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Colonel SPRINGER wished to add that at the time when it was suggested that he should get in touch with Colonel Mickelwait and Colonel Straight and find out whether the Commission lists were getting the widest possible circulation, Colonel Straight said that they used only one or two because of the "Secret" classification.

The CHAIRMAN asked all members present if they would consult their governments on the question. He thought the idea of secrecy should be eliminated in the case of these lists and he thought that on the next occasion they met, the members might have come to a conclusion. He personally was in favour of abandoning the word "Secret".

Dr. MAYR-HARTING thought there was no reason for keeping the lists secret.

Dr. SZERER and Dr. SCHRAM NIELSEN were of the same opinion.

Commander MOUTON stated that secrecy was more of an obstruction now and he was prepared to vote for its abandonment.

Dr. ZIVKOVIC agreed.

The CHAIRMAN asked whether a decision on this point should be left over to the next meeting or whether the Commission should vote on it now.

Sir Torick AMEER ALI said he certainly agreed. He felt that the quicker these matters were dealt with the better.

The CHAIRMAN thought it should be put to the Commission there and then: Was the classification "Secret" of the Commission Lists still to be retained?

Mr. TSIEN said that as he was temporarily deputising for H.E. Dr. Cheng, he felt he must abstain from voting.

All members present voted in favour of the proposal to abandon the secrecy of the lists, with the exception of the Chinese representative, who, as stated, preferred to abstain from voting.

The CHAIRMAN declared that from that moment the ban of secrecy would be removed, and this decision would be made known accordingly.

Mr. BURDEKIN enquired whether this decision was retroactive and whether previous lists could be published.

Lieut. Colonel RYAN said that what could be done was that a letter could be sent down-grading all prior lists and all future lists would be unrestricted.

The CHAIRMAN said that the Commission would make it known that as of the 6th November, 1946, the ban of secrecy had been removed from all the lists issued by the Commission.

SIR TORICK AMEER ALI LEFT THE MEETING AT THIS POINT.

Sir Robert CRAIGIE said that he had just two small points to make. Everyone knew that in the course of CROWCASS' move to Berlin, arrears necessarily occurred as a result of the great difficulties which had to be overcome and he wished to take this opportunity of congratulating Lieut. Colonel Ryan on the difficulties overcome. Now, he wished to know whether Lieut. Colonel Ryan could tell them whether they had been able to catch up on those arrears.

The second point was: The Commission had recently recast its lists to some extent in order to make them a little easier to digest and it would be useful to know whether in the form that they now appeared, they met the requirements of CROWCASS, or whether CROWCASS could suggest any amendments.

Lieut. Colonel RYAN said that in reply to the first question, they had completely finished their backlog of work. In fact, two weeks before, they had begun assembling information for a consolidated Wanted List.

With regard to the second question, from contact he had had with people outside CROWCASS, they felt that if the Commission lists were published in alphabetical order, instead of broken down by countries, they would be far preferable.

Sir Robert CRAIGIE stated that this was an amendment that had been made about two or three months ago.

The CHAIRMAN said he understood this had been settled.

Dr. LITAWSKI affirmed that it had.

The CHAIRMAN thought that all the members would agree with Sir Robert Craigie in congratulating and thanking their friends from CROWCASS for their admirable work and the re-constitution of CROWCASS on the lines of what he believed the Commission had always wanted.

Dr. MAYR-HARTING entirely agreed with the Chairman's expression of gratitude. He would report it to his Government, who would be glad to know that CROWCASS had taken up this work again and would continue in a normal way.

On the proposal of the Chairman, a unanimous vote of thanks was accorded to Lieut. Colonel Ryan and Captain Gowing.

Colonel SPRINGER asked how many people altogether had been listed as wanted.

Captain GOWING replied that, excluding Security Suspects, there had been about 50,000.

Colonel SPRINGER said that now that the Commission's lists were to be unrestricted, and to get a wider circulation, could there not be a description with each charge, as elaborate and complete as those of CROWCASS, before they got out the Wanted Lists, so that the Commission's lists might automatically be put on CROWCASS' reports. He could not see why the Commission should require less information than CROWCASS.

Lieut. Colonel RYAN said that he thought this would help CROWCASS and the people who were working in the field.

Sir Robert CRAIGIE thought they might like to discuss it in Committee I, but that, as far as he could see, there would be nothing but advantage in giving such particulars as they received. More often than not, they did not get any description and it might be possible to ask the National Offices in future always to include the description of the individual when the case was submitted.

It would mean a little more work for the Secretariat and the lists would be more bulky.

He felt it was a practical suggestion which should be discussed in Committee I in the first instance.



UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF MEETING

HELD ON

WEDNESDAY, 27th NOVEMBER, 1946

AT 4.15 p.m.

Chairman:	Lord WRIGHT	Australia
Also present:	Sir Robert CRAIGIE	United Kingdom
	M.de BAER	Belgium
	Mr.CHEN	China
	M.DIMITSAS	Greece
	Mr.HORNE	Canada
	Mr.AARS-RYNNING	Norway
	M.MEZULIC	Yugoslavia
	Dr.SZERER	Poland
	accompanied by	
	Dr.CYPRIAN	
	Dr.SCHRAM-NIELSEN	Denmark
	MR.DUTT	India
	Major FANDERLIK	Czechoslovakia
	accompanied by	
	Dr.MAYR-HARTING	
	Commander MOUTON	Netherlands
	Colonel SPRINGER	United States of America
	accompanied by	
	Mr.Ben H.BROWN	Office of the
		Legal adviser of
		the U.S.State Department
	Mr.BURDEKIN	New Zealand
	Lieut.Colonel HARRIS	

Apologies for absence were received from:

H.E. Dr.F.T.CHENG  
Mr.BRIDGLAND  
M.MAILLARD

Minutes of the 115th meeting were approved and signed.

Amendments to Draft Minutes M.116 had been received from Sir Robert Craigie, Dr.Szerer, M.de Baer, Dr.Schram-Nielsen and Colonel Springer and would be incorporated in the final text.

NOTIFICATION OF THE SURRENDER OF WAR CRIMINALS.

The CHAIRMAN asked Sir Robert Craigie to introduce the matter.

Sir Robert CRAIGIE said that Commander Mouton was the first to raise this very important point. He had pointed out that as things stood at present, it frequently occurred that investigating teams continued to search for persons who had already been found and detained in some other zone. They had discussed ways and means of improving this situation and Sir Robert had undertaken to discuss the matter, unofficially, with the War Office in an endeavour to find out whether there was any means by which Allied Missions could be notified by the detaining authority at once, in order to prevent this duplication.

The result of the discussion with Lieut.Colonel Savill - War Office - in which he had been assisted by Colonel Ledingham, established the fact that it would be exceedingly difficult for the War Office or BAOR to

carry out his proposals, owing to staff difficulties. Man power was the chief difficulty and there was great shortage of staff. The proposals which he had put forward for consideration were, briefly, as follows:-

"When an investigation team has found a war criminal it should immediately notify the War Crimes Branch of the Military Headquarters in the zone in which it is operating. That War Crimes Branch should immediately notify the Allied Missions in its Zone and the War Crimes Branches of the other Zones, who, in turn, should immediately notify the Allied Missions in their zones. The heads of the Allied Missions would be responsible for notifying their respective National Offices. In this way, all concerned in the tracking down of war criminals, would be informed.

When the time comes for the war criminal to be surrendered by one country to another, CROWCASS should be informed both by the country surrendering the criminal and by the country to whom the criminal has been surrendered. The detention reports issued by CROWCASS would then show by which country the criminal is held."

Sir Robert Craigie said that Lieut.Colonel Savill - War Office - had replied, that while the Commission's proposal was a good one, Headquarters Rhine Army were already so overworked, they regretted that they could not undertake the additional typing and work that this involved. It involved a considerable amount of detail to identify each man and H.Q. B.A.O.R. could not undertake all this. They did, however, put forward the suggestion that CIO (Civil Internment Camps) might make one extra copy of their Detention Reports and forward it to the United Nations War Crimes Commission. CIO were Control Commission Units and therefore not under control of B.A.O.R., but if this idea appealed to the Commission, it could be taken up with Control Commission.

Lieut.Colonel Savill thought that the solution really lay with the Allied Missions at Zone Headquarters. They were in close contact with each other and with the CIOs, from whom they could obtain all the information they required. The only people who might not be informed would be the National Offices if their Missions in Germany failed to keep them informed. Sir Robert Craigie thought there could be two arrangements - the first, there could be greater circulation of the CIO Detention Lists - more prompt circulation of the lists on the spot among investigating teams and secondly that the War Crimes Commission should receive duplicates of the Detention Lists from CIOs and, on receiving them, should circulate them to the National Offices. Sir Robert did not think this would involve duplication of work because at the present time, we did circulate these Detention Lists after they were received from CROWCASS. His suggestion was, instead of waiting for the Lists from CROWCASS, that we should circulate them from time to time when these duplicates from the CIOs were received, that is, so far as the British Zone was concerned. He thought it would be possible to make similar arrangements as regards the other zones.

The CHAIRMAN invited Lieut.Colonel Harris who he said had first hand knowledge of this matter, to give his views.

Lieut.Colonel HARRIS said that he must first of all point out that he was no longer a member of Headquarters Rhine Army. He was now on demobilisation leave and therefore anything he could say was to be regarded as his own personal opinion based on the situation as it was at Headquarters, B.A.O.R. last week and must not be taken as representing the opinion of the Rhine Army.

A search in the British Zone of Germany, for someone wanted by an Allied Government was usually carried out by the Investigating Teams of the interested nation and therefore he did not think it was necessary to notify



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in a Civil Internment Camp, H. Q. Rhine Army would check against card index  
and if it were found that this particular man was wanted by the Netherlands  
Government they would automatically notify the Netherlands War Crimes Mission  
that the man was now in the C.I.C. This would probably be done on the  
telephone. If they also had to notify the UNWCC, desirable from the Commission's  
point of view as he could see, it would mean that messages would have to be  
dictated, typed and sent out. As Sir Robert Craigie had said, Rhine Army were  
already swamped with the amount of work they had to do with a gradually depleting  
staff, and if a nation had its representatives at HQ Rhine Army, that  
representative should be the channel for the nation concerned. It was wasting  
time and meant duplication to notify a nation through some other channel.

In the case of the Netherlands government, it was simple, Lieut.  
Colonel Derksoma, stationed close to Headquarters Rhine Army, was the chief of  
the Netherlands War Crimes Mission in Germany and could easily notify any of  
the Dutch teams in the other zones in Germany. All Detention Reports were seen  
by Liaison Missions, so that they had a second line of notification of anyone  
who had been detained. Nations should rely upon their local Liaison officers  
who were there to notify them and he thought that with the general shortage of  
manpower in all zones, any additional work should be avoided.

Commander MOUTON wished, in the first place, to thank Sir Robert  
Craigie and the Secretary General for all the trouble they had taken to find  
means to comply with his wish and also to thank Lieut. Colonel Harris for his  
explanation. He had written to Lord Wright because he was not satisfied with  
results. Germany was a very big country and the Netherlands teams were very  
small. For that reason, he had not only asked assistance from British, American  
and French teams, but had suggested, and he had thought the idea had been  
generally adopted in the Commission, that all National Teams should assist each  
other as far as possible. If only Netherlands teams were working in Germany  
and dealing only with people whom they wanted, it would be all right, but he  
thought that as soon as other teams were involved they also should be informed.  
The Netherlands office had issued alphabetical lists of people whom they had not  
yet found, which were really extracts from the Commission lists, in which  
appeared only people they wanted. These lists were issued to British, French,  
and American Governments and Sir Robert Craigie had asked him to point out who,  
in the case of war criminals, should have some priority. Supposing there were  
ten notorious people on these lists - if they were all looking for these ten  
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immediately and that was what he was asking, namely, if there was any possibility  
of stopping the search for a particular war criminal, for whom several  
nationalities were looking, as soon as that man was found. He quite agreed that  
National Teams should inform their own National Offices, but this was not the  
point - which was, that they should inform everybody who was working for them  
that they had found a certain man. He had no idea how it should be worked out,  
but he thought that some means should be found to stop other teams wasting time.  
Where the detention lists were concerned, there was a considerable lapse of time  
between finding somebody and that name appearing on the lists. It might take six  
weeks before they knew a man was in a certain camp, and, if they relied on the  
CROW/CASS lists, they would be continuing their search for this man in the  
meantime.

Lieut. Colonel HARRIS said that although the various Allied Missions  
in Rhine Army did co-operate to the best of their ability, he could not believe  
that any allied mission had so little to do at present that they could take time  
off to search for wanted men for <sup>other</sup> countries. He could assure Commander Mouton that  
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The CHAIRMAN commented that it was not really machinery - it circulated automatically in mass.

Lieut. Colonel HARRIS said that Commander Mouton had talked about the delay in the issue of the Detention Lists. It was not the Lists which the Rhine Army saw but the actual Detention Reports and although in the early days it had taken a long time from the arrival of a name to the sending off of a report, the delay now was very short.

Sir Robert CRAIGIE enquired whether all the Investigating Teams saw the reports.

Lieut. Colonel Harris replied that the Allied Missions did so; the Detention Reports were held at Rhine Army Headquarters.

The CHAIRMAN thought there was no doubt that the best solution to the notification of the finding of a wanted person lay in the continued close co-operation of the Allied Missions and Investigation Teams in the field.

CROWCASS (DOC. MISC. 57)

M. de BAER said that he had been asked by Committee I to put before the Commission one question concerning CROWCASS which had developed into quite a serious question. This question originated in the surprise which members had felt when Lieut. Colonel Ryan had told them that no action was automatically taken on the Commission's lists and no search instituted for the accused persons. Afterwards, they had received a document which was called "What is CROWCASS"; two draft documents - one which Lieut. Colonel Ryan brought with him and another, the second draft, which was sent in later; and thirdly, two days ago; they had received a letter from CROWCASS. He had prepared a paper which, if he put it before the Commission, would take an hour. He thought therefore, in view of the fact that they had present Lieut. Colonel Harris, who had read Doc. Misc. 57, which was drawn up by Dr. Litawski, they should ask Lieut. Colonel Harris what he thought of Document Misc. 57. M. de Baer said he had had a short conversation with Lieut. Colonel Harris before the meeting and in the light of that, he thought some of his views would have to be revised. The first thing would be to ask Lieut. Colonel Harris to comment on Doc. Misc. 57 and, at the next meeting he would bring up the CROWCASS letter for discussion.

Lieut. Colonel HARRIS remarked that this question should really be answered by a member of the CROWCASS staff and not by him. He could only give his personal views on the points raised in this paper Misc. 57. Point 1 was the question of the necessity for registration with CROWCASS before an official claim could be made. This was a claim by CROWCASS which could not be substantiated. Prior to the ruling which was given by the War Office that they would not hand over people before they had been listed by the UNWCC, the British authorities did hand over people whether or not they had been registered with CROWCASS, if they were satisfied that there was a case, so he did not think that the CROWCASS claim, referred to in point one, really held water.

Point 2: He did not entirely agree with this, because, looking at the second-last paragraph on page 2, it would appear that the author of the document felt that it was wrong that a Wanted Report should be filed with CROWCASS until the UNWCC had agreed to register the wanted man as a war criminal. As he saw it, before a case could be submitted to the Commission, a good deal of work had to be done and a case had to be prepared. He was sure that there was no police force in the world which waited until it had prepared its case, before it sent out a hue and cry for somebody it wished to arrest. He considered that the first step which should be taken by any nation on the discovery that a person was suspected as a war criminal, was to get hold of the man whom they suspected of having committed that crime and therefore to submit a Wanted Report to CROWCASS, long before the case arrived at the Commission. He thought there were some nations which had not been making full use of CROWCASS and which had not been sending in their Wanted Reports. He did not know that from the 16th list, CROWCASS had not been including the UNWCC lists in CROWCASS lists. In practice this was unfortunate but in theory all right because a man should appear on a CROWCASS wanted report before he appeared on a UNWCC list.



As regards the third point, which he had not read very thoroughly, he thought that there again the present staff of CROWCASS was being a little categorical in not listing anyone who was an ex-enemy national. He thought it quite certain that they would find on CROWCASS lists people whose nationality was that of their allied nationals and he knew Rhine Army had tried and sentenced a certain number of people who were not of ex-enemy nationality. He was afraid that point was one which could only be argued out with CROWCASS and he thought that in practice, it was not quite so definite as laid down in their statement.

M. de BAER said that he was interested in hearing that some nations had not sent in Wanted Reports, but he thought that this was because no action was automatically taken by CROWCASS when they received a Wanted Report. In other words, CROWCASS felt that detection, searching etc. was work for investigating teams. He asked whether he was right in assuming this.

Lieut. Colonel HARRIS said that this was correct up to a point. Sending a wanted report to CROWCASS was really like sending an advertisement to the daily press saying that they wanted a particular person. In sending it to CROWCASS they were sending it to an organisation which had a very much wider circulation and they therefore got the widest possible publicity.

M. de BAER asked what exactly was being done at CROWCASS in respect of the search for wanted persons. The Commission were getting so many conflicting reports, that he would like to have Colonel Harris' opinion.

Lieut. Colonel HARRIS said he could only say so far as the Rhine Army was concerned. Something like 550 copies of CROWCASS lists were distributed throughout the British zone. When they got the lists they did not look down them and say they would go out and look for the people - it was merely a sort of net into which some of these people may stray and then turn out to be someone on a CROWCASS list who is wanted. Lieut. Colonel Harris went on to say that at Headquarters Rhine Army, they had a large card index in which every man shown on a CROWCASS Wanted List and/or UNWCC List was carded and any name of any German coming into Headquarters Rhine Army with reference to war crimes was checked against that card index. Registration with CROWCASS had therefore two results; one, the maximum possible publicity for a nation's requirements, and, two, an insurance that a detained person would not be handed over to one nation without reference to any other wanting nation. If another nation, say, Belgium, wanted a certain man and the Dutch authorities also wanted him, Headquarters Rhine Army would notify the Belgian and Dutch representatives to the effect that both wanted the same man and ask them to decide between themselves which one was to get him. If a satisfactory conclusion was not reached, the matter was referred to the Allied Control Council for decision.

M. de BAER asked whether they used the German police when searching for a man. For instance, if they wanted a man, say Hans Schmidt from Recklinghausen did they inform the German Police that Hans Schmidt of their village was wanted and ask them to tell them whether they had any information about him, because in M. de Baer's opinion it was the local German police who were the best placed to find such a man.

Lieut. Colonel HARRIS replied that if B.A.O.R. knew a man who was wanted was thought to be in a certain district, they instructed the Mil. Gov. detachment concerned to arrest the man. Mil Gov. detachment passed the information to their Public Safety Branch which controls the German police, and arrests were very often carried out by German police.

Mr. BURDEKIN asked if it was known where the man came from, would they be notified of that as a probable place for him to return to.

Lieut. Colonel HARRIS said that if they had any sort of a clue as to his whereabouts they would try to get on to him through Mil. Gov.

Colonel SPRINGER asked whether Lieut. Colonel Harris would say what procedure would be initiated by the filing of a wanted report.

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Lieut. Colonel HARRIS said that if Colonel King of the American department came to him and said that they wanted a certain man living in Cologne, they would ask the Cologne Mil. Gov. detachment to find that man.

Dr. MAYR HARTING said that he understood that the military authorities, before releasing any POW made sure that his name did not appear on a CROWCASS Wanted List and wondered whether the same thing was done with regard to Commission lists.

Lieut. Colonel HARRIS said no, and felt he ought to say that to check any man against a War Crimes list was a monumental task. He said that the Commission had issued 43 volumes each containing anything up to 10 lists, and the task of checking a name against 430 lists was something which no unit would undertake.

Dr. MAYR HARTING said it was then quite possible that a man who was only on a UNWCC list and <sup>not</sup> on a CROWCASS wanted list would be released.

Lieut. Colonel HARRIS said that so far as Headquarters Rhine Army was concerned this was not very likely because they had a card index and all applications for release from Civil Internment Camps came to Rhine Army and were checked against this Card Index before release took place. Sometimes it happened that a man did get through, but not very often.

Dr. MAYR HARTING enquired whether, if his government asked for the surrender of one of its own nationals, showing that he was responsible for violations of the laws and customs of war, did they refuse to surrender him because he was a quisling and the request would require to go through diplomatic channels.

Lieut. Colonel HARRIS said he could not remember off hand what had happened with regard to Czechoslovak nationals but they would almost certainly contact the Political Division as to what action should be taken.

Dr. MAYR HARTING asked whether some difference was made between allied nationals and ex enemy nationals.

Lieut. Colonel HARRIS said yes, a difference was made.

Commander MOUTON said with regard to point 3 of Misc. 57, he thought the Commission might be interested to know that he had already taken steps to approach the Control Council in Berlin to ask them to have the ruling on quislings changed.

According to Dutch national law, men lost their Dutch nationality and were more or less stateless persons from the time they volunteered for foreign service.

Lieut. Colonel HARRIS thought that at the moment, Dutch people, wanted as members of the SD, who were in the British Zone, were dealt with by the Dutch security people and not by the War Crimes Commission.

Commander MOUTON said he supposed that depended on whether they were on the lists or not.

Lieut. Colonel HARRIS thought it best to get the names of such people on the lists as security suspects.

Commander MOUTON said that Committee I had been listing people when there was a prima facie case against them, without regard to the classification of nationality.

M. de BIER informed Commander Mouton that the question of nationality had never been considered - they had always left it aside. They had had a case of a man who was technically a Pole - originally a German - but had become a Pole through the Versailles treaty and had committed atrocities. They had decided that the question of nationality would not be recorded in this Commission - it was too difficult. The rules were completely different in each country and in his opinion - the opinion of Sir Cecil Hurst - it was impossible to talk about nationality.

Commander MOUTON said the fact was that the person listed did not become a German, but lost his Dutch nationality.

Dr. CYPRIAN said that Lieut. Colonel Harris had stressed the importance of early submission of wanted reports to CROWCASS to speed up the proceedings, but he had found in Doc. 57, last page, para 4, that "in future... all the names of war criminals and only those contained in the Commission's Lists should be included automatically and promptly in CROWCASS Wanted Lists, irrespective of whether Wanted Reports have, or have not, been sent in by the National Offices". Was this submission to be accepted or were Wanted Reports to be sent in to CROWCASS? They had to wait until a man was listed by the Commission, then CROWCASS got this list from the Commission, and therefore he did not see the point of National Offices sending Wanted Reports to CROWCASS.

M. de BAER said that before the meeting, his ideas had concurred with those of Dr. Cyprian, but that since talking to Lieut. Colonel Harris he found himself in agreement with him. The important thing was to get the men.

Sir Robert CRAIGIE said he understood that on the whole the practice of CROWCASS was to include names on Wanted Lists when they received them, but he pointed out to Dr. Cyprian that, in fact, as had been discovered at a recent meeting, they did not put on CROWCASS lists names appearing on UNWCC lists.

Sir Robert CRAIGIE thought there was very great advantage in CROWCASS listing people on their wanted list as soon as the wanted reports were received and very great advantage in the forms being sent in to CROWCASS as soon as the name of a wanted man was known.

Dr. CYPRIAN remarked that if the people were listed at once, it meant that CROWCASS did not wait until the Commission lists arrived.

Dr. SCHRAM NIELSEN said that as far as he remembered, at a previous meeting of the Commission, we had cancelled the secrecy of the lists, just in order that CROWCASS might take names from lists 17 and onwards and put them into the first new volume of CROWCASS Wanted Lists.

Sir Robert CRAIGIE replied that that was the idea. Whether in fact it was going to be carried out by CROWCASS he did not know. He thought it very desirable that they should continue to press the point. He thought Lieut. Colonel Ryan was impressed by the need that something should be done on this point. He asked whether he might, on this point, put one small question to their guest that day. With regard to the use which was made of the Commission's lists, he would like to know whether, owing to the form in which the lists were sent out, Lieut. Colonel Harris considered it was not practicable for orders to be given on receipt of the list of names, for certain individuals to be searched for. So far as prisoners of war were concerned the point was less important because B.A.O.R. always put these names into a card index, so that anyone appearing on this index would not be released without reference to the Commission's lists. Was that as much attention as it was possible in present circumstances to pay to the Commission's lists?

Lieut. Colonel HARRIS stated that at the moment in Rhine Army they got two copies of the Commission's lists. They had been asked if they required more, but they felt it was quite useless to send them on, because it was so difficult to check against them.

The CHAIRMAN said that there was no one who could undertake the reconstruction of the list. CROWCASS could not do it and the Commission could not do it. They ought to have the names put into alphabetical order. Then if a name was wanted, one simply turned to the appropriate alphabetical section but he felt that this could not be done now.

Lieut. Colonel HARRIS said that in theory anyway, if the Commission were to produce such a consolidated list they would be really duplicating CROWCASS' work. They might arrange with CROWCASS that any man against whom the Commission had found a true bill would be marked with an asterisk in CROWCASS lists.



Sir Robert CRAIGIE thought that this had been discussed with Lieut. Colonel Ryan who said he would consider it. He thought in fact that CROWCASS did compare the Commission's lists with their own CROWCASS wanted lists.

Commander MOUTON asked whether it would not be better if all National Offices took the same course. He understood that some national offices were sending in their Wanted Reports immediately, while others were waiting until the men had been listed by the Commission. He would like to propose that all National Offices send in their Wanted Reports without delay and without waiting for the wanted persons to be listed by the Commission.

Sir Robert CRAIGIE said that he would be glad to support any recommendation made to that effect.

Mr. BURDEKIN said that a recommendation should be put to the National Offices that this procedure be carried out.

#### STATEMENT ON THE PROGRESS OF TRIALS OF WAR CRIMINALS IN POLAND.

The CHAIRMAN said he understood that Dr. Cyprian would like to make a statement on Trials in Poland.

Dr. CYPRIAN said that he would not like to take up too much of the Commission's time and as his statement covered four typed pages, he suggested it would be better to circulate it.

He hoped that at the meeting the following week there would be an opportunity to examine it.

#### REPORTS OF CHAIRMEN OF COMMITTEES.

The CHAIRMAN asked M. de Baer and Dr. Mayr-Harting whether they had any reports to make.

Dr. Mayr-Harting and M. de Baer said they had nothing of importance to report.

Colonel SPRINGER wished, before going on to another subject, to ask a question of Lieut. Colonel Harris. He understood that Lieut. Colonel Harris' department had taken the UNWCC Reports and card indexed them, so that they could look through those cards to assure themselves that a person was not listed, before he was released. He asked whether CROWCASS had a similar card system.

Lieut. Colonel HARRIS said that until he had seen paper 57 he had thought CROWCASS was still including every name on the UNWCC lists on their lists, but having read the paper he was not so sure what they were doing. His own card index included every one on UNWCC lists and CROWCASS lists and also had a space at the top for UNWCC reference, CROWCASS reference and his own file number.

Colonel SPRINGER said that the Commission were told at a previous meeting that CROWCASS had done practically nothing since the 16th list and he was going to suggest <sup>that</sup> M. de Baer might include in his paper the possibility of a card index being made from the Commission's lists, so that before releasing people their names may be checked against the Commission lists. He knew that there was quite a bit of work involved in making such an index but there was a whole lot more work involved in checking against 44 different lists. Lieut.

Colonel Harris had stated a case where the Belgians had asked for one of their internees in a C.I.C. - what was the procedure for surrendering him?

Lieut. Colonel HARRIS thought he had referred to the case where the Belgians wanted someone who was wanted by someone else.

The proforma would come in from the Belgian War Crimes Mission, applying for "Hans Schmidt" to be handed over. That would go first to his library to be card indexed and any information they had would be pinned on to the application before it was turned over to any officer for action. If no other nation wanted him, they would automatically ask CROWCASS to confirm that no other nation wanted him. If they subsequently found that someone else wanted

the man they would write to both the nations concerned and ask them to decide between themselves who was to get him.

Colonel SPRINGER asked that it be assumed that they wanted him for trial. Would he be transferred for trial, if he did not appear on the UNWCC lists?

Lieut. Colonel HARRIS said that this would be so; if CROWCASS confirmed that there was no objection to such a request, he would be handed over.

M. de BAER said he thought Colonel Springer's question was "if he did not appear on the lists".

Lieut. Colonel HARRIS said that all they could do then was to get him registered with the UNWCC or would get him on loan.

Commander MOUTON asked if a country was asking for a Security Suspect would there be any priority between a Security Suspect and a War Criminal. He knew that Wanted Lists showed a certain number of Security Suspects and war criminals.

Lieut. Colonel HARRIS replied that they were quite disconnected. Security Suspects were dealt with by the Intelligence section and War Criminals by Headquarters, Rhine Army. They were two entirely different organisations, but both part of the British set up.

Colonel SPRINGER asked whether a distinction was made in surrendering those on "A" lists and those on Security Suspects lists. He supposed they would make a distinction with regard to witnesses. He asked whether they would surrender a man as a witness who was not registered by the UNWCC.

Lieut. Colonel HARRIS said they would only surrender a witness on loan and would expect to get him back.

Colonel SPRINGER asked whether a distinction was made between those on the "A" lists and those on the "S" lists.

Lieut. Colonel HARRIS wanted to know the difference between an "A" list and an "S" list.

Sir Robert CRAIGIE explained that the "A" lists contained the names of persons against whom there was a prima facie case of war crimes having been committed, the "S" list contained the names of those against whom there was suspicion but not prima facie evidence. Colonel Springer had asked whether in practice any distinction was made between them.

Lieut. Colonel HARRIS said that as far as he knew, that question had not arisen. He thought they would be justified in handing over the man to the nation with an "A" registration. In practice, for the sake of friendly relations, they would in such circumstances, refer it to both nations and say that in their view the nation holding the "A" registration should get the body.

The CHAIRMAN said that as Lieut. Colonel Harris would be available here next Wednesday, the Commission must not weary him any further.

#### CRIMES AGAINST HUMANITY, STATEMENT BY COMMITTEE III ( DOCS. C236 and 237)

The CHAIRMAN said that the Commission had read Dr. Mayr-Harting's valuable report on crimes against humanity with much interest.

Dr. MAYR HARTING remarked that paper C.236 was as much the work of Dr. Schwelb as himself and he thought it would be useful to discuss these papers in connection with some Yugoslav cases that had been up before Committee III for discussion.



The CHAIRMAN asked whether Dr. Mayr-Harting wanted a special discussion in connection with the Yugoslav papers, when they had come up in Committee III. Then if they had the Committee III report on the matter in advance, they could devote a whole meeting to it.

Dr. MAYR HARTING thought this would be very useful.

The CHAIRMAN said this would be done. The Commission would take over the whole of the discussion after the report, including the statement about the Yugoslav cases, had been laid before them, probably the week after next. Then they would be able to get the view of the Commission on the whole of the question of prima facie cases of crimes.

FORMAL APPROVAL OF FORTY FOURTH LIST OF WAR CRIMINALS.

The CHAIRMAN said that the Commission had all seen this list and would have noted that the word "Secret" had been struck out. He asked how many names appeared on this list.

Dr. LITAWSKI replied that there were 600.

The CHAIRMAN asked what was the total number of persons so listed?

Dr. SCHWELB said there were 18,700 altogether.

The List was formally approved.

Mr. BURDEKIN assumed that the letter from CROWCASS (A.26) would be discussed next week.

The CHAIRMAN said they would resume the discussion on CROWCASS next week and that it would be very useful to have Lieut. Colonel Harris' observations if he would kindly make himself available to attend.

*Wright*

UNITED NATIONS WAR CRIMES COMMISSION

## MINUTES OF MEETING

HELD ON

WEDNESDAY, 4TH DECEMBER, 1946 AT

4.15 pm

Chairman: Lord WRIGHT Australia

Also present: Sir Robert CRAIGIE United Kingdom  
 M. de BAER Belgium  
 Mr. DAO China  
 M. DIMITSAS Greece  
 Mr. HORNE Canada  
 Mr. AARS-RYNNING Norway  
 M. MEZULIC Yugoslavia  
 Dr. SZERER Poland  
 accompanied by  
 Dr. CYPRIAN  
 Dr. SCHRAM NIELSEN Denmark  
 Commander MOUTON Netherlands  
 Major FANDERLIK Czechoslovakia  
 Mr. BRIDGLAND Australia  
 Colonel SPRINGER United States of America  
 accompanied by  
 Mr. Ben H. BROWN Office of the Legal Adviser,  
 United States State Department.  
 Mr. BURDEKIN New Zealand  
 Lieut. Colonel BARRATT Office of the J. A. G.  
 Lieut. Colonel HARRIS.

Apologies for absence were received from:

Mr. DUTT  
 M. MAILLARD  
 H. E. DR. F. T. CHENG.

The minutes of the 116th meeting were approved and signed.

Amendments to draft Minutes M.117, received from Lieut. Colonel Harris, and Sir Robert Craigie will be incorporated in the final text.

CROWCASS (Docs. Misc. 57 and 58 and A.26)

The CHAIRMAN said that M. de Baer had some observations to make.

M. de BAER said that he had expressed his views in Misc. 58, which the Commission had before it, but it had only just been rolled off. He thought, therefore, the only practicable way of discussing this paper was to take each suggestion, one after another, and see whether or not it met with the Commission's approval, and perhaps they might also ask Lieut. Colonel Harris what he thought of it. M. de Baer said he had tried to examine each suggestion objectively, to put himself in the place of CROWCASS, consider the difficulties of personnel and the practical difficulties with which they were faced. The Commission would note that Suggestion I was that CROWCASS should act automatically on the UNWCC lists as was shown on M.113. This part of the paper (Misc. 58) which had been drafted the day before, was in the light of what Colonel Springer had just told him, already out of date: Colonel Ryan had informed the Commission at a previous meeting that in respect of UNWCC lists 1 to 16, CROWCASS had checked the Commission's lists 1 - 16 with their wanted lists, and put on the Wanted Lists all persons listed by the Commission, but this practice had been discontinued. Colonel Springer had had a telephone conversation with CROWCASS that day, during which he had been informed that this practice of checking CROWCASS Wanted Lists against the Commission's lists was being



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resumed. So, though he had intended to suggest that they should not burden CROWCASS with this task - as it was really the business of National Offices - CROWCASS had been kind enough to do it and he therefore thought the Commission should thank them.

The CHAIRMAN asked whether M. de Baer was quite sure that CROWCASS were actually going to do it.

Colonel SPRINGER said that CROWCASS had informed him that morning that they were in the midst of the process of listing the persons appearing on UNWCC lists on their Wanted Lists, and added that his suggestion about the possibility of having a card index was consequently no longer in order.

Dr. SCHRAM NIELSEN said he felt sure that many governments would deeply appreciate the attitude of CROWCASS and thought that, as to this point, perhaps Colonel Springer would have an opportunity of conveying their thanks to CROWCASS.

The CHAIRMAN agreed and asked Colonel Springer if he would convey the thanks of the Commission on this point, to CROWCASS.

Colonel SPRINGER undertook to do so.

M. de BAER said that Suggestion II was, before accepting a Wanted Report, CROWCASS should wait until the accused has been placed on one of the Commission's lists, and act accordingly. After the last meeting, he had thought that this would not need discussion. He thought members would all agree that it was essential to catch the accused as soon as possible, even without waiting for the case to be sent to the UNWCC. A Wanted Report was essential and should be sent to CROWCASS as soon as possible. The suggestion should therefore be rejected.

After some discussion, the suggestion II was rejected.

With regard to Suggestion III M. de Baer said this was an alternative if suggestion II was rejected. The question was, should CROWCASS not delete from Wanted Lists persons whom the UNWCC had refused to place on its lists?

The object of this suggestion was the following: A Wanted Report was sent in for "Hans Schmidt" to CROWCASS, and the man arrested. Then the Commission examined the charges brought by the National Office and found that on its merits, it did not make a good case against "Hans Schmidt" and therefore decided to reject or adjourn it. Was "Hans Schmidt" to stay indefinitely in custody? The difficulty there, was that if the Commission were to send in to CROWCASS each week a list of all the cases which had been adjourned, he felt it would create a hopeless muddle. Something, however, should be done in this respect. It was unfair that a man against whom there was not a good case should remain in custody for months and months without knowing his fate.

Another suggestion had been made that morning by Sir Robert Craigie and that was, that without informing CROWCASS of all the cases which were being adjourned and which might, at some later date, be taken up again, the Commission should inform the occupying authorities in Germany that when a case is brought to their attention - of a man detained months and months ago - and regarding whom no government had taken any action, either to send in a Wanted Report or to ask for his surrender, they should notify such cases to the Commission in order that they might be revised. M. de Baer thought that to be an extremely wise suggestion. The Commission could not make a comprehensive list of all adjourned cases, but he thought that they could inform the occupying authorities of the proposal, and wondered what Colonel Harris thought of this proposal.

Lieut. Colonel HARRIS asked whether the occupying authorities were to let the Commission know of all the people they had been holding for a long period, for whom no government had asked.

M. de BAER said, to ask them to supply a list of all those in custody for whom no Wanted Report had been received was a terrific task and the screening of all these people would be a huge job, and wondered whether



this work could not be reduced by merely informing the Commission whenever a case like that was brought to their attention, without screening all prisoners.

Lieut. Colonel HARRIS said that from time to time, Rhine Army rather bullied the Allied Missions, by saying, in effect, that if no application for transfer was received within a reasonable period after a man had been arrested on behalf of an Allied Government, Rhine Army would release him, unless a request was received justifying further detention. So, actually, they were doing what had been suggested, only they were doing so locally. When they got no results from that method, they tried through higher authorities.

Sir Robert CRAIGIE thought the suggestions should only apply to persons who had been arrested on the basis of the Commission's lists.

Lieut. Colonel HARRIS thought it a very good idea.

Sir Robert CRAIGIE remarked that it would then be up to Committee I when they got such cases, to look into the whole thing. In cases where there was insufficient evidence and it was decided not to prosecute, it should be referred back to the National Office; if a minor case, they should recommend release.

M. deBAER said they should send the case back to the National Office asking for more information, otherwise, the Commission would recommend release.

Sir Robert CRAIGIE agreed. The point had been raised, whether such an individual should be taken off the Commission lists. The feeling of Committee I was against this because Commission lists should contain the names of all persons against whom there was a prima facie case. If nobody was going to prosecute, it was against our sense of justice that he should be left languishing in jail indefinitely. The fact of the name remaining on the list might prove useful for future reference, but it should not militate against the man's release.

The CHAIRMAN asked what sort of period would elapse before the Commission would be in a position to do anything.

M. de BAER said they had thought about it in Committee I that morning and had agreed that for all cases of persons who had been listed up to now, National Offices should be informed that if they had not done anything about them by the 1st of March of April or next year, the Commission would not press that they should remain in custody; for other cases, a period of three months was envisaged. For new cases, National Offices should merely send in Wanted Reports at the same time as they sent cases to the Commission, after a man has been listed, they gave them another three months. He considered this quite generous.

Mr. BURDEKIN said he understood from Sir Robert CRAIGIE's remark that this would only apply to persons arrested who had been listed by the Commission, i.e. in a small number of cases, and in all other cases, the occupying authorities would apply direct to the National Offices. He would like to make sure that this was correct.

Sir Robert CRAIGIE thought that was their idea in the course of the discussion that day. They were primarily responsible for people arrested on the basis of the Commission lists. As to the others - a very much larger number - he was inclined to think that it was primarily a matter between occupying authorities and National Offices concerned, as he hardly thought it to be within the competence of the Commission to intervene in cases where it had no part in the arrest.

Mr. BURDEKIN said that his idea was not to suggest that more cases should be sent to the Commission but on the contrary that this should be an exceptional procedure only to be used in cases where national offices had not submitted Wanted Reports to Crowcass and the arrest had been made solely on the strength of the name appearing on one of the Commission's lists.



Lieut. Colonel HARRIS stated that it was very difficult to keep an eye on cases numbering something like 4,000 individuals, without a very large staff, so that any information, from any source, pointing out that a certain man had been in internment for a considerable time and about whom nothing was being done would be of assistance to Rhine Army. He did not know what percentage of cases which had come before the Commission had been adjourned or rejected, but he thought it would help Rhine Army if lists were published after each meeting, indicating those which had been either adjourned or rejected. These would be checked and if it was found that a certain case brought by "Patagonia" had been adjourned, Rhine Army would take it up again with the local "Patagonian" representative and say to him: "Now what about this man, is your government going to produce further evidence? If not, we are going to let him out".

Sir Robert CRAIGIE thought this was very sound.

The CHAIRMAN said they could put this in as a recommendation in the general conduct of affairs, but not make any hard and fast rule about it.

M. de BAER, referring to Suggestion IV - namely that CROWCASS should discontinue its practice of refusing to accept Wanted Reports concerning persons of Allied nationality (Quislings or traitors) said, the Commission had the CROWCASS Letter (Doc. A.26) from which it appeared that the method CROWCASS used for deciding whether anyone should be put on a wanted list was not the same as that which was being used in the UNWCC. Nationality was the 'yardstick' adopted by CROWCASS: If a man was a German he was put on the Wanted List right away, but if he was English, French or Dutch, he was not put on the Wanted list. As he had stated at the last meeting, the Commission had found nationality a 'yardstick' that was too uncertain to be applied. He had tried to explain that in this paper.

He had stated last time that on the very first time they had had the case of a man, who was a German and had become a Pole after the treaty of Versailles. He had been charged with committing atrocities against Poles during the last war and Committee I had decided to put this man on the list, because he had committed a war crime. In other words, it was decided not to consider the question of nationality but to investigate the case in an objective way, if the act was a war crime, irrespective of the apparent nationality. He said 'apparent' because although a person might be described as a Belgian or a Dutchman, it was not quite certain that during the war such a person had retained that original nationality. There were many acts which might have implicated him - such as the act of enlisting in the German army or acts coming from outside, such as the Fuehrer deciding that such people were not only German from 1940 but retroactively reinstated in their German nationality since 1918. This was to such an extent that some of the people in Europe did not themselves know what was their nationality. As he had said - and Sir Cecil Hurst had also agreed in this - they had always considered nationality as not a good 'yardstick' and that had never been challenged. He would therefore be in favour of recommending Suggestion IV and asking CROWCASS to consider whether they should not discontinue their practice of listing or not listing, according to the question of nationality. It might be that CROWCASS had not the power to do this and that a revision of policy from the Commission of Control should be obtained. If this was so, M. de Baer suggested they should approach the Commission of Control in this respect.

Sir Robert CRAIGIE said that he would support M. de Baer's suggestion all the more in that he thought it was virtually impossible for CROWCASS to make a distinction really on the point of nationality. All they could do, when they knew for certain that a man was of allied nationality, was to refuse to put him on their list. Obviously there were many of allied nationality, who, unknown to CROWCASS, were on their lists, so that, in any case, it could not be a very clear distinction. The result of this was that these criminals, who were traitors as well, were liable to get off scot-free - at all events were unlikely to be surrendered. This appeared to be a reductio ad absurdum and he hoped that this particular point would be pressed with some vigour.

M. de BAER thought he might put it a little more clearly. He did not think Quislings should be allowed to go scot-free, although the Commission were



not interested in Quislings as such and therefore it was outside their jurisdiction. He absolutely agreed with what Sir Robert Craigie had just said.

Lieut. Colonel HARRIS said he would suggest a rider to this: that CROWCASS should list all Allied Nationals for whom wanted reports alleging specific war crimes were received.

M. de BAER agreed.

The CHAIRMAN said they should specify the charge.

Colonel SPRINGER added "regardless of nationality".

M. de BAER said this would be so even when he was known to be an ally.

Lieut. Colonel HARRIS said that as he had understood it, the written recommendation was to list all those people **without** enquiring as to their nationality or as to the substance of the **crime**.

M. de BAER thought that CROWCASS should not use nationality as a 'yardstick' and that when an allied national was charged with a war crime, he should be placed on the list and not refused on the grounds that he was an ally.

Sir Robert CRAIGIE said that Lieut. Colonel Harris had made an additional suggestion that persons charged as war criminals for specific crimes should be put on the list, **whatever their nationality**.

Colonel SPRINGER said that CROWCASS should not enquire into nationality along these rules with which the Commission are made acquainted, in cases where the Commission has already passed on a case and also in cases where a wanted report is filed before being submitted for the Commission's consideration.

M. de BAER said that fundamentally this was what he had said.

He could not see how CROWCASS could establish a person's nationality during a war. All these people were either traitors, or war criminals, or would have been on the Wanted List for committing some acts in connection with the enemy, any of which may have had an influence on his nationality. In all cases therefore, the nationality of the accused would be in doubt. He suggested therefore that CROWCASS should not go into the question of nationality in respect of the persons listed by this Commission - and that persons charged with having committed war crimes, should not be omitted from a Wanted List on the grounds that they were Allied Nationals.

Commander MOUTON asked whether the Commission would now write a letter to CROWCASS or to the Control Commission putting forward M. de Baer's suggestion.

Sir Robert CRAIGIE thought he was right in saying that Lieut. Colonel Ryan had said that he was not in a position to modify his ruling on that, because he had instructions from the Control Council - therefore he felt that they would not get much further in taking it up only with CROWCASS and suggested that they take it up with the Control Council. So far as he was concerned, he was prepared to ask the U.K. Government to take it up with the Control Council because he considered the matter urgent. The Americans and the French would probably do the same if the Commission were in agreement.

Commander MOUTON said that the Dutch government had already taken the matter up but would be happy to have support.

Colonel SPRINGER said the United States would be quite prepared to do this.

M. de BAER proceeding with Suggestion V, said the National Offices should be asked to send their Wanted Reports to CROWCASS at the same time, or not later than they send the relevant case to the UNWCC. He thought this would meet with the support of CROWCASS. The concrete outcome of this would be that each representative would be asked to write a letter to his government, asking that they should send the reports direct, as soon as possible.

Sir Robert CRAIGIE asked whether they could not go a little further. There was some advantage in the reports being sent in even before applications were made to the UNWCC. As phrased here, the recommendation was limited to "at the same time or not later than". He suggested that this should read "at the earliest opportunity and in any case not later than".

The Commission agreed to this amendment and passed to CROWCASS Suggestion VI, which stated that it should be necessary to send a Wanted Report to CROWCASS, before any claim could be made. He did not think CROWCASS was trying to tie up National Offices to that extent and he did not really see the purpose of it. Lieut. Colonel Harris had stated at the last meeting, he was of the same opinion.

M. de BAER proposed Suggestion VI should be rejected. This was agreed.

Suggestion VII: That each name on a UNWCC list should be marked with an asterisk on the CROWCASS lists. M. de Baer thought it was Sir Robert Craigie who had put this forward. They would differentiate from Security Suspects.

Commander MOUTON asked if there were not any Security Suspects on the lists.

Lieut. Colonel HARRIS thought they would find that the CROWCASS lists now referred only to war criminals, whereas they at one time included security suspects as well.

Sir Robert CRAIGIE asked whether suggestion VII was not mixed up with Suggestion I, the two covering rather much the same ground.

M. de BAER thought from what they had heard from Colonel Springer with regard to suggestion I, that this proposal was no longer relevant and he did not think it necessary that CROWCASS should mark the names with an asterisk.

Colonel SPRINGER said that they could probably observe that suggestion because in future, when the UNWCC lists came out, it would be too late to put an asterisk on the wanted reports.

Major FANDERLIK said this would be useful if it did not create too much difficulty and superfluous work. In this way they would be able to see how many people listed by the Commission were wanted.

Sir Robert CRAIGIE said that when CROWCASS found a man on the Commission lists who was already on their Wanted Report they could have some system of marking the list - such as the asterisk.

Colonel SPRINGER suggested that it might be just as valuable to have some indication as regards names where no wanted reports had been filed, but where men had been placed on the wanted lists only by virtue of the fact that they were on the Commission lists. It was these people whose cases the Commission might want to review.



M. de BAER said these people would have to be marked in a different way.

Sir Robert CRAIGIE asked whether they could not combine that suggestion with the other and leave it to CROWCASS to do it if they can. It might be heavy work but if CROWCASS was prepared to do it, it would be useful from the Commission's point of view. This was agreed.

M. de BAER said that the last point was the question of a pamphlet entitled "What is CROWCASS?". As the Commission had read, before the last meeting, in a paper which Dr. Litawski had circulated (Misc. 57), CROWCASS was intending to issue a memorandum on the way in which CROWCASS worked. He had been surprised to see the way in which the first draft pamphlet had been worded. It began with the words "With the exception of the UNWCC, which fulfill a similar function to CROWCASS in a slightly different way, and with whom CROWCASS maintains close liaison, there should be no necessity for any other authority to issue a wanted list". CROWCASS was a Central Registry of War Criminals and the UNWCC was a completely different body that examined cases on their merits and the lists it made were not key lists for the arrest of persons, but key lists for the surrender of accused persons which was completely different. He had tried to make this clear in his paper and he considered there much be some misapprehension. He wondered if the attention of CROWCASS could be called to this point. In the second version of this pamphlet, the wording was a little different. He thought the reference made there was to War Crimes Commission lists 1 to 16, which were checked by CROWCASS with their lists. He felt sure that CROWCASS did not mean by that that it hoped the work of the War Crimes Commission was going to be eliminated. So that there would be no misunderstanding, it would be a good thing for CROWCASS, to show in a few lines just what was the difference between the work of CROWCASS and that of the UNWCC.

Sir Robert CRAIGIE entirely agreed and asked when the brief was to be published.

M. de BAER said he did not think the brief had been published yet, as the Commission had been asked to make suggestions.

Sir Robert CRAIGIE wondered what CROWCASS could have had in mind when they said it "should not be necessary for any authority other than CROWCASS to publish Wanted Lists". What other authority could or did publish Wanted Lists?

Lieut. Colonel HARRIS said that the Rhine Army published a small list about once a fortnight of "red hot clues", for internal use only and they sent copies to CROWCASS and to liaison officers in Baden and Wiesbaden.

Sir Robert CRAIGIE asked whether Lieut. Colonel Harris knew of any other lists which came within that category.

Lieut. Colonel HARRIS did not know of any others.

The CHAIRMAN said that all they could do was to ensure that a proper account of the Commission's activities was put into the CROWCASS publication and to make a suggestion for altering what they had written.

Colonel LEDINGHAM was sure the suggestion would be gladly received. CROWCASS wanted to publish the brief as soon as possible and were holding it up for the Commission's comments and suggestions.

M. de BAER said that a few words on the lines of the first paragraph of his paper (Misc. 58) would help to clarify the position.

Dr. SCHRAM NIELSEN left the meeting at this juncture.

The CHAIRMAN said it was a very good paragraph and asked whether M. de Baer could add some statement of the Commission's fundamental and original duties. He did not think it was touched upon expressly here. Dr. Litawski, he thought, had mentioned it in his document (Misc. 57).

M. de BAER drew attention to a paragraph at the head of page 4, which might cover the points.

The CHAIRMAN thought the first paragraph on page 1 and that on top of page 4 would be satisfactory.

Dr. SCHWELB remarked that it was, perhaps, not quite precise to say that the main purpose of listing a person by CROWCASS was to obtain his arrest, and the main purpose of listing by the Commission to obtain his surrender. If the listing by the Commission had only the purpose of making the surrender possible, why should then e.g. the British and U. S. authorities list people who were already in their custody?

M. de BAER replied that he did not say that the Commission's lists were only for the surrender of persons, just as CROWCASS' lists were not only for arresting persons.

The CHAIRMAN said that an additional sentence would make that clear.

Sir Robert CRAIGIE wished to express appreciation to M. de BAER for having produced this very valuable and useful paper, which had helped to clear up a number of points, and he would like to thank him very much for the work he had put into it.

The CHAIRMAN said the Commission agreed with that expression of thanks and remarked that they owed so much to M. de Baer he was sure that they would all agree with Sir Robert Craigie's words.

#### TRIALS OF WAR CRIMINALS IN POLAND.

Dr. CYPRIAN said he would like to emphasise some points in his memorandum which had been circulated to members (Doc. A.27 dated 28th November, 1946).

The first war criminals were apprehended in March of this year and trials commenced in June. In his country war criminals were divided into two sections - major war criminals and minor war criminals. Major war criminals were dealt with by a special Tribunal called the Supreme National Tribunal, consisting of three Judges of the Supreme Court and four members of Parliament. Ordinary courts dealt with the rest of the war criminals. There were until now only two cases which had been tried by the National Tribunal - that of the Governor of Poznan, Greiser, who was sentenced to death and hanged, and that of Anton Goeth, commandant of the concentration camp at Plaszow, near Cracow, also sentenced to death and hanged. The next war criminal to be tried by the National Tribunal will be Dr. Fischer, Governor of Warsaw. Then there would be the biggest trial in Poland - when the commandant of the Oswiecim/Auschwitz/ camp will be tried. About 150 guards of this camp will be sent to ordinary courts for a mass trial. There would also be the trial of the Governor of Danzig, Foerster, and then the trial of Bühler - the so-called head of the General Government. The Policy Government hoped to invite members of the Commission to come and see these trials, especially that of the Oswiecim camp, which will be held sometime after the General Election, probably by the end of January or beginning of February. The only thing that prevented them from inviting many people was the lack of accommodation in Warsaw. The trials themselves are held in make-shift places.

The CHAIRMAN said it was very encouraging to see how energetically they were working and their determination to carry out the trials. He gathered that in Poland they had only started on war crimes in the strict sense of the word as recently as last March and wondered whether they had almost completed the business of trying quislings.

Dr. CYPRIAN said that they had almost completed the trials of quislings.

The CHAIRMAN said that he was sure the Commission was very much indebted to Dr. Cyprian for this paper and they would expect much fuller accounts when he came back.



REPORTS BY CHAIRMEN OF COMMITTEES.

M. de BAER said he had just one short communication to make. That morning, in Committee I, they had had a letter on behalf of an Italian who had been put on the War Crimes Lists at the end of 1944 and, if he remembered rightly, at the request of the Yugoslav Government. They had received this letter from his solicitors, requesting the Commission to re-examine his case or else to set him free. This document was transferred to the Yugoslav Government to enable them to examine it and, in the meantime, the solicitors had been informed that the Commission was giving the matter attention.

The CHAIRMAN raised the question of writing a "History of the Commission" and he hoped that by the beginning of the New Year some definite proposal might be formulated.

He hoped that a small committee might be formed with M. de BAER as Chairman and that Lieut. Colonel Wade, Dr. Schwelb and Dr. Litawski would help him in writing the history.

COMMITTEE III

Dr. SCHWELB reported that Committee III, in its meeting held last week, had adopted a report on the Yugoslav-Italian cases involving crimes against humanity, which were mentioned in the last meeting of the Commission (M.117 pp9/10). The reports would be circulated before the next meeting of the Commission (Doc. C.239).

The CHAIRMAN said this should be discussed by the Commission together with the Documents C.236 and C.237.

It was decided to postpone the discussion of the whole problem of crimes against humanity (Docs. C.236, 237 and 239) until the next meeting.

It was decided to hold the next meeting of the Commission at 4.15 p.m. on Wednesday, 11th December.

The CHAIRMAN said they were very much indebted to Lieut. Colonel Harris for coming; he had given the Commission very great help and he asked M. de Baer to express their thanks to Lieut. Colonel Harris.

M. de BAER said that he would be delighted to do so - he had found his conversations with Lieut. Colonel Harris not only interesting because he was so much au fait with all these questions of CROWCASS and what was happening in Germany, but might he say personally he had had great pleasure in these talks and he was sure that he was expressing the feelings of the Commission in saying that they were extremely grateful for the help he had given, and that they had considered his presence at the last two meetings highly useful. He knew that many of his own ideas had changed on several subjects as a result of his talks with Lieut. Colonel Harris.

Major FANDERLIK wished to add a few words to this vote of thanks and to thank Lieut. Colonel Harris on behalf of their investigation teams in Germany. He took this opportunity to thank Lieut. Colonel Harris for all he had done in the British Zone and for the help he had given to their investigation teams, for, without him, it would not have so smooth as it was.

The CHAIRMAN said that there was a time when they were rather sceptical of the help CROWCASS could give them, but now that view had been completely altered and it was quite obvious that CROWCASS was a very helpful organisation.

*Wade*

UNITED NATIONS WAR CRIMES COMMISSION.

M.119

MINUTES OF MEETING HELD ON

WEDNESDAY, 11TH DECEMBER, 1946,

AT 4.15 p.m.

Chairman:	Lord WRIGHT	Australia
Also present:	Sir Robert CRAIGIE	United Kingdom
	Mr. Ben BROWN	United States of America
	M. MAILLARD	France
	M. ZIMBEAUX	France, Directeur du Cabinet du Ministre de la Justice.
	M. TOUFFAIT	France, Chef du Service de Recherche de Crimes de Guerre (Director of the French National Office)
	M. BRIDGLAND	Australia
	M. de BAER	Belgium
	Mr. HORNE	Canada
	Major FANDERLIK	Czechoslovakia
	M. DIMITSAS	Greece
	Mr. DUTT	India
	Commander MOUTON	Netherlands
	Mr. AARS-RYNNING	Norway
	M. MEZULIC	Yugoslavia
	Dr. SZERER	Poland

Apologies were received from:

Mr. BURDEKIN	New Zealand
Lieut. Colonel BARRATT	Judge Advocate General's Office
Colonel SPRINGER	United States of America
Dr. SCHRAM-NIELSEN	Denmark.

MINUTES OF 117TH AND 118TH MEETINGS

Minutes of the 117th Meeting were approved and signed.

Amendments to Draft Minutes M.118 received from Sir Robert Craigie and Mr. Burdekin would be incorporated in the final text.

ARRANGEMENTS FOR NEXT MEETINGS.

The CHAIRMAN announced that the intention was to have a meeting of the Commission at 4.15 the following Wednesday, 18th December, 1946, and unless something very urgent occurred, this would be the last meeting until the 15th January, 1947.

WELCOME TO FRENCH VISITORS

The CHAIRMAN stated that the Commission had rather important business today because they had the advantage of the presence of two distinguished French lawyers - M. Zimbeaux and M. Touffait. M. Zimbeaux had a high position in the Ministry of Justice in France and M. Touffait was the Director of the French National Office.

These two gentlemen had formulated very interesting and important views, projects and proposals for the trial of concentration camp personnel and, broadly speaking, they desired to have a more uniform and concentrated system for the trial of these offences and for the trial of the members of groups and organisations declared criminal by the Judgment of the International Military Tribunal which were very well embodied in the memorandum A.30.



FRENCH PROPOSALS (DOC. A. 30)

M. ZIMBEAUX expressed his gratitude and that of the French Delegation to the Commission for arranging the meeting that day which, they hoped, would be of some help. He and M. Touffait would give short statements on the main problems arising out of the judgment of the International Military Tribunal regarding the punishment of persons belonging to criminal groups and organisations and thereby, perhaps, suggest amendments to the Control Council Law No. 10 and also to the Charter of the International Military Tribunal drawn up in London in August, 1945.

Another question which they all thought very important was the trial of the guards of the concentration camps.

M. Zimbeaux, in dealing with point 2 of Doc. A. 30 referred to Article 10 of the Charter of the International Military Tribunal which said that in cases where a group or organisation is declared to be criminal by the Tribunal the competent national authority of each Power shall have the right to bring individuals to trial for membership therein, before National, military or occupation courts. In such cases the criminal nature of the group or organisation is considered proved and shall not be questioned. He further made reference to the Control Council Law No. 10 - punishment of persons guilty of war crimes - crimes against peace and crimes against humanity - which was enacted in order to establish a uniform legal basis in Germany for the prosecution of offenders other than those dealt with by the International Military Tribunal. He quoted further, Article II(1)(d) of the same Law which refers to membership in categories of a criminal group or organisation declared criminal by the International Military Tribunal. M. Zimbeaux read Subsection (3) of Article II which provides:

"Any person found guilty of any of the above-mentioned crimes may upon conviction be punished as shall be determined by the Tribunal to be just. Such punishment may consist of one or more of the following:

- (a) Death
- (b) Imprisonment for life or for a term of years, with or without hard labour.
- (c) Fine, and imprisonment, with or without hard labour, in lieu thereof.
- (d) Forfeiture of property.
- (e) Restitution of property wrongfully acquired.
- (f) Deprivation of some or all civil rights."

This was the provision which, M. Zimbeaux suggested, should be amended. It had been thought that these provisions were somewhat vague in so far as they were providing penalties from death to mere deprivation of property, without any definition as to the manner in which punishment should be assessed. This impression, which was that of the French representative in Berlin, had been endorsed in the Judgment of Nuremberg, where the Tribunal had made to the Control Council the following recommendations:

"Since declarations of criminality which the Tribunal makes will be used by other courts in the trial of persons on account of their membership in the organisations found to be criminal, the Tribunal feels it appropriate to make the following recommendations:

1. That so far as possible throughout the four zones of occupation in Germany the classifications, sanctions and penalties be standardised. Uniformity of treatment so far as practical should be a basic principle. This does not, of course, mean that discretion in sentencing should not be vested in the court; but the discretion should be within fixed limits appropriate to the nature of the crime.
2. Law No. 10, to which reference has already been made, leaves punishment entirely in the discretion of the trial court even to the extent of inflicting the death penalty.

The De-Nazification Law of 5th March, 1946, however, passed for Bavaria, Greater-Hesse and Wuerttemberg-Baden, provides definite sentences for punishment in each type of offence. The Tribunal recommends that in no case should punishment imposed under Law No.10 upon any members of an organisation or group declared by the Tribunal to be criminal exceed the punishment fixed by the De-Nazification Law. No person should be punished under both laws.

3. The Tribunal recommends to the Control Council that Law No.10 be amended to prescribe limitations on the punishment which may be imposed for membership in a criminal group or organisation so that such punishment shall not exceed the punishment proscribed by the De-Nazification Law.

Accordingly, the French representative in Berlin had applied to the Control Council in Berlin for an amendment of Law No.10. The French authorities had also informed all other interested governments of their intention.

Moreover, they had thought that after the Judgment of Nuremberg, some difficulty of interpretation might arise and accordingly, they had made a further suggestion to the Council of Control.

According to Article 10 of the Charter it seemed that each member of a criminal group or organisation should be tried by a military tribunal or a court of the occupation zone. Such prosecution should then seem to be before the Tribunal of each occupying country.

The charter made in London said that such persons could be prosecuted before the national tribunals. The International Military Tribunal had, however, said the following:-

"A criminal organisation is analogous to a criminal conspiracy in that the essence of both is cooperation for criminal purposes. There must be a group bound together and organised for a common purpose. The group must be formed or used in connection with the commission of crimes denounced by the Charter. Since the declaration with respect to the organisations and groups will, as has been pointed out, fix the criminality of its members, that definition should exclude persons who had no knowledge of the criminal purposes or acts of the organisation and those who were drafted by the State for membership, unless they were personally implicated in the commission of acts declared criminal by Article 6 of the Charter as members of the organisation. Membership alone is not enough to come within the scope of these declarations."

Following some conversations they had in Paris, with representatives of other countries, the French authorities were led to think that a presumption of criminality would be imposed on each member of a group or organisation declared criminal, though it was clear from the Judgment of Nuremberg that persons who had no knowledge of the criminal purposes of such a group or organisation could not be prosecuted, and neither could those who were forced to join such organisations.

Therefore, the suggestion of the French Representative amending Article 2, section 1 of the Law No.10, would be this:-

"Voluntary membership after 31st August 1939, in groups or organisations hereinafter described, which have been declared criminal by the International Military Tribunal, with knowledge of the criminal purposes and acts of the groups or organisations. Then followed a list of all the groups and organisations which have been declared criminal by the Tribunal at Nuremberg and the proposed provision went on stating that a member of one of the above groups or organisations is presumed to have had knowledge that it was being used for the commission of criminal acts and has the burden of satisfying the Tribunal that he did not have such knowledge".

The French delegation asked the Commission to consider this position and see whether a recommendation of an amendment could not be arrived at on these lines.

New provisions were necessary also, because Law 10 had been enacted for German territory only. For the time being therefore, this law could only be applied to persons living now on German territory.



As most of the members of these groups declared criminal had been in the armed forces of Germany the result was that only, say 6,000 criminals were now in the French zone of Germany, whereas 30,000 were now in French prison camps.

They assumed that this applied to the other occupying countries as well, and that in the prison camps of all countries they would find far more members of criminal groups or organisations than there were in fact in Germany. As it was highly desirable that all these members of criminal groups should be tried and punished, in the same way and under uniform legislation, some agreement should be arrived at, so that they would all be tried similarly in all countries. This was the purpose of a further proposed amendment to Law No.10.

In conclusion, M.Zimbeaux expressed his hope that all members of the Commission present, would consider this question and that perhaps a statement would be made, so that each representative could draw his respective government's attention to the necessity of the question.

The CHAIRMAN said that they would like to know how, practically, M.Zimbeaux visualised that Control Council Law No.10 could receive an application elsewhere than in Germany.

M.TOUFFAIT said there was no suggestion of application of Law No.10 elsewhere than in Germany. An International Agreement would be put forward to the respective governments.

Sir Robert CRAIGIE said he understood his Government had been approached on this question. He would have to discuss the matter with his Government before he could make any definite statement, and would do so without delay.

Sir Robert CRAIGIE left the meeting at this juncture.

M.de BAER announced that the intention of the French delegation was to obtain an International agreement, whereby provisions similar to those of Control Council Law No.10 should apply in each one of the allied countries. This was of course quite exceptional and quite a new idea and applied only, of course, to the Germans that were interned in those countries. It would be a special law applicable to one category of persons present in those countries.

M.ZIMBEAUX said that unless an arrangement were arrived at, the members of criminal groups who were at present outside German jurisdiction would evade the application of Law No.10 and be treated differently in each country.

M.TOUFFAIT said that this question was also connected with that of the liberation of Prisoners of War. The question also arose as to whether Prisoners of War should be tried now or after they had been freed. Take one instance: suppose a person was interned in France. If he were sent to trial in France, the law applicable in France would be used. If he was released he would go back to Germany and if he were in the British zone, he would be tried and punished according to English methods. It would be awkward to think that one prisoner would be tried differently to another, depending on whether he was freed before the trial or not. That was why International agreement should be arrived at on a uniform law. The suggestion was that this Commission would consider the possibility of arriving at some international agreement to have uniform methods of judgment, trial and punishment.

M.de BAER said that the suggestion of the French delegation was that the Commission should study the terms of a possible agreement and recommend it to their member governments. He thought they could do so, without being ad hoc officially charged, because this was part of their general mandate and terms of reference.

The CHAIRMAN said there would be no difficulty about the Commission's jurisdiction. They had no executive powers - their powers were advisory; on several occasions in the past, they had drawn up proposals, and then written out a recommendation, which each member had undertaken to pass on to his respective government for consideration, but the motive power came from the consent or agreement of various governments. He felt that the Commission would do their best to carry out their part in this matter.

M.ZIMBEAUX said that the French government had already made some efforts to contact all other foreign governments through diplomatic channels, but thought it would be a good thing if the Commission would support their initial recommendations.

The CHAIRMAN understood there had been an approach to other governments but so far, there had been no reply except from the United States of America. He wondered whether their French friends would draw up the proposals which they desired to submit, probably copies of the proposals they had already put forward. The Commission could then discuss them and possibly one of the French delegates could come over for further discussion, probably early next year when the Commission had studied the proposals.

M. TOUFFAIT and M. ZIMBEAUX agreed and expressed their appreciation that the Commission showed such interest in the question.

The CHAIRMAN said that the Commission was anxious to get down to practical details and therefore would like to have the proposals in writing which the French delegates had preferred, quite soon.

When they had received and discussed these proposals - which they would do at an early date, - they could possibly have further discussions with the help of M. Zimbeaux and M. Touffait. They could then draw up a set of proposals which the Commission would be prepared to make, and each member could transmit the agreed proposals to his respective government.

M. de BAER wished to say one word to emphasise the importance of this question. He would give two examples: suppose that from the Control Commission for Germany a law was issued saying that any member of a criminal organisation was deemed to know the criminal intent of the organisation. Then the burden of proof that he did not know it would be on him. In France, on the other hand, he did not think the French would be prepared to admit a law like that as it was contrary to French principles. If in France then the contrary applied, that the member of a criminal organisation is deemed not to know the criminal purposes of the organisation until the public prosecutor proves that he did know them, there would be complete discrepancy between trials in occupied Germany against SS men and in France against SS men.

The CHAIRMAN said that it was the view at Nuremberg that the onus of proving the guilty knowledge of the accused should be on the prosecutors.

M. de BAER agreed.

The CHAIRMAN said that this was a point the Commission could discuss very fully when they had got the French proposals, considered them and had an opportunity of discussing them with the French representatives. The Commission could then formulate a memorandum for transmission to the member governments. That, he thought, was as far as they could go at the moment.

Mr. BROWN said that, as had been stated, his Government had been the only one to answer the French request and therefore he hesitated to express an opinion on the subject. He did question, however, the propriety of the Commission taking action on a matter like this until each government represented on the Commission had informed its representative what it intended to do regarding it.

The CHAIRMAN said the Commission could not take any executive action - their function was purely advisory - was it Mr. Brown's suggestion that the Commission should defer study of the question and the formulation of a purely advisory opinion?

Mr. BROWN said that his suggestion was not that they should defer study, but rather that they should defer commitment. He would not like to see the Commission commit itself that day to the formulation of a plan for submission to their governments until they knew more of what their governments were going to do with regard to the diplomatic note.

The CHAIRMAN said the discussion was purely exploratory and at the present stage all that was suggested was that the Commission should proceed first to hear definite proposals from the French Government - and secondly to discuss them and if they were able to formulate an opinion then to circulate them as a Commission document among the different governments.



The CHAIRMAN asked Mr. Brown whether he would have any objection to that, because they quite understood that the matter was now in the hands of the governments.

Mr. BROWN said that had been the only point he had wanted to make.

Mr. DUTT agreed to what had been suggested - that they should study the proposal put forward by the French Government and then take whatever action the Commission considered necessary.

Mr. AARS-KYNNING agreed with Mr. Dutt.

Major FANDERLIK said that in Czechoslovakia they had already passed a law against members of criminal organisations and there had been some trials in progress dealing with these crimes. He had studied this problem carefully and thought it would be difficult at this stage to change the Czechoslovak law or to pass a new law to achieve the uniformity proposed by the French delegation. There was, however, hardly a considerable number of members of criminal organisations in the hands of the Czechoslovak authorities.

M. MEZULIC thought that the point was not only to try to improve the working of Law No. 10 but to find the means of improving the system of trials of war criminals in general, and if so, it would be good not to forget that, not only in Germany, but also in another country there were many criminals who were outside any law - in Italy for example - and he thought when they discussed the proposal of the French delegates, they should keep an eye on the problem which arose out of these unpunished war criminals and in this sense he was ready to get the complete cooperation of his authorities.

He was not at all averse to a discussion on the subject.

Commander MOUTON thought the proposal brought forward by the French delegates was extremely important. He felt that, and M. Touffrait had explained to him personally that morning, it would be very dangerous if say in six years the Germans came to life again and could criticise the way war criminals were punished by the Allies, if they found that in one country, in an exactly similar case, one man had been acquitted and in another country he had been punished. Therefore he clearly saw the necessity of getting uniformity in this matter. If the onus of the proof was not on the shoulders of the member of the criminal organisation, to prove that he did not know that the association was a criminal one, but on the prosecutor, the prosecutor would have a very heavy task.

The CHAIRMAN said that he did not share the view that the presumption was necessary and that, otherwise the task of the prosecution would be too heavy. In some cases they might have a very heavy task, but generally it would be possible to show the accused man had either done a thing or associated with people who had done things mixed up with the criminal action of the association. He thought it would be possible to produce a case of that sort and ask the court to infer that from the facts before it the accused had known of the criminal purposes of the organisation. Speaking for himself, he did not like the idea of putting the burden of proof on a man who was not guilty. The practical difficulty may not be so serious since the courts were entitled to infer knowledge from the things that the man did.

M. DEMITSAS said that he would like to support the view expressed by the Yugoslav representative (M. Mezulic) and combine the problem of Italy in the discussion.

Mr. FRIDGLAND thought it would be a good plan to obtain and examine the actual text of the French proposal agreement, because some of the member Governments who had been approached through diplomatic channels might ask their representatives on the Commission or the Commission itself for advice on the matter. Even if they did not, members might think it desirable that the Commission, acting in its advisory capacity, should give some recommendation.

Dr. SZERER agreed to a discussion on the matter and asked whether members might be told the American answer, or was it a secret.

Mr. BROWN said that unfortunately he did not think he could disclose the substance of it.

Commander MOUTON wished to ask if all the countries represented on the Commission had been approached by the French Government.

M. TOUFFAIT replied that all governments of the United Nations had been approached.

M. de BAER wished to make a practical proposal in view of the objection made by Mr. BROWN. Could he suggest that as a proposal had been made to all the governments and no answer had been received, except from the United States of America that the members of the Commission should ascertain from their respective Governments whether and in what sense, they had replied to the French Government's request of October 19th, relative to the above matter.

This was agreed to.

M. MEZULIC enquired on what date their governments had been informed of the proposal.

M. TOUFFAIT replied that the French proposal had been made on October 19th, 1946.

The CHAIRMAN then introduced the discussion of the second question: the procedure which in the French view should be adopted for the trial of concentration camp personnel.

The CHAIRMAN gathered that what the French were aiming at was to organise and centralise uniform methods of procedure and jurisdiction. He asked M. Touffait to state the case in his own way.

M. TOUFFAIT said that the French authorities were worried by this question of prosecution of criminals belonging to the personnel of concentration camps, because they had found that a number of these persons were actually tried and punished before different Tribunals of different countries. Something should be done to have them tried under one and the same jurisdiction for crimes committed in the same camp.

The prosecution by the French authorities was difficult because they could find no witnesses and no documents to support a charge. In addition, the camp personnel could not be tried by French courts unless they had committed crimes in France or against French nationals. They could not be tried or punished in France for crimes committed against foreign victims. However, Law No.10 allowed prosecution against any of these persons when they had committed a crime against persons of any nationality. Accordingly, they had all been transferred from France to Germany, and they were there prosecuted for crimes committed against individuals of different nationalities. Accordingly, they had asked interested countries of the United Nations to join them, not only for the judgment of such criminals, but also for the prosecution - in other words, to appoint a prosecutor as well as a judge for the French Tribunal. In cases when trials took place in French tribunals in Germany, they would also invite interested countries to appoint a judge and a prosecutor and, on those lines, they had started a trial of 150 persons in Württemberg, and had asked representatives from Holland, Luxembourg, Belgium and Poland to appoint a judge and prosecutor to join the French tribunal.

The advantage of these methods could be summed up as follows:-

- (1) In these cases information was received and enquiries were then fully made and they gathered information and documents from all countries.
- (2) Moreover, the whole of the criminal activities of such an individual was examined and not only one part of his crimes, as in most cases these men had taken part in several crimes in the same camp and in different camps. Each country could thus make heard the voice of her own victims. It also avoided diversity in judgment and punishment. What they were trying to avoid was the delivery of all persons presumed criminal to different countries, one after the other.



Further, the cooperation of all nations in the judgment of such criminals would lead to further important steps on the lines of International justice and criminal law and further steps towards achieving uniformity of International jurisprudence could be made.

If the above methods would be adopted and recommended by the Commission, the French representatives would like to know if, also, similar methods would be applied in the British, Russian and American zones.

The CHAIRMAN said that he saw at Württemberg the French authorities had started working on one of the biggest trials of 150.

M. TOUFFAIT said that 150 accused would be tried in three trials - 50 at a time.

The CHAIRMAN asked how many judges they had.

M. TOUFFAIT replied that there were three French judges - one Polish, one Belgian, one Dutch and one Luxembourg judge.

The CHAIRMAN asked whether these were the only countries represented who had victims.

M. TOUFFAIT replied that they were the only countries who had victims involved.

The CHAIRMAN thought this was on a large scale but did not think it would be unmanageable. He enquired about the language difficulty.

M. TOUFFAIT said that the language difficulty did not arise because they could all speak French. The nations had been invited to detail judges and prosecutors who had a command of the French language.

Commander MOUTON asked what law was applied and what procedure.

M. TOUFFAIT replied that the Control Council Law No. 10 and SHAEF procedure were applied.

The CHAIRMAN said that they were only at the stage of discussing proposals. The Württemberg trial started, he gathered, the day before yesterday, and it would go on, he took it, pretty well till next April or June. He would be very interested to see how it worked. In the meantime the question of producing a uniform system of trial and a greater representation in the prosecution among the judges were questions which the Commission would desire to discuss very carefully.

M. TOUFFAIT said that they had already approached the British, American and Soviet Governments in order to suggest that in each case where concentration camp trials are involved they should send representatives who would be interested in the trial - so far they had no definite reply and the French delegation would suggest that the Commission, at the same time as they discussed the first point, should also make a recommendation on this particular question.

The CHAIRMAN said that that sounded reasonable and asked then that the Commission might have the French delegates' views and recommendations and experience in writing.

M. TOUFFAIT said that this could be done.

The CHAIRMAN summed up that it would be satisfactory to everybody if the French proposal on the point of Concentration Camp trials would also be made in writing, circulated to the members and then discussed by the Commission. Possibly M. Touffait and M. Zimbeaux would attend to help the Commission in the task at some stage and then the Commission could give their advisory opinion to the member governments. This was agreed to.

Mr. BROWN asked the representatives of France whether their proposal re Concentration Camp personnel applied primarily or entirely to trials in Germany?

M. TOUFFAIT recalled that he had said that the French authorities sent all

their prisoners to Germany, so that all the trials were taking place in Germany.

Mr. BROWN further enquired whether the matter had been discussed or presented by the French representative to the Control Council.

M. TOUFFAIT said that some unofficial conversations had taken place.

The CHAIRMAN said that the Commission were very obliged to the French representatives for coming and they looked forward to having another meeting later on, when all the material had been received. When the Commission had got their communications and had considered them, they would see if they could persuade the French delegates to come over again.

They could not deal with items 5 and 6 (Crimes against humanity) of the agenda, because the responsible members were not there. He understood there were no reports of Chairmen of Committees,. They would meet again at 4.15 on Wednesday, 18th December, 1946.

That would conclude the business of the meeting.

*Wright*



M.121

UNITED NATIONS WAR CRIMES COMMISSION

February 7, 1947.

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Owing to the fact that further amendments have been received to Minutes of Commission M.121 it would be appreciated if you would substitute the enclosed <sup>final text</sup> for the Minutes M.121 circulated a few days ago.

A.G.

December, 1946,

Amendments to Minutes of meeting of Commission held on 18th December, 1946, M.120 had been received from Colonel Springer and Sir Robert Craigie and would be incorporated in the final text.

PARTICIPATION OF THE SOVIET UNION IN THE WORK OF THE COMMISSION

The CHAIRMAN requested Sir Robert Craigie to speak on this matter.

Sir Robert CRAIGIE said that the Commission would recollect that on July 19th, 1946, it had adopted a resolution containing a reply from the UNWGC to the Government of the Union of Soviet Socialist Republics, with regard to the question of Soviet participation in the work of this Commission. At that meeting, he had undertaken to transmit the resolution to the Foreign Office and to confer with the Foreign Office as to the correct method of transmitting the resolution to the Soviet Government. The actual channel through which the reply was sent was through the U.K. Ambassador in Moscow and the Secretary General had now received this letter from the Foreign Office:-

FOREIGN OFFICE,  
S.W.1.  
31st December, 1946

(U 8239/1546/73 )

Dear Ledingham,

As Sir Robert Craigie is away at present I am sending you herewith a copy of a letter which was sent to our Ambassador in Moscow by Monsieur

UNITED NATIONS WAR CRIMES COMMISSION

M.121

Meeting of the Commission

Held on

Wednesday 22nd January, 1947.

at 3 p.m.

Chairman: Lord WRIGHT Australia

Also present: Sir Robert CRAIGIE United Kingdom  
Colonel SPRINGER United States of America  
accompanied by  
Lieut.Colonel HAUGEN United States of America  
M.MAILLARD France  
Mr.DAO China  
Mr.GLASHEEN Australia  
M.de BAER Belgium  
Major FANDERLIK Czechoslovakia  
accompanied by  
Dr.NEUMANN  
Dr.SCHRAM-NIELSEN Denmark  
Commander MOUTON Netherlands  
Mr.BURDEKIN New Zealand  
Mr.AARS-RYNNING Norway  
Dr.ZIVKOVIC Yugoslavia

Apologies were received from:

Lieut.Colonel BARRATT United Kingdom, J.A.G.  
Mr.BRIDGLAND Australia  
Mr.DUTT India

MINUTES

Minutes of the 119th Meeting of the Commission held 11th December, 1946, were approved and signed.

Amendments to Minutes of meeting of Commission held on 18th December, 1946, M.120 had been received from Colonel Springer and Sir Robert Craigie and would be incorporated in the final text.

PARTICIPATION OF THE SOVIET UNION IN THE WORK OF THE COMMISSION

The CHAIRMAN requested Sir Robert Craigie to speak on this matter.

Sir Robert CRAIGIE said that the Commission would recollect that on July 29th, 1946, it had adopted a resolution containing a reply from the UNWCC to the Government of the Union of Soviet Socialist Republics, with regard to the question of Soviet participation in the work of this Commission. At that meeting, he had undertaken to transmit the resolution to the Foreign Office and to confer with the Foreign Office as to the correct method of transmitting the resolution to the Soviet Government. The actual channel through which the reply was sent was through the U.K. Ambassador in Moscow and the Secretary General had now received this letter from the Foreign Office:-

FOREIGN OFFICE,  
S.W.1.  
31st December, 1946

(U 8239/1546/73 )

Dear Ledingham,

As Sir Robert Craigie is away at present I am sending you herewith a copy of a letter which was sent to our Ambassador in Moscow by Monsieur



Dekanozov regarding the participation of the Soviet Union in the work of the United Nations War Crimes Commission.

Yours sincerely,

Sgd: (F.F.GARNER)

Enclosure:-

FOREIGN AFFAIRS OF U.S.S.R.

Moscow, 6th December, 1946.

Dear Mr. Ambassador,

In connection with Mr. Roberts' letter of the 2nd September 1946, I have the honour to inform you that the view of the Government of the U.S.S.R. about the terms on which the Soviet Union could participate in the work of the United Nations Commission for investigating war crimes has already been presented in the memorandum of the 29th March, 1946.

The resolution of the Commission notified by you declines the participation of the Moldavian, Lithuanian, Latvian, Estonian and Karelo-Finnish Soviet Socialist Republics in the work of the Commission for investigating war crimes.

Under such conditions the Government of the U.S.S.R. does not consider it possible to participate in the said Commission.

Please accept, Mr. Ambassador, the assurance of my highest esteem.

Sgd: (V.DEKANOZOV)

To: Sir Maurice Peterson,  
British Ambassador Plenipotentiary,  
Moscow.

Sir Robert CRAIGIE added that he was sure the Commission very much regretted the nature of the reply. They could only take note of it in their record.

FORMAL APPROVAL OF LISTS 46-49 (REPRODUCTION OF SUB-COMMISSION'S LISTS). 45 AND 50 (COMMISSION'S LISTS) - (ALREADY CIRCULATED)

The CHAIRMAN recalled that these lists had all been circulated and he would ask the Commission to give their formal approval. They had all been dealt with in Committee I and as there was no point raised, he recorded the formal approval of the Commission on these lists.

REPORTS BY CHAIRMEN OF COMMITTEES

M.de BAER said that Committee I had nothing to report. It would meet the next day (January 23rd).

Sir Robert CRAIGIE, Acting Chairman of Committee III said that Committee III had presented to the Commission statements on crimes against humanity (Docs. C. 236, 237, 239) and on giving information as a war crime (C. 240) which formed separate items of the agenda.

VISIT BY THE CHAIRMAN AND THE SECRETARY-GENERAL TO GERMANY

The CHAIRMAN gave a brief description of the visit which he and Colonel Ledingham had made to Germany during the recess.

They had had quite an extensive tour in order to observe what was being done in the prosecution and investigation of war crimes. They went first to the American zone and visited Nuremberg which was extremely interesting. Their American friends in charge of Brigadier General Telford Taylor were very active, enterprising and enthusiastic. In Nuremberg, there were two trials under way: one which he might call the 'big' trial against the Nazi medical authorities and the other dealing with Field Marshall Milch, in a similar but very commodious and comfortable courtroom, which was fitted up in the same building.

The CHAIRMAN said there were 23 doctors in the big trial, including one woman and that trial was likely to go on for perhaps six weeks.

The CHAIRMAN said that the Judges represented, as far as he could judge, every corner of the United States. The President who came from the State of Washington, of which he was Chief Justice, struck him as a very able and judicial man and the other four were very capable and enthusiastic people, anxious to do what was right. The atrocities were committed on unwilling victims, under the guise of medical experiments, and, according to what he had heard when he was there, some of the atrocities which were committed on these unfortunate people when they were under anasthetics were very atrocious indeed. From Nuremberg, they went to Berlin and there they had a most interesting examination of CROWCASS. He was bound to say that he was extremely pleased to find what a very efficient set-up CROWCASS now had. The arrangements to deal with the various reports and the attempts to bring together the detained lists and the wanted lists were all really most efficient. They had often discussed what CROWCASS ought to do and as far as he could judge, they were actually doing it now. The arrangement of the documents, tabulation, reference facilities all seemed to him to be first rate. He was very much gratified to see what was being done under the very efficient management of Lieut. Colonel Ryan and Major Lewis. From Berlin, they went to Hamburg and apart from the paralysing effect of the cold they found much to look at. The British were holding a very big and important trial - the Ravensbrück trial and they seemed to be proceeding very efficiently and satisfactorily. The Chairman said that he was glad that he was not engaged in the trial under the present climatic conditions and he was quite content to spend only a few days there. From there they went to Bad Oeynhausen, where they had long and very interesting discussions with the Army Commander, Lieut-General McCreery, with Lord Russell and Group Captain Somerhaugh of the J.A.G.'s Branch.

From Bad Oeynhausen, where the Commander in Chief had placed his private Dakota at their disposal, an attempt was made to fly back to England, but owing to the fact that all the roads were so frozen that no car could venture out and the runways were sheets of solid ice, no plane could leave the ground. It was therefore necessary to come home on the Rhine Army Special which took about 24 hours.

On the whole, he considered it had been a very useful expedition and he was very gratified to know that everybody they came across were busy working and very gratified at the interest the people outside showed in what they were doing. He thought it very important that members of the Commission should go over from time to time. Perhaps Colonel Ledingham could add something to what he had said.

Colonel LEDINGHAM thought the Chairman had described the visit very aptly and added that they had been received in Berlin by Lieut. General Clay - the Deputy of the Military Government of the American Zone, and his legal adviser Mr. Rockwell.

With regard to CROWCASS, Colonel Ledingham would like to add his appreciation to what the Chairman had already said and how impressed they both were with the keenness and efficiency of those engaged in this very intricate and important work. Members would no doubt remember that certain criticisms were made over the move of CROWCASS from Paris to Berlin, which at that time may have been justified, especially in view of the change-over from French to German personnel which had to be accepted. So far as the new accommodation in Berlin was concerned this could not be improved upon and was satisfactory in every way, and so far as the German staff was concerned, Major Lewis spoke most enthusiastically regarding them. From the security angle each member of the staff was thoroughly screened by Intelligence, and, so far, he had no reason to suspect that they were other than whole-heartedly sincere and dependable in their work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## MINUTES OF MEETING HELD ON

WEDNESDAY, 18TH DECEMBER, 1946.

AT 4. 15 P.M.

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

Apologies for absence were received from:-

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

MINUTES OF MEETINGS

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

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

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

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

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

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

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

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

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

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

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

The representative of India had suggested the following addition:-

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

The French representative had spoken in favour of the following modification

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

The representative of the Soviet Union had suggested the following addition

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

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

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

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

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tee) of the General Assembly, of the 6th Committee on 22nd November. Representatives of the following Kingdom (Sir Hartley Shawcross), S.R., Chile, Columbia, Saudi Arabia, China, Lebanon, Belgium (Mr. Mahy) referred to a proposal containing the general principle

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Shawcross, suggested a declaration by the principal authors, according to the following addition:-

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suggested the following addition: Council should study the convention on crimes against

United Nations had not got a "crime" which seemed to him very helpful to the purpose. term, with a Greek beginning on one side and a Roman on the other. These high-sounding, cumbersome terms, and the slaughter of the innocent - which would be desirable to accept a general term, would prefer simply "crimes against humanity". A tendency had been to treat international crimes, without reference to the nature of these crimes and why they should change or not. He had no idea why

Lemkin's idea was to establish a larger genus. He would like to have a genus under which these

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

"(1) That it is not concerned with the question whether the persons charged by the Yugoslav government should be listed by the Commission at the instance of the Yugoslav government,

(2) That it is not concerned with the question whether the persons should be extradited or handed over to the Yugoslav government.

(3) That it is not concerned with the guilt of each individual accused."

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

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

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

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

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

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

#### WAR CRIMES TRIAL REPORTS.

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

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

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UNITED NATIONS WAR CRIMES COMMISSION

M.122

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

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

Apologies were received from:

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

MINUTES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GARNER said this certainly represented the British view.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

#### REPORTS BY CHAIRMEN OF COMMITTEES.

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

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

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

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

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

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

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

REPORT BY COMMITTEE I.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Wright*



UNITED NATIONS WAR CRIMES COMMISSION

M.123

MINUTES OF THE MEETING

OF THE COMMISSION

HELD ON

WEDNESDAY, 5TH MARCH, 1947,

AT 3 P.M.

Chairman: Lord WRIGHT Australia

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

Apologies for absence were received from:

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

MINUTES

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

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

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

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

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

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

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

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

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

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

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



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was the cheapest International Commission. He did not want to say anything more. He had been through them very often. He had allowed him to sit with them.

each figure was very carefully discussed by the Finance Committee and many were agreed. It seemed to him that the Secretary had all been carefully worked out, and all gently - just what they would require for the 1st.

would be noticed that the items of the Budget for the present year in the Finance Committee relating to Item 1(a) Office expenses, which were considerably more than the Budget. The main reason for that was to pay for the cleaning of the premises which had been paid by the United Kingdom. This was due to the general increase in the cost of stationery, printing and multigraphing. The cost of £850 to approximately £1,275. This was due to the printing of the Commission's lists by the Committee I having been extremely active and had also been more multigraphing than

Sir Robert very rightly had said, it was a question of the Commission's work and the duration of the final budget they should have discussed. How long it was anticipated the Commission would last. While the Finance Committee might have assumed that the Commission would last for a year, he did not think that would be the case. The Commission was continuing at its present full volume.

It would be at a reduced volume, it would function at a reduced volume, it would be the present year's expenditure was estimated for £21,850 for the next year.

There was no real difficulty about that, it was a question of the Commission's work and the duration of the final budget they should have discussed. How long it was anticipated the Commission would last. While the Finance Committee might have assumed that the Commission would last for a year, he did not think that would be the case. The Commission was continuing at its present full volume.

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

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

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

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

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



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

MR. BURDEKIN said he did not wish to press his point but at the same time was not sorry for having raised it as it had elicited valuable statements. His Government's additional contribution was only £30,000, but he was not questioning it from that point of view.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

M. DE BAER also expressed his agreement.

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

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

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

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

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

that in Budgets prior to 1944 "penditure" although a sum of 23% "e" under Item 10.

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

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

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

THE COMMISSION (DOC. C. 243)

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

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

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

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

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

#### FORMAL APPROVAL OF UNWCC LIST NO. 51.

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

#### THE GENERAL MARINOV CASE

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

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

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

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





The CHAIRMAN said that that depended on matters external to

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

except in the case of Madori, which

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

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

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

in the absence of the Secretary General, it had so far never been on the list against the wish of the Commission. A nature similar to that of Madori's application to be considered by Committee I.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UNITED NATIONS WAR CRIMES COMMISSION

MINUTES OF MEETING

HELD ON

WEDNESDAY, 12th MARCH, 1947.

AT 3 p.m.

Chairman: Lord WRIGHT

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

Apologies were received from:

Dr. NEULANN  
Lieut. Colonel BARRATT

Australia

United Kingdom  
United States of  
America  
" " " "

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

Norway

Czechoslovakia  
Office of the  
Judge Advocate  
General.

MINUTES

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

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

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

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

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

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

THE SECRETARY GENERAL read the following translation of the telegram:



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

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

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

GUEORGUI DIMITROFF PRESIDENT BULGARIAN COUNCIL OF MINISTERS."

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

M. de BAER did not think so.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

The discussion was adjourned for a fortnight.

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

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

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

M. DE BAER<sup>also</sup> asked for more information to reconcile the two statements.

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

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

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

MR. BRIDGLAND agreed as far as Australia was concerned.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

SIR ROBERT CRAIGIE said that was correct.

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

stating that it was giving the Commission with the Italian had been made the United Nations Convention. The Government's was prepared to take and he thought that their own peace treaties which would lead to these atrocities that they would take jurisdiction of policy, and jurisdiction

known as to wish to assume attitude of

Commission should Ethiopia.

where he had the Commission crimes committed

1. to the Commission on 20th October

2. the Commission has expressed

3. to the Commission of the Allies

4. to the Commission August 1945

5. to the Commission has been advised

6. to the Commission Ethiopian Government Italy and the 31st January

7. to the Commission Treaty.

might be used had adhered to a situation to the Italian

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

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

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

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

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

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

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

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

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

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

SIR ROBERT CRAIGIE said that he would second this motion.

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



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

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

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

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

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

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

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

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

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

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

The resolution was unanimously approved.

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

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

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

Chinese Government  
take up the question

the Commission cons

would be prepared to  
say that the Commis

Poland and Yugoslav  
in connection with  
Zealand, Belgium and  
being of the opinion  
crimes committed by

they would renew this

PROPOSALS FOR A PRIORITY

Commission the proposals  
detail their purpose

As  
Commission a few weeks  
Committee I they already  
wanted to speak about  
where he wanted the  
review the cases of  
go on the priority list  
government to submit  
Committee I could then  
had chances of approval  
not put on the first  
absolutely no chance  
apart from the name  
have to be some individuals  
his family were etc.  
he would like to say  
as regards the letter  
There was no question  
they would go on examination  
view of this change  
cases in the way suggested  
their list of priorities  
the Control Council,  
further lists.

had said.

anxious to bring crime  
incredible difficulties  
congratulation that  
that they could not  
facilities for identification  
that what M. de Baer  
was sure that other  
proposal should be as

the priority lists.

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

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

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

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

This was unanimously agreed.

REPORTS BY CHAIRMEN OF COMMITTEES.

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

*Wright*



UNITED NATIONS WAR CRIMES COMMISSION

ADDENDUM to Minutes of Commission  
M.125

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

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

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

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

May 22nd, 1947.

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

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

Apologies for absence had been received from:-

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

MINUTES

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

prepared a text, but it was desired.

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

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

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

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

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

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

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

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

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

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



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

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

SIR ROBERT CRAIGIE seconded this motion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### REPORTS OF CHAIRMEN OF COMMITTEES.

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

#### FORMAL APPROVAL OF UNWCC LIST NO. 52.

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

*Wright*

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

PRESENT: Lord Wright

Chairman

ALSO

PRESENT: Sir Robert Craigie

United Kingdom

Mr. Kintner

United States of America

M. Maillard

France

Mr. Bridgland

Australia

M. de Baer

Belgium

Mr. Jules Leger

Canada

Dr. Neumann

Czechoslovakia

Dr. Schram-Nielsen

Denmark

Mr. Burdekin

New Zealand

Mr. Aars-Rynning

Norway

Dr. Zivković

Yugoslavia

accompanied by

M. Zimonic

## APOLOGIES FOR ABSENCE WERE RECEIVED FROM:

Colonel Springer

United States of America

Mr. Dao

China

Mr. Dutt

India

M. Dimitzas

Greece

Commander Mouton

Netherlands

Colonel Muszkat

Poland

Lieut. Colonel Barratt

Office of the Judge

Advocate General.

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

1. MINUTES

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

the door arbitrarily on a fixed date; whether that date was 30th September or 1st November. He thought the whole matter should be left over for the present and that nations should be encouraged to continue, as they are doing, to put forward their cases and that Committee I should go on discussing and deciding what they had to decide with regard to those cases and then, at some later date, the matter could be reconsidered. He thought the 1st November would be a suitable date to reconsider the whole question as to whether it was possible or proper to fix a date for the closing down of the Commission. He thought he would ask for a vote on the question of whether this issue should be adjourned for further consideration at some future date and he would suggest 1st November as the date to which such further consideration should be adjourned.

He was not sure that the British Government, if satisfied that there were these considerations to be borne in mind, would really object to a deferment of the consideration of a closing date.

The Chairman's proposal to defer consideration of a closing date for Committee I and the Commission until 1st November was seconded by Mr. Kintner and supported by M. de Baer.

SIR ROBERT CRAIGIE said he would like to make it clear that in raising this question he was not putting forward a definite proposal by the United Kingdom Government on which a vote should be taken at this time but rather a suggestion on which they would be interested to hear the views of members of the Commission. They had heard some very important views expressed and he wondered whether it would be possible to hear the views of some other members.

DR. NEUMANN said that as a member of Committee I he wished to say that he sympathised with the views expressed, had already contacted his Government and they had agreed to 30th September 1947 as a suitable closing date for Committee I.

M. MAILLARD said he did not doubt that the French Government would welcome the proposal just put forward. They were especially interested that the lists should not close too soon because they had a large number of cases ready and he thought the proposal, which had just been made, was very suitable and he did not doubt that the French Government would support it.

MR. BRIDGLAND explained that the Chairman had expressed the Australian view very adequately.

DR. ZIVKOVIC said that although he was uninstructed by his Government, he would express his personal views on the subject. He had approached his Government after receiving the letter from M. de Baer and asked them to let him know as soon as possible what would be the date limit they would find suitable for closing Committee I. As soon as he had this information he would communicate it to the Commission. Personally he was entirely in favour of what the Chairman had said, i.e. to re-examine the question on or about the 1st November.

DR. SCHRAM NIELSEN said he also was without instructions but felt sure that his Government associated themselves with the views expressed by the Chairman because they had not finished submitting their lists to Committee I.

MR. BURDEKIN said his Government was not very directly concerned but he was sure they would support the view that any action taken prematurely as regards the closing down of the Commission would be unfortunate. He thought they would have no objection to the proposal to defer the matter for reconsideration on 1st November.

MR. AARS-RYNING said he was in a similar position to Dr. Schram-Nielsen and had no instructions, but personally he would support the proposal to reconsider the matter on 1st November.



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THE CHAIRMAN said that if the submission of cases fell off suddenly and showed no signs of a resumption, then the Commission would be prepared to reconsider the whole question before the specified date, 1st November.

SIR ROBERT CRAIGIE said it seemed to him that the idea of closing down Committee I on June 30th was singularly lacking in support and he would certainly not like to put himself in a position of spoiling a unanimous vote. But in order to give some satisfaction to the United Kingdom Government, he wondered whether the Chairman's proposition could be supplemented by what he had just said, namely by the proposal that if, in the unlikely event of cases showing a falling-off at some earlier date than 1st November the matter could be brought up again.

M. DE BAER said he would rather not have the rider. When proposing as a tentative re-examining date, the 1st November, he thought National Offices, like himself, were human enough to want to take a holiday in the summer months of July and August and therefore there would be few cases coming forward then. There were however likely to be many more in October and he would therefore not like to be committed on 30th July, to support the closing of Committee I just because there had been very few cases during that month. If the Commission agreed he would prefer to keep to the original proposal, to reconsider the whole matter on 1st November.

This was agreed.

#### 5. ARRANGEMENTS REGARDING THE FUTURE WORK OF THE COMMISSION.

M. DE BAER in examining Item No. 6 on the Agenda said there would necessarily remain even after Committee I closed down, quite a lot of work for the Commission to do. There was the continuation of the publication of the Law Reports which had been commenced and which were going to take quite a long time, there was to be the classification of all the cases which had been examined by Committee I, - and that work could only begin after Committee I had closed down because, in writing a History of the Commission they had to have a complete survey of all that had been done. He had been asked to supervise the writing of the History of the Commission and since he had been charged with that task he had given considerable thought to it, and the more he had thought and spoken about it with his collaborators the more he had been startled by the wealth of material which the Commission had accumulated since it started to work. One was really amazed, and Dr. Mayr-Harting would certainly support him in this, at the vast number of questions treated and he thought it would be a very great pity if they did not allow this work, this accumulation of work, to bear its normal fruit. He had tried to visualise how this could be done. He had drafted a paper which he now wished to with-hold until the next meeting because there were really such a lot of questions involved - there had been as members knew, letters exchanged with the Secretary General of the United Nations and various United Nations branches, and these negotiations were still in progress. The time might come when the Commission's collaboration might be sought, and bearing in mind that the documentation accumulated here was so large and so vast that if the Commission merely passed them over to the United Nations or some other organisation, he thought no one would have the courage to examine, classify and adjust all these documents. To do this, men were required who had taken part in the work of the Commission and he believed that this work of classification was going to be so valuable to students of international law and declarations on human rights that he felt he would have failed his duty if he did not draw attention to the greatness of the work which had to be done. A history of the Commission, if it was short, could be drafted in possibly three weeks to one month but he thought a History of the Commission should be a detailed work and should at least balance the reports which had been issued by

previous Commissions, the Commission of Fifteen, <sup>and</sup> the Petersen report, which were 1500 to 1600 pages. With a view to what he had just said, it would be impossible to visualise or to say that they would finish on 1st March, June or September of next year - he just could not say. He was not able to give any date for closing the History of the Commission before the autumn and even then it would only be a tentative date. About then, he would probably have other suggestions to present to the Commission and there would then be a more comprehensive survey of the services the Commission had done. His suggestion was, not to contemplate a date for closing down the Commission and if they postponed the discussion until the next meeting he would circulate a paper to members to give them a general idea of what, in his opinion, <sup>there</sup> remained to be done.

THE CHAIRMAN said that some time ago he had made a tentative suggestion of a possible date for closing the operations of the Commission. The date could only have been a tentative suggestion and was a suggestion directed to contradict the views of certain parties who thought the Commission could be brought to an end some time this June. After having seen what had been happening in the last few months he doubted very much indeed whether he had not been rather sanguine when he thought of the end of the present year as a possible date. What he had not realised was that the actual prosecutions would go on as they were doing now, and what the British and American Military authorities had on their books and were proceeding with. What he was sure of was, without unduly boasting of the Commission, that the British and American J.A.G.'s offices would be very sorry to see the Commission go out of existence while they had cases with which they were proceeding and intended to proceed. There had been quite a compliment from the head of the British J.A.G. Department to the Commission, who had said that the United Nations War Crimes Commission had been a tower of strength to them. Another thing to be remembered was that smaller nations did undoubtedly look to the Commission for help and guidance as did the investigating teams scattered all over Europe. They must look beyond Europe, there was Tokyo still going strong and he was afraid he had been too sanguine about Tokyo. There were some important cases going on <sup>in</sup> the East and he did not see how the Commission could close down until they were much nearer a conclusion of all these difficult activities.

One of their most important tasks was to produce Law Reports and to produce the History - that was going to be much more difficult than he had anticipated, there were printing and publishing difficulties which had been acute and exaggerated in the recent past and there were other difficulties which he could not help feeling were approaching. They had also got to remember that the United Nations took a certain interest in the work of the Commission. He was pleased to hear what M. de Baer had just said about the great scope of the Commission's activities in the last two years, it was absolutely true and no one who took the trouble to look into it, even on the surface, would fail to agree with what he had said. He felt his prognostication, which was at the time considered exaggerated, was likely to fall very far short of the actual requirements of the Commission, so that he would like at the moment to deprecate any attempt to fix a possible future date as the date for the final conclusion of the affairs of the Commission. He would be only too glad if things went better but just at the moment, he felt that even the end of December would not be a fair date for the closing of its overt activities. There would still be a period of some months for winding up. He had often said that it was the cheapest International Commission known to history, and that was not at all sanguine if one were to consider and limit oneself to digesting the material and writing a history and preparing and publishing law reports and possibly preparing reports for outside bodies whose requests for information they could not ignore. He was not at all sure that during this liquidation period there would be any great reduction in expenditure because there could not be any great reduction in the secretarial and expert staff. The work would have to go on and he would deprecate any attempt at this moment to fix a target date. He would deprecate any immediate attempt to tackle this problem and, as they had deferred item 5 until 1st November, he thought they should also defer item 6 on the Agenda until the same date.

M. DE BAER supported this proposal.



The Chairman's suggestion that the matter be deferred until the 1st November was unanimously approved.

6. REPORTS BY CHAIRMEN OF COMMITTEES.

M. DE BAER said that Committee I had had two meetings since the Commission last met. At one meeting they had had 87 cases and last time they had 50 cases, two of which had been adjourned from the previous meeting.

DR. SCHRAM-NIELSEN acting as temporary Chairman of Committee III reported that at its last meeting the Committee had dealt with its first report on the French case involving the question of exploitation of the Black Market as a war crime. All members agreed that the operations could not be considered pillage in the technical sense of this word (Art. 47 of the Hague Convention). Attention had been drawn, however, to Art. 43 of the Hague Convention which made it a duty of the occupant to respect, unless absolutely prevented, the laws of the occupied country and the opinion of Committee III was that the French case showed the particular a systematic and planned violation of French municipal law to such an extent as to cause serious economic and moral danger to France, and therefore the persons in question could be charged accordingly. At first Committee III was inclined to state that Article 49 of the Hague Convention prohibiting the extortion of exorbitant contributions did only cover, if at all, the crimes of one of the accused persons, whereas the French representative felt that this was too narrow a view and it was therefore decided that the appropriate part of the report should be re-drafted to the effect that it be left to Committee I to consider the case of each individual accused, on its merits.

The Committee also discussed the question of effective collaboration with the United Nations. The discussion held had only been of a preliminary character but the general feeling was that some kind of contact between the Commission and the United Nations should be established not only for purposes of present matters but also in view of the proposed winding up of the Commission. It was suggested that a delegation from the Commission's Secretariat should go to New York in order to establish personal contact with the United Nations. The Committee would discuss the matter further at their next meeting when they hoped to have their Chairman, Sir Robert Craigie, present.

THE CHAIRMAN said that if it became at any time necessary for the Commission to adopt the report concerning the French cases that report, which Dr. Schram-Nielsen had referred to, would have to be brought as a substantive matter before the Commission. It raised some debatable points as regards the Hague Conventions. These Conventions would have to be re-considered or revised in the very near future he hoped.

7. FORMAL APPROVAL OF UNWCC LISTS NOS: 53 and 54.

The Commission's Lists Nos: 53 and 54 which had been previously circulated were formally approved.

THE CHAIRMAN thought it unnecessary to arrange for a meeting of the Commission next week and possibly not even for the week after that - he did not want to hold meetings unless there was something of importance to discuss but any member who thought there was a matter which should be discussed would, he hoped, send his request to the Secretary-General.

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UNITED NATIONS WAR CRIMES COMMISSIONMINUTES OF MEETING OF COMMISSION HELDWEDNESDAY, MAY 21, 1947 AT 3.0 p. m.

PRESENT: Lord Wright

Chairman

ALSO

PRESENT: Sir Robert Craigie  
Colonel Springer  
accompanied by  
Mr. Kintner  
M. Maillard  
H. de Baer  
Mr. Jules Leger  
Dr. Neumann  
Commander Mouton  
Mr. Aars-Rynning  
Colonel Muszkat  
Dr. Zivkovic  
accompanied by  
M. Milenkovic and  
M. Zimonjic

United Kingdom  
United States of America

France  
Belgium  
Canada  
Czechoslovakia  
Netherlands  
Norway  
Poland  
Yugoslavia

Colonel R. C. Halse

Office of the U.K. Judge  
Advocate General.APOLOGIES FOR ABSENCE WERE RECEIVED FROM:

Mr. Dao  
Mr. Bridgland  
Dr. Schram-Nielsen  
Mr. Dinitzas  
Mr. Dutt  
Mr. Burdakin

China  
Australia  
Denmark  
Greece  
India  
New Zealand

MINUTES

Minutes of the meeting held on Wednesday, 26th March 1947, M.125 were approved and signed.

Amendments to Minutes of meeting held on Thursday, April 24, 1947, M.126 were received from Sir Robert Craigie and Monsieur de Baer and would be incorporated in the final text.

RECALL OF THE YUGOSLAV REPRESENTATIVE (DR. R. ZIVKOVIC)

THE CHAIRMAN said that before dealing with the Agenda there were one or two points on which he had to say a few words, - Dr. Zivkovic, who had been with them for a long time as the Yugoslav Representative was terminating his functions in the Commission on instructions from his Government, to take up new duties. His successor in the Commission would be Mr. Veljko Milenkovic, Counsellor of the Yugoslav Embassy in London who would be assisted by Mr. Milovoje Zimonjic, a Secretary at the Embassy. The Commission was happy to see these two gentlemen present and hoped to see more of them in the future.

Dr. Zivkovic had said in his letter, that he would never forget the wonderful spirit of friendly collaboration that dominated their meetings and the ever present readiness of all members to overcome differences and difficulties with an open mind and mutual understanding. Dr. Zivkovic wished the Commission every success in its important endeavours and hoped that it would show the world that true international co-operation was not only possible but had actually been carried through in their institution.



The Chairman said they were grateful to Dr. Zivković for his expressions of appreciation and good wishes and in turn they wished him the best of success and prosperity.

SIR ROBERT CRAIGIE said he would like to associate himself very fully with what the Chairman had said about Dr. Zivković's collaboration with them. They would all miss Dr. Zivković very much when he left the Commission and he knew that all members would feel the same.

H. DE BAER wished also to associate himself with what the Chairman had said in wishing Dr. Zivković every success in whatever life might have in store for him.

OFFER OF THE POST OF ASSISTANT DIRECTOR OF THE DIVISION OF HUMAN RIGHTS TO THE LEGAL OFFICER, DR. SCHWELB.

THE CHAIRMAN said the next matter was one which would cause a great loss to the Commission of a valued and useful friend but it was not a matter in which they could raise any objection because they were so glad to see the appreciation which had been shown to the efforts and ability of Dr. Schwelb. The Chairman read to members a letter he had received from the Director of the Division of Human Rights, United Nations, which was as follows:-

New York, 15 May 1947.

"Dear Lord Wright:

I cabled you yesterday to the effect that the United Nations is offering Dr. Egon Schwelb the post as assistant director of the Division of Human Rights. I wanted you to be informed of this fact before any official offer was made to him.

May I say that, while I am of course extremely happy to have Dr. Schwelb as my collaborator, I hope that his forthcoming departure from the United Nations War Crimes Commission will not prove embarrassing to you.

Yours sincerely,

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

With regard to the last sentence he could only say that it certainly would prove embarrassing to the Commission but they would have to make the best of it because they could not stand in the way of the advancement of their distinguished legal member to what he could safely say was a larger field of activities. The Chairman thought it a great honour that Dr. Schwelb had been chosen for this very important post in the United Nations - an institution of which they hoped so much - and he was sure that he would contribute very largely to its success. He had insisted that Dr. Schwelb should stay with the Commission until the middle of July so that the parting would be deferred for a little while and they would have the benefit of his valuable help until then. He thought it was a matter of considerable importance that Dr. Schwelb had received such a very distinguished and flattering offer with great possibilities of future distinction. The Commission regretted his departure and wished him all happiness and prosperity.

H. DE BAER wished to associate himself with what the Chairman had said about Dr. Schwelb and added that it had given all members very great pleasure to work with him. He knew that members all felt as he did and would regret Dr. Schwelb's departure.

COLONEL SPRINGER said he would like to concur in the remarks made with respect to Dr. Zivković and Dr. Schwelb. They would all miss them very much and hoped that they would not lose contact completely when they left the Commission.

THE CHAIRMAN said that every member agreed with these tributes which had been paid to Dr. Schwelb and Dr. Zivković and he, as Chairman of the Commission wished to pass on to these two gentlemen the tributes, expressions of regret, and the congratulations.

DR. SCHWELB (Legal Officer) thanked the Chairman for the very kind words he had said. He hoped that he would still have the opportunity of working with the Commission for some time and of taking personal leave of the Chairman, the members and the staff. Nevertheless, he thought it appropriate to say now, how much he appreciated having been so fortunate as to work in this Commission under Lord Wright's directions and help. He considered it among the greatest privileges life had bestowed on him that he had had the unique opportunity of working for more than two years under one of the greatest English lawyers of our time, and of receiving from him, during his term of office, so much encouragement and guidance, and also tokens of personal friendship and interest. He, Dr. Schwelb, would always remain grateful to the Chairman and to all the members of the Commission for the scope of the work which they had permitted him to do, for the understanding they had shown towards the many schemes and projects which he had submitted to them, however unripe and difficult to apply some of them might have been, for the exceptional benevolence with which his work had been received, and the very kind recognitions which had often been made. The atmosphere permeating the work of the Commission and of its Secretariat had always been particularly friendly, co-operative and agreeable. He was grateful not only to the Chairman and to the members of the Commission, but also to the Secretary-General and to his colleagues on the staff and to the lady secretaries from whom he had received by no means unimportant help and co-operation.

Dr. Schwelb emphasized that he would leave this friendly organisation and office only with very great regret and that he would always remember the happy and agreeable days of his connection with the War Crimes Commission. He had no doubt that the Commission would successfully complete the important tasks which lay ahead of it, including the law reporting, the publication of enactments and the production of the historical records, as well as the new tasks which would accrue to the Commission as a consequence of its connection with the United Nations.

He would always have in mind, when taking up his new duties, the expert knowledge and experience which had been gained, and the valuable material which had been collected, by this Commission and its Secretariat, which ought to be used for the tasks which confronted not only this Commission but the community of nations at large.

THE CHAIRMAN addressing Dr. Schwelb, said that everyone fully appreciated the very kind and gratifying observations he had made and he thought it was true that whatever faults they had had they had been and still were a happy family and though there were frequent changes taking place from time to time, he thought they had always maintained, throughout all these changes, a continuity of friendliness and good fellowship.

SIR ROBERT CRAIGIE said he would like to say something in this connection as probably would some other members, but whatever they had to say would all be the same thing - that they had, one and all, received the most splendid help from Dr. Schwelb throughout his appointment; he had been a tremendous source of help, they all deeply regretted his departure. All members associated themselves with the good wishes put forward.

THE CHAIRMAN said that while all members of the Commission regretted Dr. Schwelb's departure they rejoiced at the greater opportunities he was to have of working on a larger stage.

#### APPOINTMENT OF EDITORS FOR PUBLICATIONS BY MESSRS. Wm. HODGE & CO. LTD.

THE CHAIRMAN next referred to a letter which had been received from Messrs. Wm. Hodge & Co. Ltd., the publishers, who were proceeding with the editing of certain trials - their scheme was on a different scale from the plan the Commission had adopted and he did not think they would clash in any way in fact it would probably prove to be supplementary. The letter in question concerned the appointment of Editors for the Peleus and Falkenhorst trials, two very interesting and important cases - for the former trial they proposed as editor Sheriff John Cameron, DSC, M.A., LL.B., KC, and for the latter E.H. Stevens, OBE, LL.M., LL.B., WS. Both gentlemen, he understood, were distinguished Scottish lawyers and both had considerable experience in military or naval operations respectively. One was a friend of Sir David Maxwell Fyfe and he felt sure the Commission would agree that, so far as they were concerned, they fully approved of the two gentlemen named for the proposed duties. This was unanimously agreed.



VISIT TO GERMANY

THE CHAIRMAN informed the Commission that, accompanied by Lady Wright, Monsieur and Madame de Baer, Colonel and Mrs. Springer and Colonel Ledingham he had recently returned from paying a visit to the U. S. Zone of Germany, at the invitation of Brigadier General Telford Taylor, U. S. Chief of Counsel for War Crimes at Nuremberg. As members know, that distinguished lawyer took a large part in the preparation of the case for the big Nuremberg trial and he had now been established by the United States in the important position of Chief Prosecuting Counsel for a number of very important trials which the United States had been staging with accustomed generosity. General Telford Taylor certainly had a very fine team working for him, which probably ran to about 1,000 persons. During their visit they attended three of the trials at Nuremberg; the "Medical case" which involved 23 defendants including one woman, and was presided over by Judge Walter B. Beals. These 23 defendants who were of considerable standing in Germany, were being tried for committing a number of very serious atrocities. The defence had taken considerably longer than had been anticipated but the evidence should be closed by the end of this month. The next trial they attended was of the Nazi Judges and officials of the Reich Ministry of Justice at which there were 15 defendants, the presiding judge being Judge Marshall. These people were being tried for various breaches of the laws of war committed by them under the cover of judicial duties or judicial offices. It is estimated that it will require at least two more months to finish the evidence. The third trial they attended was the "Flick" trial, involving 6 defendants including Flick. The presiding judge was Judge Charles B. Sears, of the New York Court of Appeal. The defendants were principally business men involved in slave labour connected with the steel and iron trade in Germany. Another case, called the "Industrialists" was connected with I.G. Farben, an Institution with which all members were familiar, and which included a great number of defendants; the indictment would come forward next week. Then there was the Pohl trial which dealt with 18 prominent members of the S.S., heads of the S.S. and which was in recess when they were in Nuremberg. The evidence in this case should close about the end of this month. The first large military indictment had just been filed involving war crimes against Fieldmarshal List and von Weichs, General oberst Rendulic and 9 other Generals who had served under them. The Chairman thought that would be a very important trial and would show, quite conclusively, that military men, however exalted their rank, were not immune from the penalties which International Law attached to infringements and violations of the laws of war. A great many terrible atrocities were associated with these military men of exalted rank. Their party had also visited the Nuremberg prison where they had the melancholy satisfaction of seeing Hess, Doenitz, Raeder, Speer and von Neurath enjoying the pleasure of exercise in the not very extensive area appropriated for their ambulatory expeditions. In the afternoon, they saw Milch who had just been condemned to life imprisonment, by one of General Telford Taylor's Courts at Nuremberg. The ambition of General Telford Taylor was to have six courts working concurrently in the great building at Nuremberg which so many members had visited, and in that way he hoped to try a great number of cases within the comparatively restricted time allocated to him. The Chairman said he was quite sure that they would not finish these cases by the end of the year and they would be very unwilling to abandon these schemes which were so very important, substantial and well thought out.

The party next visited Dachau camp which had now been cleaned up and rearranged. The gas chambers were in admirable preservation so that one could see exactly the methods adopted. At Dachau, there were as many as seven trials taking place at one time, one of these being the "Buchenwald" trial.

All members of his party were immensely grateful to their friend Colonel Springer who, with Mrs. Springer acting as a graceful hostess, had made all the arrangements for the expedition.

The Chairman said at this point how much they appreciated the presence at this meeting of that distinguished prosecutor from the British team, Colonel Halse, who had just come back from the Kesselring trial at Venice.

WOLFFENBUTTEL - Observations by M. de Baer. Doc. A.44.

M. DE BAER said he did not think that he need take very long over this matter



as he considered the papers (A. 44) which he had submitted to members were very clear, although he felt that he should have circulated them much sooner. They were the result of an article in the Belgian Press entitled the "Scandal of Wolfenbüttel" in which an ex-Director of the Belgian section of the B.B.C. had stated that it was a very unfortunate thing that a German Court had been charged with judging war criminals in which some allies might have been victims; there were also questions in the Belgian Parliament. This had happened some time ago, since when, they had had several visits of important officers from the British Zone namely, Brigadier Paton Walsh, Colonel Rathbone and Lieut. Colonel Draper. In the beginning, he had been told that the Wolfenbüttel case was one in which German prison officials had been prosecuted for the ill-treatment of German inmates of the prison and accordingly he was satisfied, as obviously, Germans had the right to try Germans for ill-treatment of Germans in prison. After the visit of Lieut. Colonel Draper, he had heard that the Belgian request for the extradition of 34 members of the Wolfenbüttel prison staff - in which prison an indefinite number of Belgian and Polish personnel had been exterminated - might be rejected by the Control Commission (British Element). An indefinite number of Belgians had disappeared in Wolfenbüttel prison, some Belgians say 700 but it might only be 100, however, 100 Belgians disappearing was too much. Articles appeared in the press, questions were asked in Parliament and a request was made for the 34 accused to be handed over to the Belgian authorities in Germany. He understood that there might be a refusal on the grounds that these people had already been tried by a German court and the rule, that persons could not be tried twice for the same offence, might apply. M. de Baer did not know exactly what the position was at present; it might be that the Belgian request had not been filed with the proper authorities, and he was therefore advising his Government as to the proper procedure and channel of communication to adopt. He would therefore await the outcome of this before saying anything more about it.

SIR ROBERT CRAIGIE said that as the British authorities were concerned, he had taken up this matter with the Foreign Office as soon as it had been brought to his attention and had asked that it might be given most careful consideration. That inquiry and consideration was still in progress and he was not in a position to give any definite answer at this time. He would suggest therefore that until they had some response from the British side there would be some advantage in adjourning the discussion. He did not propose an adjournment in order to put off discussion but to wait until they could discuss it with the full facts at their disposal. One fact was that the Wolfenbüttel case was rather exceptional, it was a case of some importance and raised points of principle. He would suggest to members of the Commission that it was probably better in such cases that representation should be made at once to the British Government, through diplomatic channels, rather than they should spend time discussing the matter with this or that authority of the occupying power. Speaking of course only of cases relating to the British Zone, he believed that where a case was not purely routine, more rapid progress would be made if that suggestion were to be adopted.

THE CHAIRMAN said he was very glad that that proposition had been made and he thought there should be a short adjournment in order that the governments concerned might get complete information. He thought they all felt great sympathy with the desire of the Belgian Government to put right any wrongs which may seem to have been inflicted. In discussing this matter with M. de Baer, he had been impressed by the extreme difficulty of getting precise information but he thought the broad features were now perfectly clear and, speaking for himself, he was quite satisfied that there was no authority under the law prevalent in the British Zone of Germany which would justify the trial by a German Court of those persons who were accused of very serious atrocities against Belgian subjects. He was quite sure and completely satisfied that there was the greatest desire on the part of the British Government and of the occupying authorities to meet, in every possible way, the complaints of the Belgian Government, who had, he considered, at least on the fact of it, some grounds for complaint because there seemed to have been, not a desire to infringe their rights, but a real doubt as to what the true position was in regard to their application and he thought all these things with a little explanation and good will could be put right quite soon. That being so, he welcomed the opportunity which he thought was agreed to both by the Belgian representative and by the United Kingdom representative, of putting these things right as simply and naturally as possible, with as little friction and delay as possible and he hoped that when they next met, they would find that the position had been cleared up and everything put on the correct basis. He would be very gratified if that could be done and he would consider it just another proof of



the reasonableness and good will of all concerned with these questions.

The adjournment of this matter was agreed.

EXTRADITION OF WAR CRIMINALS FROM A NEUTRAL COUNTRY (DOC. A.43).

THE CHAIRMAN said they had considered the resolution prepared by the Drafting Committee (Doc. A.43) at the last meeting when it was agreed that the matter be deferred until the next meeting of the Commission.

Now that time had come, members had to decide whether they would vote on the resolution, of which they had a copy. The Chairman remarked that the amendments which, at the last meeting, had been suggested by M. Maillard had been rejected at that same meeting and therefore what they had to do now was to consider the document as it stood, prepared by the Drafting Committee and circulated as Doc. A.43.

M. DE BAER said he had abstained from voting on the last occasion but he had now obtained definite instructions from his Government to support the resolution. As regards procedure, his Government thought the best method would be for the Commission to transmit its resolution direct to neutral states and to Switzerland in particular.

DR. NEUMANN said he would like to draw attention once more to the Czechoslovak charge against Wilhelm Brünig, who had committed war crimes in Czechoslovakia and had been listed by the Commission on list "A" as a war criminal, List No. 32/27, Charge No. 2981, on 2nd May 1946. According to information received, the accused was believed to be in Switzerland. The extradition certificate of the United Nations War Crimes Commission was issued on the 26th June 1946. The Czechoslovak Government asked through the usual diplomatic channels, for extradition of Wilhelm Brünig from Switzerland. According to information received from the Czechoslovak Foreign Office in Prague, the Swiss authorities did not feel authorised to give any information with regard to the whereabouts of war criminal Brünig. By refusing to give information about a war criminal listed by the Commission, the Swiss Government, according to his humble opinion, interfered with the whole policy of the United Nations to get hold of and to try war criminals and that was why he took the liberty to ask the Secretary General to put this case on the Commission agenda in order to pass a resolution which should not be considered as a lesson but only as an expression of how the Governments represented on the Commission felt about cases where a neutral country does not endeavour to give any help to a member of the United Nations against whose nationals war crimes had been committed.

The drafting committee had prepared the most outstanding and remarkable draft resolution which should be sent by the Governments represented on the Commission to those neutral countries in which war criminals are believed to be sheltering. The Czechoslovak Government was in favour of the following addition to that resolution:

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

The Czechoslovak Government thought that the United Nations should be informed how neutral countries helped with regard to extradition of listed war criminals. It would be important to have this record when a neutral country would ask for membership in the United Nations. Persons appearing on the Commission's lists were accused of crimes of a revolting and inhuman character and it would be most unfortunate, if to such criminals, the law of asylum were granted. He wished to remind delegates that the Brünig case was not the only one. On the 14th July in Brussels there would be a discussion about extradition procedure and he was sure that a resolution passed by this international body would be a very useful document.

They did not want to give lessons to neutral countries, they only desired the goodwill and help of any country in giving them some information with regard to a listed war criminal wanted by any country represented on the Commission.

The Resolution in general terms had been passed by the Commission by, he was sorry to say, only a small majority; only 5 members voted for the resolution and two voted against it, all others abstained. He hoped that members would now approve the passing of the resolution as drafted with the amendment as proposed.

THE CHAIRMAN said that Dr. Neumann's amendment was that "The United Nations War Crimes Commission considers it its duty to report all cases where a neutral country fails to give a satisfactory reply to a member state with regard to a listed war criminal to the Secretary General of the United Nations" and that he understood Dr. Neumann wished to have that paragraph inserted at the end of the Resolution.

He personally thought such an addition might be taken as an unnecessary interference with the sovereign rights of neutral countries; however, it was a matter on which each member nation ought to have the opportunity of recording its view. The first question on which the Chairman asked members to vote was the amendment put forward by Dr. Neumann and seconded by Dr. Zivković.

A vote on the amendment was then taken, the results being as follows:

For the inclusion of the amendment:

5. Belgium,  
France,  
Yugoslavia,  
Czechoslovakia,  
Poland.

Against the inclusion of the amendment:

5. United States of America,  
Australia,  
Canada,  
United Kingdom,  
Norway.

The Chairman exercised his casting vote against the amendment.

The Czechoslovak amendment was accordingly rejected.

THE CHAIRMAN said the amendment having been rejected, the next question on which he wished to have a vote was, whether the resolution as drafted, Doc. A.43, was acceptable to the Commission. It was proposed by Dr. Neumann and seconded by Monsieur de Baer that the resolution, as drafted, should be adopted.

The vote taken showed the following result:

Those voting in favour:

8. Australia,  
Belgium,  
Czechoslovakia,  
France,  
Netherlands,  
Norway,  
Poland,  
Yugoslavia.

Those voting against:

2. United Kingdom,  
United States of America.

Canada abstained from voting.

SIR ROBERT CRAIGIE explained that in voting against the resolution, his Government did not object in any way to steps being taken to induce neutral governments to hand over war criminals within their boundaries. It was more a question of procedure. His Government felt the purpose the Commission had in view was not likely to be served by the passing of the proposed resolution.

COLONEL SPRINGER said, in explanation of his opposition to the resolution, that when the resolution was first proposed it was, as he remembered, directed specifically against Switzerland with regard to specific cases. He felt that



such a resolution might be regarded as a direct affront by that Government and consequently he had opposed its adoption. His opposition was later confirmed by his government. The resolution had now been redrafted as a resolution concerning neutral governments in general. His Government continued to oppose the resolution. As proposed the resolution could be despatched by a member nation to neutral governments with a note and in effect used in the same way as the original resolution. His government felt that the adoption of the resolution might prejudice future discussions on the question with neutral governments on a diplomatic level because such neutral governments would be able to argue justifiably that a resolution of that sort passed without a hearing of specific cases on the part of neutral governments might be considered unfair. Furthermore, to him it seemed hardly appropriate to use the Commission as an agency which might be regarded as a pressure instrument, forcing action which another country might not like to take, or might like to be more deliberate in taking. Finally only 8 out of the 17 members in the Commission had voted in favour of the resolution; that was not a complete representation and the resolution was being passed by less than a majority. In view of this numerical fact Colonel Springer suggested that the resolution, when it was adopted, should carry on its face the names of those member governments supporting the resolution so that it need not be taken, as Dr. Neumann had said it would be taken, as an expression of opinion of all governments represented on the Commission. It did not represent even the majority of the governments represented and it seemed only fair to those receiving it, that they should realise that all governments had not expressed the opinion embodied in the instrument.

THE CHAIRMAN then put forward the proposal that the resolution should be used by being circulated to each member government, and each member government having received it should be entitled, according to its own judgment, to send it or not send it, to neutral governments. To that particular proposal he took it there would be no objection.

This was agreed.

The next proposal, which had to be put to the Commission, was whether the Commission itself should pass the resolution in the form in which it now stood, approved, to neutral governments.

M. de BAER on instructions from his Government proposed that the resolution should be sent direct by the United Nations War Crimes Commission to neutral governments and especially to the Swiss Government.

Dr. ZIVKOVIC seconded M. de Baer's proposal.

THE CHAIRMAN said the proposal was "that the resolution should be sent direct by the Commission to any or all neutral governments and especially to Switzerland."

SIR ROBERT CRAIGIE said that in voting against the resolution as a whole he would also vote against the Commission taking the responsibility of sending the resolution direct to the Swiss Government, and he would venture to add, in his personal capacity, that with regard to the object the Commission and the Czechoslovak representative had in mind, he thought they could not do anything worse than send the document A.43 to any neutral government as it would probably only confirm them in their attitude not to surrender war criminals.

COMMANDER MOUTON said he quite agreed with Sir Robert though he had voted for the resolution as such, but he felt that as International Law stood, the Commission did not have the standing to communicate with sovereign states, and he thought it should be left to their own governments to decide whether or not they ought to approach these neutral governments. He was inclined to favour the communication of the resolution to neutral states by way of their governments,

THE CHAIRMAN said the Commission had no power to tell member governments what to do with the resolution when they got it. It was now a question of whether the Commission should take the responsibility of communicating the resolution itself to neutral governments.

SIR ROBERT CRAIGIE said it had never been the case for the Commission to communicate with a non-member government and such a proposal raised a new point of procedure.

THE CHAIRMAN agreed that the Commission had never before taken that unusual course and wondered whether the British Foreign Office would be prepared to act as the channel for transmission.

SIR ROBERT CRAIGIE said that, in the circumstances, the Foreign Office was not prepared to become the channel of communication.

THE CHAIRMAN then put the proposal to the vote as a result of which four members voted for the proposal that the Commission itself should communicate the resolution to neutral states and seven voted against. The members in favour of the proposal were: Belgium, Czechoslovakia, Poland and Yugoslavia; the members against were: United States of America, Australia, Canada, France, United Kingdom, Netherlands, Norway.

The proposal was therefore rejected.

COLONEL SPRINGER moved that the resolution adopted should carry, as a final paragraph, a statement to the effect that there were eight members voting in favour of the resolution, two against, one abstaining and six absent. Otherwise, as Dr. Neumann said, if a member government transmitted the resolution to a neutral government it would be accepted as the expression of the opinion of the Commission though only 8 out of 17 members represented on the Commission voted for the proposal; it was not a unanimous expression and might not even be a majority expression, depending on how absent members would have voted.

THE CHAIRMAN did not see any objection to adding that statement of fact to the resolution.

SIR ROBERT CRAIGIE said he would be prepared to support Colonel Springer's proposal.

M. DE BAER asked whether it was to be the practice for all future documents to carry a note of the voting; if this was the case, he thought a very dangerous precedent would be set.

THE CHAIRMAN said it would be dangerous if there was a precedent, but it was not a precedent and he did not see any objection to such an addition in this special case. Colonel Springer had proposed that it should be done in this particular case only, his proposal had been seconded by Sir Robert Craigie and the Chairman said he also would support it.

MR. LEGER asked whether the names of the countries voting for and against and abstaining from voting would appear on the document or only the numbers.

THE CHAIRMAN confirmed that only the numbers would appear.

M. DE BAER said he would vote against such a proposal.

DR. ZIVKOVIC felt that though the paper had been passed by an inadequate majority if it were to be communicated to neutral governments with a statement of the kind proposed by Colonel Springer attached, such a statement would deprive the document of any effect.

THE CHAIRMAN thought they had discussed the matter sufficiently and called for a vote on Colonel Springer's proposal.

The vote taken showed that there were four (4) members in favour of the proposal put forward by Colonel Springer and six (6) against.

Colonel Springer's proposal was therefore rejected and the Resolution, as drafted (Doc. A.43), without any amendments or additions, was accepted for member governments to forward to neutral states should they consider such a course desirable.



INVITATION BY BELGIAN GOVERNMENT TO SEND DELEGATES FROM THE COMMISSION TO THE CONFERENCE OF THE INTERNATIONAL BUREAU FOR THE UNIFICATION OF CRIMINAL LAW TO BE HELD IN BRUSSELS ON 10-12 JULY - (DOC. MISC. 90) - AND TO THE PERMANENT INTERNATIONAL COMMISSION FOR THE STUDY OF CRIMES AGAINST INTERNATIONAL LAW AND OF ACTS COMMITTED IN THE INTEREST OF THE ENEMY, TO BE HELD 14, 15 JULY, 1947. (DOC. MISC. 93).

M. DE BAER said that he had received from his Government an invitation to the United Nations War Crimes Commission to send one or two delegates to the Conference of the International Bureau for the Unification of Criminal Law to be held in Brussels from 10-12 July, 1947. Two conferences were to take place in Brussels in the middle of July, one on the 10th-12th and the other, in connection with the Permanent International Commission for the Study of Crimes against International Law and of Acts committed in the interests of the enemy on the 14th-15th July. M. de Baer did not think that he could express an opinion on the matter and he very much wondered whether a body like the Commission, which was really an international body, should send a report to be discussed by other bodies, possibly privately instituted and sponsored. The outcome of this would be, suppose the Commission sent a report to the Conference, if it was an excellent report they would take the credit for it and embody it in their own general report or, if it was a bad report, then the Commission would be in an extremely difficult position because of its international standing. He felt, therefore, that they should not send a report to the Conference as a report from the United Nations War Crimes Commission. Another question was sending observers to the conference. If these observers wished to submit a report in their own name it would not cause offence if such a report were criticised. Accordingly he would favour the first idea being rejected; incidentally, he would like to say that any observers going to Brussels would have to pay their own expenses or else have their expenses paid by the body sending them.

THE CHAIRMAN suggested that they reply saying that they could not spare any of their staff.

SIR ROBERT CRAIGIE suggested they could say, at this stage that it was not a matter on which the Commission was prepared to send a report but they would naturally be very interested to see the conclusions of the conference when they were available.

THE CHAIRMAN said the Secretary General might send a polite letter, thanking them for the honour of the invitation, that they deeply regretted that at the present moment owing to circumstances beyond their control, the Commission was unable to send any member of its staff at that period and that they would look forward, in due course, to the instruction and edification which they might derive from the record of their proceedings when they were completed.

SIR ROBERT CRAIGIE said they could first say that they were very honoured by the invitation and though they were not able to send a report, they would look forward with a great deal of interest to seeing the conclusions of the conference when they were available. They should say nothing about observers at this time, though they might perhaps say that they would examine the question of sending observers at some later date.

THE CHAIRMAN felt there was no necessity for a particular vote, the decision was, that the Commission should not send a report to the conference and that the question of observers be deferred.

LETTER FROM THE DIRECTOR OF THE DIVISION ON HUMAN RIGHTS, UNITED NATIONS CONCERNING THE COLLECTION OF INFORMATION ON HUMAN RIGHTS ARISING FROM TRIALS OF WAR CRIMINALS.

THE CHAIRMAN said members would see from Doc. A.45 the copy of a letter from Professor Humphrey, Director of the Division on Human Rights, United Nations, dated 6th May, concerned the question of the possible co-operation between the Division on Human Rights of the United Nations and the United Nations War Crimes Commission in the matter of collection and publication of material concerning human rights arising from trials of war criminals particularly from the Nuremberg and Tokyo trials. He thought members would all agree that as the question of quislings and traitors was outside the scope of general jurisdiction of the Commission, it would be better to agree to leave that out in issuing their document. They could not deal with the Tokyo trial because it was not only not completed but was very