 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30.

OTHER WAR CRIMES TRIALS IN THE FAR EAST.

In the Minor War Criminals Trials at Yokohama during the period from the 16th December, 1947 to the 15th January, 1948, 6 Japanese were tried for cases involving British Prisoners of War, of whom one was condemned to death and the other five to terms of imprisonment varying from 2½ to 14 years.
