

III/71.
20th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Denouncing as a War Crime.

Subsequent to the information contained in Doc.III/69, members of Committee III are hereby informed that Committee I, in its meeting held on 14th November 1946, (Minutes No.81), formulated its decision of 7th November 1946 (Minutes No.80), to refer the question whether denouncing is a war crime to Committee III, to read as follows:

" In connection with these and similar cases it was also decided to refer to Committee III for its opinion the general question as to what extent and for what reasons denunciation as defined in Czechoslovak Law should be regarded as a war crime in International Law. "

The decision arose in connection with the Czechoslovak Charge No. 4210 accusing a certain Leopold Klima of complicity in deportation, punishable under Sections 93 and 95 of the Czechoslovak Penal Code and Section 7 of the Czechoslovak Retribution Act.

The statement of facts contained in the charge No.4210, is as follows:

" The accused served as an informer of the Gestapo in Brno. He denounced several Czech citizens to the Gestapo and caused their arrest and deportation to concentration camps.

In the autumn of 1939 he denounced the Czech citizen DOSTAL from Brno to the Gestapo. The Gestapo arrested and tortured him.

He denounced the School Headmaster ZOUBEK, in Brno to the Gestapo. ZOUBEK was arrested by the Gestapo and died in prison. The same was the case of the Czech Citizen Maria BOUSKOVA. "

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20th November 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Netherlands Case No. 4262.

referred to Committee III by Committee I.

- I. The Netherlands National Office submitted to the United Nations War Crimes Commission on 8th November 1946, a charge against Wilhelm Brämer, Hermann Schuler and a certain Blekman, (No.4262).

A copy of this charge is appended to this paper.

- II. Committee I decided in its meeting held on 14th November 1946, (Minutes No.81), to list the accused No.2 (Schuler) for pillage. The cases of the accused Nos. 1 and 3 (Brämer and Blekman) were adjourned and referred to Committee III for its opinion in connection with other similar Netherlands cases now under consideration by that Committee. In addition, the Netherlands National Office was asked to submit a copy of the order issued by the first accused, (Brämer).

- III. The other, similar Netherlands cases, referred to in the decision of Committee I are the four cases annexed to Doc.III/68.

UNITED NATIONS WAR CRIMES COMMISSION

NETHERLANDS CHARGES AGAINST GERMAN WAR CRIMINALS

Charge No. 383 (2-11-1946)

For the use of the Secretariat.

Registered Number.

Date of receipt in Secretariat.

Name of accused, his
rank and unit, or
official position.
(Not to be translated)

1. BRÄUER, Wilhelm, employee of "Omnia Treuhandgesellschaft, N.V.", Amsterdam. Charged by Reichskommissar with liquidation of a Jewish concern. Born 21st June 1895 at Verningerode, Germany, lived 31 Sophialaan, A'dam. Went to Erfurt, Germany, 2nd February 1943.
2. SCHULER, Hermann, N.S.B., employee of "Omnia Treuhandgesellschaft, N.V." (Dismissed for embezzlement). Replaced Bräuer. Born 27th July 1891 at Leonberg, Germany, lived at 20 Gerard Brandstraat, Amsterdam. About 6th September 1944 left with family for Germany.
3. BLEKMAN, head of "Omnia Treuhandgesellschaft, N.V.", Amsterdam. Fled about 6th September 1944.

Place and date of
commission of al-
leged crime.

Amsterdam,
1942 - 1944.

Number and description
of crime in war crimes
list.

No. XIII, Pillage.
No. XIV, Confiscation of property.

References to rele-
vant provisions of
national law.

Neth. Penal Code.
Art. 310, 47, 48.

SHORT STATEMENT OF FACTS

The accused were successively in charge of a Jewish firm, the liquidation of which had been ordered by the Reichskommissar for the Occupied Netherlands Territories.

BRÄUER threatened the owner with the Gestapo if he offered any opposition. He also made an employee give him two months' salary paid to her in advance, later using pressure to make her give up a document showing her recognised claim to this.

SCHULER sold the firm's property, deposited the proceeds in an account under a false name, and failed to account to the administration for the total sum.

BLEKMAN, as head of "Omnia" can be considered responsible for his subordinates' actions.

TRANSMITTED BY

Political Investigation Service,
Head Office, Amsterdam.

Extract of these statements has been made in his own words by the Netherlands Representative of the United Nations War Crimes Commission.

S T A T E M E N T

submitted by W. Prasing, police officer 1st class, special constable of the Amsterdam municipality, attached to the above Service, in connection with a charge of theft brought against various Germans.

Witness H.J. Jøhøberg, a German Jew now stateless, living in Amsterdam, states that he was the owner of a business called "Enfli" (Eerste Nederlandsche Figuren en Letter Industrie). He had a partner, Ludwig Kugler, who was deported in June 1943 and died in Bergen-Belsen on 10th February 1945.

In October 1942 "Enfli" was liquidated by the "Omnia Trusthand-gesellschaft, N.V.", by order of the Reichskommissar for the Occupied Netherlands Territories. (No compensation has been paid.)

W. BRAMER appeared at witness' business saying he had orders from the Reichskommissar to liquidate it. He showed witness his authorisation. He took the key, ordered witness to make out and hand over an inventory, forbade him to carry out any business transactions under threat of having him arrested by the Gestapo should witness oppose him, and finally forbade witness to enter the premises. BRAMER also ordered an employee, Maria Woortman, to return F.160, being 2 months' salary paid in advance. This he seized.

In 1943 BRAMER was replaced by the N.S.B. man SCHULER of "Omnia". SCHULER was later dismissed by "Omnia" for embezzlement and witness was told by a certain Koes that the embezzlement was partly in connection with "Enfli". SCHULER was said to have sold the entire stock and to have paid in the proceeds to an account under a false name and without any further details, and without having accounted to the administration for the complete sum.

BEKMAN followed SCHULER but appeared to have played a subordinate role.

After "Dolle Dinsdag" (5th September 1944) witness found the above-mentioned Koes, a Dutchman, in charge. Koes told him the "Gentlemen" had taken all monies belonging to the business with them. Later he said that the bank where the money was deposited was not paying out any more.

After the liberation witness found his shop had been converted into a private dwelling and that nothing was left of his business. He estimates his total loss in money and material at F.7180.-.

Witness M. Woortman confirms the previous statement in respect of BRAMER and also that she had to return the F.160, two months' salary. A declaration was made out and deposited with the administration saying that in the event of the business being liquidated the F.160 was her property. She resigned shortly afterwards, but when she took a copy of the declaration and asked for her money BRAMER demanded the former and on her refusal to hand it over, took it from her under pressure.

Witness Koes states that he worked for "Omnia" and knew BEKMAN, a German, who was head of it. The latter fled in September 1944 at the time of "Dolle Dinsdag".

Witness adds that all monies from liquidated Jewish concerns were deposited with the "Bank voor Nederlandsche Arbeid", Amsterdam. After "Dolle Dinsdag" (5th September 1944) this bank stopped its payments and

Political Investigation Service,
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Witness Koes states that he worked for "Omnia" and knew BLEEMAN, a German, who was head of it. The latter fled in September 1944 at the time of "Dolle Dinsdag".

Witness adds that all monies from liquidated Jewish concerns were deposited with the "Bank voor Nederlandsche Arbeid", Amsterdam. After "Dolle Dinsdag" (5th September 1944) this bank stopped its payments and

was transported to Germany.

Statement drawn up under oath of office at Amsterdam, 5th September,
1946.

s/ W. Prasing.

NOTES ON THE CASE.

The case is complete.

No defence seems possible,

III/73.
22nd November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Yugoslav-Italian charges of Crimes against Humanity

referred to Committee III by Committee I.

Report by Committee III. (Second Draft).

- I. Committee I has been examining a considerable number of charges brought by the Yugoslav National Office against certain Italian nationals. These charges include Charges Nos. 1323, 1462, 3296, 4031, 4032, 4033, 4034, 4035, 4036 and 4037. Of these charges, the Charges Nos. 1462, and 4037 deal with the same facts.
- The charges mentioned were referred to Committee III by Committee I, the terms of reference being that Committee III should give its opinion as to whether or not the alleged crimes should be considered as Crimes against Humanity, and for what reasons.
- II. The facts of the cases referred to Committee III are reproduced in Docs. III/32, III/45 and III/56. The Yugoslav representative on the United Nations War Crimes Commission, Dr. R. ZIVKOVIC, supplemented the charges by two memoranda, which are contained in Docs. III/57 and III/59.
- III. In the meeting of Committee III held on 2nd October, 1946, (Committee III Minutes 21/46), Dr. Zivkovic proposed that the consideration of the case No. 1323 (annex to Doc. III/32) should be adjourned, because it was not directly connected with the other cases enumerated above. This was agreed to by Committee III and this report deals accordingly with all the cases mentioned in paragraph I of this paper, with the exception of the Charge No. 1323, on which a special report will be prepared in due course.
- IV. From the following report, it will be seen that the individual charges brought by the Yugoslav National Office, and dealt with in this report, deal in some cases with a considerable number of different sets of facts. On some of such sets of facts, or "counts", the information so far produced by the Yugoslav National Office was not considered sufficient and the decision on some counts has accordingly also been adjourned until additional information is forthcoming.
- V. In presenting the report, Committee III states:
- (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.

The only question on which Committee III has to give its opinion is whether the facts set out in the Yugoslav charges constitute crimes against humanity and if so, to give the reasons. The task of Committee III is therefore restricted to a reply to this theoretical legal question only.

Considering the charges referred to it from this restricted angle, Committee III makes the observations contained in the following paragraphs of this paper.

Committee III deals in the following with the individual charges and the counts forming them, always pointing out in the course of the analysis of the individual cases and charges whether, in its opinion, the facts alleged constitute crimes under common law (general principles of penal law) reserving the consideration of the question whether these crimes are on such a scale or of such a character as to warrant their qualification as crimes against humanity to the concluding parts of this report. (Paragraphs XIV to XVI infra).

VI. Case No. 3296 (Doc. III/45).

This charge contains eight different counts, with which Committee III dealt as follows:-

Count 1.

The decision was adjourned until the Yugoslav National Office could supply further information.

Counts 2 and 3.

Provided that the acts alleged were not committed in the course of military operations, they constitute in the Committee's opinion, crimes.

Count 4.

In the Committee's opinion, the facts dealt with in paragraph 1 of Count 4, constitute crimes.

The second paragraph of Count 4 (regarding the killing of Kamilo Stepanovic) was adjourned until the Yugoslav National Office will have had supplied information regarding the question why the victim had been killed.

Counts 5, 6 and 7.

The facts alleged constitute crimes. Attention is drawn to the Committee's opinion which will be explained later, (paragraph XVIII) that these crimes do not, however, constitute crimes against humanity.

Count 8.

The Committee is of the opinion that the torture and the shooting without trial referred to in the charge, constitute crimes.

VII. Case No. 4031.

Counts 1 and 2.

are, according to the statement by Dr. Zivkovic, important as illustrations of a pattern, but are not charges in themselves.

Count 3.

The Committee is of the opinion that the burning down of the house, allegedly as a reprisal, and the shooting, constitute crimes. The Committee does not, however, regard the mere arrest of two students and two other men, in itself, as a crime.

Counts 4 and 5.

The shooting of captured partisans without trial alleged in the charge, constitute, prima facie, a crime.

Count 6.

The Committee is of the opinion that the wanton destruction by fire of the house, as it is alleged in the charge, constitutes a crime.

Count 7.

This count consists of three different sets of facts described in three paragraphs.

Paragraphs 1 and 3 of count 7 were adjourned.

As to paragraph 2, which contains the charge of shooting civilians arrested for violation of a curfew while allegedly trying to escape, the Committee considers that there is a reasonable suspicion of a crime having been committed.

Count 8.

This count concerns the shooting of a captured partisan while allegedly trying to escape. The Committee considers this charge as a prima facie case of a crime.

VIII. Case No. 4032.

This charge concerns the pillaging of villages, setting fire to houses and the murder and deportation of persons. The Committee decided that a prima facie case of a crime had been made out.

The crime of pillage does not, however, in the Committee's view, constitute a crime against humanity.

IX. Case No. 4033.

In the Committee's opinion, both Counts of this case constitute crimes, (shooting of hostages in Count 1, and shooting of three women under the pretence that they attempted to escape in Count 2).

X. Case No. 4034.

Counts 1 to 5 of this charge refer to:

Count 1.

Imprisonment of 45 men and deportation to concentration camps in Germany.

Count 2.

The so-called "mopping up" action, in the course of which persons were arrested, one of them hanged, the others released, and the village pillaged. The hanging took place without trial.

Count 3.

The torture and capture of partisans, taking some of them to a house, stripping some of them and torturing them to death.

Count 4.

The hanging of four men without trial.

Count 5.

The pillaging of a village, setting houses on fire, killing people, including women and children.

The Committee considered that with regard to all five counts, a prima facie case of a crime had been made out.

The charge preferred in Count 6 of the same case was abandoned by Dr. Zivkovic.

XI. Case No. 4035.

Count 1.

The Yugoslav representative pointed out that the offences alleged to have been committed under Count 1 (and also Counts 7, 8, 9 and 13) were committed arbitrarily. The Committee came to the conclusion that the shooting alleged under Count 1 constitutes a prima facie case of a crime.

Count 2.

The Yugoslav representative abandoned this Count.

Count 3.

Here the Committee came to the same conclusion as in respect of Count 1.

Count 4.

The Yugoslav representative abandoned Count 4.

Count 5.

The Committee adjourned this count on the suggestion of the Yugoslav representative.

Count 6.

This Count was abandoned by the Yugoslav representative as far as the alleged robbery was concerned. The shooting however constitutes, in the Committee's opinion, a prima facie case of a crime.

Counts 7, 8 and 9.

The same applies to the shooting alleged under counts 7, 8 and 9.

Count 10.

The Yugoslav representative explained that by internment in Germany, internment in a concentration camp was meant. The Committee came therefore to the conclusion that as far as deportations to concentration camps were concerned, a prima facie case of a crime had been made out.

Counts 11 and 12.

As far as the deportations to Concentration Camps alleged under these counts are concerned, the Committee found a prima facie case of a crime.

Count 13.

The same applies to the facts alleged under Count 13 as far as the shooting of the victim is concerned.

Count 14.

With regard to the alleged beating and torture of the victims, the Committee finds a prima facie case of a crime.

XII. Case No. 4036.

The Yugoslav representative abandoned the charge of wrongful arrest. As regards the detaining without food and the order that victims be sent to concentration camps, the Committee find a prima facie case of a crime to be established.

The case was adjourned as far as the committing of a crime by ordering forced labour was alleged.

XIII. Case No. 4037.

Here the Committee dealt with the Counts reproduced in paragraph I on page 11 of Doc.III/56 in the following way:

Count 1.

The Committee adjourned the consideration of this case and asked the Yugoslav National Office to furnish the text of the regulations which were in force in the occupied Yugoslav region of Ljubljana.

Count 2.

Here the Committee arrived at the opinion that the shooting of the prisoner Furlan during an alleged attempt to escape constitutes a crime.

Counts 3, 4 and 5.

The Yugoslav representative explained that apart from the charge of killing a partisan, the facts described under these counts were brought forward to illustrate the general atmosphere and did not purport to allege that they were crimes in themselves.

The decision on the charge in count 4, regarding the killing of a partisan named Sasa, was adjourned, to enable the Yugoslav National Office to furnish further information on the circumstances of the killing.

Count 6.

The consideration of this count was adjourned, the Yugoslav National Office promising to give further information respecting the circumstances of the killing of the three partisans.

Counts 7, 8, 9, 10 and 11.

The Yugoslav representative declared that the facts contained in these points were recorded only for illustration of the general atmosphere.

Count 12.

The Yugoslav representative supplemented the charge by stating that the homes of the killed partisans had been set on fire deliberately and without military necessity and certainly not in the course of fighting. Thereupon the Committee decided that this wanton destruction of property constituted a crime.

Count 13.

The Committee came to the conclusion that the shooting of a young man for shouting communist slogans, and slogans advocating the freedom of Slovenia, made out a prima facie case of a crime, both in the event of his having been shot without trial, and in the event of a trial having been held, because the punishment would in any case have been excessive.

Count 14.

The Committee came to the conclusion that a prima facie case of a crime committed by the wanton destruction of two houses had been made out.

Count 15.

sub-para. 1. The Commission is of the opinion that a crime has been committed by sending to concentration camps persons for being relatives of men who had left their homes to join the partisans.

sub-para. 2. This case was adjourned until further information would be forthcoming.

Counts 16 and 17.

The Committee arrived at the same opinion as with respect to Count 15, sub-para.1., namely that it constitutes a crime to intern persons for no other reason than that of being relatives of youths who had joined the partisans.

Count 18.

The decision on this count was adjourned.

With regard to the Counts contained in case No.4037, (Doc.III/56, part II), the opinion of the Committee is as follows:

Count 1.

The Committee arrived at the opinion that a prima facie case of a crime had been established with regard to the killing of a man while allegedly attempting to escape. The wanton destruction of 81 buildings also constitutes a crime.

Count 2.

This case was adjourned for the same reasons as count 1 of part I and the Yugoslav National Office was asked to provide the text of the provisions valid in Ljubljana province.

- XV. The Committee took note of the two papers III/57 and III/59 presented by the Yugoslav representative, particularly of the speech made by Mussolini in Gorizia on 31st July, 1942, where Mussolini, in words, the bearing of which is unambiguous, announced that he had given the order to change the methods of dealing with Italian citizens of Yugoslav race radically. Mussolini spoke of the "inflexibility of the Roman law", from which allegedly followed that those who refuse to give up their mad dreams should know that they will be completely annihilated and that their property will literally be razed to the ground. Mussolini referred to an alleged fact that after one barbaric tribe had tried to attack the Romans three times, Caesar gave the order to annihilate all the males of that population. It goes without saying that under the "barbaric tribe", the population of Yugoslav origin, living in the Julian March, was meant.

The Committee considers Mussolini's speech particularly relevant, because of the opinion which it has expressed in its preliminary report containing "General Propositions" defining the term crimes against humanity (Doc.C.201).

Reference to the "General Propositions" and their application to the present case will be made in paragraph XVI of this paper.

- XV. From the individual Yugoslav charges, as analysed above, in connection with the speech by Mussolini, it appears that a great number of examples of crimes have been established, including acts of murder, extermination, enslavement, deportation and other inhumane acts committed against the civilian population, and persecutions on political and racial grounds. The Committee particularly points out that prima facie cases have been made out for:

shooting of prisoners while allegedly trying to escape are contained in Charge 4031, Counts 7 (para.2) and 8; in Charge 4033, Count 2; in Charge 4037, paragraph I, Count 2 and paragraph II, Count 1(1);

shooting of hostages, Case 4033, Count 1;

internment under inhumane conditions, Case No.4036, Count I(1); No.4037, Part I, Nos. 15(1), 16 and 17.

torture, Case No.3296, Counts 3 & 8; Case No.4034, Count 3; Case No.4035, Count 14;

deportation to concentration camps - case No.3296, Count 4(1); Case No.4034, Count 1; Case No.4035, Counts 10, 11 and 12; Case No.4036; Case No.4037, Counts 15 (1) and 16;

murder and attempted murder, case No.3296, Count 8; Case No. 4035, Counts 1, 3, 6, 7, 8, 9, 13; Case No.4037, Count 13.

wanton destruction of property, Case No.4031, Counts 3(2) and 6; Case No.4037, Counts 12 and 14; Case 4037(I), Counts 12 and 14 and (II), Count 1;

execution without trial, Case No.4031, Counts 4 and 5; and Case No.4034, Counts 2 and 4;

different other inhumane acts, Case No.4032; Case No.4034, Counts 2 and 5.

XVI. Committee III has submitted to the Commission, on 30th May 1946, a paper called "General Propositions defining the term 'Crimes against Humanity'", (Doc.C.201), and among the general propositions, the Committee stated, in paragraph 6, the following:

" 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. "

Having regard to the whole mass of information which has been presented to the Committee by the Yugoslav representative, the Committee has arrived at the opinion that the inhumane acts described in the preceding paragraphs of this paper and in the documents referred to, are, as a consequence of their magnitude and savagery, and of the great number, and as a consequence of the fact that a similar pattern was applied at different times and places, of such a kind, that they warrant the intervention by States other than those on whose territory the crimes have been committed, or whose subjects have become the victims of the crimes. The Committee adds that in the present cases it has been also shown that the systematic mass action which was in progress, was authoritative, and this authoritative character has transformed the number of individual common crimes, punishable merely under municipal law, into crimes against humanity, which thus have become the concern of International Law. The authoritative character of the crimes alleged by the Yugoslav National Office, has been established particularly by the speech delivered by Mussolini, quoted in Doc.III/59, and referred to in paragraph XIV of this paper. In this speech, the then Dictator of Italy not only clearly admitted, but even boasted that all the crimes, not only against the life and liberty of Italian citizens of Yugoslav race, but also against their property, which would be committed, had been ordered and instigated by him as the then supreme representative of the Italian executive power.

XVII. The International Military Tribunal at Nuremberg, in its judgment against the major German war criminals, stated on page 16927 of the official transcript (quoted in Doc.III/62, para.IX, page 6), the following:

" To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with any such crime. The Tribunal cannot, therefore, make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter, but from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity; and insofar as the inhumane acts charged in the Indictment, and committed after the beginning of the war did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity. "

The International Military Tribunal, in making a distinction between crimes committed before 1st September 1939 and crimes committed after that date, applied to the defendants who were before it the provision of Art. 6(c) of the Charter of the International Military Tribunal, according to which a crime to be a crime against humanity within the meaning of Art. 6(c) of the Charter, i.e., a crime against humanity committed by one of the major war criminals, must be "in execution of, or in connection with, any crime within the jurisdiction of the Tribunal".

For the purpose of deciding whether the particular crimes committed by Italians which are the subject of this report, fall under the notion of crimes against humanity, it is, in the present circumstances, not necessary for Committee III to express an opinion on the question whether this distinction between crimes committed before 1st September 1939 and crimes committed after that date, applies also to crimes committed by other persons than the major criminals of the European Axis. Committee III mentions, however, that in its statement, Doc.C.236, and in para.XXVII of the paper C.237, the circulation of which it has arranged, the reasoned opinion has been expressed that this differentiation is restricted to major criminals of the European Axis, judged under the particular positive provisions of the Charter of the International Military Tribunal, and does not apply to other alleged perpetrators of inhumane acts.

In the present case, however, it is clear that the alleged crimes were committed during the war, and were therefore all committed in execution of or in connection with the aggressive war which Italy joined in 1940 and started waging against Yugoslavia in 1941, so that the crimes described in the foregoing paragraphs of this paper would fall within the notion of crimes against humanity even if the restrictive provisions of the Charter of the International Military Tribunal were to be applied to the case.

XVIII The statement contained in the preceding paragraphs refer, of course, only to the charges and Counts which are discussed in this paper, and do not refer to those which have been adjourned.

In addition to those charges and counts which have been adjourned, the Committee does not include in its classification as crimes against humanity the allegations which charged individual officers or men with pillage. Here the Committee is of the opinion that the authoritative character of the crime of pillage has not been established and that the crimes in question lack one of the qualifications, which, in the opinion of the Committee, are necessary for the classification of a crime as a crime against humanity.

III/74.
2nd December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Giving Information as a War Crime.

In accordance with the decision by Committee III taken in its meeting held on 28th November 1946, the Secretary to Committee III herewith circulates a translation of Section 11 of the Czechoslovak Retribution Decree, No.16 of 1945.

GIVING INFORMATION.

Section 11.

Any person who, during the period of heightened danger to the Republic, acting in the service or for the benefit of the enemy, or taking advantage of the situation brought about by enemy occupation, gave information against another person concerning the latter's actual or alleged activities, shall be deemed to have committed a crime and shall be punished by forced labour for a term of not less than five and not exceeding ten years.

If the informer, by giving the information, has caused loss of liberty on the part of a Czechoslovak national, he shall be punished by forced labour for a term of not less than ten and not exceeding twenty years.

If the information had, as its direct or indirect result, the loss of liberty by a larger number of persons or serious injury to health, it shall be punishable by forced labour for life, and if it lead to the death of any person, it shall be punishable by death.

III/75.
7th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Giving Information as a War Crime.

Draft Resolution (x)

(Preliminarily agreed to in the meeting of Committee III
on 5th December, 1946.)

Where giving information leads to the commission of a war crime,
such giving information falls, in the opinion of the Committee,
within the notion of complicity in the commission of a war crime,
provided the general conditions relevant to complicity are fulfilled.

(x) A Draft Report, embodying the result of the discussion
in Committee will be circulated as soon as possible.

III/76.
10th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Giving Information as a War Crime.

Draft Report by Committee III.

In connection with the Czechoslovak Charge No.4210, accusing a certain Leopold Klima of complicity in deportation, committed by having served as an informer to the Gestapo, Committee I asked Committee III for its opinion as to what extent and for what reasons giving information (denunciation) should be regarded as a war crime in International Law.

The relevant information is contained in Docs. III/69, III/71 and III/74. The question was examined by Committee III in its meetings held on 5th December 1946 (Minutes No.26/46) and 11th December 1946, (Minutes No.27/46).

In the latter meeting, Committee III adopted the following

REPORT.

- I. The problem whether and to what extent giving information (denunciation; denouncing) is a crime in general, and in particular a war crime in International Law, has become of considerable practical importance during the Second World War in view of the activities of certain criminal organisations of the Axis Powers, particularly the Gestapo and the S.D. The importance attached to the question may be gathered from the fact that several nations have introduced into their municipal criminal law positive provisions dealing with the question. Examples of such provisions are:

the Belgian Law-Decree of 17th December 1942, "Moniteur Belge",
29 December 1942, Article 4;
the Czechoslovak Retribution Decree No.16 of 1945 (Section 11);
the Yugoslav Law of 25th August, 1945, (Section 3); and
the Austrian War Crimes Law of 26th June 1945, (Section 7).(*)

- II. The only reference in conventional International Law to giving information (denunciation; denouncing) is contained in Article 44 of the 4th Hague Convention of 1907, (a provision which has not been accepted by Germany, Japan and Russia). It reads as follows:

(*) The Secretary to Committee III is indebted to Commander MOUTON for having drawn his attention to the Belgian and Austrian provisions referred to in the text. The Austrian enactment was circulated as No.23 of the Document Series of the Research Office; the Yugoslav Act as Doc. Misc.No. 60.

" Article 44. A belligerent is forbidden to compel the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence. "

The provision prohibits the use of compulsion in order to extract information from the inhabitants of occupied territory by the occupying authorities. The provision deals only with information regarding the army of the other belligerent or its means of defence; it is not addressed to the persons giving the information, whether members of the occupying forces and authorities, or inhabitants of occupied territory.

III. In the opinion of the Committee, there is, therefore, no particular war crime of giving information as such in International Law. A person acting as an informer commits a crime only if by giving information he becomes a party to an independent war crime recognized as such in International Law, e.g., murder and massacre, torture of civilians, internment of civilians under inhumane conditions, forced labour of civilians, compulsory enlistment of soldiers in the armed forces of the occupying Power, etc.

IV. Participation of a person in a crime committed by others, may take different forms in different municipal legal orders, and also in International Law. The Charter of the International Military Tribunal describes the different participants of a crime or of a common plan or conspiracy to commit a crime, inter alia, as instigators and accomplices (Art. 6. of the Charter of the International Military Tribunal). English law knows four different ways of taking part in a felony: (1) a principal in the first degree, (2) a principal in the second degree, (3) an accessory before the fact, (4) an accessory after the fact.

The same categories are, in the main, known also to the Continental criminal codes, which distinguish between the immediate perpetrators and co-perpetrators, instigators, and aiders and abettors, dividing the last named category into those who give aid and comfort before the fact and those who do so after the fact.

Giving information can be considered a war crime only if, on the facts of each individual case, (a) a war crime has been committed, and (b) the informer falls within one of the categories of accomplices to this war crime.

V. It is very difficult to lay down general rules as to the circumstances which make an individual case fall under this category because every case will have to be judged on its own merits. It will always be necessary to examine:

- (a) the act of which the person who has been informed against, is accused;
- (b) the action of the occupying authorities which is reasonably to be expected as a consequence of the information.

With regard to (a): Giving information regarding common law crimes, will, in general, not be considered a war crime even if the consequences for the person informed against be very grave. The same may be said of information regarding the violation of enactments which the occupying Power was entitled, under International Law, to promulgate e.g., regulations respecting the safety of the occupying forces, food regulations in occupied territory, etc.

Giving information regarding the violation of such occupation ordinances as are obviously illegal and even criminal, will, on the other hand, often be a reason for holding that the informer may be guilty of complicity in a war crime. Such obviously illegal enactments by the occupation authorities are, e.g., provisions ordering the rounding up and deportation of Jews and other inhabitants of occupied territory, provisions introducing compulsory military service of inhabitants of occupied territory in the armed forces of the occupant, or provisions imposing slave labour on the inhabitants of occupied territory.

The test is, however, in the opinion of the Committee, not infallible. There might be circumstances in particular cases, where a denunciation of a person for having violated even a common law or an unimpeachable occupation ordinance, will amount to complicity in a war crime subsequently committed. This will, e.g., be the case when there were left in existence police authorities of the occupied State during the occupation, which would be able to deal with such information, and the informer nevertheless addresses his information to the occupying authority, (e.g. Gestapo, S.D.) with the intention of causing particularly grievous harm (deportation to a concentration camp) or excessive punishment (death sentence for petty offences) to be inflicted upon the person informed against.

With regard to (b): The action of the occupying authorities of which the information was one of the causes, must, in itself, be criminal, (inhumane treatment of all kinds, e.g. deportation to concentration camps, extermination; punishment for violation of provisions, the enactment of which in itself was criminal; excessive sentences for petty offences).

- VI. To fasten responsibility on the informer for the war crime subsequently committed, it will always be necessary to establish the mens rea or dolus malus of the informer, i.e. his knowledge that his action would lead to the commission of a war crime and his intention to bring about this effect, or his reckless indifference with regard to this effect.

In deciding the question whether this mental element of complicity in the crime is, or is not, established in particular cases, the personality of the accused and of the person informed against will have to be considered. The general situation in the place concerned will be most relevant. It will be possible to assume the informer's guilty knowledge if it was quite clear in the circumstances of the case what reaction was to be expected on the part of the occupying authorities, particularly if from the reaction of the occupying authority in similar cases a well known pattern has emerged. The informer will, on the other hand, not be responsible for the subsequent actions by the occupying authority if he had reason to believe that the person informed against would be fairly treated or fairly tried.

The responsibility of the informer will, of course, be apparent in cases where he has acted as an agent provocateur or where he knowingly accused a person of acts which the person had not committed.

- VII. As a rule, the information will have had to be furnished voluntarily in order to make the informer an accomplice in the subsequent war crime. If the informer acted under superior orders, the general rules regarding this plea, now well established, will apply to the case. The fact that the defendant acted pursuant to order of his government or of a superior, shall not free him from responsibility, but may be considered in mitigation of punishment (Art.8 of the Charter of the International Military Tribunal). The true test is not the existence of the order but whether moral choice was, in fact, possible. (Nuremberg Judgment, Cmd.6964, p.42).

If the pressure brought upon the person giving information was so strong that he could not resist it, then the defence that his will was overborne by compulsion (duress, necessity), would be available to him. This would particularly apply to information given on the part of a person who himself was being tortured or very gravely threatened.

VIII. The war crime subsequently committed need not necessarily be a direct result of the information given. A person may also become criminally responsible for a subsequent war crime if it is an indirect result of his action, provided his mens rea is established.

IX. The United Nations War Crimes Commission when listing a person, is neither in a position, nor called upon, to examine closely the mental element of a crime with which the person has been charged. It is only the task of the Commission to examine whether a prima facie case has been established. Committee III would like to point out, however, that in dealing with charges of war crimes allegedly committed by giving information, something more than the mere fact of giving the information and the subsequent action by the occupying authority should be proved in order even to establish a prima facie case and that a charge, in order to lead to the listing of a person, should contain precise indications both as to the criminality of the subsequent proceedings by the occupying authority, and of the mental element from which alone the guilt of the person giving the information can possibly be derived.

A cautious attitude will recommend itself in view of the fact that the Prosecution in the trial against the major war criminals also proceeded cautiously with regard to informers.

In the Judgment of the International Military Tribunal, as pronounced on 30th September, 1946, it was stated that the declaration regarding the Gestapo and the S.D. included all local representatives and agents, honorary or otherwise (p.16949 of the official English transcript; p.75 of the Command Paper, Cmd.6964.) On the following day, the Tribunal declared that its attention had been drawn to the fact that the Prosecution expressly excluded the honorary informers who were not members of the S.S. In view of that exclusion by the Prosecution, the Tribunal also excluded those persons from the S.D. which was declared criminal. (p.16969 of the official English transcript; p.83 of the Command Paper, Cmd.6964).

This part of the Judgment was not, of course, concerned with the guilt of the individual informers but with the question whether honorary informers were, as such, to be included in the criminal group. The incident shows nevertheless that the Prosecution was reluctant to consider giving information as such an activity constituting complicity in a war crime.

X. Where giving information leads to the commission of a war crime, such giving information falls, in the opinion of the Committee, within the notion of complicity in the commission of a war crime provided the general conditions relevant to complicity are fulfilled.

III/77.
10th February, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Request from the
Far Eastern and Pacific Sub-Commission
concerning the war crime of
"deliberate bombardment of undefended places."

The following letter, dated Nanking, 24th December 1946, has been received from the Acting Chairman of the Far Eastern and Pacific Sub-Commission.

United Nations War Crimes Commission
Far Eastern & Pacific Sub-Commission.

Nanking, December 24, 1946.

The Acting Chairman of the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission has the honour to present his compliments to the Chairman of the United Nations War Crimes Commission and to inquire about the following:

The Sub-Commission here is faced with a number of cases on "deliberate bombardment of undefended places" in China by Japanese planes. The Sub-Commission wishes to learn from the Main Commission (a) What constitutes deliberate bombardment and on whom rests the burden of proof? (b) What constitutes an undefended place and what evidence is required to establish the fact of undefendedness? (c) What procedure has been followed in similar cases in Europe by the Main Commission?

(sgd) Delvaux de Fenffe,
(Belgian Ambassador to China)

III/78.
19th February, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

DELIBERATE BOMBARDMENT OF UNDEFENDED PLACES.

Preliminary Report by Egon Schwelb, Legal Officer.

C O N T E N T S.

- I. The request from the Far Eastern and Pacific Sub-Commission.
- II. The term "Deliberate Bombardment of Undefended Places".
- III. Different rules for bombardment in land warfare, naval bombardment and aerial bombardment.
- IV. Bombardment in land warfare.
- V. Naval Bombardment.
- VI. Aerial Bombardment.
- VII. Attempts at developing the law between 1919 and 1939.
- VIII. International Adjudication on the subject between the two World Wars.
- IX. The attitude of the belligerents at the beginning of the Second World War.
- X. The practice during the Second World War.
- XI. The Charter of the International Military Tribunal, the Indictment and the Nuremberg Judgment.
- XII. Reference to the attitude of the International Military Tribunal to submarine warfare.
- XIII. Tentative Proposals.

I. The Request from the Far Eastern and Pacific Sub-Commission.

The request by the Far Eastern and Pacific Sub-Commission concerning the war crime of "deliberate bombardment of undefended places" (Doc. III/77), puts to the Main Commission three questions:

- (a) What constitutes deliberate bombardment and on whom rests the burden of proof?
- (b) What constitutes an undefended place and what evidence is required to establish the fact of undefendedness?
- (c) What procedure has been followed in similar cases in Europe by the Main Commission?

The purpose of the present paper is to submit to the members of Committee III such material as can be collected in the short time, pertaining to the questions mentioned under (a) and (b).

The material relating to the question sub (c) will be circulated in a special paper by Dr. J. Litawski, Secretary to Committee I.

No final solution of the question is attempted at the present stage, pending the examination of the problem by Committee III.

II. The term "Deliberate Bombardment of Undefended Places".

The term "deliberate bombardment of undefended places" appears in the list drawn up by the Commission of Responsibilities 1919, containing the headings under which charges of war crimes can be collected and classified.

This list, including as its item 19 the alleged crime of deliberate bombardment of undefended places, was adopted by this Commission on 2nd December 1943, as a working list (Doc.C.I.). In adopting the list as a working list, the Commission pointed out that "there is no list of war crimes which is authoritative in the sense that international law forbids any act outside the list being treated as a war crime, and obliges every state which recognises the obligatory nature of international law to treat as a war crime every act which figures in the list". (para.4. *ibid*). The Commission also pointed out that "it will be necessary to add to this list one or two items which seem to be inadequately covered by the language employed in framing the list; just as it may be necessary to disregard certain items - such as No.21 - as these refer to acts which in the present war the forces of the United Nations have themselves been obliged to commit" (para.10 *ibid*). As one of the reasons for adopting this list as a working list, the fact was mentioned that of the present chief Axis Powers, Italy and Japan were parties to its preparation. (para.12, *ibid*).

The report by the Commission of Responsibilities, 1919, states in its Chapter II, which contains the list of 32 items, that by way of illustration, a certain number of examples have been collected in Annex I. This Annex I has not been printed in the accessible publications of the report, Carnegie Endowment for International Peace, Division of International Law, Pamphlet No.32, and American Journal of International Law, 1920. An English translation of the respective item taken from the publication: "Conférence de la Paix 1919-1920. Recueil des Actes de la Conférence. Partie IV Commissions de la Conférence (Procès-verbaux, Rapports et Documents). B. Questions Générales (2) Commission des Responsabilités des auteurs de la guerre et sanctions", is therefore annexed to this paper.

It will be seen from the annexed text that the Belgian and Serbian charges did not elaborate at all the questions of the deliberate character of the bombardment and of the qualification that the bombarded

places were undefended. In some of the British charges, dealt with by the 1919 Commission, the clearness of the weather, the favourable visibility, the clearness of the night, the fact that there was a full moon, was stressed, probably as indicating the deliberate character of the bombardment. As far as the objects bombarded were concerned, the British report stressed the fact that there was no opposition, that the districts attacked were occupied exclusively by civilian inhabitants, and that the main attack on Edinburgh was on the city itself.

In the case of the naval bombardment of Scarborough, it was pointed out that it was a bombardment of the whole town, from one end to the other, without cause and completely without discrimination. The indiscriminate character of the bombardment is also stressed in the case of the attack on West Hartlepool. It appears therefore that also the British charges relating to the 1914-1919 war appear to fall short of establishing even a prima facie case of both the intention of the responsible enemy personnel and the character of the objects as undefended places.

III. Different rules for bombardment in land warfare, naval bombardment and aerial bombardment.

For reasons of the development of the relevant rules, it is necessary to deal separately with the question of the bombardment of undefended places (a) in land warfare, (b) in sea warfare, and (c) in air warfare. This is necessary in spite of the fact that the subject of the enquiry from Nanking is probably bombardment from the air because although there exists written law on bombardment in land warfare and sea warfare, there are practically no conventional rules as to bombardment (bombing) from the air.

IV. Bombardment in land warfare.

According to Oppenheim-Lauterpacht (II, p.326), bombardment by land forces was not generally considered prior to the first World War, except in connection with assault or siege. But the experiences of the first World War and in particular the new uses of aircraft and long range guns have raised the question how far bombardment is lawful when it is solely for destructive purposes, and is not intended to be a prelude to occupation by armed forces.

The Hague Rules of Land Warfare (Annex to Convention IV of 1907) contain the following provisions:

"Article 25:

The attack or bombardment, by any means whatever, of undefended towns, villages, dwellings, or buildings, is forbidden.

Article 26:

The officer in command of an attacking force must do all in his power to warn the authorities before commencing a bombardment, except in cases of assault.

Article 27.

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand. "

Respecting the above mentioned text of Art.25, it should be noted that its binding force was deemed controversial and that it differed from Art.25 of the Hague Convention of 1899 by the words "by whatever means", which words were designed to cover bombardment by aircraft.

Neither the Convention of 1899 nor the Convention of 1907 contain a definition of the notion "undefended places". Respecting Art.27, attention is drawn to the words "as far as possible".

V. Naval Bombardment.

The Hague Convention IX of 1907 respecting Bombardment by Naval Forces in Time of War, contains the following provisions:

" Chapter I.

Bombardment of Undefended Ports, Towns, Villages, Dwellings or Buildings.

Article 1.

The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place may not be bombarded solely on the ground that automatic submarine contact mines are anchored off the harbour.

Article 2.

Military works, military or naval establishments, depôts of arms or war material, workshops or plant which could be utilized for the needs of the hostile fleet or army, and ships of war in the harbour, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable interval of time, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

The Commander incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

If for military reasons immediate action is necessary, and no delay can be allowed to the enemy, it is nevertheless understood that the prohibition to bombard the undefended town holds good, as in the case given in the first paragraph, and that the commander shall take all due measures in order that the town may suffer as little harm as possible.

Article 3.

After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the local authorities, on a formal summons being made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

Such requisitions shall be proportional to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in ready money; if not, receipts shall be given.

Article 4.

The bombardment of undefended ports, towns, villages, dwellings or buildings, on account of failure to pay money contributions, is forbidden.

Chapter II.

General Provisions.

Article 5.

In bombardments by naval forces all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, provided that they are not used at the time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two painted triangular portions, the upper portion black, the lower portion white.

Article 6.

Unless military exigencies render it impossible, the officer in command of an attacking naval force must, before commencing the bombardment, do all in his power to warn the authorities. "

Great Britain, France, Germany and Japan entered a reservation against Article 1, paragraph 2, since, in the opinion of Oppenheim-Lauterpacht, they correctly considered places where automatic submarine contact mines were anchored off the harbour, to be defended. (ibid, p.402).

The fundamental difference between the rules of Convention IV (supra IV) and the rules of Convention IX with which I am dealing in this paragraph, will be noticed.

While under the Rules of Land Warfare the decisive distinction is whether the bombarded place is defended or undefended, in naval warfare also undefended places may legitimately be bombarded, if they contain what has been called "military objectives" (Article 2 of Hague Convention IX).

During the first World War, the Hague Convention IX was not, or may not have been, in strict law binding, since not all the belligerents were parties to it. However this may be, as is stressed by Oppenheim-Lauterpacht, the German bombardment of Scarborough, West Hartlepool, Whitby (*) Whitehaven and other English coast towns ignored the spirit of the Convention, for these raids had no military purpose whatever, unless it was a legitimate military purpose to attempt to frighten and terrorise the civil population of the enemy - a condition which neither the fundamental principles of the law of war, nor considerations of humanity permit to accept (Oppenheim-Lauterpacht, ibid, p.404).

VI. Aerial Bombardment.

It has already been mentioned that by inserting the words "by whatever means" into Article 25 of the Hague Regulations (Convention IV), the Parties intended to cover bombardment by aircraft. The insertion of these words in Art.25 appears to be the only written law on aerial bombardment.

The first Hague Conference adopted on 29th July 1899, a declaration forbidding the launching of projectiles or explosives from balloons or air vessels for a term of five years. At the time of the second Hague Conference the 1899 Declaration had expired. A new declaration was made, on 18th October, 1907, by the Second Hague Conference by which the Contracting Powers agreed "to prohibit, for a period extending to the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature". It was provided

(*) See annex to this paper.

that the declaration "shall cease to be binding from the moment when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power." Out of 27 States which signed the 1907 Declaration only a few (among them Great Britain and the United States of America) had ratified it before the first World War, and Germany, France, Italy, Japan and Russia did not even sign it. When the first World War broke out, not one of the Central Powers had ratified the declaration; its provisions were not binding and were not observed. (Oppenheim-Lauterpacht, II, p.277).

VII. Attempts at developing the law between 1919 and 1939.

Between the two World Wars, attempts at codification of the rules of air warfare were made; in 1923, a Commission of Jurists, appointed at the Washington Conference of 1922, produced the "Hague Air Warfare Rules".

The Hague Air Warfare Rules have not been ratified but according to Oppenheim-Lauterpacht, (II, p.410), their Article 62, which lays down that "aircraft personnel engaged in hostilities come under the laws of war and neutrality applicable to land troops", indicates correctly that air warfare, while calling for rules of its own regulating in detail the specific situations to which it gives rise, is subject to the general principles of a customary or conventional character which underlie alike the law of war on land and at sea. These include for instance, in addition to humanitarian principles of unchallenged applicability, the fundamental prohibition of direct attack upon non-combatants. Whenever a departure from this principle is alleged to be necessary, its cogency must be proved by reference either to express agreement or to the peculiar conditions of aerial warfare.

The principal provisions of the unratified Hague Air Warfare Rules of 1923 regarding aerial bombardment are as follows:

"Article 22.

Aerial bombardment for the purpose of terrorising the civilian population, of destroying or damaging private property not of a military character, or of injuring non-combatants, is prohibited.

Article 23.

Aerial bombardment for the purpose of enforcing compliance with requisitions in kind or payment of contributions in money is prohibited.

Article 24.

(1) Aerial bombardment is legitimate only when directed at a military objective - that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

(2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depôts; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition, or distinctively military supplies; lines of communication or transportation used for military purposes.

(3) The bombardment of cities, towns, villages, dwellings, or buildings not in the immediate neighbourhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph (2) are so situated that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

(4) In the immediate neighbourhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.

(5) A belligerent State is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article. "

Commenting on these clauses, Oppenheim-Lauterpacht explain that they discard the obsolete and unworkable test of liability to bombardment which rests on the distinction between "defended" and "undefended" places, and are inspired mainly by the doctrine that bombardment should be confined to military objectives. (ibid, II, pp.412-413.)

In July 1932, in a Resolution adopted by the General Commission of the Disarmament Conference, it was laid down that "air attack against the civilian population shall be absolutely prohibited." Oppenheim-Lauterpacht add that the fact that neither this Resolution nor the Hague Air Warfare Rules of 1923 have become part of International Law ought not to be interpreted as meaning that the matter is not governed by existing principles of law. The immunity of non-combatants from direct attack is one of the fundamental rules of the International Law of War. It is a rule which applies with absolute cogency alike to war on land, at sea and in the air. This is not a question of the application, by analogy, to air warfare, of the rules obtaining in warfare on land and at sea. (As has been shown, in the matter of the bombardment the Hague Conventions adopted different rules for the bombardment of towns in land warfare, where the law has adopted the test of "defence", and in naval warfare, where the test of "military objective" has been adopted.) It is a question of the subjection of a particular sphere of war to rules generally recognised to be the basis of the law of war. The immunity of non-combatants from direct attack is a principle of this nature.

VIII. International Adjudication on the subject between the two World Wars.

The Greco-German Mixed Arbitral Tribunal has held in two cases, decided in 1927 and 1930 respectively, that the principle of respect for the life and property of the civilian population was of overriding application. In both cases, which were concerned with a claim for damages on account of the bombardment of Salonica by German aircraft in 1916, the Tribunal held that the duty of previous notification clearly recognised in respect of land and naval bombardment, applied by analogy to bombardment from the air. (Annual Digest, 1927-1928, case No.389; ibid 1929-1930, case No.301.)

IX. The attitude of the belligerents at the beginning of the Second World War.

At the beginning of the Second World War, in reply to an appeal by the President of the United States, a joint Anglo-French Declaration was issued on 2nd September 1939, affirming the intention of the two Governments, in the event of war, to conduct hostilities with a firm desire to spare the civilian population. On 17th September 1939, Germany took note of that declaration and announced her intention to adhere to the same policy subject to reciprocity. The German campaign in Poland in September 1939, was, of course, conducted in disregard of this declaration.

When, in May 1940, Germany initiated on a wide scale the use of the aerial weapon for the purpose of bombardment, the British Government announced on 10th May 1940 with reference to the declaration

of September 1939, that it reserved the right to take appropriate action in the event of bombing by the enemy of civilian populations in Great Britain, France or in countries assisted by Great Britain. Nevertheless, on 18th May 1940, the British Government reaffirmed the declaration made in September 1939 to the effect that, no matter what the policy of Germany may be, Great Britain would not resort to bombardment directed exclusively against the civilian population.

X. The practice during the Second World War.

The practice of the belligerents adopted by both sides in the Second World War is described by Lester Nurick of the United States Judge Advocate General's Department (in his private capacity) in (39) American Journal of International Law, 1945, pp.680 et seq. He says, inter alia, that in sharp contrast to the disputes amongst the writers has been the uniform, stated practice of belligerents in the Second World War to bomb industrial centres without much regard for the civilian population; in fact at times, the civilian population, particularly the industrial workers, have, according to this American writer, constituted the avowed target. The indiscriminate bombing of Rotterdam and London by the Germans needs no description. The Allied nations have adopted as a policy, the devastation of industrial areas (ibid, p.695); official statements by Allied leaders, are quoted in footnote 70, ibid.

It may be added that during the flying bomb attack on London, the British Prime Minister declined to make a statement on the legality or illegality of the attacks by flying bombs. (Statement of 6th July 1944, quoted by Lester Nurick, ibid, 696).

Subsequently the policy of dropping atomic bombs on Japanese towns was adopted in two cases.

XI. The Charter of the International Military Tribunal, the Indictment and the Nuremberg Judgment.

The Charter of the International Military Tribunal contains in its Article 6(b), in the course of an exemplative enumeration of the violations of the laws and customs of war, inter alia, the items "wanton destruction of cities, towns or villages or devastation not justified by military necessity." The Nuremberg Indictment, Count 3(G) recalls that "the defendants wantonly destroyed cities, towns and villages and committed other acts of devastation without military justification or necessity. These acts violated Articles 46 and 50 of the Hague Regulations of 1907, the laws and customs of war, the general principles of criminal law, as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed and Article 6(b) of the Charter. "

Among the examples mentioned in the Indictment, there appears to be no case of destruction of cities, towns and villages by way of bombing. In particular, neither the bombing of British towns in 1940-41 and subsequently, nor the use of the V-weapons against England in 1944 are charged in the Nuremberg Indictment.

The Nuremberg Judgment does not devote particular attention to the question under discussion. The only reference to the quoted part of the Indictment is the following sentence on page 45 of the British edition of the Judgment: "Cities and towns and villages were wantonly destroyed without military justification or necessity." The verdict against Goering does not mention the bombing activities of the Luftwaffe, of which he was the chief.

XII. Reference to the attitude of the International Military Tribunal to submarine warfare.

It will be for Committee III to discuss, and to form an opinion on, the question what, if any, effect the events during and after the conclusion of the second World War have on the law regarding the illegality of bombarding undefended places and advise the Commission and eventually the Far Eastern Sub-Commission accordingly.

For this purpose, the following observations relating to the treatment by the Nuremberg Tribunal of a similar question, may be useful. Oppenheim-Lauterpacht (ibid, p.415) draw an analogy between the law as to the sinking of merchant vessels by submarines and the prohibition of the bombardment of non-combatants.

As has been shown in Doc. III/70, the Nuremberg Tribunal has based its judgment on the consideration that the London Protocol on Submarine Warfare continues to be binding International Law of war. In view of the actual developments during the second World War, the Tribunal has, however, interpreted the provisions of the Protocol in favour of greater liberty of action by submarines. One of the consequences of this narrowing down of the scope of the London Protocol was that, although its violations remain technically war crimes, no punishment is inflicted for such violations as have been committed also by the other belligerent. With regard to this restriction, it is not clear whether the abstaining from imposing penalties is conditioned by the fact that the other belligerent committed the same act on his own initiative, or whether it also applies when the other belligerent committed the same act as a legitimate reprisal. This attitude was adopted by the Nuremberg Tribunal towards the London Protocol of 1936 to which, by the end of August 1939, 48 States had adhered, and the formal validity and binding character of which could therefore not be reasonably doubted.

This writer ventures, therefore, tentatively to express the opinion that what applies to conventional rules adopted as recently as between 1936 and 1939, by almost all seafaring nations, must apply still more to aerial warfare which, as has been shown above, has not been the subject of recent conventional regulation.

It seems, therefore, doubtful whether item 19 of the 1919 list of war crimes which is also the working list of this Commission, still represents a crime recognised as such in International Law. This submission is based not only on the actual conduct of the second World War by both sides, and the attitude of the Nuremberg Prosecution and Judgment, but also on the fact that even before the Second World War, there was a consent of opinion that the test whether a place is undefended is unworkable and obsolete.

XIV. Tentative Proposals.

If, in spite of what has been submitted in this paper, it will be considered appropriate to proceed to a detailed reply to the questions posed by the Sub-Commission under (a) and (b), the replies would probably have to be on the following lines:

Regarding (a): "Deliberate Bombardment of Undefended Places" means the intentional bombardment of places with the knowledge that they are undefended (whatever the latter expression may mean).

According to general principles of criminal law, the burden of proof rests on the prosecution. This does not exclude, of course, that the intention to bombard the undefended place may be inferred

from actions taken by the accused persons.

Regarding (b): There is no indication either in conventional law or in the opinion of legal writers or in actual state practice what "undefended place" means. It will, however, be sounder to replace the term "undefended place" by "place containing no military objective" and to state that the intentional bombardment of such a place is a violation of the laws and customs of war.

UNITED NATIONS WAR CRIMES COMMISSION.

Translation of Item 19 of the Annex I to the
Report of the Commission of Fifteen Members

appointed by the Preliminary Peace Conference in Paris on 25th January 1919.
for the purpose of enquiring into the responsibilities relating to the war.

19. DELIBERATE BOMBARDMENT OF UNDEFENDED PLACES.

<u>Details:</u>	<u>Date:</u>	<u>Place:</u>	<u>Authors:</u>	<u>Reference:</u>
<u>BELGIUM.</u>				
-11- Bombs dropped from aeroplanes.	4th September, 1914.	Gand	German aeroplane.	Report of the Belgian Commission of Enquiry, III, p.36.
do	5th Sept. 1914	Ecoloo	do	do
<u>BRITISH EMPIRE</u>				
Night attack. 90 incendiary bombs and several high explosive bombs dropped. 1 woman killed and 1 man wounded. No opposition.	10th May 1915	Southend	German airman in a dirigible.	Provisional British Reports.
Night attack. 47 incendiary bombs and 23 high explosive grenades dropped. 2 women killed and 1 child wounded. No opposition.	26th May 1915	do	The same dirigible	do

Night attack in clear weather with a full moon. The districts attacked were occupied exclusively by civilian inhabitants (Shoreditch, Whitechapel and Kingsland Road). There was no military objective in the neighbourhood. 89 incendiary bombs and 30 high explosive grenades dropped, 7 civilians killed, 33 wounded. No opposition.

31st May, 1915.

London.

do

do

The objective was the civilian part of the town and not in any way a military objective. A clear night with the town plainly visible. 7 high explosive bombs and 15 incendiary bombs dropped. 18 civilians killed, 52 wounded. No military loss.

5th March 1916

Hull.

A German dirigible. (A second airman was identified for Hull.)

do

Night attack. Favourable visibility. Main attack was on the town itself. The airman descended to 2,000 ft. "when he saw that the town was not defended by guns." 18 high explosive bombs and 6 incendiary bombs dropped. Casualties limited to civilians: 9 men and 2 children killed; 6 men, 13 women and 5 children wounded. Considerable damage.

2nd - 3rd April, 1916.

Edinburgh, (the City).

The same airman.

do

3 high explosive bombs dropped.

2nd - 3rd April, 1916.

Edinburgh, (the parishes of Colinton and Liberton.

Another German airman.

do

Battle cruisers and cruisers were accompanied by destroyers.

Scarborough - no fixed defences, no works of military or naval use. The bombardment was a bombardment of the whole town from one end to the other, without cause and completely without discrimination. 17 civilians killed, 120 wounded. Damage to houses: £30,000 sterling.

16th December, 1914.

Scarborough, Whitby, West Hartlepool.

German High Seas Fleet. (The names of the officers are available.)

British Reports, 16th January, 1919, page 4.

Whitby - no fixed defences. Damage to civilian property: £10,000 sterling.

West Hartlepool - no fixed defences. Indiscriminate bombardment of the town. 56 civilians were killed or died as a result of injuries, 220 more or less seriously injured; 506 houses and an ascertained number of churches and schools damaged.

SERBIA.

A number of undefended towns shelled by heavy artillery.

1914 - 1915.

Belgrade,
Chabatz,
Losnitza.

The Austrian and
German military
authorities.

Reports by Dr. Reiss,
Report to the Allied
Commission in
Occupied Serbia,
page 3.

Entire streets destroyed.

1916.

Bitolje
(Monastir)

Bulgarians.

Report of the
Allied Commission
in Occupied Serbia,
page 34.

III/79.
28th February, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

DELIBERATE BOMBARDMENT OF UNDEFENDED PLACES.

Draft Report

by

Committee III

summarising Documents III/78 and I/82 and embodying
the results of the discussion in Committee III meeting of
26th February, 1947.

Committee III recommends to the Commission that the following reply be given to the enquiry from the Far Eastern Sub-Commission of 24th December, 1946;

- I. The Far Eastern and Pacific Sub-Commission is faced with a number of cases on "deliberate bombardment of undefended places" in China by Japanese planes. The Sub-Commission wishes to learn from the Main Commission (a) What constitutes deliberate bombardment and on whom rests the burden of proof? (b) What constitutes an undefended place and what evidence is required to establish the fact of undefendedness? (c) What procedure has been followed in similar cases in Europe by the Main Commission?
- II. The term "Deliberate bombardment of undefended places" as describing a war crime, has been inserted in the list of headings under which charges of war crimes can be collected and classified, by the Commission of Responsibilities appointed by the Preliminary Paris Peace Conference in 1919. The list has been adopted as a working list by the United Nations War Crimes Commission (Doc.C.1.)

The item "deliberate bombardment of undefended places" has been formulated on the basis of Article 25 of the Rules of Land Warfare of 1899 and Article 25 of the Hague Regulations, annexed to Convention IV of 1907, which forbid the attack or bombardment of undefended towns, villages, dwellings or buildings.

The Fourth Hague Convention of 1907, by inserting the words "by any means whatever", intended to cover bombardments occurring not only in land warfare, but also in air warfare.

The rules governing bombardments by naval forces, (Hague Convention IX of 1907), while also in general prohibiting the bombardment by naval forces of undefended ports, towns, villages, dwellings or buildings, did not include in this prohibition military works, military or naval establishments, depots of arms or war material, workshops or plants which could be utilized for the needs of the hostile fleet or army. With regard to naval warfare, the criterion has, from the beginning, been not the question whether the bombarded place was or was not defended, but whether or not it contained military objectives. Although the conventional law governing land and air bombardments has never expressly been amended to this effect, there was a consensus of opinion between statesmen, experts and writers on international law between the two World Wars, that the test of undefendedness was unworkable and obsolete.

At the beginning of the Japanese-Chinese hostilities, and at the beginning of the Second World War in Europe in 1939, the legal position was, in the opinion of the United Nations War Crimes Commission, that air warfare was, in the same way as warfare on land and at sea, subject to the fundamental prohibition of direct attack upon non-combatants which permeates the whole law of war.

The United Nations War Crimes Commission has, therefore, in its production of lists of persons against whom a prima facie case of having committed a war crime has been established, consistently rejected cases alleging illegitimate bombardment, if, on the evidence before the Commission, the bombarded places contained military objectives, and has listed only such persons as were held responsible for having intentionally bombarded places containing no military objectives.

Between 1940 and 1945, the bombardment of large areas was used as a means of warfare by both belligerents. The indiscriminate bombing of allied cities by the German Airforce has not been made the subject of a charge either against the major German war criminals in general, or against the Commander in Chief of the German Airforce who was the main defendant at Nuremberg. Nor has the use of the so-called V-weapons against England been made part of the Nuremberg Indictment. The Nuremberg Judgment does not, therefore, contain a finding on the subject. The same applies to the trial of the major Japanese war criminals. Among the breaches of the laws and customs of war for which they are held responsible, no mention is made of illegitimate air warfare by bombing places not containing military objectives.

The United Nations War Crimes Commission does not think, however, that it is necessary for the present purpose to express an opinion on the question what influence, if any, the conduct of the Second World War and the Nuremberg and Tokyo proceedings have had on the relevant law, as the Commission understands that the enquiry from the Sub-Commission mainly refers to incidents which happened in the course of the Japanese-Chinese hostilities before 1939.

III. With the proviso contained in the preceding paragraph, the Commission replies to the three questions posed by the Sub-Commission, as follows:

(a) "Deliberate Bombardment of undefended places" means the intentional bombardment of places with the knowledge that they are undefended.

According to general principles of criminal law, the burden of proof rests on the prosecution. The intention to bombard the undefended places may be inferred from actions taken by the accused persons.

(b) There is no indication either in conventional law or in the opinion of legal writers or in actual state practice what "undefended place" means.

In the light of the developments, the words "undefended place" should, however, be read as meaning "place containing no military objective."

(c) The Commission, in its actual practice, considered the absence of military objectives to be the correct criterion. It has, therefore, declined to list persons accused of being responsible for the bombardment of places containing military objectives, and has, on the other hand, placed on its list, persons responsible for the deliberate, i.e., (x) intentional bombardment of places containing no military objectives.

(x) For details respecting the development of the relevant law, see Doc. III/78, for the practice of Committee I see Doc. I/82.

III/80.
3rd March, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

The French cases Nos. 4695 and 4698,
consideration of which is referred to

Committee III.

(Exploitation of the Black Market and similar economic activities as
War Crimes).

At its meeting of 27th February 1947, Committee I
referred the following two French cases to Committee III
for its opinion as to whether the activities of the
accused should be considered as war crimes:

(Translation)

Case No. 4695

French Charges against German War Criminals, Case No. 2184.

Name of the accused, their rank and unit,
or official position:

1. Veltjens, Colonel, Official in charge (chargé de mission).
2. Poeschel, Major, Military Controller,
3. Bosse, S.S. Director of a Purchasing Office.
4. Engelke, S.S. Director of a Purchasing Service.
5. Matzke, Director of the S.O.D.E.K.O. Company.
6. Kattenstroth, Director of the Experts and President of the U.E.W.A.
7. Busse, a Director of the R.O.G.E.S.
8. Weiss, a Director of the R.O.G.E.S.,
9. Wutke, a Director of the R.O.G.E.S.
10. Ranis, Secretary General to the R.O.G.E.S.
11. Meyer, Staff Chemist and Director of the Purchasing Office "Sanitaire".
12. Prince von Hohenlohe, Director of a Purchasing Service.
13. Van-Den-Linden, Director of a Purchasing Service.
14. Moller, a Director of a Purchasing Office.
15. Schulz, a Director of the Purchasing Offices at Marseille.
16. Kramer, a Director of the Purchasing Service OTTO.
17. Breiter, S.S. Chief of a textile purchasing office.
18. Drexel, Private Secretary to Colonel Veltjens.
19. Zernotitzky, Agent of the V.E.R.V.A. Office.
20. Zimmermann, Chief of the purchasing office for rare metals.
21. Lungfeil, Director of the Purchasing office HEERES, R.O.G.E.S.
22. Nagel, Chief of a Purchasing Office.
23. Rieckey, Chief of a Purchasing Office.
24. Peter, Chief of an OTTO Purchasing Office.
25. Fuchs, Chief of an OTTO Purchasing Office.
26. Gerb, Chief of an OTTO Purchasing Office.
27. Vogel, Chief of an OTTO Purchasing Office.
28. Pescht, Chief of an OTTO Purchasing Office.

29. Ohl, Chief of an OTTO Purchasing Office.
30. Muller, Chief of an OTTO Purchasing Office.
31. Godecke, S.S. Chief of an OTTO Purchasing Office.
32. Horne, Chief of an OTTO Purchasing Office.
33. Maulaz, S.S. Chief of an OTTO Purchasing Office.
34. Niemann, Official purchaser for the R.O.G.E.S.
35. Bracksiek, Chief accountant to Kattenstroth.
36. Kirchoff, S.S. Chief of a Purchasing Office.
37. Halswick, S.S. Chief of the commercial police service.

Date & Place of commission of alleged crime:

France: 1942 - 1944.

No. and Description of crime in War Crimes List:

- No. 13, Economic Pillage,
No. 7, Deportation of civilians (as regards Halswick).

Reference to relevant provisions of National Law:

War Crime No. 13: Art. 440 of the Penal Code and Decree of the
1st September 1939: Penal Servitude for a term of years.
War Crime No. 7: Art. 341 of the Penal Code: Penal Servitude
for a term of years.

Short Statement of Facts:

Colonel Veltjens was charged as an official of the Four-Year Plan with the task of organising the black market in occupied territories in the West, in order to enable the importing into Germany of the greatest quantities possible of goods in addition to the taxes in kind and the official purchases. The other names of war criminals proposed for list 'A' are of the directors of services and managers of enterprises entrusted with carrying out the Veltjens plan.

Particulars of Alleged Crime:

Colonel Veltjens, an official (chargé de Mission) at the headquarters of Field-Marshal Goering, proposed, on 21st May 1942, the scientific organisation of the black market in the occupied territories of the West. A conference was held with this end in view at the Ministry of War Production in the presence of representatives of the German Government Ministries. The plan of Colonel Veltjens was adopted and, in an official letter (lettre de service) signed by Goering, he received full powers for its execution.

Until this time the different German services, the Army, the Navy, the S.S., the Todt Organisation, the Air Force, etc., had operated in an unco-ordinated fashion and possessed purchasing offices independently in the occupied territories. This practice was inconvenient in many ways. It placed the German purchasing offices in a position of mutual competition when dealing with foreign salesmen, it encouraged corruption among the German agents in charge of buying, it resulted in the making of unfavourable bargains (goods of inferior quality) or uneconomic transactions (goods delivered in duplicate or in excessive quantities). Further, rare metals and valuable goods escaped the hands of German buyers and were sent by third parties to neutral countries.

The centralisation of purchases on the black market under the direction of Colonel Veltjens was intended to overcome these inconvenient features. "A central administration is created for seeking out and using goods from the black market in occupied territories." It was a question of "using the black market to the greatest extent and in the best financial conditions for the Reich". (Translation of the Veltjens

report of 21.5.42) It is clearly stated that the Veltjens organisation must not "hamper the legal possibilities of taking possession of goods". (loc.cit.) Its purpose was therefore to snatch away and import into Germany all goods, raw materials or manufactured products which had been able to escape the official commercial transactions and the taxes and requisitions of the German government.

The capital necessary for financing of these activities was supplied by the R.O.G.E.S. which was itself credited with funds by the Reich Finance Ministry and the Price Control. The organ specially charged with the manipulation of funds and with the granting of credits, was the UEBERWEISUNGSKASSE, whose agent in Paris was Erich Lungfiel.

The buying organs, credited with funds, had direct relations with the intermediaries, bank managers and traders, (démarcheurs, rabatteurs), individuals of all nationalities, and doubtful characters (MARQUER, SZKOLNIKOW). These agents, paid on a commission basis, having important means of access to credits and very large sums of ready money, sought out stocks of goods for which they paid any price whatever, and worked for purchasing offices of which those best known were as follows:

The OTTO Offices, from the Christian name of their director Otto Brandl, who committed suicide on 6th August 1946 at Munich after his arrest, were centred at 23 Square du Bois de Boulogne. Their purpose was to buy goods of all kinds with the exception of oils and fats, but more particularly metals, textiles, hides and skins, provisions, seeds, spices and sanitary materials.

The Military Controller attached to the Otto Offices was Major POESCHEL. The chiefs of the Otto Offices with specialised purchasing tasks were as follows:

- (1) For the branch dealing with hides and metals, - Dr. FUCHS.
- (2) For the textiles branch - KRAMER and Mre. GERB.
- (3) For provisions, spirits, etc., - ZERNOTIZKY and PETER.

The figure for the transactions carried out by the Otto Offices amounted approximately to 22,000,000,000 francs according to the accounts of R.O.G.E.S.

The MUNIMM-PIMETEX, an abbreviation for Munitions Ministerium and Pioniermaterial, Metalle, Textilien, with a business office at 33, Avenue des Champs Elysées, had the task of purchasing metals, machinery, tools, cables, machine tools and provisions, particularly eggs and vegetable preserves.

In charge of this purchasing office was Dr. Paul BOSSE, with Capt. VOGEL as his assistant.

Each of the following sections specialised in its purchases with the following in charge:

The buying of metals, NAGEL.
The purchasing office at Marseille, SCHULZ.
The buying of provisions, VAN-DER-LINDEN.
The buying of machines and tools, PESCHT.
The buying of textiles and hides, OHL.

Others had special tasks, notably in the buying of rare metals, wolfram, industrial diamonds, etc. These persons were RIECKHEY, Mlle. MULLER, HORN and ZIMMERMANN.

The activities of Munimim-Pimetex for the period from 2nd August 1943, to 31st October 1944 alone came up to the figure of 3,500,000,000 francs.

The ESSEX Offices.

The S.S. Services had their own purchasing offices at 27 Avenue Marceau, but they were integrated with the Veltjens organisation. Their purchases concerned mainly textiles, provisions, wines and spirits.

The Director was the S.S. Hauptsturmführer ENGELKE and his assistants were S.S. Untersturmführers KURCHOFF, BREITER, GODECKE and MAULAZ. The S.S. services operated in conjunction with the other purchasing offices, exercising a sort of police function over their transactions, confiscating goods and deporting where necessary business men who refused to co-operate. (The task of Dr. HALSWICK of the S.S.).

The purchases carried out by the ESSEX Offices came to more than 1,000,000,000 francs between 15 June 1943 and 31 January 1944, according to the accounts of the R.O.G.E.S.

The S.S. ROME Offices - S.S. Offices specialising in the finding out and buying of metals, situated at 10, place des Etats-Unis. The director was S.S. Untersturmführer Prince von HOHENLOHE. His business figures came to 122,000,000 francs.

The S.O.D.E.K.O. Offices, 77, Champs Elysées, Paris, a company specialising in the buying of fats for consumption and for industrial purposes, directed by Dr. MATZKE. The activities of this company were relatively modest, (50,000,000 francs).

SANITATSPARK 541 Offices. This service, directed by Oberstabsapotheker MEYER, was charged with buying sanitary materials. Its operations amounted to 50,000,000 francs.

These buying offices had branches in the provinces, particularly in Lille.

The U.E.W.A. (Ueberwachungsstelle), was the organ used by Veltjens for controlling and directing the purchasing activities of the offices. It appointed experts who estimated quality and value, and the expediency of the transactions being carried out. Their opinion was absolutely necessary for the conclusion of a deal. Its body of experts was under the direction of KATTENSTROTH, who had under his orders Oberzahlmeister BRACKSIEK.

The R.O.G.E.S. (Rohstoff-Gesellschaft) was a commercial company without powers of its own and created to serve as a façade for the organising offices and committees. It was this company which financed the purchasing offices, kept accounts of their commercial operations and ensured the sending and carrying of goods into Germany. In reality it possessed a monopoly for all the countries in the West and its traffic paid no customs dues. After the purchases had been carried out by the offices at black market prices, the R.O.G.E.S. was refunded the difference between that and the official price by the Ministry of War Economics, so that the goods came at the normal price into the commercial channels within Germany.

The operations carried out by R.O.G.E.S. on behalf of the Veltjens organisation alone amounted for a period of 11 months (1st January to 30th November 1942) to 1,000,000,582 francs.

The directors of R.O.G.E.S. in Paris were WUTTKE, WEIS and BUSSE. RANIS was in charge of accounting.

The injurious effects of the Veltjens organisation is shown by its own words in its report of 15th January 1943 to Reich-Marshal Goering. It emphasised first that to the extent of 9/10ths the financing of the operations on the black market by the purchasing offices was assured by the payment of French occupation expenses. It set out the economic

value of the commercial transactions carried out on the black market by drawing a favourable comparison for the period from 1st July 1942 to 30th November 1942, ^{between} the operations carried out by its services (384,382,893 Reichsmarks), and the operations of the official services for normal transactions operated by the Militärbevollmächtigter (267,409,926 Reichsmarks).

It follows then that the Veltjens organisation enabled the German war economy completely to drain the internal markets of the occupied countries without prejudicing the German finances. Its activities even provoked the protest of the Vichy government (Bicholonne Michel agreements), but without success. Its methodic exploitation of the black market was calculated not only to empty France of all substances from the economic point of view, but also to cause a rise in prices and inflation, and a certain moral decline in the quarters effected directly or indirectly by the purchasing offices.

Only the directors and managers who were in charge of commercial operations, and who were able to derive therefrom personal gain, have been held as accomplices in the war crime of pillage.

Case No. 4698.

French charges against German war criminals, Case No. 2207.

Names of the accused, their rank, unit or official position:

- (1) Bernard Poeppelmann,
- (2) Henri Munsch-Meyer.

Date & Place of commission of alleged crime:

Paris, 1942 - 1944.

Number and Description of War Crime in War Crimes List:

No. 13, Economic Pillage.

Reference to relevant provisions of national law:

Art. 440 of the Penal Code; the Decree of 1.9.39; and the Decree of 15.5.40: Penal Servitude for a term of years.

Short Statement of Facts:

Poeppelmann and Munsch-Meyer were directors and principal shareholders of the Socolilex Company which was charged by the German Government with the task of making the French tanners and manufacturers of footwear work for the benefit of Germany.

Particulars of Alleged Crime:

The Germans, Poeppelmann and Munsch-Meyer, a commercial man and a banker respectively, both living in Paris, set up there on the 3rd December 1941, a limited liability company called Société de Commerce pour l'Importation et l'Exportation (SOCOLILEX).

This Company used to import into France raw materials intended for the manufacture of footwear, excepting the hides and the tanning extracts intended for the French tanneries.

Although in fact the Socolilex Company did nothing but import into France German goods and products, it none the less contributed directly to the economic pillage of the country. It must be pointed out in fact, on the one hand, that the Hides Office, which regulated within France the whole of the footwear industry and hides industry, forced the French tanners and manufacturers to buy from Socolilex, the sole suppliers, German products of an inferior quality at a high price; and, on the other hand, that Socolilex only sold to firms which worked compulsorily for Germany and whose products were bought exclusively by R.O.G.E.S. (the German Purchasing Company attached to the Ministry of Economics).

The total figures representing the business carried out by the Socolilex Company from 3rd December 1941 to 31st October 1944, was 257,106,362 francs.

It is clear then that the company was very active during the occupation, and that it constituted an important part of the organisation entrusted by the German government with seeing that the French hides industry worked only for the benefit of Germany.

Poeppelmann and Munsch-Meyer, directors and principal share-holders of Socolilex, must be held responsible for their criminal activities.

Particulars of evidence in support:

The Expert Report dated 25th September 1945 of Monsieur Lefevre, expert accountant appointed by order on 9th March 1945.

13th March, 1947

UNITED NATIONS WAR CRIMES COMMISSIONCOMMITTEE IIIThe French Case No. 4695 (Exploitation of
the Black Market as a War Crime)Preliminary ReportPrepared by the Secretary on the basis of
the discussion in the Meeting of 6th
March, 1947.

In the Meeting of Committee III held on 6th March, 1947 (Committee III Minutes No. 2/47) the Secretary to Committee III was charged with the task of preparing a paper based on the opinions tentatively expressed in the meeting. The following text is submitted as a basis for discussion.

I. The persons concerned are charged with "economic pillage" (apart from the accused No. 37, who is also charged with deportation of civilians, the latter accusation being outside the scope of this paper).

By Article 47 of the Hague Regulations "pillage is formally forbidden".

Pillage is also one of the items of the 1919 list which has been adopted by this Commission as its working list of war crimes (Doc. C.1). The provision of Article 47 means, in the first instance, that private property of inhabitants of occupied territory is no longer a lawful object of private booty. Occupant soldiers must not plunder for private purposes. In his monograph on the International Economic Law of Belligerent Occupation, E.H. Feilchenfeld states that, in his view, the rule against pillage does not merely protect private property, but is also directed against all acts of individual lawlessness, committed in regard to property interests of all kinds, including public property. "It is necessary to think", the writer goes on saying, "not merely of individuals, but also of big business interests that may want to rob inhabitants. They may employ more complicated methods than outright physical stealing. The gravest cases of blackmail purchases have recently been those in which a person is forced to sell his business to another who is more acceptable to the authorities of the occupant. However, we are here dealing only with private pressure; where government pressure is used or added we no longer have a clear case of private plundering, but are confronted with public confiscation, legal or illegal, according to whether the rules on requisitions are observed". (o.c. pp. 31-32)

II. The Charter of the International Military Tribunal does not use the term "pillage", but speaks, in Article 6(b), of "plunder of public or private property" (cf. Doc. III/67, analysing the treatment of plunder of public and private property in the Nuremberg Judgment). The Nuremberg Judgment has summarised the law as to economic war crimes by stating that, under the rules of war, the economy of an occupied country can only be required to bear the expenses of the occupation, and these should not be greater than the economy of the country can be reasonably expected to bear (page 53 of Cmd. 6964). Evidence in the Nuremberg case has established, the Tribunal further states, "that the territories occupied by Germany were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy. There was in truth a systematic "plunder of private or public

property" which was criminal under Article 6(b) of the Charter (page 54 of Cmd. 6964).

In describing the conduct of the occupying authorities in some of the occupied countries, the Nuremberg Judgment(l.c.) refers to an order by Goering, issued as early as the 19th October, 1939, and states the following:-

"As a consequence of this order, agricultural products, raw materials needed by German factories, machine tools, transportation equipment, other finished products and even foreign securities and holdings of foreign exchange were all requisitioned and sent to Germany. These resources were requisitioned in a manner out of all proportion to the economic resources of those countries, and resulted in famine, inflation and an active black market. At first the German occupation authorities attempted to suppress the black market, because it was a channel of distribution keeping local products out of German hands. When attempts at suppression failed, a German purchasing agency was organized to make purchases for Germany on the black market, thus carrying out the assurance made by the defendant Goering that it was "necessary that all should know that if there is to be famine anywhere, it shall in no case be in Germany".

In many of the occupied countries of the East and the West, the authorities maintained the pretence of paying for all the property which they seized. This elaborate pretence of payment merely disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries themselves, either by the device of excessive occupation costs or by forced loans in return for a credit balance on a "clearing account" which was an account merely in name.

In most of the occupied countries of the East even this pretence of legality was not maintained; economic exploitation became deliberate plunder".

III. It will be seen from the preceding paragraph that the London Charter and the Nuremberg Judgment have developed the rules of International Law on our question to the extent that not only pillage, which is the unauthorised outrage of individual soldiers, is punishable, but also activities which come under the wider term of plunder of public or private property and in this connection the very fact which is charged by the French National Office in the present case has been mentioned in the Judgment, namely the organisation of a purchasing agency to make purchases for Germany on the black market. It is stated in the French charge No. 4695 (see Doc. III/80, p. 4 bottom) that to the extent of nine-tenths, the financing of the operations on the black market by the purchasing offices was assured by the payment of French occupation expenses.

It is also stated in the charge (p. 3 of Doc. III/80) that the agents of the Veltjens organisations sought out stocks of goods for which they paid any price whatever.

IV. The contributions which were extorted from the French economy by the German occupying authorities were far in excess of the needs of the army of occupation or of the administration of occupied French territory. If it had been otherwise, no money would have been available for financing nine-tenths of the enemy's black market purchases for Germany. The exaction of the exorbitant contributions constitutes therefore a violation of Article 47 of the Hague Regulations. (Item 15 of the 1919 list, which is the working list of the Commission (C.1) reads: "Exaction of illegitimate or of exorbitant contributions and requisitions") This has already been established in the Nuremberg Judgment. I do not think, however, that personal criminal responsibility for the exaction of exorbitant contributions by Germany from France can be fastened upon the accused 2 to 37. It could, probably, be argued, that the accused 1 (Veltjens) is suspect of having as a member of Goering's economic headquarters, been implicated in the policy of exacting exorbitant contributions and of being an accessory

after the fact of this crime in knowingly using the money thus extorted for the purchases on the black market.

V. I submit that it is not possible to say that the purchasing of goods on the black market, under circumstances in which the highest prices are paid, constitutes pillage either in the traditional sense of this word or as extended by the leading writer on the subject (supra para I).

In my view these black market operations do not even come under the wider notion of plunder as applied at Nuremberg.

The "plunder" aspect consists in the way how the money for the black market purchases was raised. If the Germans had brought to France good and valuable currency and spent it on the black market, nobody would suggest to treat the transaction as pillage or plunder.

VI. This does not mean that the persons who were responsible for the black market operations are not criminally responsible.

To the extent to which purchases on the black market were prohibited and criminal under French municipal law, the activities described in the charge constitute a violation of those French provisions. To that extent the activities charged were offences under French municipal law and are punishable as such.

VII. On the question whether they simultaneously constitute war crimes under international law, the following may be said: Article 43 of the Hague Regulations provides that the occupant has a duty to restore and ensure public order and safety and to respect, unless absolutely prevented, the laws in force in the country. This provision is addressed to the occupying Power as such. The rule that the occupying Power shall respect the laws in force in the country primarily means that it shall not, unless absolutely prevented, make alterations in the laws in force in the occupied country. The respect to the laws in force is therefore primarily illustrated by the duty of abstention from changing them.

It is submitted, however, that the prohibition covers not only the formal changing of the laws in force, but also the organising of a systematic violation of those laws. If the Hague Convention prohibits, apart from the case of absolute necessity, the changing of the law, the prohibition covers also what is in fact the same and actually more objectionable, namely the planning and organising of violations of this law. The persons responsible for the organising and planning of systematic violations of the laws in force in France are guilty of a violation of Article 43 of the Hague Regulations.

VIII. In order to establish a prima facie case of the existence of this guilt, the National Office should be asked to submit additional information with a view to establishing the fact that the activities known as the "black market" were at the material time prohibited and punishable under French law.

IX. Provided this additional information is given, the responsibility of the accused No. 1, who planned the whole scheme and was entrusted by Goering with carrying it out, appears to be prima facie established. The question as to what extent the other accused persons are implicated, either as direct perpetrators or as accomplices, in this planning and organising of the systematic violation of the French legal order will be a matter for Committee I to decide.

III/82.

14th March, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

The French Case No. 4698.

(Alleged pillage through economic activities; making French tanners and manufacturers of foot-wear work for the benefit of Germany).

Draft Report by Committee III.

Prepared by the Secretary on the basis of the discussion held on 6th March, 1947.

I. At its meeting on 27th February, 1947, Committee I referred the French case No. 4698 to Committee III for its opinion as to whether the activities of the accused should be considered war crimes. According to the short statement of facts, the accused (POEPPELMANN and MUNSCHMEYER) were directors and principal share holders of a company which was charged by the German Government with the task of making the French tanners and manufacturers of foot-wear work for the benefit of Germany. The accused, a commercial man and a banker respectively, both living in Paris, set up there in December 1941, a limited liability company. This company used to import into France raw materials intended for the manufacture of foot-wear, excepting the hides and the tanning extracts, intended for the French tanneries. The charge states that ^{though} the company did nothing but import into France German goods and products, it none the less contributed directly to the economic pillage of the country. This proposition is in the charge based on two facts: (1) that the Hides Office which regulated within France the whole of the foot-wear industry and the hides industry forced the French tanners and manufacturers to buy from the company, the sole suppliers, German products of an inferior quality, and at a high price. (2) that the company only sold to firms which worked **compulsorily** for Germany and whose products were bought exclusively by the German purchasing company attached to the Ministry of Economics. The charge states that the total figures representing the business carried out by the company from December, 1941, to October, 1944, was above 257,000,000 francs. It is stated that the company constituted an important part of the organisation entrusted by the German Government with seeing that the French hides industry worked only for the benefit of Germany.

II. In the opinion of Committee III, the charge, unless supplemented by additional facts, does not disclose facts establishing a prima facie case for a war crime having been committed. The activities of the two company directors may have been and certainly were disadvantageous to the French economy. They did not, however, come either under the notion of pillage which is prohibited by article 47 of the Hague Regulations or under the term of "Plunder of Private or Public Property", as used in article 6(b) of the Charter of the International Military Tribunal

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and as applied by the Nuremberg Judgement in the trial of the major German war criminals. It is not stated in the charge that the accused did not pay full value for the goods they purchased, nor that they in applying criminal means, achieved more than the value of the goods they sold. As far as the charge contains hints at unlawful pressure having been brought upon the French commercial community, it is not stated that the two accused were personally implicated in the applying or threatening of the illegitimate use of force.

It is stated that French tanners and manufacturers were forced - though not by the accused - to buy from the accused German products of an inferior quality. Committee III fails to see the relevance of this statement, particularly in view of the fact that the products made of the material of inferior quality were again re-imported into Germany.

III. Committee III therefore recommends that the National Office be invited to supplement the charge and that unless the charge is supplemented, the accused should not be listed by the Commission.

III/83.
25th March, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III

The French Case No. 4695.

(Exploitation of the Black Market as a War Crime).

Draft Report by Committee III (prepared by
the Secretary on the basis of the discussions
in the meetings of 6th and 20th March, 1947.) (*)

- I. In its meeting of 27th February 1947, Committee I referred the French Case No. 4695 to Committee III for its opinion as to whether the activities of the accused should be considered as war crimes.

Committee III discussed the case in its meetings held on 6th, 20th and 27th March 1947 (Minutes Nos. 2, 3 and 4 of 1947), and adopted the following report:

- II. The French National Office charges Colonel Veltjens and 36 other persons with the war crime of "Economic Pillage". It refers to No. 13 of the working list of war crimes adopted by the Commission (Doc. C.1) and refers as to relevant provisions of national law to Art. 440 of the French Penal Code and the French Decree of 1st September 1939.

- III. In the French charge it is stated that the first accused, Colonel Veltjens, was a German official for the carrying out of the Four-Year Plan and had the task of organising the black market in the occupied territories of the West, in order to enable the importing into Germany of the greatest quantities possible of goods, in addition to the taxes in kind and the official purchases. The other accused persons were the directors of services and managers of enterprises entrusted with carrying out the Veltjens plan. According to the charge, Veltjens proposed on 21st May 1942 the scientific organisation of the black market in the occupied territories of the West. At a conference held with this end in view, the plan proposed by him was adopted and in an official letter from Goering, Veltjens received full powers for its execution. The charge quotes from a memorandum prepared by Veltjens dated 21st May 1942 that "a central administration is created for seeking out and using goods from the black market in occupied territories". It was a question of "using the black market to the greatest extent and in the best financial conditions for the Reich". It was the purpose of the Veltjens organisation to snatch away and import into Germany all goods, raw materials or manufactured products which had been able to escape the official commercial transactions and the taxes and requisitions of the German occupation. Agents of the different German organisations,

(*) The discussion and preparatory work preceding this report is to be found in Documents III/80 and III/81 and in the Committee III Minutes Nos. 2 and 3 of 1947. Relevant questions of law pertinent to the subject have also been discussed in Documents I/22 and III/15.

paid on a commission basis, having important means of access to credits and very large sums of ready money, sought out stocks of goods for which they paid any price whatever. The French charge further states that the injurious effects of the Veltjens organisation is shown by its own words in its report of 15th January 1943 to Reichsmarshal Goering. It emphasises first that to the extent of 9/10ths the financing of the operations on the black market by the purchasing offices was assured by the payment of the French occupation expenses. It also sets out the economic value of the commercial transactions carried out on the black market by drawing a favourable comparison between the operations carried out by this service in the period from 1st July 1942 to 30th November 1942, amounting to 384,000,000 Rm, with the operations of the official services for normal transactions operated by the Militärbefehlshaber, (267,000,000 Rm). The French charge concludes that the Veltjens organisation enabled the German war economy completely to drain the internal markets of the occupied countries without prejudicing the German finances. Its methodical exploitation of the black market was, the charge submits, calculated not only to empty France of all substances from the economic point of view, but also to cause a rise in prices and inflation and a certain moral decline in the quarters affected directly or indirectly by the purchasing offices.

- IV. Committee III first considered whether the activities of the accused persons complained of come, as stated by the French National Office, under the notion of pillage.

In conventional international law, the question of pillage is dealt with in Article 47 of the Hague Regulations of 1907, according to which "pillage is formally forbidden".

Pillage is also one of the items of the 1919 list which has been adopted by this Commission as its working list of war crimes (Doc.C.1). The provision of Article 47 means, in the first instance, that private property of inhabitants of occupied territory is no longer a lawful object of private booty. Occupant soldiers must not plunder for private purposes. In his monograph on the International Economic Law of Belligerent Occupation, E.H.Feilchenfeld states that, in his view, the rule against pillage does not merely protect private property, but is also directed against all acts of individual lawlessness, committed in regard to property interests of all kinds, including public property. "It is necessary to think", the writer goes on saying, "not merely of individuals, but also of big business interests that may want to rob inhabitants. They may employ more complicated methods than outright physical stealing. The gravest cases of black-mail purchases have recently been those in which a person is forced to sell his business to another who is more acceptable to the authorities of the occupant. However, we are here dealing only with private pressure; where government pressure is used or added we no longer have a clear case of private plundering, but are confronted with public confiscation, legal or illegal, according to whether the rules on requisitions are observed." (o.c. pp.31-32).

- V. The Charter of the International Military Tribunal annexed to the Four-Power Agreement of 8th August, 1945, does not use the term "pillage", but speaks, in Article 6(b) of "plunder of public or private property" (cf. Doc.III/67, analysing the treatment of plunder of public and private property in the Nuremberg Judgment). The Nuremberg Judgment has summarised the law as to economic war crimes by stating that, under the rules of war, the economy of an occupied country can only be required to bear the expenses of the occupation, and these should not be greater than the economy of the country can be reasonably expected to bear (page 53 of Cmd. 6964). Evidence in the Nuremberg case has established, the Tribunal further states, "that the territories occupied by Germany were exploited for the German war effort in the most

ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy. There was in truth a systematic "plunder of private or public property" which was criminal under Article 6(b) of the Charter (p.54 of Cmd. 6964).

In describing the conduct of the occupying authorities in some of the occupied countries, the Nuremberg Judgment (l.c.) refers to an order by Goering, issued as early as the 19th October 1939, and states the following:

" As a consequence of this order, agricultural products, raw materials needed by German factories, machine tools, transportation equipment, other finished products and even foreign securities and holdings of foreign exchange were all requisitioned and sent to Germany. These resources were requisitioned in a manner out of all proportion to the economic resources of those countries, and resulted in famine, inflation and an active black market. At first the German occupation authorities attempted to suppress the black market, because it was a channel of distribution keeping local products out of German hands. When attempts at suppression failed, a German purchasing agency was organised to make purchases for Germany on the black market, thus carrying out the assurance made by the defendant Goering that it was "necessary that all should know that if there is to be famine anywhere, it shall in no case be in Germany". In many of the occupied countries of the East and the West, the authorities maintained the pretence of paying for all the property which they seized. This elaborate pretence of payment merely disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries themselves, either by the device of excessive occupation costs or by forced loans in return for a credit balance on a "clearing account" which was an account merely in name. In most of the occupied countries of the East even this pretence of legality was not maintained; economic exploitation became deliberate plunder".

- VI. It will be seen from the preceding paragraph that the London Charter and the Nuremberg Judgment have developed the rules of international law on our question to the extent that not only pillage, which is the unauthorised outrage of individual soldiers, is punishable, but also activities which come under the wider term of plunder of public or private property and in this connection the very fact which is charged by the French National Office in the present case has been mentioned in the Judgment, namely the organisation of a purchasing agency to make purchases for Germany on the black market.

It is stated in the French charge and it is quoted in paragraph II (supra) that to the extent of nine-tenths, the financing of the operations on the black market by the purchasing offices was assured by the payment of French occupation expenses.

It is also stated in the charge that the agents of the Veltjens organisations sought out stocks of goods for which they paid any price whatever.

- VII. In the opinion of Committee III, it is, however, not possible to say that the purchasing of goods on the black market, under circumstances in which the highest prices are paid, constitutes pillage either in the traditional sense of this word or as extended by the leading writer on the subject.

In the view of Committee III these black market operations do not even come under the wider notion of plunder as applied at Nuremberg.

Pillage or plunder, in the opinion of Committee III, pre-suppose that the goods were taken from the victim of pillage or plunder against the victim's will and without consideration. If the goods were not taken against the will of the legitimate owner and if adequate compensation was given for purchased goods, it is not possible to say that the activities come under the term of pillage, however reprehensible they may be from other points of view.

The correctness of this interpretation of the term "pillage" in international law is confirmed by the provisions of French municipal law to which the French charge itself refers, namely Art. 440 et seq. of the French Criminal Code, and the Decree of 1st September 1939. The relevant French municipal provisions read as follows:

French Criminal Code:

Art. 440:

Every act of pillage or destruction of commodities, effects or any movable property, committed by a group or band and by open violence, shall be punished by penal servitude for a term of years; each of the persons responsible shall also be fined between 2,400 and 60,000 francs.

Art. 441:

Nevertheless, those who are shown to have been caused by provocation or solicitation to take part in these acts of violence may only be punished by imprisonment.

Art. 442:

If the commodities pillaged or destroyed are grains, grain refuse or flour, mealy substances, bread, wine or other liquor, the penalty inflicted on the leaders, instigators or inciters shall be the maximum period of penal servitude and the maximum fine laid down in Article 440.

Decree of 1st September 1939 respecting the prevention of pillage in time of war:

Art. 1:

In time of war, the criminal acts of pillage set out in Article 440, 441 and 442 of the Penal Code shall be punished by death.

The same penalty shall be awarded for all acts of theft committed in a dwelling house or in a building evacuated by its occupants as a result of operations of war.

From the quoted texts of the French Criminal Code, it appears that the application of violence is necessary to constitute the crime of pillage. From the decree of 1st September 1939, imposing the death penalty for pillage in time of war, it appears that the legislator, when dealing with pillage, conceived it as a violent crime deserving of the supreme penalty.

VIII. Having arrived at the conclusion that the activities complained of do not come under the term of pillage or plunder, Committee III points out that this does not amount to saying that the persons who were responsible for them are not liable. It means that in the Committee's opinion, the "plunder" aspect of the black market purchases consists primarily in the way in which the money for the operations complained of was raised. If Germans had brought to France hard and valuable currency and spent it at the black market, nobody would suggest that the transaction be treated as pillage or plunder.

The illegal and criminal character of the scheme primarily consists, therefore, in the fact that nine-tenths of the money for these operations were taken from occupation expenses paid by France. This is evidence of the fact that the contributions which were extorted from the French economy by the German occupying authorities were far in excess of the needs of the army of occupation or of the administration of occupied French territory. If it had been otherwise, no money would have been available for financing the enemy's black market purchases destined for Germany. The exaction of the exorbitant contributions constitutes therefore a violation of Article 49 of the Hague Regulations, which provides that if the occupant levies money contributions in the occupied territory, "this shall only be for the needs of the army or the administration of the territory in question". This has already been established in the Nuremberg Judgment.

Item 15 of the 1919 list (Doc. C.1) reads: "Exaction of illegitimate or of exorbitant contributions and requisitions".

Committee I does not think, however, that personal criminal responsibility for the exaction of exorbitant contributions by Germany from France can be fastened upon the accused 2 to 37. It could, probably, be argued, that the accused 1 (Veltjens) is suspect of having as a member of Goering's economic headquarters, been implicated in the policy of exacting exorbitant contributions and of being an accessory after the fact of this crime in knowingly using the money thus extorted for the purchases on the black market, particularly in view of the fact that he is alleged to have proposed the whole scheme.

IX. In addition to the criminal liability of those persons who were responsible for the illegal extortion of the money with which the operations were financed, it goes without saying that to the extent to which purchases on the black market were prohibited and criminal under French municipal law, the activities described in the charge constitute a violation of those French provisions. To that extent the activities charged were offences under French municipal law and are punishable as such.

X. On the question whether they simultaneously constitute a violation of a rule of international law, the following may be said: Article 43 of the Hague Regulations provides that the occupant has a duty to restore and ensure public order and safety and to respect, unless absolutely prevented, the laws in force in the country. This provision is addressed to the occupying Power as such. The rule that the occupying Power shall respect the laws in force in the country primarily means that it shall not, unless absolutely prevented, make alterations in the laws in force in the occupied country. The respect to the laws in force is therefore, in the first instance, illustrated by the duty of abstention from changing them.

In the opinion of Committee III, the prohibition covers not only the formal changing of the laws in force, but also the organising of a systematic violation of those laws. If the Hague Convention prohibits, apart from the case of absolute necessity, the changing of the law, the prohibition comprises also what is in fact the same and actually more objectionable, namely the planning and organising of violations of this law. The persons responsible for the organising and planning of systematic violations of the laws in force in France are therefore guilty of a violation of Article 43 of the Hague Regulations.

XI. Having thus established that the activities of the organisers at the top and the main instruments of the policy of violating the municipal French provisions prohibiting the black market, is a violation of a rule of international law, namely of Article 43 of the Hague

Regulations, Committee III had to deal with a further question which goes to the root not only of the jurisdiction of the United Nations War Crimes Commission, but of the fundamental problems of delinquency in international law in general. The notion of an international crime or of a crime in international law has been controversial for a very long time. It is particularly the German literature on the subject which holds that every contravention of international law amounts to an international crime; not only acts which are shocking from the moral point of view are under this doctrine international crimes, but also every breach of contract or agreement. This doctrine is particularly upheld by Strupp in his book "Das völkerrechtliche Delikt," 1920. His opinion has not been accepted by other writers.

Fauchille distinguishes between "délits internationaux" and the breach of contractual obligations. Rivier, *Principes du droit des gens*, says: "Tout acte qui viole un droit essentiel est une infraction au droit des gens, un crime au délit international." Rivier speaks of the violation of an essential right as constituting an international crime.

That acts constituting what corresponds to civil wrongs (torts) and breach of contract were by writers of international law put on the same footing as acts corresponding to crimes in municipal law, was, in the opinion of Committee III, mainly due to the fact that, until very recent times, only States were considered to be subjects of international law. This alleged nature of the Law of Nations excluded the possibility of "punishing" a state for an international delinquency and of considering the latter in the light of a crime and led to the conclusion that the only legal consequences of international delinquency were such as create reparation of the moral and material wrong done. The equation of acts morally shocking with acts constituting merely contraventions of contractual obligations had its reason in the fact that even atrocious crimes were supposed to lead not to the punishment of the guilty individual, but only to a claim against the State for reparation and damages.

At a stage in the development of international law which has so far culminated in the conclusion of the Four-Power Agreement dated 8th August 1945, in the acceptance of its principles by 19 States which have adhered to it, in the application of its principles by the Nuremberg Judgment, in their affirmation by a Resolution passed in the 55th Plenary Meeting of the General Assembly of the United Nations on the 11th December 1946 and in the provisions of the Peace Treaties signed on 10th February 1947, a doctrine which does not distinguish between crimes in the sense of criminal law and mere civil or administrative wrongs must be considered obsolete in international law to the same extent as it has been obsolete in the municipal law of civilised states for hundreds of years. At a time when international law assumes the responsibility for punishing international crimes, it is necessary to establish a delimitation between crimes in the sense of criminal law and other illegal acts which, without constituting a crime, are mere contraventions of customary or conventional rules.

The demarkation line between acts which are merely illegal because they violate conventional or customary provisions of international law, and such acts which also constitute international crimes and entail personal criminal liability, can only be drawn by reference to the general principles of criminal law as recognised by civilised nations, and as, inter alia, applied in the Nuremberg proceedings. If the violation of a rule of the Hague Regulations simultaneously constitutes an offence against the general principles of criminal law, then it also constitutes a war crime. If it is not punishable under the municipal criminal law of the relevant states, then it cannot be classified as a war crime.

XII. In the present case, the accused persons are charged with acts which, though not technically constituting pillage, amount to a conspiracy to violate municipal law which the perpetrators were bound to respect, and thereby to exploit the economy of the occupied country. The activities resulted, according to the charge, in the emptying of France of all substances, in the causing of a rise in prices and in inflation and in a certain moral decline. All these results are contrary to the duties which are enjoined upon an occupant by international law and there are therefore combined both the illegal means and the effect deprecated by international law. On the facts submitted by the French National Office, the accused persons have violated not only a technical provision of international law, but an essential right of the occupied country.

Provided that the facts alleged are taken to be established, Committee III is of the opinion that those persons who are responsible for the planning and carrying into effect, at the top level, of this policy, are criminally responsible for these violations of international law.

XIII. Committee III adds that this statement refers, of course, only to those persons who were implicated in the preparation, planning and execution of the scheme, as distinguished from those who have only taken part in the day-to-day operations of the black market, (prohibited sales and purchases).

The latter, though probably criminally liable under municipal law, are, in the Committee's opinion, not guilty of a war crime.

XIV. Committee III recommends that the National Office should be asked to submit additional information with a view to establishing the fact that the activities known as the "black market" were at the material time prohibited and punishable under French law.

III/84.
28th March, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

The French Case No. 4695

(Exploitation of the Black Market as a War Crime).

New Text of Paragraph XI, sub-paragraph 4 (page 6) of Doc.III/83.

In its meeting of 27th March 1947, the Committee agreed on the substance of the fourth sub-paragraph of paragraph XI, but charged the Secretary with rewording it, by dividing it into two or three different sentences.

The proposed new text is herewith circulated to members of Committee III and if no suggestions to the contrary are received, the text contained in this paper will be embodied in the final report to be presented to the Commission.

Proposed New Text.

At the present stage in the development of international law, a doctrine which does not distinguish between crimes entailing criminal responsibility and mere civil or administrative wrongs must be considered obsolete in international law. Such a doctrine is to-day obsolete in international law as it has been obsolete in the municipal law of civilised States for hundreds of years. Under the principles laid down in the Four-Power Agreement of 8th August 1945, international law assumes responsibility for punishing international crimes. These principles have been endorsed by the 19 States who have adhered to the Agreement, they have been applied in the Nuremberg Judgment, affirmed by a Resolution passed by the 54 States forming the General Assembly of the United Nations on 11th December 1946, and also accepted by the five Axis Countries with whom Treaties were signed on the 10th February 1947. It is therefore necessary to establish a delimitation between acts entailing criminal responsibility and other illegal acts which, without constituting an international crime, are mere contraventions of customary or conventional rules.

III/85.
1st April, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

The Task of the United Nations in the Province of
International Criminal Law.

Preliminary Note on the possibilities of the
co-operation of the
United Nations War Crimes Commission
in this task.

By Egon Schwelb, Legal Officer.

C O N T E N T S.

- I. Report on the proceedings of the different organs of the United Nations.
- II. The general Resolution on the progressive development of international law and its codification.
- III. The Resolution concerning the affirmation of the principles of international law recognised by the Charter of the Nuremberg Tribunal.
- IV. The Resolution on the crime of Genocide.

I. Report on the proceedings of the different organs of the United Nations.

The United Nations General Assembly adopted, in its 55th Plenary Meeting on 11th December 1946, three resolutions, all of which have a bearing on the terms of reference of the United Nations War Crimes Commission, namely a General Resolution on the Progressive Development of International Law and its Codification, a Resolution on the Affirmation of the principles of International Law recognised by the Charter of the Nuremberg Tribunal and a Resolution on the crime of Genocide. (General Assembly Journal No. 75, Supplement A-64, Add 1, pp. 944-946; see Docs. Misc. Nos. 66, 68 and 69). The General Assembly, on the same date, also adopted a Resolution concerning the preparation of a draft resolution on Fundamental Human Rights and Freedoms. (ibid, p. 830).

From 27th January to 10th February 1947, the Human Rights Commission of the United Nations held its first session at Lake Success, New York, and this was attended also by representatives of two specialised agencies, (The International Labour Organisation and the United Nations Educational, Scientific and Cultural Organisation) and by representatives of several non-Governmental agencies, (The World Federation of Trade Unions, the American Federation of Labour, the International Co-Operative Alliance). The Human Rights Commission discussed the rights to be included in the proposed Bill of Rights and the instructions to be given to the Drafting Group.

As long ago as 21st June 1946, the Economic and Social Council of the United Nations instructed the Secretary General to make arrangements, inter alia, for the collection and publication of information concerning human rights arising from trials of war criminals, quislings and traitors and in particular from the Nuremberg and Tokyo trials. (Report of the Secretary General on the work of the United Nations, Doc. A-65, p. 18; see Doc. Misc. No. 46, p. 3), and in his letter of 22nd July 1946, (Doc. A.10) the Acting Secretary General of the United Nations requested from the Secretary General of the United Nations War Crimes Commission information and records in connection with the resolution of the Economic and Social Council.

The Secretariat of the United Nations War Crimes Commission has, since then, been in contact with the United Nations Secretariat and furnished the latter with all the relevant papers, both of the Commission and of its Committees.

In a letter addressed to Colonel Ledingham, the Secretary General of the United Nations War Crimes Commission, dated 11th December 1946, the Secretary General of the United Nations, Mr. Trygve Lie, noted that the research work and the discussions regarding the concept of crimes against humanity and the bearing of that concept on the protection of human rights and fundamental freedoms, were being continued and that a more comprehensive document would be produced soon. He added that he would be grateful to the United Nations War Crimes Commission for a copy of this document when it was ready.

In a letter dated 19th December 1946, addressed to Dr. Schwelb, Legal Officer of the United Nations War Crimes Commission, the Assistant Secretary General of the United Nations, in charge of Legal Affairs, Dr. Ivan Kerno, sent a copy of the Resolution on the Affirmation of the Nuremberg Principles (Misc. No. 66) and expressed the opinion that through this resolution the opportunities for co-operation between the United Nations War Crimes Commission and the United Nations would be enhanced.

In a letter dated 13th January 1947, also addressed to Dr. Schwelb, Dr. Yuen-Li Liang, Director of the Division of the Development and Codification of International Law stated that it was his sincere wish for the Legal Department to maintain close contact with the United Nations War Crimes Commission. His former association with the War Crimes Commission convinced him all the more keenly that such contact would be of great use to the work which he had in hand. He felt sure that the United Nations would be fully appreciative of any assistance which the United Nations War Crimes Commission might give in connection with the affirmation of the principles of international law recognised by the Charter of the Nuremberg Tribunal and other related matters.

Lord Wright and the Secretary-General of the United Nations War Crimes Commission had a meeting with Mr. Trygve Lie on 8th August 1946. On 2nd and 3rd January 1947 a member of the staff of the United Nations, Professor Giraud, visited the Commission and had a thorough discussion on all problems connecting the two organisations with members of the United Nations War Crimes Commission Secretariat.

For all these reasons it is suggested that Committee III and eventually the Commission should now enter into a discussion of the substance of the topical problems dealt with in the above decisions of the different organs of the United Nations and make the result of its discussions and studies available to the United Nations.

II. The general Resolution on the progressive development of international law and its codification.

In the Resolution regarding the progressive development of international law and its codification, the General Assembly has directed a special committee which it simultaneously appointed, to study, *inter alia*, methods of securing the co-operation of the several organs of the United Nations to this end and methods of enlisting the assistance of such national or international bodies as might aid in the attaining of this objective. (paragraphs (b) and (c) of the Resolution.) The experience and expert knowledge gained by the United Nations War Crimes Commission, particularly its members of Committees I and III and also to some extent by its Secretariat, enable the Commission to assist the United Nations in attaining their objective of the development and codification of international law as far as the following provinces of international law are concerned:

- (a) the laws and customs of war, particularly the laws and customs of land warfare including the law of belligerent occupation and the treatment of prisoners of war and internees; the law of naval warfare; the law of air warfare;
- (b) the law of State jurisdiction, including territorial and personal jurisdiction, immunities and limitations;
- (c) the law of international institutions, particularly international tribunals and investigating and prosecuting agencies;
- (d) international criminal law as a means of preventing threats to the peace, acts of aggression and breaches of the peace, ("crimes against peace");
- (e) the protection of human rights and fundamental freedoms by way of international criminal law ("crimes against humanity").

It is therefore suggested that the Commission should declare its readiness to assist the United Nations in implementing the resolution on the progressive development of international law and its codification, with respect to the branches of the law outlined under (a) to (e).

III. The Resolution concerning the affirmation of the principles of international law recognised by the Charter of the Nuremberg Tribunal.

Here it appears necessary to elucidate the exact scope of this Resolution, (Doc. Misc. No. 66).

The General Assembly, in affirming the principles of international law recognised by the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal, has directed the Committee on the codification of international law to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognised in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal.

It is necessary to clarify the question whether the term "offences against the peace and security of mankind" covers the whole field of the Charter of the International Military Tribunal and of the Judgment of the Tribunal, or is restricted to what in the Charter of the International Military Tribunal are called "crimes against peace". The term "offences against the peace and security of mankind" has obviously been taken over from Mr. Francis Biddle's report to the President of the United States, which was published in the Department of State Bulletin of 24th November 1946, p.954, et seq. The correspondence between Mr. Truman and Mr. Biddle leaves open the question, however, whether the American initiative refers only to crimes against peace or includes also war crimes proper and crimes against humanity. The last sentence of the second paragraph of the President's letter of 12th November 1946, appears to indicate that crimes against humanity are to be included.

The principles of international law recognised by the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal are not restricted to crimes against peace, but include also such fundamental questions as:

- (a) the responsibility for inhumane acts committed "against any civilian population";
- (b) the responsibility for inhumane acts committed "before the war";
- (c) the irrelevance of the fact that inhumane acts were committed "in violation of the domestic law of the country where perpetrated";
- (d) the whole notion of crimes against humanity, its delimitation from common law crimes and its relation to war crimes and crimes against peace;
- (e) the doctrine of act of state, the irrelevance of the official position of the defendants as heads of state or responsible officials in government departments;
- (f) the plea of superior order;
- (g) the problem of criminal groups or organisations and the criminal responsibility for membership in such groups or organisations.

The principles recognised by the Charter of the Nuremberg Tribunal also include detailed questions of the law of war, particularly such questions as the relevance or otherwise of the subjugation of occupied territory, plunder of public and private property, detailed rules of naval warfare and particularly U-boat warfare, etc.

The United Nations War Crimes Commission is, of course, qualified to deal with all the problems indicated but it will be useful to know whether the task to which the Resolution refers, comprises the whole law of war and law of crimes against humanity, or whether it is restricted to the elaboration of the principles concerning crimes against peace.

IV. The Resolution on the Crime of Genocide.

While, for the reasons given in the case of the Resolutions of the General Assembly mentioned under II and III, it is necessary to restrict this note to general questions of procedure concerning the collaboration between the United Nations and the United Nations War Crimes Commission, it is possible to offer even at this stage, some comment on the substance of the Genocide Resolution.

The Resolution describes Genocide as "a denial of the right of existence of entire human groups". It compares Genocide with homicide which is "the denial of the right to live of individual human beings". It is said that "such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups and is contrary to moral law and to the spirit and aims of the United Nations". The Resolution goes on to state that "many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed entirely or in part."

- (a) It is submitted that the term "Genocide" as described in the Preamble to the Resolution covers to a great extent, if not completely, acts coming under the term "crimes against humanity" as formulated in Art. 6(c) of the Charter of the International Military Tribunal annexed to the Four-Power Agreement of 8th August 1945, which, since 1945, has been adopted in a number of other international and national documents, including the five Peace Treaties with the Axis satellites signed on 10th February 1947.
- (b) As defined in the Preamble to the Resolution, the notion of Genocide seems to be on the one hand narrower than the notion "crimes against humanity" because it appears to cover only acts amounting to the denial of the right of existence, whereas the term "crime against humanity" covers not only murder, but also extermination, enslavement, deportation and other inhumane acts, or persecutions on political, racial or religious grounds.
- (c) The notion of Genocide as defined in the Preamble is, on the other hand, wider than the notion of crime against humanity, under the London Charter, because under the London Charter, as clarified by the Berlin Protocol of October 1945, and as applied by the Nuremberg Judgment, it is necessary for an act, to come within the notion of crimes against humanity, to have been committed in execution of or in connection with a war crime or a crime against peace. It should be added that this qualification contained in the London Charter, does not apply to some other documents dealing with crimes against humanity, particularly not to the law as applied in Germany under the Control Council Law No.10.
- (d) In view of the fact that the terms "crimes against humanity" and "Genocide" cover to a very great extent, the same ground, it is necessary to point out that the words "humanity" and "mankind" in the Genocide Resolution have a meaning different from the term "humanity" in the phrase "crimes against humanity". The word "humanity" has at least two different meanings, the one connotating the human race (mankind) as a whole and the other humaneness, i.e. a certain quality of behaviour.

In the Charter of the International Military Tribunal the word "humanity" is used in the latter sense; it is therefore not necessary for a certain act, in order to come within the notion of crimes against humanity, to affect mankind as a whole. A crime against humanity is an offence against general principles of criminal law, which, in certain circumstances, becomes the concern of the international community, namely if it has repercussions reaching across international frontiers or if it passes in magnitude or

savagery any limits of what is tolerable by modern civilisations. (Mr. Justice Jackson in his opening statement at Nuremberg.)

In the Genocide Resolution, on the other hand, "humanity" is used as meaning the human race as a whole ("results in great losses to humanity", in the French text inflige de grandes pertes à l'humanité.) The same applies to the use of the word "mankind" in "shocks the conscience of mankind". (In the French text "boulverse la conscience humaine".)

- (e) The reference to the crime of Genocide, as shocking the conscience of mankind, is verbatim identical with the definition of crimes against humanity adopted in the Commission documents C.201 and C.236, paragraph 6.
- (f) As far as the Genocide Resolution refers to the fact that Genocide is "contrary to moral law", it is respectfully submitted that this phrase is apt to be interpreted as a retrograde step, throwing international law back to the position of 1919 when the Allied and Associated Powers publicly arraigned the German Emperor for a supreme offence against international morality. Under the law as laid down in the London Charter, adopted by the Four Great Powers and adhered to by 19 other States, applied by the Nuremberg Tribunal and affirmed by the General Assembly of the United Nations, a crime against humanity is contrary not only to moral law but it violates legal provisions.

To-day it can be accepted as an established proposition that what in the London Charter is called crimes against humanity, and what the Resolution calls Genocide, is not merely an offence against morality or moral law, but a crime against positive law entailing legal sanctions.

- (g) The Genocide Resolution appears to include acts aiming at the destruction not only of racial groups but also of religious, political and other groups. Also in this respect, the Genocide Resolution is based on the same ideas as the definition of crimes against humanity which covers persecutions on political, racial and religious grounds. As far as the destruction of "political and other groups" and crimes committed on "political or any other grounds" are concerned, the expression "Genocide" appears to be a misnomer because a political movement, political party or a political group do prima facie, certainly not come under the notion of Genos. This makes it doubtful whether the choice of the word "Genocide" instead of the phrase "Crime against Humanity" which is already part of established international law, is warranted.
- (h) The Genocide Resolution speaks of "any other groups" and uses the phrase "or any other grounds". To that extent, the notion is wider than the notion of crimes against humanity; it might be said, however, that the general words quoted make the definition too general with the effect that "Genocide" is not sufficiently delimited from other types of crimes.
- (i) As far as the Resolution affirms that Genocide is a crime under international law, for the commission of which principals and accomplices, whether private individuals, public officials or statesmen, are punishable, it is entirely in line with the Charter of the International Military Tribunal.

- (j) The Resolution invites the member States to enact the necessary legislation for the prevention and punishment of the crime of Genocide.

Here the Resolution is more conservative than the London Charter. In the London Charter the crime against humanity is punishable whether or not in violation of the domestic law of the country where perpetrated. The London Charter also protects "any civilian population" and it is the theory of the London Charter that with regard to crimes against humanity as defined in Art. 6(c), international law overrides municipal law.

- (k) The Genocide Resolution does not deal with one important aspect of the concept of crimes against humanity, namely that in protecting "any civilian population" the provisions protect the civilian population also against excesses of power committed by its own national authorities.

III/86.
2nd April, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

The French Case No. 4695.

(Exploitation of the Black Market as a War Crime).

In the meeting of Committee III held on 27th March 1947, (Committee III Minutes No. 4/47), the Committee approved the draft report prepared by its Secretary (Doc. III/83) subject to certain amendments which are recorded in Committee III Minutes No. 4/47, and subject to a re-wording of the 4th sub-paragraph of paragraph XI. The proposed new text of this 4th sub-paragraph of paragraph XI was circulated as Doc. III/84 and in accordance with the Committee's decision, it was intended to circulate the final report by Committee III as a Commission document and insert its discussion as an item on the agenda of the next Commission meeting.

On 1st April 1947, the acting French representative, Monsieur Maillard, who had been prevented from attending the meeting of Committee III held on 27th March 1947, informed the Secretary to Committee III that the French authorities had certain objections to part of the report as drafted in Doc. III/83, particularly to the statement on page 5, paragraph 3 of the document,^(*) where it was said that Committee III does not think that personal criminal responsibility for the exaction of exorbitant contributions by Germany from France could be fastened upon the accused 2 - 37. In the opinion of the French authorities, the accused Nos. 2 - 37 are guilty as accomplices in the crime of exacting illegitimate and exorbitant contributions.

The Secretary to Committee III has, therefore, arranged the following with Monsieur Maillard:

- (a) The document which was to go out as the final report of Committee III as a C. document, is not to be circulated for the time being as the final report, and is annexed to this paper as the second draft of the report by Committee III.
- (b) The case will again be placed on the agenda of Committee III. Monsieur Maillard will attend the meeting and will supplement the French charge accordingly.

(*) Paragraph VIII, sub-paragraph 3 of the enclosed second draft on page 5.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Exploitation of the Black Market as a War Crime.
(French Case No. 4695).

Second Draft Report by Committee III (Embodying the Amendments decided upon in the meeting of Committee III held on 27th March 1947).
(Committee III Minutes No. 4/47).^(*)

- I. In its meeting of 27th February 1947, Committee I referred the French case No. 4695 to Committee III for its opinion as to whether the activities of the accused should be considered as war crimes.
- Committee III discussed the case in its meetings held on 6th, 20th and 27th March 1947 (Minutes Nos. 2, 3 and 4 of 1947), and adopted the following report:
- II. The French National Office charges Colonel Veltjens and 36 other persons with the war crime of "Economic Pillage". It refers to No. 13 of the working list of war crimes adopted by the Commission (Doc.C.1) and refers as to relevant provisions of national law to Art. 440 of the French Penal Code and the French Decree of 1st September 1939.
- III. In the French charge it is stated that the first accused, Colonel Veltjens, was a German official for the carrying out of the Four-Year Plan and had the task of organising the black market in the occupied territories of the West, in order to enable the importing into Germany of the greatest possible quantities of goods, in addition to the taxes in kind and the official purchases. The other accused persons were the directors of services and managers of enterprises entrusted with carrying out the Veltjens plan. According to the charge, Veltjens proposed on 21st May 1942 the scientific organisation of the black market in the occupied territories of the West. At a conference held with this end in view, the plan proposed by him was adopted and in an official letter from Goering, Veltjens received full powers for its execution. The charge quotes from a memorandum prepared by Veltjens dated 21st May 1942 that "a central administration is created for seeking out and using goods from the black market in occupied territories". It was a question of "using the black market to the greatest extent and in the best financial conditions for the Reich". It was the purpose of the Veltjens organisation to snatch away and import into Germany all goods, raw materials or manufactured products which had been able to escape the official commercial transactions and the taxes and requisitions of the German occupation. Agents of the different German organisations, paid on a commission basis, having important means of access to credits and very large sums of ready money, sought out stocks of goods for which they paid any price whatever. The French charge further states that the injurious effects of the Veltjens organisation is shown by its own words in its report of 15th January 1943 to Reichsmarshal Goering.

(*) The discussion and preparatory work preceding this report is to be found in Documents III/80, III/81 and III/83 and in the Committee III Minutes Nos. 2, 3 and 4 of 1947. Relevant questions of law pertinent to the subject have also been discussed in Documents I/22 and III/15.

It emphasises first that to the extent of nine-tenths the financing of the operations on the black market by the purchasing offices was assured by the payment of the French occupation expenses. It also sets out the economic value of the commercial transactions carried out on the black market by drawing a favourable comparison between the operations carried out by this service in the period from 1st July 1942 to 30th November 1942, amounting to 384,000,000 Rm, with the operations of the official services for normal transactions operated by the Militärbefehlshaber, (267,000,000 Rm). The French charge concludes that the Veltjens organisation enabled the German war economy completely to drain the internal markets of the occupied countries without prejudicing the German finances. Its methodical exploitation of the black market was, the charge submits, calculated not only to empty France of all substances from the economic point of view, but also to cause a rise in prices and inflation and a certain moral decline in the quarters affected directly or indirectly by the purchasing offices.

- IV. Committee III first considered whether the activities of the accused persons complained of come, as stated by the French National Office, under the notion of pillage.

In conventional international law, the question of pillage is dealt with in Article 47 of the Hague Regulations of 1907, according to which, "pillage is formally forbidden".

Pillage is also one of the items of the 1919 list which has been adopted by this Commission as its working list of war crimes (Doc.C.1). The provision of Article 47 means, in the first instance, that private property of inhabitants of occupied territory is no longer a lawful object of private booty. Occupant soldiers must not plunder for private purposes. In his monograph on the International Economic Law of Belligerent Occupation, E.H.Feilothenfeld states that, in his view, the rule against pillage does not merely protect private property, but is also directed against all acts of individual lawlessness, committed in regard to property interests of all kinds, including public property. "It is necessary to think", the writer goes on to say, "not merely of individuals, but also of big business interests that may want to rob inhabitants. They may employ more complicated methods than outright physical stealing. The gravest cases of blackmail purchases have recently been those in which a person is forced to sell his business to another who is more acceptable to the authorities of the occupant. However, we are here dealing only with private pressure; where government pressure is used or added we no longer have a clear case of private plundering, but are confronted with public confiscation, legal or illegal, according to whether the rules on requisitions are observed." (c.c. pp.31-32).

- V. The Charter of the International Military Tribunal annexed to the Four-Power Agreement of 8th August 1945, does not use the term "pillage", but speaks, in Article 6(b) of "plunder of public or private property" (cf. Doc.III/67, analysing the treatment of plunder of public and private property in the Nuremberg Judgment). The Nuremberg Judgment has summarised the law as to economic war crimes by stating that, under the rules of war, the economy of an occupied country can only be required to bear the expenses of the occupation, and these should not be greater than the economy of the country can be reasonably expected to bear (page 53 of Cmd. 6964). "Evidence in the Nuremberg case has established," the Tribunal further states, "that the territories occupied by Germany were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy. There was in truth a systematic "plunder of private or public property" which was criminal under Article 6(b) of the Charter (p.54 of Cmd. 6964).

In describing the conduct of the occupying authorities in some of the occupied countries, the Nuremberg Judgment (l.c.) refers to an order by Goering, issued as early as the 19th October 1939, and states the following:

" As a consequence of this order, agricultural products, raw materials needed by German factories, machine tools, transportation equipment, other finished products and even foreign securities and holdings of foreign exchange were all requisitioned and sent to Germany. These resources were requisitioned in a manner out of all proportion to the economic resources of those countries, and resulted in famine, inflation and an active black market. At first the German occupation authorities attempted to suppress the black market, because it was a channel of distribution keeping local products out of German hands. When attempts at suppression failed, a German purchasing agency was organised to make purchases for Germany on the black market, thus carrying out the assurance made by the defendant Goering that it was "necessary that all should know that if there is to be famine anywhere, it shall in no case be in Germany." In many of the occupied countries of the East and the West, the authorities maintained the pretence of paying for all the property which they seized. This elaborate pretence of payment merely disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries themselves, either by the device of excessive occupation costs or by forced loans in return for a credit balance on a "clearing account" which was an account merely in name. In most of the occupied countries of the East even this pretence of legality was not maintained; economic exploitation became deliberate plunder."

- VI. It will be seen from the preceding paragraph that the London Charter and the Nuremberg Judgment have developed the rules of international law on our question to the extent that not only pillage, which is the unauthorised outrage of individual soldiers, is punishable, but also activities which come under the wider term of plunder of public or private property and in this connection the very fact which is charged by the French National Office in the present case has been mentioned in the Judgment, namely the organisation of a purchasing agency to make purchases for Germany on the black market.

It is stated in the French charge and it is quoted in paragraph II (supra) that to the extent of nine-tenths, the financing of the operations on the black market by the purchasing offices was assured by the payment of French occupation expenses.

It is also stated in the charge that the agents of the Veltjens organisation sought out stocks of goods for which they paid any price whatever.

- VII. In the opinion of Committee III, it would, however, be incorrect to assume that the purchasing of goods on the black market, particularly in circumstances in which the highest prices are paid, constitutes pillage either in the traditional sense of this word or as extended by the leading writer on the subject.

These black market operations do not even come under the wider notion of plunder as applied at Nuremberg.

Pillage or plunder pre-suppose that the goods were taken from the victim of pillage or plunder against the victim's will and without consideration. If the goods were not taken against the will of the legitimate owner and if adequate compensation were given for purchased goods, it would be incorrect to say that the activities come under the term of pillage, however reprehensible they may be from other points of view.

The correctness of this interpretation of the term "pillage" in international law is confirmed by the provisions of French municipal law to which the French charge itself refers, namely Art. 440 et seq. of the French Criminal Code, and the Decree of 1st September 1939. The relevant French municipal provisions read as follows:

French Criminal Code:

Art. 440:

Every act of pillage or destruction of commodities, effects or any movable property, committed by a group or band and by open violence, shall be punished by penal servitude for a term of years; each of the persons responsible shall also be fined between 2,400 and 60,000 francs.

Art. 441:

Nevertheless, those who are shown to have been caused by provocation or solicitation to take part in these acts of violence may only be punished by imprisonment.

Art. 442:

If the commodities pillaged or destroyed are grains, grain refuse or flour, mealy substances, bread, wine or other liquor, the penalty inflicted on the leaders, instigators or inciters shall be the maximum period of penal servitude and the maximum fine laid down in Article 440.

Decree of 1st September 1939 respecting the prevention of pillage in time of war:

Art. 1:

In time of war, the criminal acts of pillage set out in Articles 440, 441 and 442 of the Penal Code shall be punished by death.

The same penalty shall be awarded for all acts of theft committed in a dwelling house or in a building evacuated by its occupants as a result of operations of war.

From the quoted texts of the French Criminal Code, it appears that the application of violence is necessary to constitute the crime of pillage. From the decree of 1st September 1939, imposing the death penalty for pillage in time of war, it appears that the legislator, when dealing with pillage, conceived it as a violent crime deserving of the supreme penalty.

VIII. Having arrived at the conclusion that the activities complained of do not come under the term of pillage or plunder, Committee III points out that this does not amount to saying that the persons who were responsible for them are not liable. It means that in the Committee's opinion, the "plunder" aspect of the black market purchases consists primarily in the way in which the money for the operations complained of was raised. If Germans had brought to France hard and valuable currency and spent it at the black market, nobody would suggest that the transaction be treated as pillage or plunder.

The illegal and criminal character of the scheme primarily consists, therefore, in the fact that nine-tenths of the money for these operations were taken from occupation expenses paid by France. This is evidence of the fact that the contributions which were extorted from the French economy by the German occupying authorities were far in excess of the needs of the army of occupation or of the administration of occupied French territory. If it had been otherwise, no money would have been available for financing the enemy's black market purchases destined for Germany. The exaction of the exorbitant contributions constitutes

therefore, a violation of Article 49 of the Hague Regulations, which provides that if the occupant levies money contributions in the occupied territory, "this shall only be for the needs of the army or the administration of the territory in question". This has already been established in the Nuremberg Judgment.

Item 15 of the 1919 list (Doc.C.1) reads: "Exaction of illegitimate or of exorbitant contributions and requisitions".

Committee III does not think, however, that personal criminal responsibility for the exaction of exorbitant contributions by Germany from France can be fastened upon the accused 2 to 37. It could, probably, be argued, that the accused 1 (Veltjens) is suspect of having as a member of Goering's economic headquarters, been implicated in the policy of exacting exorbitant contributions and of being an accessory after the fact of this crime in knowingly using the money thus extorted for the purchases on the black market, particularly in view of the fact that he is alleged to have proposed the whole scheme.

- IX. In addition to the criminal liability of those persons who were responsible for the illegal extortion of the money with which the operations were financed, it goes without saying that to the extent to which purchases on the black market were prohibited and criminal under French municipal law, the activities described in the charge constitute a violation of those French provisions. To that extent the activities charged were offences under French municipal law and are punishable as such.
- X. Committee III recommends that the National Office should be asked to submit additional information with a view to establishing the fact that the activities known as the "black market" were at the material time prohibited and punishable under French law.
- XI. On the question whether they simultaneously constitute a violation of a rule of international law, the following may be said: Article 43 of the Hague Regulations provides that the occupant has a duty to restore and ensure public order and safety and to respect, unless absolutely prevented, the laws in force in the country. This provision is addressed to the occupying Power as such. The rule that the occupying Power shall respect the laws in force in the country primarily means that it shall not, unless absolutely prevented, make alterations in the laws in force in the occupied country. The respect to the laws in force is therefore, in the first instance, illustrated by the duty of abstention from changing them.

In the opinion of Committee III, the prohibition covers not only the formal changing of the laws in force, but also the organising of a systematic violation of those laws. If the Hague Convention prohibits, apart from the case of absolute necessity, the changing of the law, the prohibition comprises also what is in fact the same and actually more objectionable, namely the planning and organising of violations of this law. The persons responsible for the organising and planning of systematic violations of the laws in force in France are therefore guilty of a violation of Article 43 of the Hague Regulations.

- XII. Having thus established that the activities of the organisers at the top and the main instruments of the policy of violating the municipal French provisions prohibiting the black market, is a violation of a rule of international law, namely of Article 43 of the Hague Regulations, Committee III had to deal with a further question which goes to the root not only of the jurisdiction of the United Nations War Crimes Commission, but of the fundamental problems of delinquency in international law in general. The notion of an international crime or of a crime in international law has been controversial for a very long time. It is particularly the German literature on the subject which holds that every

contravention of international law amounts to an international crime; not only acts which are shocking from the moral point of view are under this doctrine international crimes, but also every breach of contract or agreement. This doctrine is particularly upheld by Strupp in his book "Das völkerrechtliche Delikt", 1920. His opinion has not been accepted by other writers.

Fauchille distinguishes between "délits internationaux" and the breach of contractual obligations. Rivier, *Principes du droit des gens*, says: "Tout acte qui viole un droit essentiel est une infraction au droit des gens, un crime au délit international". Rivier speaks of the violation of an essential right as constituting an international crime.

That acts constituting what corresponds to civil wrongs (torts) and breach of contract were by writers of international law put on the same footing as acts corresponding to crimes in municipal law, was, in the opinion of Committee III, mainly due to the fact that, until very recent times, only States were considered to be subjects of international law. According to this theory the law of nations excluded the possibility of "punishing" a State for an international delinquency and of considering the latter in the light of a crime and led to the conclusion that the only legal consequences of international delinquency were such as create reparation of the moral and material wrong done. The equation of acts morally shocking with acts constituting merely contraventions of contractual obligations, had its origin in the theory of this school of thought, which was by no means unchallenged, namely that even atrocious crimes were supposed to lead not to the punishment of the guilty individual, but only to a claim against the State for reparation and damages.

At the present stage in the development of international law, a doctrine which does not distinguish between crimes entailing criminal responsibility and mere civil or administrative wrongs must be considered obsolete in international law. Such a doctrine is to-day obsolete in international law as it has been obsolete in the municipal law of civilised States for hundreds of years. Under the principles laid down in the Four-Power Agreement of 8th August 1945, international law assumes responsibility for punishing international crimes. These principles have been endorsed by the 19 States who have adhered to the Agreement, they have been applied in the Nuremberg Judgment, affirmed by a Resolution passed by the 54 States forming the General Assembly of the United Nations on 11th December 1946, and also accepted by the five Axis Countries with whom Treaties were signed on the 10th February 1947. It is therefore necessary to establish a delimitation between acts entailing criminal responsibility and other illegal acts which, without constituting an international crime, are mere contraventions of customary or conventional rules.

The demarkation line between acts which are merely illegal because they violate conventional or customary provisions of international law, and such acts which also constitute international crimes and entail personal criminal liability, can only be drawn by reference to the general principles of criminal law as recognised by civilised nations, and as, *inter alia*, applied in the Nuremberg proceedings. If the violation of a rule of the Hague Regulations simultaneously constitutes an offence against the general principles of criminal law, then it also constitutes a war crime.

XIII. In the present case, the accused persons are charged with acts which, though not technically constituting pillage, amount to a conspiracy to violate municipal law which the perpetrators were bound to respect, and thereby to exploit the economy of the occupied country. The activities resulted, according to the charge, in the emptying of French of all substances, in the causing of a rise in prices, in inflation and in a certain moral decline. All these results are

contrary to the duties which are enjoined upon an occupant by international law and we find therefore combined both the illegal means and the effect deprecated by international law. On the facts submitted by the French National Office, the accused persons have violated not only a technical provision of international law, but an essential right of the occupied country. (see Rivier's statement, XII, para.2 above).

- XIV. Provided that the facts alleged are taken to be established, Committee III is of the opinion that those persons who are responsible for the preparation or planning of this policy or for carrying it into effect, whether at the centre or locally, are criminally responsible for these violations of international law.

This does not implicate persons who, without operating this scheme or forming part of the machinery of carrying it out, have availed themselves of the possibility to make sales or purchases prohibited under French law.

The latter, though probably criminally liable under municipal law are, in the Committee's opinion, not guilty of a war crime".

III/87.
18th April, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

The French Case No. 4695

(Exploitation of the Black Market as a War Crime).

Proposed new text of paragraph VIII, sub-paragraph 4 of Doc. III/86
(on page 5, 3rd paragraph).

In its meeting of 16th April 1947, the Committee, after having discussed the French objections to the wording of the last sub-paragraph of paragraph VIII of the Report III/86, decided that the paragraph should be replaced by a new text as outlined in Committee III Minutes No. 5 of 1947.

The proposed new text is herewith circulated to members of Committee III and if no suggestions to the contrary are received, the text contained in this paper will be embodied in the final report to be presented to the Commission.

Proposed New Text.

Committee III is therefore of the opinion that those persons who were implicated in the policy of exacting exorbitant contributions by the German authorities from the French authorities, and knowingly used the money thus extorted for the purchases in connection with the black market operations outlined in the French charge, are guilty of having committed a war crime and can be listed for this war crime where a prima facie case of their implication is established.

III/88.
21st April, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Co-Operation with the United Nations.

Additional Information.

- I. In the meeting of Committee III held on 16th April 1947, the Secretariat was charged with the task of furnishing to the Committee complete information both on the correspondence between the United Nations War Crimes Commission and the United Nations, and on the progress of that part of the work of the United Nations in which the United Nations War Crimes Commission was interested.

The correspondence with the United Nations Secretariat has been circulated as Doc. Misc. No.88.

The relevant Resolutions of the General Assembly of the United Nations have been circulated as Docs. Misc. Nos. 66 and 69.

- II. According to the information available to the Secretariat (United Nations Weekly Bulletin, Vol.2, No.12, 1st April 1947), the Committee of Seventeen Members of the United Nations on the Development of International Law and Codification, established by the Resolution of the General Assembly of 11th December 1946 concerning the progressive development of international law and its codification will meet at Lake Success on 1st May 1947. The Committee consists of representatives of the following members of the United Nations:

Argentina, Australia, Brazil, China, Colombia, Egypt,
France, India, Netherlands, Panama, Poland, Sweden,
Union of Soviet Socialist Republics, United Kingdom,
United States of America, Venezuela, Yugoslavia.

- III. The Human Rights Commission had its first session from 27 January to 10 February 1947. The summary records of all the meetings of the session are available in the Commission's Secretariat. (Dr. Schwelb's Office, Room 315). The result of the meetings is summarised in the United Nations Weekly Bulletin, Vol.2, No.6 of 18 February 1947, as follows:

" The Commission on Human Rights completed its first session on February 10. At meetings on February 4, 5, 6 and 7 it discussed the Rights to be included in the proposed Bill of Rights and the instructions to be given to the drafting group. It also decided that the Bill should be prepared as a Resolution for submission to the General Assembly. It provisionally adopted its Rules of Procedure; decided that a small sub-committee should screen communications to the United Nations or other related organs concerning human rights; adopted terms of reference and decided on the composition of the Sub-Commissions on (1) Freedom of Information and of the Press and (2) Prevention of Discrimination and Protection of Minorities; decided, subject to the concurrence of the Secretary-General, that its second session should be held in Geneva on July 21 next. "

IV. The Preliminary report of the Human Rights Commission was discussed in the session of the Economic and Social Council which began on 28th February 1947. In this session of the Economic and Social Council, both the Human Rights Commission's Report and the question of Genocide were discussed. The following report is taken from the United Nations Weekly Bulletin, Vol.2, No.11 of 25th March 1947.

" Human Rights Commission's Report.

Two plenary meetings of the Council last week were devoted to a general discussion of the report of the Commission on Human Rights, which was subsequently referred to the Council's Committee of the Whole for further study. Many of the comments related to three of the Commission's recommendations: first, the method of drafting an International Bill of Rights; second, the method proposed for handling communications to the Commission; and third, the composition of the Sub-Commissions on Freedom of Information and of the Press, and on Prevention of Discrimination and Protection of Minorities.

The Commission had decided to entrust to its officers - Mrs. Franklin D. Roosevelt of the United States, Dr. P.C.Chang of China and Dr. Charles Malik of Lebanon, respectively Chairman, Vice-Chairman and Rapporteur - the task of formulating a preliminary draft International Bill of Rights which after consideration by the Commission, would be referred to the Council and then to the General Assembly.

Criticizing this procedure, Mrs. Hansa Mehta of India said that this drafting group had received no instructions except that it is "to be guided by the general discussion that took place in the Commission." Definite guidance she thought should have been given to the group on the contents of the draft document it has been directed to produce.

Speaking of the need for implementing the Bill, Mrs. Mehta said: "It is necessary to make it clear that the Bill of Rights cannot be a mere declaration of rights. Unless it is binding on the states Members of the United Nations it will have no meaning". The problem of implementation, as the Indian representative saw it, is two-fold: first, supervision of the observance of rights; and second, enforcement if the rights are not observed.

The French representative, Pierre Mendes-France, who endorsed the drafting procedure proposed by the Commission, pointed to one category of human beings in war-time for which no protecting convention exists: the civilian population. "During the tragic period which has just ended", Mr. Mendes-France said, "there was no protection whatever concerning civilian persons; yet there were conventions concerning fighting men and prisoners". He proposed that this omission might be studied by the drafting group.

Professor A.P.Morozov of the U.S.S.R. noted that the drafting group had been set up by the Commission before any decisions had been taken on the actual rights. This made the group's responsibility much wider than had originally been intended.

He also felt that the group itself should be expanded from three to five members, to include representation from Europe, a suggestion which was backed later in the discussion by the Czechoslovak representative, Dr. Jan Papanek.

Dr. Alberto Arca Parró of Peru stated that in his opinion the drafting of an International Bill of Human Rights should take place simultaneously with the creation of machinery to implement such rights. He pointed to the fact that most national constitutions contained provisions for the rights of the individual and, while recommending that the Commission study and take notice of all existing national legislation in this respect, he stressed that the International Bill of Rights must go beyond a mere compilation of already recognized rights.

Dr. Arca Parró also endorsed the principle that the group charged with the drafting of the International Bill should be composed of representatives of governments. Only by this means, he said, could fair geographic distribution of membership be ensured.

Dr. Malik, the Rapporteur of the Commission, explained the status of the "drafting group" to the Council. Actually the preparation of a preliminary draft Bill was being undertaken, he said, by the Commission itself (with the assistance of the Secretariat), which was acting through its officers. The officers did not constitute a "group"; the phrase "drafting group" was misleading. Because the Commission itself was serving as a drafting committee, there could be no question of enlarging it, Dr. Malik explained.

Leroy D. Stinebower of the United States reminded the Council of a proposal put forward by his Government at the Commission's meetings that in addition to personal, procedural and political rights, (such as freedom of speech, safeguards to persons accused of crime, right to citizenship) the proposed Bill of Rights should include a category of social rights, such as rights to employment and social security, to equal opportunity, and the right to enjoy minimum standards of economic, social and cultural well-being.

Christopher Mayhew, of the United Kingdom, thought that the Human Rights Commission could hardly be able to prepare the International Bill during its next session. It would be better, he said, if the Commission took more time for study and presented the International Bill to the General Assembly in 1948 and if methods of implementing the Bill could be discussed later. "

" Genocide.

By a unanimous resolution, the General Assembly last December had requested the Economic and Social Council to "undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly." Genocide was defined by this resolution as "a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings." The Assembly affirmed that "genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices - whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds - are punishable."

Last week the Council discussed the General Assembly's directive on this subject. Speaking as representative of one of the three governments (Cuba, India and Panama) which had introduced the resolution on genocide at the General Assembly, Dr. Guillermo Belt of Cuba proposed that a committee of the Council be appointed to produce a preliminary draft convention to be circulated to Member governments prior to the Council's fifth session, at which time the draft could be considered and submitted to the General Assembly.

Ivar Lunde of Norway suggested that the draft should be drawn up in consultation with the Assembly's Committee on the Development and Codification of International Law.

The Peruvian representative, Dr. Alberto Arca Parró, supported Dr. Belt's suggestion, but felt that clarification was needed on the action that the United Nations should take against those guilty of genocide. Further, he felt that a convention on the crime should clearly indicate who would be adjudged responsible for the offence. He also suggested that genocide should be considered as having been committed even if only individuals were involved. To this effect, Dr. Arca Parró introduced a resolution stating that "crimes against health, life and property which are perpetrated against one or more persons and which are carried out,

individually or collectively, following secret or open decisions with the purpose of inflicting unlawful punishment upon persons belonging to groups which are subject to racial, religious, political or any other kind of discrimination, should be included in the international covenant on genocide."

Paul Guerin, of France, suggested that a more appropriate procedure for drafting the convention would be to refer it to the Commission on Human Rights for report to the Council's next session.

Still another procedure was put forward by Christopher Mayhew of the United Kingdom, who proposed that the Secretariat, in collaboration with lawyers and experts, should prepare the draft for submission to the Council.

Professor Morozov of the U.S.S.R. backed the suggestion that a committee of the Council should produce the draft.

The three proposals on the procedure, together with the Peruvian resolution, were referred to the Council's ad hoc Social Committee of the Whole. "

According to the United Nations Weekly Bulletin Vol.2, No.12 of 1st April 1947:

" The Council's Social Committee at meetings on March 20, 21, 22 and 23, recommended the enlargement of the drafting group appointed by the Commission on Human Rights to formulate a preliminary draft International Bill of Human Rights; recommended that the Council instruct the Secretariat to undertake studies with a view to drawing up a draft convention on the crime of genocide; decided to recommend establishment of a temporary sub-commission to prepare a preliminary draft International Bill of Rights; recommended for the Council's approval terms of reference for the Sub-Commission on Freedom of Information and of the Press; and recommended terms of reference for the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. "

III/89.
8th May, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Collection and Publication of Information concerning Human Rights
arising from Trials of War Criminals, Quislings and Traitors,
and in particular from the Nuremberg and Tokyo Trials.

Memorandum by the Secretary to Committee III.

- I. The Economic and Social Council of the United Nations in its first session in February 1946, instructed the Secretary General, in addition to the general guidance provided in the report of the nuclear Commission on Human Rights, to make arrangements for:
- (a) the compilation and publication of a yearbook on law and usage relating to human rights, the first edition of which should include all declarations and bills on human rights now in force in the various countries;
 - (b) the collection and publication of information on the activities concerning human rights of all organs of the United Nations;
 - (c) the collection and publication of information concerning human rights arising from trials of war criminals, quislings and traitors, and in particular from the Nuremberg and Tokyo trials;
 - (d) the preparation and publication of a survey of the development of human rights;
 - (e) the collection and publication of plans and declarations on human rights by specialized agencies and non-governmental national and international organizations.
- II. The Acting Secretary-General of the United Nations, in a note to the Secretary General of the U.N.W.C.C. dated 22nd July 1946, referred to paragraph (c) of this decision of the Economic and Social Council and added that he would be grateful if any information and records in the possession of the War Crimes Commission could be made available to him, (See Misc. No.88, Doc. No.1 on page 3.)

Reference to this request from the Secretariat of the United Nations to the U.N.W.C.C. was made during the discussions with the Director of the Human Rights Division of the United Nations, Professor John P. Humphrey, which were held in London last month. (See Doc. Misc. No.89).

At these discussions, it was envisaged that a paper should be drawn up by the Secretariat of the U.N.W.C.C. outlining a programme of the work of the U.N.W.C.C. in connection with this task and submitted both to the U.N.W.C.C. and to the United Nations Secretariat for approval.

It is the purpose of the present paper to make preparations for this work in order that it can start as soon as possible after the receipt of an official request from the United Nations Secretariat to undertake it.

- III. The Secretariat of the U.N.W.C.C. has requested the Distribution Section of the United Nations Secretariat to make available to the U.N.W.C.C. Secretariat all preceding documents and minutes from which the exact scope of the decision of the Economic and Social Council can be gathered. When this material is received, a supplement to the present paper will be circulated, if necessary.
- IV. The collection and publication of information concerning human rights arising from the trials is not an end in itself but obviously serves a specific practical purpose. This purpose is to aid in the main task of the Commission on Human Rights, particularly the preparation of an international bill of rights, international declarations or conventions on civil liberties. It is, therefore, submitted that the work of collecting the respective material should be undertaken with this end in view. The information to be collected will, therefore, be of a two-fold character, the one aspect being how human rights have been violated, the other how they have been protected.
- V. The Resolution of the Economic and Social Council speaks of trials of war criminals, quislings and traitors and particularly refers to the Nuremberg and Tokyo trials. As far as the trials of quislings and traitors are concerned, the position is that these trials are outside the regular activities of the U.N.W.C.C. which are, in general, restricted to dealing with war crimes (in the wider sense, which includes crimes against peace and crimes against humanity). The Commission has, however, refrained from dealing with so-called quislings and traitors, with the exception of such cases where an allied national was accused not only of collaboration and treason, but also of war crimes.

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

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

This juxtaposition of quislings, traitors and collaborators with war criminals in many international documents does not affect the fact that the U.N.W.C.C. has not taken jurisdiction to deal with them and has not collected the material concerning them. If the Commission should also have to undertake the collection of the information arising from trials of quislings and traitors, a decision on policy would be necessary and it would also be necessary to ask the member governments to make the respective information available to the Commission and to assist in the collection of material from such countries, for example, the former enemy countries, which are not members of the Commission.

- VI. Unless a decision to include trials of quislings and traitors is taken, the Commission will have to restrict itself to the material concerning trials of war criminals (in the wider sense).

Here again, for technical reasons, a division of the material appears necessary namely:

- (a) the trial of the major German war criminals (Nuremberg),
- (b) the trial of the major Japanese war criminals, (Tokyo),
- (c) the trials of persons accused of war crimes, crimes against peace and crimes against humanity not falling within the categories (a) and (b).

Work on the tasks mentioned under (a) and (c) could start forthwith, whereas (b) will have to wait until the Tokyo trial has ended and the transcripts of its latter part and the decision of the Tribunal are available.

- VII. Every crime or nearly every crime violates a right and therewith a "human right" in a wider, non-technical sense. Every individual murder violates a human right. The same applies to almost all violations of the laws and customs of war and to all acts coming under the term "crime against humanity" as defined in the basic documents, e.g. in the Charter of the International Military Tribunal of 8th August, 1945. It is obvious that the collection of material indiscriminately dealing with records of common law crimes, war crimes, and crimes against humanity, which have been committed and which were the subject of criminal proceedings in international tribunals, mixed courts and in national military and occupation courts, would be almost worthless for the purpose for which the collection is needed by the United Nations. It is therefore probable that only then the collection of material would meet the requirements if it were restricted to the recording of such incidents and reactions to them as throw a light on the sufficiency or otherwise of the laws and usages of war and other provisions of international law which purport to afford protection against violations of human rights. Records of trials of persons responsible for such outrages as deportation of allied nationals into concentration camps, their ill-treatment and murder, the killing of prisoners of war, extermination of whole populations and so on, are of very great interest to the historian, the sociologist and the lawyer, but they are of no particular relevance to the task before the Human Rights Commission, because no catalogue of human rights is needed to place it beyond doubt that murder of innocent men, women and children is criminal. It is, therefore, this writer's opinion that the collection of material should be restricted to records illustrative of the following questions:

(a) Cases, if there are any, where the existing provisions of international law did not furnish a sufficient basis for imposing a just penalty for activities violating human rights;

(b) cases where though the competent tribunal has found a sufficient basis in existing international or municipal law, the legal position remains nevertheless doubtful because the doctrine of stare decisis does not apply in international law and in most municipal legal orders concerned. It is therefore advisable in such cases to place the law beyond doubt as to future occurrences;

(c) cases showing that more elaborate provisions of international law could have prevented violations of human rights from occurring. The question of the protection of civilian populations of occupied territory, as distinguished from prisoners of war, is a case in point. The cases will certainly show that many crimes would have been prevented, if machinery similar to that established for the protection of prisoners of war had been in operation also for the protection of civilian members of the population of occupied territory, and of persons who were deported from occupied territory. Article 6(c) of the Charter

of the International Military Tribunal extends its protection to "any civilian population"; a close study of the cases will show, however, that greater elaboration of this principle and the establishment of proper machinery is necessary.

(d) Stress should be laid, in sifting, collecting and arranging the material, on the protection of human rights of persons who are not of the nationality of the victorious Powers. In the province of what is now called "crimes against humanity", the aspect of these provisions as a means of protecting human rights stands out more clearly. Here the report to be produced will have to show how certain flagrant violations of human rights have gone unpunished mainly for lack of jurisdiction of the respective tribunals.

Crimes committed before the 1st September 1939 in Germany against Germans are here in point, in view of the Berlin Protocol of 6th October 1945, by which the scope of Art. 6(c) of the Charter of the International Military Tribunal was restrictively defined. This necessarily led to the restrictive interpretation of the Charter by the Nuremberg Tribunal. A similar lacuna (from the point of view of the future protection of human rights) are the provisions of the basic documents under which many allied military tribunals were prevented from taking cognizance of acts such as the murders of tens of thousands of German "useless eaters" in institutions such as Hadamar, or the murder and ill-treatment of, say, Hungarian inmates of Belsen Concentration Camp. With this, provisions will have to be contrasted, e.g. the Control Council Law No. 10, which gives to the competent courts jurisdiction without the important qualifications of the Nuremberg Charter and the Berlin Protocol.

(e) In general, it will be appropriate to illustrate on the basis of the immense material available, the development from the position where only allied interests and allied rights were considered to be protected, to a stage where the trend clearly was to extend the protection of minimum standards of humanity to human beings everywhere.

(f) Attention should also be paid in the report to the responsibility of military commanders and administrators for violations of human rights committed by their subordinates, which has been assumed in many of the important war crimes cases, such as in the American/Japanese case of Yamashita, in the Canadian/German case of Meyer and in the British/German case of Kesselring. The establishment of such responsibility is one of the links in an efficient machinery for the protection of human rights in time of war and occupation.

(g) As already indicated, one of the tasks of the report should also be to show how far the human rights of the alleged perpetrators of war crimes themselves have been respected in the course of the trials. It will be important to examine to what extent the accused have been given fair trials. One very important illustration of this aspect of the matter is the attitude of the Nuremberg Tribunal to the problem of criminal organisations. Here the court interpreted the sweeping provisions of the Charter in a restrictive manner because, as it said, this was a far-reaching and novel procedure, the application of which, unless properly safeguarded, might produce injustice. In accordance with well settled legal principles, the Tribunal attempted to make sure that innocent persons would not be punished. The court therefore excluded from its statement concerning the criminality of the accused organisations, inter alia, persons who had no knowledge of the criminal purposes of the organisations.

III/91.

27th May, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

Collection of Information concerning Human Rights
arising from Trials of War Criminals etc.

Notes on Document III/89

By Dr. H. Mayr-Harting

It will be necessary to decide which trials and what other material should be taken into consideration when the programme of the work requested by the United Nations Secretariat is outlined.

- I. As to the question whether use should only be made of transcripts of trials of war criminals proper or of trials of quislings and traitors too, it should be noted that in the terminology of the Commission a different meaning is attached to the notion of "Quisling" than in that of the Economic and Social Council: "Quisling" as understood by the Commission refers to certain forms of treason. In other words, the notion of traitor comprises our conception of Quisling. The juxtaposition of quislings and traitors in the Resolution of the Economic and Social Council of February 1946 (cf. Doc. III/89, I, c) seems, however, to indicate that in this instance (not traitors but) the following categories of persons are brought under the heading "Quislings":

1. Allied nationals who, in concert with the enemy, committed war crimes (in the wider sense of the word); and
2. some enemy nationals (especially subjects of the satellite States) guilty of crimes against humanity committed against their co-nationals or stateless persons.

The Commission has repeatedly listed Allied nationals accused of violations of the laws and customs of war or crimes against humanity committed against Allied nationals.

Crimes against humanity of enemy nationals committed against enemy nationals or stateless persons on enemy territory were the subject of charges submitted to the Commission in exceptional cases only. It forms, however, part of the original functions of the Commission to collect evidence and to report from time to time to the Governments on certain classes of atrocities showing where possible the connection between the individual crimes of each type and the common policy which they expressed. It was the view of the Commission from the beginning that this part of its functions includes the consideration of crimes against humanity of this type.

(Cf. letter from the Lord Chancellor to Sir Cecil Hurst, dated 23rd August, 1944 - Document C. 78 and Progress Report Document C. 48(1)).

Should the Commission now take into account the trials of those groups of persons mentioned under 1 and 2, it would not touch a new sphere.

Whatever is understood as Quisling in the Resolution of the Economic and Social Council, it would not mean a change of the present policy of the United Nations War Crimes Commission unless it were decided to deal also with trials of persons accused of treason only.

The trials of traitors (mainly those before continental courts) may be of interest for a paper on crimes against peace - they comprise the national jurisdiction over this class of offences. For the present purpose of the United Nations they will hardly prove a valuable source.

The distinction between trials of traitors, on the one hand, and war criminals (in the wider sense of the word), on the other, is probably of minor practical importance. The trials in question are mostly concerned not only with treason but also with war crimes and crimes against humanity. And as far as they deal with the latter their transcripts will be a valuable source for the work requested from the Commission (cf. Doc. III/90).

- II. It certainly will be one of the most important tasks of our work to illustrate gaps in international law which have the effect that some activities violating human rights go at present unpunished. For obvious reasons, however, gaps in international law, and for that matter national law, will be rarely discovered in the transcripts of trials. The question, for instance, to what extent reprisals are allowed *de lege lata* can hardly be answered satisfactorily with the help of transcripts of trials alone. In the great majority of cases in which even flagrant violations of human rights are justified at present as a reprisal no charge has probably been preferred. The transcripts of trials of war criminals, etc., will show - apart from rare exceptions - merely cases where the provisions of international law on reprisals have not barred the punishment of violations of human rights.

In addition to the files of the Commission the files of the prosecuting authorities may be the richest source for the study of such gaps in international law.

It is, of course, not possible to make use of the files of the prosecuting authorities to the same extent as of the transcripts of trials. On the other hand, concrete enquiries with the competent authorities - for instance, a request for a report on cases in which no charge was preferred in view of the provisions of international law on reprisals - will no doubt furnish useful information.

- III. The intended collection of material will have to illustrate, first of all - as has been pointed out in Doc. III/89 - to what extent the laws and customs of war afford protection against violations of human rights. It can certainly dispense in this connection with taking into consideration the great majority of cases of apparent violations of human rights as they obviously constitute at the same time violations of the laws and customs of war involving criminal liability.

A different problem will arise in connection with violations of human rights committed in execution of a policy of persecution of political, racial and religious groups. Here the aspect of jurisdiction will be of greater importance than the gaps in substantive law.

As far as the relation between perpetrator and victim was governed by the Hague Rules of land warfare, a sufficient jurisdiction may exist.

In cases, however, in which the policy of persecution has not taken effect abroad and led to violations of human rights of co-nationals or stateless persons, no effective jurisdiction existed at the time.

Violations of this kind have partly been deprived by the régime in power at the relevant time of their quality of criminal offences under national law, or - where they constituted criminal offences even under national law - the perpetrators who executed the policy designed by the administration or at least approved by it, were protected by the same administration against their national criminal jurisdiction.

It is amongst others the lack of an effective national jurisdiction at the time of the offence which makes these offences a concern of international criminal jurisdiction.

As the crimes of enemy nationals committed against enemy nationals (and stateless persons) on enemy territory fall mainly within the jurisdiction of their own courts, these aspects, already referred to in document III/89, VII (d) can be demonstrated sufficiently only if the trials before German, Austrian, and the courts of the former satellite States are taken into account.

The trials before German (and Austrian) courts, the most important in this connection, are supervised by the Control Council. The Legal Division of the British Element expressed its willingness some time ago to send to the Commission returns of all the cases of crimes against humanity which were due for trial or have been tried by German courts (Doc. M. 114, 5). In important cases at least it may be possible to procure the transcripts of these trials.

- IV. It may be useful eventually to consider not only the present state of international law, but also the changes, especially those which the laws and customs of war have experienced in the last decades. They have been modified in many instances in the direction of greater recognition of human rights and sometimes in the opposite direction giving place to modern requirements of warfare.

There was no doubt, for instance, during the 1914 - 18 war that the sinking of a merchant ship by a submarine without previous warning constituted an illegitimate act of warfare. Now, it is argued that technical developments have made it more difficult for a submarine to give such warning without endangering its own safety. A perusal of the trials of war criminals will possibly show that the law and judicial practice have changed accordingly.

Of greater practical importance are possibly changes in law and judicial practice concerning the bombardment of undefended places. And most important of all might be to investigate how far the position of civilians during wartime has been modified.

Investigations of this sort will show that the main difference between this and previous wars is simply that the rights of civilians have now been violated to a far greater extent than ever before, and

that most of these violations constitute as clearly as they have done before violations of the laws and customs of war. To some extent, however, changes of law may have occurred.

Apart from the trials of war criminals, etc., the files of the Responsibility Commission of 1919 (as far as they are accessible), the report of this Responsibility Commission and similar documents might be a useful source if compared with the files of the United Nations War Crimes Commission, and transcripts of trials held after this war.

III/90.

22nd May, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

Collection of Information concerning Human Rights
arising from Trials of War Criminals etc.

Some Preliminary Observations on the Implications of a
Full Acceptance of the Task set out in the United Nations Resolution

By George Brand, LL.B.

- I. The Commission will soon be asked to decide whether its Secretariat should accept the whole of the task which it has been requested by the United Nations Secretariat to undertake, or whether attention should only be given to trials of war criminals proper and to the Nuremberg and Tokyo trials. The present notes represent an attempt to explore the implications involved in undertaking the task in toto.
- II. Even should the more restricted course be taken, a wide field of work would be opened up, as has been shown in Doc. III/89, paragraph VII. There is no need to repeat here what has been said there. It may be added that the whole problem of the defences of superior orders and duress can be regarded as one of balancing the conflicting claims of an accused and his victims. The Secretariat is now in possession of considerable information regarding the law and practice of the various Allied countries on this matter.

Much of this study would in practice amount in the first place to showing how the Hague and Geneva Conventions protect certain rights of certain types of people; e.g., prisoners of war, the sick and wounded and the civilians of occupied territories, and secondly to quoting as examples of such protection, trials in which the provisions of these Conventions have been applied. Such an account may seem elementary to the United Nations War Crimes Commission, but would not appear so to persons less acquainted with these questions.
- III. Nevertheless, it must be admitted that the specific rights most commonly vindicated in war crime trials are few in number, for instance the right to life, the right not to be condemned without trial or the right not to be put to discomfort without due cause. It is surely clear that the human rights usually referred to in everyday discussions, and indeed in the deliberations of the Human Rights Commission itself are such rights as those of free speech, free press, freedom of association, freedom of public meeting and free elections. The trials which will be most illustrative of the extent of the protection or vindication of such rights are clearly the trials of quislings and traitors and those of the major war criminals. Of the Nuremberg and Tokyo trials this fact will readily be granted, but it is

urged that no study of the protection of the civic rights of the individual can afford to ignore the trials of quislings and traitors. For instance, Marshal Antonescu and certain others were tried by a Rumanian Court, inter alia, for enslavement of the press and information services with the object of spreading Nazism in Rumania and corrupting public opinion.⁽¹⁾

Many interesting problems would arise from a study of these trials from the point of view of human rights vindicated. For instance, where an accused was charged with collaboration with the enemy or with treason it must be asked: what were the specific acts or omissions of the accused? Only thus will it be possible to show what specific rights have been violated by collaboration. Thus Quisling was indicted, inter alia, for theft, embezzlement and abetting murder, and the rights violated by such offences will probably be clear. But what of the charges against him of attempting to put Norway under the control of a foreign power, and of inciting the Norwegian armed forces to mutiny and disloyalty?⁽²⁾ These acts clearly violated Norway's right of national existence, but are not human rights to be interpreted as the rights of individuals?

Again, Bela Imredy, former Premier and Finance Minister, was found guilty in Hungary, inter alia, of the promulgation of anti-semitic legislation.⁽³⁾ It would be necessary to analyse this judicial finding into the protection of specific rights by looking at the rights which the legislation in question violated.

As another example, what specific rights are violated by a policy of Germanisation?

IV. If the Secretariat were to exclude the protection of civic rights from its study, much of the value of the Nuremberg and Tokyo documentation would be lost. On the other hand, if attention were turned to civic rights, there would seem to be a strong case for examining the relevant aspects of the trials of traitors and quislings.

V. Certain difficulties are involved in accepting the task in full, however, and these must also be faced. They include the following:

- (i) The term "traitors" is very elastic and could include all persons convicted of treason or "anti-state activities" up to the present time, even if they were in no way connected with the war. Such a wide interpretation would cover the trial, recently undertaken before the Hungarian People's Court, of certain persons alleged to have been implicated (along with Mr. Bela Kovacs whose arrest by the Soviet authorities caused some degree of international friction) in an anti-Republican conspiracy.⁽⁴⁾

It might be wise to interpret the jurisdiction of the Commission restrictively so as to exclude the Secretariat from dealing with any cases not mainly relating to treasonable activities carried on during or in connection with the war. Another possibility would be to limit the enquiry to cases already begun, or concluded, when the resolution was passed.

(1) Keesing's Contemporary Archives, 8035 A.

(2) Ibid, 7855 A.

(3) Ibid, 8156 B.

(4) See Manchester Guardian Weekly, March 13th, 1947, p. 1.

- (ii) Many relevant legal texts are already in the hands of the Secretariat and have been circulated as Miscellaneous documents; these set out the laws and decrees applicable. There may, however, be difficulties in securing material regarding the trials, especially from non-members of the Commission (Bulgaria, Rumania and Hungary, - and Finland if the last has held suitable trials). Full transcripts would seem necessary for a full examination of the way in which the rights of the accused are provided for during his trial. For an estimate of the protection of the rights of his victims, however, the essentials are a statement of the offence, the attitude of the Court to such pleas as superior orders or act of subordinate without the knowledge of the accused, and the decision of the Court.
- (iii) The Secretariat of the Commission does not itself include sufficient linguists to enable it to deal with material written in all of the likely languages. Some outside assistance would be required in this connection.