

(12) The comparatively small number of cases on which the military authorities may take action now has not been disclosed to the public. If the number becomes known there is likely to be very strong and widespread criticism of the Commission, especially in view of such statements as that made by the Under-Secretary for Foreign Affairs in the House of Commons on 20th July, viz: the policy of the Government towards the German war criminals was well-known. The War Crimes Commission would see to **it** that the same excuse was not made this time as was made after the last war.

It is however no complete answer for the Commission to argue that the National Offices have been charged with the duty of putting forward particulars and that Committee I merely has to examine such cases. The Commission itself is charged with the duty of obtaining particulars of war criminals so that their custody can be demanded by the military authorities. SHAEF has made it clear that it is now ready to receive such particulars.

(13) The question of cost, which will be of necessity be very considerable, ought in no wise deter the accomplishment of the duty which the Commission owes to the Governments and indeed to humanity. Nothing should be omitted which will show to the world that the immunity given to war criminals after the last war will not again be given to the war criminals of the present war. Just retribution must be exacted, but speedy and thorough-going action is now necessary if the Commission's duty is to be discharged.

(14) It is not significant in what territory or against what nationalities war crimes have been committed. They are crimes against all the United Nations and indeed against the more important interests of all countries. Their punishment is the concern of the whole of civilisation

#### Appendix I

It might be useful for the Investigation Branch to investigate the methods at present being employed by the Russians in apprehending war criminals in the eastern zone of Europe.

#### Appendix II

If in a liberated territory where the National Government is once again functioning, such National Government fails to supply the Commission with particulars, the Commission should take every possible step to secure that war criminals do not escape justice.

Steps have already been taken to prevent neutral countries from harbouring war criminals and it would be an absurdity for an Allied Government to prevent by passive methods the investigation of war crimes within its territory.

SECRET

C.62  
6 November 1944

UNITED NATIONS WAR CRIMES COMMISSION

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PROPOSAL BY LORD WRIGHT (AUSTRALIA) FOR  
A MODIFICATION OF THE SYSTEM NOW IN USE FOR THE  
COLLECTION OF EVIDENCE IN RESPECT OF WAR CRIMES

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The Apprehension of War Criminals

Chief Object - to apprehend every available war criminal.

Specific Object - United Nations War Crimes Commission to obtain particulars of every war crime in order to supply Military Authorities with details to enable them to take every war criminal into custody.

Suggestions for accomplishment of the specific object

- (1) There is waiting to be gathered an enormous amount of information concerning war crimes and war criminals in such places as:-
  - (a) Offices of the National Governments;
  - (b) Offices of the various Service Departments with their offshoots (e.g. in the case of the British War Office:- the Prisoners of War Department, the Historical Section, etc.);
  - (c) The British Foreign Office and its offshoots (e.g. P.I.D.);
  - (d) The U.S. State Department, War Department etc. (e.g. War Department Intelligence Agencies);
  - (e) Uncollected information in liberated territories;
  - (f) Uncollected information in unliberated territories;
  - (g) SHAEF-1;
  - (h) The Extraordinary State Commission of the U.S.S.R.
- (2) Experience has shown that the gathering of this information should be carried out not by the National Offices, but by the Commission itself, as originally charged.
- (3) The task of organising the collection of particulars concerning war crimes and war criminals should be entrusted by the Commission to an officer, who should be either a service man or civilian, but who should possess imagination, drive and initiative.

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He should be answerable to the Commission but should be given a large measure of independence in carrying out his duties. The branch of which this officer would be in charge might be called "The Investigation Branch of the United Nations War Crimes Commission".

The Commission's main object in relation to the Branch should be to see that appropriate progress is being made in obtaining particulars of the thousands upon thousands of cases of war crimes committed.

(4) A small committee of the Commission should be established to consider the progress being made by the Investigating Branch, but it should not attempt to supervise the Branch unduly.

(5) The principal headquarters of the Investigating Branch should be in London. As regards the other countries, including the countries which have been invaded, the headquarters should, wherever possible, be situated at the capitals of such countries.

So far as gathering the information at present in London, the Investigation Branch should comb the records of the various Governments.

A man with drive and initiative should be in charge of the headquarters of the Agencies of the Investigation Branch at the various capitals.

As a tentative recommendation of the practical steps to be taken, it is suggested that in each country under the Officer in charge of the Agency at the capital, one or more travelling investigatory groups be sent from town to town on circuit. These groups should be preceded in each particular town by an advance agent who would be responsible for notifying the inhabitants of that town through the press, radio, or other modes of publicity of the fact that, say a week hence, the travelling group would arrive and be available at the Town Hall or other similar public building, and that this body would welcome any information concerning war crimes which any inhabitant might bring before it. It should be made very clear that the group's purpose would be to obtain particulars of war crimes and not to hold trials. The advance agent should also designate the most responsible and respected citizen of particular communities as a key-man to act during the intervening week and possibly for a period during and after the sessions in the town of the travelling group. The key-men would differ from place to place. In some areas e.g. where the army is still in charge, he would be a military officer, in others a representative of the F.F.I. or analogous underground army, in others the Mayor and in others the most trusted leading inhabitant (not necessarily holding an official position) during the time of Axis occupation.

In charge of the travelling group should be a man of forceful character, with sufficient legal knowledge, but possessing above all initiative and great keenness. He should be imbued with a strong sense of the international duty of obtaining particulars concerning all war crimes, and see that no considerations of local prestige or favouritism should hinder the information from coming in.



If residents in a particular area are not satisfied with their local key-man they should have the right to appeal to headquarters at the capital of the country with a view to a new key-man being appointed.

(6) It appears that SHAEF and the other Supreme Commands are willing to apprehend war criminals but they ask that they be supplied with all available information including particulars identifying the accused, such as home address, personal description, age, photograph, etc. These data should be prepared by the Investigation Branch of the Commission through exhaustive contacts with such Agencies as are mentioned in paragraph 1.

(7) The United Nations War Crimes Commission has had imposed on it the duty that it "will investigate war crimes committed against nationals of the United Nations recording the testimony available, and the Commission will report from time to time to the Governments of these nations cases in which such crimes appear to have been committed, naming and identifying wherever possible persons responsible".

In other words, the Commission has been specifically charged by the Governments with the particular duty of obtaining all possible data which the military authorities will need in order to apprehend the war criminals. Unless it is satisfied that this work is being carried out by some other authority, it cannot abdicate its responsibilities of obtaining particulars of war crimes.

(8) The victims of these war crimes number hundreds of thousands but so far only a few hundred dossiers have been prepared and the total number of persons whom the Commission has declared should be taken into custody is probably not more than a thousand.

(9) The Commission has from time to time complained that this failure was due to the fact that the National Offices had not been sending in more than a very few cases.

The Chairman (Sir C. Hurst) has more than once drawn attention to this situation. So also has the Chairman of Committee I (General de Baer).

E.G. As far back as the 25th April General de Baer, in Document C.14 emphasised the small number of cases which the National Offices were sending his Committee, and he said inter alia "The great obstacle is the difficulty of obtaining circumstantial evidence from abroad".

This difficulty no longer obtains in regard to Belgium and France, which have been liberated, but we have not yet seen an influx of cases commensurate with the number of war crimes committed in those countries.

Further on in C.14 General de Baer said, "However, as the punishment of crime is the concern of the United Nations as a whole, it may be proper for us, if the National Offices fail to send us these cases, to examine whether the Commission should not itself assume this part of the work."

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When Document C.14 came before the Commission on the 2nd May Sir C. Hurst said that "the National Offices, and possibly the Commission itself, should seek evidence against leading war criminals in orders and decrees signed by them prescribing acts and practices which were war crimes. Such evidence could be sought in newspapers, official journals, etc. Ought the Commission itself to undertake such research as well as the National Offices?" The Commission agreed to this being done.

On the 23rd May General de Baer, as Chairman of Committee I reported to the Commission that "he wished to ask that members of the Commission would urge their National Offices to transmit to the Commission cases of war crimes which did not involve violation of their national criminal law. They appeared to be avoiding doing this and it was important to find out how numerous such cases were as this had a bearing on setting up an international criminal court." General de Baer's proposal was adopted by the Commission.

On the 1st August the Chairman once again emphasised the small number of cases which the National Offices were sending to Committee I and requested members to draw their Governments' attention to the matter.

(10) Both the Chairman of the Commission and the Chairman of Committee II have also from time to time emphasised (e.g. in C.14) that this extension of the Commission's work would involve additions to the Commission's staff.

On the 2nd May the Chairman "said he would see if he could arrange for any additional staff which might be necessary to enable the Commission, in collaboration with the National Offices, to undertake this work ...."

As a result of the above resolution, the Chairman announced at the next meeting of the Commission on May 16th that the services of Lt. Col. Wade had been secured in order "to meet the need for additional staff resulting from the Commission's decision to collaborate actively with the National Offices in seeking certain kinds of evidence against leading war criminals and to give general assistance to the Secretary-General."

The present staff, in fact, consists of the Secretary-General, Lt.-Col. Wade, Miss Pittendrigh and four Secretary-typists.

Although this striking inadequacy of staff has also been stressed by members of the Commission no adequate steps have been taken to meet it.

(11) From time to time articles and letters have appeared in the more responsible United Kingdom newspapers concerning public uneasiness as to the progress being made by the Commission. Similar articles are appearing in the United States Press. The public, however, obviously have no means of knowing the conditions under which the Commission labours due to the difficulties involved in its restricted terms of reference.

(12) The comparatively small number of cases on which the military authorities may take action now has not been disclosed to the public. If the number becomes known there is likely to be very strong and widespread criticism of the Commission, especially in view of such statements as that made by the Under-Secretary for Foreign Affairs in the House of Commons on 20th July, viz: the policy of the Government towards the German war criminals was well-known. The War Crimes Commission would see to it that the same excuse was not made this time as was made after the last war.

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SECRET

C.63  
11 November, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

REPORT MADE BY DR. ECER ON PROFESSOR TRAININ'S BOOK  
"THE CRIMINAL RESPONSIBILITY OF THE HITLERITES" AT THE  
COMMISSION'S MEETING OF OCTOBER 31ST, 1944.

Professor Trainin is a member of the Moscow Academy, Professor of Law at the Moscow University and a leading member of the Extraordinary State Commission for the Investigation of German Crimes which was established by the Soviet Government on November 2nd, 1942. His book, appeared in July 1944 and expresses not only Professor Trainin's opinion but also the official attitude of the Soviet Government.

The title indicates how the author approaches the problem. He does not limit his study to "war crimes" stricto sensu (violation of laws and customs of war), but deals with the penal responsibility of the Hitlerites for all their crimes, in the first place for their crimes against peace. He stresses the rôle of criminal law, both national and international, in the repression and prevention of German criminality.

In my paper on Soviet Penal Law which was circulated among the members of our Commission, I explained its general principles (the conception of crime, the physical and mental elements of a crime, intention, negligence, exemptions from penal responsibility, stages of criminal action - inchoate crimes, and so on), and I proved that the general principles of Soviet Penal Law are to a great extent identical with those of the modern criminal law of other allied nations.

I.

The present war and the problem of penal responsibility in the sphere of International Law.

1) In the first chapter, Professor Trainin first of all characterizes the present war. The monstrous peculiarity of the present war as conducted by the Hitlerites consists, in his opinion, in the fact that "enormous, million-masses of people, armed according to the last word of technical skill, are engaged in a planned and organised manner in gangster-like attacks, and are exterminating the inhabitants of the invaded countries, plundering and destroying towns and villages, robbing and annihilating the national cultural values" (p.3). In another place, he calls Hitler's aggression "State-organised banditry", criminal intention and criminal deeds - the two fundamental elements of crime - are the decisive features of the present war as regards the Germans.

2) The author points out that the new relations between the nations must be organised in such a manner that aggressive wars will be impossible. The punishment of Hitlerite criminals for all their crimes is one of the essential conditions of the achievement of this aim. The author quotes Marshall Stalin's declaration of December 4th, 1941, and some notes of his Government (November 25th, 1941, April 27th, 1944, October 14th, 1944), in which the criminal, not only the moral or political responsibility of the German State - Army - and Party-leaders, their accomplices and of all individual perpetrators of atrocities, is established and their punishment by Courts, national and international demanded.



The Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of November 2nd 1942, by which a Commission, analogous to our Commission, was set up, states that for the monstrous crimes committed by the German Fascist invaders and their accomplices, and for the material damage caused by them, the criminal Hitlerite Government, the Commanders of the German Army and their accomplices, bear full penal and material responsibility. The terms of reference of the Commission are wider than the terms of reference of our Commission.

The Commission is called the "Extraordinary State Commission for detecting and investigating crimes committed by the German Fascist invaders and their accomplices, and enquiring into the material damage caused by them to the citizens, collective farms, collective organisations, state institutions and establishments of the U.S.S.R.".

The author then quotes some declarations of other Allies aiming at the same goal, the judicial punishment of the Hitlerites - especially Roosevelt's of August 1942 and Churchill's of September 8th, 1942, which both stress the punishment of Hitlerites by tribunals.

3) The crimes of the Hitlerites are genuine international crimes: they are attacks on the very foundations of the international community. The author stresses the important rôle of criminal law in the fight against this kind of crime. International Criminal Law is not at present a perfect instrument for the purpose but, in spite of its defects it is, in co-operation with National Criminal Law, a sufficient legal basis for the punishment of all the crimes of the Hitlerites. These consist of :

- a) crimes against peace, and
- b) crimes against the laws and customs of war.

## II.

### The conception of International Crime.

1) In the second chapter the author describes some attempts by experts in International or Criminal Law to define International crime. He mentioned the definitions and doctrines of Pella, Saldana, and others.

2) Some other experts regard as the source of International Criminal Law various international conventions concluded for co-operation of states in the struggle against certain dangerous species of crimes, such as trading in opium and other drugs, trading in women and children, and so on. The author does not regard the crimes enumerated in these conventions as belonging to the sphere of genuine international crimes. They are ordinary crimes arising under the criminal law of the signatory states. Their international character consists only in the fact that their operation is not confined to the territory of a single State. But this is not an intrinsic characteristic of an international crime.

3) Much more important for the development of an international criminal law dealing with genuine international crimes are works of some authors dealing with Article 16 of the Covenant. The author quotes some of these. Professor Kunz, for instance, says that the launching of war in violation of Article 16 of the Covenant must be regarded as a crime. Mr. Kon sees in Article 16 an institution of penal law, and Professor Bruck says that Article 16 is the penal code of the League of Nations. In the opinion of Professor Trainin, these authors were

trying to define international crime as aggression in violation of the Covenant and international punishment as the sanctions provided in Article 16. It was the right way. Unfortunately, Article 16 was never brought into operation and remained a dead letter, although it was capable of being a very useful starting point for penal actions against aggressors and thus a starting point for the development of a genuine international criminal law.

4) The monstrous crimes of the Hitlerites have revealed the uselessness and ineffectiveness of formal constructions of international crime, and the necessity to seek for a conception in accordance with the real nature of this criminal behaviour. The author admits that international crime is a complicated and peculiar phenomenon, distinct from offences under the national criminal law. He regards the following features as characteristics of an international crime.

a) it is an attack on the existence and foundations of international community.

b) the fundamental principle of national criminal law "nullum crimen and nulla poena sine lege", cannot be strictly applied to international crimes as "conditio sine qua non" of their punishments. In the sphere of international law there is no "lex" because there is no legislative body and international law does not provide penalties for individuals.

c) but the principle of penal and personal responsibility for violation of international agreements was clearly expressed in the Hague Regulations, (Article 56), in the Geneva Convention (Article 29), and especially in Article 3 of the Washington Convention 1922 according to which violation of the Convention by an attack against a merchant ship would be regarded as a "war crime" and punished by the Courts of the signatory States into whose hands the perpetrators fell. The author even sees the recognition of this principle in the Versailles treaties in the provisions relating to the Kaiser.

d) finally, international crimes, in the first place "violations of laws and customs of war", are punishable by the penal codes of individual States.

Thus, the United Nations have, if not formally perfect, at least a completely sufficient legal basis for the definition of an international crime as a "punishable attack on the foundations of the international community" (p.35).

### III.

#### Classification of International Crimes

1) To say that international crime is an "attack on the foundations of the international community", would be to give a generic definition of international crime, but this general notion manifests itself in many species of international crimes.

2) The fundamental condition for the existence of the international community is maintenance of peaceful relations between the nations. War disrupts these relations and destroys the very foundation of international life. Thus peace is the most valuable thing in international life. The first and most dangerous category of international crimes are crimes against peace. The first crime of this category is aggression. Penal repression of aggression should not be

limited to this direct and most dangerous crime, but should be extended to preparation for aggression. There are four main species of such preparatory action:

a) conclusion of agreements with the purpose of preparing for aggression.

b) violations of pacts and agreements serving the cause of peace.

c) provocation of international conflicts.

d) propaganda in favour of aggression which uses speeches, articles, films, and terroristic acts as well. An example was the assassination of King Alexander of Yugoslavia, and the French Minister of Foreign Affairs, Barthou. Terrorism is one of the most dangerous of the international crimes which serve to prepare for aggressive wars. It is for this reason that this assassination caused the members of the League of Nations to conclude two conventions against terrorism, (1937) which, of course, deal only with one species of international crime.

3) As long as it is impossible to prevent wars, it is necessary to establish a "legal régime of war", in order to limit the horrors of war to a minimum, to protect prisoners, wounded and sick soldiers and the peaceful civilian population. Attacks on this minimum of humanity and civilisation, the "violations of laws and customs of war", are the second great category of international crime.

In conclusion, the author establishes the following classification of international crimes, (p.40) :

A) First group: Attacks on peaceful relations between nations.

- 1) aggressive acts,
- 2) propaganda for aggression,
- 3) conclusion of agreements for the purpose of aggression,
- 4) violation of agreements serving the cause of peace,
- 5) provocation for the purpose of disturbing peaceful relations between States,
- 6) terrorism,
- 7) maintenance of armed gangs (fifth columnists).

B) Second group: Crimes connected with the conduct of war.

- 1) crimes against prisoners of war and wounded and sick soldiers.
- 2) crimes against the life, health, honour and property of peaceful inhabitants.
- 3) destruction of towns and villages.
- 4) destruction or robbery of material or cultural values.

This classification, the author admits, cannot be considered as exhaustive.

#### IV.

Crimes of the Hitlerites against peace.

- 1) The author examines the acts of the German Government and the commanders of the German Armies and the crimes of the great mass of



German criminals on the lines of his classification. Thus, he examines first their crimes against peace. He begins with a short analysis of Hitler's famous book "Mein Kampf", and he demonstrates with the help of this book the criminal intentions of the Hitlerites which they accomplished by invasion and occupation of foreign territories according to a previously well-established plan and programme.

2) The author further describes the preparation for these criminal German aggressions: a régime of terror in Germany, re-armament, militarisation of the whole German industry, propaganda for aggression, instigation of internal troubles in the countries to be invaded, and at the same time - in order to deceive these countries and all peaceful nations - recognition of older and even conclusion of new pacts and agreements in favour of peace (Briand-Kellogg Pact, non-aggression or friendship Pacts).

## V.

### Crimes of the Hitlerites connected with the conduct of War.

1) the system of State banditry which characterizes Hitlerite Germany manifests itself in peace-time in internal terrorism, in preparation for war, and in systematic provocation of armed conflict.

Having achieved its purpose by launching aggressive and total war, Germany directed its system of State banditry and its criminal machinery against the life and independence of free peoples, against culture and civilisation and against material possessions of foreign races. Germany is using criminal methods and means in conducting the present war.

2) The author divides the crimes considered into four main groups:

- a) crimes against prisoners of war, wounded and sick soldiers.
- b) crimes against the peaceful population.
  - a.a) murder and violence
  - b.b) establishment of a régime of slavery and deportation into "captivity".
  - c.c) robbery.
- c) destruction of towns and other inhabited places.
- d) plunder and destruction of cultural values.

The author proves that Germany, by violating the "laws and customs of war", especially the Hague Regulations and the Geneva Conventions, is violating at the same time some of its own legal provisions. He quotes as an example the German Law issued by the Hitlerite Government on August 17th 1938 relating to the organisation and jurisdiction of military courts in time of war. This law contains in Section E, paras. 73-75, a direct reference to the Geneva Convention of 1929, repeats the main provisions of this Convention and stresses the necessity of observing them. But in contradiction with and violation of this law the Hitlerite Government ordered crimes to be committed against prisoners of war, wounded and sick soldiers. The author quotes an impressive number of such criminal orders issued by the German Government, the German High Command, or the Commanders of various units of the German Army. Among them is an order issued on behalf of Hitler by the German High Command on January 14th, 1942, forbidding expressly any form of humanitarian treatment of prisoners of war.

Then the author deals with the crimes committed against the civilian population and proves, by quoting government decrees, the planned and deliberate character of these crimes and gives some outstanding examples of them. Finally, the author quotes the German Rules of Land Warfare of 1902, which is still in force in Germany, which after enumerating some violations of the laws and customs of war says: "Such crimes are contrary to the fundamental conception of international law. The sense of justice inborn in all men and the spirit of chivalry living in the armies of all civilised nations have branded them as crimes against the legal conscience of mankind. To a belligerent who has clearly violated the laws of honour and justice there cannot in future be granted equal rights" (p.70)

## VI.

To whom is responsibility for international crimes to be attributed : Responsibility of the Hitlerites for such crimes.

1) The author deals with the question whether the whole German nation or some sections of it, or alternatively, only the Nazi régime, should be held responsible for the crimes which the Germans have committed.

2) He explains the complicated character of a crime which is committed on behalf of a State by the state machinery. The problem of responsibility for such a crime is a difficult one. The question arises, "who can be held penally responsible?". The author mentions some experts in criminal law who hold that even a corporation, for instance a State, can be penally responsible for its acts. He refers to the well-known theory of "corporate liability", and especially to the theory of Professor Fella on the collective guilt and penal responsibility of States. The author rejects this theory. Penal responsibility presupposes a guilty mind (intention or negligence). Only an individual is capable of having a guilty mind. The State cannot have a guilty mind. A State cannot be put on trial before a Court for a crime. A State cannot be punished by imprisonment or execution. Consequently it is only politically and materially that a State can be made to answer for its acts. It can, for example, be made to do so politically by being disarmed and materially by being forced to pay damages. But to treat it as responsible in criminal law is, in the author's opinion, impossible.

3) This does not mean, of course, that the acts committed in the name and on behalf of the State and with the help of the State machinery, i.e. acts which could be regarded as State crimes or acts of State banditry, have no penal consequences. The author quotes the principle laid down by the Swiss Penal Code of 1937 (Article 172) according to which men acting on behalf and in the name of a corporation are penally and personally responsible for those acts of the corporation which amount to crimes, (p.75). Men who commit crimes on behalf and in the name of a State are penally and personally responsible for them. In other words, crimes committed by a State through the State machinery are simply crimes of the men who govern the State, of its political and military leaders, and of the individuals who carry out orders to commit such crimes. Both groups are fully responsible under criminal law.

The author rejects the attempt made by the German expert Strupp to exempt representatives of State from penal liability and demonstrates the absurdity of such a theory (p.77). He emphasises that attribution of penal responsibility to persons acting on behalf of a corporation has been accepted by Soviet criminal law and practice. It is thus shown to what entities responsibility for international crimes is attributable, viz:

- a) the State bears the political and material responsibility.
- b) the men who act on behalf of the State have, in addition, a personal penal responsibility. This is the general principle. Now it must be examined what position should be assigned to various groups of the Hitlerite criminals.

## VII.

### The different classes of German criminals.

The author puts the question: "What groups, what men, should be regarded as inspirers, organisers, helpers and perpetrators of Hitlerite crimes and bear the penal responsibility for them?" (p.79).

It is a question of "the possible parties to a crime".

This question, the author stresses, is a difficult one in the sphere of national criminal law, and is far more difficult in the sphere of international crime.

The main figure is the perpetrator, says the author.

In the sphere of national criminal law this is the man who "directly accomplishes the criminal act: who murders, steals, rapes" (p.80). But the perpetrators of international crimes do not accomplish the "black work" themselves.

The peculiarity of their rôle and the danger of their activity consists in the fact they use a complicated machinery for the purpose of their crimes.

We have in such cases, in the opinion of the author, two groups of perpetrators, both responsible as "principals in the first degree": the main perpetrator - "the man who despatches the assassin", to use Kenny's words - and the man who accomplishes the criminal act. Both are perpetrators. But while the main perpetrator commits an international crime by violating, for instance, the Geneva Convention of 1929, the other perpetrator commits a common crime by violating a provision of the national criminal law (murder).

To the group of the worst criminals, both from the point of view of national and of international criminal law, belong in the first place Hitler and the members of the German Government.

This is the most dangerous and ferocious group of international criminals. They play the central rôle in preparing, organising, and accomplishing the greatest catastrophe in the history of mankind. Consequently Hitler and his Ministers must bear responsibility as the main, the central group of international criminals.

With this first group are indissolubly connected the leaders of the Nazi party.

The law of December 1st, 1933, the purpose of which was "to secure the unity of Party and State" established such a close union between the German State and the Nazi Party that the Party leaders and officials were at the same time State leaders and officials by virtue of their party position and function. One consequence must be drawn from this unity of Party and State: the Party "Führers" must bear a common penal responsibility for Hitlerite crimes with the State "Führers". To this class the "Gauleiters" also belong.



In the same position, so far as criminal responsibility is concerned, are the commanders of the German Army who organised the criminal activity of that Fascist army. Thus, the first class of German criminals is said by the author to be :

"Hitler and his ministers, the leaders of the Nazi party, German military commanders, the commissioners of the German Government who directly carried out a policy of State banditry, consisting of planned and systematic accomplishment of international crimes: perfidious aggression, terror, violation of international obligations, violation of the laws and customs of war, organisation of military banditry".

But this leading class of German criminals has its "social basis" in a vast group of industrial and financial "Führers".

Their political position is clear: they form the economic foundation of the Nazi government machinery. But what is their position from the point of view of criminal law?

The author examines this question on the basis of the Soviet criminological theory about banditry.

He comes to the conclusion that this group is collectively responsible, with the first group, as their aiders and abettors, for all the crimes committed by this leading class of criminals. All these individuals are collectively responsible for all the crimes committed by the criminal gang as a whole.

Finally, all the men who individually and personally accomplished the crimes, the great bulk of the actual perpetrators who did the "black work", must bear their personal penal responsibility for their criminal acts.

In conclusion the author sums up the classes of German criminals who should be punished:

1) Hitler and his ministers, the leaders of the Nazi Party, the commanders of the German Army. These are organisers and perpetrators of the crimes.

2) The leaders of the industrial and financial concerns. These are organisers and "aiders and abettors".

Members of both groups are penally personally responsible for the gravest attacks on the foundations of the international community and of human morality. They are at the same time not only members of a gang of international criminals but also organisers of innumerable common (ordinary) crimes.

3) The actual individual offenders. These latter, if they have already been captured, cannot plead that a prisoner of war cannot be tried and cannot defend themselves by the plea of superior orders. Both pleas were rejected by the Kharkov trial.

#### VIII.

##### Jurisdiction in respect of the Hitlerite crimes.

The author deals with the problem of the relations between national and international jurisdiction.

In general, the territorial principle could be regarded as a sufficient basis for jurisdiction. This principle was recognised as a legal basis of the jurisdiction in the decision of the Supreme Court of the U.S.S.R. of December 11th 1941. It was also expressly recognised in the Moscow Declaration of November 1st, 1943. But the author admits that it is not sufficient so far as the following groups of crimes are concerned:

a) crimes committed on the territory of Germany and her Allies against the citizens of the Allied nations. In this case instead of the territorial jurisdiction, the principle of the so-called "real jurisdiction" must be brought into operation. The courts of States against whose citizens and interests crimes were committed on German territory are entitled to try such crimes.

b) crimes committed by Hitler and his clique. The author refers to the Moscow Declaration and stresses the particular importance of organising a Court (obviously he has in mind an inter-allied Court) for the trial of Hitler and his clique. But he adds that the guilt of Hitler and his clique is so obvious that a judicial procedure could be regarded as superfluous. The author then admits the possibility of a political verdict pronounced by the Governments of the victorious Allied Nations.

#### IX.

##### Co-operation of the United Nations in the struggle against international crimes.

After the defeat of Germany, the United Nations will face two tasks:

- a) to organise tribunals for the punishment of the Hitlerites,
- b) to establish penal laws as a protection against a revival of Hitlerism in any form. The author suggests that the United Nations should conclude a convention defining international crimes, fixing the penalties and establishing the Court which is to punish them. This Convention should be a part of the future system of international security and contain the measures necessary for the struggle against Hitlerite crimes. The most important measures to be taken are the apprehension and extradition of the Hitlerite criminals. In this connection the author suggests the establishment of an agency entrusted with the prosecution of the criminals, especially on German territory. Finally, he deals with the problem of the execution of the sentences.

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I sum up my personal opinion on Professor Trainin's booklet :

In spite of some defects which are only natural in view of the gigantic and in some respect unprecedented nature of the subject, Professor Trainin's booklet is one of the most creative and progressive contributions to the problem which is called "punishment of war criminals". He treats the problem in true character as the problem of penal responsibility for crimes against peace and crimes against the laws and customs of war. Both classes of crime are closely connected with one another. The second is the continuation of the first. Both are "war crimes" in a popular sense, and both are parts of the same criminal conduct, crimes against mankind. As such they must be studied, understood, prosecuted, tried and punished.

SECRET

C.64

30 November, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

EXAMINATION OF THE QUESTION WHETHER THE PREPARATION AND  
LAUNCHING OF THE PRESENT WAR CAN BE CONSIDERED AS A "WAR CRIME"

NOTE BY SIR CECIL HURST

The question whether the preparation and launching of the present war can be considered as a war crime was adjourned for six weeks at the close of the meeting on October 17th and it was announced that a vote would then be taken. The subject will be on the agenda for the next meeting of the Commission (December 6th, 1944).

Formulated as the question is in the first paragraph of this paper, it is quite appropriate for a vote, but the result of the vote will be meaningless unless those who vote are all using the term "war crime" in the same sense. A perusal of the minutes of the 35th and 36th meetings shows that those who took part in the debate were not all using the term in the same sense. Dr. Eöör himself pointed this out (See minutes, 36th Meeting, p. 19, last paragraph).

A vote on the question framed as above would in these circumstances in my view be unfortunate, not merely because it would be meaningless, but because it would lead people to think that members of the Commission who voted in the negative, because to them a war crime means a violation of the laws of war, were not in favour of the punishment of Hitler and the rest of the Nazi leaders responsible for the Nazi policy including the preparation and launching of the present war. This possibility is increased by the fact that paragraph 3 of the Majority Report proposes that the launching of the present war should be condemned in the future peace treaty. This might be thought to imply that such condemnation was the only punishment to be meted out.

So far as I know, there is no shadow of doubt that the policy of the Allied leaders and of the Allied Governments is definitely in favour of the punishment of these men. It is also a view which I frequently hear expressed by members of the Commission. For war crimes in the narrower sense of the term, most of the Nazi leaders are already on the Commission's list of war criminals.

If we are all agreed that Hitler and the Nazi and Fascist leaders deserve condign punishment; - if - as our statesmen have announced - their punishment is one of the major purposes of the war (Churchill, 25.10.1941); if, as we know from President Roosevelt's statement of September 28th, 1944, the Allied nations have every intention of punishing them, it would to my mind be wise to avoid any vote which implied a divergence of view on the subject. The Commission should devote its energies to assisting the Allied policy as proclaimed by the Allied statesmen, i.e. it should continue to collect any material that comes to hand showing the responsibility of these Nazi leaders for the commission of war crimes in the more technical sense, in case the Allied Governments should decide

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to put these arch criminals on trial before a court: the reason being that such material would be of assistance in framing the charges on which the men were tried.

If, on the other hand, the Allied Governments eventually decide to deal with these arch criminals by executive action, the collection of material now being undertaken will be of value in case the Commission should think it wise at a later stage to prepare and publish a report showing the responsibility of the leaders for the war crimes (in the strict sense) carried out in occupied territory.

6th December, 1944.

UNITED NATIONS WAR CRIMES COMMISSIONINTERROGATION OF PRISONERS-OF-WARDraft Proposal by the Chairman of Committee I

It is now clear that thousands of prisoners of war have passed through Allied countries and have been interrogated without being asked whether they have witnessed any war crimes or questioned regarding war crimes; it has been disclosed further that the interrogating military authorities have not yet received instructions to question in respect of war crimes.

Some members of the Commission have been told that when, in the statements of these prisoners, any reference is made to a war crime, a copy of that statement will be sent either to the War Crimes Commission or to the National Office concerned, but it is not known whether effect has been given to this promise.

In any case the above form of interrogation is not sufficient from the point of view of the Commission: enquiries should be systematically conducted to detect and furnish evidence of war crimes.

Furthermore, evidence and particulars should be collected as soon as possible from prisoners of war who have been transported to countries across the seas.

The War Crimes Commission as at present organised is not equipped to conduct such interrogation and therefore recommends that the Governments of the United Nations in whose hands enemy prisoners of war have fallen, take the necessary steps in order to collect information on war crimes from all prisoners of war either at time of capture or at the earliest possible moment after their arrival at prison camps. In the view of the Commission, supported by the advice of military authorities, the sooner the interrogation is conducted after capture the more likelihood there is of prisoners of war divulging information which would be of use to the Commission.

To this effect the Commission submits the following questionnaires:

FIRST QUESTIONNAIRE

Name in full: .....

Date and place of birth (locality and district): .....

- (1) Have you been garrisoned in an occupied country, where and when?
- (2) Have you been a member of the Gestapo, the S.S. or the S.A. (state unit, etc.....)?
- (3) Have you been employed in the civil or military administration of an occupied country (state place and time)?
- (4) Have you belonged to the personnel of a camp for prisoners of war in the Reich, of a concentration camp, of a forced labour camp, or were you a member of the Todt organisation (state place and time)?

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SECOND QUESTIONNAIRE

Name in full : .....

Date and place of birth (locality and district) : .....

- (1) Have you any knowledge - either from your own observation or from other persons' accounts - of facts concerning executions or ill-treatment by the Germans of prisoners of war during the 1939 campaign, or thereafter in the war prisoners' camps?
- (2) Have you an exact knowledge either from your own observation or from other persons' accounts - of any offences committed by the Germans against the civil population of occupied countries :
- (a) mass-arrests and street round-ups ?
  - (b) execution of hostages ?
  - (c) torturing in prisons ?
  - (d) mass-shooting of inhabitants of villages - setting on fire of houses and settlements ?
  - (e) rape of women and coercion to prostitution ?
  - (f) attempts to demoralise and inducing of children and youth to drunkenness ?
  - (g) robbery of private or public property - destruction of buildings, museums, libraries, monuments ?
  - (h) reprisals following the non-delivery of contingents of corn and cattle ?
- (3) Can you state any names of Germans holding an office in Gestapo, S.S., Police, civil servants, except Governors and Gauleiters ?

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Opinion of the interrogating officer as to the extent and quality of information which the interrogated person can give :

(Date) .....

(Signature).....



SECRET

C.65(1)  
3rd January, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

INTERROGATION OF PRISONERS OF WAR

Amended Proposal by the Chairman of Committee I

It is now clear that thousands of prisoners of war have passed through Allied countries and have been interrogated without being asked whether they have witnessed any war crimes or questioned regarding war crimes; it has been disclosed further that the interrogating military authorities have not yet received instructions to question in respect of war crimes.

Some members of the Commission have been told that when, in the statements of these prisoners, any reference is made to a war crime, a copy of that statement will be sent either to the War Crimes Commission or to the National Office concerned, but it is not known whether such action is being taken.

In any case the above form of interrogation is not sufficient from the point of view of the Commission: enquiries should be systematically conducted to detect and furnish evidence of war crimes.

Furthermore, evidence and particulars should be collected as soon as possible from prisoners of war who have been transported to countries across the seas.

The War Crimes Commission as at present organised is not in a position to conduct such interrogation and therefore recommends that the Governments of the United Nations in whose hands enemy prisoners of war have fallen, take the necessary steps in order to collect information on war crimes from all prisoners of war either at time of capture or at the earliest possible moment after their arrival at prison camps. In the view of the Commission, supported by the advice of military authorities, the sooner the interrogation is conducted after capture the more likelihood there is of prisoners of war divulging information which would be of use to the Commission.

The following questionnaire is an indication of the matters to be covered, and it should be taken into account that information is necessary not merely about crimes committed against the country of the interrogating officer but also about crimes committed against victims belonging to other countries.

QUESTIONNAIRE

- 1). Have you been stationed in an occupied country, where and when?
- 2). Have you been a member of the police (state unit, etc... with particular reference in the case of Germans, to the Gestapo, the S.S. and the S.A.)?
- 3). Have you been employed in the civil or military administration of an occupied country (state place and time)?

- 4). Have you belonged to the personnel of a camp for prisoners of war, of a concentration camp, of a forced labour camp, and the like (for Germans add the Todt Organisation)?
- 5). Have you any knowledge - either from your own observation or from other persons' accounts - of facts concerning executions or ill-treatment of prisoners of war during the 1939 campaign, or thereafter in the war prisoners' camps?
- 6). Have you an exact knowledge - either from your own observation or from other persons' accounts - of any offences committed against the civil population of occupied countries :
  - (a) deportations, mass-arrests, street round-ups?
  - (b) execution of hostages?
  - (c) torturing in prisons?
  - (d) mass-shooting of inhabitants of villages - setting on fire of houses and settlements?
  - (e) rape of women and coercion to prostitution?
  - (f) attempts to deprave and inducing of children and youth to drunkenness?
  - (g) robbery of private or public property - destruction of buildings, museums, libraries, monuments?
  - (h) reprisals following the non-delivery of contingents of corn and cattle?
- 7). Can you state any names of individuals holding an office in the police, or in the civil or military administration of occupied countries (with particular reference in the case of Germans, to the Gestapo, the S.S. and the S.A.)?

In forwarding the above recommendation the Commission wishes to emphasise that in its view the proposal should be referred to the military authorities with as little delay as possible, should the Governments approve the proposal.

The Commission therefore suggests, that in the event of such approval being given, the Governments move the combined chiefs of staff with a view to instructions being issued to each of the Supreme Commanders requesting them to take the necessary steps to effect interrogation of prisoners regarding war crimes, and to forward the information obtained direct to the headquarters of the United Nations War Crimes Commission at the Royal Courts of Justice, Strand, London, W.C. It would also be desirable to forward (if convenient) a copy of the information to the Government of the country concerned through the usual military channels of communication.

SECRET

C.65(2)  
18th January, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

INTERROGATION OF ENEMY PRISONERS OF WAR

Recommendation adopted by the Commission on 17th  
January, 1945.

It is now clear that thousands of prisoners of war have passed through Allied countries and have been interrogated without being asked whether they have witnessed any war crimes or questioned regarding war crimes; it has been disclosed further that the interrogating military authorities have not yet received instructions to question in respect of war crimes.

Some members of the Commission have been told that when, in the statements of these prisoners, any reference is made to a war crime, a copy of that statement will be sent either to the War Crimes Commission or to the National Office concerned, but it is not known whether such action is being taken.

In any case the above form of interrogation is not sufficient from the point of view of the Commission: enquiries should be systematically conducted to detect and furnish evidence of war crimes.

Furthermore, evidence and particulars should be collected as soon as possible from prisoners of war who have been transported to countries across the seas.

The War Crimes Commission as at present organised is not in a position to conduct such interrogation and therefore recommends that the Governments of the United Nations in whose hands enemy prisoners of war have fallen, take the necessary steps in order to collect information on war crimes from all prisoners of war either at time of capture or at the earliest possible moment after their arrival at prison camps. In the view of the Commission, supported by the advice of military authorities, the sooner the interrogation is conducted after capture the more likelihood there is of prisoners of war divulging information which would be of use to the Commission.

The following questionnaire is an indication of the matters to be covered, and it should be taken into account that information is necessary not merely about crimes committed against the country of the interrogating officer but also about crimes committed against victims belonging to other countries.

QUESTIONNAIRE

- 1). Have you been stationed in an occupied country, where and when?
- 2). Have you been a member of the police (state unit, etc... with particular reference in the case of Germany, to the Gestapo, the S.S. and the S.A.)?
- 3). Have you been employed in the civil or military administration of an occupied country (state place and time)?



- 4). Have you belonged to the personnel of a camp for prisoners of war, of a concentration camp, of a forced labour camp, and the like (for Germans add the Todt Organisation)?
- 5). Have you any knowledge - either from your own observation or from other persons' accounts - of facts concerning executions or ill-treatment of prisoners of war during the 1939 campaign, or thereafter in the war prisoners' camps?
- 6). Have you an exact knowledge - either from your own observation or from other persons' accounts - of any offences committed against the civil population of occupied countries :
  - (a) deportations, mass-arrests, street round-ups?
  - (b) execution of hostages?
  - (c) torturing in prisons?
  - (d) mass-shooting of inhabitants of villages - setting on fire of houses and settlements?
  - (e) rape of women and coercion to prostitution?
  - (f) attempts to deprave and inducing of children and youth to drunkenness?
  - (g) robbery of private or public property - destruction of buildings, museums, libraries, monuments?
  - (h) reprisals following the non-delivery of contingents of corn and cattle?
- 7). Can you state any names of individuals holding an office in the police, or in the civil or military administration of occupied countries (with particular reference in the case of Germans, to the Gestapo, the S.S. and the S.A.)?

In-forwarding the above recommendation the Commission wishes to emphasise that in its view the proposal should be referred to the military authorities with as little delay as possible, should the Governments approve the proposal.

The Commission therefore suggests, that in the event of such approval being given the Governments move the combined chiefs of staff with a view to instructions being issued to each of the Supreme Commanders requesting them to take the necessary steps to effect interrogation of prisoners regarding war crimes, and to forward the information obtained direct to the headquarters of the United Nations War Crimes Commission at the Royal Courts of Justice, Strand, London, W.C. It would also be desirable to forward (if convenient) a copy of the information to the Government of the country concerned through the usual military channels of communication.

SECRET

C.66  
20th December, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

AUSTRALIAN PROPOSAL FOR A MODIFICATION OF THE SYSTEM  
NOW IN USE FOR THE COLLECTION OF EVIDENCE IN RESPECT  
OF WAR CRIMES

Conclusions proposed by Committee II

1. The Commission recognises that the National Offices established by the Governments are the bodies primarily concerned with collecting evidence regarding war crimes.
2. As regards the modification of the internal organisation of the Commission :
  - (a). An official with experience of criminal work should be added to the staff of the Commission, for the purpose of examining charges before they go before Committee I. His functions would be to draw the attention of the National Offices to any additional information in the possession of the Commission, to assist the Committee by calling attention to points requiring consideration, and generally to help in the work of preparation and consideration of cases and in the drawing up of the Lists.
  - (b). It would be desirable to provide accommodation in the Commission's office for representatives desiring to work there.
3. It is recommended that in view of the increase in the number of cases which may be expected, and of the further fact that in many cases the work of the National Offices will be carried out in their own countries, and not in London, close contact between the Commission and the National Offices should be maintained, where necessary, by the appointment by the Governments of special officials for the purpose.
4. In view of the developments contemplated in the preceding paragraph, the Commission decides that a Central Investigation Officer be appointed at the headquarters of the Commission for the purpose of assisting the National Offices at their request in the investigation of war crimes, of collecting evidence which is available to the Commission in order to transmit it to the National Offices and of coordinating evidence.

The Central Investigation Officer will be directly responsible to the Commission.

SECRET

C.66(1)  
21st December, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

AUSTRALIAN PROPOSAL FOR A MODIFICATION OF THE SYSTEM  
NOW IN USE FOR THE COLLECTION OF EVIDENCE IN RESPECT  
OF WAR CRIMES.

Decisions and Recommendation adopted by the  
Commission on 20th December, 1944.

1. The Commission recognises that the National Offices established by the Governments are the bodies primarily concerned with collecting evidence regarding war crimes.
2. As regards the modification of the internal organisation of the Commission :
  - (a). An official with experience of criminal work should be added to the staff of the Commission for the purpose of examining charges before they go before Committee I. His functions would be to draw the attention of the National Offices to any additional information in the possession of the Commission, to assist the Committee by calling attention to points requiring consideration, and generally to help in the work of preparation and consideration of cases and in the drawing up of the Lists.
  - (b). It would be desirable to provide accommodation in the Commission's office for members or their representatives desiring to work there.
3. It is recommended that in view of the increase in the number of cases which may be expected, and of the further fact that in many instances the work of the National Offices will be carried out from their own countries, and not from London, close contact between the Commission and the National Offices should be maintained, where necessary, by the appointment by the Governments of officials for the purpose, or in some other appropriate way.
4. In view of the developments contemplated in the preceding paragraph, the Commission decides that a Central Investigation Officer be appointed at the headquarters of the Commission for the purpose of assisting the National Offices at their request in the investigation of war crimes, of collecting evidence which is available to the Commission in order to transmit it to the National Offices and of coordinating witness.

The Central Investigation Officer will be directly responsible to the Commission.



SECRET

C.67.  
9th January, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

MEMORANDUM ON THE "STANDGERICHTE" INSTITUTED IN THE  
SO-CALLED PROTECTORATE OF BOHEMIA AND MORAVIA, PURSUANT  
TO THE ORDINANCE OF 27TH SEPTEMBER, 1941 (V.B.I.R.Prot.p.527).

PRESENTED by DR. EGER

I.

Criminal Jurisdiction in the "Protectorate of  
Bohemia and Moravia".

Criminal Jurisdiction in the Czechoslovak Republic since its  
occupation has been exercised mainly by two categories of courts.

- a) By the "German Courts". These are the courts enumerated in the  
Rules for Criminal Procedure for the German Reich (Strafprozessordnung  
für das Deutsche Reich) and its amendments. Pursuant to the  
Ordinance concerning German Jurisdiction in the Protectorate of Bohemia  
and Moravia of 14 April, 1939 (R.G.Bl.I.p.752 - V.B.I.R.Prot.p.231) and  
its amendments, these courts were also established in the "Protectorate  
of Bohemia and Moravia"; the competence of the Reichsgericht in Leipzig  
and of the People's Court in Berlin was extended to the "Protectorate".
- b) By the "Autonomous Courts". These are the Czechoslovak Courts, the  
organisation and procedure of which remained, however, unchanged only  
so far as they were not incompatible with the altered constitutional  
conditions" - as the German phraseology terms them.

II.

The "Standgerichte"

The "Standgerichte", which were established by the Ordinance  
of the Reichsprotector of Bohemia and Moravia concerning the Declaration  
of a State of Civil Emergency, dated 27 September, 1941 (V.B.I.R.Prot.p.527)  
constitute an institution sui generis. For these "Standgerichte" neither  
the German Rules of Criminal Procedure (Deutsche Strafprozessordnung), nor  
the Czechoslovak Rules of Criminal Procedure, are applicable. The  
only rules regulating their institution, composition, and procedure,  
are to be found in the Ordinance of 27 September, 1941 (V.B.I.R.Prot.p.527).  
The significance of the fact that a whole series of important questions  
is left unanswered in the said Ordinance is dealt with in the  
following paragraphs.

III.

The Declaration of a State of Civilian Emergency

According to the law of all civilized nations, the suspension  
of the regular Criminal Jurisdiction and the transfer of part of this  
Jurisdiction to so-called Courts Martial is possible - if at all -  
only under certain conditions. Without going into details - it may  
be said that revolts and perhaps also the increasing recurrence of  
grave crimes may, under the laws of most countries, lead to the  
declaration of a State of Civil Emergency. The Ordinance of September

27th, 1941, however, merely states laconically: "The Reichsprotector may declare a State of Civil Emergency in the whole Protectorate of Bohemia and Moravia or in separate districts" (Sect. 1 para. 1). This warrant of the Reichsprotector is quite unrestricted. The conditions under which a State of Civil Emergency may be declared in the "Protectorate" and an important part of the criminal jurisdiction transferred to Courts Martial are incompatible with the general principles of law which are recognised by civilised nations, but which find no place either in the Ordinance of 27 September, 1941, or in any other instrument. All is left to the discretion and arbitrary decisions, of the Reichsprotector.

IV.

The Institution of the "Standgerichte".

Section 3, para. 3 of the Ordinance of September 27th, 1941 (V.B.L.R.Prot.p.527) simply declares that "Standgerichte" are set up by the Reichsprotector. Thus, the Ordinance avoids deciding in advance what kind of tribunals are to function as "Standgerichte". It does not even reserve the conduct of proceedings under Martial Law to the already existing Courts. What institutions are to conduct these proceedings, is a point left to the discretion of the Reichsprotector.

V.

The Composition of the "Standgerichte"

On whom may the office of Judge in these "Standgerichte" be conferred? Are the Judges in these "Standgerichte" to be professional or non-professional Judges? Are sentences to be passed by a Bench or by a single Judge?

The only source from which these questions can be answered is the Ordinance of 27th September, 1941. It is the only source from which one can ascertain the provisions regulating the composition and procedure of the "Standgerichte" in the Protectorate of Bohemia and Moravia. And the only answer which the Ordinance gives to these questions is: "Standgerichte" will be set up by the Reichsprotector. It is for him to choose the persons who are to function as Judges. As his selection is in no way restricted, he may choose professional Judges; but should he consider it more expedient, he may nominate exclusively non-professionals. Whether they have to function as single Judges or as a Bench is again left entirely to the discretion of the Reichsprotector.

According to the information we possess at the moment, the Judges designated for these "Standgerichte" were only in exceptional cases - if ever - professional Judges. As a rule, knowledge of the law was not the decisive factor in the selection. Political reliability was the quality most sought after. That is why the Judges were, it can be stated without exception, members and mostly executives of the N.S.D.A.P. or of the various other National Socialist Organisations, that is to say, men who - with a few exceptions - had not the slightest knowledge of law, or experience in conducting criminal proceedings. According to our information, the proceedings under Martial Law were regularly carried out by a Bench (not always of the same size), composed of insufficiently qualified persons. It is obvious that the activity of such a Bench hardly merits the name of jurisdiction.

The legislator had obviously both anticipated and desired this inadequacy of the "Standgerichte". What else can have been the reason for prohibiting the accused from rejecting a Judge? Why was it that a Judge was forbidden to withdraw from a case even if, for reasons of a general or special character, he felt unfitted for the task? The aim of this inadequacy was obviously to prevent discussions which would have constantly shown that the Judges selected by the Reichsprotektor were incapable of fulfilling their duties.

The Ordinance of 27 September, 1941 does not grant the accused the right to reject a Judge. It does not even give the Judge the possibility of declaring himself prejudiced and suggesting the appointment of another Judge. In short, it opens the way for a sentence to be passed by Judges who are not unprejudiced.

#### VI.

##### The Jurisdiction of the "Standgerichte"

The procedure of the "Standgerichte" is a summary one. It should lead to an immediate decision. One cannot, evidently, submit all cases of a certain type to such a procedure. It should be applied only in cases where the guilt of the accused can be proved without difficulty. In general, it is possible to prove the guilt of a person caught in the very act without any circumstantial procedure. It will probably be possible in many other instances to obtain a clear idea of the guilt of the accused. But, on the other hand, there will frequently be cases which are much more complicated than others of the same category. And if they too are tried by a summary procedure, then the reliability of the decision will be intolerably reduced.

Section 3, para. 2 of the Ordinance of the 27th September, 1941, enumerates the offences falling within the competence of the "Standgerichte". The Ordinance does not contain any clause providing that cases which cannot be dealt with satisfactorily by a summary procedure, owing to their complexity, must be transferred to regular tribunals.

Section 3, para. 2 of the Ordinance states that the Reichsprotektor can withdraw exceptional cases from the "Standgerichte" and submit them to the Peoples Court (Volksgerichtshof). Nobody acquainted with the spirit of the National Socialist legislation will believe that this provision of the Ordinance aims at protecting the rights of the accused. This strange provision, enabling an administrative official to decide which tribunal is competent to try a certain criminal case, is clearly inserted in the interest of the régime only. It provides chiefly for important and dangerous cases of high treason, which call for close investigation. Such an investigation cannot be expected from Summary Courts, certainly not from "Standgerichte".

#### VII.

##### Persons falling under the Jurisdiction of the "Standgerichte"

According to the standards recognised by all civilised nations, a summary procedure is adequate neither for every criminal case, nor for every person. Dangerously-ill and pregnant persons, for example, will not be able to put forward a serious defence against a charge before a "Standgericht". They should be tried by regular tribunals only; otherwise the proceedings would be degraded to the level of a farce. But all considerations of this kind are ignored by the Ordinance of 27 September, 1941. It compels the taking of proceedings under Martial Law in the case of any person, without exception, who is suspected of one of the actions specified in Sec. 3, para. 2.



VIII.

Defence before the "Standgerichte".

A still more obvious restriction of the rights of defence is the fact that in proceedings - above all in summary proceedings - which can only end in a death sentence (or acquittal), the accused is not represented by Counsel. The Ordinance of 27 September, 1941 does not provide for the employment of Counsel at a trial; and in practice - according to the information we possess - trials were regularly held, and sentences were passed, without the participation of Counsel.

IX.

The Procedure before the "Standgerichte".

The Ordinance of 27 September, 1941 does not contain any rules governing the procedure at a trial. It is left to the Judges to lay them down. As already mentioned, the Judges, with a few exceptions, have no knowledge of law and the majority of them no experience whatever of the conduct of criminal proceedings. It is, therefore, not astonishing that trials before a "Standgericht" have had no resemblance to what is called a trial in civilised systems of law. In other words - trials before "Standgerichte" have been conducted in a way which would not have enabled even learned and experienced Judges to gain a clear picture of the facts.

Any control of the trial or of the sentence, either by the presence of the public or by a Court of Appeal, is excluded by the Ordinance of 27 September, 1941.

"Standgerichte" have never sat in public. As there have been no serious reasons (certainly none in the general view), for keeping most of the cases dealt with by these "tribunals", secret - we find here, again, a flagrant infringement of the principles maintained by the law of all civilised nations. And this infringement of a generally recognised principle, has obviously no other aim than to terrorise the inhabitants of the Occupied Territory. They are threatened by a criminal procedure which nobody has witnessed, which no-one knows for certain; and nobody can ascertain what actions in particular are punishable. As the public is not admitted to the proceedings of the "Standgerichte", the mere existence of these "tribunals" increases the insecurity under the existing law.

There is no appeal against the sentences passed by the "Standgerichte" (Section 4, para. 3 of the Ordinance).

The records of a trial before the "Standgerichte" contain simply the names of the Judges, the accused, and the witnesses, as well as the crime and the date of the sentence (Section 4, para. 2 of the Ordinance). Provisions which allow of such incomplete records, and even prescribe them, can only have one object: to prevent all control, by concealing what has taken place during the trial so as to efface all traces of what has been done.

According to Section 4, para. 1 of the Ordinance, "Standgerichte" can only pass a sentence of death or deliver the accused to the Secret State Police. The Ordinance does not indicate which of these two punishments is to be considered as the milder one. The "Standgerichte" have, apparently, hardly ever made use of the third possibility, acquittal, mentioned in Section 4, para. 1. That was certainly the intention of the "legislator", to whom the idea of acquittal was so

remote that he omitted to order the keeping of a record (even in outline) for such a case. (Compare Section 4, para. 2 of the Ordinance which only mentions a "condemned" and not an "accused").

X.

The Execution of Sentences passed by the "Standgerichte"

Sentences delivered by "Standgerichte" have to be executed immediately (Section 4, para. 3 of the Ordinance). Numerous experiences have shown that the brutal National Socialist legislation has never been attenuated in practice. At the end of the so-called trial, it is left to the Judges to decide whether the condemned is to be shot or hanged (Section 4, para. 3 of the Ordinance). Not even a short delay to prepare himself for death is granted to a condemned person. Pardon does not come under consideration in the Ordinance. In any case, the brutal haste with which the sentences of the "Standgerichte" were executed, made it impossible.

XI.

To sum up, it may be said :

1. The Ordinance of 27 September, 1941 makes it possible to declare a State of Civil Emergency without any cause such as, according to the general principles of law recognised by civilised nations, would be sufficient to suspend the regular criminal jurisdiction and to replace it by summary proceedings.
2. The Ordinance of 27 September, 1941 which regulates the action to be taken under a State of Civil Emergency, does not leave it to Courts already in existence to conduct proceedings under Martial Law. Even where it can be shown that the persons entrusted with these proceedings have no qualifications as Judges, and that the trials are not being carried out in accordance with the fundamental rules of justice, the Ordinance of 27 September, 1941 flagrantly disregards the well-established principle: nobody should be deprived of his Judge. For can it be said that this principle respected when the Reichsprotektor grants the name of "Standgerichte" to a gang of willing dilettanti and sets this "court" (Gericht) the task of sanctioning the death of many hundreds through a so-called sentence, passed after some proceedings mis-named a trial before the "Standgerichte"?
3. The wholly inadequate qualifications of the Judges and the impossibility of rejecting even an obviously prejudiced Judge, make it questionable whether the institution we are discussing is one which, measured by the standard of civilised nations, can be described as a "court".

And do the proceedings before the "Standgerichte" merit the name "trial"? To recapitulate the main points: we have already referred to the exclusion of the public. The restriction of the rights of the defence is an even worse feature. Even an experienced Counsel would have found little opportunity for exercising his rôle at these entirely irregular trials. But even that little opportunity was withheld from the accused. Under the Ordinance concerning the jurisdiction of Criminal Courts, the Special Courts (Sondergerichte) and other Provisions of Criminal Procedure dated 21 February, 1940 (R.G.Bl.I, p.405-V, Bl. I, Prot. p.116) the President has to provide Counsel for the accused when a trial is held before the Special Bench (Besondere Strafsenat) of the Reichsgericht, the Peoples Court (Volksgerichtshof), or the High Court (Oberlandesgericht). When a trial is held before a Court of which that Ordinance refers, Counsel must be provided for the accused whenever the act alleged is one that may involve capital punishment.

The above-mentioned Ordinance does not, however, apply to proceedings before the "Standgerichte". Nor does any analogous provision exist for these courts. In other words, there is no rule which provides that the accused must be represented by Counsel at a trial before the "Standgerichte"; and in practice, according to our information, accused persons have never been so represented.

4. It is impossible, in the provisions which regulate the proceedings before the "Standgerichte", to discover the least vestige of humanity. The rule, for instance, which requires the sentence to be executed immediately, and the practice which does not grant the condemned man even a brief respite to prepare himself for death, is a form of brutality which, like many other inhumanities of the régime, aims at terrorising the population.

It may be difficult to define the conditions which are essential to enable an institution to possess the character of a tribunal. It may also be difficult to state the principles which must be observed to enable proceedings before a criminal court to be called a trial. But in the present instance we can dispense with a solution of these questions. We need not consider the minimum standard to which a "tribunal" has to conform, or determine the border-line between a (perhaps defective or void) trial, and proceedings which cannot be considered as a trial at all. We are not concerned here with a border-line case. It is obvious that the establishment of the "Standgerichte" is in contradiction to the principles recognised by all civilised States, and that the suspension of the normal criminal jurisdiction which was decreed (e.g. on 27 May, 1942) in the territory of the Czechoslovak Republic was illegal, according to International Law. Besides, it is evident that the "Standgerichte" lack almost every quality which, according to general opinion, a tribunal ought to possess; and finally, that the trials before these "Courts" offend against every principle which has to be respected under the laws of all civilised nations. The "Standgerichte" can certainly not be considered as tribunals, nor their proceedings as trials and sentences.

And, apart from these considerations, the circumstance alone that they were directed to function, and did in fact function, according to rules inconsistent with the fundamental principles of justice, marks their activity as a war crime, and establishes the criminal responsibility of persons who took part in that activity, and, naturally, also of those who prescribed that activity, in whatever form. (compare report by M. de Baer of 22nd September, 1944 - Doc. III/11 pp. 7 and 8).

The "Standgerichte" served the ends of a systematic terrorism of the people of the Czechoslovak Republic, and their activities must be qualified as mass murder. The case stated under (1) in the list of war crimes is, therefore, clearly established.



A N O R D I N A N C E

CONCERNING THE DECLARATION OF A STATE OF CIVIL  
EMERGENCY (ZIVILE AUSNAHMEZUSTAND) ISSUED BY THE  
REICHSPROTECTOR IN BOHEMIA AND MORAVIA ON  
SEPTEMBER 27TH, 1941.

In order to deal with events of an exceptional character,  
pursuant to paragraph 1 of the Ordinance concerning Legislation in  
the Protectorate of Bohemia and Moravia, dated June 7th, 1939,  
(R.G.Bl.I.p.1039 - V.Bl.R.Prot.p.37), it is hereby decreed as follows :

Section 1.

1. The Reichsprotector may declare a State of Civil Emergency (Zivile Ausnahmezustand) throughout the whole territory of the Protectorate of Bohemia and Moravia, or in separate districts.
2. The effects following on the Declaration of a State of Civil Emergency are laid down in Sections 2 and 3.

Section 2.

1. Deviations may be made from the law in force when introducing and carrying out measures for the preservation or restoration of public security and order.
2. The Reichsprotector can transfer these extraordinary powers to the authorities subordinate to him.

Section 3.

1. Martial Law (Standrecht) is applicable in any district in which a State of Civil Emergency has been declared.
2. All acts disturbing or endangering public order and security, economic life or peaceful work are punishable under Martial Law. This applies especially to all violations of the special Orders issued in the district in question under the extraordinary powers provided in Section 2, by the Reichsprotector himself, or by the authorities responsible to him. A further punishable offence under Martial Law, is the intentional illegal possession of fire arms, explosives or ammunition. (Ordinance of the Reichsprotector in Bohemia and Moravia of May 6th, 1940, V.Bl.R.Prot.p.62).
3. The Courts Martial (Standgerichte), will be set up by the Reichsprotector.
4. In exceptional circumstances the Reichsprotector can send a case for trial before the People's Court (Volksgerichtshof), in proceedings instituted by him.

Section 4.

1. The sentence of the Court Martial may be capital punishment, or the handing over of the accused to the Secret State Police, or acquittal. The sentence may also include the confiscation of property, or part thereof.
2. Records shall be kept of the names of the Judges, of the condemned persons, and of the witnesses upon whose evidence the sentence is based, as well as of the punishable offence, and the date on which sentence was delivered.
3. There shall be no appeal against the sentences passed by Courts Martial. Sentences shall be carried out immediately. Death sentences shall be carried out by shooting or by hanging.

Section 5.

Article 2 of the Ordinance of the Reichsprotector in Bohemia and Moravia against Acts of Sabotage, dated August 26th, 1939 (V.B.I.R.Prot.p.83) will be suspended during the period for which a State of Civil Emergency is declared and in the districts affected.

Section 6.

The regulations concerning jurisdiction over the German Armed Forces, and the special jurisdiction concerning punishable offences on the part of members of the SS and members of the Police Forces are not affected by this Ordinance.

Section 7.

The present Ordinance shall come into force immediately.

Prague, September 27th, 1941.

The Reichsprotector in Bohemia and Moravia.

Signed : Heydrich, SS Obergruppenführer and General der Polizei, entrusted with the functions of the Reichsprotector in Bohemia and Moravia.

SECRET

C.68  
10 January, 1945

UNITED NATIONS WAR CRIMES COMMISSION

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LETTER DATED 4 JANUARY, 1945, FROM MR EDEN  
TO SIR CECIL HURST DEALING WITH CERTAIN PROPOSALS  
SUBMITTED BY THE COMMISSION TO THE GOVERNMENTS

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The Secretary-General begs to communicate herewith to the members of the Commission the text of a letter of 4 January, 1945, addressed to Sir Cecil Hurst by H.M. Minister of Foreign Affairs in the United Kingdom Mr. Eden, which deals with the Commission's proposals regarding the establishment of an Inter-Allied Court, the establishment of Mixed Inter-Allied Military Courts, the negotiation of an Inter-Allied Convention to facilitate the handing over of war criminals between members of the United Nations, the insertion of certain provisions in any armistice to be concluded with Germany, and the institution by the Supreme Military Command of an Agency or Section which would concern itself particularly with the work to be done in occupied enemy territory for the purpose of bringing war criminals to justice.

Passages not dealing with the above subjects are omitted.

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My dear Hurst,

"I understand, to my great regret, that there is a feeling among at any rate some members of your Commission that His Majesty's Government are not giving adequate consideration to certain proposals which the Commission has made. There is no foundation whatever for such an idea, and I may say that consideration of the methods by which the policy of the punishment of persons guilty of war crimes can be most effectively pursued occupies a very considerable proportion of the time both of my Department and of the military and other authorities who are concerned with the matter. I think, however, that in order to put an end to any such suggestion it is desirable to explain exactly what the position is at present as regards the more important recommendations made by your Commission. This will, I think, show that the fact that it has so far not been possible for His Majesty's Government to make a definite reply to these recommendations does not mean that His Majesty's Government are not interested or have been inactive in the matter.

"On the 6th October last you forwarded to His Majesty's Government and to the other Governments represented on the Commission certain proposals, to which your Commission had devoted a great deal of time and labour for

- (a) the establishment by treaty of an Inter-Allied Court for the trial of war criminals.
- (b) the setting up of Mixed Inter-Allied Military Courts for the same purpose.



I think that both you and the other members of your Commission are well aware that His Majesty's Government have throughout doubted both the desirability and the practicability, especially in view of the time factor, of the formal establishment of an Inter-Allied Court by treaty for this purpose. On the other hand His Majesty's Government fully appreciate that some Allied countries feel that for constitutional and other reasons it would be difficult for them to ensure in a satisfactory manner the trial of at any rate all cases in which they were concerned in their national courts, as contemplated in the Moscow Declaration. In such cases the proposal made by your Commission for the establishment of mixed military courts might well afford a satisfactory solution of this difficulty. It should be plain, however, that this is not a matter in which His Majesty's Government would desire, even if it were possible, to adopt a definite position without previous consultation with the Government of the United States, particularly as the military operations in Western Europe are on a joint basis and the Supreme Command is now in the hands of an American general. Moreover, until the two Governments had reached, at any rate in principle, some conclusion as to the desirability of establishing an inter-Allied Court by treaty it was obviously impossible to pursue the suggestion made in your letter for the convocation of a conference to negotiate such a treaty. The matter has accordingly been the subject of full consultation with the Government of the United States, and as soon as the views of the two Governments have been definitely formed it is the desire of His Majesty's Government that the other Allied Governments concerned should be approached with a view to consultation as to the measures to be adopted.

"On the 8th September you forwarded to His Majesty's Government and the other Allied Governments represented on the Commission proposals for an international convention to facilitate the handing over of war criminals between members of the United Nations. With the object of this convention His Majesty's Government have, I need not say, every sympathy, and they are determined to do everything in their power to assist the other United Nations in this matter. The question, however, whether the conclusion of a convention on the lines proposed would, so far as His Majesty's Government are concerned, be the best method of effecting this object, and whether in their case it could not be better attained, without any formal convention, by the use of powers which His Majesty's Government already possess, required careful consideration and consultation with the Departments of His Majesty's Government concerned. This procedure is now in an advanced stage, and I hope to be in a position to communicate the views of His Majesty's Government to the other Allied Governments concerned at an early date.

"On the 19th June and 24th July His Majesty's Government received the views of the Commission as to provisions to be inserted in any armistice with Germany and other enemy powers, with the object of securing the apprehension of alleged war criminals. As you are aware, His Majesty's Government considered that the proper body to consider these proposals was the European Advisory Commission, which had been set up with the object inter alia of advising the Governments concerned as to the terms to be imposed on Germany and the other enemy states. The Commission's proposals were accordingly forwarded to that body. The proceedings of the Commission are of course secret, but I feel confident that it will be found that the proposals of your Commission will have been taken into full account in the recommendations which the E.A.C. will make in due course.

"On the 31st August last you forwarded to me a recommendation by your Commission in favour of the institution by the Supreme Military Commander of an Agency or Section which would concern itself particularly with the work which will have to be undertaken in the enemy territory, when such territory is subject to Allied occupation, for the purpose of bringing war criminals to justice". This question was clearly one for consideration by the Allied military authorities, and immediate steps were taken for its submission to them. The particular proposal for the establishment of such an Agency forms part of the general question of the steps to be taken in occupied territory, both before and after Germany's surrender, for the collection of information and evidence about war crimes and the discovery and apprehension of accused persons. This question has been under active consideration by the various authorities concerned, and it is hoped that a formal directive will shortly be issued by the Chiefs of Staff which will put the matter on a regular basis. In the meantime a good deal of preliminary work has already been done and the necessary machinery is in process of being established; your Commission is, I understand, in touch with representatives of Supreme Headquarters Allied Expeditionary Force and those responsible for planning the organisation to be established in Germany after the surrender, and will be aware that there is every desire on the part of the persons concerned to make arrangements which will facilitate the work of the Commission and secure the objects with which it was established.

"It has always been understood, and was indeed inevitable, that the work of your Commission was hampered by the difficulties which the Allied Governments established in London experienced in obtaining information from their own countries. As the process of liberation continues these difficulties should be reduced. When Allied territory has been liberated the task of collecting material in it will be for the restored Allied Governments, and I understand that some of them have already established machinery for this purpose. It is to be hoped also that a great deal of material will be received from the military authorities under the arrangements referred to above. It may, therefore, be anticipated that the flow of material to your Commission will in future be considerably augmented. Should the Commission feel that this situation will involve some increase of the Commission's staff His Majesty's Government would raise no objection whatever to additional expenditure being incurred for this purpose, and should the Commission desire any assistance from His Majesty's Government in recruiting such staff we should be glad to give it, so far as existing conditions permit.

"We have now received the Commission's first lists of German and Italian war criminals, and consideration has already been given to the action which would be required upon them, so I hope that there will be no undue delay in dealing with them.

"In conclusion may I say that His Majesty's Government much appreciate the work which your Commission are doing and have every sympathy with them in the difficulties with which in the circumstances they have inevitably had to contend. If there are any other matters as to which the Commission would desire assistance from His Majesty's Government, we will do our best to supply whatever may be in our power.

"Yours sincerely,

(Signed) ANTHONY EDEN "

SECRET

C.69  
13 January, 1945

UNITED NATIONS WAR CRIMES COMMISSION

CHANGE IN THE REPRESENTATION OF NORWAY

The Secretary-General regrets to inform the members of the Commission that he has received the following letter from the Norwegian Minister for Foreign Affairs.

"Sir,

"I have the honour to inform you that owing to hard pressure of work the Norwegian Representative to the United Nations War Crimes Commission, M. Erik Colban, Norwegian Ambassador is not able to continue in his capacity as a Member of the Commission. M. Colban has therefore, at his own request, been relieved of his duties as the Norwegian Representative.

"I am,

Sir,

Your obedient Servant,

(Signed) TRYGVE LIE"

The Secretary-General has not yet been informed of the name of M. Colban's successor.



SECRET

C.70 (1)  
18th January, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

TERMINATION OF FINANCIAL ARRANGEMENT  
WITH FOREIGN OFFICE

Report by the Finance Committee adopted by the  
Commission on 17th January, 1945.

Article 12, para. 2 of the Commission's Financial and  
Administrative Regulations (C.45) provides :

"2. When the Commission, on the advice of the Finance Committee,  
decides that its financial position justifies its doing so,  
it will assume responsibility for meeting its expenditure  
out of the contributions of the member Governments and terminate  
the existing arrangements with H.M. Foreign Office"

The Secretary-General has informed the Finance Committee that  
the Foreign Office would be glad that this step should now be  
taken, and after examining the Commission's financial position,  
the Committee has no objection to this course.

Accordingly, it recommends the Commission to adopt the  
following Resolution :

R E S O L U T I O N

The United Nations War Crimes Commission resolves :

1. That it will assume responsibility for meeting its expenditure  
out of the contributions of the member Governments and terminate the  
existing arrangements with the Foreign Office at an early date to be  
fixed by agreement between the Foreign Office and the Secretary-General.

2. That Barclay's Bank who have been appointed the bankers of the  
Commission be and they are hereby authorised :

(i) To honour and comply with all cheques, drafts, bills, promissory  
notes, acceptances, negotiable instruments and orders expressed  
to be drawn accepted made or given on behalf of the said  
Commission at any time or times.

(ii) To honour and comply with all instructions to deliver or dispose  
of any securities or documents or property held by the Bank  
on behalf of the said Commission

Provided any such cheques, drafts, bills, promissory notes,  
acceptances, negotiable instruments, orders and instructions are  
signed by the Chairman of the Commission, the Chairman of the  
Finance Committee or the Secretary-General, and countersigned  
by the Secretary-General or the Chief Clerk.

(iii) To treat all bills, promissory notes and acceptances as being  
issued on behalf of the said Commission provided such  
instruments are countersigned by any signatory to the account.

SECRET

C.71  
16th January, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

REPRESENTATION OF THE UNITED KINGDOM: APPOINTMENT  
OF LORD FINLAY

The Secretary-General begs to inform the members of the Commission that he has received the following letter from the Foreign Office :

"Sir,

"I am directed by Mr. Secretary Eden to inform you that His Majesty's Government in the United Kingdom have appointed the Right Honourable Viscount Finlay, G.B.E. as their representative on the United Nations War Crimes Commission in place of Sir Cecil Hurst, who has been compelled to resign his position on medical grounds. Mr. Eden would be grateful if you would inform the members of the Commission accordingly.

"I am,

Sir,

Your obedient Servant,

(Signed) GLADWYN JEBB.

SECRET

G.72  
29th January, 1945

UNITED NATIONS WAR CRIMES COMMISSION

REPORTS ON SPECIAL CLASSES OF AXIS  
WAR CRIMES

Note by the Secretary-General on the history  
of the question

Origin of the Idea

It was the Commission's late Chairman, Sir Cecil Hurst, who first suggested the idea that, as a complement to its primary task of investigating war crimes and reporting on them to the Governments, the War Crimes Commission should make itself responsible for reports addressed to the general public and intended to make the public understand why it is both justifiable and essential that the perpetrators of such crimes should be punished.

In suggesting such reports, Sir Cecil was undoubtedly very much influenced by the desire to do something to satisfy Jewish opinion. At an interview on 20th July, 1944, a delegation of the British Section of the World Jewish Congress had handed him a memorandum asking the Commission to undertake what it called an "investigation" of crimes against Jews as a kind of category of crimes which should be differentiated strictly from war crimes in general and be dealt with by special methods. Sir Cecil felt that it was hardly possible for the Commission to do this, but that one of the Congress's objects in asking for such a procedure was to ensure that the actual facts of the Axis policy of extermination of the Jews should be put on an unquestionable basis of evidence, and that the Commission could contribute to this by publishing a report. He was thus led to the idea of a series of reports of which the report



on the Jews would be one. He put the suggestion before the Commission at its 27th meeting on 8th August, 1944 in the report which he made on a second interview which he had had with the representatives of the Congress on August 2nd. He told the Commission that a great deal of information was available in the hands of the Congress and that, while he had not promised any such action by the Commission

"He had in mind the possibility of the Commission's issuing reports dealing with special categories of the atrocities committed by the Axis powers. One of these reports might well deal with this campaign for the extermination of the Jews as a whole, so as to link together the particular acts committed against the Jews in the various occupied countries and make the public at large more readily understand the situation. The Chairman added that he had been careful to emphasise that scrutiny of the material by non-Jewish sources was essential in the interests of the object which the World Jewish Congress had in view".

The contemplated report on anti-Jewish crimes was also meant to meet the views of the Anglo-Jewish Association which had approached Sir Cecil asking for the organisation of a judicial enquiry into anti-Jewish crimes for the purpose of establishing the truth and demonstrating that they were not Jewish lies and propaganda.

#### Decisions of the Commission

A formal decision to publish reports was taken by the Commission on 22nd August, 1944, at its twenty-eighth meeting (M.28, p. 3-4).

The record reads as follows:

"Production by the Commission of reports on different classes of Axis' war crimes, such as crimes directed against Jews as such, etc."

Referring to his suggestions at the Commission's last meeting that reports of this kind should be produced with the object of linking together the war crimes of different categories committed by the Axis powers and making the public at large more readily understand the situation, the Chairman asked for general endorsement of this idea from the Commission, while warning it that its execution would cost money. The statements made must be well supported by evidence and the work must be done by persons well qualified both to test the material and present it in an attractive form.

Mr. Chaim Weizmann said he agreed on the understanding that the reports were not to be the Commission's work and not exhaustive historical studies. Other members spoke in favour of the Chairman's proposal, which was accepted."

At its thirty-second meeting on 19th September, 1944 (M.32.p.7), the Commission, in the Progress Report (Doc. C.48(1)) which it then adopted, approved a passage entitled "Reports on special classes of war crimes", which reads as follows :

"The Commission has in view the preparation of reports on some of the classes of war crimes which have been committed in the course of the present struggle.

Many of the brutalities which have been committed by the enemy cannot be understood if they are regarded as mere criminal acts of individuals or groups of individuals such as have occurred in previous wars. Some of course have this character, but they are not the most characteristic. The special feature which has marked and rendered so horrible the struggle of the Axis Powers for world domination has been the constant recurrence in pursuance of a policy which was dictated by Berlin of crimes of well-marked types, each calculated to secure a particular object or objects and deliberately ordered or encouraged for that purpose. Examples are the campaign against the Jews, the campaign against the Polish intelligentsia, the horrors of the concentration camps, the mass execution of hostages, destruction of villages and other forms of terrorism aimed at breaking the spirit of a population.

The Commission feels that the policy of systematic punishment of war crimes which the United Nations have adopted may fail of its purpose, and even produce a revulsion of popular feeling in certain countries, if this essential fact which is the chief reason for the policy is not brought home to the public.

The reports which the Commission has in mind would be prepared with a view to publication at the appropriate moment and would show the connection between the individual crimes of each type and the common policy which they expressed, thereby making it easier for the general public to comprehend the justification for and the necessity of the severity which had been shown towards their perpetrators.

An additional reason for the preparation and eventual publication of such reports under the authority of the Commission is the need for correcting the idea which is all too prevalent that the stories of the horrors perpetrated by the enemy are untrustworthy exaggerations designed for propaganda purposes.

The reports would therefore be framed so as to demonstrate in a readable form which might be expected to be of interest to the public at large not merely the general policy pursued by the Axis Powers, and the particular application of that policy in each of the occupied countries, but also the facts disclosed in the cases of war crimes brought to trial and the punishments inflicted."

The policy stated in the above quotation was reaffirmed at the Commission's thirty-sixth meeting on 6th December, 1944 (M.36, p.5).

-4-

Report on anti-Jewish crimes.

The present position is as follows :

Provision of material by the World Jewish Congress.

This subject has been discussed with representatives of the British Section of the World Jewish Congress on two occasions.

The first occasion was the above mentioned interview of August 2nd, 1944. The representatives of the Congress clearly did not accept the suggestion of a report by the Commission as an adequate substitute for the "investigation" for which they had asked, and made several attempts to press their original proposals, but they were prepared to provide material for the contemplated report. Sir Cecil refused to agree to any direct participation of the Congress in the drafting of the report, or in the verification of the material used, on the ground that this might lead to doubts as to its objectivity.

The second occasion was a meeting of the representatives of the Congress convened by Sir Cecil for 14th December, 1944, whose object was to ascertain when the material which the Congress was to supply would be available. Sir Cecil again insisted that the material was not to be sifted or selected by the Congress. It was to be sent to the Commission as it stood for transmission to the person who was to draft the report. Sir Cecil said that a fundamental feature of the report was to be evidence given in actual trials for crimes against Jews. The Congress representatives said that the material might be very voluminous. Some was about to come from New York. Other material was being collected in Palestine. Lady Reading was conducting a search in France.

No material has in fact come from the World Jewish Congress.

Appointment and resignation of Professor Brogan.

Professor Brogan was selected by Sir Cecil Hurst to write the report and the selection was received with approval by the Commission on 7th November. In a letter of 29th September, 1944, asking if Professor Brogan would undertake the task, Sir Cecil had indicated that he was "aiming at having these reports ready for publication



after the cessation of hostilities", and in one of 7th December he said, "We want our reports differentiated from publications like the pamphlets of the Inter-Allied Information Bureau by the ability to make reference in them to the punishments meted out to war criminals after trial in the courts". The method of carrying out this policy was to be discussed at an interview which owing to Sir Cecil's state of health never took place.

The state of his own health has now unfortunately obliged Professor Bregin to give up the idea of doing the report for the Commission. Professor Bregin has given the Secretary-General the names of three persons who would in his opinion be suitable for writing the report.

#### Reports on other classes of War Criminals

Sir Cecil also made preparations for the drafting of reports on other classes of war crimes. He drew up on this subject a paper which he apparently showed to Committee I. The paper was addressed to the Commission. It stated in the first place that Sir Cecil had provisionally arranged for reports on the three following subjects to be done by three members of the London Bar :

The Concentration Camps.

The Wiping out of Villages.

The execution of hostages or of civilians by way of reprisal or for the purpose of terrorising the population.

Secondly, it said that before going further Sir Cecil would like to be sure that the Commission approved the lines upon which he thought the reports should be drawn up, and would like to know the views of the members of the Commission on the categories of war crimes which should be the subjects of reports. Subjects which had been suggested were :

The atrocities committed against the Jews.

The deportation of workers from occupied countries to Germany.

The starvation of occupied countries for the benefit of Germany.

The Prisoners of War Camps.

The methods of the Gestapo.

The Secretary-General was in hospital when the above document was produced, but the Chief Clerk informs him that Sir Cecil convened the Finance Committee a quarter of an hour before the Commission's meeting on October 17th, obviously to settle the remuneration to be offered for drafting the reports in question. Unfortunately, Sir Cecil had a fall which prevented him from coming up to London on the Commission's business until October 23rd. He took no further steps in the matter, which accordingly has never been before the Finance Committee or the Commission.

SECRET

C.73  
31st January, 1945

UNITED NATIONS WAR CRIMES COMMISSION

SUBMISSION TO THE WAR CRIMES COMMISSION OF CERTAIN  
QUESTIONS CONCERNING THE FAR EASTERN AND PACIFIC  
SUB-COMMISSION.

The Secretary-General has received the following communication  
from H.E. Dr. Wellington Koo :

30th January, 1945.

"Dear Mr. McKinnon Wood,

I am requested by Dr. Wang Chung-hui, Chairman of the Far Eastern and Pacific Sub-Commission, to transmit to the main Commission for consideration certain proposals made by the Australian and Netherlands representatives before the Sub-Commission at the time of its inauguration. In the opinion of the Sub-Commission these proposals involve questions of principle which should be decided by the main Commission.

I shall be obliged if you will put this subject upon the agenda for consideration by the main Commission as soon as possible after the Chairman of the Commission has been elected. Perhaps to facilitate its discussion, the main Commission may desire to have it referred first to our Far Eastern Committee for preliminary study and report to the Commission.

Yours sincerely,

(Signed) V.K. WELLINGTON KOO."

"Proposals of the Australian Government to the  
Far Eastern and Pacific Sub-Commission of the  
United Nations War Crimes Commission.

1. In appointing a representative on the Far Eastern and Pacific Sub-Commission for the investigation of Japanese atrocities the understanding of the Australian Government is that the setting up of the Chungking Panel does not preclude the setting up of the Southwest Pacific Panel, nor does it preclude the bringing of cases of atrocities by the Japanese directly before the main Commission in London.
2. It is understood that the panel will have no power of initiation and will deal only with cases which may be referred to it by any combatant government.
3. In the opinion of the Australian Government, events in China prior to December 1941 present a special case which should be made the subject of a special commission concerned with the China Incident as a whole and operating separately from the United Nations Commission for Investigation."

P.S.C.



"Proposals of the Netherlands Government to the  
Far Eastern and Pacific Sub-Commission of the  
United Nations War Crimes Commission."

The Netherlands Government made the reservation that the formation of the Sub-Commission should not prejudice the formation of any equivalent sub-commission in the Far East, for instance the Netherlands Indies, nor the bringing up before the London Commission of matters pertaining to Japan."

SECRET

C.74.  
6th February, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

REPLY TO QUESTIONS SUBMITTED TO THE COMMISSION BY  
THE FAR EASTERN AND PACIFIC SUB-COMMISSION.

Draft Resolution to be moved by the Chairman  
of the Far Eastern and Pacific Committee.

The United Nations War Crimes Commission has considered the questions which have been presented in the Far Eastern and Pacific Sub-Commission by the representatives of Australia and the Netherlands and referred to it by the Sub-Commission, and, on the advice of its Far Eastern and Pacific Committee it replies to these questions as follows :

1. It was made clear in the letter addressed by Sir Cecil Hurst on 9th June, 1944 with the approval of the Commission to the Governments represented on the Commission that the establishment of the Far Eastern and Pacific Sub-Commission does not preclude the creation of other branches of the Commission.
2. Subject to its terms of reference, the main Commission does not restrict the scope of its work or its power of initiative, and it feels that the Sub-Commission should act on the same basis.
3. Taking note of the statement made in the Far Eastern and Pacific Committee by the Australian representative that the Australian Government would see no objection to the Sub-Commission's dealing with war crimes committed by the Japanese before December 1941, and after considering the question in the light of its own practice, the Commission feels that the Sub-Commission should not limit its investigations to war crimes committed after a particular date, and that each case should be considered on its merits.

SECRET

C.75(2)  
15th February, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

PROPOSAL BY COMMITTEE I SUGGESTING  
TWO NEW FORMS OF LIST.

Adopted by the Commission on  
14th February, 1945.

Committee I has reconsidered the proposal which it made on February 7th, 1945, in the Document C.75. It is satisfied that two new lists are required, which may be described as the S and W, Suspects and Witnesses Lists respectively.

It has already been decided that the Lists of War Criminals presented to the Governments shall include, possibly in a special section, the names or descriptions of military, police or other organised units which are considered to have acted as units in the commission of war crimes, in order that the personnel of such units may be arrested and handed over for trial to the competent authority, subject, of course, to the right of each member to establish his innocence. In the case of Oradour two units were so treated (List 1, No. 123). The conditions which must be satisfied before a unit is treated in this manner are under consideration by Lord Wright's Committee.

There are other cases in which the crime is the work of unidentified members of a unit but it is not considered that the unit as a whole is implicated. Here what must be attempted is first to find the members of the unit who took part in the crime and, secondly, to find any members who, though innocent themselves, have witnessed the crime. The proposed Lists are intended for this purpose. The first is a list of suspected persons or of units whose personnel the Commission considers should be taken and maintained in custody until it has been possible to identify the war criminals who are to be handed over for trial by the competent court. The second is a list of persons capable of giving evidence regarding the crimes.



SECRET

C.76  
8th February, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

MEMORANDUM ON THE PRESENT POSITION OF THE UNITED  
NATIONS WAR CRIMES COMMISSION, THE WORK ALREADY  
DONE, AND ITS FUTURE TASKS.

Presented by Dr. B. ECER

Introductory Remarks

I think that the present moment in the life of our Commission gives us the opportunity not only to issue statements for the Press and distribute blame for "leakage of information", but to pause for some minutes in order to review our position in general, our work in the past, and our tasks in the future.

During the last few months events occurred which in my opinion are starting points for such a review.

Let me sum them up :

1). On August 30th 1944, our former chairman Sir Cecil Hurst made at a Press Conference, a statement about the position, the task, and - to some extent - the work of our Commission. A Press campaign and questions to Mr. Cordell Hull in the U.S.A. and to Mr. Churchill in the House of Commons followed the statement. There was much criticism.

With reference to this statement, Mr. Churchill in the House of Commons on September 26th said in reply to a question :

"No, Sir, what Sir Cecil Hurst says is compressed, superseded and if necessary, over-ridden by what is said on behalf of His Majesty's Government".

It is not clear to which passage of Sir Cecil Hurst's statement Mr. Churchill referred, but from previous questions and answers in the House of Commons on this date, we could conclude that the point was the fate of Hitler and other leading Nazi criminals. I should like to stress in this connection that the Commission never discussed this important statement made in the House of Commons by Mr. Churchill, although it was concerned with a statement made by our former chairman on behalf of the Commission.

2). On January 4th 1945, Sir Cecil Hurst resigned. In his letter informing us of his resignation, he used some pessimistic phrases as to the fate of our recommendations submitted to the Governments on October 3rd, 1944. I quote for instance, this one phrase :

"and I am reluctantly forced to the conclusion that nothing is going to happen and I am, therefore, left with the feeling that I personally can do no more".

3). On January 13th 1945, Mr. Colban's resignation was announced in the Press.

P.T.O.

- 4). On January 11th 1945, an official statement (issued probably by the British Ministry of Information) was published saying :

"Sir Cecil on behalf of the Commission wrote to Mr. Eden in May, offering the Commission's services in helping to bring to book those responsible for crimes against the Jews in the Nazi countries. Mr. Eden replied on October 9th to the effect that in the British Government's view the progress of the war required the War Crimes Commission to get ahead with its work, and not undertake additional burdens".

- 5). On January 28th 1945, the Press announced that Mr. Pell "has been compelled to resign". Mr. Pell's own statements followed. They confirmed the impression that there is a crisis of the Commission.

- 6). On January 29th 1945, Mr. Joseph Grew, U.S. Under-Secretary of State stated :

"It is the policy of this Government to see that Axis leaders and their henchmen guilty of war crimes and atrocities shall be brought to the bar of justice."

- 7). On January 31st 1945, the British Minister of State, Mr. Richard Law stated in the House of Commons in reply to a question :

"Crimes committed by Germans against Germans are in a different category from war crimes and cannot be dealt with under the same procedure. But in spite of this, I can assure my hon. Friend that His Majesty's Government will do their utmost to ensure that these crimes do not go unpunished. It is the desire of His Majesty's Government that the authorities in post-war Germany shall mete out to the perpetrators of these crimes the punishments which they deserve."

"The authorities to which I refer are the authorities who will be in control in Germany when the war comes to an end. I think I can leave it to my hon. and learned Friend to imagine who those authorities will be."

- 8). On January 31st 1945, we elected Lord Wright as chairman of the Commission. In his statement he stressed and clearly indicated the new lines on which the work of the Commission should develop.

- 9). In the course of the last four weeks the advancing Red Army captured, according to the Press news, a series of German concentration, torture and extermination camps, among them Tomaszow, and the ill-famous Oswieczim (Auschwitz). Citizens of the majority of the United Nations are among the victims. Thus, the United Nations War Crimes Commission is faced with a great task: to establish contact as soon as possible with the Soviet authorities, especially with the Soviet Extraordinary State Commission for the investigation of German crimes, as Lord Wright rightly pointed out.

All these events, some of them indicating a crisis, others the renaissance of the Commission, ask for careful consideration, and justify the need for a general review of our position and work.

The purpose of the review should be :

- a) to realise the successes and the defects in our work.
- b) to make suggestions for its improvement where necessary.

- (1) This date should be November 9th.

I.

Position, terms of reference, and competence of the  
Commission in its relation to the Governments.

The Commission was intended as a United Nations War Crimes Commission. For its position and competence two official acts are of constitutive importance :

- A) The decision of the Diplomatic Conference held on October 20th 1943 at the Foreign Office.
- B) The letter sent by the Foreign Office on February 24th to the Governments represented on the Commission.

Both are constitutive acts as to the position, competence, and task of our Commission and its relation to the Governments.

ad. A). The Diplomatic meeting of October 20th 1943.

At this meeting it was agreed that the Commission should **investigate** war crimes, without any precise definition what crimes are to be regarded as war crimes. We must conclude that the meeting agreed to the statements both of Lord Simon, and President Roosevelt of October 7th.

In the Lord Chancellor's statement, reference was made expressly to the laws and customs of war, so it seemed that the activities of the Commission are limited to the investigation of crimes that are violations of laws and customs of war.

I have before me the minutes of this Diplomatic meeting which I myself attended. I remember the discussion very well, especially as to the competence of the Commission. The Lord Chancellor indirectly admitted that the competence is too narrow and not yet definitely fixed, because he said "the question of the possible expansion of the scope of its investigations and functions should be reserved for future consideration". This was unanimously agreed upon. It was a very wise reservation made by the Lord Chancellor and by the Diplomatic meeting because since October 7th 1942, the date of his statement in the House of Commons announcing the establishment of the Commission, events occurred and official statements were issued which went far beyond the original scope of the Commission as set up in the speech of the Lord Chancellor of October 7th 1942. I should like to stress only the most important facts and statements :

- a) In September 1943 an Armistice with Italy was concluded. Article 29 of the Armistice reads as follows:

"Benito Mussolini, his chief Fascist associates, and all persons suspected of having committed war crimes or analogous offences..... will forthwith be apprehended and surrendered into the hands of the United Nations".

You see that the Armistice did not limit the allied retributive action in Italy to war crimes stricto sensu, but extended it to analogous crimes.



b) On November 1st 1943, the famous Moscow Declaration was issued. It is interesting to note that this declaration, signed by Gt. Britain, U.S.A. and the Soviet Union, does not refer to the laws and customs of war at all. This declaration promises the punishment of atrocities committed by the Germans, according to the laws of the liberated countries, not according to the "laws and customs of war". The question arises as to whether the Moscow declaration supersedes or even over-rides the statement of October 7th, 1942. In any case, the Moscow declaration introduced a new element into the problem of the punishment of war criminals, by referring to the laws of the liberated countries. Further, the Moscow declaration enumerates among the countries where crimes were to be punished, Denmark and Italy. Now, Italy was until the Armistice, an enemy territory. Crimes committed against Italian citizens are, at least up until the Armistice, not war crimes at all. Crimes committed by the Germans in Denmark are not war crimes at all, and yet the punishment of these crimes by the Allies was promised.

c) On March 24th 1944, after the occupation of Hungary by the Germans, President Roosevelt broadcast a declaration warning the Germans and Hungarian leaders against the extermination of Jews. He called these crimes "the blackest crimes of all history, begun by the Nazis in the days of peace and multiplied by them a hundred times in the time of war", and he said that all who take part in the deportation of Jews to their death in Poland, shall share the punishment.

Now it is clear that Roosevelt did not limit this solemn pledge of the Allies to the extermination of Allied Jews. On the contrary, he had in mind in the first place, the Hungarian Jews, but the murder of Hungarian Jews by the German or Hungarian Governments on enemy territory, is not a war crime *stricto sensu*.

Roosevelt's statement was supported by a similar statement made by Mr. Eden on March 30th 1944. Our American colleague, Mr. H. Pell, submitted to Committee III of the Commission, a motion with regard to these crimes. I shall come back to this motion and to what happened to it, because I regard the attitude of our Commission, and the attitude of our Governments towards crimes committed for reason of race, religion or political creed, as the most serious test of the determination of the Allies to fulfill their pledges.

d) On June 12th 1944, President Roosevelt made a declaration in which he said :

"This Nation is appalled by the systematic persecution of helpless minority groups by the Nazis. To us the unprovoked murder of innocent people simply because of race, religion or political creed, is the blackest of all possible crimes. Since the Nazis began this campaign, many of our citizens in all walks of life and of all political and religious persuasions, have expressed our feeling of repulsion, and our anger. It is a matter with respect to which, there is and can be no division of opinion amongst us. To the Hitlerites, their subordinates and functionaries and satellites, to the German people and to all other peoples under the Nazi yoke, we have made clear our determination to punish all participants in these acts of savagery. In the name of humanity we have called upon them to spare the lives of these innocent people."

It is impossible to misrepresent this very clear and precise statement made by President Roosevelt. The statement makes absolutely clear the intention of the Allies to punish crimes of this kind, irrespective of the fact whether they are or are not covered by the old-fashioned and narrow expression "violations of laws and customs of war".

e) On January 31st 1945, the British Minister of State, Mr. Richard Law, replying to a question, made in the House of Commons a statement quoted on page 2. This statement corresponds exactly to the statement of President Roosevelt of June 12th 1944.

In view of these official statements extending the Allied retributive action to German crimes which are not violations of "laws and customs of war", the question could be raised whether our Commission appears to be authorised to deal with them either in a general or particular manner. Apart from the fact that our Commission is the only Allied body entrusted with the task of dealing with the enemy criminality, the answer to this question could be found in the second official act concerning our position and our competence.

ad. B). Letter sent on behalf of the Foreign Secretary, Mr. Eden, on February 24th, 1944, to all Governments represented on the Commission.

This is the second official document concerning our position and competence. I quote from this letter :

"You will recall that at the meeting of Allied Diplomatic Representatives held at the Foreign Office on the 20th October, 1943 to make arrangements for the establishment of the United Nations Commission for the Investigation of War Crimes, it was agreed that it would be desirable to set up in due course in addition to the Commission, a Technical Committee of legal experts, to make recommendations to the Governments concerned upon matters of a politico-legal nature relating to the punishment of war criminals. It was, however, at the same time agreed that the actual establishment of this Committee should be deferred.

His Majesty's Government in the United Kingdom understand that the consensus of opinion among the members of the United Nations Commission now is that the most suitable procedure would be for the Commission itself to consider and make recommendations upon these general questions and for no Technical Committee of the nature originally proposed, to be established.

Having regard to the views of the members of the Commission upon this subject, His Majesty's Government are, in the circumstances, inclined to agree that their proposal for the establishment of a Technical Committee should not be proceeded with, and that the functions with which it was originally proposed that the Technical Committee should be entrusted, should now be assumed by the Commission itself."

All the Governments agreed. The new task originally intended to be entrusted to the Technical Committee - recommendations on politico-legal questions - was now entrusted to the Commission. Therefore, the task of the Commission and its relation to the Governments as defined by both the decision of the Diplomatic Conference of October 20th, 1943, and by the letter of the Foreign Office of February 24th, 1944, could be described as follows :

- a) To investigate the war crimes, practically to examine the charges submitted by various Governments, and to compile lists of war criminals. In this respect the Commission is the authoritative body.

- b) To submit to the Governments represented on the Commission recommendations on general questions of a politico-legal nature. In this respect the Commission is an advisory body for the Governments.

I think that an adviser is not only authorised to give advice when asked but that he is obliged to advise his Government on his own initiative, without waiting for a request, to the best of his ability.

The Commission took an opposite course in two cases: in the question of crimes committed because of race, nationality, religious or political creed, and in the question as to whether the preparation and launching of the present war is a crime. In both cases the Commission asked the Governments for permission to deal with the problems. In my opinion, we were authorised by the letter of Mr. Eden of February 24th, 1944 agreed by all respective Governments, to deal with them and to make recommendations to the Governments without any special permission. The result of our proceeding in both cases is known: in the first case no answer was communicated to the Commission up to date (I shall return to this fact later on), in the second case an unnecessary delay.

In this connection I should like to quote Sir Cecil Hurst who stated on February 8th 1944 at the meeting of the Commission that

"if the Commission proceeded to advise the Governments to the best of its ability on the problems which arose in regard to war criminals, it need not fear objections on the ground that it was exceeding its competence".

#### Conclusion

In my opinion we are authorised and even obliged to deal with all problems connected with the punishment of war criminals in the widest sense of the word in accordance with the Allied declarations.. We are authorised and as an advisory body even obliged to submit to our Governments recommendations on all politico-legal questions. Consequently the competence of the Commission could be defined as follows :

1) As an advisory body:

- a) establish a classification of crimes committed by the enemies, the punishment of which was promised by the Allies in their official declarations.
- b) deal with and make recommendations in view of all legal, or politico-legal questions and questions of machinery connected with the task of putting into operation the Allied declarations.

2) As an authoritative body:

- a) examine charges submitted by individual Governments and decide whether the accused should be put on the list as *prima facie* responsible.
- b) put on the list men who, according to the evidence collected by the Commission itself, are *prima facie* responsible, especially for mass-crimes systematically planned and carried out.



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II.

Collaboration with the Soviet Authorities.

The practical advantage and necessity of this collaboration is too obvious to need any special explanation or justification.

At a meeting of Committee I in August 1944, I was asked by Sir Cecil Hurst, in agreement with other members, to make an unofficial inquiry if and on what lines the Soviet Government would be willing to collaborate with and to participate in the United Nations War Crimes Commission. By a letter of October 5th 1944, I reported the result of my unofficial mission. The letter reads as follows :

"Dear Sir Cecil,

As was agreed at a meeting of Committee I which dealt with a French case from Lublin, I unofficially approached Mr. Karavaev, First Secretary of the Soviet Embassy in London. I saw him on September 14th, 1944 and told him that with your own and other members approval I would be very glad to know if and on what lines the Soviet Government would be willing to collaborate with the Commission and to participate on it. I stressed the strictly unofficial character of my question. Mr. Karavaev promised to put this question to the Ambassador who alternatively should ask for instructions from his Government.

On Saturday the 30th, he asked for an appointment and I saw him on Wednesday the 4th October, when he let me read the following documents :

- a) aide memoire of July 27th 1943 sent by the Soviet Ambassador in reply to a communication from the Foreign Office of the 6th March 1943 and to a letter of Mr. Cadogan of 19th May 1943.
- b) a memorandum of October 18th 1943 sent by the Soviet Ambassador to Mr. Cadogan as answer to a note of the Foreign Office of August 30th 1943.
- c) a letter of October 18th 1943 accompanying the memorandum mentioned in sub. b).

Mr. Karavaev authorised me to make notes of all these documents, and to inform yourself and other members of the Commission about the point of view of the Soviet Government as expressed in the three documents.

On the basis of these three documents and of the conversation with Mr. Karavaev, I sum up the position of the Soviet Government and their attitude to the United Nations War Crimes Commission, as follows :

- a) The Soviet Government is ready to collaborate with the Commission and to participate on it. This attitude of principle expressed in the written documents remains unchanged.
- b) The Soviet Government would agree to the participation of Soviet representatives on the United Nations War Crimes Commission on condition that the right to be represented would be granted to the Soviet Republics who are actively engaged in the war against the enemy, as the Ukrainian, Byelorussian, Moldavian, Lithuanian, Latvian, Estonian and Karelo-Finnish Republics.

The Soviet Government points out that the international status of these Soviet Republics is not weaker than the international status of British Dominions and India, whose representative was agreed by the Soviet Government.

c) The Soviet Government is ready to present to the United Nations War Crimes Commission all appropriate material.

As the point sub. b). could be settled only by diplomatic negotiation, I limited my conversation with Mr. Karavaev to the point sub. c). because the promise to supply the United Nations War Crimes Commission with internal material has, in my opinion, no connection with the question of the representation which is a political one. The point sub. c). is a practical one and within the scope of the Commission. In addition, this point is an urgent one. The French have already presented cases from Lublin, the Poles made a statement at the meeting of the Commission on September 19th about Lublin(Majdanek) Camp and envisage to make a formal suggestion that a delegation of our Commission should be sent to Poland. This proves the practical aspect of the collaboration. I told Mr. Karavaev that we would be glad to have material, for instance about Lublin, and he answered that if the Commission asked for it, the Soviet Government would certainly send all appropriate material.

My impression is that the Soviet Government is still ready to collaborate with us and to participate on the Commission. The question of representation must of course, be settled by diplomatic arrangement, but I think that the Commission should make use of the willingness of the Soviet Government to send her appropriate material, and should ask for it.

As my unofficial mission was agreed to at a meeting of Committee I and as Mr. Karavaev authorised me to inform all members of the Commission of the result of our talks, I am sending copies of this letter to the members of Committee I, M. de Baer, Lt.Col. Hodgson and Dr. de Moor.

Yours sincerely,

(Signed) Dr. B. Eöer."

My suggestion that the Commission should make use of the willingness of the Soviet Government to supply appropriate material and should ask for it, was never brought before the Commission. Our new chairman, Lord Wright, in his statement on January 31st 1945, stressed the necessity of the collaboration.

#### Conclusion.

The Commission should try to establish as soon as possible through the Soviet Government, collaboration with the Soviet Extraordinary State Commission for German crimes. A delegation of the Commission should be sent for this purpose to the Soviet Union in accordance with the Soviet Government. In addition the Commission should advise the Governments to ensure as soon as possible, the representation of the Soviet Union on the Commission.



III.

The relation between the Commission and the public, especially the Press.

On several occasions our policy as to the relation of the Commission towards the public and the Press, was discussed. My point of view is as follows :

We are a United Nations Commission. It means we are responsible not only to our Governments and their Foreign Offices, but to our peoples as well.

The punishment of war criminals is not an exclusive job of the Commission, of the Governments represented, and of their Foreign Offices. It is a question of life or death for hundreds of millions. We must understand the passionate interest of public opinion in this problem and we should welcome it, not kill it by statements which could deprive us of the invaluable support of public opinion, and without which support we are doomed. Have no illusions about it. We cannot maintain the policy of "secret diplomacy" practised up to date. The results are disastrous. If we had for instance published the fact that the Commission has already put Hitler and the members of his gang called Government, on List No. 1 of November 22nd 1944, the whole Press Campaign of January 1945, also some stupid remarks about our attitude towards the arch-criminals would have been impossible. If we had published a summary of the headings of our recommendations, confidence in the Commission would not be shaken. On this point we must say: mea culpa. We are responsible for the fact that public opinion does not know what it is entirely entitled to know. We were in some cases, more secret than any Commander in Chief. We must eat the bitter fruits of "secret diplomacy" in matters which do not tolerate "secret diplomacy" but exige full day light.

The Soviet Extraordinary State Commission for German crimes takes exactly the opposite course. It informs the public and the Press in detail. It has the support of public opinion and a great vestige in the whole of Europe. Meanwhile, we are losing confidence as a result of our "secret diplomacy", in spite of the great constructive work on general questions we have already done.

Conclusion.

We should abandon the policy of unreasonable and exaggerated secrecy. We should establish close contact with public opinion and the Press as we envisaged and agreed at the first meeting on October 20th, 1943. Such collaboration through communiques, press conferences, articles of individual members etc. would have a very good result. It would :

- a) facilitate the realisation of our work.
- b) strengthen the hopes and the morale of our peoples.
- c) strengthen confidence in the Allied declarations and prevent growing anxiety that, as in 1919 the Allies will break their solemn pledges.
- d) prevent any lynch-tendencies in the liberated countries.

All this is very necessary for victory and especially for peace.

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IV.

The work already done by the Commission, and its realisation.

It is very useful to review what the Commission has already done in the past both as a deciding body (examination of charges), and as an advisory body (recommendations).

1. Lists of War Criminals.

We have already established the first list of war criminals. The work continues. In this respect, I have only one objection; the list of war criminals is being kept very secret. I think this is wrong. The Germans are already preparing false documents in order to facilitate the war criminals either to escape into neutral countries, or to submerge into Germany. This preparation could be hampered by publishing the list of war criminals. I am sure that millions of foreign workers, and perhaps even a certain number of Germans would be able to watch the war criminals and help the Allies to arrest them. But apart from this practical reason the public announcement that the arch-criminals with Hitler at the head, are already listed, would make a great impression, would strengthen the confidence in Allied promises and in the Commission. We need this confidence badly. The Commission should publish the names of others in whom they are interested as Dr. Cyprian suggested.

2. Recommendations.

Apart from examination of charges and compiling of lists, the Commission has done much good work in its advisory capacity. I mean the various recommendations either in legal questions or in questions of procedure and machinery.

A. As to the legal questions, the Commission dealt with some important problems and reached, in some respects, conclusions. On the other hand, as to other legal questions, the work was interrupted and up to date is not complete. I have in mind the following cases :

a) At the meeting of Committee III on March 16th, Mr. Pell stated that he, as a delegate of the United States, suggested the following resolution: "It is clearly understood that the words 'crimes against humanity' refer among others, to the crimes committed against stateless persons or against any persons because of their race or religion; such crimes are judicable by the United Nations or their agencies as war crimes."

This motion was discussed at the meetings of the Legal Committee on March 27th and April 5th. Mr. Pell expressly referred to public opinion in the United States, and to the statements of President Roosevelt of March 24th, and Mr. Eden of March 30th 1943, in order to support his motion. No decision was taken regarding this motion because meanwhile I submitted my report on the Scope of the Retributive Action of the Allied Nations according to the official declarations, and I inserted Mr. Pell's motion as paragraph C of the part A of my conclusions. At the meeting of the Legal Committee of May 15th, the following resolution was adopted :



"From this general point of view the United Nations War Crimes Commission considers that the following categories of crimes are within the scope of its work :

1. the crimes committed for the purpose of preparing or launching the war, irrespective of the territory where these crimes have been committed.
2. crimes committed in the Allied countries and crimes committed against members of the armed forces, or civilian citizens of the United Nations abroad, in the air, or on the sea, whatever may be the rank of the accused.
3. crimes committed against any persons without regard to nationality, stateless persons included, because of race, nationality, religious or political belief, irrespective of where they have been committed.
4. crimes that may be committed in order to prevent the restoration of peace."

This resolution was submitted to the Commission as Document C.20 and discussed at the meeting of May 23rd. It was decided to write a letter to Mr. Eden as to point 3 of the resolution, and to adjourn discussion of points 1 and 4. Later on point 4 was left out by general agreement, and point 1 was submitted to the Legal Committee for further consideration. The letter dated May 30th 1944 was prepared by Sir Cecil Hurst, and approved by all the Commission (see Doc. C.23). I quote from the letter the following passage :

"A category of enemy atrocities which has deeply affected the public mind, but which does not fall strictly within the definition of war crimes, is undoubtedly the atrocities which have been committed on racial, political or religious grounds in enemy territory. The publicity which was given to the appointment of the Commission for the Investigation of War Crimes led many people to assume that it would be part of the duties of the Commission to investigate atrocities of this character committed by the enemy in enemy territory as well as in occupied territory. I have been approached on occasions by bodies and individuals desirous of knowing whether they could help the Commission in this part of its work. If some other machinery for dealing with the above category of cases is to be set up, the Commission feels that a public announcement to this effect would be helpful, in order that the public at large may understand that effective steps will be taken to ensure that the authors of these atrocities are brought to justice. The Governments of the United Nations may already have in view some plan for bringing the authors of these crimes to justice, but if that is not the case, it is right that you should know that the Commission is prepared to take up this work if by so doing it can assist the Governments of the United Nations.

In conclusion, I would say that it is the hope of the Commission that you will take the initiative in promoting any further discussion between the Governments of the United Nations which the suggestions made in this letter may be thought to require."

With great regret I state the fact that up to date the Commission as such, never received any reply to this letter which I regard as one of the most important documents issued by our Commission. I only learned from official information published on January 11th 1945 in the Press, that a reply was sent on October 9th 1944 to Sir Cecil Hurst. The respective passage of the official information published in the Press is quoted on page 2 of this memorandum.

(1) This date should be November 9th

Up to date the text of the letter was not circulated among the members of the Commission, nor communicated to the Commission at the meeting, although the letter sent to Mr. Eden was a letter voted by the Commission and sent to him on behalf of the Commission. I refrain from any criticism. The fact speaks for itself. Should the recommendations suggested and letters from the Commission be treated in future in such a manner, which implies an ironical remark about "additional burden" I fear that some members will ask themselves if it is of any use to work on the Commission, if it is not a waste of time to participate on its meetings, discussions and resolutions. In addition, the feeling could arise or grow that exactly as in 1919 there is a gap between words and deeds. I do not think that the Commission can by-pass such an important fact, and must make some decision in view of this unpleasant incident.

b) The Legal Committee discussed at the meeting of September 11th, a draft prepared by Mr. Hambro on one legal conclusion of my report (Doc. C.32) on the German, S.A., S.S. and Gestapo presented to the Commission in June 1944. This one conclusion was concerned with the problem of collective responsibility. The Committee voted the conclusion as re-drafted by Mr. Hambro, but this conclusion was never submitted to the Commission. No earlier than the meeting of December 20th, the Commission decided to submit this, and other conclusions of my report, Doc. C.32 to Lord Wright's Legal sub-committee. This means that between the resolution of Committee III and the decision of the Commission, more than three months elapsed. Such a procedure is, naturally, impossible in view of the speed with which the war is developing.

c) The same meeting of Committee III discussed Dr. Liang's proposal on "Superior Order", and it was agreed that Sir Cecil Hurst should prepare for the next meeting of September 18th, a resolution on this point. This resolution was voted by a majority on September 18th but has never been submitted to the Commission. It is not encouraging for a member of this Commission, if his work, taking some time weeks to prepare, is treated in such a manner. In future, such procedure must be stopped in the interest of our future work.

B. As to the question of machinery, the Commission already voted a series of recommendations, among them the following main recommendations :

- a) On June 13th 1944, the Commission voted the recommendation Doc. C.27, entitled "Establishment in enemy territory of a War Crimes Office."
- b) On June 16th 1944, the Commission voted the recommendation Doc. C.31 completed by Doc. C.34, entitled "Surrender by the Axis Powers of persons wanted for trial as War Criminals."
- c) On August 29th 1944, the Commission voted the recommendation Doc. C.47 called "Convention for the surrender of War Criminals and other War offenders", and accompanying explanatory memorandum.
- d) On September 19th 1944, the Commission voted the recommendation Doc. C.52 with explanatory note Doc. C.59 called "The Establishment by Supreme Military Commanders of mixed Military Tribunals for the trial of War Criminals".
- e) On October 3rd 1944, the Commission voted the recommendation Doc. C.58, called "Draft Convention for the establishment of a United Nations War Crimes Court".

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What are the practical results of our examinations? What has happened to them? Up to date we have received answers from three Governments. The Czechoslovak Government approved three of the recommendations, the Yugoslav Government, one, and the British Government replied by letter of January 4th, saying that these recommendations are the subject of careful consideration.

All members of the Commission will remember that when we discussed these recommendations at Committee II, the urgency was time and again pointed out by all members. The same thing happened on the Commission. We remember that Sir Cecil Hurst asked the Committees to finish their work at least by November 10th, because it was possible that the war could end last year. If the war had ended, the situation would have been exactly the same as in 1919; solemn pledges and declarations and no machinery to carry out these solemn pledges and declarations. After the last war the German machinery was entrusted with the fulfilment of the Allied pledges to punish severely the German war criminals. This time such a "solution" would probably be impossible and so the Allies, if the war had ended last year, would have had no machinery at all for the arrest, investigation, extradition and trial of war criminals in Germany, or who have escaped to Germany from occupied countries.

But the possibility of the sudden ending of the war is now probable and to my regret I have to state the fact that in view of this probability, all these recommendations with a few exceptions, are far from any realisation. I think that it is not only our right but our duty as an advisory body of the Governments, to draw the attention of the Governments to this unpleasant fact and to press them to take as quickly as possible, all necessary steps to fill up this dangerous gap. The most important measure to be taken in this respect is, as Sir Cecil Hurst in his letter of January 2nd 1945, pointed out, to establish Inter-Allied Governmental machinery for the purpose of deciding about the recommendations, and to put them into operation.

#### C. Colonel Wade's Reports.

With great modesty, Colonel Wade presented a series of reports called "Summary of Information". I must say that these reports are of exceptional value for our work, because they supply the National Offices, and the Commission with facts of general importance illustrating the systematic and deliberate criminal character of the German actions in the occupied countries. Apart from the help given by these reports to the National Offices as to the charges prepared by them, these reports could be the basis for some general conclusions of a legal nature. These conclusions would be of use to Committee I and could be used as a basis for the discussion of Lord Wright's Legal sub-committee, and finally a very good basis for the revision of our general policy in order to bring the policy of the Commission into line with new facts which the Commission did not know at the beginning of its work and which have since been revealed, and are now reported by Colonel Wade.

#### Conclusions.

##### 1. Lists of War Criminals:

The Commission should publish the names of leading war criminals already listed, and publish from time to time other leading war criminals to be listed. The Commission should let the National Offices of individual Governments know that it has no objection against publication by the respective Governments of names of war criminals in which the National Offices are interested.

## 2. Legal Questions:

### a) Crimes for reasons of race, nationality, religious or political creed.

We must first of all ask for the full text of Mr. Eden's letter of October 9th<sup>(1)</sup> 1944, in reply to the letter sent to him on behalf and at the request of the Commission, by Sir Cecil Hurst on May 30th 1944. Then we must decide what is to be done with this problem. My personal view is that we should send our recommendations on this vital and most important question, to all Allied Governments represented on the Commission, and to deal with this problem as really being within the scope of our Commission because it is covered by a letter of the Foreign Office of February 24th 1944 quoted above, by which we were authorised to deal with all political legal questions. In addition the statement of the British Minister of State, Mr. R. Law on January 31st 1945, in the House of Commons.

### b) Other legal problems:

I think that at first all legal work already begun some ten months ago, (for instance about the S.A., S.S. and Gestapo - legal conclusions) should be finished.

Without having the ambition to give an exhaustive list of the work started but not finished, I mention :

Legal conclusions of my report on S.A., S.S. and Gestapo, Doc. C.32, M. Gros's and Mr. Hambro's proposals on Collective Responsibility, Dr. Liang's report and resolution on "Superior Order", etc. etc.,

Some of them have already been forwarded to Lord Wright's Legal sub-committee.

## 3. Machinery.

If we bear in mind that the first recommendation was voted at the beginning of June and that we are now at the end of January, the time which has elapsed between our vote, and the present situation, is more than seven months and yet nothing has been put into effect, it is a disquieting and even a disturbing fact. I do not think that this unpleasant fact is due to disrespect for the work of the Commission on the part of the Governments, but in any case, it is a discouraging attitude towards the recommendations of our Commission. We should draw the attention of the Governments to this fact. It is in the interest of the Commission that the responsibility for this situation should be established as quickly as possible. The day will come when the members of the Commission will be obliged to give an account of their activities to the new Governments and Parliaments of the peoples, especially in the liberated countries. The Commission as a whole, and the individual members, are authorised to insist on clear statements establishing their own responsibility and that of the Governments. My conclusion does not imply any criticism of the Governments, but meets the legitimate need for a clear distinction of responsibility.

I think we must discuss this point very seriously, and especially the letter of January 4th 1945, sent to the Commission through its chairman, by the British Foreign Secretary. I do not think that any member of our Commission would be able and willing to sacrifice time for work which would finally be put into pigeon holes of archives.

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(1) This date should be November 9th.

As Sir Cecil Hurst pointed out in his letter of January 2nd, 1945, an inter-allied machinery should be set up in order to ensure proper consideration of our recommendations by all the Governments concerned. I should like to add: and to ensure their realisation, if adopted, through the executive organs of the Allies (combined Chiefs of Staffs, SHAEF, and other Commanders in Chief of the occupying forces, Armistice Commissions, Military Governments, etc.)

4. Colonel Wade's Reports: These reports contain plenty of facts from which general conclusions could be drawn, which could be a basis for recommendations to be submitted to the Governments either as to the general penal policy towards "war criminals" or as to the various legal aspects of the struggle against Axis criminality or as to the proceedings to be adopted and measures to be taken which would be adequate for the systematical and mass character of this criminality.

#### V.

##### The organisation of the Commission's work

The internal organisation of the Commission voted on January 25th 1944, worked very well. All committees have done very useful work which would be appreciated in the future not only as a contribution to the solution of the problem called "Punishment of War Criminals", but also as a contribution to the further development of International Law, (especially its new discipline of International Criminal Law) and of Criminal Laws of many United Nations. But there was not a co-ordinating body. The work was not systematically planned and carried out. The result was that in some respect there were overlapping resolutions and decisions.

In my opinion we need a leading full time team to organise, to plan, and to supervise the work of the Commission. The chairman, his deputies, the chairmen of the various Committees could form such a leading team.

##### Conclusion.

We should elect two deputy chairmen of the Commission to assist the chairman. The chairman of the Commission, his deputies, and the chairmen of the Committees and their deputies, should be entrusted with the task of preparing, planning, co-ordinating and supervising the work of the Commission and of its Committees so that the systematic work with the maximum of effectiveness and minimum of time would be done.

#### VI.

##### Suggestions

In conclusion I make the following suggestions which seem to me to derive from the analysis of the position, work in the past, and work to be done in the future :

No. 1 The Commission should regard as being within its scope and competence :

- a) to establish a classification of crimes committed by the enemies, the punishment of which was promised by the Allies in their official declarations.



- b) to deal with and make recommendations in view of all legal or politico-legal questions and questions of machinery connected with the task of putting into operation the Allied declarations.
- c) to examine charges submitted by individual Governments and decide whether the accused should be put on the list as prima facie responsible.
- d) to put on the list men whom according to the evidence collected by the Commission itself, are prima facie responsible especially for mass-crimes systematically planned and carried out.

No. 2 The Commission should :

- a) establish as soon as possible through the Soviet Government, collaboration with the Soviet Extraordinary State Commission for German crimes. A delegation of the Commission should be sent for this purpose to the Soviet Union in accordance with the Soviet Government.
- b) advise the Governments to ensure as soon as possible the representation of the Soviet Union on the Commission.

No. 3 The Commission should establish close contact with public opinion, especially with the Press, through communiques, press conferences, articles of individual members etc., For this purpose a Publicity Department working under the direction of the chairman, should be established.

No. 4 The Commission should publish the names of leading war criminals already listed, and publish from time to time other leading war criminals to be listed. The Commission should let the National Offices of individual Governments know that it has no objection against publication by the respective Governments of names of war criminals in which the National Offices are interested.

No. 5 The resolution of Committee III of May 15th 1944, concerning crimes because of race, nationality, religious or political belief, the letter sent on this matter on May 30th 1944, to Mr. Eden and his reply of October 9th, 1944 should be submitted to the Commission for consideration and a new decision with regard to the statement of the British Minister of State, Mr. R. Law, of January 31st 1945.

No. 6 As Committee III (legal questions) formally continues to exist without functioning as on the other hand the ad hoc elected Legal Committee presided over by Lord Wright was entrusted with further tasks which probably would increase, the reconstruction of the permanent legal committee under the chairmanship of Lord Wright should be decided.

No. 7 The Commission should draw the attention of the Governments to the fact that most of them have not yet replied to the recommendations voted and sent to them by the Commission.

A precise list of the recommendations with all particulars as the heading, date of vote, date of communication etc., should be attached. The Commission should further inform the Governments that such treatment of its recommendations is discouraging for members, who either as rapporteurs or members of special committees, sacrificed work and time to the elaboration of recommendations simply put aside by the great majority of Governments.

No. 8 The Commission should entrust the Legal Committee with the task of drawing legal conclusions of general nature from Colonel Wade's reports, and to submit them to the Commission as recommendations to be sent to the Governments.

No. 9 The Commission should elect two deputy chairmen who would assist the chairman. The chairman, his deputies and the chairmen of the committees would together constitute the leading team, planning, co-ordinating and supervising the work of the Commission and its committees.

SECRET

C.77(1)  
15th February, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

RECOMMENDATIONS TO THE GOVERNMENTS TO DETAIN  
PRISONERS OF WAR PENDING WAR CRIMES INVESTIGATIONS

Adopted by the Commission on  
14th February, 1945

1. The United Nations War Crimes Commission has recommended that the capitulation (armistice) terms should contain appropriate provisions requiring the arrest and detention of all members and former members of the Gestapo and S.S. (Documents C.31 and C.34) in order that those organizations, as well as their members, may be thoroughly investigated.
2. It is reported that there are prisoners of war in the custody of the Allies who have committed war crimes or who have knowledge of the commission of war crimes by others. In this regard it is believed that many of these prisoners of war have avoided disclosing their true identity or have refused to divulge information in their possession concerning the commission of war crimes by others.
3. The experience of the Commission has established that certain war crimes have been committed by units or detachments acting as a whole, or individually by unknown members of identified military organizations. In these cases the only practical method of specifying the war criminals is by listing those units and organizations whose members must be thereafter identified.
4. It is believed that unless appropriate measures are taken before the repatriation of prisoners of war to identify the mentioned war criminals and to secure the information which each prisoner of war may possess concerning war crimes committed by others, the ultimate apprehension of the war criminals will be rendered extremely and unnecessarily difficult, many war criminals will be released and may never be re-apprehended, and serious war crimes and atrocities may not be punished.
5. It is believed, therefore, that there should be an exhaustive investigation of all prisoners of war in the custody of the Allies, and, at an appropriate time before their repatriation, they should be required to divulge all information concerning their identity, their service and activities during the war, and the war crimes committed by others about which they have information.
6. It is advisable that such investigation should be undertaken as soon as possible.
7. Under existing provisions of international law the extent of information which prisoners of war may be required to give during the existence of hostilities is restricted, which hinders during hostilities thorough investigation of prisoners of war and the securing of information they may possess concerning war crimes.

P.T.O.



8. It is the view of this Commission that under appropriate capitulation (armistice) terms providing for the disclosure of the mentioned information prisoners of war may be lawfully required to disclose all the mentioned information before their repatriation.

9. The United Nations War Crimes Commission therefore recommends to the Governments :

- a). That appropriate measures should be taken to identify war criminals among the prisoners of war.
- b). That the prisoners in the custody of the Allies at the time of capitulation (armistice) should be kept in custody for a period sufficient to allow the necessary identification of war criminals and investigation regarding war crimes.
- c). That appropriate provisions be incorporated in the capitulation (armistice) terms providing :
  1. that before his repatriation every prisoner of war may be required to answer truly all questions put to him and in particular all questions concerning his identity and past activities and those of the units or military organizations to which he has belonged, as well as any questions necessary to ensure the investigation of war crimes, upon penalty of retainance in custody or other punishment if he refuses to answer or knowingly gives false information.
  2. that the prisoners of war in Allied custody at the time of the capitulation (armistice) may be kept in custody for sufficient time to permit the carrying out of the measures above mentioned.

SECRET

C.76  
13 February, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

CORRESPONDENCE BETWEEN THE WAR CRIMES COMMISSION  
AND H. M. GOVERNMENT IN LONDON REGARDING THE PUNISHMENT  
OF CRIMES COMMITTED ON RELIGIOUS, RACIAL OR POLITICAL GROUNDS

Note by the Secretary General

In view of what is said and proposed on the subject of religious, racial and political crimes in Dr. Eder's memorandum entitled "Memorandum on the present position of the United Nations War Crimes Commission, the work already done and its future tasks" (Doc. C.76), the Secretary General begs to reproduce below the text of the above-mentioned correspondence with certain necessary explanations.

Letter 1

This letter was the result of consideration by the Commission of the draft resolution submitted by Committee III under the title "Scope of the Retributive Action of the United Nations" (Doc. C.20), the origin of which is described by Dr. Eder. Its text, which was approved by the Commission on 30 May, 1944 (Doc. M.20 pp 1-2), is as follows:

Letter from Sir Cecil Hurst to The Rt. Hon. Anthony Eden,  
dated 31st May, 1944.

"Sir,

"At the time when agreement was reached between the Governments of the United Nations for the institution of this Commission, the paramount consideration was the need to establish machinery for bringing to justice members of the enemy forces and officials in the enemy administrations, who had been guilty of violations of the laws and customs of war against members of the Allied forces or against inhabitants of Allied territory temporarily occupied by the enemy.

"I have been asked by members of the Commission to inform you that in their view it would now be convenient to know whether it is the desire of the Governments of the United Nations that the activities of the Commission should be restricted to the investigation of war crimes "stricto sensu", of which the victims have been allied individuals.

"Technically, a distinction can well be drawn between atrocities committed by the enemy which are violations of the laws and customs of war and those which are not but it will probably be the general view that the need to exact retribution is as great in the one case as in the other.

"A category of enemy atrocities which has deeply affected  
"the public mind, but which does not fall strictly within the  
"definition of war crimes, is undoubtedly the atrocities which  
"have been committed on racial, political or religious grounds  
"in enemy territory.

"The publicity which was given to the appointment of the  
"Commission for the Investigation of War Crimes led many people  
"to assume that it would be part of the duties of the Commission  
"to investigate atrocities of this character committed by the  
"enemy in enemy territory as well as in occupied territory.  
"I have been approached on occasions by bodies and individuals  
"desirous of knowing whether they could help the Commission in  
"this part of its work. If some other machinery for dealing  
"with the above category of cases is to be set up, the  
"Commission feels that a public announcement to this effect  
"would be helpful, in order that the public at large may under-  
"stand that effective steps will be taken to ensure that the  
"authors of these atrocities are brought to justice.

"The Governments of the United Nations may already have in  
"view some plan for bringing the authors of these crimes to  
"justice, but if that is not the case, it is right that you  
"should know that the Commission is prepared to take up this  
"work if by so doing it can assist the Governments of the  
"United Nations.

"In conclusion, I would say that it is the hope of the  
"Commission that you will take the initiative in promoting  
"any further discussion between the Governments of the United  
"Nations which the suggestions made in this letter may be  
"thought to require.

"I am

Sir,

Your obedient servant,

(Signed) CECIL J.B. HURST"

Letter 2

The reply to Letter 1 was contained in the following  
communication from Lord Simon.

Letter from the Lord Chancellor to Sir Cecil Hurst,  
dated 23rd August, 1944

"My dear Hurst,

"I promised at the interview you had on the 28th July with  
"me and the Attorney General to write you a letter which was to  
"convey some of the suggestions which the War Cabinet has authorised  
"us to make with the object of promoting the work of the Com-  
"mission on War Crimes over which you preside. The observations



"in this letter are communicated to you as Chairman of the Commission, and, as you will see, are to a large extent in line with the recommendations adopted by the Commission on May 16th, and forwarded by you to the Foreign Secretary in your letter of May 24th. You have also by your letter of May 31st to the Foreign Secretary taken a broad view of the duties of the Commission in another matter on which the War Cabinet authorised us to make a suggestion to you.

"His Majesty's Government are in agreement with the Commission that the mere establishment of a list of persons presumed to be guilty of war crimes by building up and preparing complete cases and dossiers containing the proof of their guilt cannot in itself complete the work to be done by the Commission. It was, indeed, never intended that this should be the limit of the Commission's work; you will notice in the statement made in the House of Lords on October 7th, 1942, when the functions of the Commission were generally described, that the Commission was to report from time to time to the Governments cases in which war crimes appear to have been committed against nationals of the United Nations, 'naming and identifying wherever possible the persons responsible'. In the view of His Majesty's Government the purpose to be served by the Commission is intended to include an account, in such detail as is possible, of specific war atrocities, even though it is not possible in all cases to identify the individual perpetrators or the units involved.

"Secondly, we note the suggestion that all persons who have held responsible positions in the occupied countries, especially lists of enemy personnel in authority in each occupied district, including gauleiters, governors, chiefs of the S.S., chiefs of the Gestapo, etc., with particulars as complete as possible regarding their own identity and of the more important crimes committed in the areas where they were in authority, should be compiled by the Allied Governments and that such persons (at any rate members of the S.S. or Gestapo) should be detained as soon as this is possible. This, of course, is primarily a matter which falls within the task of the Governments themselves and of the Allied commanders, but we can well understand that such lists might be of great value to the Commission in the discharge of its work, and, so far as His Majesty's Government are concerned, we believe that the course proposed would be thoroughly approved.

"Thirdly, in your letter of the 31st May you refer to a category of enemy atrocities which does not fall within the definition of war crimes, namely, atrocities committed on racial, political or religious grounds in enemy territory. This would open a very wide field. No doubt you have in mind particularly the atrocities committed against the Jews. I assume there is no doubt that the massacres which have occurred in occupied territories would come within the category of war crimes and there would be no question as to their being within the Commission's terms of reference. No doubt they are part of a policy which the Nazi Government have adopted from the outset, and I can fully understand the Commission wishing to receive and consider and report on evidence which threw light on what one might describe as the extermination policy. I think I can probably express the view of His Majesty's Government by

saying/

- 4 -

"saying that it would not desire the Commission to place any  
"unnecessary restriction on the evidence which may be tendered  
"to it on this general subject. I feel I should warn you,  
"however, that the question of acts of this kind committed in  
"enemy territory raises serious difficulties and it would  
"probably be better that the Commission should not concern  
"itself with these until the matter has been fully considered  
"in the light of your recent recommendations. His Majesty's  
"Government do attach very great importance to the investi-  
"gation which they feel sure is proceeding of the massacres  
"committed in the occupied territories and the identification  
"of those responsible.

"To sum up: if I may state in broad terms the position  
"as I see it, I would say that I trust that the Commission will  
"not feel narrowly confined to the work of identifying individ-  
"criminals. It will not, I am sure, forget that in order to  
"bring home guilt to an individual enemy who is charged with  
"having perpetrated a specified crime, it is necessary to show  
"that the man accused is rightly held responsible for it and,  
"to that extent, identification may often be most important.  
"But, on the other hand, the report of the United Nations War  
"Crimes Commission ought certainly to take a wider scope, for it  
"is by means of this report that the extent and character of  
"well authenticated atrocities will be largely judged, and the  
"difficult and responsible task of the Commission is to bring  
"those matters home in their general aspect as well as to collect  
"evidence of the crime of an identified individual. When the  
"Commission are able to address themselves to what has happened  
"in the Far East, it may be found that identification of  
"individuals is even more difficult than in the West. It  
"will, however, be of the greatest importance for there to be  
"a reliable and authoritative report on the atrocities.

"You may, therefore, assume that the wider treatment of  
"the subject which the Commission has suggested to His Majesty's  
"Government is the treatment which His Majesty's Government  
"would approve.

"Yours sincerely,

(Signed) SIMON"

Owing to its informal character, Sir Cecil Hurst at first regarded this letter as intended for his personal information as United Kingdom representative on the Commission. Having learned from Lord Simon that it was, in fact, His Majesty's Government's reply to his letter of 31st May, Sir Cecil communicated the sense of the letter to the Commission on 26th September, 1944, but did not think it necessary to circulate the text. The record in the Minutes of the meeting is as follows, (Doc. H.33, p.3):

"Persecution of Jews"

"Lord WRIGHT was of opinion that the persecution of the  
"Jews in Germany was, logically, a war crime, and that the  
"Commission might have to consider extending its definition of  
"war crimes. Perhaps the Foreign Office should be approached  
"again about the letter of May 31st, 1944.

"The CHAIRMAN said that at the end of August he had received  
"a letter from the Lord Chancellor which, as he now learned,  
"was intended to convey a reply to the Commission's letter of  
"May 31st. This letter had indicated a desire that the Com-  
"mission should not interpret its mandate in any narrow spirit,  
"but pointed out the difficulties in the way of including in  
"the Commission's duties the handling of German crimes against  
"Germans in Germany. He (the Chairman) should like to remind  
"the Commission that the vast majority of the crimes committed  
"against the Jews fell within the Commission's terms of reference  
"because they had been carried out in occupied territory such  
"as Poland, or because the victims were non-Germans".

Letter 3

A further letter was later received from the Foreign Office  
confirming the attitude taken in Letter 2. It is the one mentioned  
in the Press communiqué quoted by Dr. Eder. It reads as follows:

Letter from The Rt. Hon. Anthony Eden to Sir Cecil Hurst,  
dated 9th November, 1944

"My dear Hurst,

"The views of the War Cabinet on your letter of the 31st May  
"were communicated to your Commission in the letter from the  
"Lord Chancellor to yourself as Chairman on the 23rd August, 1944.  
"The fourth paragraph of that letter dealt with the suggestion  
"put forward by the Commission as to atrocities committed on  
"racial, political or religious grounds in enemy territory.  
"In that letter, after stating the view then held, the Lord  
"Chancellor went on to say that His Majesty's Government would  
"give further consideration to this question. I am therefore  
"writing to let you know that His Majesty's Government adhere  
"to the views as stated in that letter. The majority of these  
"atrocities will have been committed against enemy nationals;  
"if committed against Allied nationals they are within your  
"Commission's terms of reference already. I think it is clear  
"from the letter that there was no intention to exclude  
"atrocities on these grounds in enemy territory if they in fact  
"came within the category of war crimes, but you were clearly  
"raising the wider issue. His Majesty's Government do not -  
"as was stated in the letter - wish to preclude the Commission  
"from collecting any evidence which they feel would be of value  
"in relation to the general extermination policy which has  
"undoubtedly been carried out in occupied territory in  
"circumstances which constitute war crimes.

"Apart from other considerations His Majesty's Government  
"feel that the progress of the war has made the war criminal  
"question one of some urgency, and it would be a mistake for the  
"Commission to undertake this additional and heavy burden.  
"It is unnecessary to say that His Majesty's Government sincerely  
"hope that those who have been responsible for these atrocities  
"may one day have the punishment which their actions deserve.

"Yours sincerely,

(Signed) ANTHONY EDEN

This/



This letter was not circulated because Sir Cecil Hurst considered it unnecessary to do so.

Appendix

Mr. Law's answer to Parliamentary questions on 31st January, 1945, which are quoted by Dr. Eder may be supplemented by earlier answers given by Mr. Eden on October 4th 1944.

Parliamentary Debates (Hansard) Vol. 403, No. 125, col. 906:

"In reply to a first question by Mr. G. Strauss, asking that the names of those responsible for crimes against German democrats and anti-Nazis, such as the murder of 7,000 internees in Buchenwald concentration camp, should be added to the list of war criminals, Mr. Eden said:

Crimes committed by Germans against Germans, however reprehensible, are in a different category from war crimes and cannot be dealt with under the same procedure. His Majesty's Government have this matter under consideration, but I am not in a position to make any further statement at present."

"In reply to a further question as to whether the murder of anti-Nazi Germans in Germany was not just as criminal as the murder of other anti Nazis elsewhere, Mr. Eden said:

"I was not trying to measure the degree of the reprehensible in any of these deeds, all I was saying was that it was not a war crime in the sense of other crimes that are being committed, and other means would have to be found for dealing with it."

"Finally, in reply to a question by Mr. Silverman as to whether the terms of reference of the War Crimes Commission should not be widened so that all these matters could be dealt with by exactly the same procedure, Mr. Eden said:

"No, Sir. We really have given some thought to this. I cannot agree with my hon. Friend about widening the work of the War Crimes Commission, they have a very definite and circumscribed task. I agree, however, about the offensiveness of these crimes, all I say is, that they must be handled in some other way."

SECRET

C.79  
16th February, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

REPORT OF THE FINANCE COMMITTEE ON THE BUDGET FOR  
THE FIRST FISCAL PERIOD - 26TH OCTOBER, 1943 TO  
31ST MARCH, 1945 - ADOPTED ON FEBRUARY 15TH, 1945

The basis of the War Crimes Commission's finances is the Resolution on Financial Administration adopted by it on 21st March, 1944 (Doc. C.10) and submitted for approval to the member Governments. This resolution, in the first place, provides that the Commission's expenses for each year shall be divided among the Governments in such a manner that each pays (a) a "basic contribution" of £400 and (b) a proportionate share of the excess of the total estimated expenditure over the total amount due in the form of basic contributions, such shares being calculated on a scale which corresponds to that adopted for the administrative budget of the United Nations Relief and Rehabilitation Administration in 1943, except that the United Kingdom pays the same share as the United States.

In the second place the resolution requires the Commission to make regulations governing its financial and general administration. Such regulations were adopted on the 22nd August, 1944 (Doc. C.45).

By an arrangement which H.M. Foreign Office in London was good enough to make with the Commission, the latter's expenses were met by advances from that Department until it should decide that it could assume the responsibility of meeting them from the contributions of the member Governments. Such a decision was taken on 17th January of the present year and has been in effect since the end of that month. It was made possible by the fact that under the Financial and Administrative Regulations the "basic contributions" were payable in advance of the adoption of a budget and had nearly all been paid.

The delay in adopting a budget for the Commission's first "fiscal period", i.e. the period from its first meeting down to 31st March, 1945, has been due to the inevitable uncertainty as to the development of its work and the size and cost of the organisation which would be required. It is now clear that the expansion of its organisation and work which the Commission has decided to undertake will fall wholly or almost wholly within the next fiscal period. A draft budget with explanatory notes (p. 3) has accordingly been submitted to the Finance Committee by the Secretary-General and the Committee recommends that it be adopted in the form shown in Annex A.

The contributions for which each member Government will be liable if the full amount of the draft budget is voted are set out in Annex B.

ANNEX A

BUDGET FOR THE PERIOD 26th OCTOBER,  
1943, TO 31st MARCH, 1945.

ESTIMATED REQUIREMENTS

Part I

WORKING CAPITAL FUND

	£.	s.	d.
Amount fixed by Financial and Administrative Regulations (Doc. C.45, Art. 4, para. 1) . . . . .	6,000.	0.	0

Part II

EXPENSES OF THE COMMISSION

	£.	s.	d.
1) Premises (including furniture, heating, lighting, cleaning, telephones, etc.) supplied free of charge by H.M. Government in London. . . . .	0.	0.	0.
2) Stationery and multigraphing . . . . .	300.	0.	0.
3) Postage, telegrams, cables . . . . .	100.	0.	0.
4) Salaries and subsistence allowances (including National Health and Unemployment Insurance) . . . . .	4100.	0.	0.
5) Provision until 31st March 1945 for anticipated additional staff . . . . .	250.	0.	0.
6) Travelling . . . . .	10.	0.	0.
7) Accountants and auditors' charges . . . . .	50.	0.	0.
8) Publication of reports . . . . .	10.	0.	0.
9) Expenses of the Far Eastern and Pacific Sub-Commission : a) Premises (including furniture, heating, lighting, cleaning, telephones etc.) provided free of charge by the Chinese Government . . . . .	0.	0.	0.
b) Amount of the Sub-Commission expenses, from its inauguration to the end of the first fiscal period, estimated by the Sub-Commission at 590,000 Chinese dollars . . . . .	850.	0.	0.
10) Miscellaneous and unforeseen expenditure . . . . .	100.	0.	0.
	£11,770.	0.	0.



ESTIMATED RECEIPTS

	£.	s.	d.
Basic contributions . . . . .	6,000.	0.	0.
Excess of estimated expenditure over amount due as basic contributions . . . . .	5,770.	0.	0.
<b>TOTAL RECEIPTS . . . . .</b>	<b>£11,770.</b>	<b>0.</b>	<b>0.</b>

EXPLANATORY NOTES

Estimated requirements, Part I.  
Working Capital Fund.

The Working Capital Fund is a Reserve Fund which is provided for in the basic Financial Resolution of 21st March, 1944 and which has for its principal object "to enable the Commission to meet its expenses notwithstanding delay in the receipt of contributions" (Resolution on Financial Administration, para. 2). The Commission by a vote of two thirds of its members may draw upon it temporarily for purposes not provided for in the Budget (Financial and Administrative Regulations, Art. 4, para. 4(ii)). Amounts drawn from the Fund must be repaid to it as soon as possible (Ibidem, Art. 4, para. 4).

It has been felt prudent to ask the members to supply in the Commission's first budget the whole amount of this Fund as fixed by the Administrative and Financial Regulations.

Estimated requirements, Part II.  
Expenses of the Commission.

Down to January 12th, 1945, the following approximate amounts had been expended on the items mentioned :

	£.	s.	d.
Item 2) . . . . .	200.	0.	0.
Item 3) . . . . .	60.	0.	0.
Item 4) . . . . .	3,000.	0.	0.

The position as regards the other items is as follows :

Item 1) : No expenditure is anticipated.

Item 5) : The Commission has decided to appoint on the staff (a) a lawyer with criminal experience, and (b) a Central Investigation Officer with appropriate staff, but the dates of appointment and salaries required are still uncertain.

Item 6) : This is a token item to which a transfer from Item 10 will be made if any travelling expenses are incurred.

Item 7) : In order to avoid the engagement of an accountant who could not be fully employed, the Secretary-General has had recourse to the assistance of a firm of accountants.

Item 8) : The remark made on Item 6 applies to this item.

ANNEX B

CONTRIBUTIONS DUE FROM MEMBER GOVERNMENTS.

	No. of Units	Basic con- tributions of £400	Share of excess of total budget over basic contribution	Total due
			£. s. d.	£. s. d.
Australia	30	paid	114. 2. 2	114. 2. 2
Belgium	20	"	76. 1. 5	76. 1. 5
China	100	"	380. 7. 1	380. 7. 1
Czechoslovakia	20	"	76. 1. 5	76. 1. 5
France	80	"	304. 5. 8	304. 5. 8
Greece	10	£400	38. 0. 9	438. 0. 9
India	80	paid	304. 5. 8	304. 5. 8
Luxemburg	1	"	3. 16. 1	3. 16. 1
Netherlands	30	"	114. 2. 2	114. 2. 2
New Zealand	6	"	22. 16. 5	22. 16. 5
Norway	6	"	22. 16. 5	22. 16. 5
Poland	20	"	76. 1. 5	76. 1. 5
United Kingdom	550	£400	2091. 19. 2	2491. 19. 2
U.S.A.	550	paid	2091. 19. 2	2091. 19. 2
Yugoslavia.	14	"	53. 5. 0	53. 5. 0
TOTAL	1,517	£800	£5770. 0. 0	£6570. 0. 0

VALUE OF 1 UNIT = £3. 16. 0.85432.

SECRET

C.79  
16th February, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

REPORT OF THE FINANCE COMMITTEE ON THE BUDGET FOR  
THE FIRST FISCAL PERIOD - 26TH OCTOBER, 1943 TO  
31ST MARCH, 1945 - ADOPTED ON FEBRUARY 15TH, 1945

The basis of the War Crimes Commission's finances is the Resolution on Financial Administration adopted by it on 21st March, 1944 (Doc. C.10) and submitted for approval to the member Governments. This resolution, in the first place, provides that the Commission's expenses for each year shall be divided among the Governments in such a manner that each pays (a) a "basic contribution" of £400 and (b) a proportionate share of the excess of the total estimated expenditure over the total amount due in the form of basic contributions, such shares being calculated on a scale which corresponds to that adopted for the administrative budget of the United Nations Relief and Rehabilitation Administration in 1943, except that the United Kingdom pays the same share as the United States.

In the second place the resolution requires the Commission to make regulations governing its financial and general administration. Such regulations were adopted on the 22nd August, 1944 (Doc. C.45).

By an arrangement which H.M. Foreign Office in London was good enough to make with the Commission, the latter's expenses were met by advances from that Department until it should decide that it could assume the responsibility of meeting them from the contributions of the member Governments. Such a decision was taken on 17th January of the present year and has been in effect since the end of that month. It was made possible by the fact that under the Financial and Administrative Regulations the "basic contributions" were payable in advance of the adoption of a budget and had nearly all been paid.

The delay in adopting a budget for the Commission's first "fiscal period", i.e. the period from its first meeting down to 31st March, 1945, has been due to the inevitable uncertainty as to the development of its work and the size and cost of the organisation which would be required. It is now clear that the expansion of its organisation and work which the Commission has decided to undertake will fall wholly or almost wholly within the next fiscal period. A draft budget with explanatory notes (p. 3) has accordingly been submitted to the Finance Committee by the Secretary-General and the Committee recommends that it be adopted in the form shown in Annex A.

The contributions for which each member Government will be liable if the full amount of the draft budget is voted are set out in Annex B.



ANNEX A

BUDGET FOR THE PERIOD 26th OCTOBER,  
1943, TO 31st MARCH, 1945.

ESTIMATED REQUIREMENTS

Part I

WORKING CAPITAL FUND

	£.	s.	d.
Amount fixed by Financial and Administrative Regulations (Doc. C.45, Art. 4, para. 1) . . . . .	6,000.	0.	0

Part II

EXPENSES OF THE COMMISSION

	£.	s.	d.
1) Premises (including furniture, heating, lighting, cleaning, telephones, etc.) supplied free of charge by H.M. Government in London. . . . .	0.	0.	0.
2) Stationery and multigraphing . . . . .	300.	0.	0.
3) Postage, telegrams, cables . . . . .	100.	0.	0.
4) Salaries and subsistence allowances (including National Health and Unemployment Insurance) . . . . .	4100.	0.	0.
5) Provision until 31st March 1945 for anticipated additional staff . . . . .	250.	0.	0.
6) Travelling . . . . .	10.	0.	0.
7) Accountants and auditors' charges . . . . .	50.	0.	0.
8) Publication of reports . . . . .	10.	0.	0.
9) Expenses of the Far Eastern and Pacific Sub-Commission : a) Premises (including furniture, heating, lighting, cleaning, telephones etc.) provided free of charge by the Chinese Government . . . . .	0.	0.	0.
b) Amount of the Sub-Commission expenses, from its inauguration to the end of the first fiscal period, estimated by the Sub-Commission at 590,000 Chinese dollars . . . . .	850.	0.	0.
10) Miscellaneous and unforeseen expenditure . . . . .	100.	0.	0.
	£11,770.	0.	0.

ESTIMATED RECEIPTS

	£.	s.	d.
Basic contributions . . . . .	6,000.	0.	0.
Excess of estimated expenditure over amount due as basic contributions . . . . .	5,770.	0.	0.
<b>TOTAL RECEIPTS . . . . .</b>	<b>£11,770.</b>	<b>0.</b>	<b>0.</b>

EXPLANATORY NOTES

Estimated requirements, Part I.  
Working Capital Fund.

The Working Capital Fund is a Reserve fund which is provided for in the basic Financial Resolution of 21st March, 1944 and which has for its principal object "to enable the Commission to meet its expenses notwithstanding delay in the receipt of contributions" (Resolution on Financial Administration, para. 2). The Commission by a vote of two thirds of its members may draw upon it temporarily for purposes not provided for in the Budget (Financial and Administrative Regulations, Art. 4, para. 4(ii)). Amounts drawn from the Fund must be repaid to it as soon as possible (Ibidem, Art. 4, para. 4).

It has been felt prudent to ask the members to supply in the Commission's first budget the whole amount of this Fund as fixed by the Administrative and Financial Regulations.

Estimated requirements, Part II.  
Expenses of the Commission.

Down to January 12th, 1945, the following approximate amounts had been expended on the items mentioned :

	£.	s.	d.
Item 2) . . . . .	200.	0.	0.
Item 3) . . . . .	60.	0.	0.
Item 4) . . . . .	3,000.	0.	0.

The position as regards the other items is as follows :

Item 1) : No expenditure is anticipated.

Item 5) : The Commission has decided to appoint on the staff (a) a lawyer with criminal experience, and (b) a Central Investigation Officer with appropriate staff, but the dates of appointment and salaries required are still uncertain.

Item 6) : This is a token item to which a transfer from Item 10 will be made if any travelling expenses are incurred.

Item 7) : In order to avoid the engagement of an accountant who could not be fully employed, the Secretary-General has had recourse to the assistance of a firm of accountants.

Item 8) : The remark made on Item 6 applies to this item.

ANNEX B

CONTRIBUTIONS DUE FROM MEMBER GOVERNMENTS.

	No. of Units	Basic con- tributions of £4.00	Share of excess of total budget over basic contribution.	Total due
			£. s. d.	£. s. d.
Australia	30	paid	114. 2. 2	114. 2. 2
Belgium	20	"	76. 1. 5	76. 1. 5
China	100	"	380. 7. 1	380. 7. 1
Czechoslovakia	20	"	76. 1. 5	76. 1. 5
France	80	"	304. 5. 8	304. 5. 8
Greece	10	£4.00	38. 0. 9	438. 0. 9
India	80	paid	304. 5. 8	304. 5. 8
Luxemburg	1	"	3. 16. 1	3. 16. 1
Netherlands	30	"	114. 2. 2	114. 2. 2
New Zealand	6	"	22. 16. 5	22. 16. 5
Norway	6	"	22. 16. 5	22. 16. 5
Poland	20	"	76. 1. 5	76. 1. 5
United Kingdom	550	£4.00	2091. 19. 2	2491. 19. 2
U.S.A.	550	paid	2091. 19. 2	2091. 19. 2
Yugoslavia.	14	"	53. 5. 0	53. 5. 0
TOTAL	1,517	£800	£5770. 0. 0	£6570. 0. 0

VALUE OF 1 UNIT = £3. 16. 0.85432



SECRET

C.79(1)  
22nd February, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

REPORT OF THE FINANCE COMMITTEE ON THE BUDGET FOR  
THE FIRST FISCAL PERIOD - 26TH OCTOBER, 1943 TO  
31ST MARCH, 1945.

Adopted by the Commission on 21st February, 1945

The basis of the War Crimes Commission's finances is the Resolution on Financial Administration adopted by it on 21st March, 1944 (Doc. C.10) and submitted for approval to the member Governments. This resolution, in the first place, provides that the Commission's expenses for each year shall be divided among the Governments in such a manner that each pays (a) a "basic contribution" of £400 and (b) a proportionate share of the excess of the total estimated expenditure over the total amount due in the form of basic contributions, such shares being calculated on a scale which corresponds to that adopted for the administrative budget of the United Nations Relief and Rehabilitation Administration in 1943, except that the United Kingdom pays the same share as the United States.

In the second place the resolution requires the Commission to make regulations governing its financial and general administration. Such regulations were adopted on the 22nd August, 1944 (Doc. C.45).

By an arrangement which H.M. Foreign Office in London was good enough to make with the Commission, the latter's expenses were met by advances from that Department until it should decide that it could assume the responsibility of meeting them from the contributions of the member Governments. Such a decision was taken on 17th January of the present year and has been in effect since the end of that month. It was made possible by the fact that under the Financial and Administrative Regulations the "basic contributions" were payable in advance of the adoption of a budget and had nearly all been paid.

The delay in adopting a budget for the Commission's first "fiscal period", i.e. the period from its first meeting down to 31st March, 1945, has been due to the inevitable uncertainty as to the development of its work and the size and cost of the organisation which would be required. It is now clear that the expansion of its organisation and work which the Commission has decided to undertake will fall wholly or almost wholly within the next fiscal period. A draft budget with explanatory notes (p. 3) has accordingly been submitted to the Finance Committee by the Secretary-General and the Committee recommends that it be adopted in the form shown in Annex A.

The contributions for which each member Government will be liable if the full amount of the draft budget is voted are set out in Annex B.

ANNEX A

BUDGET FOR THE PERIOD 26TH  
OCTOBER 1943, TO 31ST MARCH, 1945

ESTIMATED REQUIREMENTS

Part I

WORKING CAPITAL FUND <sup>(1)</sup>

Amount fixed by Financial and Administrative Regulations (Doc. C.43, Art. 4, para. 1) . . . . .	£. s. d. 6,000. 0. 0.
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Part 2

EXPENSES OF THE COMMISSION

	<u>Approximate Expenditure to 31st Dec. 1944</u>	<u>Estimate for whole period</u>
	£. s. d.	£. s. d.
1) Premises (including furniture, heating, lighting, cleaning, telephones, etc.) supplied free of charge by H.M. Government in London. . . . .	0. 0. 0.	0. 0. 0.
2) Stationery and multigraphing . . . . .	200. 0. 0.	300. 0. 0.
3) Postage, telegrams, cables . . . . .	50. 0. 0.	100. 0. 0.
4) Salaries and subsistence allowances (including National Health and Unemployment Insurance . . . . .	2930. 0. 0.	4100. 0. 0.
5) Provision until 31st March, 1945 for anticipated additional staff <sup>(1)</sup> . . . . .	0. 0. 0.	250. 0. 0.
6) Travelling <sup>(1)</sup> . . . . .	0. 0. 0.	10. 0. 0.
7) Accountants and auditors' charges <sup>(1)</sup> . . . . .	0. 0. 0.	50. 0. 0.
8) Publication of reports <sup>(1)</sup> . . . . .	0. 0. 0.	10. 0. 0.
9) Expenses of the Far Eastern and Pacific Sub-Commission : . . . . .		
a) Premises (including furniture, heating, lighting, cleaning, telephones etc.) provided free of charge by the Chinese Government . . . . .	0. 0. 0.	0. 0. 0.
b) Amount of the Sub-Commission expenses, from its inauguration to the end of the first fiscal period, estimated by the Sub- Commission at C.N. 700,000 (as a maximum) and R. 425 . . . . .	0. 0. 0.	850. 0. 0.
10) Miscellaneous and unforeseen expenditure . . . . .	10. 0. 0.	100. 0. 0.
	<u>£3,190. 0. 0.</u>	<u>£11,770. 0. 0.</u>

(1) See Explanatory Notes (p. 3)

ESTIMATED RECEIPTS

	£.	s.	d.
Basic contributions . . . . .	6,000.	0.	0.
Excess of estimated expenditure over amount due as basic contributions . . . . .	5,770.	0.	0.
TOTAL RECEIPTS . . . . .	<u>£11,770.</u>	<u>0.</u>	<u>0.</u>

EXPLANATORY NOTES

Estimated requirements, Part I.  
Working Capital Fund.

The Working Capital Fund is a Reserve Fund which is provided for in the basic Financial Resolution of 21st March, 1944 and which has for its principal object "to enable the Commission to meet its expenses notwithstanding delay in the receipt of contributions" (Resolution on Financial Administration, para. 2). The Commission by a vote of two thirds of its members may draw upon it temporarily for purposes not provided for in the Budget (Financial and Administrative Regulations, Art. 4, para. 4 (ii)). Amounts drawn from the Fund must be repaid to it as soon as possible (*Ibidem*, Art. 4, para. 4).

It has been felt prudent to ask the members to supply in the Commission's first budget the whole amount of this Fund as fixed by the Administrative and Financial Regulations.

Estimated requirements, Part II.  
Expenses of the Commission.

General Observation: In considering these figures it must be borne in mind that the Commission's expenses were extremely low during the first part of its existence, but have necessarily increased with the development of its work.

Item 5) : The Commission has decided to appoint on the staff (a) a lawyer with criminal experience, and (b) a Central Investigation Officer with appropriate staff, but the dates of appointment and salaries required are still uncertain.

Item 6) : This is a token item to which a transfer from Item 10 will be made if any travelling expenses are incurred.

Item 7) : In order to avoid the engagement of an accountant who could not be fully employed, the Secretary-General has had recourse to the assistance of a firm of accountants.

Item 8) : The remark made in Item 6 applies to this item.



ESTIMATED RECEIPTS

	£.	s.	d.
Basic contributions . . . . .	6,000.	0.	0.
Excess of estimated expenditure over amount due as basic contributions . . . . .	5,770.	0.	0.
<b>TOTAL RECEIPTS . . . . .</b>	<b>£11,770.</b>	<b>0.</b>	<b>0.</b>

EXPLANATORY NOTES

Estimated requirements, Part I.  
Working Capital Fund.

The Working Capital Fund is a Reserve Fund which is provided for in the basic Financial Resolution of 21st March, 1944 and which has for its principal object "to enable the Commission to meet its expenses notwithstanding delay in the receipt of contributions" (Resolution on Financial Administration, para. 2). The Commission by a vote of two thirds of its members may draw upon it temporarily for purposes not provided for in the Budget (Financial and Administrative Regulations, Art. 4, para. 4 (ii)). Amounts drawn from the Fund must be repaid to it as soon as possible (Ibidem, Art. 4, para. 4).

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Estimated requirements, Part II.  
Expenses of the Commission.

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Item 6) : This is a token item to which a transfer from Item 10 will be made if any travelling expenses are incurred.

Item 7) : In order to avoid the engagement of an accountant who could not be fully employed, the Secretary-General has had recourse to the assistance of a firm of accountants.

Item 8) : The remark made on Item 6 applies to this item.

ANNEX B

CONTRIBUTIONS DUE FROM MEMBER GOVERNMENTS

	No. of Units	Basic contribu- ions of £400.	Share of excess of total budget over basic contributions.			Total due.		
			£.	s.	d.	£.	s.	d.
Australia	30	paid	114.	2.	2	114.	2.	2
Belgium	20	"	76.	1.	5	76.	1.	5
China	100	"	380.	7.	1	380.	7.	1
Czechoslovakia	20	"	76.	1.	5	76.	1.	5
France	80	"	304.	5.	8.	304.	5.	8
Greece	10	£400	38.	0.	9	438.	0.	9
India	80	paid	304.	5.	8	304.	5.	8
Luxemburg	1	"	3.	16.	1	3.	16.	1
Netherlands	30	"	114.	2.	2	114.	2.	2
New Zealand	6	"	22.	16.	5	22.	16.	5
Norway	6	"	22.	16.	5	22.	16.	5
Poland	20	"	76.	1.	5	76.	1.	5
United Kingdom	550	£400	2091.	19.	2	2491.	19.	2
U.S.A.	550	paid	2091.	19.	2	2091.	19.	2
Yugoslavia.	14	"	53.	5.	0	53.	5.	0
	1,517		£300.	£5770.	0. 0.	£6570.	0.	0.

VALUE OF 1 UNIT - £3. 16. 0.85432

SECRET

C.80  
16 February, 1945

UNITED NATIONS WAR CRIMES COMMISSION

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Supplementary report by the Finance Committee on minor financial questions, adopted by the Committee on 15th February, 1945

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APPROVAL OF SALARIES AND OTHER EXPENDITURE

The Finance Committee asks the Commission to confirm its approval of the following items of expenditure:

- (i) A salary of £3. 10. 0 per week for Miss Critchfield, who replaces a Typist-Clerk, Miss Wheeler, who has resigned.
- (ii) A salary not to exceed £10. 0. 0 per week for a secretary shorthand typist to replace Miss McCulloch, who is resigning shortly.
- (iii) An increase of Colonel Wade's salary from £520 to £650, without prejudice to the subsistence allowance already granted to him at the rate of £1 per night for five nights per week.
- (iv) Sir Cecil Hurst commissioned a member of the Bar to draw up descriptions of the crimes appearing in the Commission's Lists of War Criminals Nos. 1 and 2. The Finance Committee has approved payment of fees of £60 and £20 to Mr. Borregard for this work.
- (v) Fidelity Guarantee and Workmen's Compensation Insurance. The Financial Regulations provide for a fidelity guarantee insurance in respect of officials handling the Commission's money, i.e., the Secretary-General and the Chief Clerk. It may further be desirable to take out workmen's compensation insurance in respect of certain officials. The Finance Committee has fixed at £1,000 0. 0. the insurance to be taken on each of the first mentioned officials and proposes that the Secretary-General be authorised to spend the necessary amount on these classes of insurance.

AUDITING OF COMMISSION'S ACCOUNTS

In order that the Commission's accounts may be audited by the Comptroller and Auditor General of the Public Accounts of the United Kingdom, as provided in Article 9 of the Financial and Administrative Regulations, it is necessary that the Commission should adopt a resolution inviting him to do so, this being the condition on which he has consented to act. The fee will depend on the amount of work involved.

The Finance Committee asks the Commission to adopt the following Resolution on this subject:

"The United Nations War Crimes Commission resolves to request the Comptroller and Auditor General of the Public Accounts of the United Kingdom to undertake the auditing of the Commission's accounts, as he has been good enough to agree to do, and it instructs the Secretary-General to convey this request to him."



SECRET

C.81  
5th March, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

PROPOSAL BY DR. B. ECER (CZECHOSLOVAKIA) FOR THE  
PARTICIPATION OF THE UNITED NATIONS WAR CRIMES  
COMMISSION IN THE SAN FRANCISCO CONFERENCE.

1. The Crimea Conference agreed that a Conference of United Nations should be called to meet at San Francisco on April 25th 1945. The purpose of this Conference will be the establishment of a "general International Organisation to maintain peace and security", i.e. "to prevent aggression, and to remove the political, economic, and social causes of war".

2. The punishment of criminals who launched the second world war or who are responsible for war crimes and analogous offences, is one of the essential conditions of future security. These men must be punished and rendered harmless, not only because of the need for justice but because of the need for security as well.

The close connection between international crimes and world security is self-evident.

3. Thus the inter-American Conference in Mexico City, has decided according to the Press, to present the world with a formal international agreement concerning war criminals. The inter-American Judicial Committee, sitting at Rio de Janeiro is preparing plans of procedure to extradite wanted criminals, and a definition of war criminals.

According to a report from Mexico City, published in the Daily Herald of March 1st, the Committee proposed to regard as war criminals "Axis leaders and their associates who have caused to be committed", as well as those who actually have committed "heinous crimes" in violation of :

- 1 - The laws of war,
- 2 - Existing treaties,
- 3 - Rules of international law,
- 4 - Penal codes of civilised nations,
- 5 - Concepts of civilised life.

The reporter adds "The fifth point prevents any guilty person escaping trial on a technicality for a crime against humanity, including, for example, Nazi-legalised murder of Jews. It is believed that the adoption here of these resolutions would be the prelude to their inclusion in the agenda for the San Francisco Conference."

4. I think that it is a duty of our Commission to offer the United Nations Conference at San Francisco our collaboration. If the inter-American Judicial Committee takes the initiative - and I fully appreciate it in this respect - then the United Nations War Crimes Commission should with more justification offer their own help, because we are the only official inter-Allied body entrusted with the problem of war criminals.

5. As I stated in my memorandum C.76 of February 8th 1945, the United Nations War Crimes Commission has been authorised to make recommendations to the Governments concerned upon matters of a politico-legal nature relating to the punishment of war criminals.

I think that an advisor is not only authorised to give advice when asked but that he is obliged to advise on his own initiative without waiting for a request, to the best of his ability.

6. The United Nations War Crimes Commission has already submitted a series of recommendations to the Governments. But these recommendations are still under consideration by most of the Governments concerned and, of course, are far from being put into operation. The reasons are :

- a) All the United Nations Governments are not represented on the War Crimes Commission.
- b) Even the Governments represented have not established the machinery to deal with our recommendations.

Sir Cecil Hurst in his letter of January 2nd, 1945 announcing his resignation rightly pointed out in this respect that some new machinery must be set up for the consideration of recommendations made by the Commission

7. For the first time in the history of this war, all the United Nations great and small, will meet at a Conference. At San Francisco a body composed of representatives of the highest rank of all the United Nations will discuss all problems of security and not only discuss them but decide. It would be an exceptional opportunity to realise the recommendations of the United Nations War Crimes Commission without the delay which is inevitable if decisions should be made by diplomatic negotiations.

I think that our Commission should take the initiative at this decisive moment in the history of the United Nations, and should offer their collaboration in all questions concerning the criminals responsible for the present war and its atrocities, as an advisory body of the United Nations Governments.

8. Therefore, I suggest that the Commission should discuss and adopt the following proposals :

a) To ask the five Governments entrusted by the Crimea Conference with the task to sponsor invitations to put on the agenda of the San Francisco Conference the punishment of criminals responsible for the second world war and the atrocities.

b) To offer the Governments the collaboration of our Commission at the San Francisco Conference, as advisory body, and, if our offer is accepted, to elect a delegation of the United Nations War Crimes Commission for the San Francisco Conference.

c) To send, in any case, apart from the decision about points a) and b), a memorandum to the San Francisco Conference with full texts of our recommendations, containing a review of our work, and our views as to the future work to be done. A Committee should be established to draft such a memorandum, and to prepare all material to be sent to San Francisco.

SECRET

C. 82.  
12th March 1945.

UNITED NATIONS WAR CRIMES COMMISSION

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RECOMMENDATION CONCERNING PERSONS SUSPECTED OF  
WAR CRIMES AND ENEMY PERSONS WANTED AS WITNESSES

ADOPTED BY THE COMMISSION ON 7TH MARCH 1945.

On February 14th, 1945, the United Nations War Crimes Commission reached the conclusion that to ensure as far as possible the full execution of the policy of punishing war crimes it was necessary that the Commission's Lists of persons actually accused of such crimes (Lists of War Criminals) should be supplemented by two new Lists (See Doc.C.75/2/).

The first new class of Lists are Lists of Suspects, i.e. individuals against whom evidence of participation in a war crime will in all probability be obtainable, and units of which members who have not as yet been identified have been involved in a war crime.

The second are Lists of Witnesses, i.e. enemy persons, not accused or suspected of war crimes, who are considered capable of giving evidence regarding war crimes.

The Commission recommends that the Governments should give all necessary instructions to ensure -

(1) The taking into custody of the individuals and units named in the Lists of Suspects and their maintenance in custody until it has been possible to identify the persons who should be handed over for trial as war criminals;

(2) The maintenance of contact with the persons named in the Lists of Witnesses until their evidence has been taken, and measures to protect them against other enemy nationals;

(3) The maintenance in custody, if they are prisoners of war, of persons named in the Lists of Witnesses until their evidence can be taken and, in proper cases, segregation of such witnesses from other enemy nationals who are in custody.



SECRET

C.83

15 March, 1948

UNITED NATIONS WAR CRIMES COMMISSION

EFFECT OF THE PLEA OF "SUPERIOR ORDERS"

The present position of this question is as follows:

In September of last year, Committee III adopted the following statement:

"Some general understanding is desirable between the Governments of the United Nations as to the principle to be followed in cases where a war criminal puts in a plea of superior orders. Such understanding is desirable because it will be useful for the guidance of any inter-Allied tribunal which may be set up.

"The Commission is satisfied that the following rule is in accordance with general international practice and is consistent with international law:

'The defence of obedience to superior orders shall not constitute a justification for the commission of an offence against the laws and customs of war, if the order was so manifestly contrary to those laws or customs that, taking into account his rank or position and the circumstances surrounding the commission of the offence, an individual of ordinary understanding should have known that such an order was illegal.' "

The subject was then considered by Committee II in relation with the Draft Convention for the Establishment of a United Nations Joint Court. Committee II made the following recommendation to the Commission, which was adopted by it and figures as sub-paragraph (b) in the explanatory memorandum accompanying the Draft Convention (See Doc. C.56; See also Doc. C.57 and, for the decision of the Commission, the Minutes of the 34th Meeting, p.6).

"(b) The Commission has considered the question of 'Superior Orders'. It finally decided to leave out any provision on the subject for the same reason as that for which it left out the detailed list of war crimes. The Commission considers that it is better to leave it to the Court itself in each case to decide what weight should be attached to a plea of superior orders. But the Commission wants to make it perfectly clear that its members unanimously agree that in principle this plea of itself does not exonerate the offender."

The Report of Committee III was not unanimous. The following Minority Report was drawn up by Dr. Eöör:

"I suggest accepting the following recommendations in respect of the plea of superior orders:

- 1) An order given by a superior to an inferior to commit a crime is not in itself a defence;

2) The Court may consider in individual cases whether the accused was placed by such an order in a state of irresistible compulsion, and acquit him or mitigate the punishment accordingly;

3) The defence that the accused was placed in a state of compulsion is excluded:

a) if the crime was of a revolting nature;

b) if the accused was, at the time when the alleged crime was committed, a member of an organisation the membership of which implied the execution of criminal orders.

"This text was voted by the London International Assembly, on June 21st, 1943.

"I recommend this text because it is in accordance with the modern criminological theory and judicial practice of almost all United Nations in matters of necessity or irresistible compulsion as reasons for exemption from criminal liability:

"In addition, this text takes into account the fact that there are in Germany and the occupied countries, organisations such as the Gestapo, S.S. and S.A. and similar, with voluntary membership, the purpose and the means of which are of a clearly criminal nature."

Commission documents embodying the text adopted by Committee III and Dr. Eéer's Minority Report were prepared by the Secretariat, but on instructions from the Chairman, who would seem to have considered that the subject was exhausted, these documents were not circulated.

SECRET

C.84  
29th March 1945

UNITED NATIONS WAR CRIMES COMMISSION

SECOND PROGRESS REPORT

Adopted by the Commission on 28th March, 1945

The present report is a continuation of the First Progress Report (Doc. C.48(1)) which was adopted by the Commission on 19th September, 1944, for presentation to the member Governments. It deals with the progress and development of the Commission's work since that date.

HISTORY

On 4th January, 1945, Sir Cecil Hurst was obliged by ill-health to resign his position of United Kingdom representative and thus ceased to be Chairman. The Right Hon. Lord Wright, representative of Australia, was elected as his successor in the Chair on 31st January, 1945.

A welcome increase in the membership of the Commission has occurred through the decision of the Government of the Dominion of Canada to be represented upon it. The first meeting at which the Dominion was officially represented was that of 14th March, 1945. For some weeks previously the Commission's proceedings had been followed by a Canadian observer.

Liaison has been established with the G.1 and G.5 Branches of the Supreme Headquarters of the Allied Expeditionary Force, the Control Commission for Germany (British Element) and the U.S. Group C.C., and steps are being taken to extend these contacts to all agencies concerned.

The Governments represented on the Commission and their representatives are at present as follows:

Australia	The Rt. Hon. the Lord Wright (Chairman)
Belgium	M. de Baer
Canada	The Rt. Hon. Vincent Massey
China	H.E. Dr. V.K. Wellington Koo
Czechoslovakia	Dr. B. Ečer.
France	Professor André Gros
Greece	M. C. Stavropoulos
India	Diwan Bahadur Sir Samuel Runganadhan
Luxembourg	M. A. Clasen
Netherlands	Dr. J.M. de Moor
New Zealand	Mr. C.B. Burdekin
Norway	(No representative at present)
Poland	Dr. T. Cyprian
United Kingdom	The Rt. Hon. the Viscount Finlay
U.S. of America	Lieut.-Colonel J.V. Hodgson, J.A.G.D.
Yugoslavia	M. Zivković

INVESTIGATION OF WAR CRIMES

The Commission is an international body representing sixteen United Nations Governments. In the investigation of war crimes it embodies the impartial decision of these Governments that there is a case justifying apprehension of the accused by the arresting authorities who are thus not called upon to act upon ex parte statements of a single Government. The Commission in this particular proceeds in a manner somewhat similar to that of a committing magistrate; its acts are the expression of the joint will of the Governments that justice shall be done.



In performing its function of investigating and recording the evidence of war crimes, the Commission's method continues to be primarily that described in the First Progress Report. The National Offices set up at its request by the member Governments submit evidence which is examined by the Commission with the assistance of a representative of the Office. This process is inevitably hampered by the difficulty of obtaining precise information from Allied territories which are still in enemy occupation, and last autumn discussions took place in the Commission as to whether its responsibilities made it desirable to adopt additional methods in carrying out its work.

As soon as possible after the enemy was expelled, the French Government took the lead in establishing an admirable system for the investigation of war crimes throughout the country, and the other Governments in the same position are following the same course. Moreover, the Australian Government presented cases against Japanese War Criminals which arose in the Pacific area. There has thus been a great change in the situation and a considerable increase in the inflow of information to the Commission.

This change, however, does not exonerate the Commission from the responsibility of making every effort to improve its machinery for the investigation of war crimes. With this object it decided on 20th December, 1944, that it would add to its staff a Central Investigation Officer who would in due course be provided with the necessary assistants and whose functions are defined as follows:

"It is recommended that in view of the increase in the number of cases which may be expected, and of the further fact that in many instances the work of the National Offices will be carried out from their own countries, and not from London, close contact between the Commission and the National Offices should be maintained where necessary, by the appointment by the Governments of officials for the purpose, or in some other appropriate way.

"In view of the developments contemplated in the preceding paragraph, the Commission decides that a Central Investigation Officer be appointed at the headquarters of the Commission for the purpose of assisting the National Offices at their request in the investigation of war crimes, of collecting evidence which is available to the Commission in order to transmit it to the National Offices and of co-ordinating evidence.

"The Central Investigation Officer will be directly responsible to the Commission."

(Docs. M.43, pp.1-4, and C.66(1)).

The Commission, for its own purposes, has prepared reports concerning the systematic and deliberate criminal character of the German actions in the occupied countries. These have been made available on request to the National Offices of the member Governments.

The staff of the Commission has been enlarged to provide assistance in the screening of charges before they are examined by the Commission and in the discharge of the Commission's function to investigate war crimes.

Not only is the Commission charged with the investigation and recording of evidence of war crimes, but it has the duty of reporting to the Governments concerned cases in which it appears that evidence might be expected to be forthcoming sufficient to justify, in its opinion, the apprehension and trial of those responsible.

The following Lists have been presented for appropriate action:

In December 1944: First List of War Criminals (Germans) - Charges by Belgium, Czechoslovakia, France, Greece, Luxembourg, Netherlands, Norway, Poland, United Kingdom, Yugoslavia.

Second List of War Criminals (Italians) - Charges by France, United Kingdom, Yugoslavia.

In March 1945: Third List of War Criminals (Germans) - Charges by France, Netherlands, Norway, Poland, United Kingdom, Yugoslavia.

Fourth List of War Criminals (Japanese), together with List of Suspects and List of Witnesses - Charges by Australia.

Fifth List of War Criminals (Albanians, Bulgarians, Hungarians, Italians and Rumanians) - Charges by France, United Kingdom, and Yugoslavia - with which are included the Second List of Suspects listed on charges formulated by the Commission itself and the Second List of Witnesses.

The Lists of War Criminals consist primarily of the names or descriptions of individuals believed to have committed or to be responsible for a war crime as to whom the Commission is satisfied that there is, or will be at the time of trial, sufficient evidence to justify a prosecution. The persons appearing on them are to be apprehended and surrendered to the appropriate authority. The Commission has, however, also applied the principle that wherever a crime has been committed by a unit or detachment of a larger organisation, acting in concert, and, after investigation, the identity of the offenders has not been ascertained, membership in such unit or detachment at the time of the crime constitutes prima facie evidence of participation therein, and that all members of such unit or detachment may be charged with responsibility, and will be listed as accused war criminals.

The List of Suspects and List of Witnesses which accompany the third of the above lists mark a new and necessary departure in the Commission's procedure. They are the object of a Recommendation to the Governments adopted by the Commission on 7th March, 1945 (Doc. C.82), which asks that all necessary instructions may be given to ensure:

(1) The taking into custody of the individuals and units named in the Lists of Suspects and their maintenance in custody until it has been possible to identify the persons who should be handed over for trial as war criminals;

(2) The maintenance of contact with the persons named in the Lists of Witnesses until their evidence has been taken, and the taking of measures to protect them against other enemy nationals;

(3) The maintenance in custody, if they are prisoners of war, of persons named in the Lists of Witnesses until their evidence can be taken and, in proper cases, segregation of such witnesses from other enemy nationals who are in custody.

Finally, the Commission on 14th March, 1945, resolved "to include in its Lists charges formulated by itself and to recommend that the Agencies apprehending the persons charged shall, if necessary, apply to the Commission for instructions as to their disposal." (Doc. M.52, p. 2). This procedure is intended to apply to cases in which for some reason evidence of a war crime is obtained by the Commission without being brought before it by the National Office of a Government, but it is nevertheless probable that when the time comes there will be a Government able and ready to prosecute the



accused. An example is furnished by German crimes against Italians.

In respect of major criminals whose crimes have no geographical location who are referred to in the Moscow Declaration of 1st November, 1943, the Commission on the 26th September, 1944, unanimously decided that they should be included in its lists of war criminals without waiting for the initiative of any one Government on the matter. It was felt that their activities were sufficiently well-known to warrant the inclusion of their names on the Commission's lists (Doc. M.33, p. 5). Accordingly, their names have appeared in the Commission's List as persons about whom it is collecting evidence (List No. 1, Introduction, paragraphs 4 and 5). In many cases, the same persons are wanted for trial by particular United Nations. On 7th March, 1945, the Commission decided to issue a separate List or Lists of these criminals, accompanied by schedules of the crimes of which they can be accused (Doc. M.51, p. 3).

ACTION ON RECOMMENDATIONS MENTIONED IN THE FIRST PROGRESS REPORT (pp. 2 - 3).

Some member Governments (Belgium, Czechoslovakia, Netherlands, Norway) have been able to give effect to the Recommendation that they should supply the Commission with Lists of enemy military and civil persons in authority in their occupied districts (Doc. C.21). This information has been transmitted to the Supreme Headquarters Allied Expeditionary Forces.

The recommendation regarding the insertion in the various armistices (terms of capitulations) granted to the various Axis Powers of clauses to ensure the surrender of persons wanted for trial as war criminals (Docs. C.31 and C.34) has been submitted for consideration to the European Advisory Commission (See Doc. C.68 - Letter from Mr. Eden to Sir Cecil Hurst, p. 2).

PUNISHMENT OF CRIMES COMMITTED IN ENEMY TERRITORY.

With regard to the punishment of crimes committed in enemy territory on racial, political or religious grounds, Sir Cecil Hurst, on behalf of the Commission, stated in a letter to Mr. Eden on the 31st May, 1944 (C.23(1)):- "The Governments of the United Nations may already have in view some plan for bringing the authors of these crimes to justice, but if that is not the case, it is right that you should know that the Commission is prepared to take up this work if, by so doing, it can assist the Governments of the United Nations."

Replying in letters dated 23rd August, 1944, and 9th November, 1944, respectively, the Lord Chancellor and Mr. Eden expressed the view that the Commission should not take up the extra work although they wished to make it clear that it was not desired to preclude "the Commission from collecting any evidence which they feel would be of value in relation to the general extermination policy which has undoubtedly been carried out in occupied territory in circumstances which constitute war crimes".

On the 31st January, 1945, Mr. Law stated in the House of Commons that the United Kingdom Government would do their utmost to ensure that the crimes would not go unpunished and that the authorities in post-war Germany should mete out to the perpetrators the punishment which they deserved.

Amplifying Mr. Law's statement, Lord Simon declared in the House of Lords on the 20th March, 1945, that the United Kingdom Government did not contemplate that the tribunals would be composed of Germans "but that upon the defeat of Germany the Allies will set up the organisation and the tribunals under which such process might take place."



#### TRANSFERS OF WAR CRIMINALS.

The member Governments are understood to have under consideration the Convention for the Surrender of War Criminals and other War Offenders which with an explanatory memorandum was adopted by the Commission on August 29th, 1944 (Doc. C.47). The following Governments have already indicated their approval, namely, Czechoslovakia and Yugoslavia.

#### TRIBUNALS FOR THE TRIAL OF WAR CRIMINALS.

The Commission's proposals on this subject are discussed on pages 3-4 of the First Progress Report, but at the date of the Report the texts embodying them had not been finally adopted by the Commission.

On September 26th, 1944, the Commission adopted the text of a draft Convention for the Establishment of a United Nations War Crimes Court (Doc.C.50(1)), and on October 6th it adopted an explanatory memorandum which was to accompany the draft (Doc. C.58).

On October 3rd, the Commission adopted a Recommendation for the Establishment by Supreme Military Commanders of Mixed Military Tribunals for the trial of War Criminals (Doc.C.52(1)), together with Suggestions to accompany the Recommendation for the Establishment of Mixed Military Tribunals (Doc. C.59).

The institutions above mentioned are, of course, intended only to deal with war criminals who in virtue of a decision of the United Nations or for reasons of convenience or other grounds are not tried before National Courts.

The Commission directed that the above draft Convention and draft Recommendation should be transmitted to the Secretary of State for Foreign Affairs in the United Kingdom by a letter from the Chairman. The last paragraph of this letter expresses the Commission's unanimous hope that the Secretary of State "would be so good as to take the necessary steps to convene in the near future a diplomatic conference to consider and, if thought fit, to conclude a Convention for the Establishment of a United Nations War Crimes Court." In reply to this invitation, Mr. Eden's letter to Sir Cecil Hurst on 4th January, 1945, reproduced in Document C.68, after referring to certain difficulties felt by the United Kingdom said:

"It should be plain, however, that this is not a matter in which His Majesty's Government would desire, even if it were possible, to adopt a definite position without previous consultation with the Government of the United States, particularly as the military operations in Western Europe are on a joint basis and the Supreme Command is now in the hands of an American general. Moreover, until the two Governments had reached, at any rate in principle, some conclusion as to the desirability of establishing an inter-Allied Court by treaty it was obviously impossible to pursue the suggestion made in your letter for the convocation of a conference to negotiate such a treaty. The matter has accordingly been the subject of full consultation with the Government of the United States, and as soon as the views of the two Governments have been definitely formed it is the desire of His Majesty's Government that the other Allied Governments concerned should be approached with a view to consultation as to the measures to be adopted."

INTERROGATION AND DETENTION OF PRISONERS OF WAR.

On 18th January, 1945, the Commission recommended that Prisoners of War be interrogated regarding war crimes (Doc. C.65(2)). A companion Recommendation of 14th February, 1945, recommended the detention of Prisoners of War after cessation of hostilities pending investigations of war crimes (Doc. C.77(1)).

PUBLICATIONS ON THE SUBJECT OF WAR CRIMES.

Without prejudice to the policy mentioned in the first Progress Report (p. 4) of eventually publishing reports on special classes of war crimes authenticated by evidence obtained in actual trials of war criminals, the Commission has under consideration the preparation for publication of popular accounts of certain types of war crime for the purpose of impressing upon the public the widespread and calculated nature of the atrocities committed by the Axis forces in this war and the necessity for the punishment of war criminals.

FAR EASTERN AND PACIFIC SUB-COMMISSION.

The Sub-Commission held its inaugural meeting on 29th November, 1944. The Governments represented on the Sub-Commission are those of Australia, Belgium, China, Czechoslovakia, France, India, Luxembourg, Netherlands, Poland, United Kingdom, and United States. Dr. Wang Chung-hui, the Chinese representative, was elected Chairman. The Sub-Commission has now commenced the examination of Chinese charges against Japanese war criminals.

In response to a request for its opinion, the main Commission on 7th February, 1945, decided to inform the Sub-Commission that in its view the establishment of that institution does not preclude the creation of other branches of the Commission, that, subject to their terms of reference, neither the Commission nor the Sub-Commission are restricted in the scope of their work or their power of initiative and that the Sub-Commission should not limit its investigation to war crimes committed after a particular date but that it should consider each case on its own merits. (For the text of this opinion, see Doc. M.47, p. 2 (a)).

FUTURE ACTIVITIES.

In respect of the future work of the Commission, it is believed that the primary task will be the investigation of war crimes, including the forwarding of the names of war criminals to the appropriate authorities for apprehension. The task will indeed be a colossal one. As the various overrun countries are liberated and as Germany and the other Axis countries are occupied, the flow of information to the Commission is bound to increase. The Commission has this matter very much in mind and it is taking steps to supplement its own machinery so that it may efficiently cope with the work that lies ahead. It must never be forgotten that with the cessation of hostilities in Europe the responsibility of the majority of the members of the Commission with regard to the Pacific War continues.

While, no doubt, there remains much to be done as to advising the Governments in regard to matters of policy, it is felt that the major part of the Commission's activities in this sphere have now been completed. Reference is made in the earlier portions of this Report to the recommendations which have been made. It is understood that discussions are at present proceeding between certain of the Governments with regard to a number of these recommendations. Moreover, as was pointed out by Lord Simon in a statement in the House of Lords on the 20th March, the subject of the major war criminals is to be dealt with by the American, British and Soviet Foreign Ministers at their next meeting.



The Chairman of the Commission, when he assumed office on the 31st January, made known in the course of a public statement his view that close co-operation with the Russian Extraordinary State Commission was very desirable. Both Commissions were working with the same end in view, and in his view their approaches to the common problem were not radically different. In addition, Lord Wright stated in the course of the House of Lords Debate on the 20th March: "In particular, however, I should very much desire to get into contact with the Russian organisation for dealing with war criminals. There is no possibility now, as I gather, of their becoming members of the Commission or members of an enlarged Commission. There are diplomatic reasons, I understand, which would make that impossible, but I see no reason at all why there should not be an intercommunication of counsel, advice and information, and I am doing what I can to bring that about." Supporting Lord Wright's view, Lord Simon stated:- "On this subject I noticed the very important observations of Lord Wright, that he would like to feel he was in closer touch with the Soviet tribunals. I agree with him."

#### CONCLUSION.

In reporting the progress and development of the Commission an effort has been made to point out only the more important items which are included in the work of the Commission and its Committees as set forth in detail in several several pages of documents.

Such a report can do no more than suggest the credit which the present members of the Commission feel is due to many who, often unofficially, have assisted in making possible the work accomplished. Suffice it to say that the continued co-operation of all concerned in those many problems involving war crimes is essential, and the help of those who must join in the task as the hour of retribution nears both necessary and welcome.

Nor does the Commission feel that details as to its future programme should burden an already lengthy document. With full realisation that time is running out, a survey is now being made to determine the extent of the investigation of war crimes effected to date. The Commission plans to continue to take whatever steps are within its competence to assure full, complete and impartial investigation of all war crimes. It will continue to advise the Governments of cases which appear to justify apprehension and trial of accused war criminals.

Finally, in matters where direct action is not the responsibility of the Commission, additional Recommendations will be made to the Governments to the extent deemed necessary or advisable, or upon request of proper authorities. In this connection it is ventured that the information and experience of the Commission, resulting from more than a year's study of reports of hundreds of offences and the various problems involved, may be of assistance when steps are taken affecting international law in this field.

To punish war criminals and to render them harmless is not only in the interest of justice, but in the interest of world security in general. It would be impossible to ensure lasting peace and world security without due punishment of men whose ambition was and still is to plunge the world into wars and to commit atrocities against peaceful nations. From this point of view the work of the Commission is more than simply to assist justice; by fulfilling its task the Commission is assisting world security.



SECRET

C.84(a)  
20th March, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

SECOND PROGRESS REPORT

Draft Part 2

submitted by Dr. ECER (Czechoslovakia)

After having been elected chairman of the Commission, Lord Wright made a statement in which he pointed out the broad lines of its future work, as follows :

- a) to ensure that the failure to bring the war criminals to justice which followed the 1914-1918 war, would not be repeated this time.
- b) he would like to emphasise that, dreadful as were the crimes which our enemies committed last time, they were of small account compared with the organised, calculated, scientific brutality with which the Germans and Japanese, and their associates, had sought to achieve their present objects.
- c) he desired to make clear that the United Nations War Crimes Commission was an independent international body and was the chosen instrument of the various Governments represented on it for the investigation of war crimes. It was not a prosecuting body, but it was the organisation which took the first steps in seeing that war crimes did not go unrequited.
- d) he stressed the necessity of close co-operation between the Commission and National Offices of the various Governments on the one hand, and with the military authorities on the various world fronts on the other hand.
- e) finally he said that in his view close co-operation with the Russian Extraordinary State Commission was eminently desirable. Both Commissions were working with the same end in view, and in his opinion their approaches to the common problem were not radically different.

In his statement made at the meeting of February 28th, 1945, the chairman Lord Wright referred again to the Commission's work, and stated that it

"had been restricted owing to certain misconceptions and errors. Whilst its primary task was to investigate war crimes and identify the perpetrators, where possible, it had also to report cases where it might be expected that evidence would be forthcoming and its competence had been in addition enlarged by giving it advisory functions in respect of all questions concerning war crimes in the broad sense."

He finally stressed again the necessity of establishing friendly and sympathetic relations with the U.S.S.R.

The work that "lies ahead" (see the decisions of the Commission of March 14th, 1945) could be divided into two parts :

- a) Work to be done by the Commission itself,
- b) Work to be done by the United Nations Governments in order to realise the recommendations of the Commission.

ad. a) Work to be done by the Commission itself

The Commission should fulfil the following urgent tasks :

- 1) to establish a classification of crimes committed by the enemies, the punishment of which was promised by the Allies in their official declarations.
- 2) to reconsider and decide about the resolution of Committee III of May 15th, 1944 concerning crimes because of race, nationality, religious or political belief, the letter sent on this matter on May 30th, 1944 to Mr. Eden, and his reply of October 9th, 1944 with regard to the statement of the British Minister of State, Mr. R. Law, of January 31st, 1945.
- 3) to establish as soon as possible through the Soviet Government, collaboration with the Soviet Extraordinary State Commission for German crimes.
- 4) to draw legal conclusions of general nature from Colonel Wade's reports.

ad. b) Work to be done by the United Nations Governments in order to realise the recommendations of the Commission.

The Commission should draw the attention of the Governments represented, to the fact that the following questions already discussed by the Commission, should be answered, and recommendations already made by the Commission should be approved in order to avoid any complications which could arise if all technical, legal and judicial preparations were not completed in time.

- 1) the question of crimes committed by the preparation and launching of the present war (see minutes of meetings of October 3rd and 10th, 1944).
- 2) the following recommendations made by the Commission and already sent to all Governments,
  - (a) On June 13th, 1944, the Commission voted the recommendation Doc. C.27, entitled "Establishment in enemy territory of a War Crimes Office."
  - (b) On June 16th, 1944, the Commission voted the recommendation Doc. C.31 completed by Document C.34, entitled "Surrender by the Axis Powers of persons wanted for trial as War Criminals."

- (c) On August 29th, 1944, the Commission voted the recommendation Doc. C.47 called "Convention for the surrender of War Criminals and other War Offenders", and accompanying explanatory memorandum.
- (d) On September 19th, 1944, the Commission voted the recommendation Doc. C.52 with explanatory note Doc. C.59 called "The Establishment by Supreme Military Commanders of mixed Military Tribunals for the Trial of War Criminals."
- (e) On October 3rd, 1944, the Commission voted the recommendation Doc. C.58, called "Draft Convention for the establishment of a United Nations War Crimes Court."

Further, the Commission would be very much assisted in its work if the United Nations Governments would :

- a) establish an inter-allied Governmental machinery for the purpose of deciding about the recommendations of the Commission, and to put them into operation as suggested in Sir Cecil Hurst's letter of January 2nd, 1945.
- b) decide the question: what is the exact meaning of the phrase used in the Moscow Declaration, namely that the major criminals "will be punished by joint decision of the Allied Governments", i.e. whether they should be punished by political decision, or by a United Nations Criminal Court.
- c) issue a common statement signed by all of them which would bring into line the various declarations about the punishment of war criminals with each other, especially as to the questions: what crimes should be punished according to the Allied declarations, and whether the United Nations War Crimes Commission should deal with all these crimes the punishment of which was promised, although they are not violations of laws and customs of war, (reference to the Allied declarations of 17th December, 1942, concerning the extermination of Jews, statement of Mr. Roosevelt of March 24th, 1944, about the Hungarian Jews, and a similar statement by Mr. Eden a week later, and to the statement of Mr. Richard Law, British Minister of State, of January 31st, 1945, concerning crimes committed in Germany on German citizens, and so on).

The uncertainty regarding some questions and recommendations of the Commission mentioned in this report could seriously affect the whole work of the Commission and the fulfilment of the Allied promises concerning the punishment of war criminals.

To punish the war criminals and to render them harmless is not only in the interest of justice, but in the interest of world security in general, and the European security in particular. It would be impossible to ensure lasting peace and world security without severe punishment of men whose ambition was and still is to plunge the world into wars, and to commit atrocities against peaceful nations. From this point of view the work of the Commission is more than simply to assist justice: by fulfilling its task the Commission is assisting the new organisation of world security.



SECRET

C.85  
28th March, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

MEMORANDUM BY PROFESSOR ANDRE GROS ON THE PROBLEM OF  
COLLECTIVE RESPONSIBILITY FOR WAR CRIMES

(Translation)

I. Examination of the dossiers submitted by the various United Nations to the War Crimes Commission during rather more than a year has shown that there are many cases in which a large number of war criminals may escape the punishment due to their crimes on account of the difficulty, sometimes the material impossibility, of proving the guilt of each individual criminal.

Units of the army, groups of the Gestapo, "liquidation teams" have exercised their criminal activity in many different countries for years, and to ask the Public Prosecutor to furnish by the ordinary processes of criminal law proof of the crimes which each of these men has committed would be to place upon him an impossible duty.

It cannot be denied that the special form of crime known as war crime has developed to such an extent as to cease to have any analogy with the individual crimes which are committed in all countries. The principle that a person can only be made responsible for the crimes which he has committed himself, a principle established by centuries of tradition as a defence for the individual, cannot be applied to the entirely new phenomenon of mass crime.

II. The War Crimes Commission has already accepted the principle of preventive arrest of groups, formations or units. This does not conflict with any general rule of criminal law. It is however simply part of the preliminary judicial enquiry into a crime, and has nothing to do with the rules which determine how the criminal's guilt has to be proved. We must, therefore, study as an entirely different matter, the question how the guilt of war criminals has to be proved.

III. Several technical methods of preventing the guilty from escaping punishment and enabling justice to take its course can be imagined, if one takes as the starting point the conception of a presumption of guilt. One is led to the conception of a collective responsibility corresponding to the collective character of the crimes. The war has furnished plenty of examples of the collective character of war crimes, of the fact that they have been committed not by isolated individuals but by groups, units or organised formations. Such crimes amount to organised collective violation of international public order.

Of course, the penal legislator has never hitherto concerned himself with the repression of this kind of crime, for it could not develop in civilised States. It is not, therefore, in the internal legislation of particular States that one will be able to find provisions formally intended for its punishment. When applying existing texts and when searching for the applicable law, it is to the spirit of criminal law and to the fundamental principles of civilised life in human societies that importance must be attributed rather than to particular requirements of particular municipal legal systems. It is only natural that the criminal laws of most States should disregard such collective crime for, in the twentieth century, collective aggression and collective crime had ceased to be a danger to the life and liberties of the citizen.

IV. Under French law, two technical methods are conceivable, each operating in a different domain and, in certain cases, both operating cumulatively:

- a) presumption of guilt;
- b) punishment of membership in an association of criminals.

a) A presumption of guilt reverses the onus of proof. The Public Prosecutor is no longer bound to present complete proof of the criminal act. It suffices for him to establish that the accused is in a position in which the presumption applies. When this is so, the accused is found guilty, unless he can succeed in demonstrating his innocence.

Thus, in the case of Oradour, a village was destroyed and hundreds of persons murdered by a number of companies forming part of the Division "Das Reich". It would be going too far to require of the Prosecution that it should prove that every man belonging to those companies was actually on the spot and that it should show the exact part which each man took in the mass crime. It would be in practice impossible to satisfy such a requirement, and to follow the general principles of criminal law would involve the acquittal of most of the men for lack of sufficient evidence. The men themselves took care that this should be so when they murdered all the possible witnesses. Is it not reasonable to apply a presumption that all the men who belonged to the companies at the date when the crime of Oradour was committed did actually take part in the crime, leaving to them the possibility of proving that they did not.

If this is done, the application of a legal presumption of guilt, tempered by the possibility of rebutting this presumption, will, in circumstances in which the presumption is supported by the facts, make it possible to treat an enemy formation as collectively guilty.

Special legislation would be necessary before such a presumption could be applied.

b) Membership of an association of criminals is a crime in itself. What the law punishes is the act of combining to commit crimes. The crime is complete, and the individual liable to be held guilty, before any particular crime has been committed and although no particular crime is committed. The case is thus, in some degree, one of collective responsibility, since the law punishes all the members of the association without distinction.

The Public Prosecutor can always accuse this or that member of the association of committing a particular crime and, on the basis of the acts thus charged, can ask that they be more severely punished.

The conception of an association of criminals has, in the case of French judges, the advantage of possessing a positive basis in legal texts (Article 265 and following articles of the Penal Code. See Annex). The penalty is penal servitude and it can be inflicted without its being necessary for the Prosecution to show that the accused took part in some particular crime.

The legal requirements for the existence of the crime of membership of an association of criminals are, firstly, that the membership is voluntary, that is to say, the accused knowingly joined the association, and, secondly, that the object of the association is to commit crimes.

Whether these conditions are or are not in fact satisfied by associations such as the Gestapo, certain units of the S.S. or the "liquidation teams", is a question of interpretation of the law. Ordinarily, units of the Wehrmacht can obviously not be treated as

associations of criminals. On the other hand, the Gestapo in the occupied territories and the "liquidation teams" have quite clearly a criminal object and appear to consist of volunteers

The idea at the basis of Article 265 and the following articles of the Penal Code is that of punishment without distinction of the members of a group where it appears that the activity of the group is dangerous or injurious for the citizens of the State. This is the spirit of the law and it is in this sense that the law should be applied to war criminals. The French Ordonnance of 28th August 1944 concerning the punishment of war criminals (Official Journal, No. 72, 30th August 1944) provides:

"Article 2.- The provisions of the Penal Code and the Code of Military Justice are to be interpreted in the sense that:

"Organisations or enterprises having systematic terrorism for their object are to be considered as a form of association of criminals within the meaning of Article 265 and the following articles of the penal code". (Translation)

The interpretation which the courts give to this Ordonnance will show what are the organisations and enterprises which have systematic terrorism for their object. Great latitude is therefore left to the courts and it is only in the cases where there has been systematic terrorism that the members of the terrorist organisations (Gestapo, special units of the S.S. or "liquidation teams") will be able to be found guilty without particular crimes being charged against them.

Many other exceptions to the principle that an individual is responsible only for crimes committed by him are known to criminal law. For example, Article 61 of the French Penal Code considers a person who furnishes shelter to a criminal as the criminal's accomplice, and it is not necessary for the prosecution to prove that he intended to assist the criminal.

The Commission's attention has also been called to the provisions of the law of India contained in Act. No. 30 of 14th November 1836 (Document W.2).<sup>x</sup>

V. The above are the points on which, on December 13th, 1944, I asked to have the opinion of the War Crimes Commission (Document M.42, page 3).

I pointed out that it would be in the general interest of the United Nations to decide unanimously to consider the Gestapo and certain formations of the S.S. as associations of criminals and not simply military formations.

The fact is that the Commission is faced by a problem which is new. The most it can do, no doubt, is to make a recommendation to the member Governments. Nevertheless, since municipal criminal laws are either silent or contain inadequate provisions, the members of the War Crimes Commission, confronted by the complete rejection of all the ordinary relations between human beings which German war crime represents, have a duty to make their opinion known.

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i.e. the legislation against the Thugs.



Penal Code.

ANNEX (Translation)

SECTION V.

Associations of Criminals, Vagabondage, Begging.

First paragraph - Association of Criminals.

265. - (As amended, 18th December 1893) Every association, whatever be its duration or the number of its members that may be formed and every agreement that may be entered into with the purpose of making preparation for or committing crimes against person or property, is a crime against the public peace.

266. - (As amended, 18th December 1893) Every person who joins an association which has been formed or is party to an agreement which has been made with the object mentioned in the preceding article shall be sentenced to penal servitude.

He may further be sentenced to confinement to a particular area without prejudice to the application of the provisions of the law of May 30th, 1854, on the execution of the sentence of penal servitude.

Persons who have been guilty of the crime mentioned in the present article shall be exempted from punishment if, before any steps to prosecute them have been taken, they have disclosed to the competent authorities the making of the agreement or the existence of the association.

267. - (As amended, 18th December 1893) Every person who knowingly and voluntarily has helped persons committing the crimes dealt with in Article 265 by furnishing them with instruments for the commission of the crime, means of communication, shelter or a place in which to meet, shall be sentenced to solitary confinement with hard labour.

Deprivation of the right of residence under the terms of Article 19 of the law of May 27th, 1885, may in addition be imposed upon the guilty person for life or for a period of time.

The provisions of paragraph 3 of Article 266 shall, however, be applicable to a person guilty of the acts dealt with in the present article.

SECRET

C.86  
29th March, 1945

UNITED NATIONS WAR CRIMES COMMISSION

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REPORT TO THE GOVERNMENTS ON THE PLEA OF SUPERIOR ORDERS.

Submitted by Dr Liang and adopted by the Commission on 28th March, 1945.

When drafting the Convention for the Establishment of a United Nations War Crimes Court, the Commission carefully considered the question whether any provision should be inserted on the subject of the plea of superior orders. The conclusion which it reached was set out in the explanatory memorandum distributed with the draft convention (Doc. C.58) and was as follows :

"The Commission has considered the question of 'superior orders'. It finally decided to leave out any provision on the subject for the same reason as that for which it left out the detailed list of war crimes. The Commission considers that it is better to leave it to the Court itself in each case to decide what weight should be attached to a plea of superior orders. But the Commission wants to make it perfectly clear that its members unanimously agree that in principle this plea of itself does not exonerate the offender."

The Commission has now considered the further question whether it should attempt to lay down any principle or rule for the guidance of national courts trying cases of war crimes in which the plea of superior orders is raised. Having regard to the fact that many, if not most, of the member States have legal rules on the subject, some of which have been adopted very recently, and that in most cases these rules differ from one another, and to the further consideration that the question how far obedience to the orders of a superior exonerates an offender or mitigates the punishment must depend on the circumstances of the particular case, the Commission does not consider that it can usefully propound any principle or rule.

The Commission unanimously maintains the view which it expressed in connection with the United Nations War Crimes Court that the mere fact of having acted in obedience to the orders of a superior does not of itself relieve a person who has committed a war crime from responsibility.

SECRET

C.87(1)  
19th April, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

PREPARATION AND PRESENTATION OF CASES OF WAR CRIMES

Memorandum adopted by the Commission  
on 18th April, 1945 (1)

Shortly after the United Nations War Crimes Commission was created, it recommended to the Governments that National War Crimes Offices be established to investigate in the first instance reports concerning war crimes, and to submit to the Commission in the form requested, information concerning the offences investigated. Attached as Annex 1 is a list of the national offices through which in most instances the Commission is enabled to perform its responsibility for investigating and recording evidence of war crimes.

The Commission is further charged with reporting to the member Governments cases in which it appears that evidence might be expected to be forthcoming sufficient to justify the apprehension and trial of individuals accused of war crimes. In this respect the Commission as an international agency functions in a manner resembling that of a committing magistrate, reporting to the Governments the names of the individuals accused. In this connection the Commission has recommended to the Governments that a war crimes agency be established in occupied enemy territory to investigate war crimes and to apprehend and detain alleged war criminals.

Set forth herein are suggestions in respect of the preparation and presentation of cases by the national offices. In most instances these suggestions have been heretofore submitted to the Governments, but are here assembled together for convenience.

1. War Crimes.

a. The competence of the United Nations War Crimes Commission extends to war criminals only, and does not include Quislings or traitors or those individuals who have committed atrocities against nationals of their own country.

b. As a working list for the convenience of both the Commission and the national offices, the list of acts which the Responsibilities Commission of the Paris Peace Conference agreed in 1919 should be treated as war crimes has been adopted, and is attached hereto as Annex II. This list is intended to serve as a general guide in dealing with individual war crimes without unduly restricting the Governments. For example, to the 1919 list has been added Item XXXIII: Indiscriminate mass arrests.

c. It is desirable that in preparing a case the national office should, in addition to specifying the heading in the tentative list of war crimes under which the case falls, indicate what provisions if any of the national criminal laws (whether civil or military) have been infringed by the accused.

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(1) This memorandum is a revised version of Document C.7(1) and replaces that document.



2. Investigation and Recording of Testimony.

a. The Commission has recommended to the Governments that all Prisoners of War be interrogated in respect of war crimes, and that members and former members of the S.S., Gestapo and similar organizations be kept under control until investigation can be completed in respect to their possible complicity in war crimes. In many instances complete investigation will not be possible until termination of hostilities.

b. In view of the possible death or disappearance of witnesses or their geographical dispersal, the lapse of time between offence and trial, and the deliberate destruction of evidence by the Axis, the Commission believes that it is necessary to record or perpetuate evidence, while it is still available, in an authentic form with a view not only to compilation of an historical record, but to eventual prosecution of accused war criminals for such crimes in the possible absence of the witnesses at the trial.

c. To facilitate apprehension and interrogation of persons suspected of complicity in war crimes, the names of such suspected war criminals may be presented to the Commission for transmittal to the Governments. The Commission has recommended to the Governments that such suspects be taken into custody for the purpose of obtaining information including evidence relating to the possible complicity of such persons in war crimes.

d. The names of persons not accused or suspected of perpetration of war crimes themselves but considered capable of giving evidence regarding particular offences may also be submitted to the Commission for inclusion in Lists of Witnesses transmitted to the Governments. The Commission has recommended to the Governments that persons included on the Witness Lists be kept available until their testimony can be recorded, and that necessary security measures be afforded in proper cases.

3. Submission of Cases

a. Since the Commission is charged with the investigation of all war crimes even though no prosecution of those responsible is possible, it requests the national offices to prepare and present cases in every instance where the Governments concerned is satisfied that a war crime of reasonable importance has been committed. As a general rule cases should not be filed until the investigation and recording of evidence is reasonably complete, and no further material evidence with respect to the offence will be available in the immediate future.

b. Information too vague and uncertain to indicate either names or position of the offenders, the date and place, or the source of the information is not desired by the Commission at this time, although such reports can often serve a useful purpose to the national office concerned in connection with the work of investigation.

In many cases where there is no present indication of the identity of the perpetrators it is suggested that it may be possible at some future time to establish a pattern or series of incidents of the same nature which may be the result of the execution of a general plan or order for which the responsible person could be identified and apprehended.

c. Cases filed with the Commission may be supplemented and reconsidered in the event further material information is obtained.

d. As a rule, national offices will submit cases which have been committed on their territory and where the victims are its own nationals; they will transmit to the national office of the country of any other nationals involved information which will assist in preparation of its own or a joint case. Where nationals of a United Nation other than that submitting the case are concerned, notice will be given by the Secretary to that other Government in order that it may have an opportunity of considering what action, if any, it desires to take. The consideration of the case will be adjourned a reasonable length of time to afford such opportunity.

#### 4. Form of Submission.

a. A printed Form for the presentation of cases has been adopted by the Commission, copies of which are supplied by the Secretariat to the National Offices. (Annex III).

b. It is important that cases should be marked in the place provided in the form with the national serial number indicating the way in which the cases (and charges against individuals in each case) are designated by the national offices. The object is to provide a fool-proof method by which the cases and individuals charged can be identified in any correspondence relating to them between the Commission and the national offices. Unless this is done cases may be confused with one another, particularly where the name of the accused is not known. In addition to the national office numbers, a number is assigned each case by the Commission consisting of four items: The series number (Atlantic or Pacific) of each case; a letter denoting the national office submitting the case; a letter denoting the Government of the accused; and the number in the sub-series of cases filed by each national office against each accused Government.

c. It is requested that at least five copies of each case be transmitted to the Commission in addition to the signed original. Legible carbon copies on thin paper or mimeographed copies will suffice. All such information is considered "Secret" and the original and all copies submitted are considered the property of the Commission to be retained by it in its files.

d. It is understood that in some instances it is impossible for reasons of security to identify a witness or witnesses by name in cases or supporting documents transmitted to the Commission. In such cases the witness may be designated by letter or number stating at least in general terms the nature of the evidence or information on which the case is based, and the agent of the national office presenting the case should be in a position to communicate orally to the Commission the particulars of any information requested.

e. Titles, military or civil, and the names of military, naval, or air formations, units, government departments or organisations, etc. should be left in their original language (with or without a translation) in order that they may be correctly stated in the Commission's Lists.

f. Reference to Prisoner of War Camps would show:

- (1) Whether the camp is for officers or for other ranks.
- (2) The official number of description.
- (3) The country in which the camp is situated and its exact location at the time involved.

g. It is desirable to give full particulars by way of description, official position, etc. in respect of any individual to be included in any of the Commission's Lists in order to assist apprehending authorities and to aid identification. It is not necessary that the full particulars asked for in the suggested form for the submission of cases should be completely supplied. The Commission has listed many accused persons who were identifiable only as having held a post or discharged a particular function at the date of the crime, when it has considered that this clue should in the circumstances of the case probably result in ultimate identification of the person wanted for trial.

h. Where a crime has been committed by individual members of an identified unit or detachment, the commander of that unit or detachment in addition to any identified individuals, may be charged with responsibility where the evidence indicates culpability by reason of his failure to take preventive measures.

i. Identification by name is not necessary, but information sufficient to permit identification for the purpose of apprehension is required before an individual will be included as an Accused War Criminal. For example, it is enough to describe the accused by stating that he was the Commandant of a specified Prisoner of War Camp at a given date and locality, for this information makes it reasonably certain that the name of the accused will be obtained in due course and the identification is therefore sufficient.

j. All individuals responsible for each offence should be charged even though already listed by the Commission in connection with another offence.

Where possible it is well to frame charges not only against the immediate perpetrators of the crime who are often but the subordinates, but also to include charges against those individuals who have issued the orders or have made the policies carried out in detail by others. In this respect the Summaries of Information prepared by the Commission may be of assistance to the National Offices.

k. In addition to individuals accused of war crimes, in certain cases it will appear that war crimes have been committed by units or detachments of larger organisations, acting in concert. Where, after investigation, the identity of the offenders has not been ascertained, membership in such a unit or detachment at the time of the crime is regarded by the Commission as constituting prima facie evidence of participation therein, and all members of such unit or detachment may be charged with responsibility and will be listed as accused war criminals. In preparing such a case, charges should be made not only against identified individuals, if any are known, but against "All Members" of the unit or detachment at the time of the commission of the crime.

l. The exact nationality of an accused individual is often in doubt. The important thing is his possible perpetration of a war crime, and the purpose of including the names on the lists of accused war criminals is to facilitate apprehension. It is therefore useful for a Government to send to the Commission not only charges against enemy citizens, but also charges framed against its own nationals accused of committing war crimes who in many cases may have fled to enemy countries.

m. The Commission prefers documentation of cases, even though it consists only of quoting extracts from affidavits, statements or other materials. It is not essential that the evidence should be complete if it is reasonably clear that further evidence can and will be obtained in due course. What is required is that the case should show that there is reason to believe that a war crime of reasonable importance has been committed and that there is or will be at the time of trial sufficient evidence to justify a prosecution.

##### 5. Presentation of Cases.

a. Cases filed with the Commission will normally be considered by Committee I, Committee on Facts and Evidence, in the course of the week following the reception of the case, and the presence of representatives of the Government submitting the charges is invited and desired.



b. Action by the Committee will include :

- (1) Determination whether it is probable that a war crime of reasonable importance has been committed.
- (2) Determination whether there is or will be at the time of trial sufficient evidence to justify a prosecution.
- (3) Determination of which individuals or units, if any, should be included on the Commission's Lists of Accused War Criminals, Suspects, or Witnesses.

c. Notice of the recommendations of Committee I to the Commission in respect of each submitted case will be given in writing by the Secretary in duplicate to the Government concerned, the original to be sent to the National Office and the duplicate to the representative of that Government on the Commission.

6. Commission Charges

a. As noted above, the United Nations War Crimes Commission depends upon the national offices and the military and occupation forces to perform the major part of the work of investigating and recording evidence of war crimes, and identifying where possible those individuals responsible. A small investigating and liaison staff is nevertheless maintained by the Commission to co-ordinate the work of the co-operating agencies, and to investigate, prepare and file charges involving offences and individuals not covered by the National Office plan.

b. In addition the Commission maintains a research staff for the purpose of ultimately recording for historical purposes the record of war crimes committed by the enemies of the United Nations.

c. Close direct contact by the National Offices and other agencies concerned with the Commission is invited. The Commission maintains office facilities and an executive staff to provide accommodation in the Commission's office for members or their representatives desiring to work there, and for assisting in the interchange of information and the preparation of cases.

ANNEX I

LIST OF NATIONAL OFFICES.

- AUSTRALIA: Department of External Affairs, Canberra, A.C.T.  
War Crimes Commissioner: The Hon. Sir William Webb.
- BELGIUM: 1 rue de Turin, Brussels.  
President: M. Antoine Delfosse.
- CANADA: Canadian War Crimes Advisory Committee.  
Secretary: Wing Commander E.R. Hopkins,  
c/o The Department of External Affairs,  
New Post Office Building, Ottawa.
- CHINA: 4 Chuen Sen Road, Chungking.  
Principal Officer: Dr. C.T. Wang.
- CZECHOSLOVAKIA: Czechoslovak Ministry of Interior (Section IV),  
62, Princes Gate, London, S.W.7.  
Principal Officer: Colonel J. Bartik.
- FRANCE: Service de Recherche des Crimes de Guerre Francais,  
22, Place Vendôme, Paris.  
Principal Officer: Colonel Chauveau.
- GREECE: M. Stavropoulos, 4 Aldford House, Park Street, W.1.
- INDIA: Defence Department, Government of India, New Delhi.  
Chief Officer: Secretary to the Government of India.
- LUXEMBOURG: c/o Ministry of Justice, Ternes Rouges Building, Luxembourg.  
President: M. Charles Leon Harnes.
- NETHERLANDS: Mexborough House, 55 Dover Street, London, W.1.  
Principal Officer: Dr. J. van der Bergh.
- NEW ZEALAND: Department of External Affairs, Wellington, New Zealand.  
Principal Officer: Mr. Ross Shapahan.
- NORWAY: Norwegian Police Investigation Office, 24 Connaught  
Square, London, W.2.  
Principal Officer: Major Finn Palmström.
- POLAND: Polish War Crimes Office, 16 Arden Court, Palace Gate,  
London, W.8.  
Principal Officer: Dr. J. Litawski.
- UNITED KINGDOM: Treasury Solicitor's Department, Storey's Gate, London, S.W.1.  
Principal Officer: The Treasury Solicitor.
- UNITED STATES  
OF AMERICA: Office of the Judge Advocate General of the Army, War Crimes  
Office, Munitions Building, Washington 25, D.C.  
Principal Officer: Brigadier-General John M. Weir.
- YUGOSLAVIA: Yugoslav State Commission for the Investigation of War Crimes,  
Belgrade.  
Chairman: Prof. Dr. Dusan Nedeljkovic.

ANNEX II

LIST OF WAR CRIMES

drawn up by

The Responsibilities Commission of the Paris Peace Conference in 1919

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- (i) Murder and massacres - systematic terrorism.
- (ii) Putting hostages to death.
- (iii) Torture of civilians.
- (iv) Deliberate starvation of civilians.
- (v) Rape.
- (vi) Abduction of girls and women for the purpose of enforced prostitution.
- (vii) Deportation of civilians.
- (viii) Internment of civilians under inhuman conditions.
- (ix) Forced labour of civilians in connection with the military operations of the enemy.
- (x) Usurpation of sovereignty during military occupation.
- (xi) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
- (xii) Attempts to denationalise the inhabitants of occupied territory.
- (xiii) Pillage.
- (xiv) Confiscation of property.
- (xv) Exaction of illegitimate or of exorbitant contributions and requisitions.
- (xvi) Debasement of the currency and issue of spurious currency.
- (xvii) Imposition of collective penalties.
- (xviii) Wanton devastation and destruction of property.
- (xix) Deliberate bombardment of undefended places.
- (xx) Wanton destruction of religious, charitable, educational and historic buildings and monuments.
- (xxi) Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers and crew.
- (xxii) Destruction of fishing boats and of relief ships.
- (xxiii) Deliberate bombardment of hospitals.
- (xxiv) Attack and destruction of hospital ships.
- (xxv) Breach of other rules relating to the Red Cross.
- (xxvi) Use of deleterious and asphyxiating gases.
- (xxvii) Use of explosive or expanding bullets and other inhuman appliances.
- (xxviii) Directions to give no quarter.
- (xxix) Ill-treatment of wounded and prisoners of war.
- (xxx) Employment of prisoners of war on unauthorised works.
- (xxxi) Misuse of flags of truce.
- (xxxii) Poisoning of wells.

ITEMS ADDED BY THE WAR CRIMES COMMISSION

- (xxxiii) Indiscriminate mass arrests.



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  - (v) Rape.
  - (vi) Abduction of girls and women for the purpose of enforced prostitution.
  - (vii) Deportation of civilians.
  - (viii) Internment of civilians under inhuman conditions.
  - (ix) Forced labour of civilians in connection with the military operations of the enemy.
  - (x) Usurpation of sovereignty during military occupation.
  - (xi) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
  - (xii) Attempts to denationalise the inhabitants of occupied territory.
  - (xiii) Pillage.
  - (xiv) Confiscation of property.
  - (xv) Exaction of illegitimate or of exorbitant contributions and requisitions.
  - (xvi) Debasement of the currency and issue of spurious currency.
  - (xvii) Imposition of collective penalties.
  - (xviii) Wanton devastation and destruction of property.
  - (xix) Deliberate bombardment of undefended places.
  - (xx) Wanton destruction of religious, charitable, educational and historic buildings and monuments.
  - (xxi) Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers and crew.
  - (xxii) Destruction of fishing boats and of relief ships.
  - (xxiii) Deliberate bombardment of hospitals.
  - (xxiv) Attack and destruction of hospital ships.
  - (xxv) Breach of other rules relating to the Red Cross.
  - (xxvi) Use of deleterious and asphyxiating gases.
  - (xxvii) Use of explosive or expanding bullets and other inhuman appliances.
  - (xxviii) Directions to give no quarter.
  - (xxix) Ill-treatment of wounded and prisoners of war.
  - (xxx) Employment of prisoners of war on unauthorised works.
  - (xxxi) Misuse of flags of truce.
  - (xxxii) Poisoning of wells.

ITEMS ADDED BY THE WAR CRIMES COMMISSION

- (xxxiii) Indiscriminate mass arrests.

(For the Use of the Secretariat)

## ANNEX III

Registered Number.

Date of receipt in Secretariat.

### UNITED NATIONS WAR CRIMES COMMISSION

CHARGES AGAINST

WAR CRIMINALS

CHARGE No. \*

Name of accused, his  
rank and unit, or  
official position.

(Not to be translated.)

Date and place of  
commission of al-  
leged crime.

Number and descrip-  
tion of crime in war  
crimes list.

References to rele-  
vant provisions of  
national law.

#### SHORT STATEMENT OF FACTS.

TRANSMITTED BY

\* Insert serial number under which the case is registered in the files of the National Office of the accusing State.

(26852) W.L.P.1505/1120 500 1/44 A.S.E.W.Lt.L. Gp.685  
(26924) W.L.P.1817/P.1139 5,000 3/44

Page 2

PARTICULARS OF ALLEGED CRIME



Page 3

PARTICULARS OF EVIDENCE IN SUPPORT

NOTES ON THE CASE

(Under this heading should be included the view taken as to (a) the degree of responsibility of the accused in view of his official position, e.g., was offence committed on the offender's own initiative, or in obedience to orders, or in carrying out a system approved by authority or a legal provision ; (b) the probable defence, (c) whether the case appears to be reasonably complete.)

SECRET

C.88.  
13 March, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

THE CRIMINAL AND PERSONAL RESPONSIBILITY OF  
THE MEMBERS OF THE GERMAN NAZI GOVERNMENT.  
/Memorandum for information/.  
by Dr. B. Ečer /Czechoslovakia/

Chapter I.

THE PROBLEM.

The question to be answered by Lord Wright's Committee in respect of the enemy Governments was formulated at the first meeting of the Committee on February 6th 1945 as follows:  
"As to whether membership to enemy Governments may involve criminal responsibility for the criminal policy followed by such Governments".

Our task is to decide whether a man charged by a National Office as a member of the enemy Government in connection with crimes committed on behalf of the respective enemy state and by its civilian or military apparatus, could be put on the list of war criminals by virtue of the fact that he is a member of the Government.

I try to solve this problem with regard to the German Government, and would formulate the question as follows:  
Is membership to the German Nazi Government a prima facie proof sufficient to justify the decision to put him on the list of war criminals in connection with crimes committed by the German State apparatus and its members in the invaded or occupied Allied citizens? /I leave out for further consideration, the question raised by British State Minister, Richard Law, in the House of Commons on January 31st 1945 as to the punishment of crimes committed in Germany by Germans on German citizens/.

In other words: Are we authorised to apply the principles laid down in the British Law quoted in my report on Gestapo, page 28 /Def. Reg./ 91, dealing with offences committed by corporations, or the similar principles laid down in the Swiss Criminal Code of 1937, Article 172, according to which the members of the board of a Corporation are personally responsible for crimes committed by such corporation.

Both British and Swiss laws established a "praesumptio juris" i.e. "inference of fact which only holds good until evidence has been given which contradicts them. They consequently afford merely a prima facie proof of the fact presumed; a proof which may be overthrown by evidence which negatives it, or by collision with some other and still larger presumption which suggests a contrary inference". /Kenny, "Outlines of Criminal Law", Cambridge 1936, page 386/.

If there would be some objection to the qualification of this presumption as praesumptio juris or as legal presumption which the law commands the Jury or the Judge to draw, it is at least a praesumptio facti which the law advises the Judge to draw. In this connection I should like to stress that our decision to put a man charged by a National Office, on the list of war criminals does not involve any conclusion as to his guilt.



Whether he is guilty or not must be decided first by the Public Prosecutor framing the charge, and then by the Judge passing the sentence.

On the other side we cannot answer the question and solve the problem which the Commission is facing, without legal considerations. But these considerations must be based on facts, and the legal conclusions even in the limited sense /prima facie basis for listing/ must be drawn from relevant facts. Thus there are two elements on which the answer should be based as far as members of the German Government are concerned:

a/ facts important for the personal position and responsibility of the members of the German Government by virtue of their membership

b/ the general principles of criminal law dealing with the question: Who is to be regarded as perpetrator, accomplice or conspirator?

As to the criminal laws to be taken into consideration I think that the following method should be applied:

According to the Moscow Declaration of November 1st 1942, war criminals should be tried by the Criminal Courts of the liberated countries according to their laws. But the members of the German Government have violated by their acts, the criminal laws of several Allied countries, and even the criminal law of their own country. Thus I shall try to establish general principles which are common to some Allied systems of criminal law /English, French, Czechoslovak and Soviet/ regarding our problem.

I think that only by this empirical and inductive method the question could be satisfactorily answered. A purely speculative answer not based on facts and not taking into consideration the above-mentioned principles of criminal law would be of little use.

## PART A. The Facts.

### Chapter II.

#### CRIMINAL AIMS AND CONCEPTIONS OF NAZISM.

I think that the following facts should be taken into consideration as being important for the answer to our question as formulated in Chapter I.

1/ Nazi Party and the German State. We must bear in mind that the relation between the Nazi Party and the German State is exactly the opposite to the relation between a Political Party and the State in democratic and civilised countries. After having liquidated all other existing Political parties and forbidden by law of July 14th 1933 the creation of new parties, the Nazi Party became the only Party in the Reich. The law of December 1st 1933 called "A law to safeguard the Unity of Party and State" established a totalitarian union between the only existing Party and the State.+ The substance of this unity of Party and State was more clearly defined by Hitler himself to the Nuremberg Party Congress in 1934: "It is not the State which gives orders to us but it is us who give orders to the State".

The same idea was stated in one of the leading Nazi text-books /Haidn Fischer, Das Recht der N.S.D.A.F., 1938, page 54/: "In Nazi Germany the State becomes merely the instrument for the realisation of the aims of the Nazi Party".

+ This union was dissolved by a decree issued by Hitler on April 7th 1945.

The union between the Nazi Party and the German State was realised in a manner which I described on pages 2 and 3 of my report on the German S.A., S.S. and Gestapo. Here I should like to add to this description:

a/ ~~All members of the German Government are leading members of the Nazi Party, and the majority of them are members of the S.S.~~ The following diagram may illustrate how the principle of personal union between Party and Government works in practise:

<u>Position in the Party.</u>	<u>Name.</u>	<u>Position in Government.</u>
Leader of the Party.	HITLER	Head of the German State and German Government.
Head of the Agricultural Office.	DARRÉ	Minister of Agriculture.
Head of the Bureau for Colonial Policy.	EPP	" without Portfolio.
Head of the National Legal Office.	FRANCK	" " "
National Propaganda Leader.	GOEBBELS	Minister for Propaganda.
National Labour Leader	HIERL	Minister without Portfolio.

b/ The Civil Servants Act of 1937 /Deutsches Beamtengesetz/ established the duties of every civil servant in the present German State. The basic principle is "unconditional devotion to the political ideas and aims of the National Socialist Party, and unconditional personal allegiance to Adolf Hitler" /Härdt-Fischer, op.cit. page 536/. This principle has been put into legal terms by the mentioned Civil Servants Act of 1937 /Deutsches Beamtengesetz/ which demands: "that a civil servant must be permeated by the National Socialist Weltanschauung" and that he "must be an executor of the State idea based on the Nazi Party" /Section 1, sub-section 2/. If a civil servant ceases to satisfy this standard, if any facts are brought to the notice of his superiors which may give rise to the suspicion that he would not at all times support the Nazi regime, he may be dismissed from office by a special "process of law" /Section 71/.

2/ The aims, conceptions, programme and "philosophy" of the Nazi Party. ~~We must constantly bear in mind that all members of the German Government are at the same time leading members of the Nazi Party, most of them members of the S.S. All are and must be fanatical Nazis.~~ They are obliged to realise the aims of the Party because the State is, according to Hitler, an instrument of the Nazi Party. The principles and aims of the Nazi Party have absolute priority in Germany, even over the law. On January 18th 1935 the so-called German Supreme Administrative Tribunal in Dresden passed a sentence in which it stated that the law in the National Socialist conception is not a complex of individual provisions issued by the law-making authority, but the legal ideas rooted in the German people. These legal ideas, the source of which is mainly Adolf Hitler have, according to this tribunal, priority even over the written law. / Quoted in the book "Die Deutsche Polizei" written in 1941 by Dr. Werner Best, S.S. Brigadeführer. At present German Minister in Denmark/.



Thus it is necessary to sum up at least the most important points of the Nazi "philosophy", programme, and aims, as far as these are relevant for our problem.

a/ The conception of State. As has been proved above, the present German State is the instrument for the realisation of the aims of the Nazi Party.

b/ Life and liberty of individual man. There are many books, and a mass of statements of Nazi leaders with regard to the position of the individual man in the Nazi community. I quote two statements: Dr. Best wrote in his above-mentioned book, page 19, that the only reality of the human life is "Das Volk" /The People/. "The individual man must serve the preservation and furtherance of the 'Volk', and when necessary must be sacrificed".

This general principle was explained in more detail and with more barbarous frankness by Goering who wrote in his book "German Reborn", page 129, referring to the two decrees given by him to the Police to shoot every opponent of the Nazi regime: "If you call it murder then I am a murderer..... I assume full responsibility for all shootings". And the same Goering in a speech to the German Academy of Journalists in 1934: "We need to have no indictments, proof or trials. We were killing enemies of the people". He referred in this phrase to the massacre of June 30, 1934.

It should be remembered that already in 1931, one of the Nazi papers wrote with regard to the political murder: "Only the small republican wretch with his guilty conscience will call political murder something damnable in itself".

The acts of the Nazis, especially since 1933, are in full accordance with this attitude to the life of individual man. With the same disrespect to the human being, the Nazis advocated and even introduced by law, sterilization of people affected by some diseases, and the so-called euthanasia. This high-sounding scientific phrase is nothing but a cover for systematic murder committed against men and women who did not live up to the standard of "pure race" demanded by Nazi Ideology. A special commission was created for this purpose by Rudolph Hess, and the high Nazi official Philipp Bouhler, under the name of "Euthanasia Commission". According to Oechsner, an American Press correspondent in Berlin until Germany declared war on the U.S.A., this Commission had "destroyed" 37,000 persons up to the Summer 1941. The victims were persons allegedly suffering from physical or mental disability. It should be noticed that the question "whether a victim was suffering from such disability", was decided by a mixed Medical and Legal Commission consisting of course entirely of reliable Nazi officials. On what criteria they based their decision may be gathered from the fact that according to Oechsner's information 17% of the victims of this Commission came from concentration camps; in other words euthanasia is only another weapon by which the Nazis get rid of their political opponents and other people who are in the way. It should also be noted that this murder of "undesirable elements" is not just an excess by particularly zealous Nazis; Hitler himself is responsible. Although it has been pointed out to him that the application of Euthanasia would be put into the hands of unscrupulous physicians or lawyers, the power arbitrarily to get rid of peoples in whose deaths their clients / i.e. the Nazis/ might have an interest, he has been adamant. / see Oechsner, page 97/.



The most gruesome kind of scientific murder however, has been committed in the so-called "Hitlerkammern" where children whom the Nazis regarded as being feeble-minded / i.e. unable to die for Hitler as soldiers / were put to death. Ziemer, the author of "Education for Death" inspected one of these murder chambers where sometimes several children were murdered in a month. As Georg Abels, a high official in the Nazi Ministry of Health told him, the parents of these unfortunate children were requested by a "Court of Health" consisting entirely of Nazi criminals, to sign a paper that they gave up their children to the State. Asked by Ziemer what happened if they refused, Abels just replied: "They do not refuse".

Euthanasia, Hitlerkammern, Death vans of Kharkov and Death Factory of Maidanek - all these are part of the horrible plan by Hitler and his gang to exterminate every one who might be in the way of their criminal intention to dominate the world.

c/ Enslavement and extermination of Foreign Nations and Races. Hitler said "The German people alone will be a people of warriors. The other Nations will be Helots working for the Teuton Warrior Caste, / Otto Strasser, "Hitler and I" 1940, p. 224/.

Darré in a speech delivered in 1940 to Nazi Officials, /the speech was not reported in the German Press, but was reproduced by the British Press on May 27th 1944/:

"It will then be our duty to organise economically the territories gained which gradually will be included in the German area. We will introduce in our new "living space" completely new methods.

"All soil and industrial property of inhabitants of non-German origin, will be confiscated without exception, and distributed primarily among the worthy members of the Party, and soldiers who were accorded honours for bravery in this war.

"Thus a new aristocracy of German masters /Herrenvolk/ will be created. This aristocracy will have slaves assigned to it, these slaves to be their property and consist of landless, non-German nationals.

"Please do not interpret the word "slaves" as a parable or as rhetorical term. We actually have in mind a modern form of medieval slavery which we must and will introduce because we urgently need it in order to fulfil our tasks.

"These slaves will by no means be denied the blessings of illiteracy; higher education will in future be reserved only for the German population of Europe".

Dr. Best stated that Germans have "a divine right" to enslave, and when necessary to exterminate foreign nations and races.

The attitude of the Germans to the Jews is wellknown. All members of the Nazi Party agree with what Hitler said: "The Jews must be routed out to their last hair from every phase of German activity. The Jew is an inferior thing, he can only be called a man of third grade". /Oechsner "This is the Enemy" p. 109/.

Other statements are contained in Colonel Wade's report No. 11 called "The Planned Extermination of the Jews". In this excellent report there are statements of Hitler, Goebbels, and Rosenberg,

all aiming at the extermination of the Jews.

d/ Education of Youth for Death and Crime. The best characterisation of the mentality which made possible the organisation of crimes on such a vast scale has been given by Hitler himself in "Mein Kampf" /page 724/: "The determined gangster is at any time free to thwart any political activity of a respectable man". "It has been the task of Nazi education to degrade the whole German Nation to "determined gangsters". "The education of Youth is entirely subordinated to this purpose" Gregor Zeimar has shown how this "Education for Death" is put into practice.

Thus Nazi education is systematic education for death, and systematic education for crime. It is in accordance with the negation by the Nazis of all moral values known to the civilised world. All moral scruples are decried. "Dominance and harshness are demanded" /Darre/. "I must harden my heart. I must do terrible things whatever it may cost, without pity like Torquemada" /Hitler quoted by Louis Gillet, Rayons et Ombres d'Allemagne, Paris, 1937/. "Pity", he stated on another occasion /see Alexander Stein, Adolf Hitler, Schuler der Weisen von Zion, Karlsbad, 1936/ is not our business. That is the business of the Higher One. Our duty is merely to see that justice is done. We may be as inhuman as we like if only we make the German people happy in that way".

The young Nazis are the bulk of the S.S. formations. They are "fanatic animals".

e/ The conception of Law and Justice. Nazi law has similar functions in the criminal plans of the Nazi gangsters. Justice has been defined by the Nazis as being all that serves the German people. In other words all that serves the criminal intentions of Hitler and his gang. The meaning of this phrase "subjective law" is more clearly defined by Karl Lorenz, one of the "legal philosophers" of Nazi Germany /see "Deutsche Rechtsentwicklung und Rechtsphilosophie" 1934/: "Nobody but the Fuehrer can take the decision in the last instance whether a certain law should apply or not..... A law based on his will is therefore not subject to judicial control. The Fuehrer does not obey a norm directed to him, but the living law of the community which has been embodied in his flesh". This principle of lawlessness was even more clearly expressed by Kerrl, Prussian Minister of Justice, quoted by Dimitroff in his memorable defence at the Reichstag Fire Trial: "Measures taken by Judges and Counsel for the Prosecution and the Defence must be guided by one rule of conduct: What is good for the life of the Nation?" "Not aimless objectivity which means standstill, and thus ossification which means severance from the people must govern. All acts, all measures taken by the community and by the individual should be devoted to the vital needs of the people. They are subordinated to the nation". - Judges and lawyers who are guided by their own conscience are warned not to follow "this alleged voice of conscience" if it is at variance with Nazi views /Freisler, Nationalsozialistisches Recht und Rechtsdenken, 1933/. "Only what Adolf Hitler, our Fuehrer, allows or does not allow is our conscience" said Dr. Ley in 1942. Thus it is not surprising to hear the Fuehrer himself proclaiming /in 1936/ that "in the new penal code, German justice would be placed on a basis which will put justice for all time into the service of maintaining the German race". In his Reichstag speech of April 26th 1942, the Fuehrer explained this principle further: "I expect German justice to realise that Germany must live though formal principles of justice may suffer. In future I shall dismiss those Judges who do not understand the necessities of the day".



But even laws created by the Nazis themselves are overridden by these gangsters when it suits them. Rudolf Olden, writing long before the war, points out that though the régime "maintains Law Courts and Prisons, side by side with them it has set up concentration camps. The Supreme Administrative Court can review every measure or decision taken by the Administration, but it has no control over the Secret State Police since it has itself ruled that its competence does not comprise these. The State has its proper organs, but where these are not adequate the Party steps in". Apart from that, Judges are openly encouraged to break the law. A leading Nazi "lawyer" Senator Rothenberger, President of the Hanseatic Court of Appeal admitted himself in a speech addressed to lawyers at Hamburg on the 21.10.1936: "Finally there are even occasions for deciding contrary to the law if, in the opinion of the judge the law and the popular sentiment are in conflict".

At last, in 1942, the Reichstag itself has purported to legalise this state of barbarism in its resolution dated April 26, 1942, a veritable Magna Charta of Nazi Lawlessness: "The Fuehrer must possess the right..... to do everything which serves or contributes to the attainment of victory.....In his capacity as Leader of the Nation, as Commander-in-Chief of the Army, as Head of the Government, and supreme bearer of the executive authority, as chief Judge, and as Leader of the Party, the Fuehrer must therefore, - without being bound by existing legal principles - be able at any time if necessary to urge any German to fulfil his obligations by all means which appear to him appropriate.....In the case of a dereliction of these duties after a conscientious investigation, he must be able without regard to so-called "well-acquired" rights, to impose the fitting punishment, in particular without introducing the prescribed procedure, to remove any man from his office, his rank, and his position".

The best definition of "law" in the Nazi State was given by the notorious Dr. Frank in the "Volkischer Beobachter" of the 18th May 1936: "The law is an instrument in the hands of the Fuehrer for the realisation of National Socialism". In other words, an instrument in the hands of the leading gangster for the realisation of his criminal intentions.

The attitude of Nazism towards International Law was explained authoritatively by Hitler as follows:

"I shall shrink from nothing. No so-called International law, no agreements will prevent me from making use of any advantage that offers". /Schwarzenberger "International Law and Totalitarian Lawlessness", London 1943, page 16/.

"My behaviour in war-time will be no different. The most terrible warfare is the kindest. I shall spread terror by the surprise employment of all my measures. The important thing is the sudden shock of an overwhelming fear of death" /Schwarzenberger, p. 17/.

The criminal character of the aims and conceptions of Nazism as summed up in this Chapter, is manifest according to the criminal laws of civilised nations.



Chapter III.

THE REALISATION OF THE CRIMINAL NAZI AIMS AND  
CONCEPTIONS BY THE PRESENT GERMAN STATE, ITS  
GOVERNMENT, AND APPARATUS.

The German State as instrument of the German Nazi Party realised and is still realising the criminal aims and conceptions of the Nazi Party. The German Government and the whole German State apparatus /civilian and military/ since 1933, and especially during the course of the present war, put into operation a system of criminal acts aiming at the realisation of the Nazi Party programme which in itself is, as far as the main points are concerned, a criminal one according to the general conceptions of Criminal law of civilised countries.

It is, of course, impossible to give in a chapter of this paper, a description of how the German State in the service of Nazism realised, and still realises the criminal aims of the Party. But in view of the fact that the criminal deeds are notorious, and in addition described in detail in various documents of our Commission, I content myself to giving a summary:

a/ Suppression of personal liberty.

On February 28th 1933, the Reichstag fire was used as a pretext to issue an emergency decree for "the Protection of People and the State" which was based on Article 48, Sub-section 2. /Weimar Constitution/.

This decree was stated to be "a defensive measure against Communist acts of violence endangering the State". This decree "suspended the fundamental rights of the Weimar Constitution until further notice, and "authorised" restrictions on personal liberty, such as "protective custody" in Concentration Camps. Thus, this decree has become the "legal" basis for the reign of terror which has since been established in Nazi Germany.

Nazi authorities quite openly admit that protective custody and Concentration Camps have no foundation in German law. Thu Geigenmüller /3/ declares: "Although the decree of February 28th 1933 was issued formally in accordance with the Weimar Constitution its basis has long since ceased to exist. By virtue of article 48, sub-section 2, the fundamental rights enumerated there may be "temporarily" suspended wholly or in part "for the purpose of restoring public order and security". Neither of these conditions have been present for a long time. After all, the actual situation in Germany is sufficient proof to show that public order and security have been restored a long time ago; but the Communist danger which gave rise to the decree, and which has been expressly mentioned in the preamble as the reason for it, is still subsisting in undiminished force".

The "formal" procedure governing protective custody was laid down in a Regulation issued by the Reich Minister for Home Affairs, dated April 12, 1933. This Regulation gave power to the Police authorities of the Länder to impose "protective custody", and very soon afterwards Decrees were issued in all the German Länder entrusting this task to the newly formed Secret State Police /Geheime Staatspolizei - GESTAPO/. By a decree of the Fuehrer dated June 17, 1936, the command of the whole German Police was given to the Reichsfuehrer of the S.S., Heinrich Himmler, the most ominous figure in the gallery of Nazi Thugs.

The régime in the Concentration Camps, and the special responsibility of men in charge of the Camps, is described in Colonel Wade's report No. 10 called "Concentration Camps".

b/ Slavery.

I refer to the following reports of Colonel Wade:

- No. 1 - Sauckel, Forced Labour.
- No. 2 - Goebbels, Mobilisation of Man-Power.
- No. 5 - Forced Labour and Deportations.
- No. 6 - Mobilisation of Man-Power.
- No. 7 - Deportation of Foreign Workers.
- No. 8 - Forced Labour.

All these reports prove that the German State, i.e. German Government with Hitler at the head, and the German State apparatus, established under various headings a system of legalised slavery and slave traffic, precisely on the lines of Hitler's statement quoted on page 5 and Darre's speech quoted also on page 5.

c/ Torture.

I refer to Colonel Wade's reports:

- No. 4 - Laws against Poles and Jews.
- No. 10 - Concentration Camps.
- No. 11 - Extermination of Jews.
- No. 12 - Crimes connected with prisoners of war.

In addition there is a mass of absolutely reliable reports about torture in the Concentration Camps. All reports agree on one point: the tortures are a recognised and legalised means of treatment of human beings by the Germans. The system of torture was introduced and established by laws, ordinances, and orders of the German Government with Hitler at the head, and the leading officials of the German State apparatus.

d/ Starvation.

I refer to Colonel Wade's reports:

- No. 3 - Goering, Confiscation of property.
- No. 9 - Nazi Hunger Policy.
- No. 11 - Extermination of Jews.
- No. 18 - Economic Organisation.

and to various documents already published about this category of crimes. All reports agree on one point: that this category of crimes constitutes a special branch of the German Governmental policy.

e/ Mass-murders.

I refer to Colonel Wade's reports:

- No. 10 - Concentration Camps.
- No. 11 - Extermination of Jews.
- No. 17 - S.S. Organisation.

further to numerous charges submitted by National Offices to the Commission, and to numerous reports published by various Governments and their agencies, especially by the Soviet Extraordinary State Commission, and various Jewish Organisations, on the mass-murders



in Concentration and Extermination Camps. I refer to the records of the Kharkov and Lublin trials in this respect. All these sources prove that mass-murder was organised by Hitler and his Government, Leading Officials of the State apparatus, and Army Commanders, and carried out by State formations and organisations such as the S.S. All this exactly on the lines of statements and declarations made by the Nazi leaders with regard to political murder and mass extermination of foreign races and nations, especially of the Jewish race.

#### Chapter IV.

##### THE POSITION OF THE GERMAN GOVERNMENTS AND ITS MEMBERS.

First of all I should like to draw the attention to the fact that Mr. Eden stated in the House of Commons on March 7th 1945 in reply to a question, that the British Government regard Goebbels and Ribbentrop as major war criminals coming within the scope of the Declaration on German atrocities at the Moscow Conference in 1943.

Both are already on the United Nations War Criminals List No. 1. They were put on the list by a decision of Committee No. 1. of November 22nd 1944, approved by the Commission the same day. The basis for the decision of the Committee and Commission was the charge submitted by the Czechoslovak Government under the heading "Standgerichte". The Committee agreed that all members of the German Government are prima facie responsible for the crimes described in the Czechoslovak Charge, by virtue of their membership to the German Government at the time when the crimes were committed.

This legal position is in full agreement with the attitude of the British Government as stated by Mr. Eden. Neither Goebbels nor Ribbentrop are members of the so-called Ministerrat fur die Reichsverteidigung /Council for the Defence of the Reich/, which is regarded as the real War Cabinet of Germany in the document supplied by our Secretariat under the heading "Extracts from Germany Basic Handbook". And yet both are responsible for atrocities according to Mr. Eden's statement. It is quite obvious that the British Government holds them responsible mainly if not only by virtue of the fact that both are members of the German Government.

So we come to the question of the German Government, its constitutional position, and general and special responsibility for war crimes.

1/. I think that we must constantly bear in mind the fundamental fact that all members of the German Government are and must be, according to the principle of union between Party and State, members of the Nazi Party. In fact they are even leading and fanatical members of the Party, many of them members of the S.S. All are obliged by their membership to the Nazi Party to put into operation the aims of the Nazi Party through the apparatus of the German State.

2/. In addition to this general fact there are some fundamental legal provisions defining the position of the German Government and its members:



a/ On August 1st 1934 an Act was issued called "Das Gesetz ueber das Staatsoberhaupt des Deutschen Reichs" /Act concerning the Head of the German State/. This act united in the hands of Adolf Hitler two functions of the Head of State, and the function of the Reich Chancellor who could be regarded as the Prime Minister.

b/ But this was not the only change. In addition the relation between the Reich Chancellor and the Government was changed. According to the Weimar Constitution the Reich Chancellor was primus inter pares in the body of the Ministers forming the Government of the Reich.

In Nazi Germany the Reich Chancellor is in a position superior to that of the Government /see Meissner und G.Kaisenberg, Staats- und Verwaltungsrecht im Dritten Reich, Berlin 1935, p. 65, and following, further quoted as M.u.K. and F.Poetzsch-Heffter, Vom Deutschen Staatsleben, 30 Jan - 31 Dez- 1933. - Jahrbuch des Oeffentlichen Rechts, Bd. 22 1935, P. 52, further quoted as P-H/.

What is called in the German terminology "Decision of the Government" is not in fact the result of a vote inside the Government, but a decision of Adolf Hitler which was prepared by the members of the Government as advisory body. It means that the members of the Government are not playing merely a passive rôle with regard to the decisions of Hitler. As all authors quoted above stress in their books, the relation between the members of the Government and the Fuehrer is a mutual one in the sense that the Minister is obliged to prepare the decision of Hitler. He is obliged to advise him, and Hitler is naturally entitled to reject his advice but through their advisory function, the Ministers are contributing in a decisive manner to the definite formulation of what is called "The decision of the Government" and what is in fact the decision of Hitler. Consequently they are, at least as advisers, responsible for the decision of Hitler. But apart from this function as advisers of Hitler with regard to the final decision of the Government, they are of course responsible for all ordinances or orders issued by them within the sphere of their ministerial department. /I shall come back to this question later on/.

c/ The position of the present German Government is fundamentally different from the position of the Republican Government because the present German Government is not only the executive body of the State, but the law-making one. The Act of March 24th 1933 called "Das Gesetz zur Behebung der Not von Volk und Reich" /Act abolishing the distress of People and State/, authorised the German Government to issue Acts, as a law-making body. The Act is called "Enabling Act". The Government was authorised to issue Acts deviating from the Constitution, but with one exception; the institution of the Reichstag and the rights of the President of the State could not be changed by an Act passed by the Government. But even this exception was abolished later on in a special Act, so that the Government became "the unlimited legislator" /M.u.K.p.105/.

The question arises now: How the individual members of the Government may influence the legislation? It is a curious fact that at present the proceedings of the Governmental meetings, and the function of the individual members of the Government are ruled by an old Act of May 23rd 1924, amended on April 14th 1926, called "Die Gemeinsame Geschäftsordnung der Reichsministerien" /the joint rules of procedure of the Reichs Ministeries/. These rules were adapted to the new situation by a decision of the German Government of July 14th 1933.

The essential provisions of these rules concerned with the function of the members of the Government are:

A/ According to Article 57, 3, para. 1, all drafts of Acts should be prepared by the competent Minister and submitted to the Reichs Chancellery. The competent Minister is obliged to inform the Reichs Chancellery in an accompanying letter, whether the other Ministers concerned agree to the draft.

B/ Then the draft is put by the Reichs Chancellery on the agenda of one of the next meetings of the Government. The Government discusses the draft and after discussion the Chancellor decides without being bound by the opinion expressed by individual members of the Government. A formal vote does not take place.

C/ A special and more simple procedure is provided by the Act for treating matters of minor importance. But even in this simplified procedure every member of the Government must be informed about every subject matter, and has the right and the duty to express his opinion.

D/ The Act passed by the Government is signed by all Ministers who have submitted the draft to the Government. The significance of the signature is of another kind than in Democratic countries. By signing an Act the Ministers take responsibility for the correctness and so on, towards the Chancellor.

d/ The National Socialist régime has maintained the distinction between Bill and Ordinance. The Government disposes of both, of the legislative power, and of the power to issue Ordinances. The formal difference between Bill and Ordinance is, therefore, a slight one only. According to the definition we find everywhere repeated: Bills are legal maxims created by the co-operation of all members of the Government, Ordinances, the general regulations which the Fuehrer or Ministers as Heads of their department issue jointly or singly within their special competence /P-H.p. 73/. "The decisive co-operation of the Fuehrer and the observance of an orderly legislative procedure characterises the Bill". /P-H.p.73/. But definitions of this kind are correct only when we compare the Bill with the Ordinance of a single Minister. Ordinances which are issued by the whole Government are created as well as a Bill, with the "decisive co-operation of the Fuehrer and Reichs Chancellor".

The Ordinance differs more distinctly from a Bill as far as its content is concerned. The Bill contains a legal maxim, the Ordinance is a regulation in the sphere of the Administration /M.u.K.p.110/.

The issuing of legal maxims of minor importance was occasionally assigned by the Constitution or a Bill, to a group or single members of the Government even before the Nazis came to power.

The sphere of questions which had to be decided by the whole Government has been limited more and more under the National Socialist régime. In the same degree the sphere which was left to the independent activity of a group or a single Minister has been enlarged. It corresponds to this development that the Government more often than before discharged its legislative task by transferring the right to issue Ordinances.

In the National Socialist State the Fuehrer and Reich Chancellor has the right to issue Orders which belonged, according to the Weimar Constitution, to the Reich President. As Supreme Commander of the Wehrmacht he issues the Ordinances concerning the Wehrmacht.



Amongst others, he is entitled to issue the Ordinances which define the competence of the various Ministers /M.u.K.p.112/. As a Bill is determined by the Fuehrer and Reich Chancellor alone - the rest of the Government functions in the process of legislation as an advisory body only - it is hardly possible to find a boundary between a Bill and an Ordinance of the Fuehrer. The Cabinet for the Defence of the Reich for instance, was established by an Ordinance of the Fuehrer of August 30th 1939. This Ordinance assigns to a group of Ministers a joint sphere of activity. This part of its contents certainly does not require a Bill. But further it lays down that the Cabinet for the Defence of the Reich may issue Ordinances with the force of law. This right might be granted strictly speaking by a Bill only.

It cannot be ascertained from the literature at our disposal whether an Ordinance of the Fuehrer is created in the same way as a Bill. However, as both come to life through the sole decision of the Fuehrer and there is no distinct difference between both, it can be presumed that Ordinances of the Fuehrer are handled and proposed in the same way as the Bill. The Ordinances of the Fuehrer concerning the Wehrmacht, and his other Ordinances, require the Ministerial counter-signature for their validity. This counter-signature has certainly no other meaning as the counter-signature of a Bill.

Besides the Fuehrer and Reich Chancellor, the Reich Government has the right to issue Ordinances - Under the Nazi regime the sphere which is left to the regulation by Ordinances has been substantially enlarged. Ordinances have been further issued mainly by single Ministers, not by the whole Government. But as before the decision of important matters is left to a Bill, and generally Ordinances arrange the details /P-H-p.73/. Above all in the National Socialist State too, Ordinances may be issued only by persons to whom this right has been transferred by the Legislative power, and only within the sphere which is circumscribed by a Bill. Even the Cabinet for the Defence of the Reich is not a Legislative body which has wholly or partly superseded the Reich Government in this capacity. This Cabinet too has only the right to issue Ordinances.

e/ The appointment and dismissal of the higher Civil Servants is reserved for the Reich Chancellor. Appointments are proposed by the Minister of Interior, in some cases by other Ministers. It seems that these proposals are made without consultation of the other members of the Government.

f/ The so-called "general clauses" in German Acts.

A characteristic feature of the National Socialist legislation is the fact that the Acts passed by the German Government do not contain precise provisions in order to avoid any abuse and to give strict limits to executive organs, but they contain in an astonishing number of cases, the so-called "general clauses", as for instance: "Recklessly intercede in favour of the National State", "unconditional devotion to the political ideas and aims of the National Socialist Party"; "unconditional personal allegiance to Adolf Hitler"; "measures necessary for the maintenance of public order and security; "measures necessary for reasons of public welfare", and so on.



In such a manner the subordinate authorities are given general permission to a great extent to act according to their own discretion. It is obvious that National Socialist authorities are making full use of this extended permission which covers in fact, all crimes committed by them against the "enemies of the German people". Innumerable crimes were committed on this basis.

The Nazi experts stress that these general clauses must be interpreted "according to the principles of the National Socialist conception of the world" /P-H.p.72/. They further stress that the State authorities are bound by statements and declarations of Hitler, irrespective in which form Hitler expressed his will. The authorities and even the Courts must decide "on the basis of the Fuehrer's thoughts and the National Socialist conception of the world". /P-H.p. 120/.

## Part B - LEGAL CONSIDERATIONS.

### Chapter V.

#### THE RELEVANT GENERAL PRINCIPLES OF CRIMINAL LAWS.

I think that the relevant principles of criminal laws which should be used for the legal appreciation of the facts as explained in the previous chapters are contained in the provisions concerning the following subject matter:

- 1/ The guilty mind and the prima facie proof of the guilty mind.
- 2/ The possible parties to a crime.
- 3/ Conspiracy and similar forms of criminal co-operation or criminal organisation.
- 4/ Criminal liability of the master for criminal acts of the servant.
- 5/ Criminal liability of corporations /corporate liability/.

I think that principles common to the four Allied systems of Criminal Law which I have examined /English, French, Soviet and Czechoslovak/ would be a sufficient basis for legal conclusions:

- ad.1/ The guilty mind and the prima facie proof of the guilty mind.

The four systems seem to me to be in accordance that a guilty mind is:

- a/ the criminal intention,
- b/ the criminal negligence.

Responsibility for crimes requires criminal intention or "gross" negligence, mere inadvertence is not sufficient. All the four systems and the judicial practice of the Courts of the respective countries seem to me to be in accordance that the criminal intention is composed of two elements:

a/ the consciousness, i.e. "the accused must realise that certain consequences are likely to follow from his conduct whether that conduct consists of action, or omission to act, coupled with the duty to act" /Kenny, "Outlines of Criminal Law", Cambridge 1936 p. 42/.

b/ The volition, i.e. "He may intend the consequences or be merely reckless or indifferent to them" /Kenny, pp.42 and 43/.

The proof of the guilty mind is in general the task of the prosecution. But there are some exceptions where the burden of proof is overthrown to the accused. I quoted some examples in my report on the S.A., S.S. and Gestapo. As a general rule the Prosecutor must prove the guilty mind as one of the important elements of the crime. But in every criminal case it must necessarily be proved by circumstantial evidence /except when the prisoner confesses/ and in every criminal case the Judge on the Continent, or the Jury in England must be aided by legal presumptions. One of the main legal presumptions in respect of the guilty mind is "that a man intends the natural consequences of his act" /Kenny p. 396, N. 1/.

In Chapter III of his work, Kenny deals with this question in more detail. On page 43 he says: "Yet in most cases the law regards the criminal act itself as sufficient prima facie proof of the presence of mens rea. Every sane adult is presumed to intend the natural consequences of his conduct". I think that is the general line adopted by all the four systems of criminal law, and by the criminal courts of the respective countries in respect of the proof of the guilty mind. The presumption plays a very important rôle as one of the important modes of judicial proof. We will see later on to what extent the facts explained in the previous chapter justify such presumption on the part of the Nazis in general, and of the members of the German Government in particular.

ad.2/ The possible parties to a crime.

After having examined all four systems I come to the conclusion that apart from slight differences, as for instance in respect of the aider and abettor, all four criminal laws and the practice of criminal courts of the respective countries agree that there are four groups of possible parties to the crime:

a/ the principal in the first degree /the perpetrator/, the man by whom the criminal act itself was done, or the man who gave the order to another man to commit the crime, "the man who finally despatches the assassin". /Kenny, p.102/, and finally a man who did not commit a criminal act but who omitted an act which he was obliged to carry out and which would prevent the criminal result. Such an omission is punishable exactly as the commission of a criminal act. In this connection I should like to stress that in my opinion all four systems and their legal practise agree with the principle: "qui facit per alium facit per se".

b/ the principal in the second degree, or subordinate principal who aided and abetted the actual perpetrator and who may or may not be present at the scene of the crime. The modes of his aiding and abetting are various. Even a mere applause may be "aiding and abetting". As to the question of liability: an aider and abettor is in principle punishable as the perpetrator for crimes committed by the principal in the first degree, as being done in the execution of their common purpose.



I think that according to all four systems and practise of the respective courts, we could accept the following opinion: Thus if two men have a common design to commit robbery with violence and one causes death while another is present aiding and abetting the felony, as a principal in the second degree, both are guilty or murder although the latter had not specifically consented to such a degree of violence as was in fact used" /Kenny, p. 997.

c/ an accessory before the fact is a person who procures or advises one or more of the principals to commit the crime. In some cases the activity of such an accessory before the fact might reach such intensity that he may be regarded as principal in the first degree. For instance, if Hitler gives to the subordinate Gaulciter or Governor any order no one could say that Hitler is merely accessory before the fact. He is in fact principal in the first degree, the principal perpetrator, and the other is the co-perpetrator. The same applies to the members of the German Government. But these conclusions are the subject matter of Chapter VI.

d/ Accessory after the fact is a remote degree of complicity, consisting usually in subsequently sheltering or relieving the criminal.

I think that in this respect all systems agree in spite of some differences of place attributed to this fourth group in the system of criminal law. Some criminal courts treat the fourth, this group, as accomplices, some as perpetrators of a crime sui generis.

ad.3/ Conspiracy and similar forms of co-operation or organisation.

In all of the four systems of criminal law there is a provision dealing with criminal co-operation or organisation. This criminal co-operation may consist of a simple agreement of two men to commit a crime, or of an agreement to commit a series of indefinite crimes, or in the creation of a genuine criminal gang for committing crimes, with its own leaders, administration, rules and so on. These various forms of criminal co-operation in the four systems I examined, are called: conspiracy /English Criminal Law/, complot and L'association de malfaiteurs /French Criminal Law/, and complot and crime of banditry /Soviet and Czechoslovak Criminal Law/.

I cannot deal in detail with this problem. I should like to stress:

a/ that the fact of organised criminality is a source of such danger to the community that all penal systems agree on one point: repression of criminality cannot wait until a crime is committed as the result of criminal co-operation. The community must intervene at a much earlier stage than in cases of individual criminality. That is the first general principle in respect of such organised crime.

b/ the guilty mind of all members of such criminal organisations or of all men taking part in a criminal agreement is presumed. So for instance the French criminal law as explained in Garaud "Précis de droit criminel" authorises the court to presume the guilty mind of all men taking part in a complot. The fact that the men joined the complot is a sufficient prima facie evidence of their guilty mind. In English criminal law there is not such a general presumption, but "so soon as a common



criminal purpose has been shown, evidence of the acts of one accomplice though done in the absence of the others, will be admissible against all of them". /Kenny p.473/

c/ in some criminal laws /French, Czechoslovak and Soviet/ the criminal organisation is regarded as being so dangerous in itself that the mere fact of joining some such organisation is a criminal act, and the membership to it constitutes a special crime, the so-called "crime of banditry".

d/ all members of such organisations, or all men participating in a criminal agreement must bear joint responsibility /collective responsibility/ without regard to their real share in the final result.

I think that the following opinion of Kenny could be adopted as common principle to all the four systems of law: "As regards the malice which is to be imputed to the various members of a group of wrong-doers when one of them commits a homicide, the rule is that, if several persons act together in pursuance of a common intent, every act done in furtherance of it by any one of them is, in law, done by all".

ad.4/ Criminal responsibility of the master for criminal acts of the servant.

In some cases the master is made liable criminally for the acts of his servant. In England there are two cases of statutory offences with regard to whom the master is responsible for the servant even if he had no knowledge of his act, or even when the servant acted contrary to the express orders of the master. But the general rule in the common law is that the master is not involved in any criminal liability unless he has himself authorised the acts of his servant, or aided and abetted them. "To render him liable criminally this authorisation must have been given either expressly or else by a general authority couched in terms so wide as to imply permission to execute it even criminally". /Kenny p. 457. I think it could be regarded as a principle common to all systems of criminal law. This principle is of great importance for the criminal responsibility of the German Government and its members, for the criminal acts of the subordinate authorities, with regard to the position of the German officials /see the German Civil Servants Act 1937, explained in Chapter II, pp. 5 and 6 and with regard to the so-called "general clauses".

ad. 5/ Criminal liability of corporations /corporate liability/.

In this respect I refer to what I said on page 28 of my report on the S.A., S.S. and Gestapo, and should like to draw attention to the principle of the Swiss Criminal Code of 1937, Article 172, quoted on page 3. I have not found a similar provision in the other Criminal Laws, but think that such cases are covered by the French provision about complot and criminal associations, and by the provision of the Czechoslovak and Soviet law about complot and banditry.

As to the Soviet criminal law I should like to stress that the Public Prosecutor of the Soviet Union in the trial against the Trotskists, Vyshinski, who is at present deputy to the Foreign Minister Molotov, stated the following opinion about the criminal responsibility of a criminal gang: "every member of a criminal