

3rd March, 1947.

## BULGARIAN WAR CRIMES LEGISLATION

The following English translations of three Bulgarian War Crimes enactments (Decree No. 22 of October 6th, 1944, and two amendments) have been made available to the Secretariat by the United Kingdom Foreign Office.

## I.

## L A W - D E C R E E

for the trial by a People's Court those who were guilty of involving Bulgaria in the World War against the Allied Nation and of the crimes connected with the War.

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Art. 1. A People's Court shall be instituted for the trial of those who have committed criminal acts, as provided by this Law:

- a/. ministers of the Governments during the period January 1, 1941 to September 9, 1944;
- b/. deputies of the 25th Regular National Assembly and,
- c/. other civilians and army men.

Art. 2. The following persons shall be punished by a strict limited term or life imprisonment or by death and by a fine up to five million leva:

1. The persons who, after January 1, 1941, have exposed the safety of the State or have put in danger the interests of the nation, either by concluding international treaties with belligerent countries or by taking a decision to declare war and to wage war.
2. The leading personalities who, after June 22, 1941, have ordered actions violating the declared neutrality towards the Union of the Soviet Socialist Republics and in this way have aggravated the international position of Bulgaria.
3. The leading personalities who, in connection with the declaration of war and carrying it on against England and the United States of America, have not fulfilled their official duties and have failed to take appropriate measures in due time for the protection of the people and State against moral and material damages.
4. The persons who, within the country or abroad, from January 1, 1941 to September 9, 1944, by their actions, writings, speeches and otherwise, have contributed actively and essentially to the commission or execution of the above acts. +)
5. The persons who, after January 1st, 1941, within the old boundaries of the country, in Macedonia, Thrace or elsewhere, have taken advantage of their connections with the Administration or with the belligerent states, or of their official position in order to secure unlawful enjoyment of property benefits for themselves or for others.
6. The persons who have been in the service of Germany and her Allies and who, by discharging their duties, have contributed actively and essentially to the carrying out of the policy of these States to the detriment of the interests of the Bulgarian people.

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+ ) See amendment by Decree No. 49 of 1944 below under (II)

7. The persons who, during the same period, dispatched Bulgarian troops to Yugoslavia and Greece in order to pursue the National Armies of Liberation in these countries, as well as those leading army men who, by their acts or by their inactivity have been the cause of endangering our troops.

8. The persons who, within the country or abroad, in connection with the foreign or home policy carried on by the Governments after January 1, 1941, have ordered, encouraged or committed murders, heavy physical injuries, fires, robberies, pillages and tortures.

9. The persons who have served and have handed over willingly to the Police, Gendarmery and Army such information which had reference to the safety or important interests of the partisans or of the other fighters for national liberties.

10. Examining magistrates, public prosecutors and judges who, during the preliminary or court inquiry or by pronounced sentences, have displayed obvious partiality and have greatly exceeded their rights with the purpose of supporting the terror, lawlessness and violence to which the people were subjected.

Art.3. Those who have concealed or helped the escape of a person, about whom they knew, or judging from circumstantial evidence should have presumed, to have committed some of the crimes under this Law, shall be punished in the ordinary courts from five to fifteen years strict imprisonment; husband, wife, ascendant and descendant relatives, brother and sister are excluded from penalty.

Art.4. Those guilty of having committed crimes under this Law shall be deprived temporarily or for ever of the rights provided in Art.30 of the Penal Law. The Court shall resolve that the whole or part of the property of the condemned be confiscated for the benefit of the State treasury. The death of the person who has committed an act under this Law and which occurred before or after he had been indicated, shall not prevent the initiation and the conclusion of the prosecution and the passing of a sentence, in accordance with the preceding paragraph.

Art.5. The Ministerial Council, upon the report of the Minister of Justice, shall appoint a Chief People's Prosecutor and the required number of prosecutors. The Chief People's Prosecutor and the prosecutors, with the greatest possible urgency, shall collect the indictment evidence, bring the indictment against the accused, determine the bail, draw up the indictment act and maintain the indictment before the Court.

Art.6. The People's Court shall consist of: a/people's judges Bulgarian citizens of legal age belonging to both sexes, elected by the district committees of the Fatherland Front; b/ judges appointed by the country. Each district committee of the Fatherland Front shall elect thirty people's judges among the best citizens of towns and villages. +)

Art.7. The distribution of the People's Courts shall be made by the Minister of Justice, observing the following rules:

a/. One or more courts of thirteen members each shall be constituted for the trial of ministers and deputies; four of the judges shall be appointed, and the others would be those who had been indicated by the district committees. These courts shall hold sittings in Sofia. The senior judge among the appointed ones shall be the Chairman of the Court. +)

b/. For each district, courts shall be constituted whose number shall correspond to the number of the accused, and which shall consist of one appointed judge, as President, and four judges indicated by the respective district committee. These courts shall hold sittings in the district centres or, when the Minister finds it appropriate, in some of the county centres of the district.

c/. In case any of the appointed judges shall be prevented from taking part in the work of the Court, the Minister of Justice shall replace him by another.

Art.8. The indictment shall be forwarded to the respective Court which in turn shall hand copies of it to the accused. The latter shall be able to make their objections and to show evidence in their favour within seven days after the receipt of the copies.

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+ ) See amendment by Decree No.49 of 1944, below under(II)



The People's Prosecutor shall demand the delivery of the accused military persons from the War Minister.

Art.9. The Court shall fix the date of the hearing the case with the least delay. The court inquiry shall be carried out by the Court whose members shall act freely and according to their own judgment and conscience. Should some of the accused be absent, the hearing of the case shall take place in their absence.

Each accused is entitled to two defenders at most.

The Court shall clear out the law suits brought before it not later than 1st January, 1945. ++)

Art.10. After the conclusion of the court inquiry, the hearing of the prosecution, the defence and the last word of the accused, the Court shall pass sentence, motivated and subject to, no appeal or approval. The sentences shall be carried out without delay by the public prosecutors of the district courts.

Art.11. The People's Prosecutor shall issue orders for any disability and lien on the properties of the accused.

Art.12. Within a period of fifteen days from the day of the notice, the heirs of the persons affected by Art.4. III. of the present Law should declare before the People's Prosecutor the properties of the deceased. Third persons who own in their name or on any ground whatsoever hold in their possession properties of the accused under this Law, should declare them before the People's Prosecutor within a period of seven days from the day of the publication in the Official Gazette of a notice about it.

Art.13. Whoever shall not fulfill the obligation under the previous article or shall give incomplete and untrue information thereof shall be punished by the regular courts to strict imprisonment and shall be fined up to one million leva. The concealed properties shall be confiscated.

Art.14. All expropriations and establishment of ownership rights on properties of persons condemned by virtue of this Law, effected after June 1, 1944, shall by right be null and void as against the State.

Art.15. All properties transferred after January 1, 1941, to the wife, ascendant and descendant relatives, brothers, sisters, or descendant of the relatives shall be considered as belonging to the accused until the contrary shall be proved. The same shall refer to the properties acquired after the above date by the wife and minor descendant relatives except the properties acquired by rights of heirship.

Art.16. The present Law-Decree shall be enforced from the day of its publication in the Official Gazette.

Published by Decree No.22 in the Official Gazette, Number 219, of October 6, 1944 - Sofia.

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++) See amendment by Decree No.2 of 1945 under (III) below.

L A W - D E C R E E

for the amendment and supplementing of the Law-Decree for the trial by a People's Court of those who were guilty of involving Bulgaria in the World War against the Allied Nations, and of the crimes connected with the War.

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1. In Art.2, point 4 shall become point 10, and the period at the end shall be replaced by a comma, and the following words shall be added: "as well as to the persecution of the Jews".

Points 5 to 10 shall become respectively points 4 to 9.

2. The following words shall be added to Art.6, II: "Should in some district, the Courts, constituted in proportion to the number of the accused persons, be insufficient, the Minister of Justice shall be able to request the respective District Fatherland Front Committee to select an additional number of people's judges."

3. Art.7 letter "a" shall be changed as follows: "One or more Courts of thirteen members each shall be constituted for the trial of the regents, ministers, deputies, court advisers and high ranking clergymen and military persons; four of the judges are taken from those who are appointed, and the others - from those indicated by the district committees. These Courts shall hold sittings in Sofia. The senior of the appointed judges shall act as Chairman of the Court."

Published by Decree No.49 in the  
Official Gazette, Number 261, of  
November 24, 1944. - Sofia.



L A W - D E C R E E

for the amendment of the Law-Decree for the trial by a People's Court of those who were guilty of involving Bulgaria in the World War against the Allied Nations, and of the crimes connected with the War.

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Single paragraph: In Art. 9. al. IV, the words : "January 1, 1945 shall be replaced by the words: " March 31, 1945."

Published by Decree No.2 in the  
Official Gazette, Number 9, of  
January 12, 1945. Sofia.

Misc. 77  
February 27, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

TRIAL OF RUDOLF HOESS

The following letter has been received from Colonel MUSZKAT, Commissioner for Poland, and is circulated to Members for their information.

"Dear Colonel Ledingham:

I have been requested by my Government to inform the members of the United Nations War Crimes Commission that the trial of the former Commandant of Auschwitz concentration camp, Rudolf Hoess, will begin in Warsaw on March 11th, 1947, and it is expected to continue for several weeks.

If any of the countries represented on the Commission wish to send observers to this trial, it is requested that they should communicate with the Polish Embassy, so that the necessary arrangements may be made.

Yours sincerely,

(Signed) Marian MUSZKAT,  
Colonel."

UNITED NATIONS WAR CRIMES COMMISSION.

February 28th 1947.

TRIALS IN THE BRITISH ZONE OF GERMANY.

The Commission has been informed regarding the following trials:

RHEINE AIRFIELD CASE.

Heinz STELLPFLUG,  
August HACKETHAL,  
Karl HENKELHAUSEN,  
Friedrich HOCKSTAETTER,  
Franz SCHMITT,  
Walter KLOEPZIG.

The above named German nationals will be tried by Military Court on charges of committing sundry war crimes, namely, being jointly concerned in the killing of certain captured Royal Air Force, Empire and American airmen, prisoners of war.

This important war crimes trial will take place in the Garrison Theatre Osnabruck on March 7th, 1947 at 10.30 hrs.

NOAILLES CASE.

Helmut KNOCHEN.  
Hans KIEFFER,  
Richard SCHNUR,  
Otto ILGENFRITZ,  
Karl HAUG,  
Fritz HILDEMAN.

The above named German nationals are to be tried as alleged war criminals by Military Court at the Zoological Gardens Hall, 30.A. Hubertus Allee, Wuppertal, on Friday March 7th 1947 at 10.30 hrs.

The accused are charged with committing a war crime in that they near NOAILLES, Oise, France on or about August 9th, 1944, in violation of the laws and usages of war, were concerned in the killing of British parachute troops who were prisoners of war.

SCHANDELAH CASE.

The SCHANDELAH Labour War Crimes Trial in which the former Managers and Camp staff of the notorious SCHANDELAH Labour Camp were tried on charges of committing war crimes, namely, ill-treatment and killing of Allied nationals working for the Steineel Co. Ltd., at Schandelah between May, 1944 and April, 1945, was completed at BRUNSWICK on February 3rd 1947.

The findings and sentences passed on the nine former Managers and Staff of the Company and of the camp were as follows:-

Solms	WITTIG.	Guilty.	Death by hanging.
Hans	OHLEN.	Guilty.	10 years imprisonment.
Otto	HEFTER.	Not guilty.	Acquitted.

OVER.....



SCHINDELAR CASE (Cont)

Freidrich	EBSEN.	Guilty.	Death by hanging.
Karl	TRUSCHEL.	Guilty.	Death by hanging.
Erich	JAHN.	Not guilty.	Acquitted.
Johann	HEITZ.	Guilty.	Death by hanging.
Arthur	GROSSE.	Guilty.	Death by hanging.
Herbert	SCHIEFFELBEIN.	Guilty.	2 years imprisonment.

Jacob HAMM, another accused died on the night of 27/28 December, 1946 after a medical operation.

Witnesses for the prosecution came from Belgium, France and parts of Germany. Over 30 witnesses for the Defence were summoned to the hearing.

The trial opened on January 2nd, 1947, and was presided over by Lt. Col. E.C. Vander Kiste, a Permanent President of War Crimes Courts. The Judge Advocate was Mr. R.G.Dew, Barrister at Law.

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UNITED NATIONS WAR CRIMES COMMISSION

MISC. NO. 79

4th March, 1947

ORDINANCE REGULATING THE TRIAL OF MEMBERS  
OF CRIMINAL ORGANISATIONS IN THE BRITISH  
ZONE OF CONTROL IN GERMANY.

( ORDINANCE NO. 69 )

In the meeting of the Commission held on 29th January, 1947, M.122, the Secretariat undertook to circulate, as soon as it becomes available, the text of the Ordinance regulating the trial of members of criminal organisations promulgated for the British Zone of Control in Germany.

By the courtesy of Sir Alfred Brown, LL.D., Legal Adviser to the Control Office for Germany and Austria, a copy of Ordinance No. 69, in poster form, has been made available to the Secretariat. The Ordinance has not yet been published in the "Military Government Gazette" the last number of which (No. 15) contains only the Ordinances up to and including No. 68. It is possible that the text of Ordinance No. 69, which is herewith circulated for the information of members, will be amended before promulgation in the Military Government Gazette.

MILITARY GOVERNMENT - GERMANY

BRITISH ZONE OF CONTROL

ORDINANCE NO. 69.

Trial of Members of Criminal Organisations

WHEREAS by Article 10 of the Charter of the International Military Tribunal annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis signed at London on 8th August, 1945, by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics, it is provided (i) that in cases where a group or organization is declared criminal by the said Tribunal the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein

before national military or occupation courts and (ii) that in any such case the criminal nature of the group or organization is considered proved and shall not be questioned;

AND WHEREAS the International Military Tribunal set up under the said Charter at the first trial, held at Nuremberg, has declared to be criminal the members and officials of the groups and organizations (hereinafter called "the said Criminal Organizations") as set out in the First Schedule annexed hereto:-

NOW IT IS HEREBY ORDERED AS FOLLOWS:-

#### ARTICLE I

##### Establishment of German Tribunals of First Instance

1. German Tribunals of first instance (hereinafter called Spruchkammern) will be established for the trial and punishment of members of the said Criminal Organizations.
2. The number of the Spruchkammern will be determined by the Central Legal Office for the British Zone.

#### ARTICLE II

##### Establishment of a Zonal German Tribunal of Second Instance

3. A Zonal German Tribunal of Second Instance will be established to hear and determine appeals by the Prosecution and by the accused persons from the Spruchkammern on questions of Law. This Tribunal will consist of a number of Senates (hereinafter called Spruchsenate). The number of such Spruchsenate shall be determined by the Central Legal Office.

#### ARTICLE III

##### Composition of the Spruchkammern and Spruchsenate.

4. Each of the Spruchkammern will be composed of a Chairman who must be qualified to hold judicial office and two Lay Assessors. ite
5. Each of the Spruchsenate will be composed of a Chairman, who must be a Judge and two members, who must be qualified to hold Judicial Office.
6. The Chairman of the Spruchkammern and all members of the Spruchsenate will be nominated by the Central Legal Office in consultation with the highest legal administrative authority (Oberste Justizverwaltung) in each Land. The two Lay Assessors on each Spruchkammer will be nominated by the appropriate Land Government.
7. No former member of the N.S.D.A.P. nor any person who has held office in any affiliated organization thereof may be Chairman or member of the Spruchkammern or Spruchsenate.

#### ARTICLE IV

##### Prosecution and Charge

8. The preparation of cases against members of the said Criminal Organizations and the prosecution thereof shall be the responsibility of the Central Legal Office.
9. The accused persons will be charged with having been a member of a criminal organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, as specified in the Second Schedule to this Ordinance.



## ARTICLE V

### Penalties

10. Any person found guilty will be liable to any or all of the following penalties:-

- (a) imprisonment (Gefängnisstrafe) for a term not exceeding 10 years;
- (b) forfeiture of property; (c) fine.

## ARTICLE VI

### Mitigating Circumstances.

11., The Tribunals may take into account mitigating circumstances when determining the sentence to be awarded.

## ARTICLE VII

### Issue of Regulations

12. The Central Legal Office shall issue such regulations or orders as may be necessary or expedient for carrying this Ordinance into effect, including directions as to the maximum sentences to be imposed in relation to any rank or appointment held in any of the said criminal organizations, provided that in no cases shall any sentence of imprisonment exceed the maximum laid down in Article V hereof.

## ARTICLE VIII

### Effective Date

13. This Ordinance shall become effective on the 31st December, 1946.

BY ORDER OF MILITARY GOVERNMENT.

## FIRST SCHEDULE

### Group A: Leadership Corps

(i) Reichsleiter; (ii) Gauleiter; (iii) Kreisleiter; (iv) Ortsgruppenleiter; (v) Amtsleiter who were heads of offices on the staffs of the Reichsleitung, Gauleitung, or Kreisleitung. Those members holding the positions enumerated above who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, or who were personally implicated as members of the organization in the commission of such acts (excluding, however, those persons who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such acts).

This group does not include persons who had ceased to hold the positions enumerated above before first September, 1939.

### Group B: Gestapo and Sicherheitsdienst des Reichsführers SS (commonly known as the S.D.)

(i) All executive and administrative officials of Amt IV of the Reichssicherheitshauptamt (R.S.H.A.);

(ii) All executive and administrative officials concerned with Gestapo administration in department of the R.S.H.A. other than Amt IV;

(iii) Local Gestapo officials who served inside and outside Germany including members of the Frontier Police (but excluding members of the Border and Customs protection and members of the Secret Field Police who do not fall within subparagraphs (i) and (ii) above) unless they were employed by the Gestapo for purely clerical, stenographic, janitorial or similar unofficial tasks;

(iv) All officials of Amt III, VI and VII of the R.S.H.A.;

(v) All other members (Angehörige) of the S.D. including all local representatives and agents, honorary or otherwise but excluding honorary informers who were not members of the SS and members of the Abwehr who were transferred to the S.D.

Those members holding the positions enumerated above who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, or who were personally implicated as members of the organization in the commission of such acts (excluding, however, those persons who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such acts).

This group does not include persons who had ceased to hold the positions enumerated above before first September, 1939.

Group C: S.S.

(i) Members (Mitglieder) of the S.S. including members of the Allgemeine S. Waffen-S.S. and S.S.-Totenkopfverbände (but excluding members of the S.S. Riding Units);

(ii) members of the different police forces who were members of the S.S.

Those persons who had been officially accepted as members of the S.S. as enumerated above who remained members of the organizations with knowledge that they were being used for the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, or who were personally implicated as members of such organizations in the commission of such acts (excluding, however, those persons who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such acts).

This group does not include persons who had ceased to belong to the organizations enumerated above before first September, 1939.

SECOND SCHEDULE

The Acts declared criminal by Article 6 of the Charter of the International Military Tribunal are:-

(a) Crimes against peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.



Misc. 80  
March 5th, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

Proposals for a Priority List of War Criminals

by the Chairman of Committee I.

For some time I have been perturbed by the almost impossible task which faces the appropriate authorities in Germany and elsewhere, in tracing and apprehending all the accused who are listed by this Commission. In Committee I we have been accepting, as accused, persons against whom there exists a prima facie case of a war crime, but in many cases the war crime in question was not necessarily of a very heinous nature, and this practice has made our lists somewhat bulky.

I am fully aware that Governments must be left completely free to bring all their cases before the Commission, since it is most important that the picture of Nazi crimes, which is built up by the Commission, should be as complete as possible. For these reasons I consider that the present practice should continue unrestricted.

But the result is that the present list of war criminals issued by the Commission are too voluminous for the occupying authorities to handle; while the lists serve their full purpose in respect of surrender, they are of little practical effect for purposes of apprehension.

I would, therefore, like to suggest that a review should be made of all the cases which have been considered by Committee I, with a view to compiling a short list of war criminals, who are accused of having committed crimes of a truly grave nature, about which there is adequate first-hand evidence, while the identity of the criminal is well substantiated. Without this last element the tracing authorities will not have much chance of finding them.

I have recently discussed this matter with Colonel Draper of the Control Commission, and I asked him if it would be possible to make use of the German Police for tracking down a number of criminals short-listed by this Commission. The Kripo - the German Criminal Police - are a very efficient organisation; they have a system of entering the names and particulars of the ordinary domestic criminals in a Kripo book, which is circularised from Kripo Headquarters to every branch office, not only in the British zone, but in all other zones of Germany. Every tiny police station in Germany receives a copy of the particulars and the Kripo keep a regular check on the local inns and hotels, as well as on the inhabitants.

I understand, however, that the Kripo are already over-worked and under-staffed, owing to the amount of domestic crime (black market, fascist movement etc) and also because of the lack of officers who are not tainted with Nazi-ism. It is certain that if this Commission were to ask the Control Commission for permission to use the Kripo in the search for the odd 20,000 persons listed as criminals by the United Nations War Crimes Commission, the Control Commission would be unwilling to over-burden that organisation with such a huge amount of additional work, lest the administration of ordinary criminal justice in Germany be seriously delayed. They would, however, probably agree to trace a small number of accused, whose apprehension was considered to be a matter of priority.

Some members may wonder whether, in these circumstances it would not be better to recast the work of Committee I. The reason why I feel that Committee I should continue its work as in the past is that it may well be that criminals who are not on the priority list may, by chance, fall into the hands of the authorities, and provisions must exist for such



persons to be surrendered and tried. Moreover, the lists of suspects and witnesses should not be discontinued.

While leaving the work of Committee I to continue as it has done to date, I would like to put forward the following suggestions for the consideration of the Commission (and in this connection, I might add that I am personally willing to undertake any extra work which this may require):-

1. That National Offices should be asked to review their cases and specify which ones they consider to be of a really heinous nature and justifying priority treatment.
2. These cases should then be re-considered by Committee I, bearing in mind that the identification should be sufficient to give a reasonable chance of detention, and a new priority list of war criminals, wanted by all the states represented on the Commission, should then be issued.
3. This Commission should then ask the Control Commission for permission to use the organisation of the Kripo in the search for these men.
4. Eventually, further priority lists could be issued.

UNITED NATIONS WAR CRIMES COMMISSION.  
Progress report of War Crimes trials from data available on March 1st 1947.

MISC. 81.

March 10th 1947.

	Cases tried.	Accused Involved.	Death.	Imprisonment	Acquittal.	Remarks.
EUROPE: Countries whose reports comprise war criminals only.						
UNITED STATES: UNFET)	174	838	233	481	124	as at 21.2.47.
UNIT )						
BRITISH: B/ OR	194	653	149	309	196	as at 28.2.47.
MIF & BTA						
FRANCE:	9	193	95	92	6	as at 1.1.47.
GREECE:	2	4	2	2	-	as at 31.1.47.
NORWAY:	-	16	11	5	-	as at 16.10.46.
YUGOSLAVIA:	3	47	34	13	-	as at 1.1.47.
TOTAL		1751	524	902	325	
EUROPE: Countries whose reports show war criminals and collabo- rators combined.						
CZECHOSLOVAKIA:	-	18496	362	13969	4165	as at 31.10.46.
POLAND:		4593	631	1840	2122	as at 1. 7.46.
TOTAL		23089	993	15809	6287	
FAIR LIST:						
UNITED STATES:	-	482	138	296	48	as at 21.2.47.
BRITISH:	203	680	231	368	81	as at 23.2.47.
AUSTRALIAN:	229	725	140	254	221	as at 1.2.47.
NETHERLANDS EAST INDIES:	30	35	16	19	-	as at 1.3.47
TOTAL		1922	525	1010	350	

19th March, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

NORWEGIAN WAR CRIMES LEGISLATION

(This English translation of the Norwegian law of December 12th, 1946 (No.14), was made available to the Secretariat by the Representative of Norway on the Commission, Mr. J. Aars-Rynning. A further document, explanatory to the present one, will be circulated in the near future).

The Norwegian Law on the Punishment of Foreign War Criminals

The following law was passed by the Storting on December 12th, 1946 (No.14), and sanctioned by the King on December 13th, 1946. The law was promulgated in No.44, of the "Norsk Lovtidend" (Norwegian Law Gazette) on December 31st, 1946.

§ 1.

Acts which, by reason of their character, come within the scope of Norwegian criminal legislation are punishable, according to Norwegian law, if they were committed in violation of the laws and customs of war by enemy citizens or other aliens who were in enemy service or under enemy orders, and if the said acts were committed in Norway or were directed against Norwegian citizens or Norwegian interests. In accordance with the terms of the Civil Criminal Code § 12, paragraph 4, with which should be read § 13, paragraphs 1 and 3, the above provision applies also to acts committed abroad to the prejudice of Allied legal rights or of rights which, as laid down by Royal proclamation, are deemed to be equivalent thereto.

§ 2.

Confiscation of property, requisitioning, imposition of contributions, illegal imposition of fines, and any other form of economic gain illegally acquired by force or threat of force, are deemed to be crimes against the Civil Criminal Code, § 267 and § 268, paragraph 3.

§ 3.

In the case of crimes referred to in § 1 above, the sentence of imprisonment may be doubled, and penal servitude may in all such cases be substituted for imprisonment. The collection of fines from a convicted defendant or his heirs is subject to the rules laid down in the Decree of December 15th, 1944, on the punishment of traitors.

A life sentence or capital punishment may be inflicted in all cases where:

- a. the act caused grave bodily injury, grave suffering, prolonged deprivation of freedom, or extensive damage to property;



- b. the act resulted in death, even though this outcome was not intended;
- c. chapters 21, 22, and 25 of the Civil Criminal Code were repeatedly violated; or
- d. particularly aggravating circumstances were present.

Fines may be imposed in addition to capital punishment or imprisonment. As regards the collection of fines from a convicted defendant or his heirs, the provisions of the Decrees concerning the punishment and financial liability of traitors are applicable.<sup>(\*)</sup>

§ 4

The attempted commission of any crime referred to in § 1 of the present law is subject to the same punishment as an accomplished act. Complicity is likewise punishable.

§ 5

Necessity and superior order cannot be pleaded in exculpation of any crime referred to in § 1 of the present law. The court may, however, take the circumstances into account and may impose a sentence less than the minimum laid down for the crime in question or may impose a milder form of punishment. In particularly extenuating circumstances the punishment may be entirely remitted.

§ 6

In deciding whether cases concerning crimes referred to in § 1 of the present law are to be dealt with by the Court of Appeal (Lagmannsrett) or by the County Courts (Herredsrett) or Town Courts (Byrett), the power to increase punishment which is provided in § 3 of the present law should not be taken into consideration.

§ 7

The present law shall come into force forthwith.

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(\*) As is stated in the explanatory memorandum to the present law, issued by the Ministry of Justice and Police, this point was the only amendment proposed by the Ministry in their recommendation to the Storting for the supersession of the Provisional Decree of 4th May, 1945, by a formal Act of Parliament.

UNITED NATIONS WAR CRIMES COMMISSION.

Detention, Arrest and Handing Over of War Criminals in Austria.

(Note by the Secretary to Committee III)

- I. In Doc. Misc. No. 65, the provisions enacted by the Four Powers occupying Austria as far as they relate to the treatment of war criminals, have been circulated and annotated. In the quoted document, reference was made particularly to Art. V, paragraph 7 of the Four-Power Agreement dated Vienna, 28th June 1946.

Under this Agreement, the tracing, arrest and handing over of war criminals comes under the so-called reserve powers of the Allied Commission. In particular the Four-Power Agreement distinguishes between persons wanted by one of the four Powers or by the International Military Tribunal on the one hand, and persons wanted by other United Nations. In the case of persons wanted by one of the four Powers or by the International Military Tribunal, for war crimes or crimes against humanity, no condition is laid down for the tracing, arrest and handing over of such persons. In the case of persons wanted by other United Nations for war crimes or crimes against humanity, it is laid down that they will be traced, arrested and handed over if they are included in the lists of the United Nations War Crimes Commission.

- II. On 23rd December 1946, the Allied Council for Austria gave to the Austrian Minister of Justice more detailed instructions as to the detention, arrest and handing over of war criminals. The letter from the Allied Council to the Austrian Minister of Justice has been published in No. 13 of the Gazette of the Allied Commission for Austria, item 13. It reads as follows:

" 13. Detention, Arrest and Handing Over of War Criminals.

The Allied Council approved the following letter to be sent to the Minister of Justice:

1. The Austrian Government will be notified concerning the measures which it is necessary to take in regard to the persons you asked about in your letter.

2. The Austrian Government must submit regularly to the Allied Council, lists of all arrested war criminals. In regard to each person mentioned in the list submitted by the Austrian Government, it is necessary to be guided by the following general principles:

(a) If this person is looked for by an organization acting on behalf of the Four Powers, or by one of the Four Powers, the Austrian Government will have to submit to the Allied Council any information concerning the guilt of the given person which is at the disposal of the Austrian Government. The Allied Council may then give the Austrian authorities an order about his arrest and his immediate delivery to the authorities of the Government which are looking for him. If within the period of two meetings of the Allied Council following the day of the receipt of the information by the Allied Secretariat there is no decision by the Allied Council, then the High Commissioner of the zone where the war criminal is, may give an order for his arrest.

(b) If the person is sought by any other member of the United Nations, and if he is also included in the list of the United Nations Commission on War Criminals, the measures indicated in sub-paragraph (a) will apply to him.

(c) If the person does not fall under the two preceding sub-paragraphs, but comes within the jurisdiction of the Austrian Government, the latter will have the authority to try him with the reservation that the proceedings and the punishment will be subject to the control of the Allied Council.

3. Supplemental information concerning special cases mentioned in your letter will be sent to you.

Vienna, 23rd December, 1946."

As will be seen from paragraph 2(b) of the Allied Council letter, the inclusion of persons in the list of the United Nations War Crimes Commission is again stated as a condition for the handing over of persons to an Allied State other than one of the four occupying Powers.

III. In No.1 (14) of the Gazette of the Allied Commission for Austria, there is published an instruction sent by the Executive Committee on behalf of the Allied Council to the Federal Chancellor for Austria on 31st January 1947 concerning the disposal of 17 war criminals, two of them being listed on the Commission's list, and 15 not listed. The letter to the Federal Chancellor reads as follows:

" 9. Disposal of 17 War Criminals.

The Executive Committee, on behalf of the Allied Council, sent the following letter to the Federal Chancellor:

With reference to the letter of the Minister of Justice of 20th July 1946 (No. 20.886/46) addressed to the Chairman of the Allied Council for Austria and to the Allied Council's instructions in reply (SECA/702), the Allied Council directs that you be informed as follows:

Two of the individuals listed, namely Ignaz Hans Berger and Josef Kunert, are wanted by the Czechoslovak Government and their names appear in the list of the United Nations Commission on War Criminals.

The Allied Council directs that those individuals be handed over as soon as possible to the Czechoslovak Government for prosecution, as provided in the Allied Council's letter under reference. The Allied Council will inform the Czechoslovak Government of this.

Concerning the other 15 persons mentioned in the letter, who are detained by the Austrian authorities on charges of war crimes, you are advised that those individuals are not at present included in the United Nations War Criminals List. However, the Allied Council has no objections to decisions by the Austrian authorities that these persons be extradited to the interested countries as contemplated in the letter of 20th July 1946, but in each case it is necessary promptly to notify the Allied Council.

Vienna, 31st January, 1947."



1st April, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

NORWEGIAN WAR CRIMES LEGISLATION

(The following material, relating to and explaining the Norwegian Law of December 13th, 1946 (No. 14) (already circulated in Misc. No. 82), has been furnished by the Norwegian Representative on the Commission, Mr. J. Aars-Rynning).

EXPLANATORY MEMORANDUM

In proposing this Law to the Storting, the Ministry of Justice and Police made the following statement:

"Acting in accordance with § 17 of the Norwegian Constitution<sup>(\*)</sup> and the resolution adopted by the Storting at Elverum on April 9th, 1940, the Government in London on May 4th, 1945, promulgated a Provisional Decree (Provisorisk Anordning) on the punishment of foreign war criminals.

The Provisional Decree reads as follows: ...."

(The Decree has the same wording as the Law by which it has been superseded (see Misc. No. 82) apart from the provision regarding the imposition of fines in § 3 (see footnote on p. 2 of Misc. No. 82) which was first introduced by the new Law)

The Ministry issued the following statement in explanation of their recommendation regarding the Provisional Decree:

- I. A war crime in the widest sense of the term is, according to international law, any hostile or harmful act committed by a belligerents' soldiers or civilians which can legally be punished by the other side. This wide conception of the term, which has not taken root in common usage, is unfortunate and misleading. The term includes not only misdeeds which every civilised belligerent must regard as deplorable and try to counteract, e.g. plunder, atrocities, the use of poison or forbidden weapons, etc, but also acts which, far from being criminal in the usual sense of the word, are on the contrary to be regarded, from a patriotic point of view, as noble and highly moral, as e.g. acts of sabotage undertaken by the population of the occupied territory.

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(\*) "The King may make or repeal regulations concerning commerce, customs, trade and industry, and police; they must not, however, be at variance with the Constitution or the laws passed by the Storting".

As regards the essential differences between the various categories of war crimes, it has become the practice to distinguish between four groups of such crimes:

1. violations of the laws and customs of war, committed by members of the armed forces or by other persons attached to these forces,
2. military acts committed by persons not belonging to the armed forces or by those who, according to international law, belong to the same category (non-belligerents),
3. espionage and war treason,
4. marauding.

Only crimes of group 1 are considered as war crimes in the strict sense of the word and are to be discussed in this connection. Such offences as are mentioned in groups 2 - 4 might happen in connection with the liberation of Norway in the event of more wide-spread military operations taking place. However, as far as such violations are concerned, it may be taken for granted that they are already sufficiently covered by Chapters 8 and 10 of the Military Criminal Code.

As mentioned above, war crimes in the strict sense of the word (group 1) consist of violations of the "laws and customs of war". As to these acts, the description "criminal" is fully appropriate. The moral valuation is here independent of whether the act is considered from the enemy's point of view or from that of the delinquent's own countrymen. This view has been expressed in various treaties, but most clearly in the Geneva Convention of 1929, dealing with the sick and wounded. The signatories to the treaty solemnly promise therein to initiate appropriate legislation with a view to avoiding violations of the Convention in war time, if their present national criminal legislation does not cover such acts (Art. 29). Analogous regulations are to be found in Articles 1 and 3 of the Hague Convention IV regarding the laws and customs of land warfare.

The violations of the laws and customs of war are primarily a breach of specific treaty provisions regarding warfare, particularly the Hague Convention IV with its appended regulations for land warfare (Hague Regulations). Among further treaties which limit the belligerents' freedom of action, the two Geneva Conventions of 1929, dealing with the treatment respectively of prisoners of war and of the sick and wounded, are particularly important. Those international customs of war that have taken root and have been commonly recognised in the relations between states should be regarded as supplementary to the international laws laid down in treaties. Land, sea and air warfare have, however, in no way been exhaustively regulated by treaties or by recognised customs of international law. In the absence of explicit regulations, one has, according to the Hague Regulations IV, to resort to "the principles of the law of nations, derived from the usages established among civilised peoples, from the laws of humanity, and from the dictates of the public conscience".

It appears from the above that doubt may sometimes prevail as to whether an act is to be regarded as a war crime. One must not, however, exaggerate the difficulties that may arise in this connection. It may be taken for granted that whenever the question of prosecution arises in practice, the case will leave no doubt in that respect.

As an illustration of the question, a list of the most prominent war crimes is given below. The list was worked out for the use of the peace conference in 1919, and is now, if possible, even more topical, and has accordingly been accepted as a basis for the United Nations War Crimes Commission. (The list is quoted in full in the original text of the explanatory memorandum).

International law asserts that violations of the laws and customs of war are crimes and are punishable as such. In other words, the authority to prosecute has been sanctioned by international law and comes into effect as soon as a state of war exists. As a result there is no question of punishment with retroactive effect in this respect, even though the provisions of the national criminal code applicable to war criminals may have to be promulgated after the crime was committed. International law does not set out any detailed regulations on procedure or on the substantive law regarding the prosecution of war criminals. This has been left to national legislation, subject to the limitations which follow from commonly recognized basic principles of civilised justice. International law sanctions capital punishment and any other form of punishment not at variance with it.

- II. The reckless brutality that characterised the Axis Powers' methods of waging war and their excessive use of power in occupied territories, had the effect, early in the war, of making the punishment of war criminals a predominant question in Allied countries. Public opinion was voiced, and with the experience of the previous war in mind, a public demand arose that this time the war criminals should not escape their well-deserved punishment. Already on October 25th, 1941, Winston Churchill declared that the punishment of war criminals was one of "the main war aims of the Allied countries". On September 8th, 1942, he declared in the House of Commons among other things .....(Quotation).

Similar ideas were voiced on various occasions by other Allied statesmen.

A solemn declaration on the punishment of war criminals was made on January 13th, 1942, by the governments of those Allied countries whose territories had been occupied by the Axis powers (St. James's Declaration quoted).

The clearest and most weighty proof of the Allied unshakable determination to call the war criminals to account is given in the Moscow Declaration of November 1st, 1943, which includes the following passages: (Quotation)

An important link in the preparation for dealing with the war criminals is the work that is being carried out by the United Nations War Crimes Commission. The Commission was set up in accordance with a resolution adopted at a Foreign Office meeting of the diplomatic representatives of most of the Allied countries which took place on October 20th, 1943. Norway has been represented in the Commission by Ambassador E. Colban, assisted by a special office under the Ministry of Justice, as far as the investigation side of the work is concerned. The main task of the Commission is the listing of war criminals who have been charged by the countries on whose territory or against whose citizens the crimes have been committed. The condition for listing is that prima facie evidence can be supplied to show that the suspected person is guilty of war crimes. The lists are intended to furnish the basis for security measures, imprisonment, surrender of war criminals, etc., to be initiated by the Allies when the military resistance of the enemy has been overcome.



Apart from this, the Commission has dealt with questions of a more general juridico-political character connected with problems of war crimes. Thus the Commission has adopted a draft for an inter-Allied convention regarding the surrender of war criminals (and traitors). Further, the Commission has adopted a draft convention on the setting up of an Allied Tribunal to deal with war criminals in whose cases it would be inappropriate to take proceedings in the country where the crimes were perpetrated. The Commission has also initiated various practical steps which are of importance in view of pending investigations, detentions etc., relating to war crimes.

Up till now (May, 1945), Norway has submitted to the Commission over 300 charges against German war criminals whose crimes have been committed in Norway or against Norwegian citizens. All these charges have been accepted and the names of the criminals have been put on the Commission's lists of war criminals. The Norwegian charges concern among others Reichskommissar Terboven and his closest associates, the Generals Falkenhorst Rendulic and Rediess, as well as all members of the German Police in Norway who are known to be guilty of having committed torture or other crimes, or who must be regarded as responsible for such offences. Those who initiated the plans for, and carried out, the destruction in Finnmark have all been included. The same applies to all superior officers of the German forces stationed there in the autumn of 1944.

III. The situation which will face Norway when dealing with the German war criminals may be assumed to be as follows:

With the cessation of hostilities, the authorities will have in their possession the names (particulars of identity) and preliminary evidence concerning several hundreds of Germans who have officially been listed as guilty of war crimes committed in Norway or against Norwegians. As regards some of those who can be characterised as "travelling specialists in torture for the Gestapo", it may happen that other Allied countries have equally strong or even stronger claims. The same applies to the comparatively few cases so far known, where crimes have been committed against Norwegian prisoners of war or internees in Germany, Poland or other countries outside Norway. The majority, however, have committed their crimes in Norway, so that there is every reason to expect that their trials will be held there.

Obviously it is impossible to predict where the guilty men will be when the collapse comes. The development of the war may be such that the majority of them will at that time still be in Norway. Many, no doubt, will have been transferred to Germany or will have escaped there. And it is possible that some may have tried to find refuge in neutral countries, particularly Sweden.

Whatever the situation in this respect may be, it will not be of any decisive consequence. According to the rulings laid down and the plans fixed - at the Moscow Conference and on other occasions - those war criminals who ought to be tried in Norway will, pursuant to the Allied decision, be surrendered to Norway, there to be called to account for their crimes. It is not likely that exceptions will be made regarding war criminals who have succeeded in escaping to neutral countries. It is hardly likely that toleration will be shown to neutral states, in such cases, if they maintain their right to give asylum, cf. the note of the Allied Big Powers of August, 1943, to the neutral countries.

One must therefore expect and be prepared to see the prosecution and trial of a considerable number of German war criminals in Norway very soon after the liberation. Even if some sort of inter-Allied tribunal

for the punishment of war criminals is to be established - though the prospects for this are not very hopeful - it will not have any noticeable effect in this connection. In the event of such a tribunal being set up, it will only deal with those cases which are not suitable for treatment in any particular Allied country. It is agreed upon and has been repeatedly stressed as a guiding principle that the war criminals should, as far as possible, be tried and punished in the country in which the crimes were committed. Norwegian public opinion entirely agrees with this view.

Consequently it is necessary to take into consideration the question whether Norway is sufficiently prepared to meet the situation as far as procedural and criminal law are concerned.

(a) Regarding the rules of procedure in cases against war criminals to be dealt with by Norwegian courts, any further initiation of legislature is hardly required in addition to what has already been undertaken. The Provisional Decree of February 16th, 1945, has laid down special rules of procedure for cases against traitors. The Act introduces rules of procedure which will expedite and simplify matters by transferring the cases to special judges and special sections of the courts. It is obviously justifiable and expedient that these rules of procedure should be employed in cases against foreign war criminals, particularly as § 1, 1d of the said Decree makes them applicable to cases dealing with "crimes punishable according to criminal clauses covering offences committed during the war by enemy nationals or other foreigners employed by the enemy or under his authority".

(b) As to the already existing provisions of criminal law which can be applied, the situation is as follows:

The Moscow Declaration assumes that the war criminals will be tried and punished "in accordance with the laws of the liberated countries". This assumption is obviously based on the same conception of international law as is maintained above under point I of this memorandum, where it is stated that it has been laid down by international law that violations of the laws and customs of war are crimes and are punishable as such, but that at the same time international law has, with certain limitations, left it to national legislation to fix the extent of the punishment and to set out the more detailed conditions of criminal responsibility.

According to the legal systems of certain Allied countries, the position is said to be that the prosecution of war criminals is based directly on international law. The matter is regarded as being outside national criminal legislation. When the court determines that the offence is, according to international law, to be regarded as a war crime, it decides according to its discretion on an appropriated punishment, up to the death sentence.

Even though the present situation is quite extraordinary and unforeseen, such an interpretation is unfamiliar to the Norwegian conception of law. Norwegian courts can only inflict punishment according to provisions of Norwegian civil or military law. The principle laid down in § 96 of the Constitution<sup>(\*)</sup> must be interpreted in this connection so as to make an arbitrary application of an undefined provision of international law inadmissible. In Norway, international law is not

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(\*) "No one may be convicted except according to law, or be punished except according to judicial sentence".



incorporated into national law as an integral part, as is the case in various foreign legal systems. Before a rule of substantive international law can be applied by Norwegian courts, it must be incorporated into Norwegian national law by a special act. A clear example of this is § 92 of our military criminal code, which fixes the punishment for a typical war crime committed by enemy soldiers. The paragraph is based on the international regulations which are to be found in the Geneva convention of 1929, regarding the treatment of sick and wounded; cf. § 23 f, of the Hague Regulations. The fact that the passing into law of a special criminal clause was regarded as necessary illustrates the point of view expressed above.

There are very few provisions in Norwegian criminal law directly concerned with foreign war criminals. Apart from the clause mentioned above, there is only § 92 of the Military Criminal Code and some provisions in chapter 10 of the same code.

As far as most war crimes are concerned, however, there is no need for special criminal clauses. This applies mainly to the most serious and important crimes. The great majority of the offences which can be punished as war crimes are, in their nature, covered by clauses of the Norwegian civil and military criminal codes already in force, and can, if necessary, be supplemented by criminal clauses from other special laws.

The problem is consequently reduced to the question whether Norwegian criminal law is sufficient to cover the extraordinary situation with which we are faced, whether the forms of punishment laid down by the laws already in force are adequate, whether the established conditions of criminal responsibility can be applied here and how far the definition of the punishable offence befits the crime committed.

1. As regards the question whether the methods and forms of punishment set out in Norwegian criminal law are adequate, it may be said that already at an early stage of the war a considerable extension of the possible degree of punishment was initiated. The amendment made by the Provisional Decree of 22nd January, 1942, to the civil criminal code, chapters 19, 21 and 22 has laid down:

"Crimes committed as long as Norway is in a state of war may be punished by death, according to clauses of the Civil Criminal Code, Chapter 19 (sexual crimes), Chapter 21 (crimes against personal integrity) and Chapter 22 (murder, manslaughter, assault and injury to health), they can be punished by a life sentence".

It appears from the explanatory memorandum that the Provisional Decree aims mainly at those German nationals in the service of the occupational powers who have assaulted, murdered and ill-treated Norwegian patriots.

The Ministry, however, consider that the limited possibilities provided by the Decree of applying the death penalty for the above mentioned crimes are insufficient. The Ministry further take it for granted that in many cases the demand will arise for the application of longer terms of imprisonment than those now authorised. When the Criminal Code of 1902 was promulgated, a situation like the present could naturally not have been foreseen. Consequently the Civil Criminal Code will not suffice when it has to be applied to war crimes which are of a different character from the corresponding criminal acts described in the law.



An examination of war crimes committed in Norway during the occupation, compared with the criminal legislation already in force, leads to the following conclusions as regards desirable changes in the terms of punishment:

- (a) There ought to be an unambiguous provision in the law for the application of the death penalty or life sentence for repeated or particularly flagrant instances of unwarranted deprivation of freedom (as defined by Civil Criminal Code § 223 and § 224).
- (b) The same applies to unpremeditated manslaughter, attempted murder (as defined by Criminal Code § 223) and repeated ill-treatment and torture, even though "considerable bodily injury" has not been inflicted (Civil Criminal Code § 229 and § 232).
- (c) The same applies to particularly flagrant instances of rape and sexual intercourse and perversities with children under 14, even though the conditions specified in § 192, paragraph 4, and § 195, paragraph 3, do not apply.
- (d) The same applies to particularly serious cases of destruction of property, e.g. the burning down of whole cities and villages as reprisals or in furtherance of the "scorched earth policy" (see Civil Criminal Code §§ 148 and 292).
- (e) The same applies to criminal acquisition of property of a particularly extensive character, particularly the total draining of the country's economic resources (see Civil Criminal Code § 266 and onwards).

A contributory argument in favour of an overall expansion of the terms of punishment is the inadequacy of the existing provisions regarding the repetition of crimes. It has been laid down, inter alia, in § 62 of the Criminal Code that:

"If several kinds of crime, each punishable by different terms of imprisonment, have been committed by the same person by one or several acts, the terms of imprisonment passed must exceed the minimum term of the gravest crime, but must in no case exceed its maximum term by more than a half".

It is obvious that the regulation referred to above cannot be applied to war criminals. It was founded on the supposition of a normal social life, where the police and criminal courts are available instantly or very soon afterwards whenever a more serious crime has been committed. This was not the case during the occupation. German perpetrators of violence continued for several years their criminal activity unrestrained. As a result a considerable number of them, making use of their high position, increased their guilt by systematically committing whole series of the most appalling crimes.

It could be specifically laid down that § 62 of the Civil Criminal Code should not apply in trials of foreign war criminals. The Ministry, however, hold in the circumstances that an overall increase of the terms of punishment is a better solution when applied to the most serious war crimes and in cases of repeated offences.

2. A French decree of 28th August, 1944, concerning the punishment of war criminals has, in order to facilitate the incorporation under the French Criminal law of the various categories of war crimes, considered it necessary to give special guidance on this point. Article 2 of the decree reads as follows (quoted in full in the original text)....(\*)

In the Ministry's view, it is hardly necessary for Norway to follow the same procedure as is employed in the French decree except perhaps in some isolated cases. The majority of the crimes mentioned under Nos. 1 - 8 in the second article of the decree quoted above, could without difficulty be included within the scope of settled provisions of Norwegian criminal law. There should be no doubt that an execution carried out as a means of reprisal constitutes murder (§ 244 of the Civil Criminal Code). It is equally clear that the employment of prisoners of war or civilians as living buffers against enemy forces can be classified as murder, manslaughter, inflicting bodily injury, etc. Collective fines (contrary to the Hague Regulations), requisitioning, confiscation and the like must be regarded as theft. Any employment of prisoners of war or civilians contrary to the regulations of international law, illegal conscription for forced labour, internment, deportation, etc., are to be regarded as illegal deprivation of freedom.

Thus it is hardly necessary for Norway to initiate new criminal legislation. It ought to be left to the criminal courts to pass adequate sentence based on the already existing penal clauses and taking into consideration the special circumstances of war. There is little reason to think that this would cause unsurmountable difficulties. It can be assumed that the prosecution of war criminals will primarily comprise those who have held leading positions or have taken an active part in murder, manslaughter, torture, ill-treatment, illegal deprivation of freedom, plunder and indiscriminate destruction of property. In such cases there will rarely be any doubt that they can be covered by provisions of criminal law which allow for sufficiently severe sentences. Certain war crimes of an economic nature which have been a part of the systematic exploitation of the country, form a separate group as far as the terms of punishment are concerned. Acts like the excessive issue of currency notes, unreasonable fixing of prices, irresponsible exploitation of clearing agreements, etc., can hardly be assimilated with any particular crime already defined and covered by the law. If criminal prosecution against those individually responsible in this connection should arise, it is deemed necessary to give certain instructions to those administering the law. Those regulations, however, should be given a very comprehensive though general form, considering the very different economic transactions which may arise in this connection.

The general provisions in the first part of the Civil Criminal Code are, according to § 1 of that Code, applicable to all criminal acts unless otherwise stipulated. As a rule the same provisions should apply to foreign war criminals. There are, however, some isolated cases where special directions are deemed necessary:

#### Superior orders.

It is to be expected that defendants will frequently plead having acted solely on superior orders without having had the chance of considering whether or not his act was permissible according to international law and whether it constituted an act of "lawful warfare".

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(\*) See Document Series, No. 26.

The question of the legal consequences of an act committed on superior orders has been widely discussed. As to the attitude of international law, it may be taken for granted that the fact that the act was committed under superior orders is not eo ipso exculpatory. This question must be decided by the national legislation.

In Norwegian Civil Criminal Law no general provisions have been made as to the plea of superior orders, but a special clause has been provided in § 24 of the Military Criminal Code which reads:

"The plea of superior orders in the course of duty - if the subordinate does not exceed the order - is exculpatory unless he knew or could reasonable be expected to have known that he, by executing the order, was a party to an act at variance with the law. In any case the court has the right to inflict a punishment below the fixed minimum or a more lenient form of punishment".

The Civil Criminal Code has no corresponding provision. Consequently the principle of the said law is that the general provisions of chapter 5 concerning "the possible reasons for a mitigation of punishment" are applicable to persons whose acts have been determined or influenced by an order. Chapter 5 comprises various provisions which can be applied to such cases. The most general of them is § 58, which in the case of several people being involved, provides the right to reduce the punishment for those whose complicity has mainly been caused by their subordinate or dependant position. § 56, paragraph 1, deals with the plea of having acted under pressure or in self-defence. Superior orders will, in many cases, give the subordinate justifiable reason to believe that the act was in accordance with the law, which fact may cause exemption from punishment or mitigation thereof, cf. §§ 42 and 75.

In connection with the prosecution of war criminals by Norwegian courts, resort will have to be made to the principles laid down in the Civil Criminal Code. § 24 of the Military Criminal Code cannot be applied.

In short, it has been laid down in the Civil Criminal Code that a superior order is not eo ipso exculpatory. It may, however, be taken into consideration and may lead to a mitigation of punishment. In reality there is no objection to this provision and it does not differ much from the solution which has been internationally accepted - among others by the United Nations War Crimes Commission. In order, however, to avoid unnecessary arguing, the Ministry are of the opinion that this provision should be clearly and unambiguously laid down as a separate provision. At the same time it is deemed advisable to allow for a complete exemption from punishment under particularly extenuating circumstances.

#### Necessity.

The question as to the legal consequences of acts dictated by necessity is closely connected with the preceding problem. If a defendant pleads superior orders, he will also have - and with justification - the alternative plea of necessity; i.e. he may claim that, although he knew the act was unlawful, it was an act of emergency, since, if he had not committed it, he would have been exposed to the severest disciplinary punishment.



§ 47 of the Civil Criminal Code provides that "no one can be punished for an act undertaken in order to save life or property when the circumstances justify his regarding the peril as extremely grave in comparison with the damage caused by his act". In short, according to this clause, an act is regarded as legally justifiable when performed as a necessity.

Naturally there is a certain limit as to the extent one can intrude on other people's legal rights in order to further one's own interests.

It is commonly accepted that there can never be a question of sacrificing someone else's life in order to save one's own. In the case of minor bodily injuries inflicted on others in the attempt of saving one's own life, or by sacrificing somebody else's property for the same purpose, however, the conflicting interests concerned may be taken into consideration.

The Ministry are of the opinion that the exclusion of arguments based on this provision of § 47 is fully supported and justified by the special character of war crimes. It cannot possibly be admitted as a defence that a German soldier or policeman has ill-treated Norwegian civilians, devastated and burned Norwegian property, etc. in order to save himself from criminal or disciplinary punishment. There may, however, be important reasons for the mitigation of, or even complete exemption from, punishment.

The above-mentioned reasons lead to the conclusion that the provisions as regards necessity should be of the same character as mentioned earlier in connection with the plea of superior orders. Provisions covering both the plea of superior orders and the plea of necessity can easily be combined and drawn up in one common provision.

Based on the preceding guiding principles, the Ministry have worked out a draft for a Provisional Decree on the punishment of foreign war criminals. As to the further details of the proposal, the Ministry refer to the special notes given below under Section IV.

#### IV. Notes on the Individual Provisions of the Draft.

##### § 1.

The paragraph begins by laying down that the Decree only applies to war crimes in se, cf. Section I. The expression "the laws and customs of war" is used in the wider sense comprising the whole body of international law regarding warfare, i.e. apart from the Hague Regulations and other specific conventional regulations; it includes the rules and precepts laid down by usage and commonly accepted principles of international law. It is to be expected that the question whether an act is at variance with the laws and customs of war or is a "lawful act of war" will in many cases give rise to doubt. The question has to be decided independently by the courts which have the advantage of being able to consult the legal practise of other Allied countries.

The individuals to whom the Decree applies are "enemy citizens or other foreigners employed by the enemy or those who have been under enemy authority". The expression is in conformity with that used in § 1, 1d, of the Provisional Decree of 16th February, 1945, concerning the legal procedure against traitors. The Decree has mainly in mind the persons employed by the German civil administration, the military and the police. The Decree also applies to German civilians who have been admitted to Norway during the occupation and who have used their special status in a criminal way. The same applies to foreigners,

regardless of nationality, who have voluntarily entered the country in order to work in German public or private enterprises. Foreign slave labourers and Allied prisoners of war or internees naturally do not come under the Decree.

The general provisions as to the applicability of Norwegian criminal law have been laid down in §§ 12-14 of the Civil Criminal Code. As to the geographical limitations, the Decree is much more comprehensive than the criminal legislation of many other countries, e.g. that of Great Britain. Norwegian criminal law is thus to a great extent adaptable to criminal acts committed by foreigners abroad. Atrocities perpetrated against Norwegian prisoners of war or internees in Germany are in general covered by § 12, 4a of the Civil Criminal Code. The same applies to more serious crimes in the economic field. Consequently it does not involve a considerable extension when § 1 of the Decree makes Norwegian Criminal law applicable to war crimes committed against Norwegian interests, regardless of the fact that they were committed abroad.

It may be desirable to leave open the possibility of exceptional cases of war crimes committed abroad against foreigners being prosecuted in Norway, e.g. cases against members of the Gestapo who have been detained in Norway but who previously have been active in Poland, Czechoslovakia, etc. As to such cases Norwegian criminal laws need not be more extensive than are the provisions laid down in the Civil Criminal Code. The trial of such criminals should, for reasons of international policy, only be made in accordance with special agreement with the powers concerned. It has been found advisable to include special provisions in the Decree in this respect in order to make it clear that the judicial competence of the court in regard to war crimes committed abroad has not been internationally limited by the wording in the first point of the paragraph. The provision laid down in § 13, point 2, of the Civil Criminal Code, is not applicable to war crimes and has thus been omitted.

In referring to legal rights which are equal to Allied legal rights, one has particularly had in mind:

- (a) Danish citizens and their economic interests, and,
- (b) neutral citizens in Norwegian or other Allied armed forces or employed in other Allied war work.

## § 2.

The above-mentioned French Decree of 28th August, 1944, - apart from giving a series of legal interpretations - has chosen to enumerate those provisions of the Civil and Military Criminal Codes which are expected to be of immediate importance. The Ministry hold that little is gained by this procedure as such enumeration can never be exhaustive. The French text itself clearly admits that this had not been the case.

The German economic exploitation of Norway stands in this respect in a class by itself. Its scale and the forms in which it has been carried out lie in some respects so far beyond the usual conception of criminal law that it is difficult or even impossible to regard the different acts as being within the scope of existing provisions of the Civil or Military Criminal Codes. In order to amend this deficiency the Ministry consider it necessary to lay down a special provision which covers every kind of German exploitation in Norway performed by force or threat thereof; cf. the more detailed notes under Section IIIB, 2 above.



§ 3.

This paragraph authorizes the court to inflict a more severe set of penalties, where considered necessary, in punishment of war crimes; of. the more detailed explanation given under Section IIb, 1, above.

The criminal legislation passed by the Norwegian Government in London during the war has introduced penal servitude as a new form of punishment in addition to the former alternatives of imprisonment and confinement. Penal servitude was first introduced by the Provisional Decree of 3rd October, 1941, as an amendment to the Military and Civil Criminal Codes. A corresponding provision has later been adopted in the Provisional Decree of 15th December, 1944, dealing with traitors. More detailed provisions as to the forms of penal servitude have not yet been passed. The possibility of exploiting the labour of convicted war criminals under freer conditions must be regarded as being as desirable as it is in the case of convicted traitors. The Ministry, therefore, consider a supplementary provision to this effect necessary.

On the whole it is not deemed practicable to impose fines on war criminals. Exceptional cases may, however, arise, particularly if the convicted person has property or heirs in Norway. A special amendment to this effect is not considered necessary. According to the general regulations in Section II of the Provisional Decree of 3rd September, 1943, fines can now be imposed in addition to death sentence, imprisonment, etc. As to the collection of such fines, the regulations laid down in the Provisional Decree of 15th December, 1944, regarding traitors should be applied.

Point 2 of the paragraph enumerates cases where a life sentence or capital punishment can be applied. These provisions are very comprehensive, and, supplemented by the authority to impose death sentence derived from the Provisional Decree of 22nd January, 1942, they can be expected to provide for death sentence in every conceivable case where this could be desired.

The provision under § 3a, regarding the extensive destruction of property, has in mind particularly the devastation carried out by the Germans during their withdrawal from Finnmark. The wording has been taken from § 148 of the Civil Criminal Code, which, together with § 291 and onwards, are to be applied to the above-mentioned circumstances,

The provisions of § 3b provide against the rather rare cases where continuous ill-treatment has compelled the victim to commit suicide. The same must apply to cases where the mere threat of torture has had the same result.

§ 4.

The paragraph does not necessitate any special notes.

§ 5.

Reference can here be made to the comments made under IIb, 3.

For the further clarification of the position, reference is made to the following proposal adopted by the London International Assembly of 21st May, 1943: (Points 1 - 3 quoted).



In § 3b of the proposal of the London International Assembly, it is particularly the Gestapo, the S.S. and the S.A. which have been borne in mind when organisations have been mentioned. There is no doubt that members of these organisations will be regarded as being in an unusual position: it is among them that the bulk of the most atrocious war criminals are to be found, though one should avoid declaring them distinctly and in so many words as outlaws.

The paragraph should naturally not be taken to mean that circumstances resulting from superior orders cannot be exculpatory. If the superior order has given the subordinate justifiable reason to believe that the actual circumstances of the act were other than they were, exculpation may be the consequence (cf. § 42 of the Civil Criminal Code).

§ 6.

As a rule, all cases concerning crimes which can be punished by more than five years of imprisonment are dealt with by the "Lagmannsrett" (one of the five courts of appeal, covering five different districts of Norway); cf. § 19 of the law of criminal procedure. If the right to increase punishment which is given in § 3 of the Draft of the Provisional Decree were viewed in the light of that rule, the judicial competence of the "Herredsrettene" (County Courts) and "Byrettene" (Town Courts) would be considerably restricted. There should be no justification for such restriction although it is to be expected that the bulk of the cases against war criminals will be prosecuted by the "Lagmannsrett".

In their recommendation to the Storting for the supersession of this Provisional Decree by a formal Act of Parliament, the Ministry set out further arguments:

The imposition of capital punishment on war criminals and traitors was sanctioned by the Storting in a law passed on 6th July, 1945.

It was the intention of the Ministry, when proposing the Decree of 4th May, 1945, that it should be given retroactive effect. The question whether a retroactive effect is at variance with the Constitution has been brought before the Supreme Court. In the plenary session of 27th February, 1946, - in the case against Karl Hans Hermann Klinge (No. 1764/N.G./30) - the Court ruled by nine votes to four that the retroactivity of the Provisional Decree could not be regarded as being at variance with § 97 of the Constitution, (x) as the matter was regarded as being outside the field which this paragraph of the Constitution was intended to cover. The individual reasons of the majority were not exactly the same. There was, however, a unanimity of opinion as to the fact that the convicted person - who was sentenced to death on a charge of a series of grave instances of torture - was guilty of war crimes by having violated the laws and customs of war and the laws of humanity, crimes which at the time of their perpetration could, according to international law, be submitted to the severest forms of punishment. The majority of the judges did not find it necessary to decide whether the Norwegian courts, according to the provision in § 96 of the Constitution, are legally authorised to convict a war criminal in direct application of international law, as the Decree of 4th May, 1945, confirms the same provisions already sanctioned by

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(x) "No law may be given retroactive effect".

international law, existing at the time of the perpetration of the crimes. They were satisfied that the main effect of the Decree was to vest the Norwegian courts with the authority to make use of the right of punishment already in existence under international law. Reference was moreover made to the fact that it was considered to be unreasonable that § 97 of the Constitution, which was enacted for the protection of the community, should be pleaded by alien intruders, citizens of a state which had assaulted this community with the intention of subjugating it, and, in pursuit of this end, had used the most reckless and brutal means. To admit such a plea would be a violation of the high principles which are the foundation of § 97 of the Constitution and the claim for justice which it supports. (\*)

As the question whether the retroactive application of the Decree is at variance with the Constitution has now been solved, the Ministry consider that the Decree should be superseded by an Act of Parliament and beg to propose such a law. The Attorney General has declared that he has no objections to the Decree being submitted to the Storting in its present form. Apart from the additional provision in § 3 of the Decree, the clauses of the proposed law have been given the same wording as the Provisional Decree. As the proposed law must be regarded as supplementary to our criminal legislation already in force, it is held that it should not be presented as a law with temporary duration only.

As was mentioned in the notes to § 3 of the Ministry's explanatory memorandum to the Provisional Decree, it may prove expedient to impose fines in addition to prison or the death sentence. The imposition of such fines has not been provided for in Section II of the Decree of 3rd September, 1943, which amends and supplements Chapter 2 of the Civil Criminal Code of 22nd May, 1902. The Ministry propose the repealing of the said Decree and its supersession by a new law amending § 27 of the Civil Criminal Code. It has been the intention that provisions for the imposition of fines in addition to prison or the death sentence should be incorporated into the various provisions of criminal law where deemed necessary.

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(\*) For a fuller account of this trial see Trial and Law Report Series, No. 30.

# UNITED NATIONS WAR CRIME COMMISSION

MISC. 85

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON APRIL 1ST, 1947.

April 9th, 1947.

	Cases tried	Accused involved	Death	Imprisonment	Acquitted	Remarks
Europe: Countries whose reports comprise War Criminals only.						
United States: USFET)	174	838	233	481	124	as at 14.3.1947
USMET)						
British: BAOR	204	682	159	326	197	as at 1.4.1947
CMF & BTA						
France:	25	224	103	109	12	as at 1.2.1947
Greece:	2	4	2	2	-	as at 31.4.1947
Norway:	-	16	11	5	-	as at 16.10.1946
Yugoslavia:	4	68	52	16	-	as at 1.2.1947
TOTAL:	-	1,832	560	939	333	
Europe: Countries whose reports show War Criminals & collaborators combined.						
Czechoslovakia	-	18,496	362	13,969	4,165	as at 31.10.1946
Poland:	-	4,593	631	1,840	2,122	as at 1.7.1946
TOTAL:	-	23,089	993	15,809	6,287	
Far East:						
United States:	194	483	139	296	48	as at 14.3.1947
British:	217	704	236	384	84	as at 1.4.1947
Australian:	229	725	140	364	221	as at 1.2.1947
Netherlands East Indies:	31	36	17	19	-	
TOTAL:	671	1,948	532	1,063	353	



UNITED NATIONS WAR CRIMES COMMISSION

April 14th, 1947.

TRIALS IN THE BRITISH ZONE OF GERMANY.

The Commission has been informed regarding the following trials:

HANNOVER AHLEM CASE.

Kurt Adolf KLEBECK  
Otto HARDER  
Hans Hermann Ernst HARDEN  
Wilhelm DAMMANN  
Stephan STREIT.

The above-named German nationals will be tried at Hamburg on April 16th, 1947, on the charge of being concerned in the ill-treatment of Allied National internees of the Concentration Camp at Hannover Ahlem, between November 1944 and April 1945.

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The following cases were tried on April 9th and 10th, 1947; the results have not yet been received.

HANNOVER GESTAPO CASE.

Reinhold FLUENNECKE  
Kurt RASCHE  
Adolf METHFESSEL  
Felix ZIESE  
Karl WOLTERS  
Alfred PEEK  
Wilhelm HEIDORN

The above were tried at BRUNSWICK on April 9th, 1947, on the charge of being concerned in the killing of Allied Nationals, internees and prisoners-of-war at SEELHORST, HANNOVER/DOEHREN, on or about 6th April, 1945.

ROTHENBURGSORT CASE.

Jochim STRUCK  
Paul Friedrich WILHEIMSEN  
Stanislaus PUSTKOWSKI

The above were tried at Hamburg on April 10th, on the charge of being concerned in the ill-treatment of an unknown Allied Airman at Hamburg Rothenburgsort, on or about 20th June, 1944.

SCHNABELHUCK CASE.

Josef GOEDEDE.

The above was tried at Hamburg on April 10th, on the charge of being concerned in the ill-treatment of an Allied Airman in the vicinity of Schnabelhuck on 2nd November, 1944.

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Box 5  
Pg 30

Misc. No. 87.  
14th April, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

Polish War Crimes Legislation.

The Polish Minister of Justice has promulgated in the Polish Official Gazette the consolidated text of the Polish Decree of 31st August 1944 concerning the punishment of war criminals and traitors, as amended by subsequent enactments, and, similarly, the consolidated text of the Decree of 22nd January 1946, concerning the Supreme National Tribunal.

English translations of the Minister's proclamations to which the consolidated texts of the laws are scheduled are contained in this paper.

I.

Consolidated text of War Crimes Decree.

Proclamation of the Minister of Justice  
of December 11th, 1946.

(Official Gazette of the Republic of Poland, Warsaw,  
15th December, 1946, No. 69, item 377).

regarding the publication of a consolidated text of the Decree of 31st August 1944, concerning the punishment of fascist-hitlerite criminals guilty of murder and ill-treatment of the civilian population and prisoners of war, and the punishment of traitors to the Polish Nation.

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In accordance with Article 2 of the Decree of 10th December, 1946, concerning the changes in the Decree of 31st August, 1944 (Polish Official Gazette No. 69, item 376), I promulgate in the Schedule attached to this Proclamation the consolidated text of the Decree of 31st August, 1944, concerning the punishment of the fascist-hitlerite criminals guilty of murder and ill-treatment of the civilian population and of prisoners of war, and the punishment of traitors to the Polish Nation (Polish Official Gazette No. 4, item 16), in which also the changes arising out of the Decree of 16th February 1945 (Polish Official Gazette No. 7, item 29) and of the Decree of 10th December, 1946 (Polish Official Gazette No. 69, item 376), have been taken into account, and a consecutive numbering of articles has been applied.

The Minister of Justice:

Henryk Świątkowski.

Schedule to the Proclamation of the Minister of Justice,  
of December 11th, 1946, (item 377).

D E C R E E

Concerning the punishment of fascist-hitlerite criminals guilty  
of murder and ill-treatment of the civilian population and  
of prisoners of war, and the punishment of traitors to  
the Polish Nation.

Article 1.

Any person who, assisting the authorities of the German State,  
or of a State allied with it,

- (1) took part in committing acts of murder against the civilian  
population, members of the armed forces or prisoners of war; or
- (2) by giving information or detaining, acted to the detriment of  
persons wanted or persecuted by the authorities on political,  
national, religious or racial grounds,

is liable to the death penalty.

Article 2.

Any person who, assisting the authorities of the German State,  
or of a State allied with it, acted in any other manner or in any  
other circumstances than those indicated in Article 1 to the detriment  
of the Polish State, or of a Polish corporate body, or of civilians,  
members of the armed forces or prisoners of war,

is liable to imprisonment for a  
period of not less than three  
years, or for life, or to the  
death penalty.

Article 3.

Any person who, taking advantage of the conditions created by the  
war, compelled persons to act under threat of persecution by the  
authorities of the German State, or by a State allied with it, or acted  
in any other manner to the detriment of persons wanted or persecuted  
by the said authorities

is liable to imprisonment for a  
period of not less than three  
years, or for life.

Article 4, Para. 1.

Any person who was a member of a criminal organisation established  
or recognised by the authorities of the German State or of a State  
allied with it, or by a political association which acted in the  
interest of the German State, or a State allied with it,

is liable to imprisonment for a  
period of not less than three  
years, or for life, or to the  
death penalty.



Para. 2.

A criminal organisation in the meaning of Para. 1 is a group or organisation:

- (a) which has as its aims the commission of crimes against peace, war crimes or crimes against humanity; or
- (b) which while having a different aim, tries to attain it through the commission of crimes mentioned under (a).

Para. 3.

Membership of the following organisations especially is considered criminal:

- (a) the German National Socialist Workers' Party (National Sozialistische Deutsche Arbeiter Partei - NSDAP) as regards all leading positions,
- (b) the Security Detachments (Schutzstaffeln - SS),
- (c) the State Secret Police (Geheime Staats-Polizei - Gestapo),
- (d) the Security Service (Sicherheits Dienst - S.D.).

Article 5, para.1.

The fact that an act or omission was caused by a threat, order or command does not exempt from criminal responsibility.

Para.2.

In such a case the Court may mitigate the sentence taking into consideration the circumstances of the perpetrator and the deed.

Article 6.

To inform against or to hand over to the authorities of the German State, or of a State allied with it, persons wanted for a common crime is not punishable, provided the person responsible for giving information or handing over acted in the greater public or private interest.

Article 7.

When sentence is passed for a crime defined in the present Decree, the Court shall pronounce:

- (a) loss of public and civic rights,
- (b) forfeiture of all property of the sentenced person; the ownership of the forfeited property is to be taken over by the Treasury, with the proviso that the rights of third persons are to be safeguarded to an extent not exceeding the value of the forfeited property; the rights, however, arising from intestate succession, from provisions made in a will or from a donation made after the crime has been committed are not to be taken into account; the forfeiture does not apply to objects excluded by law from seizure; all legal acts made with the purpose of saving the property from forfeiture are null and void.

Article 8.

The provisions of Articles 6 and 61 of the Penal Code of 1932 and of Articles 57 and 185 of the Military Penal Code are not applicable to criminal acts defined in the present Decree.

Article 9.

The provisions of the present Decree are applicable to criminal acts committed between September 1st 1939 and May 9th, 1945.

Article 10.

The provisions of the Decree of October 17th, 1946, concerning the abolition of Special Criminal Courts (Polish Official Gazette No. 59, item 324) are applicable to the criminal acts defined in the present Decree.

Article 11.

The provisions of Articles 1 - 9 are also applicable to persons who come under the jurisdiction of Military Courts.

Article 12.

The execution of the present Decree is entrusted to the Ministers of Justice, National Defence and Public Security.

Article 13.

The present Decree comes into force on the day of its publication.

II.

Consolidated text of the Decree concerning the  
Supreme National Tribunal.

Proclamation of the Minister of Justice  
of October 31, 1946

(Official Gazette of the Republic of Poland, Warsaw,  
17th November, 1946, No. 59, item 327.)

regarding the publication of a consolidated text of  
the Decree of 22nd January, 1946, concerning the  
Supreme National Tribunal.

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In accordance with Article 3 of the Decree of 17 October, 1946, concerning the changes in the Decree of 22nd January, 1946, on the establishment of the Supreme National Tribunal (Polish Official Gazette No. 59, item 325), I promulgate in the attached Schedule the consolidated text of the Decree of 22nd January, 1946, concerning the Supreme National Tribunal (Polish Official Gazette, No. 5, item 45), in which the changes arising out of the Decree of 17th October, 1946, have been taken into account, and a consecutive numbering of articles has been secured.

The Minister of Justice:

Henryk Świątkowski.

Schedule to the Proclamation of the Minister of Justice  
of October 31st, 1946, (item 327).

D E C R E E

on the establishment of the Supreme National Tribunal.

By virtue of the Law of 3rd January, 1945, concerning the procedure as to the issuing of decrees with the force of Laws (Polish Official Gazette, No. 1, item 1), the Council of Ministers enacted, with the concurrence of the Praesidium of the National Council, the following:

Article 1.

The Supreme National Tribunal and the Office of the Prosecutor at the Supreme National Tribunal are hereby established. Their seat will be the same as that of the Supreme Court.

Article 2.

1. The Supreme National Tribunal is to consist of the President and the Judges.
2. The Office of the Prosecutor at the Supreme National Tribunal is to consist of the First Prosecutor and other Prosecutors of the Supreme National Tribunal.

Article 3.

1. The President of the Supreme National Tribunal will be the First President of the Supreme Court.
2. The judges, the First Prosecutor and other Prosecutors of the Supreme National Tribunal are to be appointed by the Praesidium of the National Council on the recommendation of the Minister of Justice, from among persons possessing judicial qualifications.
3. The performance of judicial functions at the ordinary courts will not prevent the performing of judicial functions at the Supreme National Tribunal.
4. The performance of prosecuting functions at the ordinary Courts will not prevent the performing of prosecuting functions at the Supreme National Tribunal.
5. The list of lay-judges will be compiled by the Praesidium of the National Council from among the deputies.
6. The Praesidium of the National Council may recall the judges, prosecutors and lay-judges; a professional judge or a lay-judge may be recalled only on the recommendation of the President of the Supreme National Tribunal.
7. Officials of the Secretariat are to be appointed either by the President or by the First Prosecutor of the Supreme National Tribunal.

Article 4.

1. The Supreme National Tribunal will sit in public sessions with three professional judges and four lay-judges and in private sessions with three professional judges and no lay-judges.



2. The sessions of the Supreme National Tribunal are to be presided over by the President of the Supreme National Tribunal or by a judge assigned by him.

3. The votes are to be ascertained by the presiding judge, who will start with the youngest in age and cast the last vote himself.

Article 5.

1. In discharging the functions described in the present Decree, the judges, the first Prosecutor and the other Prosecutors of the Supreme National Tribunal are to have the same rights and duties as the judges, the First Prosecutor and the other Prosecutors of the Supreme Court.

2. In discharging their functions the lay-judges are to be independent and subordinate only to the laws; at the trial, they will have the rights and duties of a professional judge who is a member of the Tribunal.

Article 6.

The following crimes are to be within the jurisdiction of the Supreme National Tribunal:

1. Crimes envisaged by the Decree of 22nd January 1946, concerning the responsibility for the defeat of Poland in September, 1939, and for fascist activities in public life (Polish Official Gazette, No. 5, item 46.)

2. Crimes committed by persons, who, in accordance with the Moscow Declaration signed by the United States, the U.S.S.R. and Great Britain, will be surrendered to the Polish authorities, with the exception of cases which the Prosecutor of the Supreme National Tribunal will transfer to the Prosecutors of the District Courts, taking into account, as far as practicable, their territorial competence.

Article 7.

Cases transferred to a District Court in accordance with Article 6, para.2, are to be tried by a tribunal consisting of as many judges as are envisaged in the Decree of 13th June, 1946, concerning crimes, particularly dangerous in the period of national reconstruction (Polish Official Gazette, No. 30, item 192); the trials are to be conducted in accordance with the provisions of that Decree, with the proviso that Article 11 of the present Decree applies accordingly.

Article 8.

Trials before the Supreme National Tribunal are to be conducted in accordance with the provisions of the Code of Criminal Procedure, unless the provisions of the present Decree determine otherwise.

Article 9.

1. In cases coming within the jurisdiction of the Supreme National Tribunal, the Prosecutor of the Supreme National Tribunal may order the arrest of the accused or impose other movement restrictions. A complaint against the Prosecutor's decision may be lodged with the Supreme National Tribunal.

2. Investigation of crimes may be conducted by the Prosecutor of the Supreme National Tribunal directly, or through the Prosecutors of District Courts, the public security authorities, or the militiamen; or some parts of the investigation may be entrusted by him to the juges d'instruction or to the County Court judges.

2. The sessions of the Supreme National Tribunal are to be presided over by the President of the Supreme National Tribunal or by a judge assigned by him.

3. The votes are to be ascertained by the presiding judge, who will start with the youngest in age and cast the last vote himself.

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2. Investigation of crimes may be conducted by the Prosecutor of the Supreme National Tribunal directly, or through the Prosecutors of District Courts, the public security authorities, or the militiamen; or some parts of the investigation may be entrusted by him to the juges d'instruction or to the County Court judges.

3. At the instance of the Prosecutor of the Supreme National Tribunal an enquiry can be conducted. The examining magistrate to whom the motion has been submitted by the Prosecutor of the Supreme National Tribunal shall have jurisdiction to conduct the enquiry.

4. The provisions of Articles 164, paras. 1, 169, 171 and 172, of the Code of Criminal Procedure, and those concerning the rights to object to the indictment shall not apply.

Article 10.

In order to make the impending penalty of confiscation or fine effective, the Prosecutor of the Supreme National Tribunal may seize during the investigation the whole or part of the accused's property. An appeal against the Prosecutor's decision may be lodged with the Supreme National Tribunal.

Article 11.

Any records taken during the preliminary investigation and any public or private documents may be read at the trial.

Article 12.

1. At the trial, the defendant must appear with counsel. If he does not appoint one, the President of the Supreme National Tribunal is to appoint a counsel ex officio from among the advocates residing in Poland.

2. Any Polish citizen may be appointed counsel by the defendant; if, however, the latter seeks to appoint counsel from among persons not mentioned in Article 86 of the Code of Criminal Procedure such an appointment must be authorised by the President of the Supreme National Tribunal.

3. Any person appointed counsel ex officio is entitled to a remuneration for the duties performed and the loss of time involved; the amount is to be fixed according to the discretion of the Supreme National Tribunal.

Article 13.

1. The fact that the person to be indicted has not been apprehended is no bar to lodging the indictment and to holding the trial in his absence. The judgment will not be regarded as having been given in absentia.

2. In cases envisaged in para. 1:

(a) the accused's father, mother, guardian, husband, wife, children, brothers or sisters shall have the right to appoint counsel;

(b) any trial concluded by a valid sentence may be re-opened in favour of the person found guilty if new facts and fresh evidence, previously unknown to the Tribunal, are submitted, provided that they establish either in themselves or in conjunction with other facts or evidence, that he is not guilty or has been sentenced for a crime graver than that which he actually committed.

Article 14.

1. The judgment of the Tribunal must always be prepared in writing giving the reasons on which it is based.



2. The sentence can be pronounced only after the judgment and its reasons have been finally drafted. The time limit envisaged in Article 367 of the Code of Criminal Procedure is 7 days.

Article 15.

1. The judgments and decisions of the Supreme National Tribunal are to be final.
2. The person sentenced shall have the right to appeal for mercy to the President of the National Council. In cases where sentence of death is passed the President of the Supreme National Tribunal shall transmit the files of the case immediately to the Minister of Justice who in turn shall submit them for decision, together with the opinion of the Supreme National Tribunal to the President of the National Council.

Article 16.

Sentences and decisions of the Supreme National Tribunal are to be carried out by the Prosecutor of the District Court on the request of the Prosecutor of the Supreme National Tribunal.

Article 17.

On the re-opening of a trial in which the sentence was passed by the Supreme National Tribunal, only that Tribunal may come to a decision.

Article 18.

The execution of the present Decree is entrusted to the Ministers of Justice and of Public Security.

Article 19.

The present Decree comes into force on the day of its publication.

(Translation by Dr. J. Litawski, Legal Officer.)

Misc. 88

April 21, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

CORRESPONDENCE AND DISCUSSIONS

between

THE UNITED NATIONS AND THE

UNITED NATIONS WAR CRIMES COMMISSION

on the Secretariat Level

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1. Note from the Acting Secretary General of the United Nations to the Secretary General of the United Nations War Crimes Commission, Colonel G. A. Ledingham dated 22 July 1946

New York. 22 July 1946.

"The Acting Secretary-General of the United Nations presents his compliments to the Secretary-General of the United Nations War Crimes Commission and has the honour to inform him that in accordance with the Resolution of the Commission on Human Rights, adopted by the Economic and Social Council on the 21st June, 1946, he has been requested to make arrangements 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;"

(Document E/56/Rev.2 Par.4(c) ).

The Acting Secretary-General would be grateful, therefore, if any information and records in the possession of the War Crimes Commission could be made available to him."

2. Letter from Colonel Ledingham to the Acting Secretary-General of the United Nations dated 1 August 1946.

London. August 1st, 1946.

"Sir:

I have the honour to acknowledge with thanks, receipt of your letter dated 22nd July, relating to the collection and publication of information concerning human rights arising from trials of War Criminals. For your information, I beg to acquaint you in general terms with the class of material which this Commission has collected, the type of research work and the examination of charges it has been engaged on since its formation.

1) The United Nations War Crimes Commission has, since its establishment in 1943, been collecting information on crimes committed before and during the second world war, inter alia against human rights, and fundamental freedoms, including crimes emanating from racial, religious and political discrimination.

Until the liberation of the European Continent, the material collected by the appropriate department of this Commission (Research Office) was based on documents and information then available. After the occupation of Europe by the United Nations, this collection of material has been continued from the enormous mass of documentary material and evidence which then became accessible.

2. Since its establishment, the Commission has dealt with and examined, charges brought by its member governments involving approximately 18,500 accused.

3) At the same time, the United Nations War Crimes Commission made a number of recommendations to its member governments relating to the substance and procedure of the retributive action of the United Nations. Many of these recommendations have, in one form or

the other, been given effect to by the Allied Powers.

4) When, by the Four-Power Agreement of 8th August, 1945 and the attached Charter, the International Military Tribunal was established, the United Nations War Crimes Commission made the problems involved in the Charter the subject of careful studies through its competent Committee. It was particularly the notion of crimes against humanity as defined in Article 6(c) of the Charter of the International Military Tribunal which was examined particularly thoroughly in the course of these investigations.

5) When the retributive action of the allied nations actually began, namely, when the International Military Tribunals at Nuremberg and Tokyo, as well as the municipal and occupation courts of its member governments, started to function and trials of war criminals were actually being conducted on a considerable scale, the United Nations War Crimes Commission made arrangements for the collection and examination of all these trials. It has, at the time of writing, collected approximately 250 transcripts, records and reports of war crimes trials conducted by the courts of its member governments, in addition to the material concerning the Nuremberg and Tokyo trials.

The Commission has received a considerable number of trial reports inter alia of British, United States, French, Canadian, Australian, Polish and Czechoslovak courts. The appropriate Committee of the Commission and the Commission's legal staff have been examining this material.

6) The Commission is publishing Law Reports of Trials of War Criminals containing summaries of the trials and a comment on each case prepared by the Secretariat. The first volume of this series will appear shortly.

7) In addition, the Commission is sponsoring the publication of full reports of selected trials through a British legal publisher's firm.

I am instructed to inform you that the United Nations War Crimes Commission is prepared to give the Economic and Social Council of the United Nations every assistance in implementing the Resolution of the 21st June, 1946, mentioned in your letter of 22nd July, 1946, and to make available all the material and documents at its disposal. It would however be advisable to make arrangements regarding the most fitting and convenient procedure to be adopted for the examination of the great amount of material which is available.

It is suggested, that if a representative of the Commission on Human Rights could come to London, the whole matter could then be fully discussed and the material and documents referred to examined.

I am to add, that the Chairman of this Commission would welcome the opportunity to establish contact with the Secretary-General of the United Nations, who I understand, is at present in Europe. If a meeting could be arranged before his return to the United States, it would be possible to discuss this and other matters of common interest.

I have the honour to be  
Sir  
Your obedient Servant,

Sgd. G.A. Ledingham, Colonel,  
Secretary-General."



3. Note on an interview between Mr. Trygve Lie, Secretary-General, United Nations, the Chairman (Lord Wright) and the Secretary-General (Colonel Ledingham), United Nations War Crimes Commission, at the Foreign Office on Thursday, 8th August, 1946 at 12 noon.

London, August 8th, 1946.

"The question arose out of two letters, one from the Acting Secretary-General of the United Nations to the Secretary General of the United Nations War Crimes Commission dated 22 July 1946, and a reply from the Secretary General of the United Nations War Crimes Commission to the Acting Secretary-General of the United Nations dated 1 August 1946, relating to the Committee on Human Rights.

The Chairman pointed out that there was a natural desire that the United Nations and the United Nations War Crimes Commission should, to a certain extent, and in a particular sphere, co-operate because the main object of the United Nations War Crimes Commission was to eliminate or reduce the risk of war or to insure the proper conduct of war if war could not be avoided. The United Nations War Crimes Commission in the course of its operations had accumulated a great mass of information about war crimes of the second world war and was proceeding to publish law reports of the more important war trials and also had in its possession a mass of advisory opinions which it had expressed in connection with these matters. All that mass of material which was accumulated at the offices of the Commission, would be placed at the disposal of any representative of the United Nations who thought fit to come and inspect and use it. The whole matter was of a somewhat technical character and the Chairman suggested that the practical course at the present moment was to arrange in the future for a meeting between the expert and professional officers of both bodies in order to confer and agree upon the best method of co-operation.

It was pointed out that Dr. Liang who, it was understood, was Director of the Division of the Development and Codification of International Law in the Legal Department of the United Nations and would be in Paris for some time in connection with the Peace Conference. It was suggested that he might at some time in the future, come over and discuss matters at the Commission.

The Economic and Social Council of the United Nations was interested in the human rights aspect of the trials of war criminals and the material and advice available in the Commission might well be useful to that Council and its Committee on Human Rights.

Mr. Trygve Lie was in accord with this general statement of the position and it was left that arrangements should be made for a discussion between the representatives of the two bodies to bring about a meeting."

4. Letter from Mr. Trygve Lie to Colonel Ledingham dated 17th September, 1946.

New York. September 17th, 1946.

"Sir:

I have the honour to acknowledge the receipt of the very informative letter which you addressed to the Acting Secretary-General on 1 August, relating to the collection and publication of information concerning human rights arising from the trials of

war criminals, and I wish to thank you for your kindness in sending this information. I also appreciate the offer of the United Nations War Crimes Commission to give the Economic and Social Council of the United Nations every assistance in implementing the Council's Resolution of 21 June 1946, and to make available all the material and documents at the disposal of the Commission.

I assume from your letter that it would be quite impossible for you to send any appreciable part of this material to New York, although I imagine that any material which you actually publish, for example, the proposed series of law reports of the trials, could be sent here. In so far as the great bulk of the material is concerned, it would probably be necessary for the United Nations to have it examined in London by a representative of the Secretariat or of the Commission on Human Rights. It has not yet been possible to find a member of the United Nations Secretariat who could be sent to London for this purpose. I am, however, giving the matter my attention and will communicate with you in this connection later.

I note your suggestion that a representative of the Commission on Human Rights might come to London for the purpose of discussing the whole matter. Do you have in mind merely a preliminary discussion on the methods of dealing with the material, or are you suggesting that the discussion and examination of the material might take place at the same time? If you have in mind the first alternative, I might be able to arrange for the sending of a representative of the Secretariat to London in the near future.

I was very glad to have the opportunity of meeting Lord Wright when I was in London, and I am most grateful for your cooperation in all the questions where our two fields of work coincide.

I have the honour to be, Sir,

Your obedient servant,

Sgd. Trygve Lie,  
Secretary-General."

5. Letter from Dr. Egon Schwelb, Legal Officer, United Nations War Crimes Commission to Mr. M. Perez-Guerrero, Director, Division of Coordination and Liaison, Department of Economic and Social Affairs, United Nations Secretariat, dated 27th September, 1946.

London. 27th September 1946.

"Dear Sir:

From the "Report of the Secretary General on the Work of the Organisation" (Document No. 4/65, dated 30th June 1946, p.53) I gather that a special Division of the United Nations Secretariat has been established "to deal with substantive and constitutional aspects of relationships with specialised agencies". As legal adviser to the United Nations War Crimes Commission I venture to address to you the following request for information which should enable me to advise my Commission on further steps to be taken in order to assure effective co-ordination of its activities with those of the competent Departments of the United Nations and to develop the necessary technical and administrative liaison.



This letter is written in order to initiate consultation at Secretariat level (Document A/65 p 24).

Following a letter from the Acting Secretary-General of the United Nations to the Secretary-General of the United Nations War Crimes Commission (your reference number 102 C) dated 22nd July 1946, and the reply to his letter by the Secretary-General of the United Nations War Crimes Commission, dated 1st August 1946, (copies of this correspondence are enclosed for your convenience) a meeting took place in London on 8th August 1946 between Mr. Trygve Lie on the one hand and Lord Wright, Chairman, and Colonel G.A. Ledingham, Secretary General, of the United Nations War Crimes Commission, on the other. During this interview both Mr. Trygve Lie and Lord Wright were sympathetic to the idea that some contact, at present at the Secretariat level, should be entered into between the United Nations and the United Nations War Crimes Commission. The correspondence of July 22nd and August 1st shows that, though the terms of reference of the United Nations War Crimes Commission are comparatively narrow, there is a considerable sphere in which the work of the Commission can and will be of use to different organs of the United Nations. The Commission has expressed in its letter of August 1st, to which reference is made, its readiness to give the Economic and Social Council of the United Nations every assistance and to make available all the material and documents at its disposal.

Apart from the desirability of making arrangements regarding the most fitting and convenient procedure to be adopted for the examination of the great amount of material which is available, it appears to me that it is also necessary to put the collaboration between the United Nations and the United Nations War Crimes Commission on a proper constitutional and administrative basis. I am therefore considering advising the Secretary General of my Commission, and eventually the Commission itself, as to the possibilities of entering into relations with the United Nations either as a specialised agency or in some other way. It is my opinion that the United Nations War Crimes Commission is a specialised agency, within the meaning of Article 57 of the Charter of the United Nations, and that it should therefore be brought into relationship with the United Nations in accordance with the provisions of Article 63. The United Nations War Crimes Commission is an International Organisation, which has, at present, 17 member states. It has been established by Diplomatic Protocol of October 20th, 1943, and is recognised by His Majesty's Government in the United Kingdom as an International Organisation within the meaning of the Diplomatic Privileges (Extension) Act, 1944, having the legal capacities of a body corporate (Order in Council, Statutory Rules and Orders, 1945, No. 1211). The United Nations War Crimes Commission is an agency having "wide international responsibilities" in one or more of the fields enumerated in Article 57 of the Charter of the United Nations. It operates, through its central body in London and its Far Eastern Sub-Commission, both in Europe and in the Far East. The term "wide international responsibilities" is used in the Charter to distinguish agencies of a world-wide character from inter-governmental agencies of a regional character like the Inter-American System, including inter-American specialised agencies, the Arab League, and so on. It is my opinion that the terms of reference of the Commission fall within the definition contained in Article 57 which speaks of "responsibilities in economic, social, cultural, educational, health, and related fields". The problem of the repression of war crimes belongs to the "social" field within the wide meaning attached to this term in the Charter of the United Nations. (With regard to details of this question reference is made to the enclosed Study).

In addition, the Economic and Social Council is not, under the Charter, precluded from negotiating at its discretion agreements bringing other types of inter-governmental agencies than "specialised agencies" into relationship with the Organisation.



(Report of the Rapporteur of Committee II/3 at the San Francisco Conference adopted both by the Report of the Executive Committee (PC/EX/113/Rev.1) p.102, and of the Preparatory Commission (PC/20 p.40) ).

It is, therefore, the purpose of this letter to enquire whether you would be prepared to enter into preliminary consultations at the Secretariat level with a view to clearing the ground for an agreement between the United Nations and the United Nations War Crimes Commission similar to the agreements which either have been concluded or are being negotiated between the United Nations and other specialised agencies, as mentioned in the quoted report, Document No. A/65, on pages 21 et seq. In this connection I would be much obliged if you could supply me, for purposes of information, with copies of the agreements or draft agreements which have been concluded or are being negotiated between the United Nations and several specialised agencies.

I should like to add that there is a second subject which, in due course, ought to be discussed between the two organisations. That part of the Commission's activities which is connected with the prosecution of war criminals, the collection of material, the listing of accused persons and assistance in the preparation of trials, will necessarily come to an end when the retributive action of the United Nations in Europe and in the Far East will be concluded. There will, however, remain some parts of the Commission's functions, for instance those relating to the recording of facts and trials, its research and its publication of law reports, which will have to be continued when the main task of the Commission is finished. It would, in my opinion, be adequate if those remaining activities of the Commission, along with its files and archives, were, at the appropriate time, taken over by the United Nations.

You would, therefore, greatly oblige me by giving me the information asked for in this letter and by letting me know the opinion of the United Nations Secretariat on the questions raised. On receiving your reply I would draw up a report on the subject for submission to the appropriate authorities of this Commission who would, eventually, take up the matter on a higher level.

I remain,  
Yours faithfully,

Sgd. Egon Schwelb, Dr. Jur.LL.B.  
Legal Officer".

6. Study on the connection between the Terms of Reference and Activities of the United Nations War Crimes Commission and the Purposes of the United Nations, dated 27 September 1946 (Annex of letter from Dr. Schwelb to Mr. Perez-Guerrero of the same date).

London, September 27th, 1946.

1. Under the Agreement regarding the establishment of the Commission of October 20th, 1943, as supplemented by the subsequent decision (January 25th, 1944 and February 1st, 1944) to vest in the Commission also the jurisdiction of the Technical Committee of Lawyers whose establishment was originally intended, the terms of reference of the former are now as follows:-

- (i) To investigate and record the evidence of war crimes, identifying where possible the individual responsible.

(ii) To report to the Governments concerned cases in which it appears that adequate evidence might be expected to be forthcoming.

(iii) To act as a Committee of Legal Experts charged with advising the Governments concerned upon matters of a technical nature, such as the sort of tribunals to be employed in the trial of war criminals, the law to be applied, the procedure to be adopted and the rules of evidence to be followed.

The function of the Commission under (iii) is to formulate recommendations for the guidance of Governments, but it is - in its capacity of an Expert Committee - not empowered to take any decisions which would be binding upon the Governments.

Crimes against peace and against humanity, as referred to in the Four-Power Agreement of 8th August, 1945, are war crimes within the jurisdiction of the Commission (decision of January 30th, 1946).

2. According to the Preamble to the Charter of the United Nations, the peoples of the United Nations are determined, inter alia, "to re-affirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained".

Under Article 1 (1) one of the purposes of the United Nations is to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.

It is further the purpose of the United Nations (Article 1(3)) to achieve international co-operation, inter alia, for promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. The promotion of universal respect for and observance of human rights and fundamental freedoms for all is, in addition to Article 1(3) of the Charter, also stressed in Articles 13(1)(b), 55(c), 62(2), 68, 73, 76(c) of the Charter.

Under Article 13(1)(a) of the Charter, the General Assembly is to initiate studies and make recommendations for the purpose, inter alia, of encouraging the progressive development of international law and its codification.

3. There are three ways in which the functions of the United Nations War Crimes Commission would seem to touch upon those of the United Nations, namely (a) the maintenance of international peace and the suppression of acts of aggression and other breaches of the peace, (b) the development and safeguarding of human rights and fundamental freedoms, and (c) the development and codification of international law.

Regarding (a): The close connection between the maintenance of peace on the one hand and the problem of the repression of war crimes, in the wider sense, on the other, is illustrated, inter alia, by Article 6(a) of the Charter of the International Military Tribunal, annexed to the Four-Power Agreement of 8th August 1945, which deals with crimes against peace, namely the planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing. The Four-Power Agreement was not only adhered to by 15



members of the United Nations in their individual capacity (in addition to the four Signatories), but it was also taken note of in the Resolution passed by the United Nations General Assembly on 13th February, 1946, regarding the surrender of war criminals.

Regarding (b): The connection between the terms of reference of the United Nations War Crimes Commission and that purpose of the United Nations which relates to the protection and development of human rights is also underlined by the Charter of the International Military Tribunal (see *supra*, (a)), which, in its Article 6(c), deals with crimes against humanity and enumerates among this type of crime inhumane acts committed against any civilian population and persecution on political, racial or religious grounds, whether or not in violation of the domestic law of the country where perpetrated. This definition has also been taken note of in the Resolution, passed by the United Nations General Assembly on 13th February 1946, to which reference has been made above.

Regarding (c): Through a number of recommendations to its member Governments the Commission has, in its advisory capacity (*supra*, 1(iii)), considerably influenced the development of international law in such questions as jurisdiction, extradition, belligerent occupation, personal responsibility for acts of State, the criminality of aggressive war and the protection of human rights of civil populations against violations by their own Governments.

The law-reporting activities of the Commission are a mine of information on State practice regarding the repression of crimes against peace, war crimes and crimes against humanity, and a necessary preliminary to the development and codification of these branches of international law.

4. The definition of war crimes in the wider sense, which includes crimes against peace and crimes against humanity, and which has therefore a direct bearing on the purposes of the United Nations is outlined in Article 1, paragraphs 1 and 3 of the Charter, has been endorsed, *inter alia*, by the Four Powers occupying Germany in introducing appropriate provisions into the local law of occupied Germany by the Control Council Law No. 10. It was applied when the International Military Tribunal for the Far East (Article 5) was established. It has been embodied in a number of legislative instruments of different members of the United Nations; e.g. by the American authorities in making provision for Military Commissions in the Pacific Theatre of Operations, by the Commonwealth of Australia in its Statute No. 48 of 1945, by the Kingdom of Denmark in its Act of Parliament of 12th July 1946, and others. The conception of crimes against peace and crimes against humanity as types of crime closely connected with war crimes in the narrower sense has found its place in the Draft Peace Treaties prepared by the Foreign Ministers of the four Great Powers for the Paris Peace Conference (Draft Peace Treaty with Italy (Article 38), with Roumania (Article 6), with Bulgaria (Article 5), with Hungary (Article 5), with Finland (Article 9)).

It is therefore submitted that the United Nations War Crimes Commission is an inter-governmental agency assisting in the task of the prevention and removal of threats to the peace, in the task of promoting respect for human rights and fundamental freedoms, and contributing to the development of international law.

NOTE: A copy of the letter to Mr. Perez-Guerrero and a copy of the "Study" were also sent to Mr. Ivan Kerno, Assistant Secretary General in charge of Legal Affairs.



7. Letter from Colonel Ledingham to Mr. Trygve Lie, dated 11 October, 1946.

London, October 11th, 1946.

"Sir:

I have the honour to acknowledge the receipt of your letter of the 17th September 1946, reference 704-1-1/JHP, relating to collaboration between the Commission on Human Rights and the United Nations War Crimes Commission. You indicate in your letter that either a member of the United Nations Secretariat or a representative of the Commission on Human Rights might come to London for the purpose of discussing the whole matter. This reply has been the subject of discussion and approved by Lord Wright and other members of the Commission.

I fully share the opinion conveyed in your letter that it would be preferable to restrict the purpose of such a visit to a preliminary discussion on the methods of dealing with the material. The examination of the material itself and the preparation from it of a summary of the information concerning human rights obtained from the trials of war criminals, would require some time after the general scope and the method to be applied had been discussed and agreed upon.

The Commission would therefore welcome a visit of either a member of the Secretariat or of a representative of the Commission on Human Rights for the purpose of the preliminary discussion referred to above.

I am, moreover, convinced that such preliminary discussions could be usefully prepared by way of correspondence. This Secretariat is, of course, fully informed concerning the general task of the Commission on Human Rights set up by the Economic and Social Council, and the indication which the Economic and Social Council conveyed to the Secretary General in respect of the arrangements to be made by him, at least as far as this information can be gathered from the United Nations papers available in this country. It would nevertheless be useful if, in advance of the visit, a collection of the papers, records and publications relating to the task of the Commission on Human Rights and its preparatory work, so far as it has been completed, could be forwarded to this Secretariat together with an outline of the manner in which the work connected with the trials of war criminals could be integrated with the larger programme of the work of the Commission on Human Rights. This Secretariat would then, perhaps, be in a position not only to prepare the preliminary talks appropriately but also to make some preparation for the actual work to be undertaken.

The Secretariat of the United Nations War Crimes Commission could forward to you in advance some of its internal documents and records concerning e.g. the studies made and research undertaken in connection with crimes against humanity within the meaning of recent basic International documents, the Charter of the (European) International Military Tribunal, the Law No. 10 issued by the Control Council for Germany, and the Charter of the International Military Tribunal of the Far East.

I take this opportunity of drawing your attention to a letter with annexed "study" which Dr. Schwelb, Legal Officer of this Commission, wrote to the Head of the Special Division of Relationships with Specialised Agencies on 27th September 1946, copies of which I enclose for your convenience. The purpose of Dr. Schwelb's letter was two-fold:-

(a) To initiate consultations on steps to be taken in order to ensure effective co-ordination of the activities of this Commission with those of the competent departments of the United Nations, not only in regard to the problem of Human Rights, but also to all matters where our two fields of work coincide and to develop the necessary technical and administrative liaison between the two bodies.

(b) To prepare arrangements for the time when the retributive action of the United Nations will be concluded and this organisation will be wound up, with a view to its remaining activities, together with its files and archives, being taken over by the United Nations. For the details of such proposals I would refer you to the enclosed copy of the letter referred to above.

I have the honour to be, Sir,

Your obedient servant,

Sgd. G. A. Ledingham, Colonel,  
Secretary General."

8. Letter from Mr. Perez-Guerrero to Dr. Schwelb dated 21 October, 1946.

New York, 21 October, 1946.

"Dear Sir:

I thank you for your letter of 27 September which I have given my most careful consideration. I share your views, and would consider it most desirable to establish close cooperation between the United Nations and the United Nations War Crimes Commission. However, it would appear that the Commission does not fall within the category of Specialized Agencies as provided for in Article 57 of the Charter. Our cooperation does not have to be affected by that consideration.

The suggestion contained in your letter to have the research work of the War Crimes Commission taken over by the United Nations when the prosecution activities of the Commission come to an end appears most desirable.

Professor J. Humphrey, who is Director of the Division of Human Rights of the Secretariat of the United Nations, expects to be in London in December and could then discuss the matter with you.

On the other hand our legal Department has a direct interest in the work of your Commission, and we are referring your letter to it.

In answer to your request for copies of the Draft Agreements negotiated between the United Nations and Specialized Agencies, I am sending you herewith, for your information, a copy of Journal No. 29 of the Economic and Social Council where you will find on pages 487 494 and 502, the text of the Agreements negotiated by the Council with the International Labour Organisation, the Food and Agriculture Organization, and the United Nations Educational, Scientific and Cultural Organization.

Yours faithfully,

Sgd. H. Perez-Guerrero,  
Director of the Division of Coordination & Liaison, Department  
of Economic and Social Affairs.

9. Letter from Dr. Schwelb to Mr. Perez-Guerrero dated 31 October, 1946.

London, October 31st, 1946.

"Dear Sir:

I have to thank you for your letter of the 21st October.

I am authorized to state on behalf of Lord Wright, Chairman of the Commission, and Colonel Ledingham, Secretary General, that we shall be glad to welcome Professor J. Humphrey, Director of the Division of Human Rights, when he comes to London in December, and to discuss the matters dealt with in your letter, with him.

I also thank you for referring my letter to the Legal Department of the Secretariat of the United Nations.

I note that you state that the United Nations War Crimes Commission does not fall within the category of a Specialised Agency within the meaning of Article 57 of the Charter, and I concur in the opinion that the co-operation between our two organisations need not be affected by that consideration. However, you would oblige me by letting me know the reason why this Commission is not considered to be a Specialised Agency. I ask for your explanation, not in order to dispute that point, but to enable me to give to the Chairman and to the members of the Commission a full report on the question.

Yours faithfully,

Sgd. Egon Schwelb,  
Legal Officer".

10. Letter from Mr. Trygve Lie to Colonel Ledingham dated 8 November, 1946.

New York, 8 November 1946.

"Sir:

I have the honour to acknowledge the receipt of your letter of 11 October relating to collaboration between the Commission on Human Rights and the United Nations War Crimes Commission.

Professor John P. Humphrey, who is the director of the Division of Human Rights, will be in London for a few days in December and will discuss with you methods of dealing with the material concerning Human Rights that has been collected by your Commission. Professor Humphrey will let you know the exact date of his proposed visit later. In the meantime, I should very much appreciate your letting me have, for the use of the Division of Human Rights, the documents and records referred to in the fifth paragraph of your letter. While I would like to have this material as soon as possible, it will not be necessary to send it by airmail.

The Secretariat has not yet been able to do any considerable work in implementation of the resolution of the Economic and Social Council of 21 June, which relates to "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". Under these circumstances, I have no material here that would help you in preparing for the preliminary talks with Professor Humphrey in London. I take it from your letter that you have a copy of the resolution of the 21 June of the Economic and Social Council.

I note your reference to Mr. Schwelb's letter of 27 September, a copy of which you enclosed. The questions raised in this letter are discussed in Mr. Perez-Guerrero's letter of 21 October.

I have the honour to be, Sir,

Your obedient servant,

Sgd. Trygve Lie,  
Secretary General."

11. Letter from Mr. Perez-Guerrero to Dr. Schwelb dated 12 November, 1946.

New York. 12 November 1946.

"Dear Mr. Schwelb:

I thank you for your letter of 31 October.

In answer to your request for the reasons why the United Nations War Crimes Commission is not considered to be a specialised agency, may I state that our Legal Department concurs with my opinion that the Commission cannot be considered to have "wide international responsibilities as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields," as provided for in Article 57 of the United Nations Charter. The history of Article 57 in effect shows that the expression "specialised agencies" was intended to refer to such international organisations as the International Labour Organisation and the Food and Agriculture Organisation, which have been set up to operate permanently in one of the major social or economic fields.

Yours faithfully,

Sgd. M. Perez-Guerrero, Director,  
Division of Coordination and Liaison  
Department of Economic and Social  
Affairs".

12. Letter from Colonel Ledingham to Mr. Trygve Lie dated 15 November, 1946.

London. November 15th, 1946.

"Sir:

I have the honour to refer to your letter of the 8th November 1946, reference 704-1-1/JPH, relating to the assistance which can be given by this Commission to the Commission on Human Rights of the Economic and Social Council.

It has already been stated in the letter of 31st October, 1946, by which this Secretariat replied to Mr. Perez-Guerrero's letter

of 21st October, 1946, that we shall be glad to welcome in London Professor John P. Humphrey, the Director of the Division on Human Rights, and to discuss with him the matters raised in our correspondence, particularly the question of Human Rights.

According to your wish, I have pleasure in enclosing two copies each of the papers of the Commission enumerated below, and I should like to add that all the documents enclosed are only working papers and preparatory material, and do not represent resolutions formally adopted by the United Nations War Crimes Commission as such.

I should also like to point out that both the research work and the discussions regarding the notion of crimes against humanity and its bearing on the protection of human rights and fundamental freedoms, are being continued and that a more comprehensive document will be produced soon. The working papers which I am sending with this letter have naturally been prepared for purposes different from the tasks of the Commission on Human Rights, namely as guidance for the Commission's day to day work in deciding on individual charges. The document which is being prepared will attempt to elaborate more fully the relationship between adjudicating upon "crimes against humanity" and the protection of human rights, particularly the question of protecting the civilian population against "crimes against humanity committed by its own government authorities and the superiority of International Law over municipal law and the restriction on national sovereignty which is implied in the notion."

The following are the documents enclosed.

- III/35 containing material for the preparation of a definition of "crimes against humanity".
- C.201 containing the "general propositions" defining the term "crimes against humanity" under the basic documents which have been adopted by the Legal Committee, (Committee III).
- III/59 Memorandum regarding crimes against humanity, perpetrated against Italian citizens of Yugoslav race, presented by the Yugoslav representative on the United Nations War Crimes Commission.
- III/62 Report on the bearing of the Nuremberg Judgment on the interpretation of the term "crimes against humanity". This paper has eventually also been circulated as Commission Document C.237.
- III/64 Study on the Criminal Organisations in the Nuremberg Judgment.
- III/66 Draft Statement comparing the "general propositions" contained in document C.201 (supra) with the law as laid down in the Nuremberg Judgment. This document has also been circulated as Commission Document C.236.

I have the honour to be, Sir,

Your obedient servant,

Sgd. G. A. Ledingham, Colonel,  
Secretary General."

13. Telegram from Mr. Vladimir Fabry, Executive Officer, Legal Department, United Nations, dated 16 November 1946.

"PLEASE INFORM ME WHICH GOVERNMENTS ADHERED TO LONDON AGREEMENT OF 8 AUGUST 1945".

Sgd. Fabry,  
U.N. Legal.

14. Telegram from Colonel Ledingham to Mr. Fabry dated 18 November, 1946.

London. 18 November 1946.

"YOUR TELEGRAM GBW 3152/M 52 OF 16 NOVEMBER STOP ACCORDING TO STATEMENT CONTAINED IN NUREMBERG JUDGMENT FOLLOWING GOVERNMENTS HAVE ADHERED TO LONDON AGREEMENT:-

GREECE, DENMARK, YUGOSLAVIA, NETHERLANDS,  
CZECHOSLOVAKIA, POLAND, BELGIUM, ETHIOPIA,  
AUSTRALIA, HONDURAS, NORWAY, PANAMA,  
LUXEMBOURG, HAITI, NEW ZEALAND, INDIA,  
VENEZUELA, URUGUAY, PARAGUAY STOP

Sgd. SECRETARY GENERAL,  
UNITED NATIONS WAR CRIMES COMMISSION."

15. Letter from Professor John P. Humphrey, Director, Division on Human Rights to Colonel Ledingham, dated 19 November, 1946.

New York. 19 November 1946

"Sir:

In his letter of 8 November 1946, the Secretary-General of the United Nations informed you that I would be in London for a few days in December when I would discuss with you methods of dealing with the material concerning human rights that has been collected by your Commission.

It appears now that, because of the weight of responsibilities connected with the organisation of this Division and in connection with the meetings of the General Assembly, it will be quite impossible for me to go to London.

Under these circumstances, I am asking M. Emile Giraud, recently one of the legal advisers at the League of Nations and now the Chief of the Research Section in the Division of Human Rights, to carry on these discussions with you. M. Giraud will be in charge of a study which the Secretariat has been instructed to make in this matter.

M. Giraud is now in Geneva but will be leaving for New York towards the end of December. I have asked him to let you know the exact date of his arrival in London.

I have the honour to be, Sir,  
Your obedient Servant,

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



16. Letter from Mr. Perez-Guerrero to Dr. Schwelb dated 19 November, 1946.

New York. 19 November 1946.

"Dear Mr. Schwelb:

In my letter of 21 October, I stated that Professor John P. Humphrey, the Director of the Division of Human Rights, expected to be in London in November when he could discuss with you the question of methods of coordinating the activities of the United Nations War Crimes Commission with those of the United Nations.

It appears now that Professor Humphrey will be unable to go to London but he tells me that M. Emile Giraud, the Chief of the Research Section in the Division of Human Rights, will be calling on Colonel Ledingham late in December or early in January, for the purpose of discussing methods of dealing with the material concerning human rights that has been collected by your Commission.

I am taking advantage of Mr. Giraud's visit to ask him also to discuss with you the question of cooperation between the United Nations War Crimes Commission and the United Nations. M. Giraud will let Colonel Ledingham know the exact date of his arrival in London.

Yours faithfully,

Sgd. H. Perez-Guerrero, Director,  
Division of Coordination and Liaison,  
Department of Economic and Social Affairs."

17. Letter from Dr. Schwelb to Mr. Perez-Guerrero dated 21st November, 1946.

London. 21 November 1946.

"Dear Mr. Perez-Guerrero:

I am obliged for your letter of the 12th November where you give the reasons for your opinion, in which the Legal Department of the United Nations concurs, that the United Nations War Crimes Commission cannot be considered a Specialised Agency as provided in Article 57 of the United Nations Charter.

Already in my letter of the 27th September 1946, I have pointed out that the Economic and Social Council is not, under the Charter, precluded from negotiating, at its discretion, agreements bringing types of inter-governmental agencies, other than "specialized agencies" into relationship with the Organisation, and I quoted as an authority for this proposition the report of the Rapporteur of Committee II/3 at the San Francisco Conference, adopted both by the Report of the Executive Committee to the Preparatory Commission, (p.102) and the Report of the Preparatory Commission, (p.40).

As you have not referred in your replies of the 1st October and 12th November to this particular aspect, I write to enquire whether the Division of Co-ordination and Liaison of the Department of Economic and Social Affairs is envisaging arrangements and if so what arrangements, with such other inter-governmental agencies as are not specialised agencies in the technical sense, on the lines of paragraphs 2 and 4 of Section 5 of Chapter III of the Report of the Preparatory Commission, particularly in view of your opinion that our co-operation does not have to be affected by the

consideration that the United Nations War Crimes Commission is not a specialised agency.

Yours sincerely,

Sgd. Egon Schwelb,  
Legal Officer.

18. Letter from Mr. Fabry to Colonel Ledingham dated 30 November, 1946.

New York, 30 November 1946.

"Dear Sir:

Thank you for your letter of 18 November 1946.

I received your telegram containing the names of all governments which have adhered to the London Agreement of 8 August 1945, and I greatly appreciate your kindness in furnishing this information. This data was needed by the Members of Committee Six relative to their discussion on the Development and Codification of International Law and your telegram was most helpful.

Thanking you, I am,

Yours very truly,

Sgd. Vladimir Fabry,  
Executive Officer,  
Legal Department,  
United Nations."

19. Letter from Mr. Trygve Lie to Colonel Ledingham dated 11 December, 1946.

New York, 11 December 1946.

"Sir:

I have the honour to acknowledge the receipt of your letter of 15 November 1946 and to thank you for the papers enclosed therewith. I note that these are merely working papers and preparatory material and do not, therefore, represent resolutions formally adopted by the War Crimes Commission as such.

I also note that both 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 are being continued and that a more comprehensive document will be produced soon. I should be very grateful if I could have a copy of this document when it is ready.

I assume that, by this time, you will have received the letter which the Director of the Division of Human Rights addressed to you on 19 November, in which he said that it would be impossible for him to go to London but that M. Emile Giraud, the chief of the Research Section of the Division of Human Rights, would call on you in London for the purpose of discussing various matters raised in our previous correspondence.

I have the honour to be, Sir,  
Your obedient Servant,

Sgd. Trygve Lie,  
Secretary General."

20. Letter from Mr. Perez-Guerrero to Dr. Schwelb dated 13 December, 1946.

New York, 13 December 1946.

"Dear Mr. Schwelb:

Thank you for your letter of 21 November 1946, with respect to which I should like to make the following observations:

The Economic and Social Council has so far proceeded to develop formal relationships with two categories of organisations which are specifically provided for in the Charter of the United Nations. The first category, provided for under Article 57, refers to specialised agencies, and the second, under Article 71, to non-governmental organisations. The United Nations War Crimes Commission does not fall within either category, but belongs rather in a category, along with many other important organisations, which in a way is situated between the two already mentioned. There is a gap in the Charter in that respect which, as you see, has already been anticipated at the San Francisco Conference and is recorded in the Report of the Rapporteur of Committee II/3 and further discussed at the Preparatory Commission of the United Nations.

We expect that at an early session, the Economic and Social Council will take up this question of relations with inter-governmental organisations other than specialised agencies and will give directives to the Secretary-General thereon.

In the meantime, we shall develop working relations with most of those organisations and among them with the United Nations War Crimes Commission whose cooperation we would greatly appreciate.

We are indeed very glad to have had an exchange of views on this matter, which I am sure will produce fruitful results.

I suppose that Mr. Giraud will visit you very soon and that you will be able to devise the best means for practical collaboration between the United Nations and your Organisation.

Sincerely yours,

Sgd. M. Perez-Guerrero,  
Director, Division of Coordination and Liaison."

21. Letter from Dr. Ivan Krno, Assistant Secretary-General, Legal Department to Dr. Schwelb dated 19 December 1946.

TRANSLATION

New York, December 19, 1946.

"Dear Doctor:

I come back to your letter of September 27th 1946, the substance of which was settled and replied to by the Director of the Division for the Development and Codification of International Law. In the meantime the General Assembly of the United Nations has at the proposal of the Legal Committee adopted the resolution which I herewith enclose.

I hope that by this the opportunities of collaboration between your Organisation and the United Nations will be enhanced.

With cordial greetings,  
Sgd. I. Krno,

Assistant Secretary-General of the  
United Nations.

1 encl. (circulated as Commission Doc.  
Hisco.66 dated 2 January, 1947)



22. Letter from Dr. Schwelb to Dr. Krno dated 31 December 1946.

London, December 31, 1946.

"Dear Mr. Assistant Secretary-General:

I am much obliged for your letter of 19th December 1946, to which you have kindly enclosed a copy of Doc. A/236 (Affirmation of the principles of International Law recognised by the Charter of the Nuremberg Tribunal), which has, in the meantime been adopted by the General Assembly.

I am sure, this Commission will be pleased to give to the organs of the United Nations every assistance which may be helpful in carrying out the Resolution. The same applies mutatis mutandis to the related subject of the crime of GENOCIDE on which, I understand, a Resolution has also been passed by the General Assembly in December, 1946.

In your letter of December 19th you write that a reply to my letter of September 27th 1946, has been sent by the Director of the Department for the Development and Codification of International Law. I venture to say that I have not received a letter from the Director of the Department mentioned.

I did, however, receive a reply from Mr. M. Perez-Guerrero Director of the Division of Coordination and Liaison, Department of Economic and Social Affairs, who mentioned, inter alia, that the Legal Department had a direct interest in the work of this Commission and that he was referring my letter to it.

Yours sincerely,

Sgd. Egon Schwelb,  
Legal Officer."

23. Note on the meeting between the representative of the Secretariat of the United Nations and members of the Secretariat of the United Nations War Crimes Commission held on 2 and 3 January, 1947.

Present: From the Secretariat of the United Nations:

Professor Emile Giraud.

From the Secretariat of the United Nations War Crimes Commission.

Lieut. Colonel H.H. Wade (Research Department)  
Dr. E. Schwelb, (Legal Department)  
Dr. J. Litawski (Department: Facts, Evidence and Enforcement),

Meeting on 2nd January, at 10.30 a.m.

The members of the United Nations War Crimes Commission Secretariat expressed the regret of Colonel Ledingham, Secretary-General, at being unable to attend, because he had to leave for Germany, together with Lord Wright, the Chairman of the United Nations War Crimes Commission.

Professor GIRAUD explained that his mission was only one of information and that he could only express personal opinions, not committing the Secretariat of the United Nations.

Members of the UNWCC Secretariat observed that they were also in the same position.

The meeting then proceeded to discuss the following questions:

1. Co-operation of the UNWCC with the Commission on Human Rights,

having regard to the Resolution of the Economic and Social Council of 21st January 1946, particularly point (c) - (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).

The representatives of the UNWCC Secretariat referred to the correspondence with Mr. Trygve Lie, Secretary General of the United Nations, on the subject and to the Docs. III/33, C.201, III/59, III/62, (C.237), III/64 and III/66 (C.236), which had been sent both to Mr. Trygve Lie and to Professor Giraud. In their opinion, the problem in which the Commission on Human Rights appeared to be interested was the protection granted under the London Charter of 8th August 1945, and similar basic documents, to civilian populations, particularly against infractions of human rights by their own authorities, e.g., inhuman acts committed by the German Government against German nationals, crimes committed by the Italian Government against the Slovene minority in Italy, etc. The papers so far communicated to Mr. Trygve Lie had been prepared for internal use in the day-to-day work of the Commission and not with any special intention of elaborating the protection of Human Rights. Both the Commission and its Secretariat were engaged on further research into this question and the representatives of the UNWCC asked Professor Giraud to enquire whether their interpretation of the Resolution of the Economic and Social Council was correct in order that they should know that they were proceeding on the lines intended by the Commission on Human Rights.

Professor GIRAUD replied that his personal impression was that that was so, but he had no positive information on this point and would report to the United Nations Secretariat.

2. Co-operation between the UNWCC and the United Nations in connection with the different actions undertaken by the United Nations, concerning the codification and development of International Law.

In this respect, the representatives of the UNWCC referred to two lines of action taken during the last meeting of the General Assembly of the United Nations, namely:

- (a) the Affirmation of the principles of International Law recognised by the Charter of the International Military Tribunal (Doc. A/236).
- (b) the Resolution on Genocide (Doc. A/BUR/50) and subsequent documents.

With regard to (a) the representatives of the UNWCC Secretariat referred to a letter dated 19th December 1946, received by Dr. Schwelb from Dr. KERNO, Assistant Secretary-General in charge of the Legal Department, expressing the opinion that this Resolution will enhance the possibility of co-operation between the two organisations.

The UNWCC Secretariat representatives stated that the War Crimes Commission and its Secretariat would no doubt be glad to give to the United Nations authorities any assistance in implementing the Resolution regarding the affirmation of the Nuremberg principles. They thought that having dealt with the problems involved for many years, having, therefore, great practical experience in this field, and having



for a long time examined the theoretical questions involved, their assistance could be helpful. While the London Charter of the 8th August, 1945, and other documents based on it, e.g., the Far Eastern Charter and the Control Council Law for Germany, No. 10, distinguished between (a) crimes against peace, (b) war crimes in the narrower sense, and (c) crimes against humanity, the Resolution proposed in Doc. A/236 and adopted by the General Assembly, introduced a different term "crimes against the security of mankind" in place of "crimes against humanity".

The UNWCC Secretariat had not yet received the papers preceding A/236, and they could not express an opinion—not knowing what connotation the words "offences against the security of mankind" were intended to have—except that, if possible, the now well-established terminology of the London Agreement should be adhered to.

Dr. SCHWELB also referred to the Resolution regarding the extradition and punishment of War Criminals adopted by the General Assembly on 13th February, 1946, where the General Assembly had taken note of the definition of war crimes and crimes against peace and against humanity, contained in the Charter of the International Military Tribunal, dated 8th August, 1945.

Regarding (b), the UNWCC representatives mentioned that a preliminary discussion of the term "crimes against humanity", having regard, inter alia, to the United Nations papers concerning the Genocide resolution, had recently taken place in the UNWCC and would be continued on 15th January, 1947. The notion of "Genocide" covered a great part of the scope of "crimes against humanity" as defined in the London Charter of 8th August 1945. (Article 6(c).) Although the adoption of a Resolution calling attention to this particular aspect of the notion of crimes against humanity might be very useful, before legislative instruments or international protocols on the question were drafted it should be considered whether special provisions regarding Genocide should be recommended, or whether it was not preferable to adhere to the more general term and conception of crimes against humanity, which covers persecutions, not only on racial grounds, but also political and religious persecutions and inhumane acts of all kinds.

Here also, the representatives of the UNWCC Secretariat were sure that the War Crimes Commission would give to the United Nations any assistance desired.

Professor GIRAUD replied that he would report to the United Nations authorities on what had been said.

### 3. Constitutional and procedural questions.

- (a) The constitutional relationship between the United Nations and the UNWCC.

Professor GIRAUD stated that according to the opinion held by the Legal Department of the United Nations Secretariat, the UNWCC could not be considered as a "specialised agency" within the meaning of Article 57 of the United Nations Charter. It is, nevertheless, an intergovernmental agency and the relations between such an agency and the United Nations might—as noted in Mr. Perez Guerrero's letter to Dr. Schwelb of the 13th December 1946—be placed on a special footing. Seeing that the Economic and Social Council is likely soon to take up the question of relations with intergovernmental organisations other than specialised agencies, the meeting reviewed various points that need to be considered in this connection.



Professor GIRAUD stated that in any case these points could be settled in a practical way with or without an express agreement. In this connection the agreement between the United Nations and F.A.O. was taken as a guide for the discussion.

(a) Reciprocal representation.

The representatives of the UNWCC Secretariat expressed the opinion that a permanent representation of the UNWCC with the main organs of the United Nations would probably be neither practicable, nor necessary. Professor Giraud thought that the Commission should be invited to meetings of such organs as were dealing with matters concerning the jurisdiction of the War Crimes Commission, and it would be then for the Commission to decide when and in which cases they would avail themselves of the opportunity of attending the meetings. In his personal opinion, the UNWCC should, for example, be invited to the meeting of the Commission on Human Rights, which is to take place at the end of January 1947, and to the discussions concerning the codification of international law, particularly the questions of international criminal law applied in the Nuremberg proceedings.

Professor GIRAUD further expressed the opinion that such representation should be reciprocal and that the UNWCC should invite the United Nations to such of its meetings as dealt with questions of general interest to the United Nations.

(b) Proposal of agenda items.

No action appeared to be needed.

(c) Recommendations of the United Nations.

This also called for no remark, it being beyond doubt that the UNWCC would act upon any recommendations on the part of the United Nations, falling within their terms of reference.

(d) Exchange of information and documents.

Here the representatives of the Secretariat of the UNWCC explained that the present position was not very satisfactory. It was only if they chanced to learn from Press reports or from such publications as the United Nations Weekly Bulletin, that certain items of great interest to the UNWCC were being dealt with by an organ of the United Nations that they were in a position to ask the Documents and Sales Division of the United Nations Secretariat for the papers in question. They were grateful that in all such cases their requests had been promptly complied with, but it would be preferable if any documents and minutes which are of interest to the Commission could be sent to its Secretariat automatically. Certain matters falling within the sphere of the Legal Department (e.g., codification relating to the repression of International Crimes) and of the Commission on Human Rights are of interest to the UNWCC. The same could perhaps apply to some matters connected with disarmament and the prohibition of the use of atomic energy.

Professor GIRAUD said that he would recommend to the authorities of the United Nations to take appropriate steps to ensure that all papers and minutes relevant to the Commission should be sent to its Secretariat automatically.

The UNWCC Secretariat would arrange on its part that relevant documents and publications which might be of interest to the Secretariat of the United Nations, would be sent to the Secretariat in several copies.

Moreover, Professor Giraud asked whether it would be possible for the United Nations to have material of interest to them microfilmed.

The representatives of the UNWCC replied that in their opinion there would certainly not be any obstacle to that on the part of the UNWCC. They added, however, that this would probably be necessary only in exceptional cases as the more important trials are being published in "Law Reports of Trials of War Criminals", selected and prepared by the UNWCC (Volume I of the English Edition will be ready for distribution in a very few days). A verbatim report of the Nuremberg trial is being printed by the British Stationery Office. These two publications, together would probably reduce the necessity of microfilming to such trials as will not be reported by the Commission.

Professor Giraud also raised the question of attaching a United Nations official to the UNWCC Headquarters, either temporarily or permanently, in order to study the UNWCC documentation.

The members of the UNWCC Secretariat were convinced that no obstacles would be raised and all possible facilities would be accorded.

(e) Assistance to the Security Council.

This called for no comment; the UNWCC would give any assistance in its power, as it has done for example, in connection with enquiries which were made concerning German War Criminals in Spain.

(f), (g), (h), Assistance to the Trusteeship Council, Non self-governing territories; Relationship with the International Court of Justice.

These questions will probably not arise in connection with the UNWCC.

(i) Headquarters and Regional Offices.

This question does not arise either, as London is the seat of the Commission and will certainly remain so until it is wound up.

(j) Personnel arrangements.

In this connection Professor Giraud raised the question of diplomatic privileges of the organisation, its members and its staff. Dr. Schwelb explained that the UNWCC and its staff were enjoying diplomatic privileges within the framework of the United Kingdom Diplomatic Privileges (Extension) Act of 1944 - a statute which discriminated against the British members of the staff, preventing the tax exemptions from being extended to them. In 1946, the U.K. Diplomatic Privileges (Extension) Act of 1946 was passed; it abolished the necessity for discriminating against British subjects, but the British Government had given an assurance to Parliament that it would not actually extend to enlarged privileges to such international organisations as are not in connection with the United Nations.

When the problems of common personnel standards, salary scales, pension rights, etc. were discussed, the members of the UNWCC Secretariat said that they did not intend to burden the UNWCC, which was a small organisation, with additional financial responsibilities. They were also not interested in machinery for the settlement of disputes (Administrative tribunal). They would, of course, appreciate it if they could eventually be included in a general scheme relating to a unified international civil service.

The provisions regarding the interchange of personnel are not, at present, of practical interest; personnel questions may arise in connection with the taking over by the United Nations of part of the work of the UNWCC. This will be discussed later(+).

Professor Giraud said that he would report on all these questions.

(k), (l). Statistical services. Administrative and technical services.

No arrangement in this respect appears necessary.

(m) Budgetary and financial arrangements.

Here the representatives of the UNWCC Secretariat pointed out that the UNWCC was budgeting independently and that as long as the Commission was in existence, no arrangement of a financial nature was, in their view, necessary.

(n) Financing of special services.

Here the representatives of the UNWCC remarked that this problem would hardly arise. Professor Giraud replied that if the case should arise, it would be dealt with ad hoc.

(o) Inter-agency agreements.

No comment appeared necessary.

(p) Liaison.

In this case what has been said concerning reciprocal representation and exchange of documents, is applicable, mutatis mutandis. There is no doubt that adequate liaison will be established as a consequence of the preceding correspondence and of the present discussions.

It was considered by the members of the UNWCC Secretariat that a formal agreement embodying the matters discussed above, would be of general advantage.

The meeting was thereupon adjourned until 3.0 p.m.

The meeting was resumed on 2nd January at 3.0 p.m., and continued on 3rd January, at 3.0 p.m.

Arrangements for the Continuation of some activities of the Commission after the conclusion of its main activities.

The meeting was continued on 2nd January 1947 at 3.0 p.m., and the question was discussed of the arrangements for the continuation of those activities of the Commission which it would be necessary to continue after the conclusion of its main activities and its consequent winding up.

(a) Collection and Publication of Records of Trials: Law Reports.

The members of the UNWCC Secretariat informed Professor Giraud that according to the Commission's terms of reference, one of its tasks was the recording of war crimes. In this connection the Commission had started the preparation and publication of Law Reports of the Trials of War Criminals, one volume of which was already

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(+) See page 26 et seq.



printed and would be available in a few days.

One day the prosecutions would cease, but the transcripts of trials would continue to come in for a considerable time afterwards, and the reports on them would have to be prepared. If this was not done, one of the chief aims of the Allied nations in insisting on the punishment of war criminals, a question so important for the future, would be impaired, and it therefore seemed necessary that, after the winding up of the Commission, some other body should take over that part of its work.

Professor GIRAUD asked whether positive proposals in this respect were being considered.

The UNWCC Secretariat representatives replied that the problem was in a preliminary stage and that in their view only two possibilities were available:

- (a) either that the United Nations should take over this work, or
- (b) that a special international bureau should be created, ad hoc, when the Commission was being wound up.

Professor GIRAUD said that he agreed; and that, in his opinion, it seemed preferable that the United Nations should take it over.

(b) Collection and Publication of International Treaties and Municipal Enactments concerning war crimes.

The representatives of the UNWCC Secretariat informed Professor Giraud that the Commission was preparing a publication containing all International Treaties and municipal enactments of Allied, ex-enemy and satellite states, connected with war crimes and analogous offences. This publication would probably be complete at the time when the Commission was wound up. In case this work was not completed, at that time, it would also have to be taken over and finished by another organisation.

Professor GIRAUD agreed, and pointed out that this work would probably include legislative enactments affecting the future as well as those concerned with the past.

Dr. SCHWELB agreed that provisions which have already been envisaged declaring the use of atomic energy unlawful would also fall within the range of this publication; the same applied to future provisions for the criminal protection of human rights etc.

(c) Analysis with a view to a publication of a report on the activities of the Committee on Facts and Evidence (Recording of all decisions by Committee I illustrative of the application of International Law.

The members of the UNWCC Secretariat pointed out that the Commission had listed some 20,000 persons after their cases had been examined by the competent Committee (Committee on Facts and Evidence). There were hundreds of these cases in which legal issues had had to be discussed and rulings established. It was very desirable that all these decisions of Committee I should be recorded for the use of International lawyers and historians, in order to preserve the value of the work done by Committee I during the past years. This was not precisely the same kind of work as the Law Reports, since it did not concern rulings by courts, but by the Commission itself.

This compilation had not yet been begun and in view of the small staff of the Commission, it could not be undertaken in addition to the Commission's day-to-day work, and it would therefore not be completed when the Commission was wound up.

In the same way, also the recommendations and opinions by the Commission's Legal Committee should be prepared for publication and future record.

(d) Preparation of a comprehensive report of the activities of the Commission since 1943.

All present agreed that the preparation and production of a comprehensive report on the work of the Commission could be done only by the Commission itself and could not be undertaken by a different body after the liquidation of the Commission. The research and publication mentioned under (c) would, however, form a kind of supplement to this general report.

Professor GIRAUD observed that the material mentioned under 5(a), (b) and (c) constituted basic material for future codifications of International Law, in the matter of the repression of international crimes.

The meeting then proceeded to discuss the question of

The Archives of the Commission.

Professor GIRAUD raised the question of the custody of the archives of the UNWCC in case the Commission were wound up, and said that in this case the United Nations would be disposed to assume this custody.

Members of the UNWCC Secretariat took due note of this observation.

The discussions were concluded on 3rd January 1947 at 6.30 p.m.

Professor GIRAUD, who was returning to Geneva on 4th January, asked the Secretariat of the UNWCC to send a copy each of the present note to Professor John P. Humphrey, Director, Division on Human Rights, and Mr. Perez-Guerrero, Director, Division of Co-ordination and Liaison.

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24. Letter from Dr. Yuen-Li Liang, Director, Division of the Development and Codification of International Law to Dr. Schwelb, dated January 13th, 1947.

New York, January 13th, 1947.

Dear Dr. Schwelb,

I regret that due to some misunderstanding I did not have an opportunity to study your letter of 27 December (+) 1946 until now, and therefore was unable to send you a reply at an earlier date.

I fully concur in the statement of Mr. Perez-Guerrero to the effect that the Legal Department has a direct interest in the United Nations War Crimes Commission. It is my sincere wish for the Legal Department to maintain close contact with the United Nations War Crimes Commission. My former association with the War Crimes Commission convinces me all the more keenly that such contact will be of great usefulness to the work which I have now in hand.

I feel sure that we shall be fully appreciative of any assistance which the United Nations War Crimes Commission may give in connection with the affirmation of the principles of international law recognized by the Charter of the Nuremberg Tribunal, and other related matters.

I also feel certain that the Legal Department will find of great value the documents and records of the United Nations War Crimes Commission. As you will recall, the Secretary-General, in his letter of 8 November 1946 addressed to Colonel G. A. Ledingham, D.S.O., M.C., already discussed the possibility of transferring these documents and records to the United Nations.

Yours sincerely,

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

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(+) Note: This should read: 27 September, 1946.

25. Letter from Dr. Schwelb to Dr. Liang, dated 3 February, 1947.

London, 3rd February, 1947.

Dear Dr. Liang,

I am much obliged for your letter of the 13th January in which you refer to my previous letter of the 27th September 1946. It has already been expressed, both by the Secretary General of this Commission, Colonel G.A. Ledingham, and by myself, in the previous correspondence, that this Commission will be glad to give to all the organs of the United Nations, every assistance which may be helpful.

The papers which the Secretary General of the United Nations, Mr. Trygve Lie, mentioned in his letter of the 8th November 1946,

referred to the concept of crimes against humanity in connection with the Commission on Human Rights and its work, based upon the resolution adopted by the Economic and Social Council on 21st June 1936 regarding the collection of information concerning human rights arising from the trials of war crimes (Doc. I/56/Rev.2, par.4(c)). These documents have been sent to Mr. Trygve Lie with Colonel Ledingham's letter of the 15th November 1946.

On the 2nd and 3rd January 1947, members of the Secretariat of this Commission had the pleasure of conferring with Professor Emile Giraud of the Department on Human Rights and of discussing with him all aspects of the co-operation between the United Nations and this Organisation. Copies of the Minutes of this meeting were sent, on 6th January, 1947, to Mr. Perez-Guerrero, Director of the Division of Co-ordination and Liaison, and to Professor John P. Humphrey, Director of the Division on Human Rights.

I assume that your Division is particularly interested at present in the question of the affirmation of the principles of international law recognized by the Charter of the International Military Tribunal, because the General Assembly has decided that this subject should be treated as a matter of primary importance.

This decision by the General Assembly and the decision concerning the related subject of the so-called crime of "Genocide" is closely connected with the activities of this Commission in general and of its Legal Secretariat in particular.

I have been trying to analyse the Charter of the International Military Tribunal, the Berlin Protocol amending its Article 6(c), and the Nuremberg Judgment, both in a number of papers which I have presented to the Legal Committee of this Commission, and in a comprehensive article which will appear in the 1946 volume of the British Year Book of International Law, edited by Professor H. Lauterpacht. I assume that these papers may be of some modest assistance for the preparation of the codification work. I have pleasure, therefore, in sending you as a separate parcel the documents enumerated at the bottom of this letter, adding that I shall send you an off-print of my contribution to the British Year Book of International Law as soon as it is available.

Unfortunately, I have not yet received the United Nations papers and Minutes preceding, and preparatory to, the document A/236 although I have applied for this documentation to Mrs. Mabel M. Butler, Chief of Distribution of the Documents and Sales Division. Doc. A/236 was kindly sent to me by the Assistant Secretary-General, Dr. Kerno, himself.

As I have not these preceding documents before me, I am not quite sure about the scope of the affirmation of international law or codification which is intended by the General Assembly; particularly I do not know whether the term "offences against the peace and security of mankind" covers the whole field of the Nuremberg Charter and Judgment, or whether it 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, page 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. If this is so, the further question arises whether the concept of crimes against humanity is to be included in the "emasculated" form which it acquired by the



Berlin Protocol, or whether the United Nations codification should be based on the wider concept as expressed in the original French and English texts of the Agreement. The latter interpretation would, I believe, be more in line with the General Assembly's Resolution on Genocide.

I would be obliged if you could give me any additional information on the intention of the General Assembly. If the work of codification or affirmation is in the first instance to be restricted to crimes against peace, on the one hand, and the crime of Genocide on the other, the problem, though difficult, would not make necessary the collection and analysis of too much recent material because with respect to crimes against peace, controversial though the problem may have been before the Four-Power Agreement of 8th August 1945, the Charter itself and accordingly its application by Nuremberg, is rather straightforward.

If, however, the whole problem of what is now called crimes against humanity is to be dealt with, the task is by no means unambiguous in view of the many important qualifications which are contained in the basic documents, in view of the interpretation placed on some of these qualifications by the Nuremberg Judgment, in view of the divergencies between the French and English texts on the one hand and the Russian text on the other, and in view of the differences between the Charter of the European International Military Tribunal on the one hand and other similar documents on the other.

The task will, of course, be still more formidable if among the principles of Nuremberg which are to be affirmed, war crimes in the narrower sense should be included (Art. 6(b) of the Nuremberg Charter) which would entail the task of revision and recodification of the whole law of war as applied by the Nuremberg Judgment.

If you could give me any indication as to the scope of the work in preparation, I would report to my Commission and then work out, in collaboration with you, proposals as to how both the Commission as such and this Secretariat, could best assist you in your responsible and difficult task.

You will certainly remember that the Commission at a time when it had the privilege of your immediate assistance and collaboration, devoted much attention particularly to what is now known as crimes against peace, and made, on the eve of the San Francisco Conference, a recommendation (Doc. C.103) to the effect that "any person in the service of any State who has violated any rule of international law forbidding the threat or use of force, or any rule concerning warfare, especially the obligation to respect the generally recognized principles of humanity, shall be held individually responsible for these acts and may be brought to trial before the civil or military tribunals of any State, which may secure custody of his person, and be punished by death or any lesser penalty."

Although these recommendations were not embodied in the Charter of the United Nations in so many words, subsequent events, particularly the Assembly Resolution on the affirmation of the principles of International Law recognized by the Charter of the Nuremberg Tribunal and on the crime of Genocide, show that the Commission's recommendations were in line with the general trend of allied opinion.

I may finally mention that the principles governing the retribution for crimes against peace and, to a certain extent, crimes against humanity, have been given effect to also in a very interesting



judgment of a Chinese Military Tribunal at Nanking, in the matter of Takashi Sakai, which was passed on 27th August, 1946, i.e., before the promulgation of the Nuremberg Judgment.

Yours sincerely,

Sgd. Egon Schwelb.  
Legal Officer.

1 copy of each by separate post:

Docs. III/62, III/64, III/67, II/70.  
C.103, C.236

26. Letter from Professor Humphrey to Dr. Schwelb, dated 17 January, 1947.

New York, 17 January, 1947.

Dear Mr. Schwelb,

Thank you very much for your letter of 6 January and the copy of the notes of the discussions with Professor Emile Giraud. I expect that Professor Giraud will be at Lake Success on Monday when I will have an opportunity of discussing the whole question with him.

Thanking you again, I am,

Yours sincerely,

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

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Misc. 89  
May 2nd, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

N O T E

ON DISCUSSIONS WITH PROFESSOR JOHN P. HUMPHREY

DIRECTOR OF THE DIVISION ON HUMAN RIGHTS

OF THE

SECRETARIAT OF THE UNITED NATIONS

on 22nd, 23rd, 24th and 25th APRIL, 1947.

Discussions took place between Professor John P. Humphrey on the one hand and representatives of the United Nations War Crimes Commission on the other.

Questions outstanding between the two organisations were discussed with Professor Humphrey by Colonel Ledingham, Secretary General, and Dr. Schwelb, Legal Officer, of the United Nations War Crimes Commission. On Thursday 24th April, Professor Humphrey was received by Lord Wright in the presence of Colonel Ledingham and Dr. Schwelb, and on Friday 25th, another meeting between Lord Wright and Professor Humphrey took place at which Monsieur de Baer, the Belgian Representative on the United Nations War Crimes Commission and Chairman of Committee I, was also present.

The following is a summary of these discussions as far as they referred to relations between the two international organisations.

1. The Secretariat of the United Nations was charged by the Economic and Social Council on the 21st June 1946, with the collection and publication of information concerning human rights arising from the trials of war criminals, quislings, traitors and in particular from the Nuremberg and Tokyo trials (see collection of documents, Misc. No. 88, Document No. 1).

Professor Humphrey intends to suggest to the appropriate authorities of the United Nations Secretariat, that the United Nations War Crimes Commission should be asked by the Secretariat of the United Nations to undertake this task and submit the document or documents thus produced to the Human Rights Division of the United Nations which will make use of this material, appropriately acknowledging and pointing out that the work has been done by the United Nations War Crimes Commission.

The Legal Officer of the United Nations War Crimes Commission, Dr. Schwelb, will draw up shortly a paper outlining his ideas on how this task should be performed, for approval both by the United Nations War Crimes Commission and the United Nations Secretariat.

2. The United Nations Secretariat will shortly start work on the implementation of the Resolution of the General Assembly, passed on 11th December 1946, on the crime of Genocide. This subject falls both within the jurisdiction of the Division on Human Rights, of which Professor Humphrey is the Director, and of the Division on the Development and Codification of International Law, of which Dr. Liang is the Director.

Professor Humphrey intends to suggest to the appropriate authorities of the United Nations Secretariat that they send the draft convention on Genocide, when it is ready, to the United Nations War Crimes Commission for their comment and criticism.

3. The Human Rights Commission of the United Nations will hold its second session at Geneva in September 1947. Professor Humphrey will suggest to the appropriate authorities of the United Nations Secretariat that the United Nations War Crimes Commission be invited to send an observer to this session of the Human Rights Commission.

4. Professor Humphrey was not briefed on the question of the co-operation between the two organisations in the field of codification and development of international law. He sounded, however, the opinion of the authorities of the United Nations War Crimes Commission, whether the United Nations War Crimes Commission would be prepared to send an observer to the meeting of the Codification Committee which was scheduled to meet at Lake Success, New York, on 1st May. Professor Humphrey was informed on 25th April that the Commission would be prepared to accept such an invitation and to delegate Monsieur de Baer to represent it at the meeting. Monsieur de Baer declared his readiness to go to Lake Success, and his preparedness was particularly appreciated in view of the short notice which he would have to leave for the United States.

In the evening of Friday 25th April, Professor Humphrey sent a cablegram to Dr. Liang, strongly recommending that such an invitation be extended to the United Nations War Crimes Commission by cablegram; he also telegraphed to his immediate superior, M. Henri Laugier, Assistant Secretary General in charge of the Social Department, asking him to support this suggestion.

5. It was envisaged at the meeting on 25th April that Monsieur de Baer, when at Lake Success, should not only attend the meeting of the Codification Committee, but also get into personal contact with the appropriate officials of the Secretariat, namely, in addition to the officials in charge of the Human Rights Commission, with Dr. Ivan Kerno, Assistant Secretary-General in charge of Legal Affairs, Dr. Liang, Director of the Division for Development and Codification of International Law, and with the official in charge of the Division of Co-ordination and Liaison. (Mr. Perez-Guerrero, who had been the Director of that Division, has relinquished the post on being appointed Minister of Finance of Venezuela).

Professor Humphrey left London for New York on Saturday 26th April.



MISC. 90.

May 2nd, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

INVITATION TO EIGHTH INTERNATIONAL CONFERENCE FOR THE  
UNIFICATION OF CRIMINAL LAW

2600/C/R

The Belgian Commissioner on the  
United Nations War Crimes Commission,  
Room 320, Lansdowne House,  
Berkeley Square. London. W. 1.

29th April, 1947.

Dear Colonel Ledingham:

I have been asked by my Government to extend to the United Nations War Crimes Commission an invitation to send one or two delegates to the Conference of the International Bureau for the Unification of Criminal Law, which is to be held in Brussels on 10th, 11th and 12th July next.

I attach hereto a translation of the note on the subjects to be discussed at this Conference. You will observe that item 2 - definition of crimes against humanity - is of special interest to this Commission. You will also note that a short report on the subject to be discussed is requested from each delegation.

As soon as I know the decision of the Commission in this matter I will communicate it to my Government.

Yours sincerely,

Sgd. M. de Baer.

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

TRANSLATION

8th International Conference for the  
Unification of Criminal Law.

(Note to accompany the invitation of the Belgian Government)

The International Bureau for the Unification of Criminal Law - to which 52 Governments gave their official adherence in 1940 - was founded in 1927 with the purpose of unifying the criminal codes of law of the different countries.

The 8th Conference should have been held in Brussels in December 1939, but this had to be adjourned owing to the international situation.

The International Bureau has decided to hold this meeting on 10th, 11th and 12th July next.

This Conference is composed of official delegates, one or two each appointed by the respective Governments who have received invitations from the Belgian Government through the medium of the Ministry of Foreign Affairs, to send representatives to the meeting.

The Governments receiving invitations are requested to address their replies to the Ministère des Affaires Etrangères as soon as possible and not later than 1st June next.

Two questions figure on the agenda:-

1. Unification of the provisions for the punishment of forgery (of both public and private documents) in the different countries.

(No translation is given of this portion of the text, since it is of no special interest to the UNWCC, but it could be provided on application).

2. Definition of Crimes against Humanity.

The description of crimes against humanity is to be found in Article VI, paragraph C, of the Charter annexed to the Convention of London of 8th August 1945, namely:-

"Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

The "Congrès International du Mouvement Judiciaire Français" which met in Paris from 24th to 27th October 1946, adopted a resolution concerning the punishment of crimes against humanity.

The resolution ran as follows:-

- "1. Those who exterminate or persecute an individual or a group of individuals on account of their nationality, race, religion or opinions are guilty of crimes against humanity and are punishable as such. These crimes shall be punished whether they were committed by individuals or by organisations operating as organs of State, or were encouraged or condoned by the State.

"Crimes against humanity operate irrespective of a state of war.

- "2. The authors of crimes against humanity must at present be judged in the State on whose territory or against whose citizens the crimes have been committed. If the accused cannot be tried by a domestic court, they should be indicted before an international criminal court. The criminals should be extradited.

- "3. It is important that, in the future, the punishment of crimes against humanity should be incorporated, as a matter of urgency, in an international criminal code and that an international criminal court should be set up without delay.

"4. It is necessary that the law should punish propaganda which advocates the extermination or the persecution of an individual or a group of individuals, on account of their nationality, their race, their religion or their democratic opinions."

From what precedes, and taking into account the proceedings of Nuremberg, it is necessary to define the specific character of a crime against humanity.

While it can be committed in time of peace, just as in time of war, a crime against humanity cannot, nor must it be, confused with assaults directed against the life, body, health and liberty of individuals - acts which are defined as crimes and misdemeanours and are the subject of measures in every domestic law. That which changes such acts into crimes against humanity is the fact that they are directed against the essence of mankind, in so far as it is composed of different races, nationalities, and religions, and that it represents a multiplicity of philosophic, social and political creeds.

To kill, to persecute or to enslave a man or a group of men on account of their race, nationality, religion or the opinions which they hold, is to ignore the fundamental diversity of mankind. A crime against humanity, being directed against groups of men (racial, national, religious etc) is not aimed at the individual as an isolated case, but at the individual as being a member of a collective group. In the majority of cases, therefore, crimes against humanity present the form of mass extermination, enslavement or persecution.

Thus, apart from the traditional safeguards, designed to protect human life, liberty and the other rights inherent in the individual, another special safeguard is now required to protect institutions such as race, nationality, religion and various other aspects of the human race.

In the legal definition of a crime against humanity, there must thus be included a notion of "dolus specialis". In taking into account the special intent which promotes the crime, it is possible to make a clear and precise distinction between these crimes and the vast number of ordinary crimes and misdemeanours, such as murder, mutilation, etc., which are directed against individuals and punished in all countries of the world.

Another aspect which, in many circumstances, distinguishes a crime against humanity, is that it is committed by persons acting in their official capacity on behalf of the State. It is the expression of a political creed which uses murder, suppression of individual liberty and other attacks on human rights as instruments of Government.

In these circumstances, crimes against humanity do not appear as violations of domestic criminal law, but as acts committed in the exercise of Government by the omnipotent State, through the medium of organs created by it, operating in its name and executing laws and regulations which it has conceived. Hence the exceptional gravity of such crimes and the need to consider certain cases as international crimes and to bring the accused before an international criminal court. (For fuller details see the work of Mr. V.V. Pella, Secretary General of the International Bureau for the Unification of Penal Law, entitled "La Crime-Guerre et les Criminels de Guerre", Paris Pedon 1946, as well as the editorial by the same author on the same question which appeared in the first issue of 1947 of the "Revue Internationale de Droit Pénal", Paris Sirey 1947).

In view of the complexity of the matter, it is desirable that each rapporteur (see below) - whilst annexing the text (if any) of his domestic legislation concerning crimes against humanity - should include in his report:-



a) A draft definition of a crime against humanity, the text to be discussed by the Conference, with a view to drawing up a unified text which may be inserted in national legislation.

b) Concrete suggestions for co-operation between Governments in combating this crime. It would also be desirable, with a view to assuring speedy action, to consider the conditions in which it would be possible to recognise the jurisdiction of the judge of the place where the accused is arrested.

c) An enumeration of cases in which crimes against humanity should be taken out of the jurisdiction of the domestic courts. In the first instance, this concerns crimes which have been perpetrated by organisations operating as organs of the Government, or with the encouragement or condonement of the Government - cases which ought to be treated by an International criminal code and judged by an international criminal court.

REPORTS

The Governments represented are requested to instruct one of their delegates to draft a short report (in French) which should reach the Secrétariat Général de la Conférence, Palais de Justice, Brussels, not later than 1st June next.

It is to be noted that long dissertations are not required. The International Bureau hopes to prepare the texts which are to be inserted in international legislation or which would form the object of clauses in international conventions.

The reports should consist:

on the first question .....

on the second question, of a concise presentation of the problems involved in points a), b) and c) above.

Stress is once more laid on the fact that the reports should be as concise as possible.

MISC. 90.

May 2nd, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

INVITATION TO EIGHTH INTERNATIONAL CONFERENCE FOR THE  
UNIFICATION OF CRIMINAL LAW

2600/C/R

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United Nations War Crimes Commission,  
Room 320, Lansdowne House,  
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29th April, 1947.

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As soon as I know the decision of the Commission in this matter I will communicate it to my Government.

Yours sincerely,

Sgd. M. de Baer.

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Secretary General,  
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Stress is once more laid on the fact that the reports should be as concise as possible.

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UNITED NATIONS WAR CRIMES COMMISSION

War Crimes in Italian Criminal Law.

Explanatory Memorandum compiled by the Italian Ministry of  
Foreign Affairs.

The following translation of an explanatory memorandum compiled by the Italian Ministry of Foreign Affairs (enclosure to a letter dated 10th March 1947) has been made available to the Secretariat by the United Kingdom Foreign Office.

TRANSLATION

MINISTRY OF FOREIGN AFFAIRS.

War Crimes in Italian Criminal Law.

1. The Italian military criminal code of war - in force from 1st October 1941 - in the fourth title of the third book contemplates offences against the laws and usages of war.

Most of the offences against the laws and usages of war have their origin in international conventions and contemplate penal sanctions in a series of authoritative rules, contained in the text of the Law of War, approved by Decree No. 1415 of 8 July 1938.

With penal discipline for breaches of the laws and usages of war the Italian state has intended to put into effect in a manner best suited to the obligation undertaken in the second Hague Convention of 28th July 1899 to communicate to the armed forces instructions in conformity with the regulations regarding the laws and usages of land warfare annexed to the Convention.

The penal discipline for breaches of the laws and usages of war has been both in the wishes of Italian authors, who anticipated it, in the legislator's programme and in the interpretation of the commentators of the code, an effective contribution to the formation of an international military criminal law.

2. The foundation in the international conventions of crimes against the laws and usages of war contemplated by the Italian military criminal code explains easily the fact why there are to be found in the same code all the acts that are defined as war crimes, that is, violations of the laws and usages of war, of Art. 6(b) of the International Military Tribunal's Statute set up in pursuance of the well-known Convention of 8th August 1945 for future action against the major Axis European war criminals and their punishment.

3. The rules of the Italian penal military code regarding offences against the laws and usages of war applies to members of the Italian forces and to civilians who are Italian citizens. However, in cases where offences against the laws and usages of war are committed to the injury of the Italian state or an Italian citizen, as well as to the injury of an Allied state or a subject, the rules contained in the 4th Title of Book 3 apply also to



military personnel and to any other person belonging to the army forces of the enemy (Art. 13 of the Military Criminal Code of War).

The Italian Code regulates also the carrying out of sentences against enemy military personnel or any other persons belonging to the armed forces of the enemy. The serving of the sentence must not be postponed except in cases of special agreement between the Italian state and the state to which the persons sentenced belong, and the general principles which govern the substitution of punishments also apply, having regard to the military or civil status of the convicted person (Art. 166 of the Mil. Crim. Code of War to be read with Art. 63 and 65 of the Military Criminal Code of Peace).

4. The offences against the laws and usages of war are distributed in the Military Criminal Code of War throughout numerous chapters which group together many Articles of analogous contents.

Offences which are considered War Crimes in accordance with the definition given by the Statute of the International Military Tribunal are provided for, in Chapter 3 of the 4th Title; which contemplates the "unlawful acts of war", distinguished in two sections, the first regards the abuse of the means to injure the enemy (Arts. 174 to 185) and the second unlawful acts against enemy private citizens and damage to enemy goods (Art. 185 to 189); in Chapter 4, which contemplates the breach of duties towards infirm, wounded, shipwrecked persons, and the dead, and towards the military medical personnel (Arts. 190 to 198); in Chapter 5, which relates to prisoners of war, and is divided into four sections, the second of which concerns offences against war prisoners (Arts. 209 to 214), and the fourth contains only one Article which gives to hostages the same status as prisoners of war (Art. 219); in Chapter 6, which has certain provisions dealing with offences concerning requisitions, contributions and services performed for the benefit of the forces (Arts. 224 to 226).

The above-mentioned Chapters contain in particular the following offences:

(a) unlawful acts of war:

1. Commander who orders or authorises the use of means of war that are forbidden (Art. 174).
2. Use of forbidden means of war on the part of persons other than the Commander (Art. 175).
3. Reprisals ordered outside the cases provided for by law (Art. 176).
4. Treacherous violence to the enemy, and even non-treacherous towards an enemy who has unconditionally surrendered (Art. 177).
5. Commander who omits warning in case of bombardment (Art. 178).
6. Commander who omits to adopt provisions for the protection of buildings, places and things that have to be respected (Art. 179).
7. Improper use signs and marks of protection and flags (Art. 180).
8. Contempt for protective marks (Art. 181).
9. Constraining enemy subjects to take part or assist in military operations (Art. 182).
10. Prohibition of immediate execution of persons guilty of spying or of offences against the laws and usages of war (Art. 183).

11. Violation of safeguards or safe conducts (Art. 184).
12. Violence by members of the Italian armed forces against enemy civilians, including murder (Art. 185).
13. Pillage, even of places taken by assault (Art. 186).
14. Arson, destruction or serious damage in enemy country (Art. 187).
15. Unlawfully receiving or acquiring food or clothing (Art. 188).
16. Omitting to prevent unlawful receiving or acquiring food or clothing (Art. 189).

(b) Breach of duties towards the infirm, the wounded, shipwrecked persons, or dead, and towards medical personnel.

- (1) Omitting to help members of the armed forces who are infirm, wounded, or shipwrecked, even in the case of enemies (Art. 192).
- (2) Use of arms against ambulances, hospitals, ships, or aeroplanes of the medical service, or against the personnel attached to the same (Art. 191).
- (3) Ill-treatment of infirm, wounded, or shipwrecked persons, even if enemies (Art. 192).
- (4) Spoilation of infirm, wounded or shipwrecked persons, even if enemies (Art. 193).
- (5) Violence towards persons attached to the medical services, or to ministers of religion (Art. 194).
- (6) Omitting to release the persons mentioned in para (5), (Art. 195).
- (7) Mutilation, insults to, or stealing of corpses, (Art. 196).
- (8) Spoilation of corpses, or stealing money or other articles (Art. 197).
- (9) Arbitrary reprisal to recognise the status of a legitimate belligerent (Art. 198).

(c) Offences against prisoners of war:

- (1) Brutality or ill-treatment (Art. 210)
- (2) Treating prisoner of war with contempt (Art. 210).
- (3) Violence, threats or insults (Art. 211).
- (4) Obliging prisoners to give information or carry out prohibited work (Art. 212).
- (5) Violating the liberty of religion (Art. 213).
- (6) Stealing money or other objects (Art. 214).

(d) Offences against hostages:

Hostages enjoy the same status as prisoners of war.

(e) Offences concerning requisitions, contributions, and services performed for the benefit of the forces:

(1) Arbitrary or excessive requisitions, contributions or services (Art. 224).

(2) Contributions after the conclusion of peace (Art. 225).

(3) Abuse of requisitions of premises for military quarters (Art. 226).



UNITED NATIONS WAR CRIMES COMMISSION.

MISC. 92.

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON MAY 1ST 1947.

May 9th 1947.

	<u>Cases tried.</u>	<u>Accused involved</u>	<u>Death.</u>	<u>Imprisonment</u>	<u>Acquitted.</u>	<u>Remarks</u>
<u>EUROPE:</u> Countries whose reports comprise War criminals only.						
United States: USFET)	188	861	237	498	126	as at 1.4.1947.
USMET)						
BRITAIN: BAOR	211	708	164	334	210	as at 1.5.47.
CMF & BTA.						
France:	31	257	124	116	17	as at 1.3.47.
Greece:	2	4	2	2	-	as at 31.3.47.
Norway:	-	16	11	5	-	as at 16.10.46.
Yugoslavia:	5	79	63	16	-	as at 1.5.47.
TOTAL:	-	1,925	601	971	353	
<u>EUROPE:</u> Countries whose reports show war criminals and collaborators combined.						
Czechoslovakia:	-	18,496	362	13,969	4,165	as at 31.10.46.
Poland:	-	4,593	631	1,840	2,122.	as at 1. 7.46.
TOTAL:	-	23,089	993	15,809	6,287	
<u>PAC. EAST:</u>						
United States:	194	483	139	296	48	as at 1.4.47.
Britain:	228	729	242	402	85	as at 1.5.47.
Australia:	234	733	141	371	221	as at 1.4.47.
Netherlands East Indies:	31	36	17	19	-	as at 1.5.47.
TOTAL:	687	1,981	539	1,088	354	

MISC. NO: 93  
May 16th, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

(Translation)

PERMANENT INTERNATIONAL COMMISSION  
FOR THE STUDY OF THE PUNISHMENT OF CRIMES  
AGAINST INTERNATIONAL LAW AND OF ACTS COMMITTED  
IN THE INTERESTS OF THE ENEMY

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The meetings for the study of these questions, which had been originally arranged by the Commission to take place on Wednesday and Thursday, 18th and 19th December, 1946, had to be adjourned owing to the indisposition of the Chairman, M. CORNIL.

The meetings were accordingly adjourned to Monday and Tuesday, 14th and 15th July, 1947; that is to say, immediately after the VIIIth International Conference for the Unification of Penal Law, which was to meet on 10th, 11th and 12th July, 1947, and immediately before the International Congress of Democratic Jurists organised by the "Renaissance Judiciaire" on 17th and 18th July, which was also to take place at Brussels.

The agenda for the above-mentioned meetings includes the following points:-

Monday 14th July: Extradition of persons wanted or convicted for war crimes or for crimes of collaboration with the enemy.

Tuesday 15th July: The re-education and re-classification of persons sentenced for collaboration with the enemy.

All the countries taking part in the work of the Commission and in particular those who have sent delegations are invited to submit a concise report on each of the two subjects mentioned in the agenda.

As the permanent secretary has to draw up the general reports, it is essential that the reports of delegations should reach the permanent secretariat before 15th June, 1947.

On this occasion the Commission will be called upon, in conformity with Article 13 of its standing orders, to examine and vote upon its budget.

Sgd. DAUTRICOURT  
Permanent Secretary.

Brussels. March 31st, 1947.

Misc. 94.  
23rd May, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

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