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UNITED NATIONS WAR CRIMES COMMISSION

VISIT OF COMMISSION PARTY TO PARIS

June 7th - 11th, 1945

Report by Lord Wright, Chairman of the Commission

A small party, consisting of myself, General de Baer, Chairman of Committee I, our French colleague, Professor Gros, and Lt. Colonel Oldham, who acted as rapporteur, went to Paris last Thursday afternoon. The object of the visit was to confer with the French National authorities and the various Service authorities whose headquarters are in Paris in regard to closer co-operation in the investigation of war crimes, and to do what we could to speed up the trials of war criminals.

Another and primary object was to look over the Central Registry, which is under the direction of S.H.A.E.F.

The party arrived in Paris early on Thursday evening, and stayed at the Hotel Raphael. We are greatly indebted to Brigadier Brookes, G.I. Division SHAEF (Forward), and to SHAEF generally for the excellent accommodation and transport arrangements available to us throughout our visit.

After dinner Brigadier Brookes conferred with some of us about the recent National Offices' Conference. I was there and throughout our visit, greatly struck with the interest taken by the various authorities we saw in Paris as to the deliberations we carry on here and the recommendations which from time to time we make. It is encouraging to realise the extent to which the bodies engaged in the investigation of war crimes and the apprehension of war criminals take note of our decisions. This interest will probably increase as time goes on. We, at the headquarters of the Commission, have a great responsibility as constituting a central authority in the vital work of seeing that justice is done and that the vast scale of horrible war crimes, committed by our enemies of both the West and the East, do not go unpunished.

Brigadier Brookes explained to General de Baer and Colonel Oldham the set up of the Central Registry and then went through with them the points summarising the view of the majority of the delegates to the recent National Offices' conference.

On Friday morning we went with Brigadier Brookes to the Central Registry, and there met Lt. Colonel Palfrey, C.B.E., the British officer in charge of the Registry, Major Ryan, the energetic United States officer who is second in command and the staff. I must pay a tribute to the ability displayed by Lt. Colonel Palfrey and those working with him in this organisation. They expect to compile a complete record of the whole German Army engaged in the Western and Southern European spheres.

Lt. Colonel Palfrey explained the three types of card indexes being used at the Registry, namely (a) Wanted (b) Detained (c) Prisoner of War. First, there is the "Wanted Index" compiled from information obtained from (a) the War Crimes Commission (b) the National Offices (c) The 21st Army Group (d) United States sources and (e) Security Suspects. Something like 120,000 names appear on this index, the cards of which set out in great detail (a) personal particulars (b) Unit and (c) town, of the Wanted individuals. Members might like to see one of these cards. The Detained cards are similar to the Wanted ones and I have here also a copy of the Prisoner of War cards.

We were much struck by the happy atmosphere, close collaboration and enthusiasm which permeated the work which Lt. Colonel Palfrey is carrying out with his small executive staff and 120 French women assistants, who record in detail the particulars on the cards. It is gratifying to know that much of the machinery used at the Registry has been requisitioned from the Germans and indeed, in its early history, was used for compiling records required by the German Army. The system employed is the Holerith one. One of the most interesting features of this Office is the striking display of photographs (largely obtained from German soldiers) of war crimes being committed by the Germans themselves; and arrangements were made to have copies of these made available to the Commission for publicity purposes in various United Nations countries.

Later, during our visit, Colonel Oldham discussed with Colonel Palfrey the exchange of information between the Bureau and our Research Officer, and it was decided that Colonel Wade and Major Ryan should exchange all information which might be of use to either body. I am hopeful that it will be possible for Colonel Wade to leave, for at least 48 hours, the work which he so admirably performs here, in order to visit the Records Office and make himself personally familiar with the information being obtained by that organisation.

Later on Friday we were received by the French Minister of Justice, M. Teitgen, who, during the Resistance was No. 2 in the Underground Movement. M. Teitgen personally suffered very cruelly at the hands of the Gestapo. We had a useful exchange of views with him and raised such practical issues as the need for the Central Registry to have increased accommodation in order that its rapidly expanding work might be carried on with efficiency.

On Friday evening we had a call from Brigadier General Betts, J.A.G. of the United States Army in the Western European Theatre.

On Saturday morning the party inspected the Headquarters of the French National Office, where we were received by Professor Cassin, President of the Council of State, and Professor Paoli who is in charge of the French National Office. A staff of about 25 work at the Headquarters and prepare the charges which are based on information received from the 21 Regional Offices. Here again we saw a competent staff working under excellent conditions and we also understood the reason for the excellent flow of charges from France to the Commission in London. After having had the system employed at these Headquarters explained to us in detail, we went to the Paris Regional Headquarters which are under Colonel Badin. This is the largest of the 21 Regional Offices. We inspected the competent organisation established there.

Roughly it may be said that they work on a card system embracing these categories: (a) Place where crime was committed (b) the accused and (c) the victim. Perhaps I might record one example of a dossier which was explained to us. It set out the complaint, which was received from a French citizen concerning an alleged war crime committed against one of his relations. On receipt of the complaint the Paris Regional Headquarters wrote to the local police at the place where the crime was said to have been committed, and obtained certain particulars. The case was then referred to the SHAEF Central Registry, where further information was obtained from a statement supplied by a Polish prisoner of war. This statement involved a certain German soldier, whose address in Germany was obtained, and finally the German soldier was interrogated with eminently satisfactory results.

I should add that there is a third office in Paris engaged in the work of preparing charges based on crimes committed against French nationals. This is at the Place Vendôme where a staff of 15 is occupied with technical and legal questions.

We had the honour of being the guests of M. Teitgen at lunch on Saturday and had a further exchange of views as to the necessity for the early trials of war criminals. We also discussed with him the question of a portion of the exhibition, "Hitlerian Crimes", being shown in London. As in all other matters the Minister displayed the greatest cooperation.

Later in the afternoon, we went to the Quai d'Orsay, where we met M. Bidault who was No. 1 in the French Resistance Movement. Again we were struck by the earnestness and efficiency with which the whole question of war crimes is being pursued in France.

On Saturday evening we were the guests of Brigadier General Betts at a dinner party, and met Colonel Hall and Colonel Goff (United States Army) who are engaged in the investigation of war crimes.

On Sunday morning we visited the Offices of the United States J.A.G.'s Department, dealing with war crimes committed in the Western European theatre, and there discussed the methods being employed. After a short talk with General Betts we met Colonel Hall who explained the set up of the organisation of which he is in charge. This is divided into three sections (a) Administration, (b) Examination and (c) Investigation.

The Administration Section receives particulars of war crimes primarily from SHAEF teams and divides these particulars into (i) name of victim, (ii) name of witness, (iii) name of accused, (iv) name of Unit and (v) place where crime was committed. The particulars having thus been split up the cases go to the Examination Section, which examines largely in respect of the legal aspects. The case then goes to the Investigation Section which, if necessary, obtains any further particulars which may be required; for example, from the Detention reports of the SHAEF Central Registry. When the case has thus been completed it is handed on to another section of the J.A.G.'s Department for purposes of trial.

We were given copies of the simple but complete questionnaire supplied by the United States Military authorities to their troops and ex-prisoners of war. General Betts invited the National Offices of the countries represented on the United Nations War Crimes Commission to send representatives to the War Crimes Section which he supervises, so that they may familiarise themselves with the methods being employed there. He added that, if necessary, they could stay for a couple of days in order to understand completely the methods being employed by the United States Military authorities. The thoroughness and efficiency displayed by Colonel Hall and the officers associated with him were outstanding.

During Sunday morning, Professor Gros also called on the Director of the French Military Justice and examined with him the steps being taken to ensure early trials.

On Monday morning the party was given a preview of the Exhibition entitled "Hitlerian Crimes" which is to open today, Wednesday 13th June. This magnificent exhibition, which has been prepared with all the imagination that one associates with the French people, serves as a striking record of the diabolical methods and ensuing misery which have accompanied the German reign of terror throughout Europe. It is moderate and accurate and avoids sensationalism. I am hopeful that a substantial proportion of the exhibition may be shown in London, possibly under the auspices of this Commission.

Before returning to England the party took leave of Professor Cassin and Brigadier General Betts, and told each of them how much we appreciated the thorough steps being taken by the organisations with which they are associated to ensure prompt and substantial justice in regard to the punishment of war crimes.

June 13th, 1945.

WRIGHT
Chairman of
United Nations
War Crimes Commission

C.127
22nd June, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

REPORT TO THE PRESIDENT OF THE UNITED STATES BY MR.
JUSTICE ROBERT H. JACKSON, CHIEF OF COUNSEL FOR THE
U.S. IN THE PROSECUTION OF AXIS WAR CRIMINALS. (1)

I have the honor to report accomplishments during the month since you named me as Chief of Counsel for the United States in prosecuting the principal Axis war criminals. In brief, I have selected staffs from the several services, departments and agencies concerned; worked out a plan for the preparation, briefing and trial of the cases; allocated the work among the several agencies; instructed those engaged in collecting or processing evidence; visited the European Theater to expedite the examination of captured documents, and the interrogation of witnesses and prisoners; coordinated our preparation of the main case with preparation by judge advocates of many cases not included in my responsibilities; and arranged cooperation and mutual assistance with the United Nations War Crimes Commission and with Counsel appointed to represent the United Kingdom in the joint prosecution.

I.

The responsibilities you have conferred on me extend only to 'the case of major criminals whose offenses have no particular geographical localization and who will be punished by joint decision of the governments of the Allies,' as provided in the Moscow declaration of November 1, 1943, by President Roosevelt, Prime Minister Churchill and Premier Stalin. It does not include localized cases of any kind. Accordingly, in visiting the European Theater, I attempted to establish standards to segregate from our case against the principal offenders, cases against many other offenders and to expedite their trial. These cases fall into three principal classes:

1. The first class comprises offenses against military personnel of the United States - - such, for example, as the killing of American airmen who crash-landed, and other Americans who became prisoners of war. In order to insure effective military operation, the field forces from time immemorial have dealt with such offenses on the spot. Authorization of this prompt procedure, however, had been withdrawn because of the fear of stimulating retaliation through execution of captured Americans on trumped up charges. The surrender of Germany and liberation of our prisoners has ended that danger. The morale and safety of our own troops and effective government of the control area seemed to require prompt resumption of summary dealing with this type of case. Such proceedings are likely to disclose evidence helpful to the case against the major criminals and will not prejudice it in view of the measures I have suggested to preserve evidence and to prevent premature execution of those who are potential defendants or witnesses in the major case.

I flew to Paris and Frankfurt and conferred with Generals Eisenhower, Smith, Clay, and Betts, among others, and arranged to have a representative on hand to clear questions of conflict in any particular case. We also arranged an exchange of evidence between my staff and the Theater Judge Advocate's staff. The officials of other countries were most anxious to help. For example, the French brought to General Donovan and me in Paris evidence that civilians in Germany had benten to death with wrenches three American airmen. They had obtained from the German burgemeister identification of the killers, had taken them into custody, and offered to deliver them to our forces. Cases such as this are not infrequent. Under the arrangements perfected, the military authorities are enabled to move in cases of this class without delay. Some are already under way; some by now have been tried and verdicts rendered. Some concentration camp cases are also soon to go on trial.

(1) Radio Bulletin No. 136, Washington D.C., 7th June, 1945.

2. A second class of offenders, the prosecution of which will not interfere with the major case, consists of those who, under the Moscow declaration, are to be sent back to the scene of their crimes for trial by local authorities. These comprise localized offenses or atrocities against persons or property, usually of civilians of countries formerly occupied by Germany. The part of the United States in these cases consists of the identification of offenders and the surrender on demand of those who are within our control.

The United Nations War Crimes Commission is especially concerned with cases of this kind. It represents many of the United Nations, with the exception of Russia. It has been usefully engaged as a body with which the aggrieved of all the United Nations have recorded their accusations and evidence. Lord Wright, representing Australia, is the chairman of this commission, and Lieutenant Colonel Joseph V Hodgson is the United States representative.

In London, I conferred with Lord Wright and Colonel Hodgson in an effort to coordinate our work with that of the Commission wherever there might be danger of conflict of duplication. There was no difficulty in arriving at an understanding for mutual exchange of information. We undertook to respond to requests for any evidence in our possession against those listed with the Commission as criminals and to cooperate with each of the United Nations in efforts to bring this class of offenders to justice.

Requests for the surrender of persons held by American forces may present diplomatic or political problems which are not my responsibility. But so far as my work is concerned, I advised the Commission, as well as the appropriate American authorities, that there is no objection to the surrender of any person except on grounds that we want him as a defendant or as a witness in the major case.

3. In a third class of cases, each country, of course, is free to prosecute treason charges in its own tribunals and under its own laws against its own traitorous nationals -- Quislings, Laval, 'Lord Haw-Haw,' and the like.

The consequence of these arrangements is that preparations for the prosecution of major war criminals will not impede or delay prosecution of other offenders. In these latter cases, however, the number of known offenses is likely to exceed greatly the number of prosecutions, because witnesses are rarely able satisfactorily to identify particular soldiers in uniform whose acts they have witnessed. This difficulty of adequately identifying individual perpetrators of atrocities and crimes makes it the more important that we proceed against the top officials and organizations responsible for originating the criminal policies, for only by so doing can there be just retribution for many of the most brutal acts.

II.

Over a month ago the United States proposed to the United Kingdom, Soviet Russia and France a specific plan, in writing, that these four powers join in a protocol establishing an international military tribunal, defining the jurisdiction and powers of the tribunal, naming the categories of acts declared to be crimes, and describing those individuals and organizations to be placed on trial. Negotiation of such an agreement between the four powers is not yet completed.

In view of the immensity of our task, it did not seem wise to await consummation of international arrangements before proceeding with preparation of the American case. Accordingly, I went to Paris, to American Army Headquarters at Frankfurt and Wiesbaden, and to London, for the purpose of assembling, organizing and instructing personnel from the assisting services and agencies and getting the different organizations coordinated and at work on the evidence. I uniformly met with eager cooperation.

The custody and treatment of war criminals and suspects appeared to require immediate attention. I asked the War Department to deny those prisoners who are suspected war criminals the privilege which would appertain to their rank if they were merely prisoners of war; to assemble them at convenient and secure locations for interrogation by our staff; to deny them access to the press; and to hold them in the close confinement ordinarily given suspected criminals. The War Department has been subjected to some criticism from the press for these measures, for which it is fair that I should acknowledge responsibility. The most elementary considerations for insuring a fair trial and for the success of our case suggest the imprudence of permitting these prisoners to be interviewed indiscriminately or to use the facilities of the press to convey information to each other and to criminals yet uncaptured. Our choice is between treating them as honorable prisoners of war with the privileges of their ranks, or to classify them as war criminals, in which case they should be treated as such. I have assurances from the War Department that those likely to be accused as war criminals will be kept in close confinement and stern control.

Since a considerable part of our evidence has been assembled in London, I went there on May 28 with General Donovan to arrange for its examination, and to confer with the United Nations War Crimes Commission and with officials of the British Government responsible for the prosecution of war criminals. We had extended conferences with the newly appointed Attorney General, the Lord Chancellor, the Foreign Secretary, the Treasury Solicitor, and others. On May 29, Prime Minister Churchill announced in the house of Commons that Attorney General Sir David Maxwell Fyfe had been appointed to represent the United Kingdom in the prosecution. Following this announcement, members of my staff and I held extended conferences with the Attorney General and his staff. The sum of these conferences is that the British are taking steps parallel with our own to clear the military and localized cases for immediate trial, and to effect a complete interchange of evidence and a coordination of planning and preparation of the case by the British and American representatives. Despite the fact that the prosecution of the major war criminals involves problems of no mean dimensions, I am able to report that no substantial differences exist between the United Kingdom representatives and ourselves, and that minor differences have adjusted easily as one or the other of us advanced the better reasons for his view.

The Provisional Government of the French Republic has advised that it accepts in principle the American proposals for trials before an International Military Tribunal. It is expected to designate its representative shortly. The government of the Union of Soviet Socialist Republics, while not yet committed, has been kept informed of our steps and there is no reason to doubt that it will unite in the prosecution. We propose to make provision for others of the United Nations to become adherents to the agreement.

III

The time, I think, has come when it is appropriate to outline the basic features of the plan of prosecution on which we are tentatively proceeding in preparing the case of the United States.

1. The American case is being prepared on the assumption that an inescapable responsibility rests upon this country to conduct an inquiry, preferably in association with others, but alone if necessary, into the culpability of those whom there is probable cause to accuse of atrocities and other crimes. We have many such men in our possession. What shall we do with them? We could, of course, set them at large without a hearing. But it has cost unmeasured thousands of American lives to beat and bind these men. To free them without a trial would mock the dead and make cynics of the living. On the other hand, we could execute or otherwise punish them

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without a hearing. But indiscriminating executions or punishments without definite findings of guilt, fairly arrived at, would violate pledges repeatedly given, and would not set easily on the American conscience or be remembered by our children with pride. The only other course is to determine the innocence or guilt of the accused after a hearing as dispassionate as the times and the horrors we deal with will permit, and upon a record that will leave our reasons and motives clear.

2. These hearings, however, must not be regarded in the same light as a trial under our system, where defense is a matter of constitutional right. Fair hearings for the accused are, of course, required to make sure that we punish only the right men and for the right reasons. But the procedure of these hearings may properly bar obstructive and dilatory tactics resorted to by defendants in our ordinary criminal trials.

Nor should such a defense be recognized as the obsolete doctrine that a head of state is immune from legal liability. There is more than a suspicion that this idea is a relic of the doctrine of the divine right of kings. It is, in any event, inconsistent with the position we take toward our own officials, who are frequently brought to court at the suit of citizens who allege their rights to have been invaded. We do not accept the paradox that legal responsibility should be the least where power is the greatest. We stand on the principle of responsible government declared some three centuries ago to King James by Lord Chief Justice Coke, who proclaimed that even a King is still "under God and the law".

With the doctrine of immunity of a head of state usually is coupled another, that orders from an official superior protect one who obeys them. It will be noticed that the combination of these two doctrines means that nobody is responsible. Society as modernly organized cannot tolerate so broad an area of official irresponsibility. There is doubtless a sphere in which the defense of obedience to superior orders should prevail. If a conscripted or enlisted soldier is put on a firing squad, he should not be held responsible for the validity of the sentence he carries out. But the case may be greatly altered where one has discretion because of rank or the latitude of his orders. And of course, the defense of superior orders cannot apply in the case of voluntary participation in a criminal or conspiratorial organization, such as the Gestapo or the S.S. An accused should be allowed to show the facts about superior orders. The Tribunal can then determine whether they constitute a defense or merely extenuating circumstances, or perhaps carry no weight at all.

3. Whom will we accuse and put to their defense? We will accuse a large number of individuals and officials who were in authority in the government, in the military establishment, including the General Staff, and in the financial, industrial, and economic life of Germany who by all civilized standards are provable to be common criminals. We also propose to establish the criminal character of several voluntary organizations which have played a cruel and controlling part in subjugating first the German people and then their neighbors. It is not, of course, suggested that a person should be judged a criminal merely because he voted for certain candidates or maintained political affiliations in the sense that we in America support political parties. The organizations which we will accuse have no resemblance to our political parties. Organizations such as the Gestapo and the S.S. were direct action units, and were recruited from volunteers accepted only because of aptitude for, and fanatical devotion to, their violent purposes.

In examining the accused organizations in the trial, it is our proposal to demonstrate their declared and covert objectives, methods of recruitment, structure, lines of responsibility, and methods of effectuating their programs. In this trial, important representative members will

be allowed to defend their organizations as well as themselves. The best practicable notice will be given, that named organizations stand accused and that any member is privileged to appear and join in their defense. If in the main trial an organization is found to be criminal, the second stage will be to identify and try before regular military tribunals individual members not already personally convicted in the principal case. Findings in the main trial that an organization is criminal in nature will be conclusive in any subsequent proceedings against individual members. The individual member will thereafter be allowed to plead only personal defenses or extenuating circumstances, such as that he joined under duress, and as to those defenses he should have the burden of proof. There is nothing novel in the idea that one may lose a part of or all his defense if he fails to assert it in an appointed forum at an earlier time. In United States war-time legislation, this principle has been utilized and sustained as consistent with our concept of due process of law.

4. Our case against the major defendants is concerned with the Nazi master plan, not with individual barbarities and perversions which occurred independently of any central plan. The groundwork of our case must be factually authentic, and constitute a well-documented history of what we are convinced was a grand, concerted pattern to incite and commit the aggressions and barbarities which have shocked the world. We must not forget that when the Nazi plans were boldly proclaimed they were so extravagant that the world refused to take them seriously. Unless we write the record of this movement with clarity and precision, we cannot blame the future if in days of peace it finds incredible the accusatory generalities uttered during the war. We must establish incredible events by credible evidence.

5. What specifically are the crimes with which these individuals and organizations should be charged, and what marks their conduct as criminal?

There is, of course, real danger that trials of this character will become enmeshed in voluminous particulars of wrongs committed by individual Germans throughout the course of the war, and in the multitude of doctrinal disputes which are part of a lawyer's paraphernalia. We can save ourselves from those pitfalls if our test of what legally is crime gives recognition to those things which fundamentally outraged the conscience of the American people and brought them finally to the conviction that their own liberty and civilization could not persist in the same world with the Nazi power.

Those acts which offended the conscience of our people were criminal by standards generally accepted in all civilized countries, and I believe that we may proceed to punish those responsible in full accord with both our own traditions of fairness and with standards of just conduct which have been internationally accepted. I think also that through these trials we should be able to establish that a process of retribution by law awaits those who in the future similarly attack civilization. Before stating those offenses in legal terms and concepts, let me recall what it was that affronted the sense of justice of our people.

Early in the Nazi régime, people of this country came to look upon the Nazi Government as not constituting a legitimate state pursuing the legitimate objective of a member of the international community. They came to view the Nazis as a band of brigands, set on subverting within Germany every vestige of a rule of law which would entitle an aggregation of people to be looked upon collectively as a member of the family of nations. Our people were outraged by the oppressions, the cruellest forms of torture, the large-scale murder, and the wholesale confiscation of property which initiated the Nazi régime within Germany. They witnessed persecution of the greatest enormity on religious, political and racial grounds, the breakdown of trade unions, and the liquidation of all religious and moral influences. This was not the legitimate activity of a state within its own boundaries, but

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was preparatory to the launching of an international course of aggression and was with the evil intention, openly expressed by the Nazis, of capturing the form of the German state as an instrumentality for spreading their rule to other countries. Our people felt that these were the deepest offenses against that International Law described in the Fourth Hague Convention of 1907 as including the "laws of humanity and the dictates of the public conscience".

Once these international brigands, the top leaders of the Nazi party, the S.S. and the Gestapo, had firmly established themselves within Germany by terrorism and crime, they immediately set out on a course of international pillage. They bribed, debased, and incited to treason the citizens and subjects of other nations for the purpose of establishing their fifth columns of corruption and sabotage within those nations. They ignored the commonest obligations of one state respecting the international affairs of another. They lightly made and promptly broke international engagements as a part of their settled policy to deceive, corrupt, and overwhelm. They made, and made only to violate, pledges respecting the demilitarized Rhineland, and Czechoslovakia, and Poland and Russia. They did not hesitate to instigate the Japanese to treacherous attack on the United States. Our people saw in this succession of events the destruction of the minimum elements of trust which can hold the community of nations together in peace and progress. Then, in consummation of their plan, the Nazis swooped down upon the nations they had deceived and ruthlessly conquered them. They flagrantly violated the obligations which states, including their own, have undertaken by convention or tradition as a part of the rules of land warfare, and of the law of the sea. They wantonly destroyed cities like Rotterdam for no military purpose. They wiped out whole populations, as at Lidice, where no military purposes were to be served. They confiscated property of the Poles and gave it to party members. They transported in labor battalions great sectors of the civilian populations of the conquered countries. They refused the ordinary protections of law to the populations which they enslaved. The feeling of outrage grew in this country, and it became more and more felt that these were crimes committed against us and against the whole society of civilized nations by a band of brigands who had seized the instrumentality of a state.

I believe that these instincts of our people were right and that they should guide us as the fundamental tests of criminality. We propose to punish acts which have been regarded as criminal since the time of Cain and have been so written in every civilized code.

In arranging these trials we must also bear in mind the aspirations with which our people have faced the sacrifices of war. After we entered the war, and as we expended our men and our wealth to stamp out these wrongs, it was the universal feeling of our people that out of this war should come unmistakable rules and workable machinery from which any who might contemplate another era of brigandage would know that they would be held personally responsible and would be personally punished. Our people have been waiting for these trials in the spirit of Woodrow Wilson, who hoped to "give to international law the kind of vitality which it can only have if it is a real expression of our moral judgment".

Against this background, it may be useful to restate in more technical lawyer's terms the legal charges against the top Nazi leaders and those voluntary associations such as the S.S. and Gestapo which clustered about them and were ever the prime instrumentalities, first, in capturing the German state, and then, in directing the German state to its spoliation against the rest of the world.

(a) Atrocities and offenses against persons or property constituting violations of International Law, including the laws, rules and customs of land and naval warfare. The rules of warfare are well established and generally accepted by the nations. They make offenses of such conduct as killing of the wounded, refusal of quarter, ill treatment of prisoners of war, firing on undefended localities, poisoning of wells and streams, pillage and wanton destruction, and ill-treatment of inhabitants in occupied territory.

(b) Atrocities and offenses, including atrocities and persecutions on racial or religious grounds, committed since 1933. This is only to recognize the principles of criminal law as they are generally observed in civilized states. These principles have been assimilated as a part of International Law at least since 1907. The Fourth Hague Convention provided that inhabitants and belligerents shall remain under the protection and the rule of "the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience".

(c) Invasions of other countries and initiation of wars of aggression in violation of International Law or treaties.

The persons to be reached by these charges will be determined by the rule of liability, common to all legal systems, that all who participate in the formulation or execution of a criminal plan involving multiple crimes are liable for each of the offenses committed and responsible for the acts of each other. All are liable who have incited, ordered, procured, or counselled the commission of such acts, or who have taken what the Moscow Declaration describes as a "consenting part" therein.

IV

The legal position which the United States will maintain, being thus based on the common sense of justice, is relatively simple and non-technical. We must not permit to be complicated or obscured by sterile legalisms developed in the age of imperialism to make war respectable.

Doubtless what appeals to men of good will and common sense as the crime which comprehends all lesser crimes, is the crime of making unjustifiable war. War necessarily is a calculated series of killings, of destructions of property, of oppressions. Such acts unquestionably would be criminal except that International Law throws a mantle of protection around acts which otherwise would be crimes, when committed in pursuit of legitimate warfare. In this they are distinguished from the same acts in the pursuit of piracy or brigandage which have been considered punishable wherever and by whomever the guilty are caught. But International Law as taught in the Nineteenth and the early part of the Twentieth Century generally declared that war-making was not illegal and is no crime at law. Summarized by a standard authority, its attitude was that "both parties to every war are regarded as being in an identical legal position, and consequently as being possessed of equal rights". This, however, was a departure from the doctrine taught by Grotius, the father of International Law, that there is a distinction between the just and the unjust war - the war of defense and the war of aggression.

International Law is more than a scholarly collection of abstract and immutable principles. It is an outgrowth of treaties or agreements between nations and of accepted customs. But every custom has its origin in some single act, and every agreement has to be initiated by the action of some state. Unless we are prepared to abandon every principle of growth for International Law, we cannot deny that our own day has its right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened International Law. International Law is not capable of development by legislation, for there is no continuously sitting international legislature.

Innovations and revisions in International Law are brought about by the action of governments designed to meet a change in circumstances. It grows, as did the Common-law, through decisions reached from time to time in adapting settled principles to new situations. Hence, I am not disturbed by the lack of precedent for the inquiry we propose to conduct. After the shock to civilization of the last World War, however, a marked reversion to the earlier and sounder doctrines of International Law took place. By the time the Nazis came to power it was thoroughly established that launching an aggressive war or the institution of war by treachery was illegal and that the defense of legitimate warfare was no longer available to those who engaged in such an enterprise. It is high time that we act on the juridical principle that aggressive war-making is illegal and criminal.

The re-establishment of the principle of unjustifiable war is traceable in many steps. One of the most significant is the Briand-Kellogg Pact of 1928, by which Germany, Italy and Japan, in common with ourselves and practically all the nations of the world, renounced war as an instrument of national policy, bound themselves to seek the settlement of disputes only by pacific means, and condemned recourse to war for the solution of international controversies. Unless this Pact altered the legal status of wars of aggression, it has no meaning at all and comes close to being an act of deception. In 1932, Mr. Stimson, as Secretary of State, gave voice to the American concept of its effect. He said, "War between nations was renounced by the signatories of the Briand-Kellogg Treaty. This means that it has become illegal throughout practically the entire world. It is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct and the rights of nations revolve. It is an illegal thing. *** By that very act, we have made obsolete many legal precedents and have given the legal profession the task of re-examining many of its codes and treaties."

This Pact constitutes only one in a series of acts which have reversed the viewpoint that all war is legal and have brought International Law into harmony with the common sense of mankind, that unjustifiable war is a crime. Without attempting an exhaustive catalogue, we may mention the Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, signed by the representatives of forty-eight governments, which declared that "a war of aggression constitutes *** an international crime." The Eighth Assembly of the League of Nations in 1927, on unanimous resolution of the representatives of forty-eight member nations, including Germany, declared that a war of aggression constitutes an international crime. At the Sixth Pan-American Conference of 1928, the twenty-one American Republics unanimously adopted a resolution stating that "war of aggression constitutes an international crime against the human species."

The United States is vitally interested in recognizing the principle that treaties renouncing war have juridical as well as political meaning. We relied upon the Briand-Kellogg Pact and made it the cornerstone of our national policy. We neglected our armaments and our war machine in reliance upon it. All violations of it, wherever started, menace our peace as we now have good reason to know. An attack on the foundations of international relations cannot be regarded as anything less than a crime against the international community, which may properly vindicate the integrity of its fundamental compacts by punishing aggressors. We therefore propose to charge that a war of aggression is a crime, and that modern International Law has abolished the defense that those who incite or wage it are engaged in legitimate business. Thus may the forces of the law be mobilized on the side of peace.

Any legal position asserted on behalf of the United States will have considerable significance in the future evolution of International Law. In untroubled times, progress toward an effective rule of law in the

international community is slow indeed. Inertia rests more heavily upon the society of nations than upon any other society. Now we stand at one of those rare moments when the thought and institutions and habits of the world have been shaken by the impact of world war on the lives of countless millions. Such occasions rarely come and quickly pass. We are put under a heavy responsibility to see that our behavior during this unsettled period will direct the world's thought toward a firmer enforcement of the laws of international conduct, so as to make war less attractive to those who have governments and the destinies of peoples in their power.

V

I have left until last the first question which you and the American people are asking - when can this trial start and how long will it take. I should be glad to answer if the answer were within my control. But it would be foolhardy to name dates which depend upon the action of other governments and of many agencies. Inability to fix definite dates, however, would not excuse failure to state my attitude toward the time and duration of trial.

I know that the public has a deep sense of urgency about these trials. Because I, too, feel a sense of urgency, I have proceeded with the preparations of the American case before completion of the diplomatic exchanges concerning the Tribunal to hear it and the agreement under which we are to work. We must, however, recognize the existence of serious difficulties to be overcome in preparation of the case. It is no criticism to say that until the surrender of Germany the primary objective of the military intelligence services was naturally to gather military information rather than to prepare a legal case for trial. We must now sift and compress within a workable scope voluminous evidence relating to a multitude of crimes committed in several countries and participated in by thousands of actors over a decade of time. The preparation must cover military, naval, diplomatic, political and commercial aggressions. The evidence is scattered among various agencies and in the hands of several armies. The captured documentary evidence - literally tons of orders, records and reports - is largely in foreign languages. Every document and the trial itself must be rendered into several languages. An immense amount of work is necessary to bring this evidence together physically, to select what is useful, to integrate it into a case, to overlook no relevant detail, and at the same time and at all costs to avoid becoming lost in a wilderness of single instances. Some sacrifice of perfection to speed can wisely be made and, of course, urgency overrides every personal convenience and comfort for all of us who are engaged in this work.

Beyond this I will not go in prophecy. The task of making this record complete and accurate, while memories are fresh, while witnesses are living, and while a tribunal is available, is too important to the future opinion of the world to be undertaken before the case can be sufficiently prepared to make a creditable presentation. Intelligent, informed and sober opinion will not be satisfied with less.

The trial must not be protracted in duration by anything that is obstructive or dilatory, but we must see that it is fair and deliberative and not discredited in times to come by any sub spirit. Those who have regard for the good name of the United States as a symbol of justice under law would not have me proceed otherwise.

May I add that your personal encouragement and support have been a source of strength and inspiration to every member of my staff, as well as to me, as we go forward with a task so immense that it can never be done completely or perfectly, but which we hope to do acceptably.

Respectfully yours,

(s) Robert H. Jackson,
ROBERT H. JACKSON.

C.128.
21st June, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

Article by Lord Wright in "New York Times"
of May 15th, 1945.

THAT THE GUILTY SHALL NOT ESCAPE

by LORD WRIGHT
Chairman, United Nations War Crimes Commission

All war necessarily involves slaughter, suffering and destruction, yet nations may have to defend themselves and their existence and freedom. The British had, five years ago, to face the danger of invasion, defeat and slavery. All these things were threatened by the Germans. They were treacherous aggressors and they are as a nation chargeable with war guilt.

But the war crimes which people are discussing now belong to a different chapter from that of such war guilt. They are atrocities which go beyond the killing, suffering and destruction which are inevitably connected with all war. They have been the special features of the present war. They have been marked by deliberate planning, sometimes in order to strike terror into the invaded countries, sometimes in order to exterminate whole races like the Jews, sometimes to extract information from prisoners by almost unbelievable methods of ingeniously planned torture.

Early in this century great efforts were being made to humanize as far as possible the inevitable horrors of war. Various international conventions met and deliberated and published rules and regulations which were acceded to by almost every nation, including Germany. In particular, there was The Hague Convention of warfare on land which set out a code of rules and declared that the inhabitants and belligerents were to remain under the protection and governance of the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and from the dictates of the public conscience.

That declaration must be taken to have been intended to cover individual responsibility, to give rights to individuals and to impose responsibility on individuals for breaches, in particular, of the rules for the conduct of war and the treatment of people in occupied countries. It is these breaches that constitute war crimes and expose the guilty criminal to punishment if the offenses can be proved and the offenders identified. There is no question here of revenge, but of justice.

Let us take a very few samples of the sort of things which have been done and for which justice calls for punishment of the guilty. I ask my readers not to be skeptical because the crimes seem too terrible to be true. I choose only a few instances from a very great number, drawing my information only from credible sources, largely from reports of official inquiries.

A policy of race extermination was carried out ruthlessly against the Jews according to a plan which can be traced back to Hitler and those members of his Government who were in his immediate circle. I give one instance: At the Birkenau concentration camp in Poland the United States War Refugee Board reported that 1,750,000 Jews from all over Europe were done to death. The scheme was most elaborate. To put it shortly, the victims - men, women and children - were ordered into brick chambers where they were killed by poisonous gas. Their bodies were bundled out and were burned or otherwise disposed of. How many people have

been done to death in these camps cannot yet be stated. It has, however, been calculated that in all about six million Jews were deliberately slaughtered in that and other ways.

The revolting details of what was done in the camps of Germany have appalled the whole world. They would be unbelievable if they were not authenticated. Reliable eyewitnesses have testified to what they have seen at Belsen and Buchenwald.

Last year we were shocked by a massacre at Oradour-sur-Glane, a village in France near Limoges, where the whole population was, without notice, wiped out. The village was surrounded by SS troops. The men were herded together in a fair-ground or square in the village and were pushed into a barn where they were shot down in batches of twenty.

The women and children were driven into a church, which was set on fire, and all perished except one or two. Meantime the whole village had been burned down. Bodies of young children were afterward found in the church pressed against the confessional. About 750 people thus perished..

The whole thing was planned and the plan systematically executed under the direction of the German general. Similar massacres took place at other villages in Poland, in France, in Czechoslovakia at Lidice, in Belgium, in Greece and in Russia, where similar revolting atrocities were perpetrated. Each atrocity taken by itself would have been bad enough, but they were obviously done under a settled plan directed by the highest authority of the German state.

I may next refer to the system of torture mainly to extract information. Under the Hague Convention prisoners of war may be interrogated but not forced to answer. In defiance of this the Nazis developed a most ingenious and veritably horrible system of torture. The Gestapo, the dreaded and merciless secret Nazi police, were the principal executors, along with some sections of the SS. I cannot do more than give a few specimens.

Their fiendish cruelty was not by heroism on the part of the victims. There is, for example, the prisoner, found by Allied troops dying at the Gestapo center at Rennes when they captured the place, who could only murmur, "They did not get what they wanted." Or the unknown hero who scribbled on the walls of the torture chamber in Paris the motto, "Une seule devise: N'avouer pas" - "Never confess." The Gestapo and the SS had special training schools to educate men as torturers. Torture was standardized: it was all according to plan. Beating with a rubber hose or iron bars or dog whips or wire-core bludgeons furnished with nails, crushing fingers in presses, or by hammer blows, hanging up by wires around the fingers, wrenching out finger and toe nails, electric currents, and a long catalogue which I do not develop further.

It is almost incredible if it were not so fully vouched for by solid evidence. Bodies of victims have been found with the skin flayed off the arms, legs or other parts of the body.

The main instrumentality which carried out this horrible, this worse than bestial, cruelty was the Gestapo along with some sections of the SS body. The Gestapo, in particular, was a voluntary body pledged to this revolting system of operations. It can truly be described as a criminal association to join which was to enter deliberately on a course of wickedness and crime.

I must stop this enumeration, but will only mention one more atrocity - that is, rounding up of thousands and thousands of young women in the occupied countries and sending them to forced prostitution in German barracks. The starvation, inhuman forced labor and the almost incredible ill-treatment which were regular features of the concentration camps are well known.

When I think of all the evidence I have seen of the German atrocities I am impatient of people who ask me to define what is a war crime. I am tempted to answer like the man who was asked to define an elephant. He said, "I cannot define an elephant, but I know one when I see one."

The United Nations War Crimes Commission deals with heinous crimes. It would not pick out, bad as that is, the case of a German soldier taking off an old woman's cow. The atrocities reported to the United Nations War Crimes Commission are things outside any ordinary idea of warfare. They are all manifestly part of a systematic plan to crush and degrade and dehumanize the spirit of the peoples who are attacked, if not exterminate them. The similarity of what is done over and over again over a period of years over every part of occupied Europe shows the deliberate scheme of a master mind in villainy and can be traced back to Hitler and his key Nazis.

But, as the object of the Allied nations is justice to the guilty individuals whatever their degree, it is necessary to prove the offenses and identify the men who are responsible and finally to trace the offenders down and bring them to trial and justice. This is sometimes a complicated task. It requires the cooperation of several different instrumentalities. Of these the United Nations War Crimes Commission is most often referred to because it is the only instrumentality specially identified with the task of justice, but it is only one of the agencies whose cooperation is required.

The system which has been adopted involves four main cooperating agencies :

1. What are called the national offices - that is, each nation which has suffered creates an office of its own to collect evidence of the atrocities and to name and identify as far as possible the culprits accused. This is peculiarly the work of the nation concerned, which would resent foreign detectives working in its country. The acts were done there, the witnesses are there, the language and local conditions belong to the country.
2. The War Crimes Commission, to which the national office has to report the atrocity, then comes in. The commission examines the report and the evidence in support of it, and if satisfied that there is a prima facie case enters the names of the accused on its lists. These lists are sent to the next agency in the chain - that is, the military agencies charged by the Governments with the responsibility for apprehending accused and suspected war criminals.
3. Then comes the function of the military, which is in some ways the most difficult and important of all. The army, in cooperation with other Allied agencies charged with this responsibility, has to give effect if it can to the list of names sent to it - that is, to trace the criminals and apprehend them. It is obvious how difficult this will be. The Allies have some millions of prisoners of war and among them there must be very many war criminals. No doubt many must elude detection, but the Army is zealous, able and ingenious, and while too much must not be expected, it would be wrong to despair.
4. Finally, if the suspect is tracked and apprehended, he must be tried. This last stage raises its own problems.

The Declaration made at Moscow on Nov. 1, 1943, distinguished two classes of criminals: (a) Those who committed or assisted in atrocities, who were to be returned to the scene of their crimes for trial and punishment by local courts, and (b) the German criminals whose offenses have no geographical localization and who will be punished by a joint decision of the Governments of the Allies. The latter class includes arch-criminals like the members of Hitler's Government and others in analogous positions.

It would, I suppose, not only include key Hitler administrators but also big financiers and industrialists who supported the Nazi regime and rendered it possible.

Thus we see that the whole scheme is organized to secure justice. But it is clear that only to the extent that each of the agencies concerned, including the commission, is organized, staffed, equipped and empowered to act will the scheme be able to function.

The question of the appropriate courts in which to try suspects is important. The Governments have not yet announced how they will deal with the arch-criminals, whether they will try them at all, and, if so, in what courts, or whether they will deal with them by executive action. As to the remainder of the accused, there is more than one possible court.

They might be sent to the local court of the place where they committed the crime, or they may be tried by specially created military courts. This last class of court is well recognized in international law. The court is held under the authority of the Commander in Chief and acts on the principles of international law. It is, of course, different from a court-martial, which is summoned to punish soldiers of the Allied forces guilty of breaches of discipline or of the articles of war. The military court is summoned to try war-crimes.

The major task will be to identify the criminal; the atrocity can in most cases be established by the local evidence. No doubt many German criminals will attempt to escape, but there are few neutral countries left and most of them have declared their intention not to harbor German criminals.

There will need to be very many trials as criminals are apprehended. But these will be spread over a large part of Europe, both in the liberated countries and in Germany. The questions will mainly be questions of fact. It is certainly important that there should be no delay in the trials and the punishment.

It is clear that the whole scheme of punishing war criminals involves large coordinated effort of the agencies concerned and whole-hearted support on the part of the public.

But the object is of paramount importance to the world and to future ages. It is essential to establish that atrocities such as those which have been committed over five years and over a great part of Europe should not escape exemplary punishment. Those committed in Russia have been of peculiar savagery. The Russian Government has its own organization for the recording of war crimes and for the apprehension and trial of the accused.

In the Far East the United Nations War Crimes Commission has established a special branch which sits in China at Chungking and may sit elsewhere. The United States, Australia and the Netherlands Indies have their organizations which work with the War Crimes Commission. The Japanese have exceeded, if that were possible, the German atrocities. They have been guilty of appalling cruelties in New Guinea and the Philippines, and, indeed, throughout the whole of the vast area of the eastern operations.

The mode of trial to be adopted is not a matter for decision by the commission, though it is able to make, and has made, recommendations on that matter and also on the method of punishment. But the decision rests with the Governments. In practice the functions of the commission, though vital to the scheme, are limited. It has made various recommendations and will continue to act with the national offices and the military in a coordinating and advisory capacity.

This is specially true now that Germany is occupied. The commission did some time ago urge the setting up of an agency in Germany along with the military to investigate crimes and apprehend criminals, and was advised that such an agency was functioning. It is clear that with the occupation of Germany the national offices have a different role in detective work.

I ought to add that the commission has been hampered in its operations by false rumors - for instance, that there is some disharmony or want of loyalty among its members. This is completely false. The members have a single purpose: to bring the criminals to justice and do everything within their power to achieve that end.

The commission has positively declared its view that obedience to superior orders is not a defense and that heads of states are not immune. This last is a curious revival of the old bad idea of the divine right of kings.

SECRET

C.129.
25th June, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

VIEWS OF THE GOVERNMENTS AS TO WHETHER THE PREPARATION
AND LAUNCHING OF THE WAR IS A WAR CRIME.

Opinion of the Government of Australia
(Communicated by Mr. Oldham on behalf of Lord Wright)

The Australian Government endorses the views of its Representative, Lord Wright, expressed at the meeting of the United Nations War Crimes Commission on October 10th, 1944. Moreover, it considers that the preparation for and launching of an aggressive war are in their nature criminal acts; even if they were not justiciable under the criminal laws of invaded countries, it would be desirable formally to stigmatise such acts as offences against the moral sense of humanity and thus against the fundamental principles of International Law. It feels that a decision by the Commission to bring these acts within the categories of war crimes to be dealt with by it, would help to establish as a concept of International Law the personal responsibility of the authors of such crimes.

In the case of Germany, the launching of the war was a breach of solemn International Treaties, particularly the Pact of Paris, 1928.

Whereas the fourth point of the Majority Report (submitted to the Commission on September 27th, 1944) states it is desirable that, for the future, penal sanctions should be provided for grave outrages against the elementary principles of International Law, the Australian Government believes that such provision should be made now by action of the United Nations War Crimes Commission.

Further, it agrees with Dr. Ecer, who made the point in paragraph four of his Minority Report dated September 22nd, 1944, that the whole problem is within the scope of the Commission, which, in the Government's opinion, is authorised to put those responsible for launching the war on the list of war criminals for the fundamental crime of "total war".

Should there, however, be any doubts in this respect amongst Members of the Commission, the Australian Government supports the view of Dr. Ecer, (given in paragraph five of the above-mentioned Report) that the Commission should recommend to the member Governments that its competence should be enlarged to give it the necessary authority to take this step.

As to the international significance of the question under discussion, the attention of the Commission is drawn to the following statement made in Parliament on the 30th November, last, by the Minister of External Affairs (Dr. H.V. Evatt) viz: "An atrocity, or breach of the laws of war, is not only the concern of the State whose nationals suffer from the breach, but of all the States upholding the law of nations and the standards of civilised conduct".

C.130
26th June, 1945

UNITED NATIONS WAR CRIMES COMMISSION

CONFIRMATION OF THE COMMISSION'S PAST PRACTICE
IN REGARD TO FIXING SALARIES

Report by the Chairman of the Finance Committee

Under Article 7 of the Financial and Administrative Regulations, salaries are to be "fixed by the Commission or in accordance with rules made by it".

Originally the Finance Committee submitted proposals regarding salaries for approval by the Commission, but for a long time past without formally adopting a rule on the subject, the Commission has contented itself with the information that an appointment has been made at a salary or within salary limits approved by the Finance Committee.

Under the Staff Rules, which the Finance Committee has now proposed to the Commission (Article 1, para. 2), the power to fix salaries is formally conferred on the Finance Committee, and in order to prevent any question arising as to whether the Commission's past practice was regular, it is proposed that the Commission decide to validate it retroactively.

SECRET

C.131
27th June, 1945

UNITED NATIONS WAR CRIMES COMMISSION

BRITISH REGULATIONS FOR THE TRIAL OF
WAR CRIMINALS BY MILITARY COURTS

Note by the Legal Officer (Dr. Schwelb)

1. FORM OF THE REGULATIONS

The Regulations have been issued by Royal Warrant, dated June 14th, 1945, where it is recited that it is "expedient to make provision for the trial and punishment of violations of the laws and usages of war committed during any war in which His Majesty has been engaged at any time after September 2nd, 1939".

The "custody, trial and punishment of persons charged with such violation of the laws and usages of war as aforesaid shall be governed by the Regulations attached to" the Warrant.

2. DEFINITION OF "WAR CRIME"

"War Crime" means a violation of the laws and usages of war committed during any war in which His Majesty has been or may be engaged at any time since the 2nd September, 1939. (Regulation 1). The definition of "war crime" in Regulation 1 forms the basis of the jurisdiction of the Military Courts. It is restricted to the trial of "war crimes". (Regulations 2(a) and (4)). The court shall take judicial notice of the laws and usages of war. (Regulation 8(iii)).

Article 29 of the terms of surrender accepted by the Italian Government speaks of "Benito Mussolini, his chief Fascist associates and all persons suspected of having committed war crimes or analogous offences".

Article 11(a) of the declaration regarding the defeat of Germany, etc. (Cmd 6648) provides:

"The principal Nazi leaders as specified by the Allied Representatives, and all persons from time to time named or designated by rank, office or employment by the Allied Representatives as being suspected of having committed, ordered or abetted war crimes or analogous offences, will be apprehended and surrendered to the Allied Representatives".

The Armistices with Roumania (Cmd. 6585; Art. 14), Finland (Cmd. 6586; Art. 13), and Bulgaria (Cmd. 6587; Art. 6) on the other hand, speak only of the apprehension and trial of persons accused of war crimes.

The jurisdiction of the British Military Courts established under the Warrant does not cover the whole field. The "chief Fascist associates" and the "principal Nazi leaders" are outside their jurisdiction, obviously for the reason that special inter-allied machinery is to be provided for them.

But the Military Courts have also no jurisdiction to try what is described in the Italian Armistice and in the German Surrender Declaration as "analogous offences".

The jurisdiction of the Military Courts under the Warrant is narrower than that of the Military Government Courts⁺ established under General Eisenhower's Proclamation to the people of Germany (No. 1). Under Article II of the Ordinance No. 2, Military Government Courts have jurisdiction over:

- (a) All offences against the laws and usages of war;
- (b) All offences under any proclamation, law, ordinance, notice or order issued by or under the authority of the Military Government or of the Allied Forces;
- (c) All offences under the laws of the occupied territory or of any part thereof.

The jurisdiction of the Military Courts under the Warrant is restricted to (a).

3. CONSTITUTION OF MILITARY COURTS

A Military Court for the trial of war criminals is convened by the competent officer (Regulation 2) and consists of not less than two officers in addition to the President (Regulation 5).

4. MIXED INTER-ALLIED MILITARY COURTS

The Convening Officer may, in a case where he considers it desirable so to do, appoint as a member of the Court, but not as President, one or more officers of an Allied Force serving under his command or placed at his disposal for the purpose. (Regulation 5(3)). The number of non-British officers so appointed must not comprise more than half the members of the Court, excluding the President.

5. THE JURISDICTION OF MILITARY COURTS

In order to bring a person as a war criminal before a military court, two conditions must be complied with:

- (a) The person must be within the limits of the command of the Convening Officer;
- (b) It must appear to the Convening Officer that he has committed a war crime, at any place whether within or without the limits of the Convening Officer's command. (Regulation 4).

Provided that the accused is within the territorial jurisdiction of the Convening Officer, it makes no difference where the crime has been committed. Nor is it relevant, when it has been committed, whether before or after the promulgation of the Royal Warrant.

6. THE PROCEDURE OF MILITARY COURTS

The provisions of the Army Act and the Rules of Procedure which apply to ordinary Field General Courts-Martial apply with certain modifications

⁺A paper on the Allied Military Government Courts will be circulated to the Members of the Commission shortly.

to the Military Courts for the trial of war criminals. (Regulation 3)

7. REPRESENTATION OF THE ACCUSED

In addition to English and Northern Ireland barristers-at-law and solicitors, Scots advocates and law agents and qualified members of the legal profession of other British jurisdictions (Rule 93 of the Rules of Procedure 1926 S.R. & O. 1926, No. 989), the following persons are qualified to act as counsel before the Military Courts:

- 1) Any person qualified to appear before the Courts of the country of the accused, i.e. German, Austrian or Italian advocates;
- 2) Any (other) person approved by the Convening Officer of the Court.

8. RULES OF EVIDENCE APPLICABLE TO MILITARY COURTS

Before British Courts Martial evidence is regulated, subject to certain modifications (Sections 163-165 of the Army Act), by the rules of English civil courts, i.e. the courts of ordinary criminal jurisdiction in England, including courts of summary jurisdiction). (Rule 73 of the Rules of Procedure, 1926).

A Military Court trying war criminals, on the other hand, may take into consideration any oral statement or any document notwithstanding that it would not be admissible in proceedings before an (ordinary) Field General Court-Martial, provided it appears to be of assistance in proving or disproving the charge.

Six particular examples of evidence otherwise inadmissible in British Courts-Martial, but admissible under the Warrant, are given in Regulation 8(1)a-f.

Under (b) any document purporting to have been signed or issued officially by any member of any Allied or enemy force or by any official or agency of any Allied, neutral or enemy government shall be admissible as evidence without proof of the issue or signature thereof.

The provision (c) is of particular interest for trials against the perpetrators of crimes against Allied prisoners of war. The Court may receive as evidence of the facts therein stated any report.

- 1) of the Comité International de la Croix Rouge, or by any representative of it;
- 2) by any member of the medical profession or of any medical service;
- 3) by any person acting as a "man of confidence";
- 4) by any other person whom the Court may consider was acting in the course of his duty when making the report.

9. CRIMES COMMITTED BY UNITS OR GROUPS OF MEN

Regulation 8(II) provides that -

Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as prima facie evidence of the responsibility of each member of that unit or group for that crime.

10. PROCEEDINGS IN OPEN COURT AND IN CAMERA

The sittings of Military Courts will ordinarily be open to the public so far as accommodation permits.

But the Court may order otherwise, on the ground that it is expedient so to do:

- (a) in the national interest, or
- (b) in the interests of justice, or
- (c) for the effective prosecution of war crimes generally.

The Court may direct that all or any portion of the public shall be excluded during any part of the proceedings which normally takes place in Open Court. The Court may also prohibit the publication of any evidence given or any statement made in the course of the proceedings. The announcement of the finding and sentence always takes place in Open Court, unless the Convening Officer otherwise directs. (Regulation 8(v) and (iv))

11. PUNISHMENT OF WAR CRIMES

The punishment of a war crime consists in any one or more of the following:

- (1) Death (either by hanging or by shooting);
- (2) Imprisonment for life or for any lesser term;
- (3) Confiscation;
- (4) A fine.

The court may also order the restitution of money or property taken or destroyed by the accused.

A Court consisting of not more than three members (including the President) can pass a sentence of death only unanimously. A Court consisting of more than three members cannot pass a death sentence without the concurrence of at least two thirds of those serving on the Court. (Regulation 9)

12. APPEAL AND CONFIRMATION

No right of appeal in the ordinary sense of that term exists against the decision of a Military Court.

But, under Regulation 10, the accused may within 48 hours give notice of his intention to submit a Petition to the Confirming Officer against the finding or sentence or both. The Petition must be submitted within 14 days. If it is against the finding it is referred to His Majesty's Judge Advocate General or to any Deputy of his in the Command overseas where the trial took place.

The finding and any sentence which the Court had jurisdiction to pass, if confirmed, are valid, notwithstanding any deviation from the Regulations, or the Rules of Procedure or any defect or objection, technical or other. An exception exists only in cases where it appears that a substantial miscarriage of justice has actually occurred.

The involved problems, arising in connection with the control and supervision of the Military Courts by the superior British courts (by way of the so-called prerogative writs (or orders) , Habeas Corpus, Mandamus, Prohibition and Certiorari), the influence of the enemy-alien character of at least most of the accused on those remedies and the doctrine of the Act of State in its bearing on this kind of "foreign jurisdiction" are outside the scope of this paper.

SECRET

C.132
28th June 1945

UNITED NATIONS WAR CRIMES COMMISSION

COURTS AND CRIMINAL PROCEDURE IN GERMANY
UNDER ALLIED MILITARY GOVERNMENT

Note by the Legal Officer (Dr. Schwelb)

I. BELLIGERENT OCCUPATION AND ASSUMPTION OF SUPREME POWER

Through the "Declaration regarding the defeat of Germany and the assumption of supreme authority with respect to Germany by the Governments of the United Kingdom, the U.S.A., the U.S.S.R. and France" dated 5th June, 1945, British Command Paper 6648, the period of military government in the narrower sense of the government of a territory under belligerent occupation, has come to an end, and the four Great Powers, have assumed supreme authority in Germany, thus extending their status from mere belligerent occupants of enemy territory to holders of the sovereign power in Germany.

Since 5th June, 1945, 16.40 hours, the territory of Germany within her frontiers as they were on the 31st December, 1937, has been under a condominium of the four Powers. All the powers, formerly possessed by the German Government, the High Command and any state, municipal, or local government or authority are vested in the four Powers. But it is pointed out in the Preamble to the Declaration that the assumption of supreme authority and powers does not affect the annexation of Germany.

The legal effect of the "Declaration", which in its turn is based on Germany's unconditional surrender, is, inter alia, that the four Allied Powers as sovereigns of Germany, have ceased to be bound by the customary and conventional rules of International law defining and restricting the rights of a belligerent occupant, vis-à-vis the ousted sovereign. Particularly Articles 42 to 56 of the Hague Regulations respecting the Laws and Customs of War on Land do no longer apply in the relations between the allied authorities and the inhabitants of pre-1938 Germany.

In view of the fact that the establishment of British Military Courts to deal with war criminals in the British zone of occupation is imminent, and that negotiations about the establishment of Inter-Allied Military Courts for the prosecution of war criminals are being conducted on a very high level, it may be convenient for the members of the Commission to have laid before them a survey of the organisation of criminal jurisdiction in Germany during the period of Military Government which, in theory at least, came to an end on June 5, 1945.

This survey refers only to those parts of Germany which have been occupied by the Western Powers. It is based on the enactments published in the Military Government Gazette, Sixth Army Group Area of Control. Information about the actual working of the Military Government Courts is not available at present.

II. THE ESTABLISHMENT OF MILITARY GOVERNMENT COURTS

In his proclamation No. 1, General Eisenhower, as Supreme Commander, Allied Expeditionary Force, declared that supreme legislative, judicial and executive authority and powers within the occupied territory are vested in

him as Supreme Commander of the Allied Forces and as Military Governor, and the Military Government was established to exercise these powers under General Eisenhower's direction. It was further stated in Proclamation No. 1 that Military Government Courts will be established for the punishment of offenders (Para. II), and that all German Courts within the Occupied Territory are suspended (III); the National Socialist special courts were deprived of authority throughout the occupied territory; and with regard to the other courts, criminal and civil, it was stated that their re-opening will be authorized when conditions permit.

III. INTRODUCTION OF NEW PROVISIONS OF SUBSTANTIVE CRIMINAL LAW

Ordinance No. 1 introduced a number of provisions of substantive criminal law, the main purpose of which was to provide for the security of the Allied Forces and to establish public order. The Ordinance distinguishes between capital offences (Art. I, 1-20), which are punishable by death or such other penalty as a Military Government Court may impose, and other offences (Art. II, 21-43), which are punishable by penalties other than death. The Ordinance became effective upon the date of its first promulgation (Art. VIII).

The following provisions of a general nature may be of interest in connection with the prosecution of war criminals: they deal with (a) collective fines (Art. IV); (b) responsibility for corporate acts (Art. V); (c) the defence that an offence charged was an act of legitimate warfare (Art. VI, para. 1); and (d) the defence of Superior Order (Art. VI, para. 2).

(a) Collective Fines

Article IV, dealing with Collective Fines, provides that the Bürgermeister (Mayor) or other principal representative of any community may be charged and tried as representing the residents thereof with any offence for which such residents or a substantial number thereof are alleged to be collectively responsible, and in the event of his being convicted of such offence in his representative capacity, and collective responsibility being established, a collective fine may be imposed upon the community. This provision appears not to be repugnant to Art. 50 of the Hague Regulations respecting the Laws and Customs of War on Land, which is to the effect that no collective penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which it cannot be regarded as collectively responsible. Article IV of the Military Government Ordinance No. 1 expressly posits the condition that collective responsibility must be established before a mayor is convicted of an offence in his representative capacity, and before a collective fine is imposed upon the community. From the text of the Ordinance it follows that collective responsibility is established, when the residents of any community, or a substantial number thereof, are responsible for a certain act.

(b) Responsibility for Corporate Acts

Under Article V of the Ordinance every director, official or employee of any incorporated or unincorporated company, society, or association, and every partner or employee of a partnership, who in any such capacity, either alone or jointly with others, causes, directs, urges or votes in favour of an act or omission which constitutes an offence for which the company, society, association or partnership would be triable by a Military Government Court, shall be liable therefor as though such act or omission had been done or made in his individual capacity. Continental law does not, in general know the criminal responsibility of corporations aggregate and this provision makes sure that under Allied Military law the agents of corporations and other bodies and partnerships are criminally liable in their personal capacity for acts done on behalf of the corporation, etc.

Article V must be read in connection with Article III, which deals with Attempts and Conspiracies. Anyone who attempts to commit, or conspires or agrees with another to commit any offence, or who advises, assists in, or procures the commission of any offence, or who having knowledge of an alleged offence fails to report it, or assists an alleged offender to avoid arrest, shall be punishable as a principal (Art. III).

(c) The defence of "legitimate warfare"

Under Article VI, para. 1, it shall be a good defence to any charge under the Ordinance that the offence charged was an act of legitimate warfare by a person entitled to the status of a combatant. In considering this provision, we must bear in mind that it was prepared in advance before the Allied Forces entered German territory, and that with the unconditional surrender of Germany in May 1945, there ceased to be persons entitled to commit acts of warfare as German combatants.

But even at the time prior to the German capitulation the defence of this provision could be invoked only if the following conditions were complied with:

- (i) the defendant must have been a person entitled to the status of a combatant;
- (ii) the act complained of must have been an act of warfare;
- (iii) this act must have been legitimate under the customary and conventional rules of international law which, through the use of the words "legitimate warfare", are introduced into the body of law which the Military Government Courts are called upon to administer.

(d) The defence of Superior Order

Article VI, para. 2 of the Ordinance deals with the problem of the defence of Superior Order. It shall not be a defence to any charge under the Ordinance that the offence charged was committed (i) under orders of any civil or military superior, or (ii) of any person purporting to act as an official or member of the N.S.D.A.P., or (iii) that the offence was committed under duress. Thus, for offences against Ordinance No. 1, not only the plea of Superior Order is excluded, but even coercion, otherwise than by Superior Order or order from a N.S.D.A.P. official, is no defence.

IV. THE JURISDICTION OF ALLIED MILITARY GOVERNMENT COURTS

Ordinance No. 2 deals with the establishment of Military Government Courts. There are three kinds of Military Government Courts: General Military Courts, Intermediate Military Courts and Summary Military Courts (Art. I of Ordinance No. 2).

Ratione personarum: These Courts have jurisdiction over all persons in the occupied territory except allied military personnel.

Ratione materiae: The Military Government Courts shall, under Article II (2), have jurisdiction over:

- (i) all offences against the laws and usages of war;
- (ii) all offences under any proclamation, law, ordinance, notice, or order issued by or under the authority of the Military Government or of the Allied Forces;

- (iii) all offences under the laws of the occupied territory or of any part thereof.

Ad (i): "the laws and usages of war", i.e. provisions of international law, are thus part of the law to be administered by the Military Government Courts.

Ad (ii): this does not call for further comment.

Ad (iii): from this provision, it follows that the Military Government Courts have jurisdiction to try all offences against the law of the occupied territory. This provision, again, is in accordance with The Hague Regulations (Art.43) according to which the occupant shall respect, unless absolutely prevented, the laws in force in the country.

The provision of Article 43 of The Hague Regulations presupposes, of course, that in the occupied territory there exists a civilised system of law, and it is the provisions of such civilised systems of law which shall be respected by the occupying authorities. Where, as in Nazi Germany, a large body of law existed which was repugnant to the fundamental legal and moral notions of the community of civilised nations, such body of law could, of course, not "be respected" by the occupying Power even before the unconditional surrender of Germany, and therefore Law No. 1 of the Military Government provided for the abrogation of the fundamental Nazi laws enacted since 30th January 1933 "in order to eliminate from German law and administration within the occupied territory the policies and doctrines of the National Socialist Party, and to restore to the German people the rule of justice and equality before the law". Similarly, as the whole judiciary of the occupied country was permeated with adherents of the criminal conspiracy which governed Germany under the Hitler régime, this judicial machinery could possibly not be entrusted with the administration of justice under the occupation, and, the German courts being in part temporarily, in part permanently suspended, jurisdiction had to be vested in allied courts. When Article II, para 2(c), of the Ordinance No. 2 gives to the Military Government Courts jurisdiction over all offences under the laws of the occupied territory or of any part thereof, it, of course, means only such provisions of German law or law of German States as have not been abrogated by Law No. 1 regarding the abrogation of Nazi law, and subsequent enactments of the Military Government.

With this caveat it can be stated that already Article II of Ordinance No. 2 has vested in the Military Government Courts the jurisdiction to try offences under German law other than Nazi law.

Ordinance No. 2 became effective upon the date of its first promulgation (Art.IX). It is submitted that the Military Government Courts have had from their very establishment jurisdiction to try crimes committed in Germany both before and after the promulgation of the Ordinance. This applies to the provisions regarding the establishment of the Military Government Courts and to the provisions regulating their procedure. It does not apply to alterations in the substantive law introduced by Ordinance No. 2. The amendments of substantive law introduced by the Ordinance have no retrospective effect. Thus, Article III (3f.) provides that where an offence is charged under the laws of the occupied territory, or any part thereof, the punishment which may be imposed shall not be limited to the punishment provided by such laws. This provision, as a rule of substantive law, applies only to acts or omissions which have been committed while Ordinance No. 2 was already law. But there is no reason why the machinery of the courts and the provisions as to their procedure could not be applied to crimes committed before the occupation of Germany.

V. THE RIGHTS OF THE ACCUSED BEFORE MILITARY GOVERNMENT COURTS

Article V of Ordinance No. 2 deals with the rights of the accused.

1. Among those rights there is under Article V (8 b.) the right to be present at the trial, to give evidence and to examine or to cross-examine any witness. But it is provided that the court may proceed in the absence of the accused in two cases:

(a) if the accused has applied for and been granted permission to be absent; or

(b) if the accused is believed to be a fugitive from justice.

The notion of "a fugitive from justice" and his procedural status are explained in more detail in Rule 10, para.7, of the Rules of Military Government Courts which have been made under Art.VIII of Ordinance No. 2. From this Rule, it follows that proceedings leading up to conviction and sentence are possible only if it is proved that the accused was duly served with a summons to appear. If this condition is complied with the court may proceed with the trial in his absence and may, if it considers a case against him proved, record a conviction and sentence. If it is not so proved, but the court is satisfied that after reasonable steps have been taken to find and summon the accused, he cannot be found, the court may proceed in his absence up to but not beyond the recording of evidence and the making of an interim order for the custody or impounding of any property of the accused. In either of these cases, the court shall appoint an officer of the Allied Forces or other suitable person to represent the defence.

2. The accused is entitled to consult a lawyer before trial, and to conduct his own defence, or to be represented at the trial by a lawyer of his own choice, subject to the right of the Court to debar any person from appearing before the court; but in any case in which a sentence of death may be imposed, the accused is entitled to be represented by an officer of the Allied Forces, if he is not otherwise represented. (Art. V (c) and (d). Any lawyer not debarred by the Military Government or by the court, or any other person with the consent of the court, may appear as defending counsel. The court may appoint an officer of the Allied Forces, or with the consent of the accused, designate local counsel, to represent the accused or assist in his defence. (Rule 3 (2))

3. There appears to be no appeal as of right from the decision of the Military Government Court, but the Ordinance provides (a) for the review of the sentence by such officer or officers as may be designated for the purpose by or under the authority of the Military Government (Art.VI, 9) and (b) for the confirmation of death sentences by the Supreme Commander or other head of the Military Government for the time being (Art.VII). The reviewing authority has power to set aside any finding of "guilty"; to suspend, reduce, commute or modify the sentence, to order a new trial and to make other appropriate orders, but shall not set aside a finding of "not guilty". In any case where a petition of review has been filed which is considered to be frivolous, the reviewing authority may increase the sentence. (Art.VI (10)). A petition by a convicted person for review of the finding or sentence must be filed with the court within ten days of conviction. (Rule 24).

VI. EVIDENCE

The following provisions regarding evidence are contained in Rule 12 of the Rules of Military Government Courts are worth mentioning. A Military Government Court shall in general admit oral, written and physical evidence having a bearing on the issues before it, and may exclude any evidence, which

in its opinion is of no value as proof. If security is at stake, evidence may be taken in camera or in exceptional cases where security demands it may be excluded altogether.

VII. JUVENILE OFFENDERS

Provisions regarding juvenile offenders are contained in Rule 22 of the Rules of Military Government Courts. In cases involving offenders under the age of 18 years, Military Government Courts shall adopt a flexible procedure based on the accepted practices of local juvenile courts, and those of Great Britain and the United States, but an offender over 16 years of age but under 18 years of age may be treated in all respects as an adult unless in the opinion of the court his physical and mental immaturity make his treatment as a juvenile advisable.

VIII. SUMMARY

1. On June 5th, 1945 the four Great Powers assumed sovereign power on the territory of pre-1938 Germany, and their jurisdiction on this territory ceased to be restricted to that of a belligerent occupant.

2. But even in the time between the occupation of parts of German territory and June 5th, 1945, the Western Powers, in accordance with international law, established Military Government Courts.

3. A number of provisions of substantive criminal law were introduced, inter alia, provisions about Collective Fines, the responsibility for corporate acts, the defence of legitimate warfare, and the plea of superior order.

4. The jurisdiction of the Military Government Courts is not restricted to the trial of offences against ordinances and other enactments of the occupying authorities, but extends to offences against the laws and usages of war and to offences against German law.

Particularly with regard to the last mentioned aspect, it is submitted that the jurisdiction of the Military Government Courts is not restricted to crimes committed during occupation,

5. (a) The Military Government Courts have power to try absent persons provided they have been duly served with summons to appear. If service of summons is not proved, the court may record evidence and make interim orders as to the property of the accused.

(b) The accused has the right to be defended by counsel of his own choice and at his own expense. In cases in which a sentence of death may be imposed, he has a right to be represented by an officer of the Allied Forces, if he cannot himself otherwise provide for representation.

(c) The decisions of the Military Government Courts are subject to review; death sentences must be confirmed by the Supreme Commander or other C.O.

6. While the established rules of evidence in general apply in the proceedings of the Military Government Courts, in exceptional cases, where security demands, evidence may be excluded altogether.

7. In cases of juvenile offenders, the Courts shall apply a flexible procedure. Youths between 16 and 18 are, in general, treated as adults.

SECRET

C.133
28th June, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

SURRENDER OF LOOT BY GERMAN HOLDERS.

Memorandum by

M. de BIER

If this war is really to be an object lesson, the Germans must be made to realise that war does not pay. Exactly as in 1918, the Germans have once more benefited by the war, for they are being allowed to retain the product of their looting.

The pillage of works of art, industrial plants and private houses, jewels and money has been carried out by the Germans in occupied countries to such an extent that elementary justice demands that the looters be made to surrender the property which they have stolen.

In this country, looting has been made punishable by death after the bombardments. If that is so when it is done by our own countrymen, it should be even more the case when done by our enemies, and it would be just to impose the death penalty upon the guilty.

Our interests, however, are primarily that the stolen property be returned to their legitimate owners.

For this purpose, it is suggested that the War Crimes Commission recommends to the Allied Governments as a first measure :

That an order be made in Germany making it compulsory for every German to declare to the occupying authorities within 8 days any property (except foodstuffs) which has been acquired in any way whatever during the war. Failure to declare any property taken from the occupied countries would make the offender punishable by death.

Publication of the declared loot would enable the dispossessed owners to regain their property.

C.134
Corrections

UNITED NATIONS WAR CRIMES COMMISSION

Work of the Czechoslovak Investigating
Team attached to the H.Q. 12th Army Group
in Wiesbaden

Report by Dr. B. Ecer

Page 2: The words "(U.S. Army daily in Germany)" should be
deleted from the last line of para b) aa) and
inserted in the first line of para b) bb) after
the words "The Stars and Stripes".

Page 6: 5th paragraph, 6th line: After the words "German
crimes and", insert the words "that these crimes".

SECRET

C.154
9th July, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

WORK OF THE CZECHOSLOVAK INVESTIGATING TEAM ATTACHED TO
THE U.S. 12TH ARMY GROUP IN RESSBACH.

Report by Dr. B. Ecer

I.

The scheme of the American War Crimes Investigating
Organisation

1. The pertinent orders and instructions: SHAEF letter of February 24th 1945 to the H.Q.s. of the Army Groups on "Establishment of War Crimes Branches"; SHAEF letter to the same H.Q.s. and on same subject of April 22nd 1945; Eagle (H.Q. 12th Army Group) letters of April 24th 1945 and of 30th April 1945 to the H.Q.s. of the Armies.

2. The Organisation: a) 12th Army Group's War Crimes Branch as sub-section of the 12th Army Group's Judge Advocate's Section.

Chief of the Judge Advocate's Section of H.Q. 12th Army Group is Colonel Micklewait, his executive officer is Colonel Partlow. In addition there are a number of officers and a staff of J.C.O.S. all trained in the administration of justice.

Chief of the War Crimes Branch of H.Q. 12th Army Group is Colonel Breckinridge, his main collaborators are Colonel Mize, Colonel Ricks and Major Kirkpatrick. In addition there are a great number of officers and non-commissioned officers trained in investigating work. The activity of the War Crimes Branch of the 12th Army Group is supervised by the Judge Advocate's Section. The Army Group War Crimes Branch receives reports from the Army War Crimes Branches and moreover this Army Group War Crimes Branch is itself investigating; for instance, it is interrogating German war criminals held in custody of the Army Group.

b) Army War Crimes Branches (4 armies) as sub-sections of the Army Judge Advocate Sections. The activity of the War Crimes Branch is directed and supervised by the Army Judge Advocate. He reviews the reports submitted by the Army War Crimes Branches, determines dispositions of all reports of alleged war crimes submitted to this office and directs the activity of Army War Crimes Personnel (page 2 of the letter of April 30th 1945).

c) Field investigating officers. Their primary function is the submission of preliminary reports of suspected war crimes to the Army Judge Advocate, who determines as to whether such cases should be referred to a "War Crimes Investigating Team" for complete investigating and report or whether the preliminary report should be sent to the H.Q. Army Group without further investigation. For example when cases do not involve United States nationals as victims they will be forwarded to the H.Q. Army Group for transmission to the Foreign Government or Governments concerned (page 2 of the letter of April 30th 1945).

3. The leading principles and rules:

a). in general: "It is manifest that in the Army Group Area an obligation exists not only to our Government, but also to the Governments of other United Nations to provide evidence upon which

convictions of guilty war criminals may be predicted and to record for civilisation an account of German atrocities for the past five years" (page 2 of the letter of 30th April 1945).

b). in particular: aa). What is a war crime? The letter of April 30th 1945, says: "War crimes are violations of the laws and usages of war of general application and acceptance, including acts in contravention of treaties and conventions dealing with the conduct of war, as well as other offences against persons or property which outrage common justice or involve moral turpitude, committed in connection with military operations or occupation with or without orders or sanction of governments or commanders."

Declaration of the 4 Powers concerning the Military Government in Germany, issued on June 5th, 1945 according to the press provides that German authorities will surrender main Nazi leaders and all persons later on to be named and suspected of having committed or ordered to be committed war crimes or similar crimes. Thus the activity of the War Crimes Branches is not limited to "war crimes" stricto sensu, although there is not yet a clear description of the "similar crimes" (U.S. Army daily in Germany).

bb). Treatment of the SS: "The Stars and Stripes" published on Monday June, 11th, 1945 the following statement: "All German P.Ws. who were members of SS formations are being held for investigation and possible prosecution as war criminals, it was disclosed at a press conference today by Col. Robert J. Gill, Chief of the ETO Provost Marshal's Div. Segregated in special camps, SS men are war criminal suspects by reason of their membership in the organisation, he said. (War Crimes Prosecutor Robert H. Jackson already has indicated that such organisations may be indicted, bringing the responsibility for war crimes to bear on each member). A decision to prosecute SS men, Gill said would necessitate discharging them as prisoners of war and re-arresting them as common criminals. This would remove the obligation of treating SS men as P.Ws. under the Geneva Convention."

cc). Instructions for interrogation: Memorandum dated 28th May, 1945 issued by Eagle.

1. In view of the policy of Justice Jackson, interrogation should be conducted with a view to developing the evidence of a criminal plan by the German State, leaders and organisations, to dominate Europe; to show that this plan contemplated and resulted in numerous crimes and atrocities.

2. Interrogation should include but not be limited to :

- a. Infiltration tactics, including advance planning for invasion of various countries. Fifth column activities, subversive propaganda, bribery and corruption.
- b. Occupational practices, evidence of discrimination, expropriation, looting and atrocities.
- c. Evidence of responsibility of the German state, Nazi Party, Gestapo, SS, and similar organisations and the extent each organisation participated.

5. The securing of documentary evidence is most important. This includes :

- a. Writing and speeches of defendants and their associates.
- b. Organisational literature.
- c. Magazines, newspapers and other literature under defendant's control.
- d. Laws, decrees, ordinances and regulations.
- e. Manuals, military, diplomatic and other official orders, reports, plans etc.; and pertinent official documents of any nature.
- f. Correspondence.
- g. Diplomatic and political treaties and agreements, public and secret.
- h. Financial, commercial and trade agreements and data.
- i. Biographical records.
- j. Pictures, still and motion.

II.

The work of the War Crimes Branches of the 12th Army Group.

The persons suspected of war crimes are in the custody of an Army or of the Army Group, or finally of SHAEF according to their supposed importance, but it sometimes happens that a very important person is held under the control of an Army or of an Army Group, although he should be held under the control of SHAEF. For instance BOHLE Ernst, the head of all Nazi organisations in foreign countries is under the control of the 12th Army Group, although he belongs to the top war criminals. There is no doubt that later on he will come into the first category of war criminals. The number of persons in the detention camps of the 12th Army Group and of the Armies who compose the 12th Army Group was, at the end of May about 8,000, but I do not think that this figure is an exact one, as the whole machinery is still in a statu nascendi and is daily being improved.

The War Crimes Branches (of the Armies and of the Army Group) are investigating mostly collective crimes or mass crimes as, for instance, crimes committed in the concentration camps. In this manner they are establishing files like Buchenwald, Mauthausen, Dachau and so on, in addition they are establishing, of course, individual files against individual war criminals. The best material against war criminals was collected, of course, in the concentration camps. I give some examples of the work done by the War Crimes Branches of the 12th Army Group in some of the concentration camps.

A. BUCHENWALD

Crimes committed in Buchenwald were investigated by the War Crimes Branch of the 3rd Army. The investigation started immediately after the liberation of the camp. The final report submitted to the War Crimes Branch of the Army Group is dated June 3rd and was signed by Lt. Col. Raymond Givens. The whole file will be submitted to the various national investigating teams for examination and alternative further interrogation. I take from this report the following facts :

The camp in Buchenwald was established in 1937. Up to 1939 there were political prisoners from Germany, later from Austria, Poland and Czechoslovakia. In 1941 Russian prisoners of war were brought to the camp and in 1944 American prisoners. The total number of persons who were imprisoned in this camp it is impossible to establish accurately. Approximately up to 40,000 - 80,000. The number of men who died in the camp

(murdered; starved to death and so on) according to the records of the German camp administration is 26,000, but according to the estimates of the prisoners 51,000. The report describes the methods used by the Germans in this camp and the various kinds of murder. I quote: "The terms of the story of this lager; hunger, malnutrition, sadism, miserable housing, totally inadequate clothing, medical neglect, medical experimentation, black market operations, the "bock", latrine throwing, whipping, beating, wiring the tongue to a post, hand hanging, kicking in genitals, hot-cold shower treatment, forced boxing, pick-a-back riding, stoning, mudrolling. The crowning achievement in terms of killing by throwing them in the latrine, beating with almost every kind of instrument, neck shooting from behind, starving, injections of carbolic acid in the small brain, freezing and hanging. Human life meant less than the life of the most miserable mongrel dog".

The evidence was provided by the interrogation of 177 witnesses. The statements of these witnesses are in the file, each of them duly signed by the witness and the interrogating officer and interpreter. The nationality of the witnesses were: - Poles 21, German 27, French 7, Belgians 10, Czechoslovak 31, Austrian 15, Dutch 11, Russian 33, Spanish 7, Luxemburg 4, U.S.A. 6, British 2, Greek 2, Hungarian 1, in doubt 3.

In addition to the evidence given by the witnesses the file contains photographs, medical certificates and some so-called copra delicti like human skin parchment with laboratory shrunken head, autopsy (death through flight) and so on.

In conclusion, of his reports the investigating officer states: "that many thousands were tortured and killed by almost every known method; that their exploitation, atrocious treatment and death were part of a Nazi plan; that the thousands died needlessly is clear as shown by the evidence presented herewith. An attempt to show which perpetrator killed which victim is with few exceptions impossible and furthermore unnecessary. The fact is that no one lifted a restraining hand. The citations to exhibits on the list of perpetrators indicate that the responsible many individuals were members of the SS. The same list includes civilians who were employed as foremen. Included also are prisoners who bought immunity and privilege at the cost of other men's lives."

B. HAUTHAUSEN

The investigation of crimes committed in this most terrible concentration camp started immediately after the liberation of the camp. It was conducted by the War Crimes Branch of the 3rd Army, the interrogating officer was Major Cohen. The report submitted by the interrogation officer to the War Crimes Branch of the Judge Advocate Section of the 3rd Army Group bears the date June 13th, 1945. Like the file of Buchenwald, the whole file of Hauthausen has already gone to the War Crimes Branch of the 12th Army Group and will be submitted to the various national investigating teams for examination and for alternative further interrogation. This file is a big one but the few extracts I am quoting are sufficient illustration of what happened in Hauthausen. The file contains a precise list of about 10,000 SS men who were on duty in the camp of Hauthausen. I must explain that the camp of Hauthausen is a vast complex of about 23 camps around the place Hauthausen. A certain number of small camps were attached which explains the number of the garrison. Of these 10,000 men a certain number were killed by the prisoners on the day of liberation. A very small number were arrested (about 50) perhaps thousands of them are still in hiding somewhere.

The number of persons who died in this camp either by murder or starvation or alternatively by natural causes is, according to the official Nazi lists 71,856. The report contains a whole list of various kinds of murders committed in this camp. It is almost the same as in Buchenwald with the difference that Mauthausen was much worse. Furthermore the file contains a list of doctors who murdered the persons. There were 10 doctors and 18 assistants who systematically murdered the prisoners by injections and so on. In addition there is a list of 10 dentists responsible for having taken the gold from the teeth of the victims. The report states that altogether 24,499 grammes of gold were taken from the dead victims. Several hundred witnesses were examined among them many Czech people. The prisoners helped the investigating officers very much in the interrogation because among them were many lawyers, police officers, professors and so on.

A special case was investigated in Mauthausen directly by the 12th Army Group. It was the ill-treatment and murder of Allied prisoners of war in this concentration camp in 1944-1945. The file concerning this case contains a secret order given by the German supreme commander concerning measures against Allied officers and non-commissioned officers except the British and Americans who escaped from the camp for prisoners of war and were re-captured. Such Allied prisoners were handed over, according to the order of the German supreme commander to the police for the so-called "Kugel" action (Kugel means bullet) and they were killed. I quote from the report: - "In Mauthausen existed several treatments of prisoners, amongst them the 'Action K or Kugel' (Bullet action). Upon the arrival of transports, prisoners with the mention 'K' were not registered, got no numbers and their names remained unknown except for the officials of the Politische Abteilung. (Lt. VEITH had the opportunity of hearing upon the arrival of a transport the following conversation between the Untersturmführer STREIT ISSER and chief of the convoy: 'How many prisoners?' '15 but two K'. 'Well that makes 15').

The "K" prisoners were taken directly to the prison where they were unclothed and taken to the "bathrooms". This bathroom in the cellars of the prison building near the crematory was specially designed for executions (shooting and gassing).

The shooting took place by means of a measuring apparatus. The prisoners being backed towards a vertical measure with an automatic contraption releasing a bullet in his neck as soon as the moving plank determining his height touched the top of his head. If a transport consisted of too many "K" prisoners, instead of losing time for the "measurement" they were exterminated by gas sent into the bathroom instead of water."

In conclusion I should like to say that the investigation is conducted on the following lines:

- a. War crimes are regarded not only as violations of the laws and customs of war in the strict sense.
- b. German crimes are not individual crimes of men unbalanced by the war but a part of a criminal system and of a criminal policy.
- c. Responsible are the German State (government) the German Supreme Command, the Nazi Party, SS, Gestapo and similar organisations. SS men are regarded as war criminals by virtue of their membership to the SS. (This to be applied to the Gestapo).

III.

The Collaboration between National War Crimes Investigating
Teams of the H.Q. 12th Army Group.

Five National Investigating Teams are already working in Wiesbaden - French, Czechoslovak, Polish, Norwegian and Yugoslav. All Teams are well accommodated in the building occupied by the War Crimes Branch. It is the building of the Deutsche Bank. All officers of the Investigating Teams are accommodated in the best hotels in Wiesbaden run by the Americans and receive food free of cost. They have the right to buy rations the same as the American officers. The H.Q. give to all officers of the various National Teams a general authorisation to facilitate their work. I quote from the authorisation given to the Czechoslovak Team: "This Team and individual members thereof are authorised to visit any place or places within the 12th Army Group as may be necessary in connection with the investigation of alleged war crimes against nationals of Czechoslovakia. It is requested that persons having knowledge of war crimes be made available to members of this Team for interrogation and that where appropriate such members be afforded access to available files which pertain thereto."

I should like to stress that the American officers are collaborating with myself and my Team in a really excellent manner. They are giving us every possible help, they are working hard and with the only ambition to bring to justice the war criminals.

When the Czechoslovak Team needed, for instance, transportation to remote places to interrogate war criminals, we were given either aircraft or a car without any delay.

Cases in which Czechs are involved like Dachau, Buchenwald, and Mauthausen are recorded immediately by the War Crimes Branch to myself. With the help of the Americans I was able for seven days to interrogate Karl Hermann Frank whose statements I have sent to the Chairman, Lord Wright for the use of the Commission. I was able to interrogate some other SS officers and a certain number of witnesses, moreover the Americans helped me willingly to take to Prague the Slovak Quisling President Tiso and the members of his government.

I should like to stress that a great help to me in my work were documents of our Commission, the lists of war criminals, the list of men in so-called key positions and especially Colonel Wade's reports. All documents of our Commission and especially Colonel Wade's reports were of great value to me because they proved the systematic character of the German crimes and, as I have said above, were part of a criminal system and of a criminal policy.

When I interrogated Frank and later on SS General Voss and SS Major Hoffmann I found that all these men behaved and answered the charges almost in the same manner. They behaved politely with great obedience and even servility. At certain moments they had tears in their eyes. In my opinion it was hypocrisy. They confessed to crimes only when they thought there was no precise evidence against them. They denied crimes when they hoped there was no evidence, but even when they confessed they always added that they were obliged to carry out Hitler's orders and tried to charge with the responsibility a brutal system, as K.H. Frank told me.

IV.

Conclusions.

1. In general I am satisfied with the work done by the American War Crimes Branches and my collaboration with them. As I have already stressed the American officers are working with enthusiasm.
2. But there are some defects of organisation and work due to the fact that the War Crimes Branches were set up a little late, i.e. at the end of April, 1945.
 - a. There is no central war crimes office for the whole of Germany. The setting up of such a War Crimes Office as a department of the military government would, of course, require the collaboration of the Soviet Union in the matters of war crimes. I think that such a Central United Nations War Crimes Office attached to the Military Government or to the Allied Control Commission in Germany on which both the London and the Moscow War Crimes Commissions would be represented, is highly advisable.
 - b. National Investigating Office Teams should be attached not only to the Army Groups but to each Army, and of course, to the Central War Crimes Investigating body, either attached to SHAEF or later on to the Allied Control Commission.
 - c. There are no precise rules for surrender of war criminals to the respective countries according to the Moscow Declaration of November 1st, 1943. We had difficulties with Frank because of the lack of such rules.
 - d. The trials of the war criminals in Germany should start as soon as possible. Any delay will cause much trouble and will give certain hopes to the Nazi Underground Movement which has already begun to operate in some areas.

SECRET

C.135
16th July 1945

UNITED NATIONS WAR CRIMES COMMISSION

LIST OF ACCUSED PERSONS DETAINED BY THE ALLIED FORCES
HEADQUARTERS, MEDITERRANEAN THEATRE

(Communicated by the British National Office)

GERMANS

Major General Baron Von Behr	List 3	No. 24
Major General D Pol, Brunner	" 7	" 37
Major General Ebeling	" 6	" 871
SS Brigade Fuehrer Globocnik (committed suicide)	" 1	" 284
Lt. General D. Pol, Wilhelm Harster	" 7	" 121
Lt. General Ralph Von Heygendorff	" 1	" 98
SS Gruppenfuehrer Jurgen Von Kamptz	" 7	" 161
SS. Obergruppenfuehrer Hartmann Lauterpaucher	" 7	" 192
Major General Lemelson	" 1	" 357
SS. Obergruppenfuehrer Frederick Rainer	" 7	" 246
General D Pol, Erwin Rosener	" 7	" 262
General Von Vietinghoff, genannt Scheel	" 1	" 473
SS Obergruppenfuehrer Karl Wolff	" 7	" 346

ITALIANS

General Gastons Bambara (or Gambara)	" 5	" 88
General Nicolo Bellomo	" 2	" 5

GERMANS TRANSFERRED TO SHAEF

General Alexander Von Falkenhausen	" 7	" 66
General Franz Halder	" 7	" 119
Dr. Hjalmar Schacht	" 7	" 269
General Georg Thomas	" 7	" 320

SECRET

C.136
26th July, 1945

UNITED NATIONS WAR CRIMES COMMISSION

Notes of meeting with
Representatives of CROWCASS

July 24th, 1945

In the Chair: Lord WRIGHT (Australia)

There were also Present:

<u>Members of the Commission</u>	<u>Other representatives</u>
Captain WOLFF (U.S.A.)	Capt. JOHNSTONE (Canadian War Crimes Office)
Mr. OLDHAM (Australia)	Dr. MALEZIEUX (France)
Dr. LIANG (China)	Mr. KENT (United Kingdom National Office)
Dr. MAYR HARTING (Czechoslovakia)	Capt. ALLETSON (Control Com. for Germany)
accompanied by Dr. POLAK	
M. STAVROPOULOS (Greece)	
Commander MOUTON (Netherlands)	
Major PALMSTROM (Norway)	
Dr. ZIVKOVIC (Yugoslavia)	

and

Lt.-Col. PALFREY (CROWCASS)
2nd Lt. CAPIOMONT "

The CHAIRMAN introduced Lt.-Col. Palfrey and 2nd Lt. Capiomont, two of the members of the staff of CROWCASS from Paris, and said they were great experts with a wonderful machine which he had been shown on the occasion of his visit to Paris. They would answer any questions which members might wish to ask and he hoped that the meeting would be both agreeable and helpful to the cause which everyone had in mind. Before declaring the discussion open, the Chairman asked Col. Palfrey to make a short statement.

Col. PALFREY first explained the meaning of CROWCASS, saying that as everything in the Army had to have a name, they had called their organisation: Central Register of War Criminals and Security Suspects, which gave the word, CROWCASS.

CROWCASS was an offspring of SHAEF and had been in existence for about six months. It was created to provide a central register which would contain the particulars of all security suspects and all war criminals. Security suspects were people who fell into certain categories known as "arrest" categories, such as the S.S., Gestapo, Sicherheitsdienst and various other organisations such as the R.A.D. It had been proved that a number of the "arrest" categories were also major criminals and wanted for war crimes. Col. Palfrey would go so far as to say that the great majority of the SS. troops (not those drafted in after the big retreat, but the original members) were wanted as war criminals. What CROWCASS^{had} set out to do was to compile a register of all the SS., who were easier to identify than the war criminals. They took the "arrest" categories and sent a circular to prisoner-of-war camps asking for all such men to be documented, photographed and their fingerprints taken. In addition, known war criminals were included. At the time of sending out that circular, the number of known criminals was very low compared with the "arrest" categories: It had been estimated that the latter numbered 200,000. Today, he did not know what the figure was, but it was probably considerably higher. One object of the registry therefore was to compile a register of all known war criminals and all those falling within the "arrest" categories.

Their second object was to build up from information supplied by all Allied nations a list of the people wanted by those nations. With that end in view, a circular had been sent out by SHAEF - but he was not sure whether it had reached its various destinations - together with documents setting out the details of CROWCASS, its aims and objects. He regretted that a great deal of the information would never get to the right people, owing, he believed, to the changing situation during that period. They had received, however, the lists of wanted persons compiled by the U.N.W.C.C. and those lists had formed the foundation of their "Wanted" Section. They had also received quite a number of names of wanted people from the French - no

doubt because CROWCASS was situated in Paris and in close contact with the French war crimes organisation.

Col. PALFREY asked in what way the Allied nations could be given help. That was what CROWCASS wanted to know. It must be obvious to everyone that, with so many different countries holding prisoners in custody, it would be almost impossible to find out who had whom, unless there was a central registry. The primary object of CROWCASS was to make a register of such people so that the nations who wanted war criminals could apply to some central authority. In other words, CROWCASS was the centre of a circle and everything should filter into the centre. In order to obtain all the details necessary, they had gone a step further and decided to compile a register of every German prisoner of war captured by the Allies, with the exception of those in Russian hands. That was a formidable task, but in Col. Palfrey's opinion, it was the only possible way of finding all the people they needed. Unless they were found, he considered that the war had been fought in vain. He was convinced that the task was as great a task as that of winning the war. Now that the Axis had been given a good hiding, they must make sure that there was no chance of a recurrence. Therefore, CROWCASS had set itself the task of preparing this immense register, the biggest criminal register the world had ever known.

The register was offered to the Allied nations. It was theirs, not CROWCASS' - true it was controlled at the top by Anglo-American control and staffed by French nationals. But its objects were international and it belonged to all the Allies. It was there for them to make what use they could of it. But unless everyone was prepared to put in everything, no one could expect to get everything out of it.

Col. Palfrey then referred to its achievements. A list containing about 100,000 names of war criminals and security suspects was now being printed in London. 500 copies were being made and would be distributed to all the agencies engaged in tracking down the criminals. The lists

contained the names supplied by the U.N.W.C.C. and by the counter-intelligence services. Many other names had been accumulated since the completion of that list, and would appear in supplements, which might even be ready before the printed list. It was proposed to publish these supplements at weekly or fortnightly intervals. In addition, the names of known war criminals and security suspects were beginning at long last to come in. Col. Palfrey said that he had experienced a great thrill when looking at the photographs and fingerprints of some of the notable people who had held the sway of the world for so many years and were now imprisoned as criminals.

CROWCASS was now engaged in the preparation of a list of all the detainees which would similarly be circulated to the various Allied nations and other agencies. Certain nations had already been notified of the names of individuals sent in. The procedure, in brief, was this: when CROWCASS notified a nation that one of the people wanted was in custody, it was up to the nation to make direct application to the holding authorities for the purpose of arranging an interview with the wanted person.

As regards the handing over of wanted persons, Col. Palfrey stated that the question had not been decided when he left Paris ten days previously. There might be difficulties, however, such as the case of a man wanted by five or six nations, in which case, it would appear that he should be sent before an international tribunal. But if he were only wanted by one nation, Col. Palfrey thought he would be handed over to the nation concerned - that seemed the commonsense way of doing it.

Continuing with the question of the practical organisation of CROWCASS, Col. Palfrey said that they employed the Holerith machines, invented by an American, patented in the United States by the International Business Machines, in the United Kingdom by the British Tabulating Machines, and in France by a French concern. It was the only satisfactory machine for handling very large numbers. The information was translated into numerals and corresponding holes were punched in cards. The cards

were filed electrically and could be picked out and tabulated electrically. The registry was in three sections: Detained, Wanted, and Prisoners of War. All the sections were on machine records. In addition, there was a manual name index. At first they had not anticipated having to punch cards for the whole German Army. Some members, no doubt, were conversant with machine records - it was not really very difficult, once the system was known. CROWCASS provided special forms on which the Allied nations could note the particulars of the man they wanted, so that the information was easily available to those requiring it. Since they had to index the whole German Army, they could now pick a man out by pressing a button and his regiment was revealed. In some instances, they had even got down to battalions. When the forms were received, the information was punched on to a card, which was then sent down to a sorting machine, and sorted into its proper group. The prisoners of war were also filed alphabetically, with another copy filed according to the man's unit. That was done because in a number of cases the name of the prisoner was not known, and only the details of his unit and the place where he operated were supplied; if these details were fairly accurate, there was a sporting chance of picking him out because he was filed in three different ways: under his name, his unit and the place in which he operated; and he could also be sorted out according to his description, his rank, the date of his crime or any other details.

That was briefly what CROWCASS set out to do. Now that SHAEF had been disbanded, they were no longer under it, but Col. Palfrey believed that they would still come under some international body, probably the Control Commission. With so many French nationals on the staff, they were tied to France - and he hoped they would remain in Paris. There were about 200 girls working the machines, and it was hoped to increase the number to 300 or 400, because they aimed at punching 50,000 records daily. The job was colossal when one remembered that the German army numbered something like six or seven million.

Col. PALFREY then distributed copies of certain forms to members and explained briefly the system of the Holerith cards.

He said he would be pleased to supply the wanted forms to those who had any prisoners detained; it was surprising the number of people who were holding prisoners. CROWCASS did not want the men to be handed over, but merely to know about them. Their object was to obtain details of every prisoner held by the Allies - except the Russians - and unless that were achieved, some were going to be missed. He added that the majority of the Germans were too bad to be missed.

In conclusion, Col. Palfrey said that the best way for members to acquaint themselves with the working of CROWCASS was to pay a visit to Paris, and he welcomed them cordially.

MR. OLDHAM: On the question of CROWCASS being known and its facilities being available to the various bodies that are apprehending war criminals, it might be of interest for you to know that one of the most active members of this Commission - indeed perhaps of all Commissions - Dr. Ecker, when working at Wiesbaden or Frankfurt as a member of the national team, did not know of the existence of CROWCASS, nor did the members of the other teams working with him. Of course, he has since been told. That shows the necessity for the great records that you are building up being made known all over Europe, now that the business of apprehending is really under way.

COL. PALFREY: I am not surprised. That is one of our difficulties. As you probably know, letters are written, and pass through "channels". Some do not reach port; they do not reach the people actually doing the job. But we are trying to preach the Gospel. My American colleague was up in Germany before I left Paris, going around the American sectors, explaining CROWCASS and what facilities we were offering, and talking to the men doing the job. When I go back, I hope to go round the British sector and do the same thing.

SECRETARY GENERAL: Are you getting information from the British who are holding prisoners of war in the United Kingdom and Canada and so on?

COL. PALFREY: We actually sent one of our majors to America. The flow was coming in well when I left..

MR. OLDHAM: But what about the United Kingdom?

COL. PALFREY: Not when I left.

MR. OLDHAM: Perhaps Mr. Kent could see what he can do about getting information to CROWCASS regarding the numbers of German prisoners of war in this country.

MR. KENT: That's for the War Office. It does not come into our orbit. We are dependent on the War Office primarily for information. We are dependent on all the Services, as well as on departments of

State. Through all channels, information reaches us regarding war crimes having been committed. When we want information through any of those channels, we have to communicate with them.

MR. OLDHAM: Well, perhaps Colonel Wede could help. We are not interested in the fact that prisoners of war are held in the United Kingdom so much as that they are prisoners of war who have committed crimes. The fact that they are in the United Kingdom gives us the right to ask that the body responsible for them supplies the information to CRO CASS which the latter body requires. These views which are now being expressed should go through to the War Office. I feel that we should not be held up by Government departments. We have the right to see that the information is put through to an international body such as CRO CASS.

DR. POLAK: Have you received information from Czechoslovakia regarding the prisoners they hold?

COL. BALFREY: No. We have information from Czechoslovakia regarding the men they want as war criminals, but not regarding the prisoners they hold themselves. That is the trouble with most people, except the U.S.A., the British 21st Army Group and the French. We know that many other nations have got prisoners.

DR. POLAK: What would be the speediest way of obtaining this information for you and sending it to you?

COL. BALFREY: To send it to us: CRO CASS, A.P.O. 837, U.S. Army.

MR. OLDHAM: Perhaps this could be fully reported in the notes of this meeting, so that the attention of the National Offices be drawn to the desirability of advising the authorities holding prisoners to report to CRO CASS.

CAPT. JOHNSTONE: What about Canada?

COL. BALFREY: That is done by the United Kingdom.

MR. KENT: Regarding what has just been alleged about the lack of information from the United Kingdom, I know that the Judge Advocate General communicates with CRO CASS when we have reached conclusions regarding persons wanted. But that information is first sent to the Commission for execution in their lists.

MR. OLDHAM: I think there is a misunderstanding. This is what was suggested. A few months ago, the number of prisoners held in this country was very great and that CRO CASS wants, and what this international Commission wants for CRO CASS, is to have a list of all the German prisoners held in this country. They are making a complete list of the German army - except those taken by the Russians - and they want to know where those Germans are being held. It appears that the Germans in the U.S.A. have been recorded and the list sent to CRO CASS. It appears that the Germans who have not been reported are held in England, Czechoslovakia, etc.

COL. BALFREY: The position with regard to the United Kingdom is the same as with France. They have agreed to do it and are doing it. When you asked me whether we have received the information, I said no, because when I left Paris, nothing had come - but that does not mean that the information will not be coming. The trouble is mostly due to lack of the necessary machinery.

THE CHAIRMAN: When was the information requested?

COL. PALFREY: The circular was sent out by SHAEF about six months ago.

SECRETARY GENERAL: It takes time to fill up the particulars.

COL. PALFREY: The detention form is similar to the form I have just shown you and copies have been supplied. France has something like 6000 names and is going to fill in forms for that number. A steady flow is coming in from the U.S.A. The main difficulty has been the lack of photographic and fingerprint apparatus. With the exception of the U.S.A. who have always taken fingerprints of their criminals, and still have photographic material, no country possesses the necessary equipment. When I came over, they were trying to get equipment for a team going to Norway, and were having great difficulties.

MR. OLDHAM: Would something more simple not be nearly as good?

COL. PALFREY: We have told everybody now that we don't care whether the photographs and fingerprints come later, provided we get the forms filled in with particulars. We are prepared to supply any number of forms to the Governments. This is more useful to us and as easy to do as making out a list.

THE CHAIRMAN: The idea is to be able to tell any Government who asks whether any particular German is in custody or not and if so, where he can be found; then the Government is in a position to apply to the appropriate authorities holding the man for his surrender, as promised under the Moscow Declaration. That is right, is it not?

COL. PALFREY: Yes.

MR. KENT: Are you in touch with the War Office?

COL. PALFREY: Yes.

MR. KENT: Am I right in understanding that the organisation limits itself to German war criminals? The reason I ask is this: when discussing some Italian cases in which we had difficulty in getting information from the Allied Forces Headquarters, Mediterranean, it was suggested that we could get the information about Italian war criminals from CROWCASS.

COL. PALFREY: That question came up. We had a letter from A.F.H.Q. asking about Italian prisoners. SHAEF replied that we were interested in any war criminal, no matter what his nationality. But at the moment it is not proposed to keep a record of all prisoners whatever their nationality: we don't propose at this stage to punch every Italian prisoner held, but we are prepared to punch any war criminal.

THE CHAIRMAN: A mere Italian prisoner as such - would he be reported to you?

COL. PALFREY: No.

THE CHAIRMAN: There is then a gap here, but there is no gap as regards Italian war criminals.

DR. ZIVKOVIC: Apart from the lists and the information you receive from the U.N.W.C.C. - do you think that A.F.H.Q. will supply you with information they get on the spot regarding Italian war criminals? Apart from the information which the Americans and British have, I mean?

COL. PALFREY: Yes.

Dr. ZIVKOVIC: Do you contemplate sending out such information to the various Governments concerned?

COL. PALFREY: That is another of our functions. Where we have the information, we pass it on to the countries concerned.

DR. ZIVKOVIC: Through what channels?

COL. PALFREY: Except in the case of those Governments who have accredited missions in Paris, it was being done through the Allied Contact Section of SHAEF. But this was in the process of being altered, when I left, owing to the disbandment of SHAEF.

The CHAIRMAN: Surely the Allied Contact Section will not disappear now?

COL. PALFREY: It was suggested that they were going to give us the addresses they had.

DR. ZIVKOVIC: There are, I think, in Paris, military missions of the countries represented on this Commission. CROWCASS being a military organisation, it can always pass the information it has through the military channels of the Governments represented in Paris. That would be the quicker way. - Directly from CROWCASS to the military missions.

COL. PALFREY: It would indeed help us if we could hand the information over to the representatives in Paris, because mailing is bad.

MR. OLDHAM: What is the best way of getting information required by the Commission? By telephone, or by cable, or how?

COL. PALFREY: Either by telephone or cable.

THE CHAIRMAN: We could telephone to CROWCASS who could telephone to the military representatives, or directly back to the Commission.

There is a practical question. Suppose you have a listed man who is not a major criminal and the nation concerned wants to bring him up for trial in its own country - as it is entitled to do under the Moscow Declaration - the first step would be to find out whether the man is in custody. If so, to find out who has him. Then to apply to that body for delivery. In order to make the system work, all that machinery would have to function; this is the important thing, because we cannot go on amassing information, we ought to do something, i.e. hold trials.

COL. PALFREY: It has got to the very last stage: the handing over of the body. We have located some prisoners and told the nations where they are; they have interviewed them. Now they are waiting for someone to say. This is the handing-over day.

THE CHAIRMAN: It must be a gradual process, because you cannot produce hundreds, but the handing over of one or two, or ten or twenty would keep the Governments occupied. I don't know what the latest difficulty is about handing over. I don't know whether Dr. Ecer has got his Frank. He expects to get him soon - but expectations are not always realised. That is a gap in the working of the machine. But that is what the Moscow Declaration undertakes and promises to the various Governments and I am quite sure that it will be carried out. This is the last stage of our complicated system which started with the making of lists.

DR. ZIVKOVIC: I saw in the papers that the first trial has taken place in France. And also an Italian war criminal is being tried by a British military court.

COL. PALFREY: The French are holding a large number of prisoners of which 6000 have been selected as war criminals. There is no reason why they should not start, except that they may be holding somebody wanted as a witness by another country.

DR. ZIVKOVIC: What about Quislings? Does CROWCASS get information about Quislings arrested by the Anglo-American forces in Germany and Austria?

COL. PALFREY: We have had a few under the scheme and shall get all of them. Their trials will be left to the Governments concerned.

DR. ZIVKOVIC: It appears that the Governments are not informed as to the whereabouts of these Quislings. CROWCASS should send any information they have to the Governments concerned.

Apart from that, I am very anxious - as far as Yugoslavia is concerned - to help CROWCASS in the way the Americans have done. Would it be possible to get a letter from you, saying that you are such and such an organisation, and that you would like to have a complete list of the German, Italian or other prisoners of war detained by Yugoslavia, as soon as possible. I would then send it to Belgrade together with the forms you supply.

COL. PALFREY: We can certainly do that. Would anyone else like a letter too?

DR. POLAK: The best thing would be to work out a report of our discussion, taking into consideration all the points raised, and send a circular note to all the national offices in order that they may inform their Governments. I don't think Czechoslovakia can do more than fill in the names and military units of their prisoners and state their whereabouts, and Yugoslavia is probably in the same position. Not all the countries can afford it financially. But I think the Governments would be interested to work in with CROWCASS.

DR. ZIVKOVIC: It would be a good start for CROWCASS to send the Governments some information which they have already, so that the Governments can see that CROWCASS is an efficient body.

COL. PALFREY: By the time I get back, our first list of detainees will be ready for circulation and we propose to send a copy to each Allied Government. But I want to get the proper addresses.

One other thing - we also deal with witnesses, if you want them.

DR. LIANG: Regarding the question of handing over and the Moscow Declaration. I recall during the early days of the Commission's work that we drew up a Convention for Surrender of War Criminals. Owing to my absence from London during four months, I am not quite clear as to the situation.

THE CHAIRMAN: Our Convention was a recommendation for surrender between the Governments and it had nothing to do with the army.

DR. ZIVKOVIC: I think I understand what Dr. Liang means. The fate of the draft Convention we presented to the Governments was that the British Government replied that they did not think they should sign such a Convention, but thought that the other Governments could do so. On the other hand, they said that they were ready to use the powers they already possessed for the handing over of war criminals.

THE CHAIRMAN: The Convention itself has nothing to do with our pressing problem. It was meant to simplify matters for the Governments. Some questions may have to be considered, such as when two or more countries claim a war criminal, or when a war criminal is required for trial of a major war criminal. I gather that a condition is made that if a man is sentenced, the penalty will not be executed at once, if he is wanted as a witness in major prosecutions.

EXECUTIVE SECRETARY: We have an alphabetical index containing three to four thousand names listed by the Commission. If we were to run off an alphabetical list of those names, would it be possible to have, within a short time, an indication of those actually detained and where they are located?

COL. PALFREY: We have all your names and they are filed alphabetically. What we shall give the Commission is a list of everybody that we have, together with the people who want them.

THE CHAIRMAN: I wanted to ask that. Your list would then show at a glance whether a wanted man was in custody and where he was.

COL. PALFREY: We shall also be sending out supplements. The hitch was due to the authorities in the field, who were overcome by the sudden ending of the war and did not have time to make up the lists.

DR. ZIVKOVIC: If any change occurs in your files concerning one of the cards, will the U.N.W.C.C. be notified? If a man is detained by a certain unit at the moment, in two months he may be elsewhere - I hope that such information will be communicated to us.

MR. OLDHAM: That pre-supposes the important thing that the countries will send information to CROWCASS. I would suggest to Col. Palfrey that in addition to the notes of the meeting which we may send to our Governments, a letter be sent by CROWCASS direct to all Governments holding war criminals, with a copy to the members of this Commission in London, so that we may put pressure on our Governments.

COL. PALFREY: I am quite sure that the Allied nations want more war criminals than they have officially listed. We do know that the U.S.A. and the United Kingdom have got the biggest holding of actual bodies.

M. STAVROPOULOS: re the question of addresses: one way would be to give the information to the Embassies in Paris, or perhaps it would be better to send it through the Commission.

MR. OLDHAM: I think so, because the Australian Government, for example, is still endeavouring to find accommodation in Paris.

COL. PALFREY: That would suit us excellently. We could send the circular letter, addressed to the Governments, to the Secretariat who would transmit it to the representatives on the Commission, and the latter would forward it to the respective Governments.

THE CHAIRMAN: All correspondence from CROWCASS to the Commission should be addressed to the attention of Mr. Lyman, the Executive Secretary. The Commission would then act with extreme promptitude.

EXECUTIVE SECRETARY: Lists of addresses and telephone numbers of National Offices in and outside London are being prepared for Col. Palfrey so that he may take them with him at the close of the meeting.

THE CHAIRMAN: We are very much indebted to Col. Palfrey and Melle Capicmont for giving us all this information. I think we have imposed upon their kindness quite long enough for one meeting. But it might be necessary at some future time to pursue further enquiries. I would ask you all to express your gratitude and pass a vote of thanks to those two officers.

DR. ZIVKOVIC: The vote of thanks is unanimous.

COL. PALFREY: It has been a very great opportunity to meet you all, and something I have wanted to do for a long time. We have the shop in Paris, the window is dressed and unless you come along, we can't sell the goods! We are going to achieve something if everyone plays - and that won't be for lack of trying. We have a French staff, and the bulk of American supplies behind us, and I think we shall succeed.

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SECRET

C.137
31st July, 1945

UNITED NATIONS WAR CRIMES COMMISSION

BUDGETARY CONSEQUENCES OF THE ACCESSION
OF DENMARK

Report by the Finance Committee

Under the Resolution on Financial Administration of 21st March, 1944 and the Financial and Administrative Regulations (Docs. C.10 and C.45), the Danish Government on joining the Commission becomes liable to make the following contributions towards its expenses :

- (i) A single payment of \$400 to the Working Capital Fund under the amended text of Article 4 of the Regulations, paragraph 1, first sentence, which reads as follows (C.64, p.7) :

"Until otherwise decided by the Commission, the amount of the working capital to be accumulated in accordance with Paragraph 2 of the Resolution shall be \$6,000 as originally provided by the present paragraph plus a sum of \$400 from each Government joining the Commission after 28th February, 1945, such sum to be payable in addition to the Government's normal share of the Commission's expenses."

- (ii) A "basic contribution" of \$400 in each fiscal year (Resolution on Financial Administration, Appendix, paragraph 1).

- (iii) Its share of the amount by which the total budget exceeds the sum of the basic contributions (ibidem).

Two points fall to be considered :

- (1) The scale of allocation of UNRRA's administrative expenses for 1943-1944^(a) which has been employed to determine how much of the amount mentioned at (iii) above shall be payable by each member Government does not include Denmark. Denmark is, however, included in the scale of allocation of the first year's expenses of the "Food and Agriculture Organization of the United Nations" ^(b). It is there allotted the same share as Norway.

The Finance Committee proposes that this precedent shall be followed and Denmark be given the same number of units in the War Crimes Commission allocation scale as are paid by Norway, namely, 6 units.

Should the UNRRA scale be modified by including Denmark with a different allocation from that of the Food and Agriculture Organisation scale, Denmark will be entitled to re-open the question in respect of subsequent fiscal periods under paragraph 2 of the Annex to the Resolution on Financial Administration.

(a) See the Stationery Office Publication, Miscellaneous No. 6 (1943), Cmd. 6497, page 34.

(b) Stationery Office Publication, Miscellaneous No. 4 (1945), Cmd. 6590, page 9.

(2) The Danish Government has joined the Commission at the commencement of the second quarter of the current fiscal year. The Finance Committee thinks it fair to recommend in consequence that Denmark shall contribute in respect of only three-quarters of the fiscal year.

The effect of the entry of Denmark is to reduce slightly the contributions due from all the other Governments. The annex to the present paper shows what will be the position if the above proposals are adopted by the Commission.

It would be very desirable to have the whole matter settled at the Commission's meeting of August 1st, in order that demand notes for their contributions may be sent to the member Governments as soon as possible.

ANNEX

Contributions due for the fiscal year
1945-1946 revised as the result of the
accession of Denmark.

	Number of Units	Basic con- tributions outstanding on July 30th	Share of excess of total budget over basic contributions i.e. £28,000.	Total due
Australia	30	£400	531. 2.10	931. 2.10.
Belgium	20	paid	354. 1.11	354. 1.11
Canada	60	"	1,062. 5. 8	1,062. 5. 8
China	100	"	1,770. 9. 5	1,770. 9. 5
Czechoslovakia	20	"	354. 1.11	354. 1.11
Denmark - 6 units for 2 of year only	4½	£300	79.15. 5	379.15. 5
France	80	paid	1,416. 7. 6	1,416. 7. 6
Greece	10	£400	177. 1. 0	577. 1. 0
India	80	paid	1,416. 7. 6	1,416. 7. 6
Luxembourg	1	£400	17.14. 1	417.14. 1
Netherlands	30	£400	531. 2.10	931. 2.10
New Zealand	6	paid	106. 4. 7	106. 4. 7
Norway	6	"	106. 4. 7	106. 4. 7
Poland	20	"	354. 1.11	354. 1.11
United Kingdom	550	"	9,737.11. 9	9,737.11. 9
U.S.A.	550	"	9,737.11. 9	9,737.11. 9 (a)
Yugoslavia	14	£400	247.17. 4	647.17. 4
<hr/>				
	1,581½	£2,300	£28,000. 0. 0	£30,300. 0. 0
Basic contributions already paid			 4,400. 0. 0
Total Budget			 £34,700. 0. 0
<hr/>				
VALUE OF 1 UNIT	£17.7047107			
	= £17. 14. 1			

(a) £4,568.16. 1 of this amount has already been paid.

SECRET

UNITED NATIONS WAR CRIMES COMMISSION

C.138
28 July, 1945

BUDGET FOR 1945-1946

PROPOSAL BY MR. DUTT REGARDING THE ITEM "MISCELLANEOUS
AND UNFORESEEN AND EMERGENCY EXPENDITURE"

At the Commission's meeting of July 25th, 1945, Mr. Dutt proposed that the Commission should adopt the following decision in regard to the above mentioned item of the Commission's budget for 1945-1946:

"Items of expenditure, in excess of £100, under the 'Miscellaneous' heading of the Budget, shall be submitted for the prior approval of the Commission on each occasion".

This proposal was referred to the Finance Committee.

SECRET

C.139
1st August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

Memorandum by the Chairman

On June 20th, 1945, the Commission by a unanimous vote (India not voting), decided to approve of the offer by the French Government to instal in London an Exhibition of War Crimes on the lines of the exhibition which they had staged in Paris and which I and certain members of the Commission inspected before it was completely constructed and came to the conclusion that it was a serious, accurate and fair presentation of the facts which it showed.

Recently the British Foreign Office wrote that they saw no objection to the proposed Exhibition in principle in London, which they said might help to convince the public about the truth of German atrocities. They added that it did not matter if the Exhibition took place before or even during the projected trials of major criminals, since those trials would not take place in this country, and that the sort of judges who would be appointed to the international tribunal were unlikely to be influenced by an exhibition such as this. They also said that His Majesty's Government could not make themselves responsible for finding either accommodation or any part of the cost.

The objection which was raised by the Indian representative, though he did not vote, was that if the Commission sponsored the Exhibition here it might be a breach of the Commission's duty of impartiality, and particular reference was made to the function of the Commission to decide in cases submitted to them against particular individuals whether or not a prima facie case was shown. As this objection is still in some quarters rather vaguely or tacitly put forward, I have thought it better to set out in this memorandum why I think this objection, if it is seriously made, is unfounded in principle. The fundamental answer to the objection is that it seems to me to confuse two different things: impartiality in respect of crimes and impartiality in respect of criminals. This distinction I think is not only sound in principle but is well recognised in practice, at least in the English practice. In days not so long past, at the opening of every Assize, the material which the prosecution intended to adduce against a criminal was laid before the grand jury and they were required to say whether or not they quashed the charge on the ground that the evidence was insufficient or that the charge was otherwise unfounded, but it was customary for the judge in his preliminary address to the grand jury to discuss generally the state of crime in the country and particularly to draw attention to any crimes which appeared to him to have been seriously prevalent, even though the calendar of charges contained accusations against specific accused of the very crimes to the seriousness of which the judge had adverted. No one, however, imagined that all this would prejudice the fair trial of the individuals accused; indeed, they might well be acquitted when the matter was heard. All that the charge did was to emphasise how serious such particular classes of crimes were, and sometimes a grand jury went on to propose improvements in the law to make it more effective, but, all the same, at the trial of the case, the jury were warned that they had to be satisfied beyond reasonable doubt that the charges against the particular offenders were proved. Every accused was entitled to, and I believe received, a fair hearing. I mention this as an illustration of a distinction between impartiality in respect of crimes and impartiality in respect of criminals, and no one who is at all in touch with the ordinary current opinion of the world can be blind to the fact that very serious war crimes have been committed by the Axis Powers and their agents.

The Exhibition which is now in question deals not with particular war criminals who may be charged, but with the general illustration of the type of war crimes which have prevailed in France. It would be absurd for the Commission to pretend to be ignorant of what all the world knows, or to pretend to be ignorant of the general nature of such crimes, and it is, I think, because of this that not only have the British Foreign Office said that they saw no objection to the proposed Exhibition, but Sir David Maxwell Fyfe, then Attorney General, writing to me on the 6th July last, has also expressed the view that the Exhibition could not prejudice the trial of any particular alleged crimes, and our late colleague, Lord Finlay, writing to Sir David Fyfe on the 21st June last, - a letter which was sent to me - referred to the Indian representative's doubt, and added that everyone else, and particularly his American colleague, expressed themselves strongly in favour of supporting the Exhibition, and expressed also his own opinion that if shown in London it would do no harm.

The opinion in favour of the Exhibition was unanimously accepted by all the members of the Commission other than the Indian representative, and I personally am strongly of that opinion for the reason which I have stated, that the Commission need not be and cannot be, or pretend to be impartial in respect of the criminality of the acts of the war crimes of the Germans, but that the criminality of any particular individual who is accused is an entirely different matter - as I have already said.

There are two further points which I might note : One is the question of publicity. It is of very great importance for the promotion of the purposes which we have at heart and for which we are working, namely, the punishment of war crimes, that the Commission should be supported by an instructed and intelligent public opinion. Mr. Grow, as Acting Secretary of State of the United States of America, issued a radio bulletin on the 1st February, 1945, in which he said this : "The Department of State welcomes the public discussion of the punishment of war criminals. This discussion has made clear the determination of our people that the guilty shall be punished. The Department of State and the Government share that inexorable determination". No one can doubt the wisdom of that opinion thus effectively expressed. I am convinced that the proposed Exhibition would be a most effective means of instructing the public mind on some of the Nazi criminal methods.

One further point I may make, and that is that the judicial functions of the Commission, such as they are, are limited, as I have already pointed out, to deciding whether there is a prima facie case against some particular individuals or groups. On that issue, the Exhibition, which is general in character, can have no effect at all on the minds of the Commission. The functions of the Commission are, however, much wider than that particular and very important duty which I have just mentioned. It must never be forgotten that they include, as set out in the official statement of a constituent meeting of the 20th October, 1943, the following two primary purposes:

- "1. It should investigate and record the evidence of war crimes, identifying where possible the individuals responsible.
- "2. It should report to the Governments concerned cases in which it appeared that adequate evidence might be expected to be forthcoming."

and it is there pointed out that it is important to draw a clear distinction between the preparatory investigatory work of the Commission and the procedure for the eventual trial of war criminals.

Thus recording the evidence of war crimes is one of the assigned functions of the Commission, and I should add that the scope of the Commission's activities there expressed was afterwards extended by vesting in the Commission a general advisory capacity.

For all these considerations, I have thought it essential to emphasise as clearly as I can, the distinction between impartiality as to the responsibility of individuals accused, and an impartial or indifferent attitude towards the general system of Nazi war criminality.

SECRET

C.140
2nd August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

OSWIECIM (AUSCHWITZ) AND BIRKENAU CONCENTRATION CAMPS

Report of Committee I on a charge presented
by Czechoslovakia

The Czechoslovak National Office recently transmitted to the Commission a charge against German war criminals concerning atrocities committed against Czechoslovak nationals which have taken place in Oswiecim (Auschwitz) and Birkenau concentration camps.

Because of the fact that this charge differs from similar charges which so far have been transmitted by other National Offices, the Commission felt it of some importance to draw the attention of National Offices to the scheme adopted in this charge, in case they should feel inclined to follow the policy of the Czechoslovak National Office.

The charge is directed against individuals and groups of persons (about 2,000 in number) as follows :

1. Members of the German Government in the material period (1939-1945).
2. Persons responsible for the direction of the police activities in Germany of the highest rank. Apart from H. HIMMLER himself, this group comprises a number of senior officials of the two Hauptämter of the Reichsführer SS and Chef der Deutschen Polizei in the Reichsministerium des Innern: I. Hauptamt Ordnungspolizei; II Reichssicherheitshauptamt. For the names and functions of these officials see Annex I.
3. Persons responsible for the general administration and supervision of all concentration camps, i.e. in Germany proper and in the occupied countries, so-called Wirtschafts und Verwaltungshauptamt (WVA). The list of persons and their functions is attached in Annex II.
4. Persons of all ranks belonging to the camp personnel.
5. Chiefs and officials of the police authorities acting in, or competent for, the different sections and districts of the Czechoslovak Republic indicated by their functions or offices, in Annex III.

The Czechoslovak National Office holds these persons and groups of persons responsible for ordering and executing the arrest of Czechoslovak nationals and for committing them to the concentration and extermination camps Oswiecim-Rajsko (Auschwitz-Birkenau), and/or for aiding and abetting these criminal activities. The charge differs from similar charges which so far have been dealt with by Committee I in that it indicts not only the persons in authority on the top level (Reich Government, SS. High Command), and the actual perpetrators at the end of the journey (the camp personnel) but that it attempts to establish the guilt and responsibility of the intermediate authorities, i.e. the people competent to exercise local jurisdiction in the different parts of occupied Czechoslovakia and who had the power either to propose or to order the individual arrests and commitments to the camps.

In making charges against persons who are held responsible for their share in the crimes on the intermediate level, the Czechoslovak National Office makes two distinctions :

1. Between functionaries of the Ordnungspolizei on the one hand and those of the Sicherheitspolizei on the other. The security police was competent to order arrests. Members of the Ordnungspolizei could be called upon to carry out the arrests ordered by the Security Police. As, however, the available material does not allow to ascertain beyond doubt whether in the cases dealt with in the Czechoslovak Charge members of the Ordnungspolizei actually had any part in carrying out arrests, the Czechoslovak National Office proposed to put officials of the Ordnungspolizei on the List of Suspects (S), while the officials of the Sicherheitspolizei Gestapo and SD. are on the List of War Criminals (A).

2. The charge further distinguished between police authorities having jurisdiction exclusively for Czechoslovak territory (so-called Protectorate of Bohemia and Moravia, and the so-called Reichsgau Sudetenland), and such police authorities as were in charge of predominantly Reich German or Austrian provinces to which slices of Czechoslovak territory have been annexed during the occupation. In the case of the "Protectorate" and of the "Reichsgau Sudetenland", the Czechoslovak National Office proposed to list the police officials, other than Ordnungspolizei, on the List of War Criminals (A), and officials responsible for other parts of Czechoslovak territory on the List of Suspects (S). The reason for this distinction was that a proper prima facie case could not be established with regard to this category of officials.

As far as the delimitation of responsibility of various ranks of the police officials is concerned the Czechoslovak National Office acting on the suggestion of Committee I charged only :

(i) the administrative officials of the higher administrative police service (Höherer Polizeiverwaltungsdienst) from the rank of Government Councillor (Regierungsrat) upwards;

(ii) the executive officials of the security police (Vollzugsbeamte der Sicherheitspolizei) from the Führerlaufbahn des mittleren Dienstes in der Sicherheitspolizei, from the rank of Criminal Secretary (Kriminalsekretär) upwards;

(iii) the S.D. functionaries from the rank of manager (Geschäftsführer) upwards.

Committee I decided to propose to the Commission to put all the persons and groups of persons accused in the charge on the Commission's Lists A and S according to the delimitation of responsibility mentioned above.

ANNEX I

Chiefs and Officials of the 5 Hauptämter of the Reichsführer SS. und
Chef der Deutschen Polizei in the Reichsministerium des Innern:

Hauptamt Ordnungspolizei:

1. Chef der Ordnungspolizei.
2. Otto WINKELMANN, SS-GF, Generalleutnant der Polizei, Chief of the Kommandoamt in the Hauptamt Ordnungspolizei.
3. Anton DIERMANN, SS- BF, Generalmajor der Polizei, successor to WINKELMANN.
4. FLADE, SS- BF, Generalmajor der Polizei, successor to DIERMANN.
5. GEISEL, SS - SF, Oberst der Gendarmerie, Chief of the Amtsgruppe II of the Kommandoamt.
6. FRANK, SS - GF, Generalleutnant der Waffen SS. und der Polizei, Chief of the Wirtschaftsverwaltungsamt in the Hauptamt Ordnungspolizei.
7. Generalinspekteur der Schutzpolizei des Reichs.
8. Generalinspekteur der Gendarmerie und der Schutzpolizei der Gemeinden.
9. Generalinspekteur der Schulen.
10. Generalinspekteur der Feuerschutzpolizei.
11. Inspekteur für Volksschauliche Erziehung.

Reichssicherheitshauptamt:

12. Chef der Sicherheitspolizei und des S.D.
13. Erwin SCHULZ, SS, Brigadeführer, Chief of Amt I.
14. HAENEL, SS, Obersturmbannführer, Chief of Amt II.
15. OHLENDORF, SS, Brigadeführer, Chief of Amt III.
16. MÜLLER, SS, Gruppenführer, Chief of Amt IV.
17. NEME, SS, Gruppenführer, Chief of Amt V.
18. SCHLIMMURG, SS, Brigadeführer, Chief of Amt VI.
19. Dr. SLX, Chief of Amt VII.
- 19a. Other officials of the Reichssicherheitshauptamt (cf. Note 1 Annex III).

Heads of schools directly subordinate to the Reichssicherheitshauptamt:

20. Head of the Führerschule der Sicherheitspolizei und des S.D. in Berlin, Charlottenburg.
21. Head of the Sicherheitspolizeischule in Fürstenberg.
22. Head of the S.D. Schule in Burgau.
23. Head of the Sportschule in Pretzsch.
24. Head of the Funkschule auf Schloss Grunow.
25. Head of the Schloss-schule in Zella-Mehlis.
26. Head of the Schule der Sicherheitspolizei und des S.D. in Prag.

ANNEX II

GENERAL ADMINISTRATION AND SUPERVISION OF CONCENTRATION CAMPS.

(Wirtschafts und Verwaltungshauptamt, WVHA)

1. Oswald POHL, SS. Obergruppenführer, Head of the W.V.H.A.
Sub-Department: Amtgruppe D (Operation and Administration of
Concentration Camps.)
2. Richard GLUCKE, SS. Gruppenführer, Head of Amtgruppe D.
Office No. 1 (Central Bureau).
3. Arthur LIEBEHENSCHER, SS. Obersturmbannführer, Chief of Office No. 1.
4. Rudolf HOSS, SS. Obersturmbannführer, Successor to Liebehenschel.
Office No. II (General Administration and Prisoners).
5. Gerhard MAURER, SS. Obersturmbannführer, Chief of Office No. II.
Office No. III (Medical Administration)
6. Dr. Enno LOLLING, SS. Obersturmbannführer, Chief of Office No. III.
Office No. IV (General Administration of Camps and Camp Staff).
7. Anton KLINDL, SS. Sturmbannführer, Chief of Office No. IV.
8. HIRBAUM, HSF, Official.
9. KIENER, HSF, Office in the Amtgruppe D.
10. All other chiefs of the W.V.H.A. and all other Chiefs and Officials of
the Amtgruppe D (cf. Note 1 Annex III).
11. KATZLER, SS. Brigadeführer, Chief of Construction of Concentration Camps,
Chief of Amtgruppe C.

ANNEX III

German Police Authorities in Czechoslovakia

a) German Police Authorities in the Protectorate of Bohemia and Moravia (the organisation of these police authorities corresponds on the whole with that of the German Police Authorities in all occupied countries).

1. Hoherer SS and Polizeiführer.
2. Reichsprotektor and his Deputy (Staatssekretar and Unterstaatssekretar).
3. Befehlshaber der Ordnungspolizei.
4. Befehlshaber der Sicherheitspolizei.
5. The Staff of the Befehlshaber der Sicherheitspolizei (cf. Note 1).
6. SD Leitabschnitte and SD Abschnitte (Chiefs and other officials, cf. Note 1)
7. Staatspolizeileitstellen and Staatspolizeistellen (Chiefs and other officials and officials of the Aussonstellen cf. Note 1)
8. Höhere Polizeibehörden (Oberlandrat). (All Oberlandräte and their Deputies).
9. Kriminalpolizeileitstellen and Kriminalpolizeistellen (Chiefs and other officials cf. Note 1).
10. Staatliche Polizeiverwaltungen (Polizeidirektionen) and Kriminalabteilungen. (Polizeipräsidenten and their deputies and officials of the Kriminalabteilungen cf. Note 1).

b) German Police Authorities in the Reichsgau Sudetenland (the organisation of these Police Authorities corresponds with that of the Police Authorities in the German Reich and in the territories annexed by Germany during the war).

1. Hoherer SD und Polizeiführer.
2. Reichsstatthalter and his Deputy.
3. Inspekteur der Ordnungspolizei.
4. Inspekteur der Sicherheitspolizei und des SD.
5. The Staff of the Inspekteur der Sicherheitspolizei und des SD (cf. Note 1)
6. S.D. Leitabschnitte and S.D. Abschnitte (Chiefs and other officials). (cf. Note 1)
7. Höhere Polizeibehörden (Regierungspräsidenten) (all Regierungspräsidenten and their Deputies)
8. Staatspolizeileitstellen and Staatspolizeistellen (Chiefs and other officials and officials of the Aussonstellen, cf. Note 1).
9. Kriminalpolizeileitstellen and Kriminalpolizeistellen (Chiefs and other officials, cf. Note 1).
10. Staatliche Polizeiverwaltungen (Polizeipräsidien, Polizeidirektion, (Polizeirat) and Kriminalabteilungen (Polizeipräsidenten and their deputies and officials of the Kriminalabteilungen, cf. Note 1).

NOTE I : In all cases in which Committee I placed groups on List A, it restricted the number of officials responsible as members of this group to the ranks indicated on page 2. (cf. Annex I, 19a - Annex II, 10 - Annex III a) 5, 6, 7, 9, 10 - Annex III b) 5, 6, 8, 9, 10).

1 for agenda

SECRET

C.141
3rd August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

THE DECISIONS OF THE POTSDAM CONFERENCE AND THE PROBLEM
OF WAR CRIMINALS

Note by the Legal Officer, Mr. E. Schwelb, Dr. iur., LL.B

I.

The report on the Tripartite Conference held at the Cecilienhof, near Potsdam, from July 17th, 1945 to August 2nd, 1945, contains the following decisions which are relevant to the work of the United Nations War Crimes Commission (quotations from "The Times" newspaper, August 3rd, 1945).

1) Paragraphs 5 and 6 of the Agreement regarding "The Political and Economic Principles to Govern the Treatment of Germany in the Initial Control Period" read as follows :

"5. War criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes shall be arrested and brought to judgment. Nazi leaders, influential Nazi supporters and high officials of Nazi organizations and institutions, and any other persons dangerous to the occupation or its objectives, shall be arrested and interned.

"6. All members of the Nazi party who have been more than nominal participants in its activities, and all other persons hostile to allied purposes, shall be removed from public and semi-public office and from positions of responsibility in important private undertakings. Such persons shall be replaced by persons who, by their political and moral qualities, are deemed capable of assisting in developing genuine democratic institutions in Germany."

2) A special statement dealing with these major war criminals whose crimes have no particular geographical localization is to the following effect:

"The three Governments have taken note of the discussions which have been proceeding in recent weeks in London between British, United States, Soviet, and French representatives with a view to reaching agreement on the methods of trial of those major war criminals whose crimes under the Moscow Declaration of October, 1943, have no particular geographical localization. The three Governments reaffirm their intention to bring these criminals to swift and sure justice. They hope that the negotiations in London will result in speedy agreement being reached for this purpose, and they regard it as a matter of great importance that the trial of these major criminals should begin at the earliest possible date. The first list of defendants will be published before September 1."

II.

From this it follows that the Potsdam decisions distinguish five categories of persons who may be called "war criminals" in the widest sense, persons to whom, in view of their connection with the Nazi conspiracy, special treatment of a repressive and/or preventive kind will be meted out.

These five categories are :

- 1) The "major war criminals whose crimes under the Moscow Declaration of October, 1943, have no particular geographical localization".
- 2). War criminals in the narrower sense, i.e. persons guilty of a violation of the laws and usages of war, other than the "major war criminals" whose crimes have no particular geographical localization."
- 3). Persons who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes (as far as they do not fall within categories 1 and 2).
- 4) Nazi leaders, influential Nazi supporters and high officials of Nazi organisations and institutions, and any other persons dangerous to the occupation or its objectives (as far as they do not fall within categories 1, 2 and 3).
- 5) All members of the Nazi Party who have been more than nominal participants in its activities, and all other persons hostile to allied purposes (as far as they do not fall within categories 1 to 4).

III.

According to the Potsdam decisions, the five categories mentioned sub. II, will be dealt with as follows :

Ad 1) As to the "major war criminals" whose crimes have no particular geographical localization the Potsdam Conference has made no decision of its own. It referred to the discussions which have been proceeding in recent weeks in London between British, United States, Soviet and French representatives with a view to reaching agreement on the methods of trial of the "major" war criminals. The three Governments reaffirm their intention to bring these criminals to swift and sure justice.

This implies two things :

- a) that with regard to the criminals without any particular geographical localization the Moscow Declaration remains valid and is being reaffirmed.
- b) that the Moscow Declaration is simultaneously interpreted and explained in the one point which had been ambiguous.

In Moscow it had been said that these major criminals "will be punished by a joint decision of the Governments of the Allies."

This left open the question whether the "joint decision of the Governments of the Allies" will be a decision to establish a court to try these criminals, or whether the "decision" will directly mete out the punishment as had been done in the case of Napoleon I. The Potsdam Declaration obviously accepts the former alternative in taking note of the London discussions about the trial of the major war criminals. They will, therefore, be brought to justice not by political decision of the Allied Governments, but by judicial process.

Ad 2) As to the war criminals in the narrower sense no new departure is contained in the Potsdam Agreement. As to that, the previous decisions remain in force, particularly the Moscow Declaration, saying that they "will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the Free Governments which will be created therein."

This is not affected by the provision of paragraph 5 of the "Political and Economic Principles" (supra I (1)) according to which these persons shall be "arrested and brought to judgment." "Brought to judgment" includes, of course, judgments of the courts of the liberated countries. The fact that the provision of paragraph 5 is contained in a document concerning the administration of Germany implies that the Great Powers as sovereigns of Germany assume in this capacity jurisdiction over crimes including war crimes and atrocities committed in Germany before and during the allied occupation. This is in accordance with the Military Government Provisions, enacted by the Western Allies (see Doc. 132) and with the provisions for the British zone after the assumption of supreme authority (see Cmd. 6648 and Docs. 131, 132).

In the American occupation zone all orders by the Military Governments, including proclamations, laws, regulations and notices given (before June 5th, 1945) by the Supreme Commander or on his instructions, have remained in force, unless repealed or altered by General Eisenhower, in his capacity of C. in C. of the American zone. (Proclamation dated July 14th, 1945, "Sunday Times" 15th July, 1945).

There will, therefore, to a certain extent exist a concurrent jurisdiction of the Allied courts in Germany as local courts, and the courts of the countries of the victims of the crimes.

Ad 3) This category comprises persons who are guilty of atrocities even if these atrocities do not constitute war crimes in the narrower sense of the term. This is the group of persons who have committed "analogous offences" within the meaning of Article 11 (a) of the Declaration regarding the defeat of Germany of June 5th, 1945 (Cmd. 6648), and Article 29 of the Italian surrender terms of 1945. Under this category, inter alia, fall the perpetrators of crimes against German and other Axis nationals (political opponents, Jews, etc.), against citizens of neutral states, and against stateless persons. These offenders "shall be arrested and brought to judgment."

As to the jurisdiction in these cases, it appears that it is vested in the Allied Courts in Germany in their capacity of local courts and successors to the German courts. There may, of course, be concurrent jurisdiction in cases where the crimes were committed also against allied nationals and particularly, if they were committed on allied territory.

Ad 4) Here the Potsdam Conference has adopted a principle which has been acted upon by the United Nations War Crimes Commission in producing the so-called key-men lists Nos. 7 and 9.

This category comprises Nazi leaders and people in a similar capacity whose participation in concrete war crimes or atrocities cannot be proved. If they are guilty of war crimes or atrocities, they will be dealt with according to the provisions applying to them as falling under one or more of the categories mentioned under 1, 2 and 3. But even if no evidence of actual participation in war crimes or atrocities will be forthcoming, the "key-men" will be arrested and interned. They will not be punished, because no criminal offence committed by them personally has been proved. But they will be deprived of their liberty on principles similar to those on which Regulation 18B of the British Defence (General) Regulations was based during the Second World War.

Ad 5) Paragraph 6 of the "Political and Economic Principles" deals with members of the Nazi party who have been more than nominal participants in its activities and all other persons hostile to allied purposes.

This category differs from the category dealt with under (4) that it does not comprise "key-men". Under this fifth category fall members of the Nazi Party who were not "leaders", Nazi supporters who were not "influential", officials of Nazi organisations and institutions who were not "high" officials, persons who are hostile to allied purposes without being "dangerous to the occupation or its objectives." All rank and file Nazis fall within this category with the exception of those who were only "nominal participants" of the Nazi movement.

This vast number of people will neither be brought to trial, as is the case with categories 1, 2 and 3, nor will they be deprived of their personal freedom and interned, as category 4, but all these smaller fry suffer a capitis deminutio: they will be removed from public and semi-public offices and from positions of responsibility in important private undertakings. This, of course, implies the loss of eligibility to such offices and positions.

IV.

Summary

The Potsdam Agreement contains, therefore, the following decisions regarding war criminals and "analogous" offenders:

- 1) "Major" war criminals will be brought to justice by way of judicial process.
- 2) War criminals in the narrower sense will be tried according to ^{the} previous decisions, i.e. primarily by the courts of the victim countries, a concurrent jurisdiction being vested in the British, American, Soviet and French courts established in Germany as local courts.
- 3) The perpetrators of "analogous offences" (atrocities against non-allied nationals) will be arrested and brought to judgment by the allied courts in Germany.
- 4) Nazi key-men will be interned.
- 5) Nazi rank and file (excepting only nominal party members) will be removed from offices and influential positions.

Mr. Lyman

SECRET

C.142
10 August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

CO-OPERATION WITH THE UNION OF SOVIET
SOCIALIST REPUBLICS

DRAFT LETTER TO THE GOVERNMENTS OF THE UNITED
NATIONS REPRESENTED ON THE COMMISSION.

(Submitted by M. de BAER)

Sir,

I have the honour to inform you that members of the United Nations War Crimes Commission have on several occasions during the last year expressed some concern about the lack of co-operation between the U.S.S.R. and the United Nations represented on the Commission. It is felt that, if some sort of collaboration cannot be achieved, there is a serious risk that the persons accused of war crimes by the U.N.W.C.C. and residing in the area controlled by the U.S.S.R. may escape punishment altogether.

Therefore, and in view of the fact that the end of the war in Europe and the dissolution of the Polish Government in London may have removed some of the obstacles that were in the way, the War Crimes Commission recommends that the question of the participation of the U.S.S.R. in the work of the U.N.W.C.C. be reconsidered.

If however this were not found possible, then it may be desirable that permanent contacts be established between the U.N.W.C.C. and the Soviet Extraordinary State Commission for Ascertaining and Investigating Crimes of the German-Fascist Invaders and their Accomplices, and that some assurances should be given that the Soviet Commission shall recognise and give effect to the lists of accused which have been compiled by the U.N.W.C.C.

Yours faithfully,

SECRET

C.142(1)
22nd August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

CO-OPERATION WITH THE UNION OF SOVIET SOCIALIST REPUBLICS

DRAFT LETTER TO THE GOVERNMENTS OF THE UNITED
NATIONS REPRESENTED ON THE COMMISSION, TO BE TRANSMITTED
THROUGH THEIR REPRESENTATIVES ON THE COMMISSION

(Re-draft by Drafting Committee.)

Sir,

I have the honour to inform you that members of the United Nations War Crimes Commission have on several occasions expressed concern at the fact that the Government of the Union of Soviet Socialist Republics is not represented on the Commission. A similar concern was expressed at the Conference of National War Crimes Offices held in London from 31st May to 2nd June, 1945. It is felt that, in order to bring war criminals to justice with all possible speed, the participation of the Union of Soviet Socialist Republics in the work of the Commission can only be to the benefit both of the Governments represented on the Commission and to the Government of the Union of Soviet Socialist Republics itself.

Many of the persons who have been listed by the United Nations War Crimes Commission, and who, up to the present time have not been traced, may well be found on territory liberated by the Soviet forces and could thus be apprehended with the collaboration of the Soviet Government. On the other hand, it is to be expected that numerous war criminals wanted by the Government of the Union of Soviet Socialist Republics are to be found in the territories at present occupied by the forces of Governments represented on the United Nations War Crimes Commission, and Soviet participation in the Commission would facilitate the location and apprehension of these offenders.

Similar considerations would apply to the collection and exchange of evidence.

The United Nations War Crimes Commission, therefore, strongly urges participation of the Soviet Government in the Commission's work, and requests that your Government and the other Governments represented on the Commission shall take the necessary measures to secure that participation at the earliest opportunity.

P.T.O.

SECRET

C.143
22nd August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

SURRENDER OF WAR CRIMINALS BY SHAEF
AND SACRED

Copy of letter dated 20th August, 1945 from
United Kingdom, Foreign Office to the Chairman.

"My Lord,

I am directed by Mr. Secretary Bevin to inform you that on the 11th July the Combined Chiefs of Staff authorised the Supreme Commander, Allied Expeditionary Force and the Supreme Commander Mediterranean to hand over Germans held by the forces under their command and suspected of having committed war crimes in countries formerly occupied by Germany or in Italy, to the Allied authorities in whose country the alleged war crime had been committed provided (a) that they are not required as defendants or witnesses for trials before the British Military Courts or for trials before the proposed Inter-Allied Tribunal; (b) that the military authorities on the spot have no reason to doubt the bona fides of the Allied request for the War Criminal in question and that there are no special circumstances making transfer undesirable; and (c) that they are not wanted for trial or as witnesses by any other Allied country.

The order recognises two types of case :-

- (a) persons listed as War Criminals on the lists compiled by the United Nations War Crimes Commission: these are to be handed over without question, subject to the above conditions;
- (b) persons not listed on United Nations War Crimes Commission lists: these persons are to be handed over on receipt from the Allied authorities concerned of a plain statement that the German asked for is wanted for one or more specified war crimes committed on a specified date and either at a specified place in their territory or against their own nationals.

Any Allied Government wishing to obtain information with a view to arranging for the surrender of an alleged war criminal should in the first instance apply to the Central Registry of War Criminals and Security Suspects at Paris.

2. Mr. Bevin would be grateful if you would bring the above information to the attention of the members of the United Nations War Crimes Commission.

I am,
My Lord,
Your obedient Servant,

(signed) Patrick Dean."

SECRET

C. 144
30th August, 1945

UNITED NATIONS WAR CRIMES COMMISSION

AGREEMENT BETWEEN THE UNITED KINGDOM, THE UNITED STATES,
FRANCE AND THE UNION OF SOVIET SOCIALIST REPUBLICS FOR THE
PROSECUTION AND PUNISHMENT OF THE MAJOR WAR CRIMINALS OF
THE EUROPEAN AXIS

-REPORT OF COMMITTEE III AND RECOMMENDATION-

Adopted by the Commission on 29th August, 1945.

The Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis which was concluded on 8th August 1945, between the Governments of the United Kingdom, United States, France and the U.S.S.R., and to which (Article 5) the Government of any United Nation may adhere, and the Charter of the International Military Tribunal which is annexed to and forms part of the Agreement, are documents which give effect to far-reaching principles which have been long and fully discussed in the Commission and have been embodied in recommendations made by it or have obtained the assent of a number of its member Governments.

The adherence to the Agreement of all the States invited to adhere, which (as the Committee has ascertained) include all States entitled to sign the Charter of the United Nations, would greatly add to the authority not of the International Military Tribunal only but still more of the principles of law embodied in the Charter, the most important of which are mentioned above. The Committee feels that the four Powers in so clearly enunciating these principles, and in setting up a court to apply them have strengthened the protection against aggression which international law should give to all States and their populations and have reinforced the provisions for the prevention of war contained in the Charter of the United Nations. It seems most desirable that they should receive all possible support from the other United Nations.

For these reasons, Committee III proposes that the Commission shall adopt the following recommendation:

-RECOMMENDATION

The United Nations War Crimes Commission welcomes the conclusion by the Government of Great Britain and Northern Ireland, the Government of the United States, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics, of the Agreement of August 8th 1945, for the Prosecution and Punishment of the Major War Criminals of the European Axis, and it recommends that the Governments represented on the Commission, which are not signatories, shall adhere to this Agreement.

The Commission further recommends that the Governments represented on the Commission shall give the Signatory Governments all possible assistance by providing reports and such other material for prosecutions as they may be invited to supply.

SECRET

C.144(1)
29th August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

AGREEMENT BETWEEN THE UNITED KINGDOM, THE UNITED STATES,
FRANCE AND THE UNION OF SOVIET SOCIALIST REPUBLICS FOR THE
PROSECUTION AND PUNISHMENT OF THE MAJOR WAR CRIMINALS OF
THE EUROPEAN AXES

Report by Committee III

The Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis which was concluded on 8th August 1945, between the Governments of the United Kingdom, United States, France and the U.S.S.R., and to which (Article 5) the Government of any United Nation may adhere, and the Charter of the International Military Tribunal which is annexed to and forms part of the Agreement, are documents which give effect to far-reaching principles which have been long and fully discussed in the Commission and have been embodied in recommendations made by it or have obtained the assent of a number of its member Governments.

✓ This is in particular true of Articles 6(a) and (c), 9 and 10 of the Charter.

The Committee's first duty was to ascertain what would be the effect of adherence to the Agreement. The Legal Officer of the Commission prepared two notes (documents III/13 and III/13A annexed hereto) upon this subject. Agreement with these notes was expressed by the Office of the United States Prosecutor of Axis Criminality. The Committee also fully agrees with the mentioned notes. At the same time the Secretary General ascertained that the Foreign Office did not consider that adhering Powers acquired any rights or obligations under the Agreement. ✓

~~The adherence~~ ✓✓✓✓✓
the Agreement of all the States invited to adhere, which (as the Committee has ascertained) include all States entitled to sign the Charter of the United Nations, would greatly add to the authority not of the International Military Tribunal only but still more of the principles of law embodied in the Charter, the most important of which are mentioned above. The Committee feels that the Four Powers in so clearly enunciating these principles, and in setting up a court to

apply them have strengthened the protection against aggression which international law should give to all States and their populations and have reinforced the provisions for the prevention of war contained in the Charter of the United Nations. It seems most desirable that they should receive all possible support from the other United Nations.

For these reasons, Committee III proposes that the Commission shall adopt the following recommendation:

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The Commission further recommends that the Governments represented on the Commission shall give the Signatory Governments all possible assistance by providing reports and such other material for prosecutions as they may be invited to supply.

SECRET

C. 145
28th August, 1945

UNITED NATIONS WAR CRIMES COMMISSION

DRAFT SUMMARY OF RECOMMENDATIONS CONCERNING
JAPANESE WAR CRIMES AND ATROCITIES

Presented by the Special Far Eastern and Pacific Committee

The Governments of the United Nations have repeatedly protested against and denounced the monstrous crimes and atrocities of which the Japanese are guilty, and have declared that those responsible shall not escape retribution.

The United Kingdom, the United States and China in the ultimatum issued at Potsdam on July 26, 1945, stated:

"... stern justice will be meted out to all war criminals, including those who have visited cruelties on our prisoners."

These crimes and atrocities consist not alone of individual outrages. They are crimes and brutalities deliberately planned and systematically perpetrated throughout the Far East and Pacific areas. In consummation of their evil plan, the Japanese treacherously launched wars of aggression without ultimatum or declaration. They openly and flagrantly violated the solemn obligations which States, including their own, had undertaken by treaty or custom. They refused the ordinary protection of the law to the inhabitants of the countries they invaded. They did not respect family honour, the lives of persons, as well as religious convictions and practices. Inhabitants of countries which they overran have been ruthlessly tortured, murdered and massacred in coldblood; rape, torture, pillage, and other barbarities have occurred where their forces have operated; and cities have been wantonly destroyed and entire countrysides devastated for no military purpose. Despite the laws and customs of war and their own assurances, prisoners-of-war and other nationals of the United Nations have been systematically subjected to brutal treatment and horrible outrages calculated to exterminate them. These barbarities include massacre, murder, torture, starvation and other ruthless oppressions.

Having in view the foregoing, and in order to effect the practical measures to bring to justice the persons responsible, the Commission recommends:

I

That those Japanese who have been responsible for the plans or policies which resulted in these abominable crimes and atrocities should be surrendered to or apprehended by the United Nations for trial before an international military tribunal. These individuals and officials should include those in authority in the Government, in the military and police establishments, in the secret societies and other criminal associations, and in the financial and economic affairs of Japan who by all civilised standards are provable to be war criminals. The case against these major criminals is that they have devised, set in motion and carried out the criminal plans and enterprises which

which incited or resulted in the aggressions, cruelties and brutalities which have outraged the civilised world. All of these barbarities are flagrant violations of international law, including the laws and customs of land and naval warfare. The persons to be charged should be determined by the rule that all who participate in the formulation or execution of a criminal plan involving multiple crimes are liable for each of the offences committed and responsible for the acts of each other.

II

That those Japanese holding key-positions in the civil, military or economic life of Japan who, perhaps, did not devise or set in motion plans which resulted in these crimes and barbarities, but nevertheless directed the carrying out of such plans within Japan or in the territories of more than one of the United Nations, should be surrendered to or apprehended by the United Nations for trial before an international military tribunal. This category of criminals includes those individuals and officials, usually in key-positions in the Government, who have willingly planned the details of and put into execution the monstrous schemes of the Japanese leaders. It also includes those brutal and ruthless criminals who, both inside and outside of Japan, have been guilty of mass criminality towards the nationals of many of the United Nations. Among such persons were those in charge of certain prisoner-of-war and civilian internment camps where the people of many nations have been starved, tortured, murdered or otherwise atrociously maltreated.

III

That those Japanese who have been responsible for, or have taken a consenting part in, the crimes or atrocities committed in, or against the nationals of, a United Nation should be apprehended and sent back to the countries in which abominable deeds were done or against whose nationals crimes and atrocities were perpetrated in order that they may be judged in the courts of those countries and punished.

IV

That a Central War Crimes Agency be established and maintained in Japan by the military authority and adequately staffed with investigators, detectives, lawyers and other technicians selected from the United Nations, to perform the following duties:

- (a) To investigate all war crimes planned, directed or perpetrated inside Japanese territory;
- (b) To gather all evidence inside Japanese territory relating to Japanese war crimes and atrocities wherever committed;
- (c) To transmit to the United Nations War Crimes Commission or its Sub-Commissions evidence of war crimes detected by it, evidence of war crimes committed by persons whose names are not yet on the lists of the Commission or its Sub-Commissions, or evidence of crimes which point to the existence of a general enterprise or pattern;
- (d) To establish and maintain a register of all Japanese war criminals wanted or apprehended by it or any United Nation, or tried by any United Nation or the International Military Tribunal. Each United Nation should promptly notify the Agency of all war criminals wanted, apprehended or tried by it, and the Agency should circulate to each Government and the United Nations War Crimes Commission and its Sub-Commissions lists of such criminals. The register should be similar to that maintained by the Central Recording Office of War Criminals and Security Suspects in the European Theatre of Operations;

(e) To establish and maintain a Central War Crimes Evidence Centre to which should be sent all evidence of war crimes secured by any Government or Agency. The evidence should be indexed and be open to the examination of the representatives of any interested United Nation Government. These representatives should be given free access to the records and should be permitted to make certified copies of such papers as they may require;

(f) To arrange for the apprehension and detention of all Japanese war criminals in Japan whose names or identifying data are discovered by it or are furnished by the United Nations War Crimes Commission and its Sub-Commissions or any United Nation Government;

(g) To notify the United Nations War Crimes Commission and its Sub-Commissions and the Governments of all war criminals so apprehended;

(h) To arrange for the surrender to the interested Governments any of the Japanese war criminals mentioned under III above, who are apprehended in Japan and whose surrender is requested by a United Nation Government. In case a war criminal is wanted by two or more Governments, the Agency should decide the terms of surrender;

(i) To co-operate with the United Nations War Crimes Commission and its Sub-Commissions, the Central War Crimes Prosecution Office and the interested United Nation Governments in all matters regarding Japanese war crime.

(j) To maintain branch offices throughout the Far East and Pacific areas to receive evidence and other information concerning war crimes and war criminals, and to co-ordinate its work with that of the National War Crimes Offices.

Representatives from each of the National Offices concerned, acting as liaison officers, should, if desired, be attached to the Central War Crime Agency or to any branch. They would be invited to take charge, and, in conjunction with the Central War Crimes Agency, to investigate war crimes committed in or against the nationals of their own countries.

All of the military forces and other agencies of the Governments should co-operate with and assist the Central War Crimes Agency in the discharge of its duties.

V

That a Central War Crimes Prosecution Office should be established and maintained in Japan, adequately staffed to prepare and file the charges, to collect, analyse and sift the evidence, and to present to an International Military Tribunal the cases of the war criminals mentioned under I and II above.

VI

(a) That the Supreme Commander of the United Nations military forces or any Control Council or other Authority in Japan should appoint one or more International Military Tribunals for the trial of the war criminals mentioned under I and II above, each of which Tribunals should be composed of five members. The members should be selected and appointed on each Tribunal, after designation by their respective Governments, from the military forces of Australia, Canada, China, France, India, the Netherlands, New Zealand, the Union of Soviet Socialist Republics, the United Kingdom and United States. The Appointing Authority should adopt rules for its procedure.

(b) The Tribunal should have jurisdiction to try any of the war criminals mentioned under I and II above, who are charged with any of the crimes and atrocities which the Japanese have perpetrated. The law to be applied by the Tribunal should be the laws and customs of war, ^{generally} and the law in respect to crimes against peace and crimes against humanity defined in the Inter-Allied Agreement of August 8th, 1945, applicable to the major war criminals of the European Axis.

VII

That the war criminals mentioned under III above, upon apprehension, should be promptly surrendered to the countries in which or against whose nationalities they committed their crimes unless they are wanted as accused or witnesses in any trial before an International Military Tribunal. In the latter event, their surrender should be deferred until the conclusion of such trial or immediately effected upon such terms as may be agreed upon.

VIII

That His Majesty's Principal Secretary of State for Foreign Affairs in the United Kingdom be requested to convene as soon as possible a conference to carry out such of the foregoing recommendations as may require implementation.

Mr. Lyman

SECRET

C.145. (1)
29th August 1945

UNITED NATIONS WAR CRIMES COMMISSION

SUMMARY RECOMMENDATIONS CONCERNING
JAPANESE WAR CRIMES AND ATROCITIES.

Note by the Secretary General

In circulating the attached Recommendations the Secretary General, on instructions from the Commission, begs to call attention to the explanations and observations made by His Excellency Dr. Wellington Koo in his oral report to the Commission on 29th August. This report was in the following terms:

"The Special Far Eastern and Pacific Committee has completed its examination of the document which I mentioned in my oral report to the Commission on 15th August. It has drawn up the recommendations circulated in Document C.145, which as Chairman of the Committee I now submit for the Commission's approval.

These recommendations are expressed in summary form. This is partly because the authorities to whom they are addressed must obviously be responsible for the details of their application. It is also due to the fact that the recommendations do not contain entirely new proposals. They embody with appropriate changes proposals made by the War Crimes Commission for the European theatre of war, measures taken by the military authorities in that theatre and provisions contained in the Inter-Allied Agreement of 8th August 1945, for the Prosecution and Punishment of Major War Criminals of the European Axis.

The Committee submits the recommendations with the proviso that having been drawn up without knowledge of the terms of surrender to be imposed on Japan, they may require reconsideration by the Commission if those terms should be found to be in any way inconsistent with them."

SUMMARY RECOMMENDATIONS CONCERNING
JAPANESE WAR CRIMES AND ATROCITIES

Adopted by the Commission on 29th August, 1945

The Governments of the United Nations have repeatedly protested against and denounced the monstrous crimes and atrocities of which the Japanese are guilty, and have declared that those responsible shall not escape retribution.

The United Kingdom, the United States and China in the ultimatum issued at Potsdam on July 26, 1945, stated:

"... stern justice will be meted out to all war criminals, including those who have visited cruelties on our prisoners."

These crimes and atrocities consist not alone of individual outrages. They are crimes and brutalities deliberately planned and systematically perpetrated throughout the Far East and Pacific areas. In consummation of their evil plan, the Japanese treacherously launched wars of aggression without ultimatum or declaration. They openly and flagrantly violated the solemn obligations which States, including their own, had undertaken by treaty or custom. They refused the ordinary protection of the law to the inhabitants of the countries they invaded. They did not respect family honour, the lives of persons, as well as religious convictions and practices. Inhabitants of countries which they overran have been ruthlessly tortured, murdered and massacred in coldblood; rape, torture, pillage, and other barbarities have occurred where their forces have operated; and cities have been wantonly destroyed and entire countrysides devastated for no military purpose. Despite the laws and customs of war and their own assurances, prisoners-of-war and other nationals of the United Nations have been systematically subjected to brutal treatment and horrible outrages calculated to exterminate them. These barbarities include massacre, murder, torture, starvation and other ruthless oppressions.

Having in view the foregoing, and in order to effect the practical measures to bring to justice the persons responsible, the Commission recommends:

I

That those Japanese who have been responsible for the plans or policies which resulted in these abominable crimes and atrocities should be surrendered to or apprehended by the United Nations for trial before an international military tribunal. These individuals and officials should include those in authority in the Government, in the military and police establishments, in the secret societies and other criminal associations, and in the financial and economic affairs of Japan who by all civilised standards are provable to be war criminals. The case against these major criminals is that they have devised, set in motion and carried out the criminal plans and enterprises which

which incited or resulted in the aggressions, cruelties and brutalities which have outraged the civilised world. All of these barbarities are flagrant violations of international law, including the laws and customs of land and naval warfare. The persons to be charged should be determined by the rule that all who participate in the formulation or execution of a criminal plan involving multiple crimes are liable for each of the offences committed and responsible for the acts of each other.

II

That those Japanese holding key-positions in the civil, military or economic life of Japan who, perhaps, did not devise or set in motion plans which resulted in these crimes and barbarities, but nevertheless directed the carrying out of such plans within Japan or in the territories of more than one of the United Nations, should be surrendered to or apprehended by the United Nations for trial before an international military tribunal. This category of criminals includes those individuals and officials, usually in key-positions in the Government, who have willingly planned the details of and put into execution the monstrous schemes of the Japanese leaders. It also includes those brutal and ruthless criminals who, both inside and outside Japan, have been guilty of mass criminality towards the nationals of many of the United Nations. Among such persons were those in charge of certain prisoner-of-war and civilian internment camps where the people of many nations have been starved, tortured, murdered or otherwise atrociously maltreated.

III

That those Japanese who have been responsible for, or have taken a consenting part in the crimes or atrocities committed in, or against the nationals of, a United Nation should be apprehended and sent back to the countries in which their abominable deeds were done or against whose nationals crimes and atrocities were perpetrated in order that they may be judged in the courts of those countries and punished.

IV

That a Central War Crimes Agency be established and maintained in Japan by the military authority and adequately staffed with investigators, detectives, lawyers and other technicians selected from the United Nations, to perform the following duties:

- (a) To investigate all war crimes planned, directed or perpetrated inside Japanese territory;
- (b) To gather all evidence inside Japanese territory relating to Japanese war crimes and atrocities wherever committed;
- (c) To transmit to the United Nations War Crimes Commission or its Sub-Commissions evidence of war crimes detected by it, evidence of war crimes committed by persons whose names are not yet on the lists of the Commission or its Sub-Commissions, or evidence of crimes which point to the existence of a general enterprise or pattern;
- (d) To establish and maintain a register of all Japanese war criminals wanted or apprehended by it or any United Nation, or tried by any United Nation or the International Military Tribunal. Each United Nation should promptly notify the Agency of all war criminals wanted, apprehended or tried by it, and the Agency should circulate to each Government and the United Nations War Crimes Commission and its Sub-Commissions lists of such criminals. The register should be similar to that maintained by the Central Recording Office of War Criminals and Security Suspects in the European Theatre of Operations;

(e) To establish and maintain a Central War Crimes Evidence Centre to which should be sent all evidence of war crimes secured by any Government or Agency. The evidence should be indexed and be open to the examination of the representatives of any interested United Nation Government. These representatives should be given free access to the records and should be permitted to make certified copies of such papers as they may require;

(f) To arrange for the apprehension and detention of all Japanese war criminals in Japan whose names or identifying data are discovered by it or are furnished by the United Nations War Crimes Commission and its Sub-Commissions or any United Nation Government;

(g) To notify the United Nations War Crimes Commission and its Sub-Commissions and the Governments of all war criminals so apprehended;

(h) To arrange for the surrender to the interested Governments any of the Japanese war criminals mentioned under III above, who are apprehended in Japan and whose surrender is requested by a United Nation Government. In case a war criminal is wanted by two or more Governments, the Agency should decide the terms of surrender;

(i) To co-operate with the United Nations War Crimes Commission and its Sub-Commissions, the Central War Crimes Prosecution Office and the interested United Nation Governments in all matters regarding Japanese war crimes;

(j) To maintain branch offices throughout the Far East and Pacific areas to receive evidence and other information concerning war crimes and war criminals, and to co-ordinate its work with that of the National War Crimes Offices.

Representatives from each of the National Offices concerned, acting as liaison officers, should, if desired, be attached to the Central War Crimes Agency or to any branch. They would be invited to take charge, and, in conjunction with the Central War Crimes Agency, to investigate war crimes committed in or against the nationals of their own countries.

All of the military forces and other agencies of the Governments should co-operate with and assist the Central War Crimes Agency in the discharge of its duties.

V

That a Central War Crimes Prosecution Office should be established and maintained in Japan, adequately staffed to prepare and file the charges, to collect, analyse and sift the evidence, and to present to an International Military Tribunal the cases of the war criminals mentioned under I and II above.

VI

(a) That the Supreme Commander of the United Nations military forces or any Control Council or other Authority in Japan should appoint one or more International Military Tribunals for the trial of the war criminals mentioned under I and II above, each of which Tribunals should be composed of five members. The members should be selected and appointed on each Tribunal, after designation by their respective Governments, from the military forces of Australia, Canada, China, France, India, the Netherlands, New Zealand, the Union of Soviet Socialist Republics, the United Kingdom and United States. The appointing Authority should adopt rules for its procedure.

(b) The Tribunal should have jurisdiction to try any of the war criminals mentioned under I and II above, who are charged with any of the crimes and atrocities which the Japanese have perpetrated. The law to be applied by the Tribunal should be the laws and customs of war, ^{generally} and the law in respect to crimes against peace and crimes against humanity defined in the Inter-Allied Agreement of August 8th, 1945, applicable to the major war criminals of the European Axis.

VII

That the war criminals mentioned under III above, upon apprehension, should be promptly surrendered to the countries in which or against whose nationalsthey committed their crimes unless they are wanted as accused or witnesses in any trial before an International Military Tribunal. In the latter event, their surrender should be deferred until the conclusion of such trial or immediately effected upon such terms as may be agreed upon.

VIII

That His Majesty's Principal Secretary of State for Foreign Affairs in the United Kingdom be requested to convene as soon as possible a conference to carry out such of the foregoing recommendations as may require implementation.

SECRET

C. 146
8th September, 1945

UNITED NATIONS WAR CRIMES COMMISSION.

SURRENDER OF WAR CRIMINALS:

EFFECT GIVEN AT PRESENT BY THE UNITED STATES FORCES,
EUROPEAN THEATER, TO A PERSON'S HAVING BEEN PUT ON
THE COMMISSION'S LIST.

Letter from Colonel Hodgson to the Chairman dated
3rd September, 1945. (1)

Dear Lord Wright:

As the result of a discussion at a meeting of Committee I on August 22nd, it was considered advisable to ascertain the weight being given by the military authorities to lists of the Commission under the directive mentioned in Document C 143. To this end, it was decided that informal enquiries should be directed to the United States and United Kingdom Governments, and I was requested to make the former.

Accordingly, an inquiry was made by me and I am advised that insofar as the United States Forces, European Theater, are concerned the directive mentioned above has been superseded by another directive furnished to the Commanding General of such Forces for his guidance. The new directive sets forth the present United States policy in respect of the surrender of persons who are held by the mentioned Forces and are charged with committing crimes to which the directive is applicable.

This directive provides substantially that subject to the coordination of the Control Council and its agreed policies, upon request for the delivery of any person who is stated in such request to be charged with a crime to which the directive is applicable, the Commanding General will promptly comply with the request subject to the following exceptions:

a. Individuals wanted for trial or as witnesses in cases before an International Military Tribunal; and

b. Individuals requested by more than one nation. In such a case the Control Council in the first instance will decide relative priority.

This directive likewise provides that in cases in which the Commanding General has doubt whether he should deliver one of the mentioned persons to a requesting Government, he should refer the matter, with his recommendations, to the Control Council for decision.

I am informed that it is the view of the War Department and the State Department that in practice great weight should be given to the determination

of...

(1) A brief statement on the same subject was made in the Commission by Colonel Hodgson on 29th August. (M 77, p 12)

of the United Nations War Crimes Commission in placing a name upon its official war crimes list and that, in the absence of extraordinary circumstances, this determination by the Commission should be accepted. The impartial screening of cases by the Commission is believed to be exceedingly useful. It affords great support and assistance to the Commanding General of the mentioned Forces, and provides him with a reliable and strong basis for action.

I am further informed that, while listing by the Commission is considered as highly desirable as a basis for the apprehension and surrender of alleged war criminals, under present United States policy delivery can be made without such listing if request, otherwise adequately supported, is made by the demanding Government.

Sincerely yours,

Joseph V. Hodgson.
(sgd)

Lt. Col. JAGD, AUS,
United States Commissioner,
United Nations War Crimes Commission

SECRET

C.147
22nd September, 1945

UNITED NATIONS WAR CRIMES COMMISSION

NOTE ON THE LEGAL PROBLEMS CONNECTED WITH THE SURRENDER
OF WAR CRIMINALS TO THE AUTHORITIES COMPETENT TO
TRY THEM

Presented by Dr. R. Malézieux

TRANSLATION

From the legal point of view, the problems raised by the surrender of war criminals to the authorities competent to try them fall in practice into two categories of conflict of competence:

- 1) Conflicts between the military authorities holding the accused persons and the governments demanding them;
- 2) Conflicts between several governments demanding the same accused person.

In order that these conflicts may be solved it is necessary that there should be legal rules accepted by all the interested authorities and also that there should be bodies capable of carrying out the necessary technical work.

Certain gaps which it is indispensable to fill in order to arrive at effective international cooperation for the suppression of war crimes are apparent from an examination of the legal rules at present in force and of the part played by the existing bodies.

In this study we propose:

- 1) to find out which are the legal rules relating to the surrender of war criminals to the authorities competent to punish them, and to show in what way these rules are incomplete;
- 2) to explain the help given by the bodies at present in existence towards carrying out the technical work connected with the surrender of war criminals to the authorities competent to punish them, and to show in what measure the existing organisation is incomplete;
- 3) to seek for the different means by which the gaps existing in the law and in the institutions may be filled.

I

Statement of the rules of positive law relating to the surrender of
war criminals to the authorities competent to punish them.

The existence of gaps in positive law is apparent from the examination of both the general principles and of the rules applying particularly to the major criminals and those applying to ordinary criminals.

A. General Principles.

One principle appears to be certain: the competence of the military

authorities who have the custody of persons demanded as war criminals should give way before that of the governments recognised by international law to be competent to assure the suppression of war crimes. The right of the authorities holding prisoners of war charged with crimes committed in other States to judge these persons seems to have been left in abeyance by the declaration of Moscow of 1st October, 1943. It in fact follows from the declaration of Moscow that war criminals whose misdeeds can be localised geographically should be taken back for trial to the place where their crimes were committed.

B. Rules applying particularly to the major criminals

1. As regards the major criminals, that is to say in practice those who have been designated as such by the Committee for the Investigation and Prosecution of Major War Criminals, their appearance before the International Military Tribunal instituted for their punishment is safeguarded by the four Signatories to the Charter of 8th August, 1945.

In article 3 of the Agreement the signatory Powers undertake "to take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them....." It is however, provided that "no witness or defendant detained by any Signatory shall be taken out of the possession of that Signatory without its assent" (Charter of 8th August, 1945, article 15, last paragraph).

These provisions do not in any way modify the principles laid down by the Declaration of Moscow regarding the return of war criminals to the countries where they committed their crimes. (Art. 4, of the Agreement.) It seems, however, that in practice, the major criminals should in most cases be brought before the International Military Tribunal before their surrender to the particular governments which may have competence to try them.

2. As regards those major war criminals who are not detained by one of the Signatories of the charter of the International Military Tribunal, it is simply provided that the four Signatories of the instrument shall use their best endeavours to make them available. (Art. 3 of the Agreement).

C. Rules applying to ordinary war criminals.

1. As regards ordinary war criminals, the principle of the Moscow Declaration relating to the transfer of the guilty persons to the place where they committed their crimes remains in force.

2. An order of the Combined Chiefs of Staff of 11th July, 1945, lays down conditions for the application of this principle by the British and American military authorities. (Doc. C.143). This order concerns only the military authorities placed under the direction of the Combined Chiefs of Staff; it does not, therefore, confer any additional rights on the governments demanding the surrender of an accused person.

By the terms of the order the British and American military authorities must hand over to the allied governments demanding them, persons accused of having committed war crimes in countries formerly occupied by Germany and Italy on the following conditions:

a) that they are not required as defendants or witnesses for trials before the International Military Tribunal or for trials before the British or American Military tribunals;

b) that the military authorities to whom the request is made have no reason to doubt the bona fides of the demanding government. It is

stipulated that in cases where the wanted persons have been listed by the War Crimes Commission they will be without question considered as war criminals;

c) that the same persons are not wanted by several governments.

3) It follows from Col. Hodgson's note of 3rd September 1945, (Doc. C.146) that as particularly regards the American military authorities, a directive to the Commanding General of the forces in Europe provides:

a) that when several governments request the same accused person the matter should be referred to the Control Council in Germany.

b) that the Control Council in Germany should also be consulted if there is doubt as to the validity of the claims made by the governments.

D. Gaps in the positive law

The rules set out above show the following gaps:

1) As regards the major criminals:

No legal rule provides for priority of the international military tribunal over national jurisdiction.

No legal rule compels Powers which have not signed the Charter of the International Military Tribunal to surrender persons summoned to appear before the tribunal either as defendants or as witnesses.

2) As regards ordinary war criminals:

The order of the Combined Chiefs of Staff of 11th July 1945, relates only to the military authorities of the United Kingdom and the United States. We know of no similar provision having been made by the military authorities of the other allied Powers holding prisoners of war.

In so far as this order applies to the British authorities, there are still two gaps to be filled:

a) Where the criminal character of a wanted person is in doubt (in practice, where his name does not appear on the War Crimes Commission's lists) there is no principle regulating the conflicting claims of the military authorities and the demanding government.

b) No solution is provided for settling the conflicting claims of several governments demanding the same person.

II

Participation of existing bodies in the technical operations connected with the surrender of war criminals to the competent authorities for punishment.

We shall examine the part played by existing bodies in the solution of the two legal problems raised by the surrender of war criminals for punishment by the competent authorities.

A. Conflicting claims of the military authorities detaining the accused persons and the requesting governments.

It is evident that the military authorities can only agree to surrender an accused person if the demanding government justifies its

competence. In practice, the government requesting an individual should produce, if not evidence, at least a serious *prima facie* case that the said person had committed crimes on its territory or against its nationals.

The War Crimes Commission can help in solving this question. The lists which it draws up show with all desirable authority that the persons listed are guilty or suspected of having committed war crimes, and that the government which asked for them to be placed on the list is competent to punish them.

The United States authorities have decided, as regards requests addressed to them, to refer the matter in case of doubt to the Control Council for Germany.

B. Conflicting claims of governments asking for the surrender of the same person.

It would be useful to know first of all if there is such a question of conflicting claims, since, as we have seen, the British military authorities only agree to surrender a person in a case where he is wanted by one government only. This question can be solved thanks to CROWCASS, which is making plans for registering all the requests made by the different governments.

As regards requests addressed to the American Government we have seen that the Control Council can be called on to intervene.

C. Gaps in the existing organisation.

In the present state of organisation of the departments interested in the suppression of war crimes, the following gaps remain to be filled:

1. The War Crimes Commission, which is a body without judicial competence placed on its lists only those persons in respect of whom it is possible, without having recourse to methods of investigation properly so-called, to obtain elements or grave presumption of guilt. No international organisation is at present qualified to certify the competence of governments charged with punishing war criminals where there is no *Prima facie* evidence of guilt or presumption of guilt.

2. In the second place it should be pointed out that the U.S.S.R. participates neither in the work of the War Crimes Commission nor in CROWCASS.

3. Finally as regards particularly requests sent to the American authorities, the opinions or decisions asked for from the Control Council for Germany cannot be legally binding on allied governments other than those of the four occupying Powers.

III

What measures can be contemplated for solving the problems raised by the surrender of war criminals for trial by the competent authorities

We shall successively consider the means by which the positive law can be completed and those which it is possible to contemplate for perfecting the existing technical organisation.

A. Methods of completing the positive law.

It is possible, we think, to contemplate three technical processes for drawing up the legal rules which appear to be necessary.

1. Conclusion of an international convention. It is evident that an international convention could regulate all the questions at present unanswered. The War Criminal Commission had contemplated the conclusion of such a convention (see in particular C.47.)

In practice, it is to be feared that the negotiations and discussions necessary to arrive at the drafting and ratification of such an agreement would be rather long. The Government of Great Britain as far as it is concerned has not thought it desirable to carry out this proposal. (See Doc. C.91)

2. Drawing up of regulations for the Control Council for Germany.

The Control Council is without doubt competent to regulate the surrender of German prisoners of war detained by the four occupying Powers to the governments claiming them as criminals.

It is understood that these Powers would not be able to impose any legal rule on other allied governments. But since the majority of war criminals are at present in the custody of these four Powers, it is probable that the other allied governments would not make any difficulty about accepting reciprocally the same provisions as those adopted by the Control Council.

3. Drawing up of similar regulations by all the interested military authorities.

The order of the Combined Chiefs of Staff of 11th July 1945, suggests a third solution. Without necessitating recourse to the creation of a rule of international law, the problems raised by the surrender of war criminals to the authorities competent to try them can easily be solved by the adoption, by all the interested military authorities, of regulations containing the same provisions.

Having set out the different methods of drawing up rules of law, it remains to be considered what might be the content of these rules as concerns the part to be played by the technical bodies which will cooperate in handing over war criminals.

B. Methods of perfecting the technical organisation for the surrender of war criminals.

1. As regards collaboration with the U.S.S.R., one of the following solutions might be considered:

It would first of all be possible to ask the Control Council for Germany to participate in the work of searching for and classifying prisoners detained by the four Powers represented on it and of the requests made by the allied governments. This solution would, however, if adopted, entail the risk that it would lead to the creation of a body duplicating the work of CROWCASS.

Another solution would be to place CROWCASS under the authority of the Control Council in Germany; it would thus have access to documents which it has not at present in its possession.

2. As regards proof by requesting governments of their competence to try war criminals, in cases where such competence does not appear prima facie, several solutions can be contemplated. It is first of all possible to foresee the creation of mixed commissions on which magistrates and soldiers of the two interested governments will sit: the requesting government and the government whose military authorities are holding the wanted prisoners. These commissions would be charged with examining whether the demands for surrender of the accused persons were well founded.

A second solution suggested by Article 21 of the Charter of 8th August, 1945, setting up an international military tribunal, would be to establish a list of authorities in each country whose documents relating to the conditions in which the crimes have been committed and whose appreciation of the presumption of guilt could be considered as authentic.

3. It has been suggested that the War Crimes Commission should act as arbitrator for the settlement of conflicts of competence among several governments wanting the same accused person. (See Doc. C. 123). This solution calls for two observations. First, from the purely technical point of view, the War Crimes Commission does not know of all the demands which may have been made by different governments concerning the same person. Its lists in fact only show individuals in regard to whom it has been possible to establish *prima facie* a very grave presumption of guilt. In the second place, it is not certain that the terms of reference of the War Crimes Commission go so far as to allow it to exercise a judicial function.

However that may be, it would seem desirable to define in advance the principles according to which these conflicting claims can be regulated. The solution adopted by the draft convention prepared by the War Crimes Commission, which consists in giving preference to the State which seems competent to impose the heaviest sentence, might be reconsidered.

The adoption of such a principle, or of any other which might be deemed preferable, would admit only in exceptional cases of the intervention of an arbitrator to settle conflicts of competence among several governments demanding the same accused person, since it would be for the military authorities to see that this principle was applied.

SECRET.

C/48

28th September 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

PRELIMINARY REPORT BY THE CHAIRMAN OF COMMITTEE III.

Presented orally to the Commission on 26th September 1945.

Dr. Eder reported on the work of Committee III, which had been considering the question of whether "denationalisation" should be regarded as a war crime or not. The Committee had not yet completed its discussion and was therefore not in a position to present its recommendations, but, in view of his impending departure for Prague, it had been agreed that Dr. Eder should report on the discussion up to date.

The subject had been referred to Committee III by Committee I which had felt some doubt about a charge presented by the Yugoslav National Office, against four Italian war criminals, concerning the attempt to denationalise the inhabitants of occupied territory. Committee III had at first been unable to decide whether the question should be examined from the general point of view or whether the examination should be limited to the case of the four Italians. In Dr. Eder's opinion, the terms of reference as recorded in the minutes of Committee I might admit of either interpretation. It was felt however, that even if the charge against the four Italians were first discussed, it would be wise to attempt a general solution of the question and to establish a guiding rule for similar future cases.

Committee III had then examined the problem from the general aspect; whether and in which circumstances acts of denationalisation were to be considered war crimes and their perpetrators war criminals.

It was well known that, in 1919 the so called Responsibilities Committee had already placed attempts of denationalisation on the List of War Crimes. In December 1943, the List had been adopted by the United Nations War Crimes Commission as a basis for its work, and therefore, that specific crime, among others, had been accepted. Dr. Eder maintained, however, that the Commission was not bound by the 1919 List and it would be useful to re-examine the problem afresh in view of the knowledge gained since 1943, of Axis methods constituting a general criminal policy, which various allied statesmen had characterised as a "gangster" policy.

Dr. Eder then outlined the method and procedure adopted by Committee III. In several meetings, the Committee had tried to find if not a definition, at least a description of what is to be understood by denationalisation. It was very difficult to find a general definition; every expert held another opinion. The Committee had first decided to examine certain concrete facts, as they appeared from the charges submitted by National Offices, then to proceed from there. The second phase began with the examination of whether such crimes or acts which aimed at denationalisation were or were not prohibited by international law. If the former were the case, then it would have to be decided whether denationalisation was a crime according to the general principles of criminal law because it was obvious that not every contravention of a rule of International law was ipso facto a crime.

The Committee, after discussion of the above points, had reached certain conclusions. It seemed to it that the expression "denationalisation" was a collective noun for a certain group of measures, provisions or acts, applied or carried out by the occupying powers, some of which were crimes in se and some not. Dr. Eder enumerated certain crimes which had been

noted in the charges submitted to the Commission, such as for instance the closing of universities and schools, compulsory education in the language of the occupying power, deportation of children for the purpose of educating them in the language and spiritual atmosphere of the occupant, interference with religious services, attempts to disintegrate a nation by creating artificial minorities etc. Those were all measures adopted by the occupying axis powers for the purpose of disrupting and disintegrating the national conscience, spiritual life and national individuality. Certain measures, such as deportation of children, were war crimes in se, since they were crimes against personal freedom. Some were not crimes in se apart from their purpose. The Committee had been unanimous in its opinion that certain characteristics, pertaining to such measures, should be borne in mind. First, whether the final result, within the framework of the general policy of the aggressor, aimed at "killing the soul of the nation" - the counterpart to the physical act of killing the body, which was ordinary murder. The Germans were special masters in "killing the soul". Dr. Eder explained that his use of that expression was intended to convey the deprivation of a Czech, or a Pole or a Russian of his national language, national customs, by killing all national feeling. The second step was to transform those men into Germans or Italians, etc, the "Germanisation" or "Italianisation" of inhabitants of occupied territory.

Secondly, such crimes were not committed against individuals but against a whole nation. They were mass crimes perpetrated as part of a state policy of the axis Powers. Thirdly, they were perpetrated by means, or rather by the abuse of the power possessed by the de facto occupying Power. Dr. Eder said that the Committee's conclusion was not intended to give an exhaustive description or definition, but merely an idea of its approach to the problem.

The second point was whether such crimes were prohibited under international law. The fact that an act was not prohibited by The Hague Regulations did not imply that it was legal. In the preamble to the regulations, the authors had been wise enough to foresee that, when war started, it would not be possible to know in advance what would happen and they had therefore framed the famous preamble which declared that when an act was not covered by a specific clause of the Hague Regulations, it must be examined according to principles derived from the laws of humanity, and dictated by public conscience. The Committee had therefore considered that, although The Hague Regulations did not specifically mention denationalisation, there were certain Articles which, when interpreted in the spirit intended, formed a sufficient basis for the conclusion that the act of denationalisation was prohibited by international law. In Dr. Schwelb's valuable report mention had been made, inter alia, to Articles 46 and 56, from which that conclusion had been drawn. When article 46 laid down that individual life must be protected, it was obvious that it did not refer only to the physical person but also to the spiritual life of the person. The Article 46 mentioned family rights, it implied that children should be educated in their national language, and if Article 56 provided that cultural institutions should be protected, it covered not merely the building itself, but also the spiritual values which the building served. When the two Articles had been interpreted in the spirit of the Preamble, the Committee had come unanimously to the conclusion that denationalisation was forbidden by International law.

The third point concerned the question of whether denationalisation was a crime from the point of view of criminal law. The Committee considered that the fact that an individual changed his nationality was not a crime, provided such a change took place by natural means, or by assimilation. But it was not dealing at present with a process of natural change, but with a process imposed compulsorily by the occupying Power on

the population of occupied territory, by means of a whole system of measures ranging from psychological compulsion to violence. The fact that the occupying power was using its authority for that purpose made its policy a criminal one.

Although Committee III had not yet completed its discussion, Dr. Eder stated that a resolution would shortly be submitted to the Commission, declaring that denationalisation, under the circumstances described above, and through the use of the power of the occupying forces, should be regarded as a war crime. Moreover, his personal inclination would be to go a step further. He considered that it was not only a war crime in the traditional sense, but a genuine international crime - a crime against the very foundations of the Community of Nations. He himself was well aware of the definition of crimes given by Blackstone and Stephen: a breach of law as injures the community. In the present case the attempt to denationalise was an attack against members of the international community - an attack against the foundations of the family of nations.

In conclusion Dr. Eder wished to express his appreciation of the full participation of all members in the discussion. The problem was a difficult one which was unknown forty years ago, but in the light of recent experience he felt that the conclusions reached would be just.

SECRET.

C.149.
4th October, 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

CRIMINALITY OF ATTEMPTS TO DENATIONALISE
THE INHABITANTS OF OCCUPIED TERRITORY.

Report Presented by Committee III.

- I. In connection with the Yugoslav charge No.1434, accusing, inter alia, four Italians of the war crime of "Attempts to Denationalise the Inhabitants of Occupied Territory", doubt arose in Committee I whether or not to list the four persons as war criminals. Committee I therefore decided to put the question before Committee III and to adjourn the case as far as these four accused were concerned.
- II. Attempts to denationalise the inhabitants of occupied territory have been classified as war crimes by the Responsibilities Commission of the Paris Peace Conference of 1919. In accepting the 1919 list as a working basis for its activities, the United Nations War Crimes Commission, in its resolution adopted on the 2nd December 1943 (Doc.C.I.) has also foreseen this type of activity as a criminal offence. In the view of Committee III both the proposals of the Responsibilities Commission of 1919, and the report adopted by this Commission in 1943, were not mere accidents. The activities usually classed under this heading, are, in the opinion of Committee III, serious offences against human liberty and dignity, which, in the words of the Preamble to the 1907 Convention Concerning the Laws and Customs of War on Land, "remain under the protection and governance of the principles of the law of nations, derived from the usages established amongst civilised peoples, from the laws of humanity, and from the dictates of the public conscience."
- III. Under traditional International Law, no distinction has been made between acts constituting mere contraventions of international agreements and acts corresponding to what is usually described as "civilian wrongs" or "torts" on the one hand, and offences corresponding to crimes in national (municipal) law which must be regarded as condemned by the common conscience of mankind and call for individual punishment of the perpetrators, on the other.
- IV. At a stage in the development of International law when the principle of individual responsibility is generally recognised, a doctrine which does not distinguish between crimes in the sense of criminal law, and mere civil or administrative wrongs, must be considered as obsolete in International law to the same extent that it has been obsolete in the municipal law of civilised states for hundreds of years.

In the view of Committee III, it is, therefore, necessary to draw a line of delimitation between mere contraventions of agreements as acts corresponding to civil wrongs and breach of contract, and offences for which individual punishment is to be awarded.
- V. Committee III is of the opinion that such offences against International law as are criminal in the ordinary accepted sense of fundamental rules of warfare and of the general principles of criminal law, by reason of their heinousness, their brutality, their ruthless disregard of the sanctity of human life and personality or their wanton interference with rights or property unrelated to reasonably conceived requirements of military necessity, should be punished as war crimes.
- VI. Under denationalisation in the criminal sense Committee III understands the use of the de facto power wielded by an occupant in execution of a policy aiming at depriving the inhabitants of the occupied

territory of their national characteristics and/or transforming the ethnological character of the region, particularly by means of:

closing the universities, secondary and other schools of the occupied territory and/or their supersession by educational institutes of the occupying nation and language; interference with the methods of education; compulsory education in the language of the occupant; the deportation of children to the occupying country for the purpose of educating them in the language and the spiritual atmosphere of the occupant;

the ban on the using of the national language in schools, streets and public places;

the ban on the national press and on the printing and distributing of books in the language of the occupied region;

the removal of national symbols and names, both personal and geographical; interference with religious services as far as they have a national peculiarity;

attempts to disintegrate the nation by abusing regional differences and peculiarities and creating artificial minorities.

Denationalisation in the wider sense would also comprise such activities as:

the extermination of the intellectual class, taking people from the professions and sending them to unskilled labour;

compulsory or automatic granting of the citizenship of the occupying Power;

imposing the duty of swearing the oath of allegiance to the occupant;

the introduction of the administrative and judicial system of the occupying Power, the imposition of its financial, economic and labour administration, the occupation of administrative offices by nationals of the occupying Power;

compulsion to join organisations and associations of the occupying Power; colonisation of the occupied territory by nationals of the occupant, exploitation and pillage of economic resources, confiscation of economic enterprises, permeation of the economic life through the occupying State or individuals of the nationality of the occupant.

Many of the activities mentioned here will, of course, fall also under other headings of the list of war crimes, e.g. systematic terrorism, deportation of civilians, usurpation of sovereignty during military occupation, pillage, confiscation of property, and others.

VII. In the view of Committee III, the criminality of such activities as enumerated in the preceding paragraph is based on the general principles of criminal law accepted by all civilised members of the community of nations, which all, in one form or the other, penalise the illegal application of force from psychological compulsion to physical violence in prohibiting such offences as blackmail, menaces, violence, etc. The general provisions prohibiting false imprisonment, the infliction of grievous bodily harm, and homicide, are, of course, applicable where quasi-penal sanctions are applied by the occupant to inhabitants who disobey the denationalising activities of the occupying Power. In addition, some national (municipal) legal orders protect the population against denationalisation by special provisions declaring acts aiming

at such denationalisation to be criminal offences.

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

IX. The question whether an alleged offence falls within the terms of criminal denationalisation and whether the liability of a particular individual is involved should be decided in each case on its own merits.

SECRET.

UNITED NATIONS WAR CRIMES COMMISSION.

C. 150.
October 15th, 1945.

REPORT ON VISIT TO WIESBADEN

October 7th - 12th, 1945.

The party, consisting of the Chairman, Lord Wright, General de Baer, Colonel Hodgson, Dr. Szerer and Lieut.-Colonel Wade, arrived on October 7th at Wiesbaden where they were accommodated, and hospitably entertained, as guests of the United States Forces. The programme included: attendance at the Hadamar Trial; visits to the War Crimes Branch Documentation Centre; and a visit to Nuremburg by two members of the party.

I. THE HADAMAR TRIAL.

(From notes and Press cuttings;
a fuller narrative will be written
when the transcripts are available.)

This trial was held in the Court Room of the Landeshaus at Wiesbaden before a special United States Military Commission, consisting of six officers, appointed by General Eisenhower. The prosecutor was Colonel Jaworski of the American Army, Chief of the War Crimes Branch, Trial Section.

The defence was conducted by three American officers, assisted by four prominent Wiesbaden lawyers, MM. LATERNER, KUPFER, STEMPER and KAUFMANN: Polish and Russian observers were watching the proceedings; Colonel Scott Barrett, Judge Advocate General for the British Army of the Rhine, was also present during part of the trial.

American military interpreters translated the questions of counsel and answers of witnesses. Arguments between the American counsel on points of law and procedure were not, as a rule, translated.

The indictment was worded as follows:

"Charge: Violation of International Law.

"Specification: In that Alfons KLEIN, Adolf WAHLMANN, Heinrich RUOFF, Karl WILLIG, Adolf MERKLE, Irmgard HUBER, and Phillip BLUM, acting jointly and in pursuance of a common intent and acting for and on behalf of the then German Reich, did, from on or about 1st July 1944 to on or about 1st April 1945 at Hadamar, Germany, wilfully, deliberately and wrongfully, aid, abet and participate in the killing of human beings of Polish and Russian nationality, their exact names and number being unknown but aggregating in excess of 400, and who were then and there confined by the then German Reich as an exercise of belligerent control."

The following additional details concerning the accused were given in the Press:

"Alfons Klein, administrator of the Hadamar Heilanstalt where the systematic killings are alleged to have taken place. He was an SS officer and chief executive of the sanatorium.

"Dr. Adolf Wahlmann, medical director of the institute, was accused of working out the technique and falsifying death certificates.

"Heinrich Ruoff, chief male nurse, was accused of supervising and administering the injections.

"Karl Willig, Ruoff's assistant and later chief male nurse, was also an active Nazi party member.

"Adolf Merkle, chief clerk of the asylum, was charged with falsifying records to legitimize the deaths.

"Irmgard Huber, 45 years old, chief female nurse of the institute, was charged with administering the fatal doses to many of the Russian and Polish women patients.

"Philipp Blum was the busiest man at the hospital, according to the prosecution. As the institute's undertaker he had charge of collecting valuables from the victims before burying them in mass graves."

Evidence for the prosecution, given by former nurses of the Hadamar asylum, was reported in the Press as follows:

"Mirna Zuchow, practical nurse at the hospital, was first witness. She said she saw a group of Polish women including two children aged one and four received at the hospital in August 1944. She had been instructed by Chief Nurse Irmgard Huber to prepare three rooms for them. Later, she said, she saw male nurse Heinrich Ruoff inject them with hypodermics. Their bodies were removed one or two hours later. 'No one who went into the room came out alive,' she said.

"Edith Thomas, second witness, was secretary to Adolf Wahlmann, 69 year old Heidelberg graduate. She testified Wahlmann and Adolph Merkle, office manager, falsified death certificates for all foreign workers who came there. She identified records and the 'death book.' She said that although workers were killed upon arrival, records, made out weeks later, indicated they died from pneumonia."

According to statements made voluntarily, before the trial, by Klein the administrator, and Ruoff, chief male nurse, orders had been given in 1940 by German higher authorities for mental patients to be killed and cremated; more than 50,000 persons, it was said, had perished in this way; Russians and Poles were not medically examined on admission, and they had all died within a few hours of arrival.

In his evidence before the court, Klein contended that he was not responsible for these murders, as he had merely transmitted the orders of Bernotat (who has since died). Huber, the chief female nurse, who also gave evidence, said she had never had anything to do with the Poles and Russians beyond arranging for their accommodation on arrival.

Some evidence, which has an interest outside the limits of this trial, was given by Dr. Quambusch, a former prosecutor for the Wiesbaden area. His Chief Prosecutor, at Frankfurt, told him that he and other prosecutors had been invited by "the Minister" (presumably the Minister of Justice, Thierack) to Berlin; they were taken to his private room, where he showed them a photostat of an order by the Führer, authorising the killing of mental patients "in certain circumstances"—which were never defined. That order, Quambusch said, was not a law but an Administrative Regulation; in cross-examination he said it only applied to mental cases, not to other sick persons.

The case was still proceeding when the members of the Commission left Wiesbaden.

SOME LEGAL POINTS.

As soon as the charge had been read the defence asked that it should be dismissed on the ground that there was no body of international law under which the defendants could be tried; that the Commission was only competent to try crimes committed during—not prior to—the Occupation, and only against American nationals. Further, that Poland was conquered, not occupied, territory, governed by German legislation; and that, as regards the treatment of Russians, Germany was not bound, as towards Russia, by the Geneva Convention. The Prosecutor opposed these arguments, founding himself, inter alia, on the clause of the Hague Convention which compels an Occupying Power to respect the "lives" of the inhabitants, and likewise on the American and German Manuals concerning the Laws and Customs of War. He also contended that, in addition to written law, a great body of unwritten international laws had been established by custom and usage among nations.

The defence more than once tried to introduce evidence as to the killing of Germans as well as of members of the United Nations, with a view to showing that the acts of the defendants were part of a regularized system. The Prosecution successfully opposed these attempts, and evidence was confined strictly to the murders of Poles and Russians.

An objection by the Prosecutor to the cross-examination of his witnesses on matters not arising out of their evidence was upheld by the President, subject to the right of the defence to call these witnesses for the defence. On the other hand, it was ruled that this limitation did not apply to the interrogation of accused persons by the Prosecutor.

REACTIONS OF THE PUBLIC.

The immense scale of the killings at Hadamar had, it appears, shocked the local inhabitants; complaints had been made about the stench from the crematorium, and this had led to the adoption of burials in mass graves.

Evidence given at the trial showed that some people had been arrested by the Gestapo for talking about what happened at Hadamar. Klein, the administrator, was stated, in court, to have been more in fear of the public than of the invading troops, when the district was liberated.

Before the trial opened the Prosecutor had announced that 200 seats would be available for the public, that the Chairman of the United Nations War Crimes Commission, besides Russian and Polish observers, would be present at the trial, and that all "thinking Germans" were invited to attend and see how justice was done.

The public responded fairly well to this invitation. Some figures given in court concerning the numbers who had been killed made an evident impression. When a witness was being questioned on this subject a man in the audience shouted out: "More than 40,000." He was at once removed by the military police. For the rest, the general attitude of the German part of the audience was apathetic; this may, however, have been due to want of familiarity with the procedure, and to the acoustics of the building.

II. THE WIESBADEN DOCUMENTATION CENTRE.

(See R/G/18/9 G)

The address of this Centre at Wiesbaden is:

Records Subsection of the U.S. Army,
War Crimes Branch for Wiesbaden,
Centre: A.P.O. 757.

The Third U.S. Army has likewise a Documentation Centre.

SOURCES.

The chief sources of documents which reach the office of the J.A.W.C.B. (Judge Advocate, War Crimes Branch) at Wiesbaden are:

War Department : Washington, D.C.
Camp Ritchie : Maryland.
M.I.R.S. (now called L. D.C.) : London.
E.D.S. (Evaluation Dissemination Section) : London
G.P.C.C. (Group Production Control Commission) : Berlin.

Depending on the G.P.C.C. are:

Ministerial Collection Centre, Kassel, Germany.
Foreign Office Records, Marburg, Germany.

U.S.F.E.T., Oberursel.

Depending on the latter are:

Third Army, Freising Centre.
Seventh Army, Heidelberg Centre.

ACCESSION LISTS.

In order to receive "accession lists," i.e., lists of documents recently acquired by the above sources, application should be made, on the high level, to:

AC of S G2 3rd U.S. Army, A.F.O. 403.

AC of S G2 7th U.S. Army, A.P.O. 758.

ABBREVIATED TITLES OF REPORTS.

Reports received in documentation centres bear the following code names of the units which issue them.

M.I.I.	Military Intelligence Interrogation.
+ I.P.W.	Interrogation of Prisoners of War.
D.I.C.	Detailed Interrogation Centre.
C.S.D.I.C.	Combined Services Detailed Interrogation Centre.
+ M.F.I.U.	Mobile Field Interrogation Unit.
F.I.D.	Field Interrogation Detachment.
A.P.W.I.U.	Air Prisoners of War Interrogation Unit.
P - WXX	American Detachment within C.S.D.I.C.

+ Now combined as A.I.C.

The "Office of Chief of Counsel" (Justice Jackson's Organisation) has a liaison officer, who maintains continual touch with the Wiesbaden Records Subsection, and knows what documents they receive and possess.

The Wiesbaden Records Subsection receives a very large number of documents and reports. It has a most complete and well-staffed system of filing and indexing documents. A concise summary is made of each document, as it comes in, showing the nature of its contents, and this summary is circulated for information within the Judge Advocate's branch.

The file of these summaries constitutes, in itself, a useful reference index.

III. ATROCITIES AT DACHAU AND BUCHENWALD.

The Judge Advocate General's War Crimes Branch Staff at Wiesbaden are collecting material concerning Dachau atrocities in preparation for a trial, and welcome information on this subject. They were interested in the United Kingdom charge UK - G/B 102, which was shown to them; and they are endeavouring to obtain the evidence of one of the British officers mentioned in it.

Material for a trial concerning atrocities at Buchenwald is also being collected.

This document sets forth the remarks made by Dr. Cyprian, at a meeting of the Commission held on October 3rd, 1945, based upon his attendance at sessions of the Belsen trial. It is circulated for your information and for possible future consideration by the Commission.

SECRET

UNITED NATIONS WAR CRIMES COMMISSION

C. 151
October 15, 1945.

THE BELSEN TRIAL IN LUNEBURG

Remarks by Dr. Cyprian

The authorities responsible for the so-called Belsen Trial, which began at Luneburg in Germany on September 17th, 1945, invited as Allied observers the representatives of the nations whose nationals had been among the inmates of Belsen and Auschwitz (Oswiecim). The following nations sent representatives: Czechoslovakia, Denmark, France, Luxembourg, Greece, Poland, Russia, Yugoslavia, Holland. The Jewish World Congress was also represented.

I do not consider it necessary to report on the progress of the trial itself, as there are official stenographers and the full transcription will be sent to the Commission; in any case, the Press reports daily on the progress of the trial.

I should like instead to make some remarks about the first two weeks of the trial which I attended (the trial is still in progress). I must stress that these remarks do not represent the point of view of the Polish Government, but are the remarks of a lawyer commenting on the trial quite unofficially.

Before I start, I would like to say that the authorities in charge of the trial did their utmost to help us by giving us every facility and every assistance in our work.

The Belsen trial is, in my opinion, an outstanding event from the historical point of view. It is the first mass-trial of war criminals, it deals with the atrocities committed in two German concentration camps, which became the symbol of German rule in occupied Europe, and it can be considered the final stage of the work we are doing in the Commission.

As every judge knows, half of the work necessary for a trial has to be done before it starts and whether the trial itself will go smoothly or not depends upon this work. Therefore we have first to consider the preparatory work of the trial.

1. The Investigation at Belsen Camp

When the British liberated the Belsen camp, they found, in an area of about half a square mile, 40,000 people alive and 13,000 corpses, and people died at the rate of one thousand daily, during the following fortnight. Under these circumstances, the work of the investigating team, consisting of very able officers and men, was certainly most difficult. This difficulty was increased by another: no one in the team could speak the language of the inmates and they therefore had to find interpreters among the inmates of the camp themselves and they had to rely completely upon them for correct and precise translation of statements as well as for finding people most suitable as witnesses.

What happened was that the interpreters brought the people they knew as witnesses, and those people were not always intelligent enough to give evidence, beyond stating the quite obvious fact that they were beaten themselves, saw other people beaten, some even unto death.

Some witnesses were extremely intelligent, but many were not and they were of no great value to the Court.

Besides, there was a rumour in the camp that everybody who was required to make a statement before the investigating team would be held in the camp until the time of the trial, with the result that many intelligent people avoided being interrogated.

The translations, although fairly accurate, often missed the point, as they did not render the subtleties of the language. That led to arguments during the trial and delayed it to a great extent.

It would be advisable to have a team of people speaking some foreign languages. I well understand that that is very difficult, especially in war-time, and taking it all into account, I must say that the investigating team did its best, working hard under really appalling conditions.

2. The Accused

Among the 44 accused, there were three different types of people:

- (a) The "main criminals", such as the Lagerkommandant Kramer, the camp doctor Klein, the S.S. men and women holding key positions in the camp;
- (b) the "minor criminals", such as the S.S. guards; and
- (c) the "Kapos" chosen among the inmates of the camp themselves.

From the point of view of criminal law, all of them ought to be indicted, as the "Kapos" killed many people in the camp, but if this trial is to go down in history as an exemplary case of punishing people responsible for the atrocities in the camps, it would be better to have these three categories of accused tried separately.

There is a great difference between Kramer and Dr. Klein - responsible for thousands of people having died in the camps as the result of their activities, and those of a few more who helped them - and the "Kapos" who can successfully be convicted for killing one or two inmates. Every one of them can be hanged only once, of course, but it would be better to try them separately.

This remark refers especially to the third category of the accused, the wretched inmates of the camps, lured by more food or some favours, who became beasts as time went by, but who had started their infamous careers as the victims of the Nazis who formed the first two categories.

There is one more point to be mentioned. The camp of Belzen held inmates of all European nationalities and those nationalities were certainly represented among the "Kapos". But if this trial had as its purpose the exposing of German brutality and the German system of exterminating different nations in concentration camps, it ought to remain a purely German affair. Every addition of non Germans destroys that purpose from that most important point of view, since among the accused we find the victims of the German system who became accused persons just because they were caught by this system themselves.

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3. Belsen and Oswiecim (Auschwitz)

The indictment dealt with the atrocities committed in these two camps and it seems to me that the defence was right when asking that these two charges should be separated. It seemed expedient to combine both charges, as many of the accused committed atrocities in both camps, but in this case, I feel that the picture would be much clearer if the charges were separated and the trial limited to Belsen alone. After all, several of the accused (Kramer included) served in various other camps as well (Dachau, Mauthausen, etc.) where they certainly committed crimes of the same nature but the indictment did not go so far as to include those camps, probably because among the witnesses there were no inmates of those camps.

But the charges concerning Oswiecim (Auschwitz) can only contain a small fraction of what happened in that huge camp; those responsible for Belsen can be convicted without taking into account what they did in Auschwitz. In my opinion, therefore, it would perhaps be better to have a separate trial for the Auschwitz camp, which would be more complete and quite independent from Belsen.

4. The Indictment

If one reads the charge sheet, one is shocked by the fact that it formally indicts the accused of causing the death of twelve people mentioned by name at Belsen and of three named persons at Auschwitz, and, in addition, of "other Allied nationals". If we consider that, at Belsen, something like 50,000 or more people died, and, at Auschwitz, between two and four million, we cannot help feeling that there is something wrong in the wording of the charge sheet. I well understand that it was impossible to list one million or more names of victims but, in my opinion, the indictment should underline that there were that many victims and perhaps give some names as examples, - and not vice versa.

Fortunately, however, the Prosecuting Officer, Colonel Backhouse, in his opening speech, reversed the situation in the most able way, thus giving the trial the right start.

5. The Court

The Court consists of five high ranking officers and a civilian barrister, whose task it was to advise the Court on legal matters.

The task of the Court was not an easy one. Without knowledge of the language of the accused and the witnesses, and having to deal sometimes with intricate matters of international law and procedure, the President and the members of the Court are working hard and with the greatest devotion.

But would it not be easier if the tribunal itself consisted of officers - lawyers - well acquainted with international law and having a knowledge of the German language? As things are, the tribunal has to rely on the learned barrister in matters of law and on the interpreter for everything that is said in the Court.

6. The Interpreters

They did their best, but as they were not lawyers, it happened quite often that they missed the point and there were long drawn out arguments between them and the defence or the prosecution as to the meaning of a statement made by a witness and its more or less precise translation.

Speaking all three languages used in the Court, I was able to follow those arguments and see how often the real meaning of what the witness wanted to say was distorted in the translation.

I had some talks with the interpreters themselves and they agreed that they were not able to cope with their task, especially when the witness was unintelligent.

It would be better if for a trial of such importance some lawyers could be found who spoke the necessary language, especially German.

7. The Defence

The defence did their best to fulfil their duty, but they were greatly hampered by the necessity of relying on the interpreters.

In addition, some of the remarks of some of the Counsel went a bit too far in my opinion, as for instance the statement that all that the witness told the Court was "pure lies and invention". It aroused the indignation of the witnesses and they often reacted very sharply.

I am afraid the mistake was that the witnesses were treated like normal people which they are not after several years in a concentration camp. I am even prone to suspect that some of the statements of the witnesses border upon fantasy in some details, but I am absolutely sure that they were not conscious of it, as in their sufferings the terrible reality often became distorted in their tormented minds.

8. The Procedure

The British law and procedure made the trial even more difficult, as that law has been developed throughout the centuries for decent, law-abiding people who generally pleaded guilty if justly indicted.

But here, on German soil, it seemed to me sometimes an instrument too delicate for such a job; its fairness, I am afraid, was not fully understood by the Germans themselves who often confound fairness with weakness.

But this remark is rather a philosophical one as obviously a British Military Court had to adopt British law.

9. The Belsen Camp

The Belsen Camp was burned down by the Military Authorities several months ago, as we were told, for sanitary reasons (spreading of disease). If it had to be done (the site of the camp is still surrounded by barbed wire and nobody is allowed to enter), it is a pity that there were no pictures taken showing in all detail the inside of the huts, the baths, the sanitation, as well as the condition of the inmates, their bodies in different stages of emaciation. There was no such thing as a documentary film, and if it existed, it was not shown to the Court. The film we saw was of extremely poor quality, much less important from the documentary point of view than the films we saw in London cinemas.

10. Final Remarks

The Belsen trial will go down in history as the first great attempt to try and punish people responsible for war crimes in Western Europe. This historical character of the trial is in my opinion much more important than its legal-criminal side which, after all, means murder, manslaughter and ill-treatment.

It is the size of this crime, the numbers of the victims affected, the hitherto unknown brutality of the accused and, above all, the German plan to kill and massacre whole nations, that make this trial so important. But it is the crime against humanity, rather than the pure crime against some written law which matters here.

The United Nations War Crimes Commission did the preparatory work which led to this trial, since it established the legal basis, prepared the opinion of the world and helped to list and indict the accused. Now the work is in the hands of the Court and I can only express my full confidence that this trial - whatever the verdict may be - will go down in history as a terrible example of human degradation and exemplary punishment meted out by the violated humanity through the hands of British justice.

APPENDIX IV

Laws Relating to the Protestant Church.

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

SECRET

C 152
16th October 1945

UNITED NATIONS WAR CRIMES COMMISSION

REPORT BY THE LEGAL COMMISSION OF THE FREE GERMAN MOVEMENT
IN GREAT BRITAIN, CONCERNING THE PERSECUTION OF THE GERMAN
ANTI-NAZIS SINCE 1933 (CRIMES AGAINST HUMANITY WITHIN THE
MEANING OF ARTICLE 6, PARAGRAPH C, OF THE CHARTER OF THE
INTERNATIONAL MILITARY TRIBUNAL).

Introduction

The enclosed report is submitted by us on behalf of the Legal Commission of the Free German Movement in Great Britain in response to a request from the United Nations War Crimes Commission to state the case of the persecution of the German anti-Nazis since 1933.

Whereas the case of the numerous nations oppressed by the Hitlerites can be presented by the National War Crimes Officer of the respective States, this report is submitted by a private and voluntary organization which has no facilities for collecting evidence from witnesses on the spot. The present report is based entirely on original sources as far as they are available in London. Only in one instance however it has been possible to cite a witness who is prepared to give evidence before the International Tribunal (see Appendix I).

It is nevertheless thought that the report presents at least a general outline of the persecution against the political opponents, the Jews, the Catholics and the Protestants, and it is hoped that we, as refugees from the Nazi terror may in this small way help the United Nations to effect a just punishment also for the crimes committed by the Nazis against German nationals who opposed the Nazi regime.

It is typical for the Nazi regime that in many instances persecution and terror were carried on in the form of laws. In this connection the defence may be raised on behalf of the departmental Ministers that the members of the Cabinet were merely advisers to the Führer, but it is submitted that this cannot free any of them of their criminal liability. As a leading Nazi text book characterizes the position: "Political leadership is of course vested in the hands of the Führer. But the Ministers are not merely his assistants, but his colleagues who although bound to him by personal allegiance are independent in their departmental sphere." (1). They are - to use the terminology of criminal law - accomplices. Moreover it may be noted that by order of the Führer dated the 27th July 1934 the Deputy Leader Hess was given an important position in connection with all legislative matter which was within the jurisdiction of the Cabinet. He had to be consulted in the preparation of all legislative proposals.

The presentation of the case is necessarily based on a different type of sources in respect of the different classes of victims. As regards the persecution of political opponents and the Jews the Nazi laws largely speak for themselves. The persecution of the Catholics was not in the main line carried on by means of laws. The report will show that more subtle methods were adopted. Quite a number of facts relating to the Catholics are reported in pastoral letters and in the famous encyclical of the late Pope Pius XI "Mit brennender Sorge" which was no doubt based on authenticated material submitted to the Pope by the German clergy. It is submitted that all the facts indicated in our report can be and should be substantiated by the evidence of the leading Catholic Bishops and other authorities in Germany.

(1) Kussmann, Verfassungsleben des Dritten Reiches, 1937, p. 120.

Again on a different line is the story of the persecution of the Protestant Church. Here the Nazis applied for the first time the tactics of the Trojan Horse by forming their own Nazi Church Movement, the Faith Movement of German Christians. Only in the first stages this fight was reported in the German press. Later on it was mainly carried on by way of decrees favouring the German Christian Faction in the Protestant Church and by arbitrary measures against their opponents which only in rare cases were reported in the German press. This is therefore the only instance where some quotations from non German sources are necessary to give at least a rough outline of the case. It is however suggested that the main leaders of the German Confessional Church, such as Pastor Niemöller, Bishops Wurm and Meiser, Dr. Otto Dibelius and others be called as witnesses to give evidence of the persecution against the Protestant Church.

K. RAWITZKI
Dr. Jur.
Former barrister at law in Germany.

F. HELLENDALL
LLB., Dr. Jur.

London, 8th October, 1945.

1. PREPARATION FOR THE SEIZURE OF POWER.

After Hitler had failed to seize power by force in his Beer Cellar Putsch of 1923 he proclaimed that henceforth his fight would be carried on by legal means only, and in 1930 he confirmed this on oath when he was called as a witness before the Supreme Court of Leipzig.

But a few months after he had seized power (1.9.1933), Hitler himself stated the real purpose of this so-called "legality": "We made use of an unreasonable right which was part and parcel of an unreasonable system in order to overthrow the unreason of that system." - One of the leading "legal theorists" of the Nazi Party formulates the essence of Nazi "legality" during the period of the Weimar Republic as follows:

"The parliamentary battle of the Nazi Party had the single purpose of destroying the parliamentary system from within through its own methods."

But even legality in this perverted sense was only adhered to as long as it suited the Nazis. In the early years of the Weimar Republic leading exponents of democratic and anti-imperialist opinion in Germany fell victims of political murder perpetrated by Nazi thugs and their ideological antecedents: Liebknecht, Luxemburg, Eisner, Erzberger and Rathenau were only the most outstanding examples.⁽¹⁾ This weapon of political terror and murder was never abandoned by the Nazis. In the same speech in which Hitler pledged his legality to the Supreme Court at Leipzig on the 25.9.30, he also stated "If the Movement is victorious, then a new State Tribunal will convene, then heads will roll".

Footnote (1): The Nazis quite openly proclaimed their solidarity with these murderers. Thus an official Nazi publication printed in 1934 entitled "Kampf, Lebensdokumente Deutschlands Jugend 1914 - 1934" with an introduction by Dr. W. Frick, Reich Minister of the Interior, compiled and edited by Berthold Roth referred to the murder of Rathenau on p. 89 as follows: "The life of these Republican leaders was unsafe. It had to be unsafe, because their heads had to roll so that the old system could be finally torn asunder. Rathenau had to fall."

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

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

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

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

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

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

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

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

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

2. THE PERSECUTION OF POLITICAL OPPONENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. THE JEWS

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

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

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

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

(1) 1933 edition page 738.

(2) op.cit. p. 616

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

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

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

(6) Fränkischer Kurier, 20.5.33.

(7) Times, 16.9.36.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Frankfurter Zeitung, 24.1.38.

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

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

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

(1) Völkischer Beobachter, 10.11.38.

(2) Angriff, 11.11.38.

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

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

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

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

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

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

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

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

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

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

4. THE CHURCHES

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

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

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

a) The Catholic Church

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Westdeutscher Beobachter 1.12.37, reporting speech at Hagen, Westphalia.
(2) Dr. Hans Frank, Völkischer Beobachter 12.5.1936.

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

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

With the approach of the war, the Nazi press became more outspoken than ever. Thus "Die Bewegung", the organ of the Nazi Union of Students, stated plainly on the 1st November 1936: "The Catholic Church to-day is simply an international party pursuing purely earthly objectives with its problems of eternity and its after-life . . . The Vatican is concerned to uphold, not any particular belief in God, but (with an eye on the profits) the destructive international machinations of Jewry, Freemasonry and Bolshevism which are being more and more hard pressed . . . To-day, the young national powers of Europe are confronted by a solid front of adversaries: World Jewry, World Freemasonry, a World Church and World Bolshevism. National Socialism has conquered Bolshevism, Jewry and Freemasonry. The last international idol will also fall and must fall under the iron hand of National Socialist politics. The States of the new Europe cannot tolerate any disruptive institutions in their midst. But the determination of the Roman Church is not to build but to tear down. Clericalism - we must not mince our words - to-day is our enemy. It is alien to the people, without a Fatherland."

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

(1) Münchener Neueste Nachrichten 18.6.36.

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

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

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

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

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

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

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

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

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

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

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

b) The Protestant Church.

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

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

(1) Frankfurter Zeitung 6.4.33

(2) Frankfurter Zeitung 27.5.33

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

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

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

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

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

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

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

(2) Deutsche Allgemeine Zeitung, 27.6.33.

(3) Deutsche Allgemeine Zeitung, 31.8.33.

(4) Frankfurter Zeitung, 20.9.33.

(5) A full account of this meeting can be found in Duncan-Jones, Dean of Chichester, The Struggle for Religious Freedom in Germany, 1936, p.70. The German press merely reported that a meeting between the Führer and leading officials of the Church had taken place, Frankfurter Zeitung 26.1.34.

(6) Frankfurter Zeitung 24.9.34.

(7) op.cit. p.87

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