

The Commission's lists Nos. 46 and 50 had been received and were being checked against CROWCASS records and will be included in Wanted List No. 15 as well as in the consolidated wanted list.

Sir Robert CRAIGIE said that he would like to thank the Chairman and Colonel Ledingham for the very interesting report they had given of their journey. Such journeys were extremely valuable, not only from the point of view of the Commission but from the point of view of the authorities in Germany, as they can hear direct exactly what work the Commission were doing. Personal contacts were very useful and of the utmost value. Having heard the rigours of the journey, he thought the Commission were all the more beholden to them for the journey they had made on behalf of the Commission.

Colonel SPRINGER said that there were some rather interesting cases going on at Dachau and Colonel Straight said that he would be pleased to see any member or group from the Commission desiring to visit Dachau. He had not brought the letter with him, but he thought the most important case now in progress was the case against General STROOP and others for the killing of unarmed airmen.

The CHAIRMAN stated that General Telford Taylor was hoping to be able to carry on four trials concurrently at Nuremberg. On their lists they had quite a considerable schedule of cases they wanted to do and so had the British authorities. He was very doubtful if they could complete their programme by the end of the year, but they were determined to go on as long as they possibly could and he thought the work they were prepared to do and were likely to do was of very great importance.

REPORTS BY COMMITTEE III ON CRIMES AGAINST HUMANITY. DOCS. C. 236 AND 239

Dr. ZIVKOVIC said that he had taken part in the labours of Committee III when Committee I decided to refer the Yugoslav cases they had to bring forward as cases of crimes against humanity. Unfortunately, he was unable to attend the meetings when the report C. 239 was drafted by Committee III, but that on returning to London he had read the report very carefully and he wanted first to express his thanks to the members of the Committee which had done such excellent work. He thought that the report contained everything which should have been said in relation to the charges which they had presented. He had absolutely no remark to make. He fully endorsed the views expressed, especially in paragraphs 14, 15, 16, 17 of Doc. C. 239, and what he would suggest was that the Commission should adopt the report C. 239 and send it to Committee I, so that the Committee could take up the charges again and judge upon them, according to the merits of the facts contained in the charges. He thought that this was an important thing not only to Yugoslavia, but to everybody. This was a question of principle and if he could venture to say so and make it clear to his friends and colleagues in the Commission, he had never been concerned with politics in this connection though the facts were related with the Julian March, a territory which was a political "hot spot" at present. He was only concerned with justice and he therefore moved that Doc. C. 239 should be endorsed and sent to Committee I.

The CHAIRMAN remarked that it would be a guide to Committee I for its operations.

Dr. SCHRAM-NIELSEN said that he entirely supported the proposal made by Dr. Zivkovic.

Major FANDERLIK thought that Committee I now had to decide on the questions. Committee III decided the theoretical questions of these cases and the particular problems of each particular case were to be decided by Committee I. The work of Committee III in this connection was finished and he wished to second the proposal made by Dr. Zivkovic.

Sir Robert CRAIGIE was also prepared to support the proposal that the report should be adopted by the Commission as a guide for Committee I in considering these individual charges. It would now be for Committee I to decide in each case whether there was prima facie evidence of a crime against humanity having been committed and if so exactly what action should be recommended. The case was rather a special one and it might be necessary to have a special list on which these names would be inscribed until such time as the political question had been elucidated, but that would be a matter for discussion, in the first instance, in Committee I, providing M. de Baer, the Chairman, agreed.

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M. de BAER said that he would like to support also what Sir Robert Craigie had just said and the principles laid down by Committee III were going to be extremely valuable to Committee I. Now that they had this opinion by Committee III they would go ahead with the cases on the lines Sir Robert Craigie had suggested. He would like to express his thanks to Committee III for the great help it had given

Colonel SPRINGER said that he was not expecting these papers to be presented in just this order, i.e. C.239 before Doc. C.236 nor for just this purpose. He had participated in some of the Committee III meetings and had offered some suggestions with regard to Doc. C.239. He was prepared to go along on the general propositions of Doc. C.236, knowing that his government might want to take a different position with regard to the codification, and with that understanding he prepared to agree to the general propositions of Doc. C.236. Doc. C.239 was going further ahead than he was prepared to go at this time. He had no criticism to make at present though it did go more into the particulars than he was prepared to go at this time, however, if it was merely passed as a guide for the work of Committee I he would be prepared to go along with it.

He understood it would go from Committee III to Committee I and then the cases or lists would go before the Commission, so just to restate what he had said in a round-about way: he was prepared to vote on C.236, but not on C.237 and 239. He regarded Doc. C.237 and 239 more in the nature of a discussion on the application of particular propositions - more detailed Committee work than Commission work. If the Commission were prepared to pass C.239 without formal vote he had no objection but if a formal vote was desired he would like to have one week longer to study this and to see how far they were going in particular crimes.

M. de BAER wished to propose that the Commission should not take a vote on this question, as this could merely postpone the examination of the cases by Committee I, but if it was found that there were any discrepancies or difference of opinion in Committee I then the matter should be brought to the Commission.

The CHAIRMAN said that it was very gratifying to find that Committee III and Committee I under the respective chairmen should be working together so harmoniously and dovetailing each other's work so efficiently. He did not doubt that the difficulties in handling this rather new idea of crimes against humanity would be overcome, but as M. de Baer had said, if any question arose, they could be referred one to another and both to this Commission and he did not see any difficulty there.

Dr. ZIVKOVIC wished to explain to Colonel Springer that of course the Document was not binding in any way on Committee I as the committee had to judge upon the merits of each case, and the history of the report was that when he brought a charge to Committee I, Committee I had found some difficulty in connection with the facts presented in relation to the definition of crimes against humanity. Therefore Committee I referred the matter to the legal Committee. The legal Committee had now completed its task and the document was being passed through a plenary session of the Commission. So he did not think there was any difficulty and he did not think they should take any vote on the document in question.

The CHAIRMAN did not think it was necessary to have a vote. He had always taken the view that these definitions adumbrated as all definitions must be, were not so much definite positive and imperative law as accurate guides - signposts showing to Committee I what line it ought to take when there were several branching ways before it. It would find in these very wise and carefully considered rules, guidance which would help, but not forces which were imperatively or arbitrarily determining the direction and not hard and fast rules. They were guides of the greatest value and that of course was what he had always been familiar with in his ordinary legal practice for years. There were very few rules which were absolutely imperative and universal in their application. They were dealing with flexible directions which were of the greatest value as giving a general guidance, but which had to be modulated in accordance with the practical necessity of any particular case. He thought these directions and rules were of very great value and showed very great wisdom and insight on the part of the Committee which had formulated them. He did not think that Committee III regarded itself as a tyrant arbitrarily imposing its rules, but they were all indebted to Committee III for this most helpful document.

Mr. BURDEKIN understood that postponing the taking of this vote today, will not prevent Committee I going ahead with cases.

The CHAIRMAN thought that what was meant was that Committee I would have these rules laid before it and as each particular case of that type came before Committee I it would refer to these rules and get all the guidance and help it could. By applying the necessary modifications these rules, in particular instances, would give greater clarification and would be better appreciated and understood, and become less abstract and more practically useful in particular instances.

Sir Robert CRAIGIE asked whether the suggested procedure applied both C.236 and C.239.

Dr. ZIVKOVIC suggested that C.236 should also be included.

Sir Robert CRAIGIE said that the most important paragraph of Doc. C.236 was actually quoted verbatim in C.239 and C.239 was generally based on C.236, he thought it rather important to take the two papers in conjunction.

The CHAIRMAN said that they had a certain amount of elasticity and they would find by trial and error just what effect and meaning they were to give to these rules. He certainly agreed with Sir Robert that C.236 and C.239 should be taken in conjunction.

Sir Robert CRAIGIE thought that perhaps he might say on behalf of Committee III they did not for a moment suggest that they were making an ex cathedra pronouncement on International Law. All that Committee III had been trying to do was to interpret, as far as they could, the basic documents and existing International Law. Sometimes they had found that there was a discrepancy in the documents and in such cases they had tried to take account of these discrepancies, and, as Lord Wright had said, it was always possible to change Committee III conclusions, if any further light was thrown on any particular point. But he did not think, having regard to the situation today, and the documents before them, and what was the opinion and interpretation of the Governments who had concluded the various agreements, that the documents represented something which would materially assist Committee I in its work and that was all that Committee III claimed.

The CHAIRMAN quite agreed that it was necessary to have some sort of guide and he thought great judgment had been shown as well as great knowledge in reaching the recommendations that they now found. It was rather a new field, - crimes against humanity - its development was before Nuremberg and now their particular problems could not be regarded as something which was cold and precise; rules had to vary in application with the different cases and possession of facts.

There could not be hard and fast rules such as for instance: "You should not kill hostages", or "You should not loot or murder inoffensive people", or any positive rules. These were almost hard and fast rules, but the definition of crimes against humanity must always be experimental to some extent, though he did not want to exaggerate or over-emphasise the tentativeness - so far as there was any of these rules, but Sir Robert was quite right in pointing out that they were not meant to be imperative or mandatory.

Sir Robert CRAIGIE said that they were put forward for this purpose, as a guide to Committee I, as to what Committee III considered would be the law at the time. Might he add one thing; introducing these papers as Acting Chairman of Committee III he would like to say, and he was sure members of Committee III would agree, that they owed a debt of gratitude to Dr. Mayr-Harting, who was the Chairman during the rather prolonged discussions which led to the acceptance of these two papers. Dr. Mayr-Harting not only put in a very great deal of hard work but his guidance to the Committee was of great assistance in enabling them to get through the work with as great speed as they were able to do. He could have wished that Dr. Mayr-Harting could have been there himself to introduce the papers on which he had worked and on which he was such an authority, but as that was not to be, he would like to take this opportunity of saying how much they thanked him for his hard work and he hoped that this expression of thanks would be conveyed to Dr. Mayr-Harting by the Czechoslovak representative. He might also say that they owed a great deal to Dr. Schwelb. Dr. Schwelb had been Secretary of Committee III throughout and without his competent assistance he was sure that they would not have reached the conclusions that they had.

The CHAIRMAN said he would like to second Sir Robert Craigie's remarks and agreed with everything he had said. He had observed with great

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interest the report and also what was going on in Committee III and had seen how Dr. Mayr-Harting with great devotion and zeal had thrown himself into his work. He was going to add an appreciation of the very great services rendered by Dr. Schwelb, whose zeal, connected with law, theory and practice, of war crimes, had been a matter of admiration to him for quite a long time. This Commission owed a great deal to his continued services and unlimited efforts. He thought that every one would agree with what Sir Robert had said.

GIVING INFORMATION AS A WAR CRIME-DOC.C.240

Sir Robert CRAIGIE said that perhaps he could explain very briefly that Committee I had from time to time to consider charges based on the giving of information (denunciation) in regard to people who had broken rules of occupying authorities or denounced them to German authorities, and as it was not all clear that that could be regarded as a war crime, the matter had been referred to Committee III. As those who had read the paper Doc.C.240 would see, Committee III unanimously reached the opinion that giving information leading to arrest could not, in the ordinary course of things, be considered as a war crime, especially as in some cases regulations which had been broken could be regarded as perfectly normal, legitimate rules for the maintenance of order in occupied countries. Thus the Committee reached the conclusion that the criterion must not be the act of giving information but the question of whether the giving of that information resulted in the committing of a war crime. If it had resulted in the committing of a war crime, provided the complicity of the informer in that war crime could be proved, the Committee consider that a prima facie case could be made out against the informer. The final conclusion was given in para X of Doc.C.240 where it was said "Where the giving of information leads to the committing of a war crime... Etc.

If the Commission were to accept that ruling and the report, he thought it would materially assist Committee I.

The CHAIRMAN thought this was a very important matter and as some of them had other engagements it might be more satisfactory if they adjourned the discussion until the next meeting. He had not much doubt at the moment of the essential accuracy of the report but it did put the discussion on a rather technical and limited footing. He thought further discussion might lead to a less abstract and limited formulation. Some members might want to say a few words about it without necessarily differing from the substantial conclusions. To put the test of complicity would not apply in every case.

Sir Robert CRAIGIE said that the definition was given rather more fully in para III. It was thought desirable to compress it as far as possible in the final conclusion. The final conclusion must be read in the light of the previous paragraphs.

The CHAIRMAN said that he had suggested this already. If that was so he was not sure that the final paragraph was not a little too concise.

Made BAER said it was a combination of para II and para III.

The CHAIRMAN thought the whole report was very important and he would like to see the general effect of the report more fully summarised in clause X. It was not that he was differing from the report. It was more an expression - he thought the language of Clause 10 was treated as the body of their recommendations found in earlier passages. Then of course it might be that it ought to be accepted. He hesitated to accept as a complete and final guide anything quite so abstract - in fact he found it very difficult to understand it completely. He understood it in a sense but to his mind it needed a lot of explanation which would be rendered unnecessary if a less rigid formula were adopted. However, he suggested that the matter should be left over for discussion at the next meeting.

Sir Robert CRAIGIE was sure that Committee III would welcome any suggestions or amendments the Commission considered desirable. After some considerable thought that final clause had been adopted on the basis that the general rules relating to complicity, which were very much the same in most countries, would be understood by those expected to apply the ruling - i.e. Committee I.

The CHAIRMAN thought the general view was that they might deal with it on a future occasion.

MINUTES OF MEETING HELD ON

WEDNESDAY, 18TH DECEMBER, 1946.

AT 4. 15 P.M.

Chairman:	Lord WRIGHT	Australia
Also present:	Sir Robert CRAIGIE	United Kingdom
	Colonel SPRINGER	United States of America
	accompanied by	
	Mr. Ben H. BROWN	U.S. State Department
	Mr. BRIDGLAND	Australia
	M. de BAER	Belgium
	Mr. DAO	China
	Major FANDERLIK	Czechoslovakia
	M. DIMITSAS	Greece
	Commander MCUTON	Netherlands
	Mr. AARS-RYNNING	Norway
	M. MEZULIC	Yugoslavia

Apologies for absence were received from:-

M. MAILLARD	France
Mr. HOENE	Canada
Dr. SCHRAM-NIELSEN	Denmark
Mr. DUTT	India
Mr. BURDEKIN	New Zealand
Dr. SZERER	Poland.

MINUTES OF MEETINGS

The Minutes of the 118th Meeting were approved and signed.

Amendments to draft Minutes M.119 had been received from M. de Baer and would be incorporated in the final text.

CRIMES AGAINST HUMANITY IN THE LIGHT OF THE NUREMBERG JUDGMENT (DOCS. C. 236 AND 237) AND YUGOSLAV-ITALIAN CASES INVOLVING CRIMES AGAINST HUMANITY (DOC. C. 239).

Sir Robert CRAIGIE, as acting Chairman of Committee III, said that the Commission had before it reports of Committee III in Docs. C. 236 and C. 239, the first containing a general statement, the second dealing with cases submitted by the Yugoslav representative. Committee III had thought it would present the matter more clearly if, in Doc. C. 236, they put side by side the original recommendation of Committee III on this question of crimes against humanity (Doc. C. 201) and the Committee's comments on the general proposition Doc. C. 201, in the light of the Nuremberg Judgment. The general upshot was, he thought, that they did not find there was any need substantially to amend what Committee III put forward originally as its views about crimes against humanity, though there were certain supplementary observations and elaborations on their original proposals which were contained in the right-hand column of Doc. C. 236. He asked whether there was any particular point of Doc. C. 236 that the Commission wished him to elaborate at this stage. He thought it would be very useful to hear the views of members of the Commission who were not members of Committee III.

The CHAIRMAN called on the Legal Officer (Dr. Schwelb) to inform the meeting of the material he had collected concerning the problem of crimes against humanity before the General Assembly of the United Nations.

Dr. SCHWELB said that on his request the United Nations Secretariat had sent him the papers concerning a proposal submitted by the delegations for Cuba, India and Panama referring to what was called in the papers the crime of genocide.

Genocide - an expression suggested by Dr. Lemkin - covers partly the same ground as the notion of crimes against humanity within the meaning of Article 6(c) of the Charter of the International Military Tribunal. It was decided on 5th November, 1946, to place the crime of Genocide on the agenda. The matter

was referred to the 6th Committee (Legal Committee) of the General Assembly. The resolution was discussed in the meetings of the 6th Committee on 22nd November, 28th November and 29th November, 1946. The representatives of the following nations spoke in favour of the resolution:- Cuba, United Kingdom (Sir Hartley Shawcross, Mr. McKinnon Wood), India, France, Uruguay, U.S.S.R., Chile, Columbia, Saudi Arabia, Czechoslovakia, Netherlands, Poland (Dr. Lachs), China, Lebanon, Belgium (Mr. De Meuse), U.S.A. The U.S.A. representative (Mr. Fahy) referred to a proposal made by the U.S.A. delegation to sub-Committee No. 1 containing the general principle condemning crimes of the kind in question.

The details of this American proposal are not available at present, except an extract contained in a report by an American news agency.

On 29th November, 1946, a special sub-Committee was appointed, composed of representatives of the following countries:- Saudi Arabia, Chile, Cuba, France, India, Panama, Poland, Union of Soviet Socialist Republics, United Kingdom, United States of America.

Dr. SCHWELB further quoted the proposals which had been made by different representatives. The U.K. delegate, Sir Hartley Shawcross, suggested a declaration "that Genocide is an international crime for which the principal authors, accomplices and States concerned will be held responsible".

The representative of India had suggested the following addition:-

"It calls upon the Members to get their respective National Legislatures to deal with this crime in the same way as they have dealt with piracy, trade in women, children and slaves - crimes which have been condemned by all nations as outraging the conscience of humanity".

The French representative had spoken in favour of the following modification:

"Declares that genocide is an international crime, for which the principal authors and accomplices, whether private persons or responsible statesmen, should be punished."

The representative of the Soviet Union had suggested the following addition:

"It is desirable that the Economic and Social Council should study the question of the preparatory work to be done for a convention on crimes against a particular race."

The CHAIRMAN said that it appeared that the United Nations had not got very far, but they seemed to have adopted the word "genocide" which seemed to him objectionable from an etymological point of view and not very helpful to the purpose they had on hand. Genocide appeared to be a hybrid term, with a Greek beginning and a Latin ending, so that out in two you got a Greek on one side and a Roman on the other, and he should have thought it better to avoid these high-sounding, cumbersome and unattractive phrases. If it were ever thought to bring under one generic heading things like the breaches of the Hague and Geneva Conventions, and the slaughter of particular races, which are the main heads - put very broadly - which would come within the term of crimes against humanity, if it were desirable to accept a general term covering the whole area of these crimes. He would prefer simply "crimes against humanity" or indeed "war crimes". But as the recent tendency had been to treat things as subject to international law and as international crimes, without reference as to whether there was a state of war or not, then, perhaps, it was more logical and probably, in the great morass of international writing on every subject, they could find some logical justification for the view that, if they were to conduct complete and organized investigation of the essential nature of these crimes and so revise them, subject to International law, they would find "crimes against humanity" was the most general word they could think of. Why should they change "crimes against humanity" for a repulsive expression like genocide. He had no idea why Dr. Lemkin had suggested it - had he given any reason?

Sir Robert CRAIGIE said that he thought Dr. Lemkin's idea was to establish a special crime for atrocities committed on racial grounds.

The CHAIRMAN said they were all species of a larger genus. He would like to see crimes against humanity as a description of the genus under which these

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crimes could be studied and on due examination be made the subject of a code. Possibly some day they might have not only a code of international criminal law, but a special international court to deal with these questions when they arose. Of course they had to look ahead and he would be very glad to think active steps were being taken to develop this idea of international law of crimes and establish an international court to deal with such crimes, though in the absence of war, there might not be enough occupation for such a court.

The Chairman was in favour of some investigation and some study with a view to a possible future charter and code. Speaking for himself, he did not feel he had thought about and examined the subject up to now sufficiently to deal with it on that universal sphere and as he had not reached that stage yet, he was not sure as to the general opinion now.

Colonel SPRINGER said that he was not with Committee III at the time it set forth its analysis of the concept of crimes against humanity contained in Doc. C.201, but he was there later - and he thought it was his first attendance - when the analysis or definition was compared with that of the Nuremberg Judgment, and at which meeting they formulated this paper C.236, or the paper which was the forerunner of C.236. He personally thought that the definition which was adopted in Doc. C.201 and now appeared in the left-hand column of C.236 deserved further consideration and some practical trial in Committee I, in matching up cases, before they could really put the stamp of approval on it. It was the result, he was sure, of some very learned discussion and thought. Also he was sure it was a subject on which it would be difficult to get complete agreement on all the different aspects of the crime. There were some parts of it which he did not particularly like, but he had held his peace in Committee III rather than disturb its prior decision on the matter. For example, he doubted whether there was sufficient distinction between the two types of crimes against humanity, that is those of the "murder type" and those of the "persecutions type" to justify a distinction being made. He personally was not sure that such a distinction existed in the basic charters relating to the international tribunals; in fact he felt that none was intended. He thought, however, that the Committee deserved the compliments of the Commission for the work it had done and particularly its legal adviser and he thought it did deserve a further actual use in the committees, and perhaps further study.

Sir Robert CRAIGIE said that he would just like with the Commission's assent to develop what he had said concerning Doc. C.236. The real reason why it had appeared necessary to try to define what was the present day conception of crimes against humanity was that charges based on crimes against humanity were coming up before Committee I and it was therefore necessary for Committee I to have some criterion on which to act. It was for that reason that the matter was referred to Committee III and in due course Committee III produced Doc. C.201. He noticed a tendency of the Commission to shy off Doc. C.201. It did not actually dissent from its terms, but they never got it approved by the Commission or amended by the Commission. Then they had got the Nuremberg Judgment and its examination contained in C.236 showed what modifications, developments and elaborations were necessary in the original view held by the Committee, if they were to take account, as he thought they should - of the Nuremberg Judgment. When one examined the observations of the right-hand column, he thought it would be correct to conclude that there were very few actual changes necessary in the text of their original proposal and that one of the few points which were especially noteworthy was that mentioned by Colonel Springer, in para 2, at the top of page 2, where Committee III had said, in Doc. C.201:-

"2) Under the basic documents there are two different types of crimes against humanity, which, with a few exceptions, are subject to the same provisions, namely:-

a) crimes of the murder type, (murder, extermination, enslavement, deportation and other inhumane acts). The words "other inhumane acts" may be held to cover only serious crimes of a character similar to murder, extermination, enslavement and deportation - eiusdem generis rule of interpretation.

b) persecutions (on political and racial, under the Charter of the 8th August, 1946, also religious, grounds) ".

And then, reading from the right-hand column:-

'2) Though the Nuremberg Judgment does not speak of two different types of crimes against humanity, crimes of the murder type and persecutions, it remains possible to make a distinction between these two types. This does not imply, however, that practical sequences arise from the distinction".

The Commission might consider that in view of the fact that the Nuremberg Judgment made no such distinction, it might be simpler - and he understood that this Colonel Springer's opinion also - to leave that distinction out altogether and regard the murder type and persecution on political or racial grounds as part and parcel of the same crime, and subject to the same procedure. While he entirely agreed that the whole problem of defining the crime against humanity was a difficult one, he nevertheless believed it would serve a useful purpose if the Commission would give the matter serious consideration and either approve their original draft or amend that draft for the guidance of Committee I. M. de Baer would bear him out that it would be useful if they have something to define what was to be their procedure when they considered a charge of crimes against humanity.

The CHAIRMAN stated that the murder type would not cover all crimes against humanity - nor would genocide. There were so many persecutions on racial or religious grounds, which might not involve any murder, and which would yet be crimes against humanity. The forced deportation of people from one area or country to another was surely a crime against humanity and these could be multiplied indefinitely. That was why "genocide" was so unfortunate a term for it gave the impression of a narrow classification quite irrespective of its other objectives. The Chairman also referred to the report Doc.C.239, which, he thought, was very pertinent to this matter.

M. de BAER thought the discussion at this stage seemed to be what expression or concept they should use in respect to these crimes. He agreed that the expression "genocide" did not cover the same meaning as the term "crimes against humanity". He personally would prefer "crimes against mankind", because, as they probably remembered, there was some ambiguity in 1919 - Lansing and James Brown Scott had questioned what were the laws of humanity. But as the expression "crimes against humanity" had been adopted he thought it should be retained. He would also like to thank Sir Robert Craigie and members of Committee III not only for this paper but for the other one the Commission were going to hear (Doc.C.239), because they were responsible for having Committee III to give them a guide. As Sir Robert had said, they had in Committee I many cases of crimes against humanity, and as was known, in Committee I they were loaded with facts, and therefore they had asked Committee III to try and give them a guide as to what exactly was a crime against humanity, and in that sense he would be most interested in the discussion that was going to take place on Doc.C.239. He also wanted to say that he thought this question of crimes against humanity and of a world criminal court which would judge them, most important. As was known, he was not the only one it was the general trend of opinion. Last Saturday, Lord Cecil at the U.N. Association passed a resolution demanding the establishment of such a court and he himself three years ago, at the Czech Institute in London, gave a lecture on that particular subject. He thought that perhaps this Commission did not know enough about it yet to enter into a technical discussion.

The CHAIRMAN said that Dr. Zivkovic had sent a message saying that he could not be present today and that he was very anxious to take part in the discussion because his country was very much concerned with the question of crimes against humanity. He suggested that Dr. Zivkovic should be told that there would be an adjourned discussion on the 15th January, probably by which time they would have formed a view which they could not give with any certainty at present. He thought that what was useful about C.239 was that so many illustrations were given - very largely from the Yugoslav government. These illustrations gave the practical content of what would otherwise be a mere schematic formula. He asked whether this would be a convenient time for either M. de Baer or Sir Robert Craigie to make some observations on C.239.

Colonel SPRINGER said that before proceeding with C.239, he would be quite interested in hearing M. de Baer's opinion on this two types of crime question. Sir Robert Craigie had stated almost the same doubt that he had with respect to there being two types. Actually he had difficulty in seeing that there was more than one. He personally believed that the phrase on "political, racial and religious grounds" was applicable to both the murder and the persecution type, as the crimes were dealt with in the Charter and in the Control Council Law No.10. In other words, it seemed to him that the Committee had made a distinction where actually none existed.

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he thought probably they would regard that as their basis and many objections to what was set forth and it might be that in the light of the Nuremberg Judgment they might formulate a few amendments, but he thought there would be very little to be changed.

Sir Robert Craigie then introduced Doc. C.239 by pointing out that its practical solution was based on the propositions laid down in C.236. He thought the operative paragraph of Doc. C.236 was paragraph 6 which was intended to help to realise what constituted a crime against humanity. It read:-

"6) Isolated offences do not fall within the notion. As a rule systematic mass action, particularly if it can be shown to be authoritative, will be necessary to transform a common crime, punishable merely under municipal law, into a crime against humanity, which thus becomes also the concern of International Law. Only crimes which either by their magnitude and savagery or by their great number or by the fact that a similar pattern is applied at different times and places, endanger the international community, or shock the conscience of mankind, warrant intervention by states other than that on whose territory the crimes have been committed or whose subjects have become their victims."

Sir Robert stated that it was on that basis that Committee III examined in its report C.239 the various crimes which were alleged by the Yugoslav national office against Italian perpetrators, committed against Italian nationals of Yugoslav race. In particular they were examining whether first of all there was a common pattern and whether the crimes were authoritative, that is to say, whether there was a deliberate intention to change the politics or outlook of this area, by means of repressive action and with that in mind the Committee examined very carefully each one of the cases brought by the Yugoslav representative and their conclusion was given at the end of paragraph XVI of Doc. C.239 which read:-

"In examining the whole mass of information which has been presented to the Committee by the Yugoslav representative, the Committee had taken into consideration the number, magnitude and savagery of the inhumane acts described in the preceding paragraphs of this paper; the fact that a similar pattern emerges at different times and places; and that the systematic mass action was authoritative. Taking all this into account, the Committee reached the conclusion that these individual common crimes, punishable normally under municipal law, should be regarded as crimes against humanity, which thus become the concern of International Law."

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To him, personally, he thought possibly to some other members of the Committee, it seemed that these crimes which were brought to their notice by the Yugoslav national office were precisely the type of crimes envisaged in para. 6 of the Committee's definition (Doc. C.201). The authoritative nature was clear. There was no doubt that Mussolini had definitely ordered systematic repression in this area, in order to change the nature and outlook of the inhabitants. There was no doubt that it was systematic and that it was carried out on a very large scale.

M. de BAER agreed with Colonel Springer. He thought in view of the Nuremberg Judgment, with all respect to Committee III and with appreciation of their two documents; he could not see in this particular point the necessity of having two types of crime, but thought "b" covered the whole lot of them and in view of that it would be better not to make any distinction.

Sir Robert CRAIGIE said that the reason why they had originally made that distinction was that the basic documents seemed to make a distinction and they were merely seeking to interpret the basic documents. In view of the famous protocol about the semi-colon and the comma, in the Nuremberg Charter, he thought the distinction might be dropped.

Sir Robert Craigie hoped they would regard that as their basis and he thought probably they would find that in the main the Commission had not many objections to what was set forth and it might be that in the light of the Nuremberg Judgment they might formulate a few amendments, but he thought there would be very little to be changed.

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He understood from the Yugoslav office that the examples could be multiplied several thousand times if it was the desire of the Committee to know that it was part of a general system. So they had come to the unanimous opinion that when these cases came up again to Committee I, that Committee would be justified in accepting the charge of crimes against humanity. But of course it was not for Committee III to go into the evidence, or to decide whether any particular case, for instance, was sufficient to justify the placing of any particular man on the list. This fell within the jurisdiction of Committee I. It was for Committee I to examine each case and to decide whether the evidence produced justified listing on that basis.

The CHAIRMAN enquired whether in the opinion of Committee III the crimes alleged were municipal crimes or international crimes. Sir Robert Craigie replied that the individual cases alleged were in themselves not necessarily international crimes. The Committee proceeded as explained in Doc. C.239 (page 2 para 2) in two stages. They first examined whether the facts alleged constituted crimes under municipal law (general principles of penal law) and eventually they examined whether these crimes, punishable merely under municipal law had, because a similar pattern emerged at different times and places, because they were organised systematic mass action, because of their magnitude and savagery, been transformed into crimes so grave, that the intervention of other states was warranted.

The CHAIRMAN suggested that the word "only" in the third sentence of para 6 of Doc. C.201 involved a very strong limitation of the definition. The Commission had to fit this in with earlier statements, particularly in view of the fact that the Commission was dealing only with prima facie cases. He was afraid that by a process of infiltration the Commission might arrive at a narrowing down and negation of the broad principle that certain crimes under certain circumstances were subject to international law, because they were offences against the community of nations.

M. de BAER felt that he rather liked the wording of para 6 (Doc. C.201 and C.236). He thought humanity was not really interested in isolated crimes though he realised that once instance of one particular crime might, in exceptional circumstances, interest the whole of humanity, because of the importance of its consequences. As a rule, the savagery and magnitude of a crime was decisive. Perhaps the word "only" might be altered.

Sir Robert CRAIGIE admitted the word "only" was limiting rather severely the scope of crimes against humanity, but was it necessary to limit cases which warrant intervention by states other than that on whose territory the crime had been committed, or whose subjects have become their victims? That was a new phase in the development of international law, the intervention of other states in the affairs of one state on grounds of atrocities committed, and he thought it was the view at least of the U. K. government that they should proceed very carefully in this sphere. Committee III had interpreted the law as it existed to-day and as it emerged from the basic documents. As far as he was concerned he would not like to make the proposition more general than it was at present.

The CHAIRMAN agreed that interference with the sovereignty of states should be cautious, but he felt that it would be unfortunate to pin matters down to a precise definition at the present time.

Sir Robert CRAIGIE pointed out that Committee III did not ask the Commission, in approving its report C.236, to say that this constituted international law to-day. The function of Committee III was simply to interpret as best they could, the basic documents and to assist Committee I in its business of listing persons. It was desirable that the Commission should approve some form of Document, not as an ex cathedra pronouncement as to what was the international law on the subject, but only as a guide for Committee I.

M. de BAER agreed that it would be useful if the Commission could at day express its views on the papers C.236 and C.239, so that Committee I might go on with its work.

Sir Robert CRAIGIE said that he was under an obligation to Dr. Mezulic to make one observation on para V of Doc. C.239, where Committee III had stated:-

- "(1) That it is not concerned with the question whether the persons charged by the Yugoslav government should be listed by the Commission at the instance of the Yugoslav government,
- (2) That it is not concerned with the question whether the persons should be extradited or handed over to the Yugoslav government.
- (3) That it is not concerned with the guilt of each individual accused."

Dr. MEZULIC had objected to para V because it was, in his opinion, unnecessary. The Committee decided to leave para V in the report, but in presenting the report to the Commission to give an explanation as to why it had thought the paragraph useful. Committee III, including Dr. Mezulic, had accepted a statement drawn up by Dr. Schwelb, which was as follows:-

"Sub-paragraph No. 3 of paragraph V stated, in accordance with the Committee's proceedings that the individual guilt of the accused had not been examined by Committee III. Behind points 1 and 2, however, there was an important principle. From the outset the Commission had been careful not to express an opinion which would justify retrospectively the proposition that the authorities of one State were, in International Law, entitled to interfere in the internal affairs of another State, basing their intervention on the allegation that the other State did not properly treat its own subjects who were racially akin to the population of the interfering State, as Hitler had done with regard to the German speaking populations of Austria, Czechoslovakia, Poland and throughout Europe.

The stress in sub-paragraph 1 was on the words "on the instance of the Yugoslav Government". As these charges referred to the treatment meted out by the Italian authorities to persons who, at least at the material time, were Italian nationals, it was the policy of the Committee neither to confirm nor to reject the special claim of one particular State, to charge the perpetrators, and have them handed over. In the opinion of the Committee, the right to intervention with regard to crimes against humanity belonged to the community of nations, to the United Nations as a whole, not to an individual State."

That was the opinion of the Committee and Dr. Mezulic kindly said that he would withdraw his objection to keeping in paragraph V of the report, provided that a statement was made to the Commission.

The CHAIRMAN announced that the general discussion of the papers C.236 and C.239 would be adjourned until the 15th January, 1947 and he hoped that Dr. Zivković would be present on that occasion. He hoped that when the Commission met again Colonel Springer and other representatives would have some views on this matter and be able to tell what had been accepted by their governments.

Sir Robert CRAIGIE said that as far as the United Kingdom Government was concerned, they had accepted the definition drafted by Committee III.

WAR CRIMES TRIAL REPORTS.

The CHAIRMAN informed the Commission that its own trial reports were proceeding satisfactorily, that the proofs of the first volume had been read a week or two ago and that it should come out any day. The Secretariat was preparing the second volume. The Chairman further recalled that the publishing firm of Messrs. William Hodge & Co., were producing a set of law reports on their own on a very different scale and with a quite different purpose, and they had now informed the

Commission that they proposed to appoint Mr. Wheeler Bennet General Editor for the whole series and Mr. Phillips as editor for Hodge's report on the Belsen trial. After discussion, it was decided to inform Messrs. Hodge that the Commission had no objection to these two appointments. This reply should be despatched only after the Secretary General had contacted the appropriate British departments (the Foreign Office and the Judge Advocate General's Department) and received no objection. This was agreed to.

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minutes

UNITED NATIONS WAR CRIMES COMMISSION

M.122

Minutes of Meeting of the Commission held at 3 p.m. on Wednesday, 29th January 1947

CHAIRMAN:	Lord WRIGHT	Australia
PRESENT:	Mr. GARNER	United Kingdom
	Colonel SPRINGER	United States of America
	accompanied by	
	Colonel HOUGEN	
	and Mr. KINTNER	
	M. MAILLARD	France
	Mr. DAO	China
	Mr. BRIDGLAND	Australia
	M. de BAER	Belgium
	Dr. NEUMANN	Czechoslovakia
	Dr. SCHRAM NIELSEN	Denmark
	Commander MOUTON	Netherlands
	Mr. AARS RYNNING	Norway
	Mr. MARKOVIC	Yugoslavia
	M. DIMITSAS	Greece

Apologies were received from:

Sir Robert CRAIGIE	United Kingdom
Mr. DUTT	India
Dr. ZIVKOVIC	Yugoslavia
Professor GROS	France
Mr. BURDEKIN	New Zealand

MINUTES

Minutes of meeting of Commission held 18th December 1946 - M.120 - were approved and signed.

Amendments to minutes of meeting of Commission held January 22nd, 1947, - M.121 - had been received from Colonel Springer and would be incorporated in the final text.

FRENCH PROPOSALS REGARDING THE PROSECUTION OF MEMBERS OF CRIMINAL ORGANISATIONS AND OF CONCENTRATION CAMP PERSONNEL (DOCS. A.30, 31, C.242).

The CHAIRMAN stated that it was thought desirable to have a meeting to-day because of the question raised by the French Government in respect of their proposals, contained in Doc. C.242.

It would be remembered that the French proposals were put before the Commission on the last occasion and were to some extent discussed then. Various difficulties had been pointed out in giving effect to the suggestions and it was desired to have a fuller statement and a fuller discussion if found necessary.

M. MAILLARD apologised on behalf of Professor Gros, who was engaged on a conference and said that since the matter was raised in December by members of the French National Office, it appeared that in general, the replies received by France from the different governments had not been in favour of the French proposals. His Government considered, therefore, that as the matter now stood, it was not necessary to pursue it and he proposed that it should be dropped by the Commission.

THE CHAIRMAN said that a system of operation had been established and it would have been very difficult to give effect to the new proposals. The object was to have cases tried and for purposes of trial to put them on the most convenient and satisfactory basis and although theoretically, it might be thought desirable that the various nations whose nationals were concerned should be represented on the Board of Judges it would, as a practical measure, be very difficult and impracticable and he thought it was inconsistent with the idea which, rightly or wrongly, had been adopted, that the Military Court was the most appropriate form of procedure.

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He gathered that the French were not disposed to follow the matter through. The Commission was very grateful to the French Government for these important suggestions.

M. DE BAER said that he had not known that the French Government had received these unfavourable replies and he would like to say that the Government would probably have welcomed an International Conference of Experts, to unify the procedure in the trial of members of organisations declared criminal by the Nuremberg Court. The Nuremberg Court had expressed the view that the procedure should be unified and any steps taken to achieve this object would be opportune.

However, as the French Government had dropped their proposal, it could of course, not be pressed,

M. DE BAER said that in this Commission they had not ceased - from beginning to press for uniformity, particularly they had always asked the one prosecuting office be established, for the unification of the trials of war criminals at a time when there was no question of dividing Germany into zones, and he thought it had been the opinion of this Commission two years ago that war criminals should be judged according to one common standard and in one common way.

THE CHAIRMAN added that he gathered the French had always prosecuted under their own system.

M. MAILLARD said they sometimes had other judges participating in the trials.

M. DE BAER said there was also the second matter to be considered - the question of participation of foreign judges in concentration camp cases. In that respect, he understood the answers of other governments because these trials had gone so far, so many finished and there were so few of them left that it seemed unnecessary to go into the matter any further and press that foreign judges should be included in the trials of these cases. The other question raised, namely the uniform method of judging members of criminal organisations - was an entirely new field in which there were no directives. All nations concerned were going to be without precedents, directives or governing laws. Therefore in the light of what had been said in the Nuremberg Judgment it would have seemed to him a good thing if such an international conference of experts had been convened.

M. MAILLARD said that he knew that the Belgian Government had made a reply on these lines and thanked them.

M. DE BAER said he wished to express his appreciation of the initiative of the French Government.

MR. GARNER said that he did not think it was right to say no directive existed because the Control Council, Berlin, had issued an agreed Directive No. 38, agreed to by the four Powers, to implement the judgment of the International Military Tribunal.

THE CHAIRMAN asked how the question of the onus of proof had been disposed of.

MR. GARNER understood the question of the onus of proof would be dealt with in accordance with the general principles of German criminal procedure which was the procedure which the members of the criminal organisations are conversant with and will understand.

THE CHAIRMAN said that this was the only point of importance which seemed to him to need definition.

MR. GARNER was not sure that this was defined in the Directive No. 38 but the authorities had taken it up with their legal advisers.

THE CHAIRMAN said it had been discussed, he knew, and from the Anglo-American point of view - and Colonel Springer or Lieut. Kintner would correct him if he was wrong - the onus of proof was to rest on the prosecution, as in ordinary law.

MR. GARNER said that in this case he understood they were to go in accordance with the regular German legal procedure.

DR. SCHWELB understood both from the reports in the newspapers and from Sir Alfred Brown that an ordinance had been promulgated for the British zone of Control, regulating the trial of members of criminal organisations by special courts. The text of the ordinance was not yet available.

THE CHAIRMAN said that they assumed it would be on the lines indicated, with the onus of proof on the prosecution. That would be ascertained when they got a copy of the directive.

DR. SCHWELB said that as soon as the Ordinance became available, he would circulate it to members in the usual manner.

MR. GARNER thought that under the Ordinance it would be up to the prosecution to bring up evidence from which it could reasonably be inferred that the man had knowledge of the criminal purposes of the organisation.

THE CHAIRMAN said that indeed was the Anglo-American point of view - that the onus of proof should be on the prosecution.

MR. GARNER said it was difficult to prove the state of mind of an individual.

THE CHAIRMAN said the state of mind would be inferred from what the man did.

MR. GARNER thought this would be taken into account. The idea of using the German legal procedure was that the defence would be dealing with something with which they were familiar. This would result in a fairer trial.

THE CHAIRMAN remarked that this was striking new ground, to have an unknown number of members, of organisations declared criminal, and have them under trial. It seemed to him to be rather a movement into a new region. It was something corresponding to membership in unlawful associations. This was found in some European countries - especially in France, where membership was sufficient justification for the prosecution, but the offence itself was more in the nature of a misdemeanour rather than an important felony. It was different from the general declaration that the organisation is criminal. The offence was being a member of that criminal association and this involved some sort of complicity - mens rea they call it - and some graduation of the offence according to the extent of the mens rea. He thought this was the prevailing idea. He could quite see how it could be worked in practice, though he was glad he was not charged with the duty of working it. The Chairman further asked whether Sir Alfred Brown had expressed any general views that Dr. Schwelb could usefully state to the Commission, in order to satisfy their mental curiosity?

DR. SCHWELB said he was afraid that he could not. He had seen a previous draft of this document which had been especially marked 'confidential' and he assumed some important alterations had been made, so there would be no point in reporting to the Commission now.

M. MAILLARD asked whether the Ordinance could be examined at a meeting in view of the questions raised by members of the French National Office.

MR. GARNER drew attention to the fact that it was a British Ordinance applicable in the British zone only. The Control Council had issued Directive 38 and the British Military Government was now issuing this Ordinance.

To a question, by the Chairman, Dr. SCHWELB replied that he understood at some time discussions were in progress on a quadripartite level to amend Law No. 10 in accordance with the Nuremberg recommendations but he had no information how they were proceeding.

THE CHAIRMAN said that all they should say as a Commission was that they would hope to receive in due course copies of the ordinances issued by the different members of the Allied Control Council in Germany for the respective zones, unless they issued a joint ordinance. Meantime, they would express their gratitude to the French Government for raising these important questions and that they were in general agreement, as a matter of theory, with their views, - that trials like the concentration camp cases were to have judges representing some of the important sections of nationals concerned, though they did not think it possible to apply that principle with completeness. The present system had worked quite well and it was rather late in the day to make a complete change in what had been done with reasonable satisfaction in the past.

MR. GARNER said this certainly represented the British view.

COLONEL SPRINGER thought that, although his Government may have replied in terms not favouring the French proposals, they had, of course, been successful in presenting a very important and interesting question to the Governments which no doubt caused considerable discussion. The Control Council Law was undergoing consideration and Directive 38 now included some of the recommendations of the Tribunal. The fact of bringing this paper to the attention of everyone would achieve some uniformity in the handling of these cases, even though there could not be any definite decision.

COMMANDER MOUTON said there was an important case coming up tomorrow of a work camp in Germany where only Dutch prisoners had been held.

THE CHAIRMAN asked whether Commander Mouton wanted to have Dutch judges on the Tribunal.

COMMANDER MOUTON replied that he did not know how his Government would react but personally thought it would be useful. It would, of course, have to be tried by the British authorities as it was in the British zone.

MR. GARNER said that if the victims were all Dutch the British authorities would be quite willing to hand the trial over to the Dutch Courts. They were so short of staff, that they were only too glad to hand over any and to finish their other cases in a reasonable time. As a rule, the British authorities found the Allies were reluctant to take the cases over.

THE CHAIRMAN was quite sure that if the Dutch Government wanted to have the court composed of Dutch judges, in whole or in part, that would be considered very carefully by the British authorities.

M. DE BAER said that the Commandant of the Concentration Camp, Breendonck had been handed over to the Belgian authorities and was going to be prosecuted, before a Belgian Court.

GIVING INFORMATION (DENUNCIATION) AS A WAR CRIME. REPORT BY COMMITTEE III (DOC. C.240)

THE CHAIRMAN turned to the question of denunciation as a war crime and the report by Committee III.

M. DE BAER said that he was interested in this matter because of course it was Committee I who asked Committee III these questions and he

must say that he very much favoured the wording of Doc. C.240, including the conclusion, (para. X), though it was somewhat laconic. With a view to making it a little more clear he was wondering if after the words "in the light of the above consideration" they could add the words "and especially paragraphs III and VI". This might perhaps draw attention to the two paragraphs (III and VI) which dealt in his opinion with the two main components of the crime - that the denunciation has led to a war crime and that the author of the denunciation had the mens rea.

THE CHAIRMAN said that he was not altogether happy about this "in the light of the above considerations". He would rather say "because of the reasons set out above".

DR. SCHWELB said that Committee III, the majority of whom were Continental lawyers, had tried first to formulate the abstract rule and then proceed to elaborate the more detailed analysis contained in paragraphs I to IX. Having adopted this general ruling beforehand, Committee III did not want to alter it.

THE CHAIRMAN remarked that it was a little more cryptic than they generally tried to be.

DR. SCHWELB thought the summary contained in Article X could, to meet the objections, be easily elaborated upon by quoting part of paras. III and VI as M. de Baer had suggested.

THE CHAIRMAN asked whether it would not be better for the Commission to refer the matter to a small drafting committee to consider the re-drafting of para X.

DR. SCHRAM NIELSEN said that as a member of Committee III, he would like to point out that there was no doubt in Committee III that the last three lines represented the shortest and most clear cut definition to which the Committee could come. He would suggest that the Commission should keep these three lines and if it was found necessary, add something to the first three lines of para. X.

THE CHAIRMAN said they could leave that to the drafting committee. He suggested that the Committee be composed of Sir Robert Craigie, M. de Baer and Dr. Schram-Nielsen - Dr. Schwelb would be the Secretary - that would be a small drafting committee and he thought they could leave it to them to make any alteration or reconstruct para X in any form they liked.

He agreed with Dr. Schram-Nielsen that the last three lines were extremely important and effective. The only difficulty that occurred to him was that the general conditions which constituted complicity were present. They said "falls within the notion of complicity". He supposed that it was meant that the constituents of complicity were there. He did not want to dictate to the drafting committee. If it was agreed by the Commission that there should be a small drafting committee composed as he had suggested, then he thought the Commission should leave them to exercise their own judgment, having regard to the various points which had been touched upon. If the Commission agreed to that, then he would ask them to vote upon it accordingly. The drafting Committee was unanimously appointed.

REPORTS BY CHAIRMEN OF COMMITTEES.

THE CHAIRMAN enquired about the Finance Committee and said it was time they had their budget.

THE SECRETARY GENERAL reported that a meeting of the Finance Committee had been held last Wednesday, when members had an opportunity to examine a preliminary Budget for the year ending 31st March 1948. It was hoped to submit this preliminary Budget to the Commission at the next meeting, along with the contributions which each nation would be required to pay.

COLONEL SPRINGER enquired when they might expect a statement of the contributions required from each member government.

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SCHWELB replied that he in progress on a quadripartite with the Nuremberg recommendations proceeding.

ld say as a Commission was in copies of the ordinances issued by the Control Council in Germany for the enforcement of the ordinance. Meantime, the British Government for raising the general agreement, as a matter like the concentration camps, the important sections of the system had worked quite well, a complete change in what had been the past.

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CRIME. REPORT BY COMMITTEE II

denunciation as a war crime

n this matter because of Committee III these questions and he

THE SECRETARY GENERAL said that the statement was ready to put before the Finance Committee and, if approved, would be presented to the Commission.

It was not possible to determine the contributions payable by each nation until the total amount of the Budget had been approved. This had now been done last Wednesday by the Finance Committee.

THE CHAIRMAN asked if they had budgeted for a whole year.

THE SECRETARY GENERAL replied in the affirmative that the estimate was for the period 1st April 1947 to 31st March 1948.

REPORT BY COMMITTEE I.

M. DE BAER said that when he looked at the minutes of the various meetings and saw that it was stated that Committee I had "nothing to report" he felt that he was very inadequately expressing his appreciation of the work of the members of Committee I who helped him in carrying out this task. Last week, the members had one hundred and fifty dossiers to examine apart from other items which must have taken many hours. Seeing the very thorough way in which they carried out this task when he saw the repeated "nothing to report" he was reminded of the saying "All Quiet on the Western Front". Last week they had 150 odd cases to examine but there was one new thing: this was the first time they had listed a Swiss national as a war criminal. This was a Belgian case - the case of a massacre which had taken place in the Bulge at Christmas 1944 and which had been reported in a pamphlet by the Belgian National War Crimes Mission. An SS officer had killed, with his own revolver, about 44-45 Belgians. This man had been identified by a Swiss judge, who had the man before him on another charge and noticed that this man had a very bad record as a criminal, until 1938-44 when it was blameless. The Swiss judge asked the man what he had been doing between 1938-44 and the man said that he had been an officer in the SS and told about his experiences. He had said, that one day he had been forced, by the German Commandant, to massacre a certain number of Belgians in the village of Banda. He would not be extradited by the Swiss Government because he was a Swiss and would therefore be charged before a Swiss Court with crimes committed in Belgium when he was in the SS.

THE CHAIRMAN asked whether the Swiss law gave extra territorial jurisdiction in these cases.

DR. SCHWELB said that this was jurisdiction *ratione personae*. As a Swiss subject, he was subject to Swiss jurisdiction.

THE CHAIRMAN said that if he was accused as a war criminal, the question of nationality would not matter; as to the question of whether the Swiss Courts could assume jurisdiction, that would depend on Swiss law.

M. DE BAER thought he could be judged before a Swiss Court even for a crime committed against Belgians in Belgium.

THE CHAIRMAN supposed he would be tried in Switzerland for murder.

M. DE BAER said that apart from that they had the case of General Marinov of which the Commission knew. On this question, Committee I came to the conclusion that there were still some gaps in the case that the Greek Government had presented against General Marinov. In order not to miss out any of these gaps and to avoid any reproach, they had asked the Greek Government to supply some more information and the case would come up for review on the 13th February.

in
COLONEL SPRINGER asked M. de Baer whether the Swiss case, the Swiss reported it officially to the Belgian government indicating that they wanted him tried and wanted to charge him before the Commission.

M. DE BAER said he thought that the Swiss communication was through official channels.

THE CHAIRMAN reverting to Committee I recalled that they had had 150 cases to consider and the Commission would like to know how many cases they examined the previous week.

M. DE BAER said there were none the week before but tomorrow they had again got 40 odd cases to consider.

THE CHAIRMAN thought they might say that the cases were being submitted on an average of 50 a week. He thought this interesting but could not help wondering why these cases should be so long in coming forward. He supposed that there were very good reasons, when the troubled condition of the countries concerned was considered. Was there any indication how long various member nations would be submitting cases at this rate?

M. DE BAER did not know. He was inclined to believe that the activities of Committee I might be going on during the whole of this year.

THE CHAIRMAN said that as this was rather important the Chairman of Committee I might repeat that.

M. DE BAER believed, from what he had heard from various national offices, that Committee I might be active during the whole of this year. There were about 500-700 Dutch cases to come. There were also 2000-3000 Yugoslav cases and about 200 Greek cases. There were a number of Belgian and French cases (they had had over 100 French cases last week) and so he believed the flow was not going to stop very soon. He did not know whether they had any more Norwegian cases.

MR. AARS RYNNING said there would be no more Norwegian cases.

COLONEL SPRINGER said that the U. S. A. were presenting 12 cases tomorrow but he did not expect very many more.

DR. NEUMANN said that there would be some Czechoslovak cases.

DR. SCHRAM NIELSEN said that there might not be more than 50 Danish cases.

THE CHAIRMAN asked about the Far East and what was happening in Australia.

They had decided quite early to a certain extent to confine Australian cases to the Australian authorities. As a matter of fact, practically speaking, they had had a small proportion of cases from the Far East brought before this Commission. He rather favoured that view for practical reasons and he hoped that when it came to winding up this Commission there would be a complete tally of the various cases submitted and dealt with in the whole of the Far East for the purposes of their records. Sometimes they forgot that when the Commission was established one of the main purposes was to be a Central Record of War Crimes committed during the war.

Their files would be very full and very illuminating for future historians. It was called a fact-finding Commission but a more inappropriate name he could not find. It was a "prima facie case finding Commission". However, it had got its other functions which were important enough and quite separate. The Chairman further said that there was another matter he ought to mention arising from a letter received from the Chinese Embassy and he would ask Mr. DAO to say what it was.

MR. DAO said that the Chinese Embassy had merely transmitted a telegram which they received from the Chairman of the Far Eastern Sub-Commission, asking them to ascertain the views of the Commission on the procedure whereby the Sub-Commission might wind up its affairs, in view of the number of cases being smaller every day. Perhaps there were views which the members of the Commission would like to express.

THE SECRETARY
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THE CHAIRMAN suggested that they should accede and approve the suggestion that the Sub-Commission at Nanking should be wound up. He gathered it had kept its records and he did not think there would be a very heavy financial account to settle.

THE SECRETARY GENERAL remarked that it had been run on extremely economical lines, thanks to the Chinese Government for supplying accommodation free of charge.

It was unanimously agreed that the Sub-Commission should be wound up.

DR. SCHWELB ventured to suggest that the files and records of the Sub-Commission should come to this central office along with a progress report of its activities.

COLONEL SPRINGER thought the U. S. were also interested in this in respect to the publication to be undertaken by Messrs. Hodge & Co., to which his Government had given permission to use the transcripts of trials both here and in the Far East. It would be most convenient if transcripts of trials and records of the Sub-Commission were sent here, assuming that this was in accordance with any regulations they might be governed by; if their files and records were sent here it would make the publication of the Commission's work and the publication of war crimes trials much easier. He therefore supported Dr. Schwelb's recommendation.

THE CHAIRMAN said they would be the property of this Commission as a matter of course, and would be sent here when the Sub-Commission wound up.

THE SECRETARY GENERAL undertook to convey the views of the Commission on the winding up of the Sub-Commission at Nanking to the Chinese Embassy for their concurrence and onward transmission.

Wright

UNITED NATIONS WAR CRIMES COMMISSION

M.123

MINUTES OF THE MEETING
OF THE COMMISSION

HELD ON

WEDNESDAY, 5TH MARCH, 1947,

AT 3 P.M.

Chairman: Lord WRIGHT Australia

Also present: Sir Robert CRAIGIE United Kingdom
Colonel SPRINGER United States of America
accompanied by
Mr. KINTNER
Mlle. CAPIOMONT France
Mr. DAO China
Mr. GLASHEEN Australia
M. de BAER Belgium
Dr. SOHRAM-NIELSEN Denmark
M. DIMITSAS Greece
Commander MOUTON Netherlands
Mr. BURDEKIN New Zealand
Mr. AARS-RYNNING Norway
Colonel MUSZKAT Poland

Apologies for absence were received from:

Mr. BRIDGLAND Australia
Dr. NEUMANN Czechoslovakia
Mr. DUTT India
Dr. ZIVKOVIC Yugoslavia

MINUTES

Minutes of Meeting held on Wednesday, 22nd January, 1947, (M.121), were approved and signed.

Amendments to Minutes of Meeting held on 29th January, 1947, (M.122), had been received from Colonel Springer, M. de Baer and Mr. Burdekin and would be incorporated in the final text.

PRELIMINARY BUDGET FOR FISCAL YEAR 1947-48 (DOC. C. 244)

Sir Robert CRAIGIE stated that the Commission had before it Doc. C.244, dated 21st February, 1947, which gave an indication of what each member would have to ask his government to pay for the financial year 1947-48. This preliminary Budget had been drawn up because one or two members had asked whether it would be possible to get an indication beforehand, in order that their respective treasuries might be informed of the situation. The whole matter depended on the length of time for which this Commission remained in being. The Finance Committee reached the conclusion that they could only make their estimate on the basis of another year, and if the ultimate decision was that the Commission should remain in being for less than a year there would be a consequential refund. The Budget and Documents "A" and "B" which were attached, were in the same form as last year and he did not think they would require any further explanation by himself. If any member of the Commission wanted any further information before submitting this document to his Government, he would be happy to supply it if he could. Naturally, after March 31st, the Commission would be given the Budget with the final figures for approval.

THE CHAIRMAN thought this was the cheapest International Commission in the history of the world. He did not want to say anything more about these preliminary estimates. He had been through them very carefully. The Finance Committee had allowed him to sit with them in a previous meeting.

COLONEL SPRINGER said that each figure was very carefully discussed at an earlier meeting of the Finance Committee and many were again discussed at the meeting to-day. It seemed to him that the Secretary General had considered practically every item which could be reasonably anticipated and the estimates had all been carefully worked out, neither too moderately, nor too extravagantly - just what they would reasonably need for the year beginning April 1st.

SIR ROBERT CRAIGIE added it would be noticed that the items of the Budget 1947-48 coincided with the Budget for the present year in most cases. There were only two increases relating to Item 1(a) Office Equipment and 1(b) Cleaning of premises, which were considerably more than the £300 allowed for in the Budget. The main reason for that was that at Lansdowne House they had to pay for the cleaning of the premises whereas at Church House that had been paid by the United Kingdom Government. In Item 2 the increase was due to the general increase in cost of everything to-day, - stationery, printing and multigraphing had gone up from the Budget figure of £850 to approximately £1,275. This was due to the increased cost of printing the Commission's lists by the Stationery Office, and also to Committee I having been extremely active in producing more Lists - there had also been more multigraphing than last year.

MR. BURDEKIN said that as Sir Robert very rightly had said, it was naturally all bound up with the duration of the Commission's work and it seemed to him that before they discussed the final budget they should arrive at some conclusion as to how long it was anticipated the Commission would continue its work. While the Finance Committee might be correct in basing the budget on the assumption that the Commission would be going on for another year, he did not think that would necessarily be the view of members or governments represented as to the necessity of the Commission continuing at its present full volume for another 12 months.

THE CHAIRMAN said that it would be at a reduced volume.

MR. BURDEKIN said if it was to function at a reduced volume, it was difficult to explain why if the present year's expenditure was £15,300 they should require to estimate for £21,850 for the next year.

THE CHAIRMAN said he did not see any real difficulty about that, nor did he think would the various governments. The first question that had to be considered was how long the trials would last. Suppose, as a general idea, these trials would not extend much beyond the end of the year and would be winding up then - speaking for himself, he saw very great difficulty in terminating the life of the Commission so long as these trials were continuing. The Commission was being constantly referred to they did not trouble members with this very much in Commission meetings but certainly a great number of questions and requests for documents connected with these trials were constantly coming before their staff. This was one thing - the continuance of trials which were going on very actively now. There was another matter of great importance - as they would remember, one of their mandates was to record war crimes trials, and it had always been understood that when the time came, it would be their duty to do two things, one to report and publish a series of trials and the other to prepare and publish a History of the Commission, and although he confidently expected that both these objects would be pretty well achieved before the end of the year, he would not like to pledge those concerned to finish their business before the end of the year. In addition to that there was Committee I which in a sense was the backbone of the Commission and that seemed to be in full swing. During the past week Committee I had examined 43 cases involving 274 individuals.

each figure was very carefully discussed with the Finance Committee and many were again discussed. It seemed to him that the Secretary had very carefully worked out, and all been carefully worked out, and gently - just what they would recommend.

Robert very rightly had said, it was the duration of the Commission's work which was discussed the final budget they should know how long it was anticipated the work. While the Finance Committee might be in the assumption that the Commission would not be continued, he did not think that would be the case. The Commission was not a body of persons or governments represented as to be continued at its present full value.

function at a reduced volume, if the present year's expenditure was to be maintained, it would be necessary to estimate for £21,850 for the next year.

THE CHAIRMAN went on to say that now they had that number he was not sure that they could neglect the possibility of their continuing. All these, and other considerations made others take much the same view as he did about the position. While one did not want to keep the Commission going on for any longer than one could help, it would be rash to fix any earlier target for its dissolution than the end of the year. He did not want to prolong the life of the Commission any longer than necessary but on the other hand he did not want to "desert the ship before it had sunk". At present, he thought they should treat as a hypothetical date somewhere around the end of the present year. He wondered whether H. de Baer and Sir Robert would like to say anything in this connection.

M. DE BAER wished to say that he concurred very much with the views expressed by the Chairman. He also hoped they would be able to finish the History of the Commission by the end of the year, but he was not sure, it was a very important and long job. Moreover, as the Chairman had said, Committee I was still receiving a large number of cases. The flow was not diminishing but last week Committee I had 60 cases - this means not 60 individuals but more like 300 individuals whose cases each had to be examined. Some time ago they had made a review of the number of cases that were probable and had made an estimate. This estimate was boiled down very conservatively but since then they had been informed that the Polish National Office had about 1,000 cases to bring forward. In view of this, he agreed with what the Chairman had said and could not see the end of the Commission before the end of this year at least.

SIR ROBERT CRAIGIE felt the position was really what the Chairman and H. de Baer, had stated. So long as these cases continued to come in to Committee I in large numbers, it seemed to him that Committee I should remain in being and continue its present work. They must bear in mind that many countries, which were under German occupation, had not been able to get off the mark with war crimes investigations so quickly as others and obviously had only just got their machinery going and cases coming in. It would not be equitable if, before their cases came in, this Commission were to shut down and say "No, we are not going to consider your cases, you are too late". It would also be quite wrong from the point of view of pure justice that a bad war criminal who happened to come on the list later should escape justice while others had been executed in large numbers. He thought that there was a good case for Committee I continuing so long as there was a continuous flow of cases coming in from various countries. It seemed to him that the right moment to decide when Committee I should close down was when they found that the work was finishing and was near completion and when the flow of cases had been reduced to a mere trickle. It was very difficult to estimate, but they might make the middle of the year as the target date. That would not mean the end of the work of the Commission - the closing down of Committee I would greatly reduce the work of the Commission, but would still leave its very important work as a reporting and co-ordinating agency. He did not think it would be necessary that the Commission should thereafter meet very frequently but his personal view was that it should remain in being.

In reply to Mr. Burdekin, Sir Robert thought it would be more accurate if he compared the figures £21,850 and £22,350, rather than the figures £15,300 and £22,350, which was the Budget for the present year. It was true that the actual expenditure was some £7,000 less than the Budget. A budget is always made with a certain amount in hand; they could not go a second time to Governments and ask for an additional amount - it was difficult enough to extract one subscription, but if they had to go back a second time, their situation would become rather perilous. They did not anticipate that they would have to spend as much as £21,850 even if the Commission went on until the next financial year but they must keep, as he was sure Mr. Burdekin would agree, a certain amount in hand, so he would ask him to compare those two figures and not the £15,300.

COLONEL SPRINGER said he did not know whether his Government had concluded to what length of time the Commission should go on at the present time or whether any consideration had been given to the specific amount of money that should be set up for operating the Commission - he knew from the way that the matter was handled that it would be easier for him to present to his Government and for them to present to Congress, the amount for a whole year, even though the Commission's activities might be

terminated in six months, rather than have the amount for six months have to go back and ask for more funds afterwards. It seemed to him that should be possible to terminate the work of the Commission earlier than 31st March 1948, but thought it better to have an estimate for the full year. He thought the Finance Committee had had this in mind when the year was decided upon as the basis for contributions and he thought it quite logical to have the Budget presented for a full year.

MR. BURDEKIN said he did not wish to press his point but at the same time was not sorry for having raised it as it had elicited valuable statements. His Government's additional contribution was only £30, 6/-, he was not questioning it from that point of view.

MR. DAO thought it was the smallest budget for any international commission he knew and he felt there was a very strong case for the continuance of the Commission's work so long as cases were being received. Although he doubted whether his Government had made any decision on the question he believed that they would accept the Budget, with one exception of a technical point. As he had noticed in the column of estimated expenditure for 1946-47, the last item "Unforeseen expenditure" was estimated at £450, if the expenditure had been incurred it could no longer be regarded as unforeseen.

SIR ROBERT CRAIGIE explained that in Budgets prior to 1946-47 a sum was allowed for "Unforeseen Expenditure" although a sum of £5,000 was allowed for "Miscellaneous Expenditure" under Item 10.

At the suggestion of Mr. Dutt, the sum of £5,000 referred to was divided as to (a) £1,000 "Miscellaneous Expenditure" and (b) £4,000 "Unforeseen Expenditure" which were in reality reserve funds for two totally different objects. "Miscellaneous expenditure" included a variety of comparatively small items which could not conveniently be shown in detail in the Budget. "Unforeseen expenditure" was self-explanatory and it was necessary to make allowance for this item when budgeting for a year in advance.

The £450 to which Mr. Dao referred included a sum of £209 which had been paid to the United Kingdom Government for beneficial rates at the Courts and Church House for the period February 1944 to January 1946. This liability was entirely unforeseen as no mention had been made that the Commission were to be responsible for the payment of the beneficial portion of the total rates paid. The remaining amount of £241 has been included in this item to cover the reimbursement of the beneficial portion of the rates in respect of accommodation in Lansdowne House for the fiscal year ending 31st March, 1946, and might therefore be termed an estimate of expenditure, as the actual amount of the demand had not yet been received.

MR. GLASHEEN, M. DIMITSAS, MR. AARS RYNNING, DR. SCHRAM NIELSEN AND COLONEL MOUTON thought their respective governments would have no objection to the preliminary budget.

PLAN FOR THE WRITING OF THE HISTORY OF THE COMMISSION (DOC. C. 245)

THE CHAIRMAN said he wanted to inform the Commission that the Committee appointed had been looking into this question and - subject to the sanction of the Commission - contemplated asking Dr. Mayr-Harting to become a temporary member of the staff for the purpose of helping to prepare this History. They all knew Dr. Mayr-Harting and he thought everyone would agree that they were very fortunate in getting his help in the very serious business of preparing the History of the Commission. He therefore asked, on behalf of the Finance Committee, that the Commission should authorise that Committee to make a contract with Dr. Mayr-Harting. This was agreed.

COLONEL MUSZKAT put forward certain proposals concerning the writing of the History of the Commission, which the Chairman suggested should be given in writing to the editorial committee for their information and consideration. This, Colonel Muszkat, agreed to do.

M. DE BAER said how grateful they were to their Polish colleague for his constructive help and would welcome similar help from any other members of the Commission not only now but at any time.

MR. DAO said that as the Far Eastern Sub-Commission would render its progress report, an item might be added to the outline of the plan, reviewing the activities of the Sub-Commission.

GIVING INFORMATION AS A WAR CRIME (DOC. C. 243)

SIR ROBERT CRAIGIE, Chairman of Committee III, referring to Doc. C. 243 said that when the report of Committee III was considered at the meeting of the Commission on January 29th, it was found that the Commission was in general agreement with the terms of the report, but considered that the final conclusion was phrased rather too tersely and a Drafting Committee was appointed, consisting of M. de Baer, Dr. Schram-Nielsen and himself. They saw here the results of their labours in the final paragraph of Doc. C. 243 and he could say that they were unanimously in agreement on that text, though he understood Dr. Schram-Nielsen would like to make a small reservation in view of Danish law.

DR. SCHRAM NIELSEN said that he had committed himself not to take any exception to the final draft and he was also ready not to insist on his point, but he would just like to mention it. He did not quite agree with the final wording of paragraph X. It stated: "This is the case if the general conditions which constitute complicity are present, i.e. if the informer knew that his action would lead to the committing of a war crime ...". Dr. Schram-Nielsen stated that he had pointed out to the drafting committee that according to Danish law and to Norwegian law, "complicity" might exist even if the "informer" did not know his action would lead to a criminal result, if he ought to have known this, and he thought it would be very difficult to prove that a man actually knew that his action led to the committing of a war crime. One could never be absolutely certain about such a point. That is why he had suggested that they wrote that "the informer knew or ought to have known". He would also like to mention that in adding the last four lines, the Commission in his opinion went beyond its terms of reference. They had to deal with war crimes, but certainly not to make definitions of the notion of complicity, for afterwards when other lawyers read this paper they might think the Commission was not entitled to deal, in four lines, with the delimitation or definition of "complicity", on which so much had already been written, e.g. by continental lawyers. The definition would not match all the systems of law in the different countries, for example, in this case it would not match the Scandinavian law. Dr. Schram-Nielsen suggested therefore that they either added the words "or ought to have known" or changed the letters "i.e." to "e.g." - he wondered whether that would meet with the approval of other members.

SIR ROBERT CRAIGIE said that there was no attempt to define complicity but for the purpose of Committee I they had tried to give an example of what they had in mind. Some statement would be necessary if they were to take what was the real intention of this document, which was to help Committee I in making its decisions. He thought that to change "i.e." to "e.g." would meet Dr. Schram-Nielsen's point and he personally had no objection to such a change being made.

DR. SCHRAM NIELSEN said he would be very grateful if the change met with the approval of other members of the Drafting Committee.

M. DE BAER also expressed his agreement.

MR. BURDEKIN said that he considered the report (Doc. C. 243) a distinct improvement on the previous draft (Doc. C. 240).

COLONEL MUSZKAT said that in his opinion Dr. Schram-Nielsen's proposal changed the sense of the paragraph and he thought it important to keep the "i.e." because this, in his view, gave the correct position under International Law. It was also in accord with Polish municipal legislation.

than have the amount for six months afterwards. It seemed to be the work of the Commission earlier to have an estimate for the Committee had this in mind when for contributions and he thought presented for a full year.

It wish to press his point but raised it as it had elicited a national contribution was only 33% point of view.

smallest budget for any international strong case for the continuation of being received. Although no decision on the question of Budget, with one exception of a sum of estimated expenditure of "penditure" was estimated at 23% could no longer be regarded as

that in Budgets prior to 1944 "penditure" although a sum of 25% "e" under Item 10.

the sum of £5,000 referred to as "Expenditure" and (b) £4,000 as "reality reserve funds for the expenditure" included a variety of not conveniently be shown in "was self-explanatory and in item when budgeting for a year

ferred included a sum of £209,000 for beneficial rates in February 1944 to January 1945. Mention had been made that the payment of the beneficial amount of £241 has been made of the beneficial portion of the House for the fiscal year before be termed an estimate. The demand had not yet been made.

LARS RYNNING, DR. SCHRAM NIELSEN said that active governments would have

THE COMMISSION (DOC. C. 243)

inform the Commission that it was this question and - subject to the related asking Dr. Mayr-Harting for the purpose of helping Dr. Mayr-Harting and he thought fortunate in getting his help. The History of the Commission Committee, that the Commission to make a contract with

in proposals concerning the which the Chairman suggested a committee for their information agreed to do.

DR. SCHRAM NIELSEN wished to stress that Scandinavian Law was also in accordance with International Law and that the proposed text of Doc. C. would not be in accordance with Scandinavian Law if they kept the letters "i.e."

DR. SCHWELB said in explanation, that when Dr. Schram-Nielsen brought up his objection in the drafting committee and stated that Scandinavian law differed from other leading systems in that in Scandinavia negligent conduct ("ought to know") was sufficient to constitute criminal liability for grave crimes, he had tried to examine the principal penal systems of other countries. He had found that, in addition to English law, French law, pre-Hitlerite German law, Austrian law and the law of the Austrian succession States were all based on the principle that only a man who had mens rea or dolus, who had positive knowledge of the criminal character of the act would be guilty of complicity in any grave crime, and therefore the proposal of the Drafting Committee as it stood, was not contrary to the general principles of law recognised by civilised nations in the meaning of Article of the Statute of the International Court of Justice, although the law of the Scandinavian countries, as Dr. Schram-Nielsen had said, differed at that point. He did not think, however, that changing "i.e." to "e.g." made the report contrary to these general principles, the operative phrase being "if the general conditions which constitute complicity are present". In doing so, in deference to the Scandinavian objection, they did not lay down the rule that actual knowledge was in any circumstances necessary, but they left room for the application of such municipal legal orders which considered complicity to be established in a case where positive guilty knowledge could not be proved. Therefore he did not think there could be an objection from the point of view of International Law to Dr. Schram-Nielsen's proposal.

THE CHAIRMAN said it was better to allow a certain amount of elasticity in stating a general principle and that, he thought, was Dr. Schram-Nielsen's point. He personally rather preferred such things laid down on rather loose terms, because he had a rooted objection to too dogmatic or exhaustive a definition. The report was adopted subject to the amendment stated being made.

FORMAL APPROVAL OF UNWCC LIST NO. 51.

The Commission's List No. 51 was formally approved.

THE GENERAL MARINOV CASE

M. DE BAER gave an explanation of the case, on the lines of Doc. C.246 and his own memorandum Doc. A.36.

Colonel MUSZKAT proposed the adjournment of the decision, as was asked by Marinov's counsel in Doc. A.37 and to await further evidence which would enable the Commission to reverse its original decision. The fact that Marinov was being retained by the Bulgarian Government in a diplomatic function indicated that the Government was convinced of his innocence.

M. DIMITSAS remarked that the Commission was not a court where defendants could produce evidence and he thought that if Marinov was certain of his innocence, the best way for him to prove it was to surrender himself to the Greek authorities and to prove it in open court accessible to everybody. He did not see any reason why the decision that his name remains on the list should be postponed. If Marinov produced further evidence then the Greek Government will be forced to produce still further evidence to fight the evidence produced by Marinov and the matter would drag on indefinitely.

The CHAIRMAN said that the Commission had got to remember that the functions of the Commission covered no final adjudication. It was not a Court to decide after hearing a whole case and evidence from both sides, and it would be wrong to pretend to exercise any such functions. The Commission had no machinery for doing that, the mandate given to it was perfectly clear, they had to examine charges brought by the complaining state and come to a conclusion whether there was a prima facie case. That had

The CHAIRMAN said that that depended on matters external to

Sir Robert CRAIGIE said he did feel, himself, that this Commission would put itself in a wrong position if they were to say they had taken this decision and that it was final and whatever anybody brought forward they were not going back upon it.

Dr. SCHRAM-NIELSEN asked whether Committee I had considered the material or evidence supplied by the listed persons in any other case, or if that had never happened before?

M. de BAER said they had done so once or twice before when the accused person through his barrister, or the accusing Government had asked to have his name removed. There was a Yugoslav case against one MADORI who was accused of having burned down the University of Ljubljana; he was in a detention camp and had asked for his name to be removed from the list of war criminals. There was the case of a man accused of having committed atrocities in Belgium in 1944, who was listed at the instance of the Belgian Government. When he was arrested he said that he had not been in Belgium but that he and his division were on the Russian front at the time; he had been wounded two days before and he was in hospital on the day when the crime was committed. The Belgian Government asked to retract the charge and have the man released.

The CHAIRMAN said that this was an obvious case and there was an application by the accusing Government.

Dr. SCHRAM-NIELSEN thought that if the position was such that they never considered material or evidence supplied by the defendant it would make it easier and they could say that according to the practice only evidence supplied by the complaining party was considered and therefore the decision of Committee I would not in any way prejudice the final judgment.

The CHAIRMAN said these were only prima facie cases. That was suggested was that the Commission might, in very bad cases, correct its list and so far as he knew that had never happened and that Committee I had never entertained evidence from the defendant.

M. de BAER remarked: except in the case of Madori, which was still under consideration.

The CHAIRMAN said that was rather vague and asked to have a list of such cases. He thought Dr. Schram-Nielsen very properly wanted the Commission to know exactly what had happened in the past.

Sir Robert CRAIGIE said that Committee I had never taken the line, and he thought that it would be unwise for the Committee to take the line, that they were unprepared to consider any evidence brought before them.

The CHAIRMAN thought they were rather at loose ends and requested Dr. Schwelb to prepare, in the absence of Dr. Litawski, who was indisposed, a careful statement on this question.

Dr. SCHWELB, speaking in the absence of the Secretary to Committee I, said that, as far as he knew, it had so far never been done that a person had been removed from the list against the wish of the accusing Government. The only case of a nature similar to that of Madori was the case of Madori, where a decision on Madori's application to remove him from the list had not yet been given by Committee I.

Colonel MUSZKAT repeated that the best way would be to wait until the Bulgarian Government will have replied to the charges which the Greek government was now prepared to transmit to them through the Commission.

that that depended on matters external. I said he did feel, himself, that he was in a wrong position if they were to say that it was final and whatever they were going back upon it.

asked whether Committee I had considered the listed persons in any case opened before?

had done so once or twice before. I had a barrister, or the accusing Government. There was a Yugoslav case about having burned down the University of a camp and had asked for his name. There was the case of a man in Belgium in 1944, who was a Government. When he was arrested in Belgium but that he and his division had been wounded two days before the crime was committed. I had to retract the charge and have the man released. At this was an obvious case and the Government.

I thought that if the position was such that evidence supplied by the defendant would say that according to the prosecuting party was considered as not in any way prejudicial to the case.

These were only prima facie cases. In very bad cases, one might say that had never happened and that came from the defendant.

Except in the case of Madori, which

was rather vague and asked to be clarified. Dr. Schram-Nielsen very properly said that had happened in the past.

that Committee I had never taken. It would be unwise for the Committee to be asked to consider any evidence in the case.

They were rather at loose ends in the absence of Dr. Litawski, who was the question.

In the absence of the Secretary, I knew, it had so far never been decided against the wish of the Commission a nature similar to that of the case on Madori's application to be considered by Committee I.

that the best way would be to have replied to the charges and then to transmit to them the

M. DIMITSAS said his Government wished to know as soon as possible the decision about the status of Marinov.

The CHAIRMAN said that the Greek Government would know the decision quickly, but not that day, the Commission was not prepared to give any decision that day.

M. de BAER said that he would like to point out that he had not said a similar decision had been taken, but he had said that some accused had protested against their inclusion in the list and that the Committee considered the evidence submitted by the defendant, which was what Dr. Schram-Nielsen wanted to know.

Dr. SCHRAM-NIELSEN said that what he wanted to know was, had any name ever been deleted on the basis of evidence submitted by the defendant against the wish of the charging Government.

The CHAIRMAN said that according to Dr. Schwelb's statement, there was no doubt about that question and he thought the answer was that they had better say that it had never happened.

Dr. SCHRAM-NIELSEN said that it seemed to him an easy way to get out of the matter to say that they had never considered contrary evidence.

M. de BAER said that was contrary to fact; they had considered the evidence submitted by the Bulgarian Government and Marinov and the Bulgarian Government knew that they had considered it so he felt that they could not say that.

Sir Robert CRAIGIE said that they had considered evidence produced by both sides but had never been convinced by anything produced by the defendant sufficiently to warrant their taking a name off the list. They had never taken anybody off the list on the grounds of complaints received from the defendant or his lawyer. He did not think that this affected the case in question.

Colonel MUSZKAT again suggested that, as the Bulgarian Government had not got the charges in the possession of Committee I, they should postpone their reply to the Bulgarian Government until the Greek Government had transmitted the charges to them.

M. de BAER said he had nothing against postponing the reply for a week but the situation was really and truly that Marinov must know the charges against him because he had answered the charges.

M. DIMITSAS remarked that the charges had been printed in the newspapers, both French and English.

The CHAIRMAN said that his proposal was that at their next meeting, which he hoped would be next Wednesday, that they should definitely decide what answer they should give to the Bulgarian Government and to Marinov's lawyer, and he thought that they should have an opportunity of considering the precise terms of the draft of the additional paragraph which Sir Robert had suggested, and that would be laid before Committee I before next Wednesday and before the next meeting of the Commission, and the views of Committee I would then be formally and precisely before the Commission and they would then formally and decisively determine what answer to give.

Mr. BURDEKIN said that it seemed to him that it was not made sufficiently clear in the letter before them that the Commission was not a court but could only come to a decision on whether there was or was not a prima facie case and he thought that this point could be developed.

Sir Robert CRAIGIE thought this a very good point and suggested that this matter be considered in the meeting of Committee I to be held the next day.

UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF MEETING

HELD ON

WEDNESDAY, 12th MARCH, 1947.

AT 3 P. M.

Chairman: Lord WRIGHT

Also present: Sir Robert CRAIGIE
Colonel SPRINGER
accompanied by
Mr. KINTNER
M. MAILLARD
Mr. DAO
Mr. BRIDGLAND
M. de BAER
Mr. HORNE
Dr. SCHRAM NIELSEN
M. DIMITSAS
Commander MOUTON
Mr. BURDEKIN
Colonel MUSZKAT
Dr. ZIVKOVIC
accompanied by
Mr. ZIMONIC
Mr. AARS-RYNNING

Apologies were received from:

Dr. NEULANN
Lieut. Colonel BARRATT

Australia

United Kingdom
United States of
America
" " " "

France
China
Australia
Belgium
Canada
Denmark
Greece
Netherlands
New Zealand
Poland
Yugoslavia

Norway

Czechoslovakia
Office of the
Judge Advocate
General.

MINUTES

Minutes of Meeting held on 29th January (H.122) were approved and signed.

Amendments to Minutes of Meeting held on 5th March (H.123) had been received from Sir Robert Craigie, Dr. Schram-Nielsen, Mr. Burdekin, M. de Baer and Mr. Dao and would be incorporated in the final text.

GENERAL MERINOV'S CASE (DOCS. C.249, C.246 and A.36)

THE CHAIRMAN said that the text of the proposed letter had been carefully revised and considered by Committee I which proposed the wording contained in Doc. C.249.

SIR ROBERT CRAIGIE added that the two alterations suggested at the last meeting of the Commission had been made - apart from various verbal changes - to make it clear that the United Nations War Crimes Commission was not a Court of Law, to make clear the scope of the Commission's decision and to indicate that the Commission kept the door open, in case the Bulgarian Government had any further evidence to produce which had a definite and substantial bearing on the Commission's decision.

THE CHAIRMAN asked the Secretary-General to read a telegram which had been received from the Bulgarian Prime Minister - M. Dimitroff.

THE SECRETARY GENERAL read the following translation of the telegram:

"RIGHT HONOURABLE LORD WRIGHT OF DURLEY, CHAIRMAN, UNITED NATIONS WAR CRIMES COMMISSION LANSDOWNE HOUSE BERKELEY SQUARE LONDON.

BULGARIAN GOVERNMENT FOR THE REASONS GIVEN WHICH HAVE BEEN DULY VERIFIED CONSIDERS IT ABSOLUTELY UNJUSTIFIABLE THAT GENERAL MARINOV SHOULD BE INSCRIBED ON THE LIST OF WAR CRIMINALS STOP ON THE CONTRARY HE TOOK PART AS COMMANDER IN CHIEF OF THE BULGARIAN ARMY IN THE WAR AGAINST HITLERITE GERMANY.

THE BULGARIAN GOVERNMENT LIKES TO THINK THAT THE COMMISSION WILL EXAMINE THE QUESTION OBJECTIVELY AND WILL NOT ALLOW A FLAGRANT INJUSTICE TO BE DONE TO THE BULGARIAN PEOPLE WHO REGARD GENERAL MARINOV AS A WORTHY AND HONOURABLE MAN OF ACTION.

GUEORGUI DIMITROFF PRESIDENT BULGARIAN COUNCIL OF MINISTERS."

THE CHAIRMAN invited the present members of Committee I to say whether they saw any reason in that telegram to depart from the course they had already decided to adopt.

M. de BAER did not think so.

SIR ROBERT CRAIGIE said that there was no reason, so far as he was concerned, to depart from the course taken. The point was, really, that the Commission was retaining General Marinov's name on the list with regret and they sympathised with the Bulgarian Government's position in the matter. They had considered all the charges which were brought before this Commission, and on the basis of those charges, Committee I had unanimously arrived at the decision that their earlier decision to place this man's name on the list must remain.

MR. KINTNER said that, as a member of Committee I, he wished to support what Sir Robert had said and to state that they believed, under the task assigned to Committee I, which was purely the examination of the evidence filed by member governments, and with the addition in this case of evidence presented by the Bulgarian authorities, that a prima facie case had been made and they therefore saw no reason why Committee I should alter its previously taken action.

THE CHAIRMAN said the result was that the Commission decided that this letter, in the form before it, should be sent out to the Bulgarian Government.

THE SECRETARY GENERAL enquired whether he had the Commission's authority to inform General Marinov's lawyer, who had come to see him last week, of the relevant extract from this letter.

SIR ROBERT CRAIGIE suggested that time should be given for the letter to reach the Bulgarian Government, through the United Kingdom Foreign Office before its substance was communicated to Marinov's lawyer.

M. de BAER asked whether they could send General Marinov's lawyer a copy of the whole letter once it had reached the Bulgarian Government.

THE CHAIRMAN said that this letter could not be given to General Marinov's personal lawyer. He thought the correct form was, as Sir Robert had said, that he should be given the relevant extract at a time when, in the natural course of events, the Bulgarian Government had received this letter through the agency of the Foreign Office.

SIR ROBERT CRAIGIE said that he would ask the Foreign Office to send it on as quickly as possible, by telegram or air mail, so that it would be presumed to reach the Bulgarian Government very soon, and they could ask to be informed of the date of its delivery to the Bulgarian Government.

EXTRADITION OF A WAR CRIMINAL FROM A NEUTRAL COUNTRY (DOC. A.35).

on
DR. SCHUELB, called upon by the Chairman, reported the position on the lines of Doc. A.35. He added that after A.35 had been circulated, the Polish member of

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DR. SCHWELB, called upon by the Chairman, reported ^{on} the position on the lines of Doc. A.35. He added that after A.35 had been circulated, the Polish member of

the Commission had, in a letter, expressed his approval of the Czechoslovak suggestion. Perhaps he could add already at this stage Lord Simon - who was then Lord Chancellor of England - had given a detailed account of the steps undertaken by the great Allies during the war with a view to influencing the policy of neutral states, in a statement in the House of Lords, on 7th February, 1945. Dr. Schwelb gave a summary of Lord Simon's report.

THE CHAIRMAN thought it unfortunate that the Czechoslovak Government, who was primarily interested in this matter, should not have been represented.

M. de BAER recalled the draft conventions concerning the surrender of war criminals both between the Allies and in relation to neutral states which had been prepared by the Commission in 1944. His country was particularly interested in this question of the surrender of war criminals, and they were very much interested in the surrender of quislings - the Belgian Quisling Degrelle was at present in Spain and obtaining harbour there. He saw the point of the Czechoslovak representative, but doubted that this Commission could usefully intervene in the specific case of one individual and was more in favour of a general recommendation.

DR. ZIVKOVIC said he felt very strongly on the lines of this paper and recalled the case of Bastianini. As in the Czechoslovak case, they had applied for a certificate and when it was delivered to them they had conveyed it to the Swiss Government through diplomatic channels. Then, a letter was sent by the Commission to all the member governments asking them, if they saw fit, to assist by making representations to the Swiss Government. He could confidentially say that when the British Government was approached by a Swiss minister in London, who went to see a high representative of the Foreign Office, this high representative told him quite clearly that in the opinion of the British Government the man should be handed over to Yugoslavia, but even after this intervention nothing happened. If some action was contemplated by the Commission it would have to be very strong. He did not suggest what kind of action should be taken, but thought that they should do something to induce neutral governments, especially those who had become members of the United Nations lately, to hand over war criminals. He also referred to the Resolution of the General Assembly of the United Nations of February, 1946. There was absolutely no justification for refusing to hand over a war criminal whose guilt had been established by the United Nations War Crimes Commission. He felt that they should adopt some recommendation and probably undertake two sorts of action - one from the UNWCC itself, and the other through diplomatic channels.

COLONEL MUSZKAT spoke in favour of passing a resolution which might lend some assistance to the request of the Czechoslovak Government.

SIR ROBERT CRAIGIE thought they probably all agreed that it was unfortunate if persons accused of serious war crimes could take refuge in neutral countries. It rather defeated to that extent the purposes for which the Commission had been set up. At the same time they must remember that so far as the Federal Government of Switzerland was concerned this question of asylum had always been one to which special importance had been attached through the centuries and was therefore a very delicate one to handle. His recollection was that this question of asylum of war criminals was taken up about the time of the formation of this Commission by the U.K. Government and also the United States Government and there was an exchange of views in the course of which the Swiss Government stated that as a general principle it was not their intention to give asylum, or refuse to surrender, war criminals, but that they must judge each case on its merits. So far as the particular case which was before them was concerned he was inclined to think the matter could best be handled through diplomatic channels rather than by the Commission and he was going to suggest to their Czechoslovak colleague the desirability in the first instance of approaching the governments of the Powers which had been in touch with the Swiss Government on this question and asking them whether they had received any assurances and what in fact those Governments recommended; that would be the first step. He was sure that as far as the U.K. Government was concerned the Czechoslovak request would receive serious consideration if put forward in that way. There was the second point raised by M. de Baer - whether the Commission should pass a resolution in general terms applying to all extraditions from

neutral countries. He thought such a resolution justifiable, but was not quite so sure that it would have any effect.

DR. ZIVKOVIC said that in February, 1946, on the occasion of the first Assembly of the United Nations, a resolution was passed by the Assembly and the last part of the resolution contained an appeal to the neutral governments to surrender war criminals; he thought that in view of the difficulties still existing in neutral countries, they might also adopt a resolution with reference to the resolution passed in 1946 by the Assembly of the United Nations, with a sort of resolution to enforce the principles laid down by the United Nations on the occasion of their first meeting in London.

COMMANDEUR MOUTON thought that passing the resolution by the Commission would not have much success. He agreed with what Sir Robert Craigie said about diplomatic channels and asked whether a letter could be written to the United Nations.

COLONEL MUSZKAT pointed out that the Czech Foreign Office had already taken steps through diplomatic channels and the fact that they had been unsuccessful was the reason why they approached the Commission. It would be wrong for this Commission not to take a decision in this matter which was of very great importance.

SIR ROBERT CRAIGIE thought the only diplomatic step taken by the Czechoslovak Government had been direct with the Swiss Government. His suggestion was that they should now approach the United Kingdom and United States Governments which he believed had conducted discussions with the Swiss Government in this connection. This was a further step he was suggesting.

THE CHAIRMAN asked whether any trouble of this sort had arisen with regard to Sweden. Spain, they had heard, had not responded to the various requests nor had Argentina.

COLONEL SPRINGER did not believe the United States authorities had had any difficulty in obtaining their war criminals for trial. He was uninstructed and was not as familiar with the background as many of the other members there. Sir Robert's suggestion of using diplomatic channels would possibly be more appropriate and effective than Commission action in this case.

THE CHAIRMAN thought it was undoubtedly difficult to come to any decision as to what was best to be done and it was still more uncertain what would be likely to happen if the Commission took upon itself to make representations on its own responsibility to the various neutral governments. He confessed he was sceptical of the results likely from anything the Commission might do. He thought that something might be achieved by diplomatic procedure and it might be possible to discover what exactly had been done diplomatically in the past. The upshot would seem to be to adjourn this discussion until a fortnight's time in the hope that members of the Commission would do their best to obtain all the information which their governments might have on this question and also to inform the Commission how far their governments were prepared to communicate that information to the Commission and to give the Commission any authority to inform anyone outside of its walls what was the exact position on these questions. It seemed to him, and was confirmed by his experience in the past, that the Commission per se - unassisted by diplomatic channels was not likely to achieve anything on this very difficult question.

SIR ROBERT CRAIGIE and M. DE BAER entirely agreed with the Chairman's suggestion to adjourn the discussion for a fortnight.

MR. DAO entirely agreed with the suggestion and said that China would see what they could do to help.

MR. BURDEKIN felt there was much to be said for the proposition put forward by Sir Robert Craigie, that the matter might be advanced somewhat by representations being made through diplomatic channels by the powers who had already dealt with the matter. He asked whether a resolution in general terms expressing sympathy with the Czechoslovak Government could not be passed.

THE CHAIRMAN was not in favour of the passing of any resolution but could see no harm in the Commission authorizing the Secretary-General to write a letter to the Czech representative regretting his indisposition and very briefly stating the purport of this discussion.

MR. BURDEKIN said this would entirely achieve the object he had in mind.

The discussion was adjourned for a fortnight.

RESOLUTION ADOPTED BY SUB-COMMISSION, NANKING, on 4th March, 1947(Doc.C.251)

THE CHAIRMAN said that the Commission was asked to approve the resolution adopted by the Sub-Commission circulated as Doc. C.251.

MR. BURDEKIN referred to the minutes of the Far Eastern and Pacific Sub-Commission (S.M. 33) where very big numbers of complaints still under investigation were mentioned and asked how this could be reconciled with a statement in the proposed resolution that the sub-Commission considers it has completed its task.

M. DE BAER^{also} asked for more information to reconcile the two statements.

MR. DAO said he was not in a position to give an explanation.

SIR ROBERT CRAIGIE referred to the previous letter of 20th January, 1947, from Mr. Dao to the Secretary General, where reference was made to the decreasing number of cases being submitted to the sub-Commission.

THE CHAIRMAN said that probably the Australian and American Governments were not submitting cases to the Sub-Commission.

MR. BRIDGLAND agreed as far as Australia was concerned.

The Resolution Doc. C.251 was unanimously adopted and it was agreed that the Sub-Commission at Nanking should be wound up as at the 31st March 1947.

SUBMISSION OF CASES BY ETHIOPIA (DOCS.III/50, I/76, I/81, Committee I Minutes No. 89)

THE CHAIRMAN introduced the discussion by referring to the circulated papers and minutes.

M. DE BAER said he was of the opinion that the Commission should not take up the matter of crimes committed in 1935 in Ethiopia by the Italians. There might not only be reasons of policy against this, but in his opinion, as Ethiopia was not a member of the Commission, and as long as they were not, he thought it would be out of order if the Commission should take up this question. If and when Ethiopia became a member the question might be re-considered.

THE CHAIRMAN mentioned that the Commission had written replies from Canada, Australia, Luxembourg and Poland, while Dr. Schram-Nielsen was hoping to get instructions in the near future.

DR. SCHRAM NIELSEN said that he had instructions to the effect that the Danish Government did not feel itself so interested in this matter that it would like to take any special line, but it had merely instructed him to follow what could be called the general opinion of the Commission, so he took it that he should abstain from voting.

COMMANDER HOUTON had instructions from his Government to say that it was not in favour of the Commission taking this task on its shoulders.

COLONEL SPRINGER thought the United States Government felt that it was not intended that the Commission should have jurisdiction over the matter of war crimes which may have been committed in the Italo-Ethiopian war and therefore should not assume jurisdiction over these war crimes.

MR. HORNE referred to a letter he had written to Lord Wright stating that the Canadian Government would be prepared to support a decision giving the Commission jurisdiction over war crimes committed in connection with the Italian invasion of Ethiopia in 1935-36, and where also reference had been made to the accepted interpretation of Article 107 of the Charter of the United Nations and to Article 93 of the International Civil Aviation Convention. This letter was however merely a general indication of his Government's readiness to support any decision that the Commission was prepared to take in favour of assuming jurisdiction, if it saw fit to do so, and he thought he should stress that last condition, because it seemed to him that their opinion was formed with reference to certain articles of the Italian peace treaties, and certain articles of the Civil Aviation Conference of 1944, which would lend support to the view that they could go back to the time when these atrocities were committed. He thought he could say for his Government that they would not take a stand against a decision of the Commission not to take jurisdiction, because they did lean to the view that it was a matter of policy, and if it was decided by the Commission that policy was against jurisdiction then they would follow suit.

He would be very glad if the Commission could make its views known as to whether or not it considered fit to do so, and was capable and wished to assume new burdens, because his Government was not aware of the attitude of the Commission.

MR. BRIDGLAND stated that the Australian view was that the Commission should consider cases of war crimes which had been committed in Ethiopia.

COLONEL MUSZKAT referred to his letter dated 3rd March, 1947 where he had adduced the following reasons in support of the proposition that the Commission should assume jurisdiction and list the perpetrators of crimes committed during the Italo-Ethiopian war. He referred -

1. to the Chinese reservation in the inaugural meeting of the Commission on 20th October, 1943;
2. the Commission's decision of 30th January, 1946, where the Commission has expressly assumed jurisdiction over crimes against humanity;
3. to the Control Council Law No. 10, which indicated the general attitude of the Allied Powers;
4. to the use of the term "European Axis" in the London Agreement of 8th August 1945;
5. to the fact that the theory that the whole war by the Axis was one war has been adopted by the four Great Powers;
6. to the point that it was impossible/^{not}to consider the fact that the Ethiopian Government has never recognised the annexation of the country by Italy and to the reference thereto in the British-Ethiopian Agreement of 31st January 1942;
7. to Article 38 in connection with Articles 43 and 45 of the Italian Peace Treaty.

He further added that refusal to accept Ethiopian charges might be understood as discrimination against one of the Allied nations which had adhered to the London Agreement, and that it would be wrong to create a situation in which all the Allied nations, except Ethiopia, when submitting to the Italian Government requests for extradition should have behind them,

not only Article 45 of the Peace Treaty, but also the support of the Commission.

M. DIMITSAS stated that his Government were against taking action on crimes committed before 1939.

MR. AARS RYNNING had been instructed by his Government to vote for any decision he might deem fit, after having heard the discussion of the Commission and he personally would support the view put forward by Sir Robert Craigie that the Commission should not deal with this matter.

MR. BURDEKIN stated that he had asked for instructions from his Government but regretted that he had not received any up to the present time, so would have to abstain from voting.

DR. ZIVKOVIC had already had the opportunity of expressing his views on this question when it was discussed in the Commission some months ago and he always considered that any war waged by the Axis as a whole, or by its individual members, was fully within the competence of this Commission, if the victim government involved expressed such a wish. In the Chinese case, cases were being examined as far back as 1931. In connection with the resolution which was adopted by the Commission in July last year, he was unfortunately away, because if he had been here he would have drawn the attention of the Commission to the fact that the first paragraph of the resolution was inconsistent with the facts.

DR. ZIVKOVIC read from the resolution the part stating that Committee I and the UNWCC had only, up to now, considered cases arising out of the present war. The understanding was, he assumed, that the "present war" was the war which broke out in 1939. This was not correct, because of the Chinese example. He would not consider therefore the Ethiopian war as an isolated case. It was within the general plan of conspiracy by the Axis Powers and if the victim government thought that crimes were perpetrated - and they all knew horrible atrocities had been committed - if Ethiopia applied to the Commission - he did not see what could be the grounds, either legal or judicial, for refusing such a request. He was waiting for his instructions, and he hoped to be able to communicate the official view of his Government in the near future.

M. DE BAER said that as his Government had expressed no opinion on the matter he could not vote.

SIR ROBERT CRAIGIE said that he had expressed his view that, in actual fact, quite apart from the legal question involved - which was certainly not very clear - when this Commission was set up, the intention certainly was that it should deal primarily with cases arising out of the second world war. It was true that in the Far East it had gone back further, but there was a definite continuity of events between the war in China in 1937 and the war in Europe in 1939. He ventured to suggest that the matter was one they could regard primarily from a practical point of view. They did not know when these cases would be brought forward, it might not be for some time and they were moving towards the end of their activities. The opinion of the U.K. Government was that it would perhaps be undesirable that the Commission should, at this stage, assume this new responsibility. They knew that this would not mean that the Ethiopian Government would obtain no redress for their grievances. Under the Treaty they should apply direct to the Italian Government and in case of disagreement the matter would go before the four Ambassadors. What the Ambassadors might do he did not know. They might wish the Commission's assistance at the time to cope with the matter, but perhaps they could leave that until it happened. In the meantime, he did not think they were denying to Ethiopia any redress for its grievances against Italian criminals, if this Commission declared its inability to undertake the responsibility for considering Italian war crimes.

THE CHAIRMAN remarked that it would be taken therefore that the view of the U.K. Government was not in favour of the Commission assuming jurisdiction.

SIR ROBERT CRAIGIE said that was correct.

felt that it was over the matter of Ethiopian war crimes.

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MR. DAO said that he had received instructions that the Chinese Government would not oppose Ethiopia's request, should the Commission take up the question, and he thought he should abstain from voting.

M. MAILLARD said that his Government was not in favour of the Commission considering these cases.

MR. HORNE said that perhaps he should repeat that Canada would be prepared to support a decision to assume jurisdiction, but did not say that the Commission should assume jurisdiction.

As a result of this discussion, it appeared that Australia, Poland and Yugoslavia were in favour of the Commission assuming jurisdiction in connection with the Ethiopian request, while Canada, Denmark, New Zealand, Belgium and China would abstain from voting, the remaining members being of the opinion that the Commission should not assume jurisdiction over crimes committed by the Italians in Ethiopia, in 1935-36.

as THE CHAIRMAN decided that there were so many abstentions, they would renew this discussion at their next meeting.

PROPOSALS FOR A PRIORITY LIST OF WAR CRIMINALS (DOC. MISC. 80)

M. DE BAER said that he was submitting to the members of the Commission the proposals contained in Doc. Misc. 80 and he explained in detail their purpose.

As was known the question had already been put before the Commission a few weeks ago and it was decided to make priority lists. In Committee I they already had a short priority list of about 9 cases. What he wanted to speak about today was not the future but the past and that was where he wanted the Commission's help. It was impossible for Committee I to review the cases of 22,000 people and decide which of these people were to go on the priority list. The request was that every member would ask his government to submit a list of really heinous cases, but no more than 50. Committee I could then prepare a priority list of War Criminals when they had chances of apprehending - cases of really heinous crimes. They would not put on the first priority lists men in respect of whom there was absolutely no chance of finding them in Germany - no indication of identity apart from the name of the accused and perhaps even his unit. There would have to be some indication as to regions where he might be found - where his family were etc. Before putting this proposal before the Commission he would like to say there should not be any misunderstanding, especially as regards the letter he had seen that day from their Polish colleague. There was no question of changing in any way the activities of Committee I. They would go on examining cases as they had done in the past, and in view of this change of policy, Committee I might put on its list collective cases in the way suggested by their Polish colleague. On the other hand their list of priorities would be extremely small - and would be sent to the Control Council, and then, if they had good results, they might send further lists.

SIR ROBERT CRAIGIE entirely agreed with what M. de Baer had said.

THE CHAIRMAN agreed. He thought they had all been most anxious to bring criminals to heel, though they had experienced almost incredible difficulties at first, and it was a matter for self-congratulation that they had done as well as they had. This did not mean that they could not do better and even now it was not too late to improve facilities for identification, localisation, apprehension and he thought that what M. de Baer had suggested was the most practical scheme. He was sure that other members would agree with him when he moved that this proposal should be adopted by the Commission.

SIR ROBERT CRAIGIE said that he would second this motion.

COLONEL SPRINGER said that they were quite in favour of the priority lists.

M. DE BAER pointed out that they did not want on the list people who were already in custody.

COLONEL SPRINGER said that it occurred to him that after the priority list was finally made up, they might decide that there was a more effective way than sending it to the Control Council.

THE CHAIRMAN declared that this was not intended to discourage such machinery. At this late stage, he thought every device and machinery should be brought into effect. He considered M. de Baer's proposal was extremely practical and would have very good results.

SIR ROBERT CRAIGIE stated that the suggestion did not limit the despatch of the priority lists to the Control Commission. It would go to all authorities in addition to the Control Commission.

M. DE BAER explained that they had the promise of the Control Commission that it would search for these people, if the number was small.

PUBLICATION OF WAR CRIMES ENACTMENTS (DOC. C.247)

DR. SCHWELB said that on the 6th November, 1946, this Commission adopted the scheme proposed by Committee III for the publication of war crimes enactments and the Secretariat was charged with the task of collecting them. The paper before the Commission was a report on what had been collected through the kind help of all member governments - particularly the United Kingdom Government, which placed at the Secretariat's disposal all material that would otherwise have been inaccessible, namely English translations of the legislation of the former Axis states. This paper was being laid before the Commission as a report of what had been collected, as an invitation to those members who had not submitted their material to do so and to agree to the general scheme of the contents of the publication.

THE CHAIRMAN said that he had been told that it was thought that these enactments which were collected and set out in the lists would be printed probably by the Stationery Office and that they would come to a volume.

DR. SCHWELB said this would be done when they had all the material from the various countries.

THE CHAIRMAN said they would leave this in Dr. Schwelb's hands. He thought this was an admirable effort. He thought they might all congratulate Dr. Schwelb on this paper. Referring to Volume I of the Law Reports, which had been distributed to the members, he did not think they ever could have produced the reports of which this was the first, if it had not been for the tremendous effort and ability of Dr. Schwelb, and he was sure they might record here the resolution of the Commission giving their cordial thanks to Dr. Schwelb for his work in inaugurating the series of law reports of war crimes trials and for producing the first number.

The resolution was unanimously approved.

The forthcoming history, these reports which would run into many numbers and the volume of enactments, would be a permanent record of the work of this Commission, and it would be a permanent record showing the law which was developed in the course of the life of the Commission, and to a large extent developed owing to the efforts and investigation and the support rendered by the Commission.

DELIBERATE BOMBARDMENT OF UNDEFENDED PLACES (REPORT BY COMMITTEE III DOC. C.250)

SIR ROBERT CRAIGIE stated that the above document was intended for the information of the Commission's Far Eastern Sub-Commission and it would be rather a race to see whether it would get to them before they went out of business.

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PROPOSALS FOR A PRIORITY

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detail their purpose

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the priority lists.

THE CHAIRMAN thought it had a value beyond that and
should be discussed only after more time had been allowed for consideration

SIR ROBERT CRAIGIE said that the paper was drafted for
the Sub-Commission and they had in mind, particularly, Far Eastern crimes.

MR. DAO stated that if it was the wish of the Commission
to adopt this paper he would be quite prepared to transmit it by cable to
the Sub-Commission.

THE CHAIRMAN moved that the Report - Doc. C.250 - be
adopted and that the Chinese representative be requested to transmit it
at his earliest convenience to the Sub-Commission.

This was unanimously agreed.

REPORTS BY CHAIRMEN OF COMMITTEES.

M. DE BAER said that last week Committee I dealt with 70
cases, comprising 369 individuals.

Wright

UNITED NATIONS WAR CRIMES COMMISSION

ADDENDUM to Minutes of Commission
M.125

On page 1 of the minutes of meeting of Commission held March 26th, 1947, M.125, among those present add the name of Dr. Marian Muszkat, Poland and on Page 2 after para. 2, containing a statement by Dr. Neumann and before para 3 containing a statement by Sir Robert Craigie, insert the following statement by Dr. Marian Muszkat:-

"It seems to be desirable that this Commission should pass such a resolution. We cannot remain indifferent in this case, where one of the member governments has acquainted us with a fact which is contrary to our attitude, to the attitude of the United Nations and to declarations of the Swiss Government, also, which has stated that it will not grant asylum to persons who are suspected of having committed war crimes.

"My Government is quite in favour of the Czechoslovak proposal, if the Commission will adopt this, and would be ready to pass it to the Swiss Government through the ordinary diplomatic channels.

"It cannot be excluded that such a resolution passed by the Commission at this time will not be without effect, generally, and will have some influence on other neutral governments and on the future policy of Switzerland - since the Czechoslovak case is not the only instance of failure to surrender war criminals."

May 22nd, 1947.

UNITED NATIONS WAR CRIMES COMMISSIONMINUTES OF MEETINGHELD ONWEDNESDAY, 26th MARCH, 1947.AT 3 p. m.

Present:	Lord Wright	Australia
Also		
Present:	Sir Robert Craigie	United Kingdom
	Colonel Springer	United States of America
	accompanied by	
	Mr. Kintner	
	M. Maillard	France
	Dr. Neumann	Czechoslovakia
	Dr. Schram-Nielsen	Denmark
	M. Dimitzas	Greece
	Commander Mouton	Netherlands
	Mr. Burdekin	New Zealand
	Mr. Aars-Rynning	Norway

Apologies for absence had been received from:-

Mr. Dao	China
Mr. Bridgland	Australia
M. de Baer	Belgium
Mr. Horne	Canada

MINUTES

Minutes of Meeting held on Wednesday, 5th March, 1947 M.123, were approved and signed.

Amendments to Minutes of Meeting held on Wednesday, 12th March, 1947, M.124, had been received from Sir Robert Craigie and would be incorporated in the final text.

EXTRADITION OF A WAR CRIMINAL FROM A NEUTRAL COUNTRY (DOC. A.35 dated 25th February, 1947) CONTINUATION OF DISCUSSION.

THE CHAIRMAN referred to the previous discussion which had taken place on this subject of the extradition of war criminals from neutral countries. He was glad to see that the Czechoslovak representative, Dr. Neumann was present and directed members attention to a recent letter (A.41) which Dr. Neumann had written on this subject, advocating the despatch of a Resolution to the Swiss Government. They would hear Sir Robert Craigie on the diplomatic point of view, but so far as he was concerned he would hesitate to ask the Commission to sanction the sending of a Resolution to the Swiss Government.

SIR ROBERT CRAIGIE said that if it were proposed that the Commission should pass a Resolution, which would then be communicated to the Swiss Government, he was very doubtful of the success of such a step. On previous occasions, when the Commission had passed Resolutions, these had usually been sent for information and possible action to their own Governments and this, he thought was probably the best method. The communication of a Resolution by this Commission to the Swiss Government would not, he felt sure, assist in any way the Czechoslovak Government's application and might indeed do more harm than good. He was convinced that the better method was through diplomatic channels; the U.K. Government had, in fact, been in communication with the Swiss Government on this subject

and he believed that they would give sympathetic consideration to any recommendation from the Government of Czechoslovakia. He entirely sympathised - and was sure that his Government did - with the Czechoslovak request, for if neutral countries were to give protection on a large scale to war criminals one of the reasons why this Commission was set up would be defeated. He also felt it should be possible for the Swiss Government to answer these enquiries as to whether a given individual was or was not in Switzerland, which was one of the main objects of the Czechoslovak enquiry. As he had said he was not in favour of the despatch of a Resolution by the Commission; but if the Commission felt that such a step would be useful he would not object. In reply to a question by the Chairman, Sir Robert Craigie said he could not say whether the Foreign Office would undertake to transmit such a Resolution to the Swiss Government; he thought they would consider that they could not act in the matter until approached by the Government of Czechoslovakia.

DR. NEUMANN thanked Sir Robert Craigie for his observations but said that they had approached the Swiss Government through diplomatic channels and had received no reply; it was for this reason that he had approached the Commission. He could not help thinking that a Resolution, passed unanimously by this International Commission, would have some effect and that the Swiss Government would recognise that an answer should be given.

SIR ROBERT CRAIGIE feared that such a Resolution, however carefully worded, might be regarded by the Swiss Government as reflecting on their attitude and, if so, they might get less information from them than before.

THE CHAIRMAN said that it had been believed that the neutral states would assist the Commission by handing over war criminals who were demanded by the Allied governments; but that hope did not seem to have been fulfilled. His impression was that there had been no surrenders by neutral states.

DR. NEUMANN thought that as no attention had been paid to the Czechoslovak requests in the past the Commission should try the effect of a Resolution. The crimes with which Brüning was charged were common-law crimes and by no means political offences.

M. MAILLARD said that, from a communication he had received from his Government, he believed that his Government was quite in favour of the Czech proposal, as a matter of general policy and principle; even if a neutral state was not able to extradite a criminal, at least some information might be given about him. The French Government was therefore in favour of a Resolution, if the Commission saw fit to adopt one, and would be willing to pass it on through diplomatic channels.

THE CHAIRMAN said that the transmission of a communication by the Commission to the Swiss Government could not be done direct; the proper channel of communication would be through the United Kingdom Foreign Office. As they were located in England they would naturally send it through the British Government.

SIR ROBERT CRAIGIE thought that all they should do was to communicate any Resolution passed by the Commission to their respective governments and ask the latter whether they wished to take any action. So far as his own Government was concerned, he could not promise that they would take any action on a Resolution of the Commission. On the other hand they had said that they would be prepared to consider sympathetically and to support any representations made to them by the Czechoslovak Government. However, there was no reason why two courses should not be combined: the Commission might pass a Resolution in general terms, and this Resolution could be taken up by the governments through diplomatic channels, and in particular by the Czechoslovak Government with the United Kingdom Government.

COLONEL SPRINGER said that they all sympathised with Dr. Neumann in this situation, but his own Government felt that the action should be confined to diplomatic channels between the interested countries, and that a direct approach by the Commission to the Swiss Government would, as the Chairman had said, be inappropriate. Similarly, he believed that, in his

Government's view, a Resolution indirectly aimed at the Swiss Government would likewise be inappropriate.

SIR ROBERT CRAIGIE agreed, but he thought that the Foreign Office would see no objection to the Commission placing its views on record; for instance by passing a Resolution for the information of their respective governments, which would then take such action on that resolution as they thought fit.

THE CHAIRMAN said that what they could do was to pass a Resolution in quite general terms saying that this Commission regretted the action of the Swiss Government, first, in refusing to give information as to the whereabouts of Brüning - in particular whether he was still in Switzerland - and secondly in failing to lend its assistance to the Czechoslovak Government in the matter of surrendering Brüning.

SIR ROBERT CRAIGIE said that an alternative would be a Resolution in general terms which would not mention Switzerland by name.

THE CHAIRMAN agreed that this would probably be better. The Resolution would be on the lines he had just indicated, i.e. that it was desirable that neutral governments should, on request, give information to any of the allied nations, members of this Commission, as to whether any named individual, who had been listed as a war criminal by the Commission, was or was not in its territory, and secondly that the neutral governments should aid the allied governments, as far as possible, in obtaining possession of any such individual who had been listed as a war criminal.

SIR ROBERT CRAIGIE thought that the Resolution should also contain information about the procedure that was followed with regard to persons who were listed by the Commission.

COLONEL SPRINGER said that, in adopting such a Resolution, the Commission was departing from its primary functions and getting into a diplomatic field where it might do more harm than good. He supposed all their governments were interested in securing peace and maintaining the most friendly international relations possible, and though a Resolution of this kind might not disturb these relations, it might do them no good. The Resolution, as initially suggested, sounded as though it might be criticising the Swiss Government unjustifiably, for he remembered a case, which was recently before Committee I, where Switzerland had reported a war criminal whom they had discovered and who had never been asked for. Through their informal report a man had been brought to justice who might otherwise never have been found.

DR. SCHRAM-NIELSEN said that so far as he remembered, there had been one previous case in which they took some steps to get a man (Bastiannini) extradited from Switzerland; but he had never heard the result.

THE CHAIRMAN said that, in view of the opinion of Colonel Springer, his own views and Sir Robert Craigie's, he was not disposed to ask the Commission to pass any Resolution; however, if the Commission wanted to, it was a matter for a member who desired it, to move a Resolution and for the Commission to vote upon.

M. MAILLARD felt that the Resolution should not be communicated direct but should be submitted to the different member governments, leaving it open to them, if they saw fit, to approach the Swiss Government. He felt, however, that the Commission should have an opinion on the matter.

THE CHAIRMAN requested M. Maillard to formulate a resolution and put it to the Commission.

M. MAILLARD said that he had not prepared a text, but he would submit one at another meeting if it was desired.

SIR ROBERT CRAIGIE repeated that his Government were opposed to the Resolution, mainly because they did not think it would do any good, and might do harm. If, however, the majority of the Commission felt that a Resolution should be passed he would agree to it, provided it was in terms he could accept. He felt such a Resolution should be in general terms; in case it was going to be communicated to neutral countries it should state what it was that the Commission did in listing people, and that when a person was placed on the Commission's list it meant that there was a prima facie case against that individual. They could go on to say that there had been cases lately, when a man who had been listed had not been surrendered, and no information had even been given, that this was apt to defeat the purposes for which this Commission was appointed. They hoped, therefore, that neutral countries would give careful consideration to this matter. He added that the Resolution would need very careful drafting.

DR. ZIVKOVIC said that he was fully in agreement with the passing of a general Resolution for two reasons: first, because Switzerland was not the only neutral government which did not comply with the requests of various allied governments for the surrender of war criminals - there was the Belgian case with S. in concerning Degrelle; and secondly because the individual wanted by Czechoslovakia was not the only war criminal in Switzerland. They had heard of two other cases with the Swiss Government which had led to no successful issue. As to the terms of the Resolution, he was in agreement with the outline given by Sir Robert Craigie. It should be carefully drafted and preceded by a statement to the effect that the Commission was carefully examining all cases before listing and that, so far, neutral governments had not passed on information or surrendered persons requested by the United Nations Governments. They might also make reference to the Resolution, of which he could supply the text, passed by the United Nations Assembly in February, 1946, in London. If there was to be a vote he would vote in favour of the Resolution.

THE CHAIRMAN said that they would not take a vote that day. If it was desired to pass a Resolution it would need very careful consideration before its terms could be agreed upon.

COMMANDER MOUTON asked whether the Swiss Government had, in 1944, replied to the notes of the British and American Governments on the question.

DR. SCHWELB said that the answer was not a diplomatic reply; it was a statement made in the Swiss Federal Council in the form of a written answer to a question by a member of Parliament to the effect that Switzerland was not prepared to grant asylum to persons who had committed acts contrary to the laws and customs of war.

DR. ZIVKOVIC thought the statement had been made in November, 1944.

DR. SCHWELB said that this was correct and added that it was reported in Hansard (House of Lords) of the 7th February, 1945.

COLONEL SPRINGER said that he had the text of the statement, dated 15th November, 1944, made in the Swiss Parliament, it read:-

"In accordance with a long series of precedents which are to the honour of Switzerland, the Federal Council intends to exercise the unquestioned right of a sovereign state to give asylum to a fugitive whom it considers worthy thereof. It does not, however, feel disposed - even in cases involving the risk of death - to authorise without examination refuge

prepared a text, but it was desired.

his Government were they did not think it would be, the majority of the passed he would agree to it. He felt such a Resolution going to be communicated it was that the Commission was placed on the prima facie case against that there had been cases not been surrendered, and this was apt to defeat appointed. They hoped, careful consideration on would need very

lly in agreement with the sons: first, because ment which did not comply ents for the surrender of Spain concerning Degrelle; by Czechoslovakia was not had heard of two other ed to no successful issue, n agreement with the outline carefully drafted and precede sion was carefully examined neutral governments had not requested by the United reference to the Resolution, y the United Nations there was to be a vote he

not take a vote that day, ould need very careful ed upon.

the Swiss Government had, and American Governments

was not a diplomatic reply; Council in the form of a Parliament to the effect asylum to persons who had sons of war.

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correct and added that it the 7th February, 1945.

the text of the statement, Parliament, it read:-

of precedents which are Federal Council intends t of a sovereign state to considers worthy thereof. ed - even in cases involv without examination refuge

on Swiss territory to all those who may request it as the number of fugitives therein has already reached disturbing proportions. It is obvious in particular that asylum could not be granted either to persons who have displayed an unfriendly attitude towards Switzerland or who have committed acts contrary to the laws of war or whose past gives evidence of conceptions incompatible with the fundamental traditions of law and humanity".

THE CHAIRMAN did not think they could get very much further this day. If it was desired by members of the Commission to pass a Resolution on this question the terms would have to be drafted very carefully and that could not be done here extempore. He suggested that the terms could be drawn up by Sir Robert Craigie, in collaboration with Colonel Ledingham, Mr. Garner - if he was available - and Colonel Springer. If these four gentlemen would draw up a draft Resolution it could be circulated provisionally among the members, and at the next meeting it would be submitted to the Commission. By that time, each member would have had an opportunity of ascertaining the views of his government and a vote could then be taken on two questions; first, whether such a Resolution should be passed; and secondly - should it be passed - and come automatically to the notice of each member government, whether it should be left to governments to do what they thought fit, - or whether members would prefer to have some recommendation sent to each government. He would prefer to pass the Resolution and simply send it as a Resolution of the Commission.

M. MAILLARD asked whether it could be pointed out in the Resolution that it was desirable that steps should be taken by the Governments.

COLONEL SPRINGER doubted whether he would be of very much help to the Drafting Committee in view of the attitude of his Government and suggested that he be replaced by some other member.

THE CHAIRMAN said that he would ask H. de Baer to act.

SIR ROBERT CRAIGIE said that there would be a meeting of Committee I and III at 10.30 the next day and he would try to produce something before then.

DR. SCHRAM-NIELSEN said that so far as he understood, the Swiss Government did, as a matter of principle, surrender war criminals, i.e. they were not opposed on grounds of principle to the extradition of war criminals. There was already one Resolution regarding the neutral countries' duty to surrender such criminals and this was a very important Resolution because it had been adopted by the United Nations Assembly. So, in his opinion, the main point was to find a way of informing the Swiss Government that war criminals were not being listed by this Commission without careful examination. He could not see that it would be useful to pass a Resolution in the United Nations War Crimes Commission when already another Resolution had been passed in the United Nations and furthermore the aim of the Resolution should be that neutral countries on principle should surrender war criminals and they knew the Swiss Government had already taken this line. He could not say off-hand which way could be followed, but he thought the main point would be to inform the Swiss Government that they could rely on the Commission's lists.

MR. BURDEKIN thought if they were to communicate with their governments regarding the desirability of passing a resolution, it might be a good idea to ask the governments to inform them if they had themselves had any special cases regarding obtaining assistance or failing to obtain assistance from neutral countries; the Commission would then have fuller data before passing the Resolution.

DR. ZIVKOVIC drew attention to the fact that the statement of principle made by the Swiss Government was delivered in 1944. The Resolution passed by the United Nations was passed in February 1946 -

between the two dates a year and a half had passed and not a single war criminal had been handed over by the Swiss Government to any of the United Nations Governments represented on this Commission. More than a year had now passed since the United Nations Resolution was adopted in 1946 and nothing had happened during that period which meant that the Swiss Government may have said "we will not give asylum to war criminals" which was a very good and sound attitude, but they were inconsistent with that principle, insofar that they did not act accordingly.

THE CHAIRMAN said he was going to adjourn the proposition until they had seen a definite form of Resolution, but if the majority were at present against any Resolution being passed and they could ascertain the views of the majority here and now - it would be desirable not to go any further. He asked the members to vote upon the general question whether the idea of a Resolution was one which it was desirable to pursue.

SIR ROBERT CRAIGIE seconded this motion.

DR. SCHRAM-NIELSEN wished to ask Sir Robert Craigie one question before they took a vote. Would the Foreign Office be prepared to transmit to the Swiss Government not a Resolution but a note drafted by this Commission, regarding the procedure which takes place before the listing of each single war criminal, as a kind of information for the Swiss Government?

SIR ROBERT CRAIGIE thought there would be no objection to that though he could not undertake to say as far as a Resolution was concerned that the Foreign Office would undertake to transmit it to the Swiss Government.

In the vote that followed it was established that Czechoslovakia, France, the Netherlands, Poland and Yugoslavia voted in favour of passing a Resolution; the United Kingdom and the United States of America voted against a Resolution. New Zealand, Norway, Greece and Denmark abstained from voting. Members for India, Luxembourg, Australia, Belgium, Canada and China were absent.

FOR: 5
AGAINST: 2
ABSTENTIONS: 4
ABSENT: 6

SIR ROBERT CRAIGIE said that he would proceed to draft the Resolution.

THE CHAIRMAN said they would then pursue the matter further at the next meeting.

SUBMISSION OF CASES BY ETHIOPIA (DOCS. III/50, I/76, COMMITTEE I MINUTES NO. 89)

THE CHAIRMAN said that they had reached a certain stage in the discussion on the last occasion and they had collected a certain number of opinions from a certain number of member nations. They had decided to submit it to the member nations.

COLONEL WADE said that it appeared from the Minutes of the last meeting that Australia, Poland, and Yugoslavia were in favour of the Commission assuming jurisdiction in connection with the Ethiopian request, while Canada, Denmark, New Zealand, Belgium and China would abstain from voting, the remaining members being of the opinion that the Commission should not assume jurisdiction over crimes committed by the Italians in Ethiopia, in 1935-36. The Czechoslovak representative had since stated that he would be in favour of the Commission assuming jurisdiction, which meant that there were FOUR in favour and SIX against. (Against: U.K., U.S.A., France, Greece, Norway, Holland).

THE CHAIRMAN said that this meant that the majority of the governments were against assuming jurisdiction.

DR. ZIVKOVIC said that the statement he had made last time had been subject to instructions received from his Government. He had now received instructions just in time for to-day's meeting, saying that his Government were in full agreement with the statement he had made at the last meeting, i.e. in favour of the Ethiopian application.

HEARING OF THE ITALIAN PEACE TREATY ON THE POSITION OF ITALIAN WAR CRIMINALS (DOC. I/84; JOINT REPORT BY COMMITTEES I & III, DOC.C.252)
HEARING OF THE BULGARIAN PEACE TREATY ON THE POSITION OF BULGARIAN WAR CRIMINALS (DOC. I/85)

M. MAILLARD stated that as the question had been put by France, he wished to state that he was entirely satisfied with the report circulated and the replies received. He just wanted to ask a question with regard to sub-paragraph (2) of section II of Doc. C.252, namely whether the approval or consultation of the Italian Government was necessary.

The Secretary to Committee III (Dr. Schwelb) said that the position in his view was as follows: a request for extradition had to be addressed to the Italian Government and the Italian Government had the duty under Article 45 to take all necessary steps to secure the apprehension and surrender of the person in question, but if the Italian Government was of the opinion that the person wanted was not a war criminal then they had the right to refer the matter to the four Ambassadors. He added that the question put by M. Maillard had also been put by M. DEMITSAS in respect to the Bulgarian Peace Treaty (Doc. I/85) and he suggested that the question raised by M. Maillard might be dealt with in dealing with the second document.

SIR ROBERT CRAIGIE said that the procedure would be that a State wishing to obtain the surrender of a war criminal in Italy would apply to the Italian Government and only in a case where the Italian Government declined to surrender a war criminal would the matter go before the four Ambassadors.

M. MAILLARD said this exactly met the point he had raised.

The Commission agreed on the statement that: "The procedure under the Treaty will be that a State which desires the surrender of a war criminal situated in Italy will apply to the Italian Government; and only if the Italian Government refuses the surrender will the question go before the Ambassadors", and approved the documents I/84, C.252 and I/85.

As Colonel Springer was without instructions from his Government, he preferred, at this stage, to refrain from expressing an opinion or from voting.

PROVISIONS OF THE PEACE TREATIES WITH GERMANY AND AUSTRIA (DOC. A.40)

DR. ZIVKOVIC felt that the Commission should adopt a recommendation similar to the one they adopted in respect of the five ex-Satellite States with whom peace treaties were signed lately. Any draft should, more or less, follow the lines of the suggestions adopted by the Commission previously. The reasons for which he thought that certain differences should be made in so far as Germany and Austria were concerned were the following: The Foreign Ministers were so overwhelmed with high political matters that they were bound to be somewhat distracted from the question of the punishment of war criminals and that was why he thought they should draw attention to the need of inserting certain clauses in the peace treaties. He believed all the United Nations concerned should be much more cautious with Germany and Austria than they had been, or believed they had to be, with the five ex-Satellite States. Members would remember that when they had adopted suggestions in respect of the latter treaties and they were transmitted

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Commission's views since it was received so late in the day, but if they now put their views forward at this early stage they might hope that action would be more effective.

COLONEL SPRINGER said he would have to abstain from voting on this paper, not because it lacked merit but because on the previous occasion of the Italian treaty instructions were asked for and on the basis of those instructions he had had to express opposition to the Resolution. He thought that might have been entirely due to the late presentation of the paper. Should he have to ask for instructions now it might hold the matter up and he therefore thought it better that he abstain from voting.

DR. SCHWELB said that it would be necessary to make one or two verbal alterations, in para 5 for instance: it was not entirely correct, there were four diplomatic envoys only in the case of the Italian treaty, in the case of the Hungarian, Bulgarian and Roumanian treaties there were only three envoys and in the case of the Finnish Treaty only two. He also thought that in the introductory paragraph it should not be said that the provisions had been considered for they had not had drafts of the German and Austrian Treaties before them.

DR. ZIVKOVIC said that it seemed logical that the treaties with Germany and Austria would contain similar clauses as those with the five ex-Satellite States, it was an assumption, an understanding.

THE CHAIRMAN said it was a matter of words and they could phrase it differently.

DR. SCHWELB suggested "the United Nations War Crimes Commission submits to its members the following views on certain provisions which in the Commission's opinion, it would be necessary to insert".

SIR ROBERT CRAIGIE thought that "desirable" should be said instead of "necessary". It was agreed that Dr. Schwelb should make the two alterations in the text; subject to that, the Resolution Doc. A.40 was approved, Colonel Springer abstaining from voting.

REPORTS OF CHAIRMEN OF COMMITTEES.

SIR ROBERT CRAIGIE in the absence of H. de BAER, Chairman of Committee I reported that Committee I at its last meeting had considered 61 cases involving 1,072 persons. They had about the same number of cases to consider at their next meeting.

FORMAL APPROVAL OF UNWCC LIST NO. 52.

The Commission's 52nd List of War Criminals was formally approved.

Wright

UNITED NATIONS WAR CRIMES COMMISSIONMINUTES OF MEETING OF COMMISSION HELD ONTHURSDAY, APRIL 24th, 1947 AT 3 P. M.

PRESENT: Lord Wright

Chairman

ALSO

PRESENT: Sir Robert Craigie

United Kingdom

Mr. Kintner

United States of America

M. Maillard

France

Mr. Bridgland

Australia

M. de Baer

Belgium

Mr. Jules Leger

Canada

Dr. Neumann

Czechoslovakia

Dr. Schram-Nielsen

Denmark

Mr. Burdekin

New Zealand

Mr. Aars-Rynning

Norway

Dr. Zivković

Yugoslavia

accompanied by

M. Zimonic

APOLOGIES FOR ABSENCE WERE RECEIVED FROM:

Colonel Springer

United States of America

Mr. Dao

China

Mr. Dutt

India

M. Dimitzas

Greece

Commander Mouton

Netherlands

Colonel Muszkat

Poland

Lieut. Colonel Barratt

Office of the Judge

Advocate General.

THE CHAIRMAN introduced to members of the Commission MR. JULES LEGER who was deputising for Mr. Horne, the Canadian representative who is on leave. He was glad to see Mr. Leger present and was sure that the Commission would benefit from his help.

1. MINUTES

Minutes of meeting of Commission held on Wednesday, March 12th, 1947 - M.124 were approved and signed.

Amendments to Minutes of meeting of Commission held on Wednesday, March 26th, 1947 - M.125 - were received from Colonel Springer and would be incorporated in the final text.

2. LETTER FROM MESSRS. HODGE & CO. LTD.

THE SECRETARY GENERAL, at the request of the Chairman, read for the information of members a letter which had been received from Messrs. Hodge & Co. Ltd. dated 2nd April 1947 requesting the Commission's approval of the appointment by them of Sir David Maxwell Fyfe as General Editor of their War Crimes Series.

SIR ROBERT CRAIGIE thought it very fortunate that Sir David Maxwell Fyfe had been chosen to act as General Editor and moved that the Commission formally approve the appointment and authorize the Secretary-General to send a communication to Messrs. Hodge & Co. Ltd. to that effect.

II. DE BAER seconded this motion which was unanimously approved.

3. EXTRADITION OF A WAR CRIMINAL FROM A NEUTRAL COUNTRY. DOC. A.43.

The Commission discussed the Draft Resolution. Doc. A.43, which had been drafted by Sir Robert Craigie and a drafting committee in accordance with the vote of the Commission which had been taken at the last meeting.

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THE CHAIRMAN said the question was whether the Commission should or should not make any recommendations to neutral countries generally about what they thought was the proper course for a neutral country to take. Neutral countries were of course completely independent in questions of this sort as he personally doubted the propriety of the Commission giving neutral countries advice or recommendations as to what they should do in exercising their right to control their own countries, whether they should expel, surrender or admit any one who seeks to enter or remain in their countries. Members would recall that the voting at the last meeting had been a little peculiar. Out of the 17 members of the Commission two had voted against anything being done thinking it was interfering with the sovereign rights of a neutral country and might cause offence and umbrage, five had thought that something should be done, and the remaining ten did not register any vote at all - four were present and abstained from voting while 6 were absent altogether from the meeting. The Chairman thought that a rather feeble expression of opinion on the part of the Commission as a whole. However, there was a majority in favour of passing a Resolution - now they had the resolution - it was drawn up with inimitable tact and discretion by Sir Robert Craigie and if anything was to be done at all, he could not conceive a more judicious and inoffensive resolution.

DR. SCHRAM-NIELSEN said that he had abstained from voting on the last occasion and now having read the draft felt convinced that if such a resolution was to be passed it could not have been drafted in a more careful way. On the other hand, and with all due respect to Sir Robert, having read the resolution he felt that he would have to vote against it as a whole.

M. MAILLARD wished to add his thanks to those already expressed to Sir Robert Craigie, who, though not supporting the proposal personally, had drafted, very carefully, the recommendation before them and he was in general agreement with the exception of a very few points which had been dealt with in his circulated "Amendments to Document A.43". The position and principles of the French Government on this question were not changed and they still considered that this resolution would have a good influence. There was only one major alteration which he suggested and that was to para 2. It would be difficult, even unjustifiable, if international war criminals should be granted treatment which was generally refused to an ordinary criminal. This special point was based upon the principles of French law regarding war criminals under which war criminals were considered ordinary criminals as distinguished from political offenders. His other suggested alterations were much less important and were only suggested in the desire that, if a recommendation was to be approved and sent, it should not be too vague in its terms as what represented a definite opinion of the Commission as a body; that was why he wanted to substitute "asks therefor" for the word "recommends" and "in order that" for "in the hope that". He considered his alteration to para. 2 the most important but thought that the Czechoslovak representative might have something to say on the matter since his Government was especially interested.

DR. NEULANN thanked Sir Robert Craigie for the draft and said that he agreed with every point and also the amendments made by M. Maillard. He would, however, like to add to the last paragraph the following:-

"The United Nations War Crimes Commission considers it would be its duty to report all cases, where a neutral country fails to give a satisfactory reply to a member state with regard to listed war criminals, to the Secretary-General of the United Nations Organisation".

THE CHAIRMAN thought that had been rejected on the last occasion.

DR. ZIVKOVIC thought the draft recommendation as it stood, a masterpiece of diplomatic wording. It would avoid hurting the feelings of the Swiss Government and was therefore most likely to achieve its purpose. He was afraid that if they strengthened certain passages as proposed by M. Maillard or if they added a paragraph such as the one just proposed by their Czechoslovak colleague, he was afraid they would do just what they wanted to avoid. He thought that such a last paragraph might be interpreted by the

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whether the Commission should be neutral countries generally as a neutral country to take. The Swiss Government as a direct threat and that would spoil any chance of the recommendation achieving its purpose. He was inclined to keep the draft as it stood; he had no objection to the amendment to para. 2 as suggested by M. Maillard, but he thought that they should not adopt the additional paragraph as proposed by Dr. Neumann, nor delete the words "however unwittingly".

MR. BURDEKIN wondered whether, before going into questions of alterations, it would not be as well to find out what the opinion was on the general principle. They should not discuss verbal alterations until they knew whether the general principle was acceptable. After further consideration and after having seen the draft he would be prepared to support it.

MR. KINTNER said that he was personally appreciative of the manner in which the resolution had been drafted but was instructed by his Government to vote against any general resolution on the matter for the reason that the adoption of a resolution might prejudice any future discussion on a diplomatic level with neutral governments who, his Government felt, could argue with justification, that a resolution of the sort, passed without hearing of particular cases on the part of neutral governments might be considered unfair. They felt that neutral governments might want a hearing on particular cases and therefore this resolution would prejudice the rights and privileges of those neutral governments. Further, it was the feeling of his Government that an amendment such as that proposed by Dr. Neumann might be construed as a direct affront to neutral governments. He would have to vote against it.

THE CHAIRMAN agreed and said that these were all matters which he had hoped had been considered on the last occasion. He was not very happy about taking this course of conduct which the Commission had set up for itself; he disliked taking a step of this sort on so inconclusive a vote. They were ruled by a very few points which carry the majority, but when it was considered that out of 17 members only 5 had supported the resolution being circulated among member governments, it seemed to him that they were committing themselves to a novel course of conduct on a very mean and meagre majority. It was however a matter for the Commission and if they thought it should be done it was not for him to say "no".

MR. DE BAER said that he was without instructions and would therefore not express an opinion.

DR. NEUMANN said that the voting had been done at the last meeting and the principle of passing a resolution accepted by a majority. To-day they had only to consider Sir Robert Craigie's draft.

SIR ROBERT CRAIGIE said that as members knew, he had only acted in this matter as a member of the Drafting Committee and it remained the feeling of the United Kingdom Government that it would be a mistake for the Commission to pass a resolution of this character. So far as the United Kingdom Government was concerned, they could not undertake to take any diplomatic action with regard to it. Though he had drafted the resolution he was voting against it. In paragraphs 4 and 5 of Doc. A.43 they were perhaps trying to tell the neutral governments what they already knew. In preparing the draft he had tried to take account of all the points raised at the last meeting but it seemed to him that it might be more advisable if they omitted paragraphs 4 and 5. The first 3 paragraphs were definitely within the purview of the Commission and he thought it rather important that governments which might not know what the procedure was in the Commission, should be made aware of what was happening. This was purely his personal view and not necessarily the view of his Government.

THE CHAIRMAN quite agreed with Sir Robert that the recommendation might appear less offensive to neutral governments without these paras. 4 and 5, which were giving information rather gratuitously whereas paras. 1, 2, and 3 might enlighten the neutral governments on the procedure and purpose of the Commission, which might otherwise not be known to them. He quite agreed that some of his objections might be met if paras. 4 and 5 were omitted.

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DR. SCHRAM-NIELSEN in replying to Sir Robert said that if he should vote for the resolution he would like to vote in favour of the resolution as it stood; he would not like to add or delete one word, but he felt that if they made it weaker it would lose its effect, on the other hand as it stood it might be considered rather beyond their terms of reference especially in view of the fact that the United Nations had already passed a resolution to the effect which they had in mind.

THE CHAIRMAN said he thought that the general feeling was that if there was to be a resolution it could not be better drafted than it now was and he agreed with Dr. Schram-Nielsen that though there was a plausible case for leaving out paras. 4 and 5, on the whole the resolution was better in the form in which it now stood. He thought it unsatisfactory that a matter of such importance should be decided by 5 out of 17 members and that only three of these five members were present to-day to consider the terms of the resolution. As he understood it the views of the Commission were that the Commission approved of the draft recommendation in its original form.

MR. KINTNER said that a neutral government, receiving a communication of this nature from even one member of this Commission with the statement attached, to the effect that it did in fact represent a vote of the majority opinion of the United Nations War Crimes Commission, would immediately take any amount of disrespect or onus for having passed it on the Commission as a whole.

THE CHAIRMAN said that that was a matter which had been pointed out at the last meeting but which had not appeared to carry any conviction.

DR. SCHRAM-NIELSEN said that there was a question of procedure. In his opinion, this recommendation could not be circulated if a special vote had not been taken on its text, and he suggested that in all circumstances a recommendation circulated as adopted by the Commission should be made the object of a special vote.

SIR ROBERT CRAIGIE said that they had voted at the last meeting without the text of the resolution before them. They had voted that it should be prepared, but it seemed to him that that vote did not necessarily bind the Commission to go forward in the matter after seeing the draft.

THE CHAIRMAN said the trouble was that the Commission had not adopted that form of procedure. Was it meant, that having agreed that a draft should be prepared and submitted to the Commission, and if accepted, it should then go out as a Commission document. He considered it a very unsatisfactory position altogether, and he thought the best thing was to adjourn the matter until their next meeting and then have a vote.

MR. KINTNER seconded the Chairman's proposal and remarked that the will of five could hardly be considered the will of seventeen.

DR. NEUMANN said that the resolution in principle had already been passed and they could only accept or not accept the draft, but the principle had been accepted.

THE CHAIRMAN said that he had made his proposal which had been seconded by Mr. Kintner, namely: "That a vote on the resolution, as prepared by the drafting committee, be deferred until the next meeting of the Commission" Eight voted in favour (Australia, Belgium, Canada, New Zealand, Norway, Denmark, United States of America, United Kingdom) and three voted against (Czechoslovakia, Yugoslavia, France). The proposal was therefore carried.

4. PROPOSAL BY SIR ROBERT CRAIGIE REGARDING TARGET DATES FOR THE CLOSING OF THE COMMISSION'S LISTS OF WAR CRIMINALS AND FOR THE TERMINATION OF THE WORK OF THE COMMISSION.

SIR ROBERT CRAIGIE said that the United Kingdom Government had been giving consideration for some little time to the question of the length of time during which the Commission was likely to carry on its valuable

activities. They felt that now they were in the year 1947, it would be desirable to try and fix some target date for concluding their work. In particular, his Government wondered whether the time was not approaching when it should be possible for Committee I to close its lists and terminate its particular activities. His Government fully realised that there were a number of countries who had not been able to prepare their cases, evidence etc. to put before Committee I as quickly as other governments and were therefore a bit behindhand. At the same time, it was the hope of the United Kingdom Government that it would be possible for those countries to speed up those cases which they wished to submit to the Commission in order that Committee I's work might be brought to an end by June 30th next.

As regards the work of the Commission it was clear that there would be other matters with which it would be required to deal even after Committee I finished its work, for example the Law Reports on War Crimes Trials and the Official History of the Commission. That was important work which would have to be done but possibly by something smaller than the existing Commission. The date his Government suggested for the termination of the work of Committee I was 30th June 1947 and the end of the present year for the termination of the Commission's activities as a whole. Sir Robert said that that was put forward simply as a suggestion and that his Government would very much welcome the views of other countries represented on the Commission on this particular subject.

M. DE BIER as Chairman of Committee I, thought he was probably one of the main people interested and he felt they should bear in mind that there were two separate questions under consideration, one, with reference to Committee I and a possible closing date, and two, the termination of the work of the Commission. The British Government was suggesting that a possible closing date for Committee I might be June 30th, and for the closing of the Commission, the suggestion was the end of the present year. He wished to limit himself at the moment to the activities of Committee I. As Chairman of Committee I, he felt he would be wrong if, with all respect to the British Government, he were to support that view. He felt that at this moment it was urgent that Committee I should not be stopped in its work; the flow of cases was still continuous. Last week, Committee I had 87 cases involving 1,370 accused, on this week's agenda there were 50 cases, involving 1,175 persons but among these 1,175 persons there were a number of cases which had been adjourned from previous meetings, so it would be misleading to make a total and say that in two weeks they had had 2,500 odd cases to consider. However, the flow of cases was going on steadily and he felt the position of the British Government was not the same as governments of occupied countries. The British Government had been through bombardment and had had a very difficult time but the governments of occupied countries, who had been for some time in exile here, got back to their countries to find conditions extremely difficult and had to face public opinion, which demanded first, the punishment of quislings and collaborators, these were more urgent even than German criminals. He must confess that in Belgium they were very much behindhand, also in Holland, and these two countries both felt that they wanted to judge these cases of German criminals with serenity and not to obey passionate impulses. Belgium had faced great difficulty with the trial of collaborators; they were trying to find a level and they were very behindhand, as was Holland, with the judging of war criminals. On the other hand Belgium had established the majority of cases and brought them before Committee I but in the case of certain other countries it was not the same. Other countries were still behind in this respect and he felt it was his duty to acquaint the Commission with that fact. A few weeks ago, he had known of the British Government's proposal and had circulated a proposal to members to the effect that the lists of Committee I might be closed in September and had asked for their views on this suggested date but, unfortunately, he had received no answers. It had been suggested to him that morning by Mr. Kintner, the acting representative of the United States of America, that November 1st be the closing date for the acceptance of cases. Committee I would of course have to hold meetings after that date to consider the cases which had been adjourned on the 1st November, but on the 1st November they should

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certainly know what the reaction of governments was in respect of this closing date and should also know when they could definitely close the lists.

MR. KINTNER said that he was uninstructed by his Government on the proposal made by Sir Robert Craigie but as a member of Committee I, he did support what M. de Baer had said concerning the work of that Committee and the necessity for its continuation in order to give these governments, which have not had full opportunities of presenting their cases, an opportunity of presenting these cases to Committee I in the same manner as other governments had in the past. He felt that the work Committee I was doing, from the standpoint of those in the field and of the occupying authorities, was particularly valuable and he felt that these authorities were now giving increased value to the work which Committee I had done. It relieved those authorities of a lot of problems connected with charging and examining each particular case and for that he thought they were grateful. As to the amount of time during which the United States authorities would want to continue filing cases, he had no date in mind, other than to say that as far as he was informed from discussions with those in the field, they were continuing investigations of war crimes matters in which United States personnel had been victims, that these investigations were going on at the present time and to a considerable extent, and probably would go on for the better part of this year. It followed, therefore, that the American authorities would probably, from time to time, want to file cases with Committee I in order to clear the accused with other authorities who have possession of the accused and to expedite getting possession of those accused. They had on hand and ready to file some ten cases just received and there was no reason to think otherwise than that they would continue to receive cases to file before Committee I. It was therefore his personal suggestion that, in as much as it looked as if the Commission might continue until the end of this year, Committee I should continue its labours during the greater part of this year since it was an important part of the Commission and since its work was of such value to governments having authorities in the field and engaging in prosecutions.

M. DE BAER thought that it might perhaps be useful if he added some statistical information. The number of persons listed in the three and a half months of 1947 had increased by 50% over the numbers listed against a similar period of 1946 and an increase of 75% against 1945, so that the flow was not diminishing.

THE CHAIRMAN said they ought not to forget that the war in Europe was terminated in May 1945 and it was now April 1947. Two years was quite a short time for dealing with problems of this nature. They had to remember that the Commission had been formed to help and assist in these matters and that smaller nations particularly were to be considered. It was the smaller nations who had suffered hostile occupation, which had only ended less than two years ago. They had been tormented by all sorts of trouble, financial, political, social and economic; they had had tremendous difficulties and work to cope with in regard to quislings and traitors. Prosecution of quislings was an important post-occupation policy and he thought it would be very wrong for the Commission, to say, arbitrarily, that it would close down on all of these most essential functions, namely the submission of cases to the Commission for consideration by Committee I. They also had to remember that the importance of listing war criminals by the Commission had increased enormously. The fact that a man's name was on the list was taken, to a very large extent, as sufficient authority for surrendering him under the very simple and practical arrangements which had been made for the surrender of war criminals between one allied nation and another; the importance of their lists had grown and that was not a matter to be over-looked. He personally was quite sympathetic with the view taken by certain governments who were, perhaps, not very interested, he strongly sympathised with them in their desire not to continue the machinery of war crimes any longer than is inevitable and he himself felt a certain amount of sympathy with them in that point, but when he had seen what was happening now and had had an opportunity of considering the position he did feel very strongly that it would be wrong, indeed it would be contrary to the purpose of the Commission and to its duty, to slam