

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

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

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

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

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

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

As I have not these preceding documents before me, I am not quite sure about the scope of the affirmation of international law or codification which is intended by the General Assembly; particularly I do not know whether the term "offences against the peace and security of mankind" covers the whole field of the Nuremberg Charter and Judgment, or whether it is restricted to what, in the Charter of the International Military Tribunal, are called "crimes against peace". The term "offences against the peace and security of mankind" has obviously been taken over from Mr. Francis Biddle's report to the President of the United States, which was published in the Department of State Bulletin of 24th November 1946, page 954, et seq. The correspondence between Mr. Truman and Mr. Biddle leaves open the question, however, whether the American initiative refers only to crimes against peace or includes also war crimes proper and crimes against humanity. The last sentence of the second paragraph of the President's letter of 12th November 1946, appears to indicate that crimes against humanity are to be included. If this is so, the further question arises whether the concept of crimes against humanity is to be included in the "emasculated" form which it acquired by the

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

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

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

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

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

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

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

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

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

Yours sincerely,

Sgd. Egon Schwelb.
Legal Officer.

1 copy of each by separate post:

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

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

New York, 17 January, 1947.

Dear Mr. Schwelb,

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

Thanking you again, I am,

Yours sincerely,

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

Misc. 89
May 2nd, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

N O T E

ON DISCUSSIONS WITH PROFESSOR JOHN P. HUMPHREY

DIRECTOR OF THE DIVISION ON HUMAN RIGHTS

OF THE

SECRETARIAT OF THE UNITED NATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MISC. 90.

May 2nd, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

INVITATION TO EIGHTH INTERNATIONAL CONFERENCE FOR THE
UNIFICATION OF CRIMINAL LAW

2600/C/R

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

29th April, 1947.

Dear Colonel Ledingham:

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

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

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

Yours sincerely,

Sgd. M. de Baer.

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

TRANSLATION

8th International Conference for the
Unification of Criminal Law.

(Note to accompany the invitation of the Belgian Government)

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

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

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

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

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

Two questions figure on the agenda:-

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

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

2. Definition of Crimes against Humanity.

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

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

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

The resolution ran as follows:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REPORTS

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

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

The reports should consist:

on the first question

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

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

MISC. 90.

May 2nd, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

INVITATION TO EIGHTH INTERNATIONAL CONFERENCE FOR THE

UNIFICATION OF CRIMINAL LAW

2600/C/R

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UNITED NATIONS WAR CRIMES COMMISSION

War Crimes in Italian Criminal Law.

Explanatory Memorandum compiled by the Italian Ministry of
Foreign Affairs.

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

TRANSLATION

MINISTRY OF FOREIGN AFFAIRS.

War Crimes in Italian Criminal Law.

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

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

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

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

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

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

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

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

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

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

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

(a) unlawful acts of war:

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

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

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

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

(c) Offences against prisoners of war:

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

(d) Offences against hostages:

Hostages enjoy the same status as prisoners of war.

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

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

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

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

UNITED NATIONS WAR CRIMES COMMISSION.

MISC. 92.

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

May 9th 1947.

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

MISC. NO: 93
May 16th, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

(Translation)

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

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

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

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

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

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

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

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

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

Sgd. DAUTRICOURT
Permanent Secretary.

Brussels. March 31st, 1947.

Misc. 94.
23rd May, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

Bibliography of Legal Literature
on the Law of War Crimes and Belligerent Occupation
in the Second World War.

Consolidated List. (*)

Compiled by Egon Schwelb, Legal Officer.

C.K.A. (Probably Allen)	Nuremberg: Before and After.	"Truth" 23.11.45.
Alderman, Sidney S.	Background and Highlights of the Nuremberg Trials.	I.C.C. Practitioners' Journal, Nov. 1946, p. 106.
Anonymous (M. de Baer).	The Treatment of War Crimes I. The experience of 1918-22.	"Bulletin of International News" (Royal Institute of International Affairs). Vol. XXII (No. 3) (Feb. 1945).
Anonymous (M. de Baer).	The Treatment of War Crimes II. The present situation.	"Bulletin of International News". Vol. XXII (No. 5), (March 1945.).
Anonymous (M. de Baer).	The Treatment of War Crimes III. Quislings and traitors.	"Bulletin of International News", Vol. XXII (No. 6), (March 1945).
Anonymous (M. de Baer).	The Treatment of War Crimes IV. Treaty Violations.	Vol. XXII (No. 7), (March 1945).
Anderson, C. Arnold.	"The Utility of the Proposed Trial and Punishment of Enemy Leaders".	American Political Science Review, Vol. 37 (1943), pp. 1081, 1098-9.
American Society of International Law.	Proceedings of the;	1943.
Eugène Aronéanu	Le Crime contre l'Humanité	Nouvelle Revue de Droit International Privé. No. 2, 1946, p. 15.
Baer, M. de See also: London International Assembly, Judex, Anonymous.		
Baer, M. de	Considerations of present interest on the Pact of Paris.	Message (London), January 1944.
Baer, M. de	The case against war criminals.	Free World, (New York), 1944, pp. 184-190, 191.
Baer, M. de	Le Châtiment des crimes de guerre,	"Solidarity" (London), Vol. II, 3.
Baer, M. de	Punishment of war criminals,	"Solidarity" (London), Vol. II, 3, pp. 38-43.

(*) This list replaces Docs. Misc. Nos. 19, 24, 34, 45 and 52.

Baer, M. de	The treatment of war criminals, a lesson from the past.	Message (London). November, 1942.
Baer, M. de	The treatment of war criminals, suggestions for the future.	Message (London), December, 1942.
Baer, M. de	The legal side of unconditional surrender.	Message (London), August, 1943.
Baer, M. de	"Reliable Germans?"	"Belgium" (New York), Vol.IV, No.2 (1943), pp.57-61.
Baer, M. de	The punishment of war criminals.	"Belgium" (New York), Vol.III No.8,(1942), pp.32-37.
Baer, M. de	The neutrals and war criminals.	Message (London), Nov.1943.
Baer, M. de	"War Criminals"	Free World (New York), February 1944, pp.131-135.
Barrett, R.W. see Lester Nurrick.		
Barrister-at-law.	The Trial of the Nazis.	Fortnightly Review, 1945.
Bathurst, M.E.	The United Nations War Crimes Commission.	(39)American Journal of International Law (1945), p.565.
Bauer, Fritz,	Die Kriegsverbrecher vor Gericht	Zürich, 1945.
Béguin, Pierre,	Le Neutralité et le droit d'asile.	Journal de Genève, 15th September, 1945.
	L'extradition des criminels de guerre.	Journal de Genève, 27th September 1945.
Belgion, Montgomery.	The Punishment of War Criminals. Letter to the Editor of:	Theology, (December 1945-.
Belgion, Montgomery.	Epitaph on Nuremberg.	London, 1947.
Bentwich, Norman.	"The Law of War" in "International Law"	Royal Institute of Inter- national Affairs (Pamphlet) 1945.
Bentwich, Norman.	Nuremberg Issues.	The Spectator, 16.11.45.
Bentwich, Norman.	The Belsen Trial.	The Law Journal, Vol.XCV. 24.11.45.
Bernays, Murray C.	The Legal Basis of the Nuremberg Trials.	Survey Graphic, New York, January 1946. Condensed in Reader's Digest March, 1946.
Betts, E.C.	The Law of Military Occupation.	Washington, 1941.
Bial, Dr. Louis C.	Vergeltung und Wiedergutmachung in Deutschland.	Havana: Editorial Lex. 1945.
Biddle, Hon. Francis.	Report to President Truman on 9th November 1946.	Department of State Bulletin Vol.15, No.386(November 24, 1946), pp.954-957.
Elakeney, B.B.	International Military Tribunal.	American Bar Ass.Journal, Aug.1946, Vol.32, No.8.

Bisschop, W.R.	Criminality of War and its prevention.	Transactions of the Grotius Society for the Year 1943 (5.5.1943).
Bochet, Paul du	Le châtiment des crimes de guerre.	L'Avenir, Stockholm, 1944.
Boissarie, André	La justice internationale ou la mort.	Les Lettres Francaises. 11th January 1946.
Borchard, E.	The Treatment of Enemy Property.	Georgetown Law Journal, May 1946, Vol.34, No.4.
Bower, Francis.	Genocide	The Nineteenth Century. 1945, p.235.
Brierly, Professor.		Observer, 8th April, 1945.
Brierly, Professor.	The Nature of War Crimes Jurisdiction.	2 The Norseman, No.3, May-June 1944.
Caloyanni, Megalos A.	Cour Pénale Internationale et Code répressif des Nations.	La Revue de Droit International (Geneva) 1945, (No.4.)
Cambell A.H., Professor.	Fascism and Legality.	(62) Law Quarterly Review April, 1946, p.141.
Cassin, René see London International Assembly.		
Cecil, Viscount.	The War and After	Contemporary Review, December, 1942.
Cheatham, E.E.	Le statut juridique des prisonniers de guerre italiens aux Etats-Unis.	Journal du Droit International, Jan-Feb-March, 1940-45, (Vols.67-72), p.52.
Chicago Tribune (Editorial)	Aggressor Nations.	2nd October, 1946.
Chorley, R.S.T. (now Lord).	Military Occupation and the Rule of Law.	Modern Law Review, Vol.8, No.3 (July 1945).
Cohn, E.	The Problem of War Crimes To-day.	Transactions of the Grotius Society, London, 1941, p.125.
Cowles, Willard, B.	High Government Officials as War Criminals.	American Society of International Law, Proceedings, 1945, p.54.
Cowles, Willard B.	Trial of War criminals by Military Tribunals.	American Bar Assn. Journal, June 1944.
Cowles, Willard B.	Universality of Jurisdiction over War Crimes.	California Law Review, Vol.33(1945), p.177.
Creel George,	War Criminals and Punishment.	London, 1945.
Dickinson, E.D.		Proc. Am. Soc. Int. Law, 1943, p.46.
Doman, Nicholas,	Political Consequences of the Nuremberg Trial.	American Academy of Political and Social Sciences, Annals, Vol.246, (July 1946) pp. 81-90.

Douglas, Justice Wm. O.	Introduction to Symposium on World Organisation.	Yale Law Journal, August 1946, p.868.
E.	The British Court for War Criminals.	The Law Journal, 15th Sept. 1945.
E.	Extradition of War Criminals.	Law Journal, 29.12.45.
Eagleton, C.	"Of the Illusion that War does not change".	(35) American Journal of International Law, (1941), p.660.
Eagleton, Clyde,	"Punishment of War Criminals by the United Nations".	American Journal of International Law, Vol.37, (1943), p.495.
Ečer, Dr. Bohuslav,	see also London International Assembly.	
Ečer, Dr. Boh.	The Lessons of the Kharkov Trials.	London, 1943.
Ečer, Dr. Boh.	Hlavní Materiálně-Právní Normy Norimberského Procesu. (The Main provisions of substantive law of the Nuremberg Trial. (In Czech).	Právník, Vol.85, No.1-2, Prague, April 1946.
Ečer, Dr. Boh.	Právo v boji s nacismem. (The law in the struggle against Nazism). (In Czech).	Brno (Czechoslovakia), 1946. Knihovna Zár.
Ed. F.	Le châtimeut des criminels de guerre.	La Voix des Peuples. Geneva, September 1944.
Egbert, L.	L'accusation américaine au tribunal militaire international.	Nouvelle Revue de Droit International Privé, No.3. 1946.
Fairman, C.	The Supreme Court on Military Jurisdiction; Martial Rule in Hawaii and the Yamashita Case.	Harvard Law Review, July. 1946, Vol.59, No.6.
Feilchenfeld, E.	The International Economic Law of Belligerent Occupation.	Washington, 1942.
Finch, George A.	"Retribution for War Crimes".	American Journal of International Law, Vol.37, (1943) p. 81.
Finch, George A.	Letters to the New York Times.	22.10.44 and 12.11.44.
Finch, George A.	The Nuremberg Trial and International Law.	American Journal of International Law, Jan.1947, Vol.41, No.1, p.20.
Forbes, G.W.	Some legal aspects of the Nuremberg Trial.	Canadian Bar Review, Aug-Sept. 1946, Vol.24, No.7.
"Fortune", New York. (Anonymous).	The Nuremberg Novelty.	(1945), 32, Fortune, 140-41.
Fraenkel, Ernst.	Military Occupation and the Rule of Law.	New York, 1944.
Fried, John H.E.	Transfer of Civilian Manpower from Occupied Territory.	(40) American Journal of International Law (1946), p.303.

Fried, J.H.E.	The Exploitation of Foreign Labour by Germany.	Montreal: International Labour Office, 1945.
Friedmann, W.	International Law and the Present War.	Transactions of the Grotius Society, 1941, p.221.
G.L.J.	Crimes against Humanity.	British Zone Review, Vol.1, No.21, 6th July 1946.
Gargon, Maurice,	La Répression des crimes de guerre	Le Figaro, 1945.
Gaspard, Armand.	Au procès de Nuremberg.	Gazette de Lausanne.25.10.45.
Gérard, R.	Le procès de Nuremberg répond-il à l'esprit de justice.	Voix des Peuples, Geneva, 1946, No.2, p.60.
Glück, Sheldon.	Justice and the War Criminals.	American Mercury, March, 1945.
Glueck, Sheldon.	"Trial of Axis War Criminals"	Free World, Vol.IV(1942), p.138.
Glueck, Sheldon.	By what Tribunal shall War Offenders be tried?	(1943) 56 Harvard Law Review, p. 1059.
Glueck, Sheldon.	War Criminals, their Prosecution and Punishment.	New York, 1944.
Glueck, Sheldon.	War Criminals, their Prosecution and Punishment. The Record of History.	Lawyers Guild Review. Vol.V, No.1, Jan-Feb. 1945.
Glueck, Sheldon.	The Nuremberg Trial and Aggressive War.	Vol.LIX, No.3, Harvard Law Review, February 1946.
Goodhart, Prof.A.L.	Letter to "The Times", London.	29th October, 1946.
Goodhart, Prof.A.L.	The Legality of the Nuremberg Trials (Lecture delivered before Edinburgh University Law Faculty Society.)	Juridical Review, April, 1946.
Goodhart, Prof.A.L.	What Acts of War are Justifiable?	Oxford, 1940.
Goodhart, A.L.	Rules and Procedure to Govern the case of Crimes against International Public Order.	The Canadian Bar Review, 1942, p.231.
Graham, Prof.Malbone W.	Peace, Security and the United Nations.	The University of Chicago Press, 1946, pp.52 et seq.
Graven, J. (Professor, Geneva).	Conclusions de la discussion sur le principe "nullum crimen nulla poena sine lege" et son application au Procès de Nuremberg.	Radio - Genève, 28th January, 1946.
Gregory, T.	Murder is Murder and the Guilty can be Punished.	American Bar Association Journal, September 1946, Vol. 32, No.9.
Hall, J.W.(Editor)	Trial of William Joyce,	William Hodge & Co., Notable British Trials Series.
Hammer Ellen and Salvin Marina.	The Taking of Hostages in Theory and Practice.	American Journal of International Law, Vol.38 (1944), p.20.

- | | | |
|----------------------|--|--|
| Harris, Wilson, M.P. | Nuremberg Justice. | Spectator, 18. 1. 46. |
| Harris, Wilson, M.P. | The Nuremberg Tribunal. | The Times, 21.1.46. |
| Hawkins, R.H. | The Punishment of War Criminals:
A Christian Approach. | Theolog. Monthly Review,
Vol. XLVIII, No. 304, Oct. 45. |
| Hobza, Prof. Antonín | Průhled Mezinárodního Práva
Válečného. (Survey of the
International Law of War).
Dodatek: Trestání válečných
Zločinců.
(Supplement: The Punishment of
War Criminals) (In Czech). | Prague, Všechno, 1946. |
| Honig, F. | Nuremberg - Justice or Vengeance. | World Affairs. The London
Institute of World Affairs,
January 1947, p. 79. |
| Hudson, Manley O. | International Tribunals, Past
and Future. | Washington, 1944, pp. 180 ff. |
| Hula, Erich, | The Revival of the Idea of
Punitive War. | Thought, Vol. 21 (1946), pp.
405 - 434. |
| Hula, Erich, | Punishment for War Crimes. | Social Research, Vol. 13
(1946), p. 1. |
| Hyde, C.C. | "Punishment of War Criminals". | Proc. Am. Soc. Int. Law, 1943,
p. 39. |
| Hyde, C.C. | Aspects of the Saboteur Cases. | A. J. I. L., Vol. 37, (1943),
p. 88. |
| Jackson, R.H. | Trials of War Criminals. | Am. Bar Assn. Journal, Vol. 32
No. 6, June 1946. |
| Jackson, R.H. | Report to the President from
Justice Robert H. Jackson, Chief of
Counsel for the United States in
the Prosecution of Axis War
Criminals, June 7, 1945. | Am. Journal of International
Law, Vol. 39, Supplement,
p. 178. |
| Jackson, R.H. | Address before the Inter-American
Bar Association, Habana, Cuba,
27 March 1941 on the non-belligerent
attitude of the United States. | Am. Journal of Int. Law,
Vol. 35 (1941), pp. 348-359. |
| Jackson, R.H. | Worst Crime of All. | The New York Times Magazine.
Sept. 9, 1945, p. 45. |
| Jackson, R.H. | The Case against the Nazi War
Criminals. | New York: Alfred A. Knopf;
1946. |
| Jackson, R.H. | Opening Address at the Trial of
War Criminals at Nuremberg. | The Washington Post,
Washington D.C. |
| Jamieson, Harvey M. | Some Aspects of the Law of
Belligerent Occupation. | The Juridical Review. Vol.
LVII (1945), p. 6. |
| Jessup, Philip C. | A belligerent occupant's powers
over property. | Am. Journal of Int. Law, Vol.
38 (1944), p. 457. |
| Judex, (M. de Baer) | The War Crimes Commission and the
Punishment of War Criminals. | "Headway", The Journal of the
League of Nations Union,
No. 10, July 1945. |

- | | | |
|--|---|--|
| Judex (M. de Baer) | The treatment of war crimes and crimes incidental to the war. | Reprint from the Feb. and March 1945 issues of the Bulletin of International News. Royal Institute of International Affairs. |
| Juglart, Michel de.
Prof. | Répertoire méthodique de la jurisprudence militaire. Cour de Cassation et Tribunaux Militaires de Cassation. | Paris, 1946. Librairie du Recueil Sirey. pp.232 - 256. |
| Kelsen, Hans. Prof. | Collective and Individual responsibility in International Law with particular regard to the punishment of war criminals. | (31) Californian Law Review 1943, p.534. |
| Kelsen, Hans. Prof. | Peace through Law. | Chapel Hill: The University of North Carolina Press. London: Oxford University Press, 1944. |
| Kelsen, Hans. Prof. | The Legal Status of Germany according to the Declaration of Berlin. | Am. Journal of Int. Law. Vol.39 (1945), p.518. |
| Kelsen, Hans. | The Rule against Ex Poste Facto laws and the Prosecution of the Axis War Criminals. | Judge Advocate Journal, Vol. 2, (1945), p.8. |
| Konwitz, Milton R. | Will Nuremberg serve justice? | "Commentary" A Jewish Review published by the American Jewish Committee. Jan.1946, Vol.1, No.3. |
| Korovin, Eugene A.
(Prof. of Int.Law,
University of Moscow.) | The Second World War and International Law. | Am. Journal of Int. Law, Vol. 40, No.4, p.742. |
| Krasnodar and Kharkov Trials. | The People's Verdict. A full Report of the Proceedings at the Krasnodar and Kharkov German Atrocity Trials. English text. | London, 1944. |
| Kuhn, Arthur K. | The Execution of Hostages. | Am. Journal of Int. Law, Vol. 36, (1942), p.271. |
| Lachs, Manfred, | History or Law. Letter to the Editor of the Manchester Guardian. | December 1st, 1945. |
| Lachs, Manfred. | War Crimes. An attempt to define the issues. | London, 1945. |
| Lachs, Manfred, | The unwritten laws of warfare. | Tulane Law Review, New Orleans, October 1945. |
| Lachs, Manfred, | Crimes de Guerre - Délits Politiques. | Revue de Droit International. Geneva (Jan-June 1945). |
| Lachs, Manfred. | War Crimes and Political Offences. | Juridical Review, Edinburgh, 1944. |
| Lauterpacht, H. Prof. | Punishment of War Crimes | Oppenheim-Lauterpacht "International Law", Vol. II, p.450, 251 et seq, 6th Edition Revised 1944. |

- Lauterpa. t, H. Prof. The Law of Nations and the Punishment of War Crimes. The British Year Book of Int. Law. 1944, p.58.
- Lauterpacht, H. Prof. An International Bill of the Rights of Man. New York, 1945, pp.93 and 99.
- Lawyer, War Crimes and International Law. Fortnightly, November 1945.
- Leale John, Jurat, Address to the Statesmen of Guernsey, (39) Am. Journal of Int. Law (1945) p. 775.
Guernsey. May 23, 1945. see Quincy Wright, The Value of International Law in Occupied Territory.
- Legal Correspondent. See Times Newspaper.
- Lemkin, Raphaël Axis Rule in Occupied Europe. Washington, 1944.
- Lemkin, Raphaël Genocide. The American Scholar, March 1946.
- Lemkin, Raphaël, Responsibility of persons acting on behalf of States in the crime of Genocide. The American Scholar, Vol. XV, No.2, (April 1946).
- Lemkin, Raphaël, Genocide as a crime under International Law. Am. Journal of Int. Law, Vol. 41(1947), p.145 et seq.
- Levy, Albert G.D. Criminal Responsibility of Individuals and International Law. University of Chicago Law Review, Vol.12(1945), pp. 313-332.
- Levy, Albert G.D. The Law and Procedure of War Crime Trials. (1943) 37 Am. Pol. Science Review, 1052-1077.
- Lew, Daniel H. Manchurian Booty and International Law. (40) Am. Journal of Int. Law. (1946) p.584.
- Leyrat, P de. Crime de la guerre et Crimes de guerre. Cahiers du Monde Nouveau, No.5, Paris, Dec.45, p.503.
- Liang, Dr. Yen-Li see London International Assembly.
- Lippmann, Walter, War Trials and the World State. Symposium "One World or None" published in U.S. by McGraw Hill Publishing Co. Extract in Sunday Times, 14 April 1946.
- Llosa, T.C.G.P. Tito y el "Movimiento Guerrillero" de Yugoslavia. (5) Revista Peruana de Derecho Internacional, No.15 Jan.Feb.Mar,45, p.27.
- London International Assembly (LIA) (M.de Baer, B.Eßer, Dr.Liang Yen-Li, René Cassin, T.M.de Moor and others.) The Punishment of War Criminals. Recommendations of the LIA (1943) London International Assembly, 11, Maiden Lane, London, W.C.2.
- London International Assembly. (as above) Reports on the trial and punishment of war crimes, being the reports of Commission I of the LIA under the chairmanship of M. de Baer. One Volume, 450 pages. (December 1943).
- McNair Arnold D. Municipal effects of belligerent occupation. The Law Quarterly Review, Vol.57 (1941), p.33.

McNair, Arnold D.	Legal Effects of War.(2nd Ed)	London, 1944.
Malézieux, R.	Le Statut International des Criminels de Guerre.	La Revue Générale de Droit International Public, 1941 - 1945.
Manner George.	The Legal Nature and Punishment of Criminal Acts of Violence contrary to the Laws of War.	American Journal of Int.Law, Vol.37 (1943), pp.407-435.
Marsh, Norman S.	Some Aspects of the German Legal System under National Socialism.	Law Quarterly Review, Vol.62 (1946), p.366. (Oct. 1946).
Melen, A.C.	La question des otages à la lumière du droit.	Revue de Droit International de Sciences Diplomatiques et Politiques. Jan.-Mar.1946, Vol.24, No.1.
Michaud, S.Stelling-	Les criminels de guerre.	Journal de Genève, 31.8.45.
Michaud, S.Stelling-	Le procès de Nuremberg.	Journal de Genève, 21.1.46.
Moor, T.M. de	see London International Assembly.	
Mouton, W.M.	Oorlogsmisdrijven (War Crimes). (In Dutch).	Nederlandsch Juristenblad, Vol.1946, Nos.30 and 31, pp. 509 et seq. and 529 et seq.
Muszkat, Marian.	see Sawicki George.	
Muszkat, Marian.	Wydawanie osób poszukiwanych lub skazanych za przestępstwa wojenne albo przestępstwa współpracy z nieprzyjacieleni. With English summary: Extradition of persons wanted or sentenced for war crimes or collaboration with the enemy.	"Państwo i Prawo" (State and Law). Vol. II, February, 1947.
Namier, L.B., Prof.	The Nuremberg Trial.	Manchester Guardian, 19th and 20th Nov., 1945.
National Lawyers Guild.	The Punishment of War Criminals. A statement of the National Lawyers Guild.	Lawyers Guild Review. Vol. IV, No.6.(Nov.-Dec. 1944).
Nobleman, E.E.	American Military Government Courts in Germany.	Am.Journal of Int.Law,Vol. 40. (1946), p.803.
Nurick, Lester and Barrett Roger W.	Legality of Guerilla Forces under the Laws of War.	(40) Am.Journal of Int.Law, (1946), p.563.
Nurick, Lester. (Judge Advocate General's Dept., U.S.A.)	The distinction between combatant and non-combatant in the law of war.	(39) Am.Journal of Int.Law, 1945, p.680.
Ottolenghi, G.	Le problème des criminels de guerre.	Revue de Droit International de Sciences Diplomatiques et Politiques. Jan.-Mar.1946, Vol.24, No.1.
P.D.	Note on the Nuremberg Trials.	Law Quarterly Review, Vol.62 July 1946, p.229.
Pella V.	La Justice pénale internationale.	(23) Revue de Droit International de sciences diplomatiques et politiques. July-September, 1945.

- | | | |
|---|--|---|
| Pella, Vespasien P. | La Guerre-Crime et les Criminels de Guerre. Reflexions sur la justice pénale internationale. | Geneva, Revue de Droit International de Science Diplomatiques et Politiques, and Paris, Editions A. Pedone, 1946. |
| Popper Martin, | Statement of Martin Popper, National Executive Secretary of the National Lawyers Guild on the Punishment of War Criminals, Before the House Foreign Affairs Committee, March 26, 1945. | 16 East 41 Street, New York, N.Y. |
| Potter, Pitman B. | Basic Energy and International Law | (39) Am. Journal of Int. Law, (1945), p.788. |
| Pradelle, Albert de la | Une Révolution dans Le Droit Pénal International | Nouvelle Revue de Droit International Privé No.2, 1946, p.5. |
| Pritt, D.N., K.C. M.P. | "War Criminals". | Published by Labour Monthly London, 1944. |
| R.Y.J. | Open Towns. | British Year Book of Int. Law. (1945), p.258. |
| Radin, Max. | Justice at Nuremberg. | Foreign Affairs, Vol.24 (1946c) |
| Radin, Max. | War Crimes and the Crime of War. | (1945) Virginia Law Quarterly pp.497-516. |
| Reiwald, P. | Conquête de la paix. | Geneva, 1944, Editions du Rhône. |
| Reiwald, Paul | Nürnberger Zwischenbilanz | Basler Nationalzeitung. 20th February 1946. |
| Roberts, C.E. Bechhofer "Ephesian" (Editor) | The Trial of William Joyce. | Jarrolds Publishers, London The Old Bailey Trial Series, 1946. |
| Robinson, Jacob. | The Nuremberg Judgment. | Congress Weekly. A Review of Jewish Interests (New York) No.25, Vol.13, 25th October, 1946. |
| Rowson, S.W.D. | Punishment of War Criminals. | Law Quarterly Review, Vol. 60 (1944), p.225. |
| Sack, Alexander N. | War Criminals and the Defence of Superior Order in International Law. | Lawyers Guild Review, Vol.V No.1, Jan.-Feb. 1945. See Also Law Quarterly Review, Vol.60 (1944). |
| Sack, Alex.N. Prof. | Punishment of War Criminals and the Defence of Superior Order. | The Law Quarterly Review, Vol.60 (1944) pp.63 et seq. See also Lawyers Guild Review, Vol.V, No.1 (1945). |
| Salvin Marina, | see Hammer Ellen. | |
| Sankey, Lord. | | Fortnightly Review, Jan.1943. |
| Sawicki, George and Muszkat Marian. | Les Revendications Allemandes sur les Territoires Polonais Occidentaux a la lumière du Droit Pénal International. | Le Bureau d'Informations Polonaises, Paris, 1947. |

Schick, F.B.	War Criminals and the Law of the United Nations.	Toronto Law Review, January, 1947.
Schick, F.B.	Law of Politics for the Maintenance of Peace.	Juridical Review, Edinburgh. Vol.59, No.1, April 1947, p.50.
Schneeberger, E	Property and War.	Georgetown Law Journal, March 1946, Vol.34, No.3.
Schuschnigg, Dr.Kurt,	Destin de Nuremberg.	Courrier de Genève, 27.12.45.
Schwarzenberger, Dr. Georg	War Crimes and the Problem of an International Criminal Court.	Czechoslovak Year Book of Int.Law, London, 1942.
Schwarzenberger, Dr.G.	Tus Pacis ac Belli? Prolegomena to a Sociology of International Law.	Am.Journal of Int.Law. Vol. 37 (1943), p.460.
Schwarzenberger,Dr.G.	International Law and Totalitarian Lawlessness.	London, 1943.
Schwarzenberger,Dr.G.	A Forerunner of Nuremberg. The Breisach War Crime Trial of 1474.	Manchester Guardian, 28.9.46.
Schwarzenberger,Dr.G.	The Judgment of Nuremberg.	Tulane Law Review, Mar.1947.
Schwelb, Egon.	Legislation for Enemy Occupied Territory in the British Empire.	Transactions of the Grotius Society, 1944, p.239.
Schwelb, Egon.	The Legal Status of Germany.	Am.Journal of Int.Law, Vol. 40 (1946), p.811.
Schwelb, Egon.	Crimes against Humanity.	British Year Book of Int. Law, 1946.
Schwelb, Egon.	The United Nations War Crimes Commission.	British Year Book of International Law, 1946.
Simon, Viscount.	Nuremberg and Belsen.	Sunday Times. 25.11.45.
Smith, Prof.H.A.	The Nuremberg Trials.	Free Europe (London). Vol.13 No.162, July 1946.
Smith, W.	The Nuremberg Trials.	Am.Bar Assn.Journla, July 1946, Vol.32, No.7.
Sottile Antoine	Les Criminels de Guerre et le Nouveau Droit Pénal International seul moyen efficace pour assurer la Paix du Monde.	La Revue de Droit International. Genève. (1945) No.4.
Stimson, Henry L.	The Nuremberg Trial: Landmark in Law.	Foreign Affairs. An American Quarterly Review, January 1947.
Stoner, John E.	S.O.Levinson and the Pact of Paris.	Chicago, 1943, pp.196, 209.
Stowell, Ellery C.	The Laws of War and the Atomic Bomb.	(39) Am.Journal of Int.Law, (1945), p.784.
Stowell, Ellery C.	Military Reprisals and the Sanctions of the Laws of War.	American Journal of Int.Law. Vol.36,(1942), p.643.
Stránský, T.	The Inter-Allied Conference of War Crimes and the Problem of Retribution.	The New Commonwealth Quarterly, 1942, p.250.

- | | | |
|---|---|---|
| Thomas, Elbert D.
(Senator, Utah). | Atomic Bombs in International
Society. | (39) Am. Journal of Int. Law.
(1945), p.736. |
| Thomas, E.D., Senator. | What we must do with War Criminals. | The American, Feb., 1943. |
| Thompson, Dorothy. | Nazi Influence in the Anti-Nazi
World. Dubious Legal Sanctions for
War Crimes Trials. | "On the Record", Oct. 1945.
reprinted in Liverpool
Daily Post, 22.10.45. |
| Thompson, Dorothy. | Nuremberg Justice. Some of the
Issues Raised. | Yorkshire Post, 3.12.45. |
| Times Literary
Supplement. | War Crimes and the Law. (Review
of the books by Lachs and Trainin). | The Times Literary Supple-
ment No. 2275, 8.9.45. |
| The Times (newspaper)
London. (By a Legal
Correspondent). | War Crimes. Work of the United
Nations Commission. International
Concepts of Justice. | The Times, 18.12.46. |
| Trainin, Prof. I. P. | Questions of Guerilla Warfare in
the Law of War.

The same, translated by Dr. John
N. Hazard and republished by
permission in: | Izvestia Akademii Nauk,
S.S.S.R. Otdelenie ekonomiki
a prava. No. 4 (1945).
Am. Journal of Int. Law,
Vol. 40 (1946), No. 3, p. 534. |
| Trainin, Prof. I. | Court Procedure at Nuremberg. | Soviet News, 21.12.45. |
| Trainin, Prof. I. | International and National Trials
of War Criminals. | Soviet News, 4.1.46. |
| Trainin, Prof. I. | Looking for Loopholes. | Soviet News, No. 1320.
8th December, 1945. |
| Trainin, A. N. | Hitlerite Responsibility under
Criminal Law.

English translation by A. Rothstein, | First published in Russian
for the Institute of Law,
Academy of Sciences of the
U.S.S.R.
London, 1945. |
| Treadwell, G. W. | Military Courts Manual. | London, 1945. |
| Truman, President
Henry. | Reply to the report by Judge
Francis Biddle. | Department of State Bulletin
Vol. 15, No. 386 (24.11.46),
pp. 954-957. |
| UNIO (United Nations
Information Organisa-
tion.) | War Crimes and the Punishment of
War Criminals. | Information Paper No. 1.
Issued by the Reference
Division of the United
Nations Information
Organisation, 1945. |
| Vambery. | Law and Legalism. | (1945) 161 The Nation,
New York, p. 573. |
| Vedovato, G. | La punizione dei crimini di
guerra. | Rivista di Studi Politici
Internazionali. Florence,
1945, pp. 173 et seq. |
| War Department (U.S.A.) | Treaties governing land warfare.
(Technical Manual). | U.S. Government Printing
Office, Washington, 1944. |
| Watt, Fr. Lewis, S. J. | Trials of War Criminals. | Clergy Review, 1946. |
| Weis, Georg. | International Criminal Justice
in Time of Peace. | (28) Transactions of the
Grotius Society (1942), p. 40. |

Wilding-White, A.M.	Punishing War Criminals. What is the applicable law?	The Law Journal, Vol.XCV, October 1945.
Wilson, G.G.	The Submarine and Place of Safety.	Am.Journal of Int. Law, Vol. 35 (1941), p.496.
Wilson, G.G.	The Guerilla and the Lawful combatant.	Am.Journal of Int.Law, Vol. 37, (1943), p.494.
Winfield, Prof.P.H.	War Crimes and the Future of International Law.	Fortnightly Review, March 1946.
Woolsey, L.H.	The forced transfer of property in enemy occupied territories.	Am.Journal of Int.Law, Vol. 37 (1943). p.282.
Wright, Lord.	The Meaning of the Nuremberg Trial.	The Listener (B.B.C.) Vol. XXXVI No.933, 28.11.46, p.735
Wright, Lord.	War Crimes under International Law.	Law Quarterly Review, January 1946.
Wright, Lord.	Letter to "The Times".	21st January 1944.
Wright, Lord.	Letter to the "Sunday Times"	28th October 1945.
Wright, Lord.	"That the Guilty shall not Escape".	New York Times Magazine, 13th May 1945.
Wright, Lord.	"For Crimes against Humanity".	New York Times Magazine, 1945.
Wright, Lord.	Letter to the New York Times.	30th June 1946.
Wright, Quincy,	The Law of the Nuremberg Trial.	Am.Journal of Int.Law, Vol. 41 (1947), No.1, pp.38-72.
Wright, Quincy,	"War Criminals"	Am.Journal of Int.Law, Vol. 39, (1945), pp.257 et seq.
Wright, Quincy,	The Munich Settlement and International Law.	Am.Journal of Int.Law, Vol. 33, (1939), p.12.
Wright, Quincy,	International Law and the Balance of Power.	American Journal of Int.Law, Vol.37,(1943), p.97.
Wright, Quincy,	International Law and the Totalitarian States.	American Political Science Review, Vol.35,(1941),p.741.
Wright, Quincy,	A Study of War.	Chicago, 1942.
Wright, Quincy,	Due Process and International Law. (Note on <u>in re Yamashita</u>).	(40) Am.Journal of Int.Law. (1946), p.398.
Wright, Quincy,	The Value of International Law in Occupied Territory. (Analysis of address by Jurat John Leale, President of the State Controlling Committee to the statesmen of Guernsey assembled at the Royal Court (23rd May 1945).	(39) Am.Journal of Int.Law. (1945), p.775.
Wright, Quincy,	Human Rights and the World Order.	International Conciliation, No.389 (April 1943), pp.238 et seq.

Wright, Quincy,	The Nuremberg Trial.	American Academy of Political and Social Science, Annals, Vol.246, (July 1946) pp.72-80.
Wright, Quincy,	The Nuremberg Trial.	Chicago Bar Record, Vol.27 (1946), pp.201-219.
Wright, Quincy and others.	Legal Problems in the Far Eastern Conflict.	New York, 1941.
Wyzanski,	The Nuremberg War Crimes Trial. A communication to the (American) Academy of Arts and Sciences.	December 12th, 1945.
Young, Sir George.	War Criminals.	Contemporary Review, August 1942.

UNITED NATIONS WAR CRIMES COMMISSION.

Belgian War Crimes Enactments.

The Belgian Representative on the United Nations War Crimes Commission, Monsieur M. de Baer, has made available to the Secretariat the Belgian Enactments, translations or extracts of which are circulated in this paper.

The paper contains:

- (1) Translation of the Arrêté-Loi of 29th April 1943, concerning the suspension of the prescription (limitation) both of public prosecutions and civil actions, arising from certain crimes.
- (2) A resumé of the Arrêté-Loi of 5th August 1943 whereby jurisdiction is conferred upon Belgian courts in respect of certain crimes and misdemeanours which have been committed during the war outside Belgium.
- (3) Translation of the Act of Parliament of 30th April 1947 amending the Arrêté-Loi of 5th August 1943.

The resumé of the Arrêté-Loi of 5th August 1943, and the translations have been prepared by Monsieur M. de Baer.

- (4) An explanatory Note by Monsieur de Baer on the Act of Parliament of 30th April 1947.

I. Translation of the Arrêté-Loi of 29th April 1943, as published in "Moniteur Belge" of 8th May 1943, concerning the suspension of the time of limitation in criminal matters.

Art. 1.

The time limit (prescription) on public and civil action, resulting from a crime or a misdemeanour is suspended until the day when the national territory shall be completely liberated from enemy occupation, for all the following crimes and misdemeanours:-

- (1) those set out in articles 101 to 136, 147 to 159 and 233 to 259 of the Penal Code (crimes against public safety, crimes against the constitution and crimes committed by officials);
- (2) the Military Penal Code;
- (3) those specified in the law of 10th April 1941 relating to the measures of dispossession carried out by the enemy;
- (4) those set out in the law of 10th April 1941 relating to the prohibition on economic relations with the enemy.

Art. 2.

The time limit is also suspended for all other crimes and misdemeanours, whose trial has been rendered impossible, hindered or deferred on account of the enemy occupation of national territory.

Art. 3.

This law will come into force on the day of its publication in the Moniteur.

II. Resumé of the Arrêté-Loi of 5th August 1943, as published in "Moniteur Belge" of 20th September 1943, concerning certain crimes committed in time of war outside Belgian national territory.

Article 1 lays down that where a Belgian has, in time of war, committed a crime abroad against a citizen of a country allied to Belgium, he can be tried in Belgium. The trial may be set in motion either on the plea of the foreign victim or his family, or on an official notice being served to the Belgian authorities by the authorities of the country in which the crime was committed, or of the country of which the injured foreigner is or has been a national.

Article 2 lays down provisions for the trial in Belgium of a foreigner who, outside the territory of Belgium, is guilty in time of war of the following crimes against a Belgian national:- homicide, wilful bodily injury, rape, indecent assault or denunciation to the enemy.

Article 3 provides for the trial in Belgium only of those Belgians who are charged with committing abroad in time of war treachery or forgery of Belgian legal currency or crimes committed abroad which would have been crimes by Belgian law if committed in Belgium; or the trial in Belgium of the foreigner covered by Article 2 above, provided only that such persons are found either on Belgian or in enemy territory, or if their extradition can be obtained.

Article 4 provides that a person having committed crimes within the category of this law shall not be tried in Belgium either if (1) he has already been tried in a foreign country for the crime in question and has been acquitted, or (2) having been condemned has served his sentence, or (3) has had his sentence remitted. The article also provides that all detention which has been undergone abroad, for the charge for which he is to be tried in Belgium, shall be taken into consideration when calculating the period during which he shall be deprived of his liberty.

Article 5 provides that the application of this law shall be effective even if the crime was committed before the law was promulgated.

III. Act of Parliament of 30th April 1947 as published in "Moniteur Belge" No.135 of 15th May 1947, amending the Arrêté-Loi of 5th August 1943.

Article 1.

Article 1 of the decree of 5th August 1943 conferring exceptional jurisdiction on the Belgian courts in the matter of certain crimes and misdemeanours committed outside national territory in time of war is replaced by the following article:

" The following addition shall be made to Article 8 of the preliminary chapter of the Code of Criminal Procedure:-

' A Belgian who, in time of war, committed outside national territory, a crime or misdemeanour against a national of a country allied to Belgium as defined in paragraph 2 of Article 117 of the Criminal Code, can be tried in Belgium, either on the request of the injured foreigner or of his family, or on receipt of an official notice served to the Belgian authorities by the authorities of the country where the crime was committed or of the country of which the injured party is or has been a national. This applies even if the crime is not one of those mentioned in the law of extradition.' "

UNITED NATIONS WAR CRIMES COMMISSION.

MISC. 96.

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

June 12th 1947.

	<u>Cases tried.</u>	<u>Accused involved.</u>	<u>Death.</u>	<u>Imprisonment.</u>	<u>Acquitted.</u>	<u>Remarks.</u>
EUROPE: Countries whose reports comprise War Criminals only.						
United States. USFET)	188	861	237	498	126	as at 4. 4.47.
Britain. USMET)						
BAOR						
CMF & BTA.	225	738	172	348	218	as at 1. 6.47.
France:	40	272	125	128	19	as at 1. 4.47.
Greece:	2	4	2	2	-	as at 31. 3.47.
Netherlands.	1	1	1	-	-	as at 1. 6.47.
Norway.	-	16	11	5	-	as at 16.10.47.
Yugoslavia.	5	79	63	16	-	as at 1. 5.47.
TOTAL:	-	1,971	611	997	363	
EUROPE: Countries whose reports show war criminals & collaborators combined.						
Czechoslovakia:	-	18,496	362	13,969	4,165.	as at 31.10.46.
Poland:	-	4,593	631	1,840	2,122	as at 1. 7.46.
TOTAL:		23,089	993	15,809	6,287.	
FAR EAST.						
United States:	202	574	140	380	54	as at 4. 4.47.
Britain:	236	744	243	414	87	as at 1. 6.47.
Australia:	234	733	141	371	221	as at 1. 4.47.
Netherlands East Indies.	52	70	33	35	2	as at 1. 6.47.
TOTAL:	724	2,121	557	1,200	364	

Misc. No. 97.
13th June, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

Article on the United Nations War Crimes Commission

in

"The International Law Quarterly".

The first number of Vol.1 of the International Law Quarterly (the British Journal of Public and Private International Law), dated Spring 1947, has just appeared.

Honorary Joint Editors of this new publication are Professor J.C.Cheshire and Dr. C.John Colombos. The Editorial Committee is presided over by Sir Cecil J.B.Hurst. The Managing Editor is Mr.E.H.Wall.

On pages 42 - 44 of the first number, there is published an article on the United Nations War Crimes Commission which is reproduced below. The Note is obviously based on information contained in the article "War Crimes. Work of the United Nations Commission. International Concepts of Justice" by a "Legal Correspondent", which appeared in "The Times" of 18th December 1946.

" The United Nations War Crimes Commission.

Over 24,000 persons in Europe have been tried for war crimes in British, United States, French, Greek, Norwegian, Czechoslovak and Polish courts (including, in respect of the two last named, persons on trial for collaboration and treachery), and of this number, 1,432 have been sentenced to death, 16,413 to terms of imprisonment and 6,520 have been acquitted. 1,468 persons in the Far East have been tried before United States, United Kingdom and Australian courts, and of this number, 457 have been sentenced to death, 735 to terms of imprisonment and 276 have been acquitted. These figures are taken from statistics available to the United Nations War Crimes Commission in early December 1946, and are constantly increasing.

The United Nations War Crimes Commission was set up in October 1943, at a meeting of the representatives of seventeen nations at the Foreign Office in London, though its intended formation had been announced a year previously by a simultaneous declaration of the British and United States Governments. Unfortunately the U.S.S.R. did not take part in the inaugural meeting and never joined the Commission. The above figures do not include the Soviet Union or the Soviet Zone of Germany for which data are not available.

Both Sir Cecil Hurst, the first President of the commission and Lord Wright, who succeeded him in that office, did most valuable work in a task demanding overwhelming labour, ability and tact. The original intention was that the commission should "investigate and record the evidence of war crimes" and "report to the Governments concerned", but the further task was added of "advising the Governments

concerned upon matters of a technical nature, such as the sort of tribunals to be employed for the trial of war criminals, the law to be applied, the procedure to be adopted, and the rules of evidence to be followed" and "to formulate recommendations for the guidance of Governments". In carrying out the first-named function, the Commission has examined more than 20,000 cases and completed forty-four lists of war criminals. Inclusion in the list results, if the person can be found, in his apprehension and surrender to the Government demanding his trial. The Commission continues to lend all possible assistance at all stages.

The Commission recommended in 1944 that the retributive action of the United Nations should not be restricted to technical war crimes, that is, violations of the laws and customs of war, particularly embodied in The Hague and Geneva Conventions, but should extend to the unprecedented crimes committed by the Nazi and other Axis Powers against both combatants and civilians in the occupied and Axis countries. This recommendation doubtless influenced the Four Power Agreement of August 8, 1945, establishing the International Military Tribunal and providing, *inter alia*, for the punishment of "crimes against humanity".

The view of those members of the Commission who held that in the state of international law as it existed in 1939 the launching of an aggressive war was not only illegal but criminal, was eventually accepted by the Allied Governments, included in the Four Power Agreement, and upheld in the judgment of the Nuremberg Tribunal.

Recommendations were also made by the Commission on the defence of "Act of State" and on that of "superior orders", which were eventually approved. The Charter of the International Military Tribunal provides that the official position of defendants, whether as heads of State or as responsible officials in Government departments, and the fact of their acting in pursuance of an order of their Government or of a superior shall not free them from responsibility, although superior orders may be taken into consideration in mitigation of punishment.

The recommendation of the Commission that special measures be taken against members of criminal organisations, such as the S.S. and Gestapo, was elaborated in the Charter of the Tribunal and implemented in the Judgment at Nuremberg.

The draft peace treaties, considered at the Paris Conference, by their inclusion of the conceptions of "crimes against peace" and "crimes against humanity", implemented the recommendations of the Commission as to the scope of the retributive action of the United Nations, while the proposal made by the Commission just before the San Francisco Conference that the Charter of the United Nations should embody provisions to the effect that any person in the service of any State who has violated any rule of international law forbidding the threat or use of force or any rule of warfare, especially the obligation to respect the generally recognised principles of humanity, should be held individually responsible for those acts and could be brought to trial, though not adopted at San Francisco in that form, has found expression in comparable provisions.

The Commission has now started publishing law reports of all trials conducted by the Allied authorities, to which a summary of the proceedings and a legal commentary is added.

Misc. No.98.
26th June, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

Progressive Development of International Law.

The International Law Commission.

The following is a Note published in the United Nations Weekly Bulletin, Vol.2, No.23, 17th June, 1947, which is herewith circulated for the information of members.

" The Committee on the Progressive Development of International Law and its Codification met on June 4, 5, 6, 9 and 10. It adopted a proposal that there should be a special reference in the report to the importance and necessity of consultation between the International Law Commission and the Pan-American Union. (The International Law Commission was originally set up by the Committee as the Commission of Experts on International Law. On May 29, however, a resolution was adopted recommending to the General Assembly that it be known as the International Law Commission.) It decided to recommend to the International Law Commission that it prepare a draft convention incorporating the principles of international law recognized and sanctioned by the Nuremberg Tribunal. The Committee also decided to recommend codification of law on crimes against peace and security. It adopted a proposal suggesting that the General Assembly study the desirability of creating an international judicial authority in order to give effect to the principles of the Nuremberg Tribunal. "

The information contained in this Note throws light on two questions having a direct bearing upon the activities of the United Nations War Crimes Commission:

(1) The Committee on the Development and Codification of International Law, as the competent organ of the United Nations, has decided to recommend that the principles of International Law recognized and sanctioned by the Nuremberg trial be incorporated in an international treaty and thus the whole question solved within the scope of conventional international law. (For text of the relevant Resolution of the General Assembly of the United Nations, see Misc. No.66; see also Note in Doc. III/85, page 4.)

In this connection the Committee recommend the codification of law on crimes against peace and security, as formulated in the General Assembly's Resolution which, pending further information, leaves open the question raised in Doc. III/85 page 4, whether the term "offences against the peace and security of mankind" covers both "war crimes" and "crimes against humanity" or is restricted to "crimes against peace".

(2) The same Committee adopted a proposal suggesting the creation of an international penal court which would give effect to the principles of the Nuremberg trial as a permanent court of law, functioning in addition to the International Court of Justice.

The activities of a new organ of the Committee on the Progressive Development of International Law and its Codification, namely the International Law Commission, which is entrusted with dealing with some of the above questions, should be noted.

Misc. No. 99.

4th July, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

Bibliography of Legal Literature
on the Law of War Crimes and Belligerent Occupation

First Supplement to Doc. Misc. No. 94

Compiled by Egon Schwelb, Legal Officer

Balazs A.	Die rechtliche Begründung des Nürnberger Urteils.	Friedenswarte, 1946, Vol. 46, No.6, pp.369-375
Caloyanni, M. A.,	Le Procès de Nuremberg et l'avenir de la Justice Pénale internationale.	(24) Revue de Droit In- ternational de Sciences Diplomatiques et Poli- tiques. October-December, 1946. No.4, pp. 183-212.
Cyprian.	see: Muszkat - Cyprian - Sawicki.	
International Law Quarterly,	The United Nations War Crimes Commission.	The International Law Quarterly, Vol. 1 (No.1), (Spring 1947), pp. 42-44.
Kuhn, Arthur K.	International Criminal Jurisdiction.	(41) American Journal of International Law, April 1947, p. 430.
Lawrence, Lord Justice.	The Nuremberg Trial.	International Affairs (Royal Institute of International Affairs). Vol. XXIII, No.2. April, 1947, p. 151.
Lemkin, R.	Le Crime de Genocide.	(24) Revue de Droit International de Sciences Diplomatiques et Poli- tiques, October-December, 1946. Vol.4, pp.213-223.
Muszkat - Cyprian - Sawicki	Le droit polonais au service de la paix dans la lutte contre les criminels de guerre.	Publications de Service pour la recherche des criminels de guerre, 1947.
Oaksey, Lord.	see Lord Justice Lawrence.	
Sawicki.	see: Muszkat - Cyprian - Sawicki	
Schick, F. B.	Law or Politics for the Maintenance of Peace.	Juridical Review, Edinburgh. Vol. 59, No.1, April 1947, p. 50.

- | | | |
|--|---|--|
| Schick, F. B. | War Criminals and the Law
of the United Nations. | Toronto Law Review,
January, 1947. |
| Schwarzenberger, Georg | The Inductive Approach to
International Law. | Harvard Law Review,
Vol. LX (1947), No.4,
pp. 539 etc., at p.545. |
| Taylor, Telford
(Brigadier General, U.S.A.,
Chief of Counsel for War
Crimes). | The Meaning of the
Nuremberg trials. | An Address delivered
(in French) at the
Palais de Justice, Paris,
25th April, 1947.
(Mineographed). |
| Teitgen, M. | Le Jugement de Nuremberg. | (24) Revue de Droit
International de Sciences
Diplomatiques et Poli-
tiques, October-December
1946, No.4, pp. 161-173. |

UNITED NATIONS WAR CRIMES COMMISSION.

MISC. 100.

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

July 9th 1947.

	<u>Cases tried.</u>	<u>Accused involved.</u>	<u>Death.</u>	<u>Imprisonment.</u>	<u>Acquitted.</u>	<u>Remarks.</u>
EUROPE: Countries whose reports comprise war criminals only.						
United States. USFET)	224	978	268	564	146	as at 2. 5.47.
USMET)						
Britain. BAOR	231	750	174	355	221	as at 1. 7.47.
CMF & BTA						
France.	40	272	125	128	19	as at 1. 4.47.
Greece.	2	4	2	2	-	as at 31. 3.47.
Netherlands.	1	1	1	-	-	as at 1. 7.47.
Norway	-	16	11	5	-	as at 16.10.46.
Yugoslavia.	5	79	63	16	-	as at 1. 5.47.
TOTAL:	-	2,100	644	1,070	386	
EUROPE: Countries whose reports show war war criminals & collaborators combined						
Czechoslovakia:	-	18,496	362	13,969	4,165	as at 31.10.46
Poland:	-	4,593	631	1,840	2,122	as at 1. 7.46.
TOTAL:	-	23,089	993	15,809	6,287	
FAR EAST:						
United States.	202	574	140	380	54	as at 2. 5.47.
Britain.	267	818	254	474	90	as at 1. 7.47.
Australia.	234	733	141	371	221	as at 1. 4.47.
Netherlands.	53	71	34	35	2	as at 1. 7.47.
TOTAL:	756	2,196	569	1,260	367	

- UNITED NATIONS WAR CRIMES COMMISSION.

July 22nd, 1947.

Belgian Law of 20th June relating to the
Competence of Military Tribunals in the matter of
War Crimes.

(Published in the "Moniteur Belge" No. 177-178 of 26th and 27th June, 1947. Translated and made available to the Secretariat of the United Nations War Crimes Commission by the Belgian Representative, M. de Baer).

Article I. Article 2 of the Decree of 5th August 1943⁽¹⁾ is replaced by the following text:

Article 10 of the Preliminary Chapter of the Code of Criminal Procedure, which enumerates the cases in which a foreigner can be tried in Belgium for crimes committed outside the territory of the Kingdom, is completed by the addition of the following paragraph:

"4. In time of war, against a Belgian citizen or a foreigner resident in Belgium at the time of the outbreak of hostilities, a crime of homicide, wilful bodily injury, rape, indecent assault or denunciation to the enemy."

Article 2. Crimes falling within the jurisdiction of the Belgian Criminal Code committed in violation of the laws and customs of war between 9th May 1940 and 1st June 1945, by persons who, at the time of the commission of the offence, were in the enemy forces or the forces allied to those of the enemy of whatever standing, but especially in the capacity of a functionary in the judicial and administrative services, in the military or auxiliary services as an agent or inspector of an organisation, or a member of a formation of any sort whatever, who is charged by such persons with a mission of any nature at all, shall be tried by military tribunals in accordance with the provisions of this present law and those which are not contrary to the Code of Military Penal Procedure.

Article 3. In the case of trials instituted under the provisions of Article 2 of the present law, the fact that the accused acted in accordance with the provisions of enemy laws or regulations, or at the orders of a superior officer cannot be regarded as a reason for justification, within the meaning of Article 70 of the Criminal Code, when the act committed constituted a flagrant violation of the laws and customs of war, or the laws of humanity. The plea may be taken into consideration as an extenuating circumstance.

/Article 4.

(1) A résumé of the Decree of 5th August, 1943, concerning certain crimes committed in time of war outside Belgian national territory was given in Document Misc. 95. Article 2 thereof lays down provisions for the trial in Belgium of a foreigner who, outside the territory of Belgium, is guilty in time of war of the crimes of homicide, wilful bodily injury, rape, indecent assault or denunciation to the enemy against a Belgian national.

Article 4. The crimes covered by Article 2 of the present law shall be tried in accordance with the procedure laid down in the decree of 26th May, relating to competence and procedure in the matter of crimes and misdemeanours against the safety of the State, as modified and completed by the decrees of 18th September 1944, 9th January 1945, 4th May 1945 and 18th December 1945 (2).

Article 5. Arising out of paragraph 2 of Article 18 of the law of 15th June 1935 concerning the use of languages in judicial matters, in the case where the accused does not understand the language in which the trial is to be held, as in the case where he refuses to choose either French or Dutch, the fact must be stated in the minutes of the examination and the proceedings can be held in a language to be determined by the "auditeur".

Article 6. When a crime coming within the competence of the military tribunals instituted by the law of 15th June 1899 is associated with a crime coming within the competence of the military tribunal set out in Article 2 of the present law, or when an individual subject to the military tribunals instituted by the law of 15th June 1899, and a person subject to the jurisdiction of the military tribunal instituted by the present law, are tried simultaneously as authors, co-authors or accomplices, the crimes shall both be tried by the military tribunal instituted by the decree of 26th May 1944.

Article 7. When a person subject to the jurisdiction of a military tribunal set up under Article 2 and a person subject to civil jurisdiction are tried simultaneously, in connection with similar crimes, either as authors, co-authors or accomplices of a violation of the criminal law, the military tribunal has competence to try the individual subject to civil jurisdiction.

Similarly, when a crime which is subject to military law by virtue of Article 2 is associated with a crime which is subject to civil jurisdiction, they shall both be tried by a military tribunal.

Article 8. The present law comes into force on the date of its publication in the "Moniteur".

(2) Decree of 26th May (published in Moniteur of 2nd September 1944), related to competence and procedure in the matter of crimes and misdemeanours committed against the safety of the State.

Decree of 18th September 1944 (Text not at present available in Great Britain).

Decree of 9th January 1945 (published in Moniteur of 10th-11th January 1945) extended the competence of military tribunals to have jurisdiction in cases where there had been infractions of both military and civil law. Hitherto jurisdiction in such cases had resided in the civil courts.

Decree of 4th May 1945 (published in Moniteur of 7th-8th May 1945), extended membership of military tribunals to include civilian personnel.

Law of 18th December 1945 (published in Moniteur of 23rd December 1945) introduced additional courts to deal with minor offences.

Article 2.

Article 3 of the decree of 5th August 1943 is replaced by the following:

" Article 12 of the preliminary chapter of the Code of criminal procedure is replaced by the following article:

' Except in cases covered by Nos. 1 and 2 of Articles 6 and 10, the trial of crimes dealt with in the present decree can only be held if the accused is arrested in Belgium.

However, when the crime has been committed in time of war, the trial can be held in all cases, provided the accused is a Belgian, even if he is not arrested in Belgium, but if the accused is a foreigner, the trial can be held in Belgium if the accused is found in enemy territory or if his extradition can be obtained; the trial can also be held in Belgium in the cases mentioned in the preceding paragraph. '"

Article 3.

The present law shall become effective from the date of its publication in the "Moniteur".

Given in Brussels, 30th April 1947.

(Sgd) CHARLES, Regent,
P. STRUYE, Minister of Justice.

IV. Note by Monsieur M. de Baer on the Enactment printed under III.

The meaning of the last paragraph of article 2 is that, in time of war, and in respect of the crimes which are within the scope of this law:

- (1) if the accused is a Belgian, he can be tried in Belgium even in absentia.
- (2) if the accused is a foreigner he can be tried in Belgium only in the following cases:
 - (a) if he is present on Belgian territory and if he has been arrested or served with a summons to be present at the trial;
 - (b) if he has been found in enemy territory and been arrested there or notified of the impending trial;
 - (c) if he has been extradited to Belgium from any other country;
- (3) a foreigner may, however, be tried in Belgium even in absentia, in the following cases:
 - (a) if he has committed abroad a "crime ou délit contre la surêté de l'Etat", the definition of which is a complicated legal matter;
 - (b) if he has committed abroad crimes of counterfeiting or forging public money or documents;
 - (c) if he has committed abroad, in time of war, against a Belgian, the crimes of murder, bodily harm, rape or assault or if he has denounced him to the enemy.

- UNITED NATIONS WAR CRIMES COMMISSION.

July 22nd, 1947.

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Competence of Military Tribunals in the matter of
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Article 2. Crimes falling within the jurisdiction of the Belgian Criminal Code committed in violation of the laws and customs of war between 9th May 1940 and 1st June 1945, by persons who, at the time of the commission of the offence, were in the enemy forces or the forces allied to those of the enemy of whatever standing, but especially in the capacity of a functionary in the judicial and administrative services, in the military or auxiliary services as an agent or inspector of an organisation, or a member of a formation of any sort whatever, who is charged by such persons with a mission of any nature at all, shall be tried by military tribunals in accordance with the provisions of this present law and those which are not contrary to the Code of Military Penal Procedure.

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The present law shall become effective from the date of its publication in the "Moniteur".

Given in Brussels, 30th April 1947.

(Sgd) CHARLES, Regent,
P. STRUYE, Minister of Justice.

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 - (b) if he has been found in enemy territory and been arrested there or notified of the impending trial;
 - (c) if he has been extradited to Belgium from any other country;
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 - (a) if he has committed abroad a "crime ou délit contre la surêté de l'Etat", the definition of which is a complicated legal matter;
 - (b) if he has committed abroad crimes of counterfeiting or forging public money or documents;
 - (c) if he has committed abroad, in time of war, against a Belgian, the crimes of murder, bodily harm, rape or assault or if he has denounced him to the enemy.

UNITED NATIONS WAR CRIMES COMMISSION.

MISC. 102.

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

August 11th 1947.

	<u>Cases tried.</u>	<u>Accused involved.</u>	<u>Death.</u>	<u>Imprisonment.</u>	<u>Acquitted.</u>	<u>Remarks.</u>
<u>EUROPE:</u> Countries whose reports comprise war criminals only.						
United States. USFET)	224	978	268	564	146	as at 2. 5.47.
USMET)						
Britain. BAOR	235	761	177	362	222	as at 1. 8.47.
CMF & BIA.						
France.	47	310	139	149	22	as at 1. 6.47.
Greece.	2	4	2	2	-	as at 31. 3.47.
Netherlands.	1	1	1	-	-	as at 1. 8.47.
Norway.	16	25	8	16	1	as at 22. 7.47.
Yugoslavia.	5	79	63	16	-	as at 1. 5.47.
TOTAL:	530	2,158	658	1,109	391	
<u>EUROPE:</u> Countries whose reports show war criminals & collaborators combined.						
Czechoslovakia.	-	18,496	362	13,969	4,165	as at 31.10.46.
Poland.	-	4,593	631	1,840	2,122	as at 1. 7.46.
TOTAL:	-	23,089	993	15,809	6,287	
<u>FAR EAST:</u>						
United States.	202	574	140	380	54	as at 2. 5.47.
Britain.	291	858	256	509	93	as at 1. 8.47.
Australia.	234	733	141	371	221	as at 1. 4.47.
Netherlands.	70	116	48	66	2	as at 1. 8.47.
TOTAL:	797	2,281	585	1,326	370	

19th August, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

BRUSSELS CONFERENCES

of the International Bureau for the Unification of Criminal Law, and of the Permanent International Commission for the Study of the Punishment of Crimes against International Law and of Acts committed in the Interest of the Enemy.

In the Commission's meeting held on 18th June, 1947, Colonel Dr. MUSZKAT, the Polish Representative, was asked to attend the above mentioned international conferences also as observer on behalf of the Commission.

The following is the Report by Colonel Muszkat regarding the two meetings, and also on the Second Congress of "Law in the Service of Peace", the latter of which he attended as a member of the Polish Delegation.

REPORT BY COLONEL MUSZKAT.

Having been asked to act as an observer on behalf of the United Nations War Crimes Commission at the lawyers' conferences which took place in Brussels during July this year, I should like to submit the following report:

I. Eighth Conference of the International Bureau for the Unification of Criminal Law.

This conference was attended by the representatives of 28 governments, a delegate from the Vatican and delegates from several international organizations, including a representative of the United Nations.

After a lively discussion on the general report, which was prepared on the basis of national reports, a draft definition of the crime against humanity was voted unanimously. The definition which was recommended for inclusion in domestic penal law and in the international penal code is as follows:

"Each homicide or act resulting in death, committed in time of war or peace, against individuals or groups of people, by reason of their race, nationality, religion or opinions, constitutes a crime against humanity and should be punished in the same way as murder."

The conference also expressed a wish that States should punish propaganda having for its purpose the encouragement of the commission of crimes against humanity.

The above-quoted definition is obviously narrower than that adopted by the International Congress of "Law in the Service of Peace" which met in Paris in October, 1946, and this is due to a compromise being necessary between different tendencies which appeared during the Brussels conference.

II. The meeting of the "Permanent International Commission for the Study of the Punishment of Crimes against International Law and of Acts committed in the Interest of the Enemy."

This meeting was attended by the representatives of nine states. The agenda included two items of particular interest to the Commission: 1) Extradition of persons wanted or convicted for war crimes or for crimes of collaboration with the enemy, and 2) The re-education and reclassification of persons sentenced for collaboration with the enemy.

As a result of the discussion arising from the general report, prepared on the basis of the national reports, the Commission unanimously adopted a resolution that, in the interests of the security of each state and of world peace generally, it is necessary that persons punished for war crimes and acts committed in the interests of the enemy should be, before their final liberation, rehabilitated to normal life in society, by means of a special re-education system.

The Commission voted that asylum should be refused to persons responsible for war crimes and that, in order to facilitate the extradition of war criminals, it is necessary to base procedure not on bilateral treaties but on a relevant international convention.

During the meeting it could be clearly seen that, as a result of the recent international situation, extradition is becoming more and more difficult and often impossible in practice and therefore the point was raised that, in the interests of the safeguarding of peace and even of the democratisation of Germany, it may be reasonable to abandon the territorial principle, according to which war criminals must be tried in the countries in which they committed their crimes, and allow the Germans themselves to punish their war criminals according to a domestic penal law which should be based on the principles of the Nuremberg Judgement.

In order to avoid the results of the Leipzig trial after the first world war and the bad experience of the German de-Nazification courts, it was proposed to place the German tribunals, having jurisdiction over war criminals, under control, by making possible appeal by allied representatives in cases where there is dissatisfaction with German judgements. It was suggested that this proposal should be presented if it should prove impossible to establish in Germany mixed German courts, to include allied representatives as judges or as counsel for the prosecution, or international tribunals.

The majority of the conference members disagreed with this point of view, considering that the best way to ensure the punishment of war criminals is their extradition.

III. The Second Congress of "Law in the Service of Peace".

This last conference was the most important, because it was attended by the representatives of 32 states, including five Under-Secretaries of Justice from different countries, delegates from the most important international organizations and lawyers' associations, with large delegations from the U.S.A., U.S.S.R., Great Britain and France, the chief of the French delegation, Professor René Cassin, being elected chairman of the congress and of the World Federation of Democratic Lawyers.

On the basis of the Polish report concerning the reparation of damages resulting from a criminal war, there was adopted unanimously a resolution foreseeing the application of security measures against a state responsible for a crime against peace.

In a special resolution, confirming the attitude of the first congress in October last year in Paris, it was emphasized how necessary and urgent was the settlement of the problem of extraditing war criminals.

The Congress recommended to the United Nations the speeding up of the work of creating an international bill of human rights and an international penal jurisdiction.

Among the recommendations voted by the Congress were some regarding: 1) the necessity of fighting the remaining traces of fascism and nazism, 2) the spreading of the opinion that war is inevitable and natural, 3) the urgency of an international convention prohibiting the use for military purposes of atomic energy.

The secretaries of the three above-mentioned conferences will send to the United Nations War Crimes Commission copies of minutes and of all resolutions and views expressed at the conferences, immediately these are published.

Misc. No. 104.

26th August, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

United States Provisions Governing Trials of
Accused War Criminals

Copy of Letter Amending the Regulations
of December 5th, 1945, Governing the
Trial of Accused War Criminals in the
Pacific Theatre of Operations; Misc. 51,
pages 1 - 6.

"GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (27 December, 1946)LS-L

AP0 500
27 December, 1946

SUBJECT: Amendments to Regulations Governing the Trials of Accused
War Criminals.

TO : Commanding General, Eighth Army, APO 343.

1. Reference is made to Letter Order, AG 000.5 (5 December, 1946)LS,
General Headquarters, Supreme Commander for the Allied Powers, subject:
"Regulations Governing Trials of Accused War Criminals."

2. The following amendments are directed in Letter Order, referred
to in paragraph 1 above:

- a. In paragraph 1a, delete the words, "units and organizations."
- b. In paragraph 3a, delete in the last sentence thereof, the
words "in open court" and add immediately after said last
sentence the following: "This fact will be announced by
the president of the commission in open court."
- c. Delete paragraphs 5d(4) and 5d(5).
- d. Delete "(6)" from 5d(6) and substitute therefor "(4)."
- e. Delete paragraph 5d(7) and substitute therefor:

"(5) All purported confessions or statements of the
accused shall be admissible in evidence without
any showing that they were voluntarily made.
If it is shown that such confession or statement
was procured by means which the commission believes
to have been of such character that they may have
caused the accused to make a false statement, the
commission may strike out or disregard any such
portion thereof as was so procured."

f. In paragraph 5g, delete the first sentence and substitute therefor:

"g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, forfeiture of real or personal property, fine, or such other punishment as the commission shall determine to be proper."

g. Add paragraph 7 as follows:

"(7) OATHS.

a. Power to Administer Oaths

Any person, military, naval, civilian, who, by competent authority is assigned the duty of administering, investigating, prosecuting, or defending suspected war criminals subject to trial under these regulations, and while acting under the assignment, may be empowered by the Supreme Commander for the Allied Powers or his designee, or by the convening authority or his designee, to administer oaths with respect to all matters in the execution of such duty."

3. These amendments shall not affect any case in which the accused has been duly arraigned and, except as amended, all provisions of the subject regulations continue to remain in full force and effect.

BY COMMAND OF GENERAL MacARTHUR:

/s/ J. B. Cooley
JOHN B. COOLEY
Colonel, AGD,
Adjutant General."

Misc. No. 105.

26th August, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

CHINESE WAR CRIMES LEGISLATION

Law Governing the Trial of War Criminals,

October 24th, 1946

(The following translation of the Chinese Law of October 24th, 1946, was made available by Mr. T. C. Lai of the Chinese Embassy in London, who makes it clear, however, that it is not to be regarded as an official translation)

ARTICLE I. In addition to the Rules of International Law, the present Law is applicable to the trial and punishment of War Criminals. Cases not provided for under the present Law are governed by the Criminal Code of the Republic of China.

In applying the Criminal Law of the Republic of China, this Law shall first be applied, irrespective of the status of the offender.

ARTICLE II. A person who commits an offence which falls under any one of the following categories shall be considered a war criminal.

1. Alien combatants or non-combatants who, prior to or during the war, violate an International Treaty, International Convention or International Guarantee by planning, conspiring, preparing to start or supporting, an aggression against the Republic of China, or doing the same in an unlawful war.
2. Alien combatants, or non-combatants who during the war or a period of hostilities against the Republic of China, violate the Law and Usages of War by directly or indirectly having recourse to acts of cruelty.
3. Alien combatants or non-combatants who during the war or a period of hostilities against the Republic of China or prior to the occurrence of such circumstances, nourish intentions of enslaving, crippling, or annihilating the Chinese Nation and endeavour to carry out their intentions by such methods as (a) killing, starving, massacring, enslaving, or mass deportation of its nationals, (b) stupefying the mind and controlling the thought of its nationals, (c) distributing, spreading, or forcing people to consume, narcotic drugs or forcing them to cultivate plants for making such drugs, (d) forcing people to consume or be inoculated with poison, or destroying their power of procreation, or oppressing and tyrannising them under racial or religious pretext, or treating them inhumanly.

4. Alien combatants or non-combatants who during the war with, or a period of hostilities against the Republic of China, commit acts other than those mentioned in the three previous sections but punishable according to Chinese Criminal Law.

ARTICLE III. Offences mentioned in Section 2 Article II include the following:-

1. Planned slaughter, murder or other terrorist action.
2. Killing Hostages.
3. Malicious killing of non-combatants by starvation.
4. Rape.
5. Kidnapping children.
6. Enforcing collective torture.
7. Deliberate bombing of non-defended areas.
8. Destroying freighters or passenger boats without previous warning and without regard to the safety of passengers and crew.
9. Destroying fishing boats and relief ships.
10. Deliberate bombing of Hospitals.
11. Attack or sinking of Hospital Ships.
12. Use of poison gas or bacteriological warfare.
13. Employment of inhuman weapons.
14. Ordering wholesale slaughter.
15. Putting poison on food or drinking water.
16. Torturing of non-combatants.
17. Kidnapping females and forcing them to become prostitutes.
18. Mass deportation of non-combatants.
19. Internment of non-combatants and inflicting on them inhuman treatment.
20. Forcing non-combatants to engage in military activities with the enemy.
21. Usurpation of the sovereignty of the occupied territory.
22. Conscription by force of inhabitants in the occupied territory.
23. Scheming to enslave the inhabitants of occupied country or to deprive them of their status and rights as nationals of the occupied country.
24. Robbing.
25. Unlawful extortion or demanding contributions or requisitions.
26. Depreciating the value of currency or issuing unlawful currency notes.
27. Indiscriminate destruction of property.
28. Violating Red Cross regulations.
29. Ill-treating prisoners of war or wounded persons.
30. Forcing prisoners of war to engage in work not allowed by the International Convention.
31. Indiscriminate use of the Armistice Flags.
32. Making indiscriminate mass arrests.
33. Confiscation of property.
34. Destroying religious, charity, educational, historical constructions or memorials.
35. Malicious insults.
36. Taking money or property by force or extortion.
37. Plundering of historical, artistic or other cultural treasures.
38. Other acts violating the law or usages of war, or acts whose cruelty or destructiveness exceeds their military necessity, forcing people to do things beyond their obligation, or acts hampering the exercise of legal rights.

ARTICLE IV. All provisions under Article 2 apply to acts committed between 18th September, 1931 and 2nd September, 1945 only, with the exception of cases set out in section I and III which are also subject to prosecution.

Article 80 of the Criminal Code concerning the time limit for prosecution does not apply to war criminals.

ARTICLE V. Alien combatants or non-combatants who during the period immediately after 3rd September, 1945, but before their being interned, committed an offence provided against under Article II shall be tried by the ordinary military tribunal in accordance with Chinese Criminal Law.

ARTICLE VI. The present Law shall also apply to war criminals who may have regained Chinese Citizenship after 25th October, 1945.

ARTICLE VII. Alien combatants and non-combatants who committed any of the offences provided under Article II against the Allied Nations or their nationals, or against aliens under the protection of the Chinese Government are subject to the application of the present Law.

ARTICLE VIII. The circumstances under which the following offences have been committed shall not exonerate war criminals:

1. Crimes committed by order of Superior Officers.
2. Crimes committed as result of official duty.
3. Crimes committed in pursuance of the Policy of their Government.
4. Crimes committed out of political necessity.

ARTICLE IX. Persons who occupy a supervisory or commanding position in relation to war criminals and in his capacity as such have not fulfilled their duty to prevent crimes from being committed by his subordinates shall be treated as accomplices of the war criminals.

ARTICLE XI. War criminals who are guilty of offences provided against under Section I or Section III of Article II shall be sentenced to death or life imprisonment; those guilty of offences provided against under section 16 - 24 of Article III shall be sentenced to death or life imprisonment or imprisonment for a period over 10 years; those guilty of offences provided against under section 25 - 37 of Article III shall be sentenced to life imprisonment or imprisonment for a period over 7 years; those guilty of offences provided against under section 38 of Article III shall be sentenced to life imprisonment or imprisonment for a period over 7 years, and offences of more serious nature shall be punishable by Death.

ARTICLE XII. War criminals who are guilty of offences provided against under section IV of Article II of this Law shall be sentenced according to the respective provisions of the Criminal Law concerned.

ARTICLE XIII. The Rules relating to reduction of punishments promulgated on 17th June, 1944, shall not be applicable to war criminals.

ARTICLE XIV. War crime cases shall be within the jurisdiction of the Military Tribunals for the Trial of War Criminals, attached to various Military Organisations by order of the Ministry of Defence.

ARTICLE XV. The above Article shall be applicable to war criminals who have been tried by a specially established organisation of the United Nations; but such criminals shall be exempt from any punishment which has already been carried out by the above-mentioned organisation.

ARTICLE XVI. The establishment of the Military Tribunal for the Trial of War Criminals and the power to be vested therein shall be finally determined by the War Crimes Commission, after approval by the Ministry of Defence and the Ministry of Justice.

ARTICLE XVII. A Military Tribunal for the Trial of War Criminals shall consist of 5 Military Judges and one to three Military Prosecutors. The number of both may be increased when necessary. The hearing of any case shall be attended by three or five Military Judges and one Military Prosecutor.

ARTICLE XVIII. Abrogated.

ARTICLE XXVIII. Military Tribunals shall conduct their proceedings, in so far as oral proceedings and the pronouncement of judgements are concerned in Open Court.

ARTICLE XXIX - XXXI. Abrogated.

ARTICLE XXXII. In war crime cases where a Military Tribunal has pronounced judgment of "Guilty", all the documents relating thereto, together with their files, shall be submitted by the Military Organisation, to which such Tribunal is attached, to the Ministry of Defence for approval before execution. Sentences of death or life imprisonment shall be submitted by the Ministry of Defence to the President for approval before execution. The President of the Republic or the Ministry of Defence may return the case for re-trial if he or the Ministry considers the judgment to be illegal or improper. This provision shall also apply to judgments of the re-trial.

ARTICLE XXXIII. After judgment has been pronounced in a war crime case, the defendant may appeal for a re-trial if he has grounds for such appeal, or if his case comes under any one of the provisions in Article 45 of the Law Governing the Trial of personnel of the Army, Navy and Air Force; appeal may be submitted within 10 days of the judgment to the Military Tribunal concerned for re-submission to the Ministry of Defence.

ARTICLE XXXIV. Abrogated.

ARTICLE XXXV. The present Law shall become effective as from the date of promulgation.

UNITED NATIONS WAR CRIMES COMMISSION.

- MISC. 106.

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON SEPTEMBER 1ST 1947. September 11th 1947.

	<u>Cases tried.</u>	<u>Accused involved.</u>	<u>Death.</u>	<u>Imprisonment.</u>	<u>Acquitted.</u>	<u>Remarks.</u>
EUROPE: Countries whose reports comprise War Criminals only.						
United States. USFET) USMET)	224	978	268	564	146	as at 2. 5.47.
Britain. BAOR CMF & BTA.	241	772	177	370	225	as at 1. 9.47.
France.	47	310	139	149	22	as at 1. 6.47.
Greece.	2	4	2	2	-	as at 31. 3.47.
Netherlands.	1	1	1	-	-	as at 1. 9.47.
Norway.	16	25	8	16	1	as at 22. 7.47.
Yugoslavia.	5	79	63	16	-	as at 1. 5.47.
TOTAL:	536	2,169	658	1,117	394	
EUROPE: Countries whose reports comprise war criminals & collaborators combined.						
Czechoslovakia.	-	18,496	362	13,969	4,165	as at 31.10.46.
Poland.	-	9,121	712	3,682	4,727	as at 31. 3.47.
TOTAL:	-	27,617	1,074	17,651	8,892	
PAC EAST:						
United States.	202	574	140	380	54.	as at 2. 5.47.
Britain.	303	897	257	543	97	as at 1. 9.47.
Australia.	249	756	138	386	232	as at 1. 8.47.
Netherlands.	88	146	65	78	3	as at 1. 9.47.
TOTAL:	842	2,373	600	1,387	386	

September 12th, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

Netherlands War Crimes Legislation.

Apart from the Decree regarding the investigation of war crimes, already published in document "Miscellaneous No.55" the following acts concern the punishment of war crimes.

A. The Extraordinary Penal Law Decree of December 22, 1943 (Statute Book D.61) concerning the punishment of certain crimes committed during the present war.

This Decree introduced heavier punishment, including the death penalty for certain crimes existing in the penal code, made certain crimes punishable by the Netherlands judges even if committed outside the country, declared an attempt, complicity and conspiracy equally punishable with the crime itself, and made a crime punishable even if already punished by the German Courts.

Where civil servants and officials are specially mentioned in the penal code these provisions were made equally applicable to officials and members of the forces working for the Government of an enemy power.

Two new crimes were introduced namely, exposing anyone to persecution or arrest or punishment or to an administrative measure by the enemy; and a second one: using or threatening to use the power, opportunity or means offered him by the enemy or by the fact of the enemy occupation to injure another in his possessions or unlawfully to benefit himself or another. (articles 26 and 27).

B. By the Law of July 1947 (Statute Book H.233) a new article 27^a was added to the Extraordinary Penal Law Decree:

"Art:27^a

1. He who during the time of the present war and while in the forces or service of the enemy State is guilty of a war crime or any crime against humanity as defined in art.6 under (b) or (c) of the Charter belonging to the London Agreement of 8th August 1945 promulgated in Our Decree of 4th January 1946 (Statute Book No.G.5) shall, if such crime contains at the same time the elements of a punishable act according to Netherlands law, receive the punishment laid down for such act.
2. If such crime does not at the same time contain the elements of a punishable act according to the Netherlands law, the perpetrator shall receive the punishment laid down by Netherlands law for the act with which it shows the greatest similarity.
3. Any superior who deliberately permits a subordinate to be guilty of such a crime shall be punished with a similar punishment as laid down in paragraphs 1 and 2."

The second article of this law extends the jurisdiction of the judge to these acts if committed outside the Netherlands territory

It may be noted that no special provision for the plea of superior order was introduced, as the existing articles in the Penal Code concerning superior order and necessity were deemed to be sufficient.

Art.43 Penal Code reads:

" Not punishable is he who commits an act in the execution of an official order given him by the competent authority.

An official order given without competence thereto does not remove the liability to punishment unless it was regarded by the subordinate in all good faith as having been given competently and obeying it came within his province as a subordinate".

Obviously the authority

Obviously the authority is not considered to be competent to give orders to commit a crime.

The article concerning necessity art:40 reads:

" Not punishable is he who commits an act to which he has been forced by necessity".

Here it is left to the judge to decide whether such necessity exists or not.

Q. The Decrees of 22 December 1943 (Statute Book D.62) and of 12 June 1945 (Statute Book F.91) by which 5 special courts and a special court of cassation were introduced having jurisdiction for the crimes to which the Special Penal Law decree is applicable.

These courts are composed of military and civilian judges.

The Decree of 22 December 1943 (Statute Book D.63) gives provisions concerning the procedure of these courts.

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These courts are composed of military and civilian judges.

The Decree of 22 December 1943 (Statute Book D.63) gives provisions concerning the procedure of these courts.

IMPORTANT

MISC. 108.
12th September 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

Extradition and release of War Criminals under arrest
in the British and American Zones.

The Commission has been informed that on 14th July, 1947, information was passed to all Allied Missions concerned that war criminals claimed by them and not under arrest in the British Zone in Germany, will be released on 1st October, unless they have been taken over by that date. In order to assist the Allied Governments, a list has been circulated to each Mission of the war criminals held in the British Zone in whom the Mission may have an interest.

Persons held in civilian internment camps who have been listed by the United Nations War Crimes Commission for crimes against the Allies have always been classified by the British Authorities as war criminals, and therefore, the time limit indicated above will automatically include these persons.

The Commander-in-Chief, B.A.O.R., has assumed responsibility for extradition of war criminals and has approved a procedure by which all requests for extradition will be investigated, and all doubtful cases will be submitted to him personally.

The break-down of war criminals under arrest which are of Allied interest, excluding British interest, as on 11th July, 1947, were as follows:

Poland	382
U.S.A.	281
Russia	166
France	129
Holland	86
Norway	64
Belgium	52
Yugoslavia	28
Czechoslovakia	16
Luxemburg	5
Denmark	2

1211

All persons subject to extradition or release by the date indicated are held at the War Criminals Holding Centre at Fischbeck.

The Commission has also been informed that so far as the United States Zone in Germany is concerned, the deadline for extradition or release of such persons was set for 1st November, 1947.

I. FINAL REPORT OF THE FAR EASTERN AND PACIFIC SUB COMMISSION OF
THE UNITED NATIONS WAR CRIMES COMMISSION.

Establishment of the Sub-Commission

The Far Eastern and Pacific War Crimes Sub-Commission was established in virtue of a Resolution adopted by the United Nations War Crimes Commission on May 16, 1944. As the Sub-Commission was to be set up in Chungking, the Chinese Government immediately took up the preparatory work for its establishment. On November 29, 1944, an inaugural meeting was called by the Chinese representative, Dr. Wang Chung-hui, Secretary General of the Supreme National Defence Council.

Members and their representatives

Since the Sub-Commission is a part of the United Nations War Crimes Commission and the punishment of Japanese war crimes is of common concern to the United Nations, all the Governments participating in the Main Commission were invited to join the Sub-Commission by the Chairman of the Main Commission. Eleven countries accepted the invitation, namely; the United States of America, Australia, Belgium, China, Czechoslovakia, France, India, Luxembourg, the Netherlands, Poland and the United Kingdom. However the representative of Luxembourg has never been present at the meetings of the Sub-Commission. The other ten countries have been represented by various delegates at different times. They are listed as follows:-

The United States of America

Past Representatives:

H.E. General P. Hurley
Mr. George Atcheson, Jr.
Mr. Robert Lacy Smyth
Mr. Ray Ludden
Colonel E.H. Young
Major W. West
Captain Bailey
Mr. Ralph Clough

Present Representatives:

Mr. Ray Ludden

Australia

Past Representatives:

H.E. Mr. Douglas Berry Copland
Mr. Keith Officer
Mr. Patrick Shaw
Mr. Stocks
Mr. Charles Lee

Present Representatives:

Mr. Patrick Shaw

Belgium

Past Representatives

H.E. Jacques Delvaux de Fenffe
Mr. Robert Rothschild
Mr. Charles Brogniez
Mr. Max Wery

Present Representatives

Mr. Max Wery

China

Past Representatives

H.E. Dr. Wang Chung-hui
H.E. Dr. K.C. Wu
H.E. Dr. Hsieh Kwan Sheng
H.E. Dr. Liu Chieh
Dr. Wang Hun Cheng
Mr. Yang Yun Chu
Dr. Hsu Tuen Chang
Mr. Cha Liang Chien
Dr. Dison Poe
Dr. C.Y. Cheng

Present Representatives

H.E. Dr. Liu Chieh
Dr. Wang Hun Cheng

Czechoslovakia

Past Representatives

H. E. Mr. Stanislav Minovsky
Mr. Emanuel Mazac

Present Representatives

Mr. Emanuel Mazac

France

Past Representatives

Mr. Achille Clarac
Mr. J. Daridan
Mr. de Montonsse
Mr. Jean Brethes
Mr. Polen
Mr. Michel Bertin

Present Representatives

Mr. Jean Brothes

India

Past Representatives

H.E. Mr. Mernon
Major A. Napier
Mr. I.J. Bahadur Singh
Captain Sathe
Mr. S.I. Hasan

Present Representatives

Mr. S.I. Hasan

The Netherlands

Past Representatives

H.E. Mr. A.H.J. Lovink
Mr. Jan Van den Berg
Dr. Van Gulik
Mr. C.D. Barkman

Present Representatives

Mr. Jan Van den Berg

Poland

Past Representatives

H.E. Count Alfred Poninski
Mr. Michal Deronicz

Present Representatives

Mr. Michal Deronicz

United Kingdom

Past Representatives

H.E. Sir Horace James Seymour
Mr. G.V. Kitson
Mr. C.E. Whitmore
Mr. L. H. Lamb
Mr. H. D. Bryan

Present Representatives

Mr. H.D. Bryan

Chairman of the Sub-Commission

At the inaugural meeting of the War Crimes Sub-Commission held in Chungking on November 29, 1944, the Chinese representative, Dr. Wang Chung-hui, was unanimously elected Chairman of the Sub-Commission. Dr. Wang served until June 14, 1946, when he resigned and the present Chairman, Dr. Liu Chieh, Vice Minister of Foreign Affairs, was elected to take his place. In the Spring of 1945, Dr. Wang Chung-hui attended the San Francisco Conference on International Organisation as one of the Chinese Delegates. During his absence, the British Ambassador, Sir Horace James Seymour served as Acting Chairman of the Sub-Commission. In the Autumn of 1946 Dr. Liu Chieh was appointed as one of the Chinese Delegates to the United Nations Assembly. During his absence, the Belgian Ambassador, Jacques Delvaux de Fenffe served as Acting Chairman.

The Secretariat of the Sub-Commission

At the inaugural meeting of the Sub-Commission, Mr. P.H. Chang then counsellor of the Executive Yuan, was elected Secretary General of the Sub-Commission. In February 1946, Mr. Chang was appointed Consul-General at New York and was therefore obliged to resign. Thereupon, Dr. Wang Hua-cheng, Director of the Treaty Department of the Ministry of Foreign Affairs was elected as Secretary General.

The Secretary General was assisted at different times by a secretary, a typist, a clerk, and a messenger. At the time this report is made, the Secretariat is composed of a Secretary General, a secretary and a typist only. They all draw their pay from the Chinese Government but they receive at the same time some allowance from the Sub-Commission.

Sub-Committees of the Sub-Commission.

The Sub-Commission has set up two sub-Committees, namely the Finance Committee and the Committee on Facts and Evidence, concerning which separate reports are made.

Competence of the Sub-Commission.

At the time the Sub-Commission was established, the Australian representative raised the question of war crimes committed by the Japanese in China prior to attack on Pearl Harbor "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 the Investigation of War Crimes." The question was referred to the Main Commission in London which replied subsequently as follows: "Taking note of the statement made by the Australian representative on the Commission that the Australian Government would see no objection to Sub-Commission's dealing with war crimes committed by the Japanese before December 1941 and after, and 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."

Preparation and investigation of cases.

Among cases dealt with by the Sub-Commission, about ninety percent came from the Chinese National Office. These were first prepared by the Ministry of Justice and verified by the Ministry of Defence. They were then translated into English by the Ministry of Foreign Affairs and copied on special charge sheets modelled after those in use by the Main Commission. From the Ministry of Foreign Affairs, these cases were transmitted first to the Secretariat and then to the Sub-Committee on Fact and Evidence. After careful examination, the Sub-Committee will classify them into A-1, A-2, B and C (Explanation of the system of classification is given in a separate report of the Sub-Committee). The findings of the Sub-Committee were reported back to the Sub-Commission for approval. Lists of Japanese War Criminals were then printed by the Secretariat.

Meetings of the Sub-Commission

The Sub-Commission usually met once in two or three weeks. There was a period of time in the Spring of 1946 when the Sub-Commission did not meet regularly on account of the transfer of the Chinese Government and other Embassies and Legations from Chungking to Nanking. Up to the time this report is made the Sub-Commission has had 38 meetings. The first 23 meetings were held in Chungking and the rest were held in Nanking.

Lists of Japanese War Criminals

There are altogether 26 Lists of Japanese War Criminals containing 3147 names out of which the American Government brought charges against 218, the Australian Government 18, the French Government 345, the British Government 43 and the Chinese Government 2523. These lists were distributed to members of the Sub-Commission and sent to the main Commission in London and the Headquarters of the Supreme Commander of Allied Powers in Tokyo.

Apprehension and Trial of Japanese War Criminals.

Although the Sub-Commission has undertaken to investigate cases of Japanese war crimes submitted by member Governments yet the apprehension and

trial of Japanese war criminals are matters for the war crimes authorities of such Governments. Thus far the Chinese Government has set up military courts for the trial of Japanese war criminals at various places, such as, Nanking, Hankow, Canton, Mukden, Taiyuan, Peiping, Hsuehchow, Tsinan, Shanghai, Formosa etc. Up to the end of February, 1947, thirty six Japanese war criminals have been given death penalty, thirteen life imprisonment, and thirty eight imprisonment for different periods. Forty five were found not guilty, and one thousand one hundred and twenty eight are still under investigation and prosecution.

Nanking,
March 31, 1947.

II.

UNITED NATIONS WAR CRIMES COMMISSION
FAR EASTERN AND PACIFIC SUB-COMMISSION.

Sub-Committee on Facts and Evidence.

FINAL REPORT ON THE SUB-COMMITTEE'S ACTIVITIES

I.

Constitution of the Sub-Committee

The sub-Committee held its first meeting on February 15th, 1945 at the Embassy of the Netherlands in Chungking under the chairmanship of His Excellency Mr. A.H.J. Lovink.

It was composed furthermore of Mr. G.V. Kitson of the British Embassy, Dr. Wang Hua-cheng of the Ministry of Foreign Affairs and Major A. West of the Judge Advocate's Office in Chungking, whereas Mr. Jan van den Berg of the Netherlands Embassy assisted the Chairman.

In May 1945 Dr. Wang Hua-Cheng's place was taken by Judge Ch'a Liang-chien of the Chungking Experimental Court and the one of Mr. Kitson by Mr. C.E. Whitmore of the British Embassy.

In September 1945 Dr. Wang Hua-cheng, after his return from Washington, took Judge Ch'a's place again, whereas in October Dr. R.H. van Gulik of the Netherlands Embassy replaced Mr. van den Berg upon the latter's departure for Shanghai and Mr. L.H. Lamb of the British Embassy took Mr. Whitmore's place.

In November 1945 Major West was replaced by Mr. R. Clough of the American Embassy until his replacement by Mr. R.F. Ludden of the same Embassy in March, 1946.

In that same month the Chairman, Mr. Lovink, left China, the acting chairmanship remaining with the Netherlands representative on the committee, at that time still Dr. van Gulik, assisted by another member of the Netherlands Embassy, Mr. C.D. Barkman.

The 23rd meeting was still held in Chungking on March 25, 1946, after which date the Chinese Government was removed to Nanking, a removal which interrupted the work of the Committee considerably, so that its 24th meeting could not be held in Nanking earlier than June 3rd, 1946. At that meeting Mr. Jan van den Berg took over the acting chairmanship from Dr. van Gulik, whereas in July 1946 Dr. Wang Hua-cheng's place was taken by Dr. Seymour C.Y. Cheng (Cheng Chin-yuan) of the Ministry of Foreign Affairs and in October Mr. H.D. Bryan of the British Embassy, who had attended a few meetings to assist Mr. Lamb took the latter's place upon Mr. Lamb's departure for London.

The 33rd, 34th, 35th and 36th meetings were presided over by Mr. Barkman, during the absence of Mr. Jan van den Berg from Nanking.

Altogether the committee held 38 meetings during which it was always composed of an American, British, Chinese and Netherlands representative.

The chairman attended the meetings of the Sub-Commission in order to report on the sub-Committee's activities.

II.

Activities of the Sub-Committee

From the very outset the sub-Committee realised that its main task would consist of classifying the charges brought to their notice by the Chinese National Office.

At their third meeting the sub-Committee arrived on the following classification of war crimes cases placed before them:

- A-1, cases against named individuals where evidence is sufficiently complete to charge them as actual perpetrators of war crimes.
- A-2, cases against named enemy military or civilian personnel where evidence is sufficiently complete to charge them as having been concerned in the commission of war crimes, either by having encouraged them, condoned them or in any other way shown their responsibility for them.
- B, cases not falling under A-1 or A-2, but where there is sufficient evidence to justify any named individual or military or civilian enemy personnel in authority being held for interrogation as material witnesses after the cessation of hostilities.
- C, cases where the evidence is insufficient to justify their classification under A or B.

This classification was approved by the Sub-Commission and used without modification throughout the sub-Committee's work.

It differed from the one followed by the Main Commission in London, which was not available at the time the sub-Committee first met. Only in November 1945 the Legal Officer of the War Crimes Commission pointed out that the Sub-Commission had adopted a different classification, but since it would have been extremely difficult to bring about a change in a classification which had proven to be adequate and convenient and moreover the Main Commission had expressed no desire that the London classification should be adopted no change was made.

Forms were adopted for the use by the National Office for the presentation of charges. Major West acted as intermediary between the sub-Committee and the National Office in the initial stages of their work.

With these initial difficulties overcome the sub-Committee could set to work and the first 12 charges were classified on the 5th meeting on July 5, 1945, by which time the preparation of cases by the National Office had so far advanced that regular weekly meetings could be held.

Altogether 1243 charges were dealt with, involving approximately the names of 2434 persons and/or units, of which 1676 were classified A-1, 255 A-2, 341 B and 162 C.

The beginning of the 32nd meeting on March 25th, 1946 was attended by Colonel Morrow and Mr. David Nelson Sutton, associate counsel of the International Prosecution Section at Tokyo, who wished to obtain an idea of the work of the Sub-Committee.

Difficulties arose in November 1946, on the question of classifying charges of deliberate bombardment. These were referred back to the Sub-Commission, which in turn asked the opinion of the Main Commission in London. At the time of writing this report no such opinion has been obtained.

At its 36th meeting on January 7th, 1947, the sub-Committee considered that war crimes committed against Formosans at the time they were still Japanese subjects should not be dealt with by the Sub-Committee.

A copy of the minutes of the Sub-Committee 's meetings was regularly forwarded to the Sub-Commission.

Nanking, March, 31st, 1947.

Jan Van den Berg, acting Chairman

H.D. Bryan,

Cheng Ching-yuan,

R.P. Ludden,

C.D. Darkman.

MISC. 110.

UNITED NATIONS WAR CRIMES COMMISSION

October 13th, 1947.

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON OCTOBER 1st, 1947.

	Cases tried	Accused involved	Death	Imprisonment or Fines	Acquitted	Remarks
EUROPE: Countries whose reports comprise War Criminals only.			(+)			
United States: USFET)	380	1,400	364	831	205	As at 1.9.47
USMET)						(+) 124 executed.
Britain: BAOR	185) 248	696) 811	184) 197	324) 384	188) 230	As at 1.10.47.
CMF and BTA.	63)	115)	13)	60)	42)	
France	49	320	139	158	23	As at 1.7.47.
Greece	6	11	3	7	1	As at 12.9.47.
Netherlands	1	1	1	-	-	As at 1.9.47.
Norway	16	25	8	16	1	As at 22.7.47
Yugoslavia	5	79	63	16	-	As at 1.5.47.
	705	2,647	775	1,412	460	
EUROPE: Countries whose reports comprise war criminals & collaborators combined.						
Czechoslovakia	-	18,496	362	13,969	4,165	As at 31.10.46
Poland	-	9,121	712	3,682	4,727	As at 31.3.47.
		27,617	1,074	17,651	8,892	
FAR EAST:						
United States	202	574	140	380	54	As at 2.5.47
Britain: FARELF)	249) 318	820) 949	255) 269	466) 577	99) 103	As at 1.10.47
SCAP)	69)	129)	14)	111)	4)	As at 1.9.47.
Australia	256	764	139	391	234	As at 1.9.47.
Netherlands East Indies	117	195	84	105	6	As at 1.9.47.
TOTAL:	893	2,482	632	1,453	397	

UNITED NATIONS WAR CRIMES COMMISSION.

MISC. 111.

PROGRESS REPORT OF WAR CRIMES TRIALS FROM DATA AVAILABLE ON NOVEMBER 1st 1947.

November 13th 1947.

	<u>Cases tried.</u>	<u>Accused involved.</u>	<u>Death.</u>	<u>Imprisonment.</u>	<u>Acquitted.</u>	<u>Remarks.</u>
<u>EUROPE:</u> Countries whose reports comprise war criminals only.						
United States. USFET)	380	1,400	364	831	205	as at 1. 9.47.
USMET)						
Britain. BAOR	255	829	201	395	233	as at 1.11.47.
CMA & BIA.						
France.	65	342	142	170	30	as at 1. 9.47.
Greece.	6	11	3	7	1	as at 12. 9.47.
Netherlands.	1	1	1	-	-	as at 1. 9.47.
Norway.	16	25	8	16	1	as at 22. 7.47.
Yugoslavia.	5	79	63	16	-	as at 1. 5.47.
TOTAL:	728	2,687	782	1,435	470	
<u>EUROPE:</u> Countries whose reports show war criminals & collaborators combined.						
Czechoslovakia.	-	18,496	362	13,969	4,165	as at 31.10.46.
Poland.	-	9,121	712	3,682	4,727	as at 31. 3.47.
TOTAL:	-	27,617	1,074	17,651	8,892	
<u>FAR EAST:</u>						
United States.	202	574	140	380	54	as at 2. 5.47.
Britain.	333	995	278	604	113	as at 1.11.47.
Australia.	258	768	140	394	234	as at 1.11.47.
Netherlands-East Indies.	117	195	84	105	6	as at 1. 9.47.
TOTAL:	910	2,532	642	1,483	407	

UNITED NATIONS WAR CRIMES COMMISSION

CZECHOSLOVAK WAR CRIMES LEGISLATION

This document sets out translations, which were furnished to the Secretariat by the kindness of Dr. Neumann when Czechoslovak Representative on the Commission, of the following legal texts:

- (i) Law No. 22 of January 24th, 1946, amending and promulgating anew as law Decree No. 16 of June 19th, 1945 (pp. 1 - 2).
- (ii) The full text of the above-mentioned Decree, as so amended and promulgated (pp. 3 - 13).
- (iii) Decree No. 57 of the Slovak National Council of May 14th, 1946, amending and supplementing Decree No. 33/1945, as formulated in Decree No. 83/1945. (pp. 13 - 20).
- (iv) The full text of Decree No. 33/1945, as formulated and amended in Decrees Nos. 83/1945 and 57/1946. (pp. 20 - 32).
- (v) Law of December 18th, 1946, regarding the Extraordinary People's Courts. (pp. 33 - 35).

LAW No. 22

of 24th January, 1946,

confirming, amending and supplementing the legal provisions regarding the punishment of nazi criminals, traitors and their accomplices, and regarding the Extraordinary People's Courts.

The Provisional National Assembly of the Czechoslovak Republic has passed the following law:

Article I

The Provisional National Assembly confirms and promulgates anew as law the Decree of the President of the Republic of June 19th, 1945 (No. 16 of the Collection of Laws) on the punishment of Nazi criminals, traitors and their accomplices and on the Extraordinary People's Courts, as amended herein.

Article II

Paragraph 26, Clauses 2 and 3 is amended to run as follows:

"(2) The entire criminal proceedings shall as a rule be conducted throughout by the Extraordinary People's Court, in the manner of a trial and as far as possible without interruption, and must be concluded within the space of three days from the moment when the accused was brought before the court. If the Extraordinary People's Court has not arrived at a decision within this period, the case shall be referred to the competent ordinary court (Paragraph 25, clause 2). But even after the

termination of this period the proceedings may be continued in the Extraordinary People's Court on the proposal of the public prosecutor.

(3) In the preliminary investigations and preliminary interrogation which may precede the proceedings in the Extraordinary People's Court the public prosecutor shall have the rights and duties of a representative of the State."

Paragraph 31, clauses 2 and 3 is amended to run as follows:

"(2) The death penalty shall be carried out within two hours of the pronouncement of the sentence. At the express request of the condemned person this time may be prolonged for a further hour. If the proceedings have taken place in the absence of the accused, the death sentence shall be carried out within 24 hours from the apprehension of the condemned person. The execution of the death sentence may, however, be postponed for a suitable length of time if this is requested by the public prosecutor in the urgent public interest.

(3) If the Extraordinary People's Court passes the death sentence on several people it shall at the same time indicate in the sentence in what order the condemned are to be executed. It may also decide that the death penalty shall be carried out in public. It will do so especially when the savage manner in which the crime was committed, the degenerate character of the criminal, the number of his crimes or his own position makes a public execution advisable. In this case the court may prolong the period of two hours (clause 2) to ensure that the execution shall be public, but not beyond 24 hours."

Article III

The Minister for the Interior shall publish as an annex to this law the full text of the above Decree as amended by this law.

Article IV

This law will come into force on the day of its publication; it is approved by all the members of the Government.

Declaration of the Minister of the Interior

of 18th February, 1946,

regarding the complete text of the law concerning the punishment of nazi criminals, traitors and their accomplices and concerning Extraordinary People's Courts.

In accordance with Article III of the Law of 24th January, 1946, No. 22 in the Collection of Laws, confirming, amending and supplementing the legal provisions concerning the punishment of nazi criminals, traitors and their accomplices and concerning the Extraordinary People's Courts, I publish therewith the full text of the Decree of the President of the Republic of June 19th, 1945, No. 16 in the Collection of Laws, concerning the punishment of Nazi criminals, traitors and their accomplices and concerning the Extraordinary People's Courts, as amended by the above Law.

(signed) Nosek.

Annex to the Declaration No. 23/1946

in the Collection of Laws

LAW

of 24th January, 1946,

concerning the punishment of nazi criminals,
traitors and their accomplices and concerning
the Extraordinary People's Courts.

The outrageous crimes committed by the nazis and their treacherous accomplices in Czechoslovakia demand strict justice. The subjugation of the country, the slaughter, enslavement, looting and humiliation of which the Czechoslovak people have been the victims, and all the increasingly intensified German brutality which was, alas, assisted by very disloyal Czechoslovak citizens, some of whom thus abused high office, authority or rank, must be punished as they deserve without delay so that the nazi and fascist evil may be eradicated. The Provisional National Assembly of the Czechoslovak Republic has, therefore, passed the following Law:

Chapter I

Crimes against the State

Paragraph 1

Any person who during the period of imminent danger to the Republic (see paragraph 18) committed, either on the territory of the Republic or outside it, any of the following offences under the Law on the Defence of the Republic of 19th March, 1923, No. 50, in the Collection of Laws is to be punished according to the provisions set out below:

Conspiracy against the Republic (para.1), is to be sentenced to death; any person guilty of planning conspiracies (para.2), or of threat to the security of the Republic (para.3), treason (para.4, Art.1), betrayal of State secrets (para.5, Art.1), military treachery (para.6, Art.1, 2 and 3) or of violence against constitutional agents (para.10, Art.1), is to be sentenced to penal servitude for a period varying from twenty years to a life sentence and in the case of especially aggravating circumstances is to be sentenced to death.

Paragraph 2

Any person who during the period of imminent danger to the Republic (para.18) was a member of one of the following organisations: Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (S.S.), or Freiwillige Schutzstaffeln (F.S.), or Rodobraný, or Szabadcsapatok, or of any other organisation of a similar character, shall, if he did not commit any offence incurring a severer penalty, be punished for his crime by penal servitude for a period varying from five to twenty years and in presence of especially aggravating circumstances by penal servitude for a period varying from twenty years to a life sentence.

Paragraph 3

(1) Any person who during the period of imminent danger to the Republic (see para. 18) carried out propaganda for or supported the Nazi or Fascist movement, or who approved or defended the enemy government on the territory of the Republic or any of the illegal acts of the occupation High Command and the authorities and organs under its orders during this period in the press, on the wireless, in films or plays or at public gatherings shall, if not guilty of an offence punishable by a severer penalty, be sentenced for his crime to penal servitude for from five to twenty years, but if he committed the said crime with the intention of destroying the moral, national or state consciousness of the Czechoslovak

people, and especially of Czechoslovak youth, he shall be sentenced to penal servitude for from ten to twenty years and in the presence of especially aggravating circumstances to penal servitude for a period varying from twenty years to a life sentence or to death.

(2) Anyone who during the same period was an agent or leader in one of the following organisations: Nationalsozialistische Deutsche Arbeiterpartei (NSDAP), Sudetendeutsche Partei (SdP), Vlasta, Hlinkova Garda, Svatoplukova Garda, or in any other Fascist organisation of the same character, shall if he has not committed an offence incurring a severer penalty, be sentenced to penal servitude for from five to twenty years.

Crimes against Persons

Paragraph 5

(1) Any person who during the period of imminent danger to the Republic (see para. 18) committed while in the service or while acting in the interest of Germany or her allies or of any movement hostile to the Republic or of the organisations or members of such a movement, any of the following crimes, shall be punished as provided below:

(a) Crimes under the criminal law of 27th May, 1852, Art. 117 of the Imperial Code, the crime of robbery with public violence against the person (para. 90), public violence by treating a person as a slave (para. 95), murder (para. 134 to 137), manslaughter (para. 140 and 141) or grievous bodily harm (para. 156); and

(b) Crimes under the Penal Code, fundamental Art. V/1878, the crime of murder (para. 278), premeditated manslaughter (para. 279), grievous bodily harm with fatal consequences (paras. 306 and 307) and the abduction of children (para. 317), shall be punished with death.

(2) Any person who during the same period, under the same circumstances and with the same object committed any of the following crimes shall be sentenced to penal servitude for from ten to twenty years:

(a) Crimes under the Penal Law of 27th May, 1852, No. 117 of the Imperial Code, the crime of public violence by the unjustified restriction of the personal liberty of the individual (para. 93), public violence by extortion (para. 98), public violence by dangerous menaces (para. 99) and grievous bodily harm (paras. 350 and 353);

(b) Crimes under the Penal Code, fundamental Art. V/1878, the crime of unjustifiable restriction of the personal freedom of the individual (paras. 323, 324 and 325), grievous bodily harm (para. 301) and extortion (paras. 350 and 353).

Paragraph 6

(1) Anyone who during the same period of imminent danger to the Republic (see para. 18) gave orders for forced or voluntary labour to be performed in the interest of the war effort of Germany or her Allies, or who co-operated in the issuing or execution of such orders, shall, if he has not committed an offence incurring a severer penalty, be sentenced for his crime to penal servitude for from ten to twenty years.

(2) But if by such orders an inhabitant of the Republic was forced to work abroad, or under circumstances or in places which endangered his life or health, the guilty person shall be sentenced to penal servitude for from ten to twenty years regardless of the object of the work.

Paragraph 7

(1) Any person who, either alone or in co-operation with others, during the period of imminent danger to the Republic (see para. 18) has, in the service or interest of Germany or her Allies or of any movement hostile to the Republic or of the organisations or members of such a movement, caused the loss of liberty of an inhabitant of the Republic without other consequences, shall be sentenced for his crime to penal servitude for from five to twenty years. If the guilty person has thus caused the loss of liberty of a considerable number of inhabitants of the Republic, the court shall sentence him to penal servitude for a period varying from twenty years to a life sentence, and in the case of especially aggravating circumstances, to death.

(2) Any person who, during the same period, under the same circumstances, for the same purpose and in the same manner caused grievous bodily harm without serious consequences (para. 3) to an inhabitant of the Republic shall be sentenced for his crime to penal servitude for from ten to twenty years, and in the case of especially aggravating circumstances, for from twenty years to a life sentence. But if a considerable number of persons have been injured in this way, the court may inflict a sentence of death.

(3) Any person who, during the same period and under the same circumstances, with the same object and in the same manner, has, by a decision of the Court, verdict, order or administrative decision of any kind, or by the execution of a verdict, order or administrative decision, or otherwise, caused the death of an inhabitant of the Republic, grievous bodily harm to an inhabitant of the Republic with the consequences mentioned in para. 156 of the penal law No. 117/1852 of the Imperial Code, and in paras. 306 and 307 of the penal law, fundamental Art. V/1878, or his deportation, shall be sentenced to death for his crime.

Crimes against Property

Paragraph 8

(1) Any person who, during the period of imminent danger to the Republic (see para. 18), has committed, while in the service or acting in the interest of Germany or her Allies or of any movement hostile to the Republic or of the organisations or members of such a movement, any of the following crimes, shall be sentenced to death:

(a) Crimes under the penal law of 27th May, 1852, No. 117 of the Imperial Code, the crime of public violence by deliberate injury of the property of others (para. 95) with consequences as under para. 86, cl. 2, arson (para. 166) under circumstances and with consequences as under para. 167, subsection a), or robbery (para. 190) under circumstances and with consequences as set out under para. 195.

(b) Crimes under the penal Code, fundamental Art. V/1878, the crime of arson (para. 424), robbery (paras. 344 and 345), under circumstances and with consequences as set out under para. 349, clause 1, point 2, and clause 2.

(2) Any person who, during the same period, under the same circumstances and with the same object, has committed any of the following crimes shall be sentenced to penal servitude for from ten to twenty years and, in the presence of especially aggravating circumstances, to penal servitude for from twenty years to a life sentence:

(a) Crimes under the penal law of 27th May, 1852, No. 117 of the Imperial Code, the crime of public violence by breaking and entering the immovable property of another (para. 83), public violence by malicious

Paragraph 7

(1) Any person who, either alone or in co-operation with others, during the period of imminent danger to the Republic (see para. 18) has, in the service or interest of Germany or her Allies or of any movement hostile to the Republic or of the organisations or members of such a movement, caused the loss of liberty of an inhabitant of the Republic without other consequences, shall be sentenced for his crime to penal servitude for from five to twenty years. If the guilty person has thus caused the loss of liberty of a considerable number of inhabitants of the Republic, the court shall sentence him to penal servitude for a period varying from twenty years to a life sentence, and in the case of especially aggravating circumstances, to death.

(2) Any person who, during the same period, under the same circumstances, for the same purpose and in the same manner caused grievous bodily harm without serious consequences (para. 3) to an inhabitant of the Republic shall be sentenced for his crime to penal servitude for from ten to twenty years, and in the case of especially aggravating circumstances, for from twenty years to a life sentence. But if a considerable number of persons have been injured in this way, the court may inflict a sentence of death.

(3) Any person who, during the same period and under the same circumstances, with the same object and in the same manner, has, by a decision of the Court, verdict, order or administrative decision of any kind, or by the execution of a verdict, order or administrative decision, or otherwise, caused the death of an inhabitant of the Republic, grievous bodily harm to an inhabitant of the Republic with the consequences mentioned in para. 156 of the penal law No. 117/1852 of the Imperial Code, and in paras. 306 and 307 of the penal law, fundamental Art. V/1878, or his deportation, shall be sentenced to death for his crime.

Crimes against Property

Paragraph 8

(1) Any person who, during the period of imminent danger to the Republic (see para. 18), has committed, while in the service or acting in the interest of Germany or her Allies or of any movement hostile to the Republic or of the organisations or members of such a movement, any of the following crimes, shall be sentenced to death:

(a) Crimes under the penal law of 27th May, 1852, No. 117 of the Imperial Code, the crime of public violence by deliberate injury of the property of others (para. 95) with consequences as under para. 86, cl. 2, arson (para. 166) under circumstances and with consequences as under para. 167, subsection a), or robbery (para. 190) under circumstances and with consequences as set out under para. 195.

(b) Crimes under the penal Code, fundamental Art. V/1878, the crime of arson (para. 424), robbery (paras. 344 and 345), under circumstances and with consequences as set out under para. 349, clause 1, point 2, and clause 2.

(2) Any person who, during the same period, under the same circumstances and with the same object, has committed any of the following crimes shall be sentenced to penal servitude for from ten to twenty years and, in the presence of especially aggravating circumstances, to penal servitude for from twenty years to a life sentence:

(a) Crimes under the penal law of 27th May, 1852, No. 117 of the Imperial Code, the crime of public violence by breaking and entering the immovable property of another (para. 83), public violence by malicious

injury to the property of another (paras. 85, and 86, clause 1), arson (para. 166) under circumstances and with consequences as set out under para. 167, sub-section b) to g), theft (paras. 171 to 180), embezzlement (paras. 181 to 183), complicity in theft or embezzlement (paras. 185 and 186), robbery (para. 190) under circumstances and with consequences as set out under paras. 191 to 194, complicity in robbery (para. 196), fraud (paras. 197 to 201, 203).

(b) Crimes under the penal code, fundamental Art. V/1878, the crime of breaking up the home of private persons (paras. 330 and 331), the offence of damaging the property of others (paras. 418 and 420), which, under the conditions laid down in clause 1 of this para. is defined as a crime, arson (paras. 422 and 423), theft (paras. 333 to 341), insofar as this act is not punishable under clause 1, sub-section b) of this paragraph, complicity (para. 370), fraud (para. 379 according to the wording of para. 50 of the supplementary penal law), under circumstances as set out under para. 383, clause 2, with the exception of para. 382.

Paragraph 9

Any person who, either alone or in co-operation with others, during the period of imminent danger to the Republic (see para. 18), has, while in the service or acting interest of Germany or her Allies or of any movement hostile to the Republic or of the organisations or members of such a movement, caused, by a decision of the Court, verdict, order or administrative decision of any kind, or by the execution of a verdict, order or administrative decision, the confiscation, from the Czechoslovak state or from any legal or physical person, of the property of such state or person, either in whole or in part, contrary to the law of the Republic, shall, if he has not committed an offence incurring a severer penalty, be sentenced for his crime to penal servitude for from ten to twenty years, and under especially aggravating circumstances to penal servitude varying from twenty years to a life sentence.

Paragraph 10

Any person who, during the period of imminent danger to the Republic (see para. 18) exploited the distress caused by national, political or racial persecution to enrich himself at the expense of the State or of any legal or physical person, shall, if he has not committed any offence incurring a severer penalty, be sentenced to penal servitude for from five to ten years.

Denunciation

Paragraph 11

Any person who, during the period of imminent danger to the Republic, has, while acting in the service or interest of the enemy or exploiting the situation brought about by enemy occupation, denounced another for any act, real or fancied, shall be sentenced to penal servitude for from five to ten years. But if the informer, through his denunciation, has caused the loss of liberty of a Czechoslovak citizen he shall be sentenced to penal servitude for from ten to twenty years. If the denunciation had as its direct or indirect consequence the loss of liberty by a considerable number of people or a serious loss of health, he shall be sentenced to penal servitude for life; if it resulted in anyone's death, he shall be sentenced to death.

General Provisions

Paragraph 12

Under this law any foreigner who committed the crime mentioned in para. 1, or any of the crimes mentioned in para. 4 to 9, while on foreign

territory shall be punished if he committed them against a Czechoslovak citizen or against Czechoslovak public or private property.

Paragraph 13

(1) Actions punishable under this law are not justified by the fact that they were ordered or permitted by the provisions of any law other than Czechoslovak law or by organs set up by any state authority other than the Czechoslovak, even if it is claimed that the guilty person regarded these invalid stipulations as justified.

(2) Nor is the guilty person justified by the fact that he was carrying out his prescribed duty if he behaved with especial zeal, thus notably exceeding the normal limits of his duty, or if he acted with the intention of helping the war effort of the Germans (or their Allies), injuring or thwarting the war effort of Czechoslovakia (or her Allies), or if he acted from other obviously reprehensible motives.

(3) The irresistible compulsion of an order from his superior does not release any person from guilt who voluntarily became a member of an organisation whose members undertook to carry out all, even criminal, orders.

Paragraph 14

If the Court finds the accused guilty of a crime mentioned in this law and does not waive or reduce the sentence in accordance with para. 16, clause 2, it shall at the same time order:

a) that the condemned shall forfeit his rights as a citizen for a certain period or for ever (para. 15);

b) that the condemned shall serve part of his detention or the whole of his sentence in special forced labour divisions which will be governed by a special law;

c) ~~that the whole or part of his property shall be confiscated to the State.~~

Paragraph 15

Deprivation of the rights of a citizen (see para. 14, sub-section a)) means:

1. The permanent loss of decorations, orders, and insignia, public office, rank and function, academic rank, and also the loss of pensions and emoluments, charity and all other payments from public funds;

2. In the case of N.C.O's, loss of rank and in the case of officers, cashiering;

3. Loss of ability to acquire, exercise and reacquire the rights mentioned under Nos. 1 and 2 and the rights ensuing from the lost rank;

4. The loss of the right to vote and be elected or appointed to a public function or to vote in public matters;

5. The loss of the ability to carry out a function in associations (societies or other similar bodies);

6. The loss of the ability to be the owner, publisher, editor or correspondent or to collaborate in any way in publishing or contributing to the periodical press, or to publish non-periodical literature;

7. Disqualification from giving public lectures or making public speeches;
8. Disqualification from work in educational or artistic institutions or undertakings;
9. Disqualification from being an employer or co-employer;
10. Disqualification from the practice of a liberal profession;
11. Disqualification from membership of the board of directors (administrative council) of societies and associations;
12. Disqualification from the post of chief clerk in a private undertaking.

Any person infringing the prohibitions laid down in this paragraph will be sentenced by the regular court for his infringement to imprisonment for from one week to three months.

Paragraph 16

(1) The period of detention cannot be reduced below the minimum laid down nor the manner of it changed to a more lenient one.

(2) The Court may, however, reduce the period of detention below the minimum laid down and change the manner of it to a more lenient one, and in cases worthy of special regard can in the verdict exempt the accused from punishment, if it is generally known or can be proved without delay that the accused acted with the intention of benefitting the Czech or Slovak nation or the Czechoslovak Republic, or its Allies, or otherwise in the general interest, or that his later activity served the cause of the liberation of the Republic from the power of the enemy or to repair or lessen the harm caused by the enemy and that after his return to the path of duty he persisted in it. But this stipulation shall not be applied if the harm caused by the offence of the accused was disproportionately greater than the general benefit which he sought to bring about.

Paragraph 17

No lapse of time between the commission of offences set out in this law and the trial thereof shall create a bar to proceedings.

Paragraph 18

By the period of imminent danger to the Republic is to be understood the period from 21st May, 1938 until a date which will be fixed by Government decree.

Paragraph 19

The crimes punishable under this law shall always be regarded as especially reprehensible in the meaning of para. 1, clause 1 of the law on state imprisonment of 16th July, 1931, No. 123 of the Collection of Laws.

Paragraph 20

An accessory in crimes punishable under this law shall be punished in accordance with the penal laws in force, with the following differences:

1. In the case of crimes against the State the accessory shall receive the same sentence as the criminal committing these crimes;

7. Disqualification from giving public lectures or making public speeches;
8. Disqualification from work in educational or artistic institutions or undertakings;
9. Disqualification from being an employer or co-employer;
10. Disqualification from the practice of a liberal profession;
11. Disqualification from membership of the board of directors (administrative council) of societies and associations;
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Paragraph 20

An accessory in crimes punishable under this law shall be punished in accordance with the penal laws in force, with the following differences:

1. In the case of crimes against the State the accessory shall receive the same sentence as the criminal committing these crimes;

2. in the case of these crimes the offence of being an accessory even by concealing near relatives (para. 39 No. 4, Law No. 50/1923 of the Collection of Laws, on the Defence of the Republic) is punishable by the same sentence as the crime and shall be punished by penal servitude for from one to ten years, but if this law punishes the offence itself with death, the accessory shall be sentenced to penal servitude for from five to twenty years;

3. in the case of other crimes the accessory shall be sentenced to penal servitude

a) for from ten to twenty years if this law punishes the crime itself with death or with penal servitude for a period of more than twenty years;

b) from one to ten years if this law imposes a lesser penalty for the crime itself.

CHAPTER II

Extraordinary People's Courts

Paragraph 21

(1) It is within the competence of the Extraordinary People's Courts to try all cases of crimes punishable under this law if the persons to be tried under it as criminals, accomplices, aiders and abettors or accessories are the persons mentioned in para. 2 and para. 3, clause 2; if those to be tried under it are persons other than these, the Extraordinary People's Courts shall try them if the Public Prosecutor proposes their prosecution in these courts (para. 24).

(2) The local competence of the Extraordinary People's Courts is defined by the provisions regarding criminal procedure in force on the territory of the Republic.

Composition and Seat of the

Extraordinary People's Courts

Paragraph 22

(1) The Extraordinary People's Court shall exercise its jurisdiction in senates of five members consisting of a president, who must be a professional judge (civil or military judge) and four lay judges.

(2) The chairmen of the Extraordinary People's Courts, their deputies and the professional judges (clause 1) shall be appointed by the President of the Republic on the proposal of the Government from lists of persons drawn up for this purpose by the District National Committees. The Government shall appoint the lay judges from other lists drawn up by the District National Committees.

(3) The chairman of the Extraordinary People's Court or his deputy shall set up the necessary number of senates, with their deputies, from the persons referred to in clause 2.

(4) The Extraordinary People's Courts shall be set up at the seats of the District Courts of Second Instance, but any senate of the Extraordinary People's Court may, if need arises, sit at any place in the circuit. The Local National Committee shall appoint persons to carry out the death sentence and a sufficient number of assistants at the seat of the District Court of Second Instance.

Paragraph 23

When the vote is taken the lay judges shall vote first, the elder before the younger.

The Public Prosecutor

Paragraph 24

(1) The Public Prosecutors of the Extraordinary People's Courts shall be appointed by the Government or, on its instructions, by the Minister of Justice for a certain period, for certain cases, or for the whole period that the Courts are in force, from among the public prosecutors or other persons who have taken the degree of Doctor of Laws or passed three state examinations in law, or at least the state judicial examination, in so far as these persons are in the lists drawn up for this purpose by the District National Committees.

(2) The public prosecutors of the Extraordinary People's Courts are under the Minister of Justice.

Procedure in the Extraordinary People's Courts

Paragraph 25

(1) The procedure in the Extraordinary People's Courts shall be governed by the principles of the procedure in courts martial in the form laid down in paragraphs 26 to 31 of the present law. Where the law refers to regulations in the ordinary procedure, however, the regulations in the criminal procedure in force are signified.

(2) If the accused has been acquitted by a verdict of the Extraordinary People's Court, this does not exclude his prosecution in the ordinary court, or in the High Court under Law No. 68/1935 of the Collection of Laws, or in the District Court of Second Instance competent to try cases of military treachery under Law No. 130/1936, of the Collection of Laws, and Government Decree No. 238/1937 of the Collection of Laws. This court shall try the case again by ordinary procedure, the material provisions of this law (para. 1 - 20) being valid, in the same way as if the accused had already previously been brought before the ordinary Court (para. 21). But the proposal for such proceedings to be taken against the accused must be handed in within three months of the date of the acquittal.

Paragraph 26

(1) Proceedings in the Extraordinary People's Court shall be opened on the proposal of the Public Prosecutor (para. 24). Pregnant women shall not be summoned before the Extraordinary People's Court so long as they are in this condition.

(2) The entire criminal proceedings shall as a rule be conducted from beginning to end by the Extraordinary People's Court, after the manner of a trial, and as far as possible without interruption, and must be concluded within the space of three days from the moment when the accused was brought before the Court. If the Extraordinary People's Court has not arrived at a decision within this period, the case shall be referred to the competent Ordinary Court (para. 25, clause 2). But even after the termination of this period the proceedings may be continued in the Extraordinary People's Court on the proposal of the Public Prosecutor.

(3) In the preliminary investigations and preliminary interrogation which may precede the proceedings in the Extraordinary People's Court the Public Prosecutor shall have the rights and duties of a representative of the State.

(4) If the accused has not appeared or cannot appear in court for any reason, the Public Prosecutor may propose that the trial take place in the absence of the accused. In this case the Court must appoint a defending counsel by the exercise of its official authority.

Paragraph 27

Proceedings in the Extraordinary People's Court shall be oral and public. The accused has the right to choose his own defending counsel or, if he is destitute, to request the Court to appoint a defending counsel for him. If the accused does not exercise his right, the Court shall appoint a defending counsel for him by the exercise of its official authority. Both the accused and the Court may entrust the defence to a person not inscribed on the list of defending counsel, but who has taken the degree of Doctor of Laws or passed three State examinations in law or at least the State judicial examination.

Paragraph 28

(1) The trial in the Extraordinary People's Court shall be opened after the case has been announced and the general particulars verified by a declaration by the Public Prosecutor of the offences with which the accused is charged. The examination of the accused and the taking of evidence shall be conducted in general in accordance with the regulations of criminal procedure. Verbatim reports of the interrogation of accomplices and witnesses and the views of experts may be read whenever the president of the senate considers this suitable.

(2) The proceedings shall in principle be restricted to the act or acts for which the accused has been summoned before the Extraordinary People's Court. Acts which are not punishable under this law can therefore not be taken into account. If these acts are tried later in proceedings in the Extraordinary People's Court, or in the ordinary court or the High Court or the District Court competent to try military treachery, the sentence of imprisonment already imposed by the Extraordinary People's Court must be taken into account in deciding the penalty.

(3) Proceedings in the Extraordinary People's Court must not be delayed pending the confirmation of claims for the reparation of damage caused by the criminal act.

(4) The identification and tracing of accomplices must not be neglected but the pronouncement and execution of the sentence are not to be postponed for this purpose.

(5) After the conclusion of the proceedings for collecting evidence the Public Prosecutor shall sum up its results and make his final proposal. Thereupon the president shall call upon the accused and his defending counsel to submit the defence. If the Public Prosecutor replies to the defence, the accused and his defending counsel still have the right to the last word.

Paragraph 29

(1) After this the Court shall consider its verdict in private, being guided by the relevant regulations on regular procedure in so far as this law does not stipulate otherwise.

(2) If the verdict of guilty in the case of a crime punishable under this law with death is supported by only three votes, or if the Court is of the opinion that the circumstances have been proved to be such that the death sentence would be unduly severe, the Court may impose a sentence of penal servitude for a period varying from twenty years to a life sentence, and under the conditions indicated therein it can also apply paragraph 16, clause 2.

(3) The verdict shall be announced immediately at a public sitting of the Court.

Paragraph 30

Minutes of the proceedings in the Extraordinary People's Court shall be taken down in accordance with the rules on regular procedure. These minutes shall be signed by all the members of the senate and by the clerk to the court.

Paragraph 31

(1) There is no appeal against the decision of the Extraordinary People's Courts. A recommendation to mercy, by whomsoever presented, has no delaying effect.

(2) The death penalty shall be carried out within two hours from the pronouncement of the sentence. At the express request of the condemned person this time may be prolonged for a further hour. If the proceedings have taken place in the absence of the accused, the death sentence shall be carried out within 24 hours from the apprehension of the condemned person. The execution of the death sentence may, however, be postponed for a suitable length of time if this is requested by the Public Prosecutor in the urgent public interest.

(3) If the Extraordinary People's Court passes the death sentence on several people, it shall at the same time indicate in the sentence in what order the condemned are to be executed. It may also decide that the death penalty shall be carried out in public. It will do so especially when the savage manner in which the crime was committed, the degenerate character of the criminal, the number of his crimes or his own position makes a public execution advisable. In this case the Court may prolong the period of two hours (clause 2) to ensure that the execution shall be public, but not beyond 24 hours.

Transitional and concluding regulations

Paragraph 32

(1) The provisions of the Law of 3rd May, 1934, No. 91 of the Collection of Laws, on the imposition of the death sentence and life sentences are not valid for crimes punishable under the present law.

(2) The provisions of the Law of 11th March, 1931, No. 48, Collection of Laws, on penal legislation regarding young persons, remain in force.

Paragraph 33.

The present law shall come into force on the day of its publication[■] and shall remain in force for one year unless the competent legislative institutions amend or supplement it or curtail or extend the period of its validity.

■ That is to say on the day of the publication of the Decree No. 16/1945 of the Collection of Laws, namely 9th July, 1945.

Paragraph 34

All the members of the Government undertake to carry out this law.

Decree of the Slovak National Council

of May 14th, 1946,

amending and supplementing Decree No. 33/1945, as formulated in Decree No. 83/1945 of the Collection of Decrees of the Slovak National Council, on the punishment of Fascist criminals, usurpers, traitors and collaborators and on the setting up of the People's Courts.

The Slovak National Council has passed the following Decree:

The provisions of Decree No. 33/1945 as formulated in Decree No. 83/1945 of the Collection of Decrees of the Slovak National Council are hereby amended and supplemented as follows:

Article I

Para. 6 is amended and shall run as follows:

"(1) When the guilty person has, by his subsequent action, especially by taking part in the uprising, rendered important service in the anti-fascist struggle or in saving the lives of persons persecuted on political, national or racial grounds, it shall be possible to commute the death sentence to a sentence of detention for a period not exceeding 30 years, or in exceptional cases to set aside both secondary and principal penalties, and it shall be possible to restrict the loss of rights to the loss of the right to vote, to be elected or appointed to a public function or to vote in public matters and to loss of the right to be the editor or correspondent of a newspaper or the publisher of non-periodical printed matter, and in certain cases it shall also be possible to pass a sentence of public censure.

(2) In exceptional cases under clause 1 the Court may release the accused or waive the penalty."

Article II

Para. 10, clauses 1 and 8 are amended and run as follows:

"(1) The Peoples's Court - except in the case mentioned in para. 30a clause 2 - cannot proceed in the absence of the accused.

(8) There is no appeal against the decision of the People's Courts."

Article III

To para 13 add a further clause running as follows:

"(5) Any assistant judge who fails to fulfill his functions in the Senate to which he has been regularly appointed, without the justification of an insurmountable obstacle, or who absents himself without the permission of the President of the Senate or who refuses to carry out any other duty connected with his office unless prevented by an insurmountable obstacle, may be fined by the President of the Senate up to the amount of 10,000 kcs. The assistant judge may lodge an appeal against this decision within 8 days from the delivery of the decision. Appeals will be decided by a special Senate, which shall be made up of the President and two Assistant Judges of the competent Senate. If the Assistant Judge subsequently justifies

his conduct by proving the existence of an insurmountable obstacle, the President shall reverse the decision and cancel the imposition of the fine. In other cases worthy of consideration the President may reduce the fine in accordance with the circumstances. The decision regarding the imposition of the fine is an executive function. The fine shall be collected by distraint warrant. The fines collected shall be credited to the presidential office of the Slovak National Council. The payment of the fine does not exclude a notification under clause 4 of the purpose of appeal by the Assistant Judge in question...."

Article IV

Para. 15 is amended and shall run as follows:

"(1) Prosecutions in the National Court shall be conducted by prosecutors of the Office of Prosecution of the National Court.

(2) The leading prosecutor of the Office of Prosecution and the other prosecutors shall be appointed and withdrawn by the Presidential Office of the Slovak National Council.

(3) In carrying out his function, the leading prosecutor shall be under the direction of the Presidential Office of the Slovak National Council, but as regards questions of staff and organisation he shall be under the direction of the office of the Commissioner for Justice.

Article V

Para. 16 shall be supplemented by a new sentence to run as follows:

"The President of the Senate may at any time appoint a person to defend the accused. He is bound to do so if the accused demands it. The accused must draw attention to this right at the time when the notice of prosecution is delivered to him."

Article VI

Para. 19 is amended to run as follows:

(1) When pronouncing the death penalty the Court shall state in the sentence whether the penalty is to be carried out by hanging or shooting.

(2) When the accused has been condemned to death, the Court - immediately after the sentence has been pronounced - shall, at a private session after the hearing the prosecutor, decide whether to recommend the condemned man to mercy and if so what penalty it regards as suitable in place of the death penalty. If the Court does not make a recommendation to mercy and if no reprieve from the sentence has been granted within 48 hours, the immediate execution of the death sentence must be ordered. But if the Court makes a recommendation to mercy it shall submit the documents with its recommendation through the High Court, the Presidential Officer of the Slovak National Council and the Government to the President of the Republic. The plea for mercy submitted by the condemned man shall be annexed to the document. In this case the death penalty shall not be carried out until the President of the Republic has decided whether to reprieve the condemned man or not.

(3) The death sentence by shooting shall be carried out by the police.

(4) The measures connected with the execution of the death sentence shall be taken by the office of the Public Prosecutor in the district in which the Court is sitting, on the written request of the President of the Senate passing the sentence and in accordance with the regulations in force for the execution of death sentences imposed by the District Court of Second Instance. The function of the judge appointed by the District Court of Second Instance is carried out during execution of the sentence by the judge appointed by the appropriate District Court of Second Instance or by an Assistant Judge of the deciding Senate, appointed by the President of this Senate."

Article VII

After para. 21 a new paragraph is to be inserted which shall run as follows:

Paragraph 21a

The officer of the Commissioner for Justice may set up a special senate (or senates) of the District People's Courts and appoint the president (or his deputy) and also the necessary number of prosecutors (and their deputies). The assistant judges (and their deputies) shall be appointed to this senate (or senates) by the office of the Commissioner for Justice on the proposal of the office of the Commissioner for the Interior.

(2) The Commissariat for Justice can entrust the senate (or senates) set up under clause 1 with the temporary execution of the agenda or part of the agenda of any District People's Court.

Paragraph 21b

(1) The office of the Commissioner for the Interior may set up a special senate (or senates) of the local People's Courts and appoint its president (or his deputy), the assistant judges (or their deputies) and also the prosecutor (and his deputy) for this senate (or senates).

(2) The Commissariat for the Interior may entrust the senate (or senates) set up under clause 1 with the temporary execution of the work or part of the work of any local People's Court.

Paragraph 21c

The Commissariat for Justice can extend the competence of a District People's Court to another district (or districts).

Paragraph 21d

The Commissariat for Justice can, up to the time when the sentence is pronounced, withdraw the proceedings in any case from the appropriate District People's Court and order the case to be tried before another District People's Court.

Article VIII

Paragraph 23, clause 4 is amended to run as follows:

"(4) The stipulations of para. 13, clauses 4 and 5 are valid also for the District People's Courts."

Article IX

Paragraph 24, clauses 2 and 3 are amended to run as follows:

"(2) The prosecutor and his deputy shall be appointed, from among persons expert in the law, shall be withdrawn, by the Commissariat for Justice as far as possible on the proposal of the appropriate District National Committee.

(3) In the exercise of his functions the prosecutor shall act under the Commissariat for Justice."

Article X

After para. 25a a new paragraph shall be inserted to run as follows:

"Paragraph 25a

The office of the Commissioner for Justice shall supervise the administration of the District People's Courts."

Article XI

After para. 30 new provisions shall be inserted to run as follows:

"PART III

Paragraph 30a

Proceedings in the absence of the Accused

(1) If the accused is living abroad or if his whereabouts are unknown appropriate measures with a view to procuring his attendance shall be carried out on the proposal of the prosecutor by the President of the Senate of the competent People's Court in accordance with the provisions of Chapters XXIII and XXIV of the Penal Code, the punishable offences mentioned in paras. 1 - 4 being regarded as crimes and the punishable offences mentioned in para. 5 as misdemeanours. In the place of the President of the local People's Court these measures shall be taken by the President of the appropriate District People's Court, to whom, in such a case, the President of the local People's Court shall furnish the documents.

(2) When the efforts to trace the accused are completed and the measures under clause 1 have been taken, the prosecutor may present the document containing the accusation against the absent accused, and the Court may try the case and pass sentence. In the place of the examination of the accused, his written statement or evidence must be read during the proceedings.

Special Appeal

Paragraph 30b

(1) The sentence of the People's Court can only be reversed by special appeal.

(2) The special appeal does not postpone the execution of the sentence, but the Court which passed the death sentence and the judge within whose competence it falls to decide on the special appeal may, for reasons of sufficient importance, postpone the execution of the death sentence until the special appeal has been heard.

Paragraph 30c

(1) A special appeal can be made against either an acquittal or a sentence.

(2) A special appeal can be lodged by the Office of Prosecutions of the National Court in favour of or against the accused and in the case mentioned in para. 30d, clause 1, sub-section e), by the accused or his defending counsel.

Paragraph 30d

- (1) A special appeal shall be permitted in the following cases:
- a) When the punishable offence of another person had an influence on the decision of the court condemning or acquitting the accused, on the definition of the offence or on the penalty;
 - b) when new and important evidence has appeared which can form an argument in favour of an alteration of verdict of the Court, the definition of the offence, or the penalty;
 - c) when the local People's Court has made a decision in a case which falls within the competence of the National Court or of the District People's Court, or when the District People's Court has made a decision in a case which falls within the competence of the National Court;
 - d) when the People's Court has made a decision in a case which does not fall in any way within the competence of the People's Court;
 - e) in the case mentioned in para. 30a, clause 2, when sentence has been passed.
- (2) After the death of the accused special appeal in his favour cannot be allowed.

Paragraph 30e

- (1) Special appeals shall be decided by the National Court formed in the same way as when trying offences falling within its competence, but with this difference, that instead of two assistant judges there shall be two members of the Supreme Court, who (with two deputies) shall be appointed and withdrawn by the Office of the President of the Slovak National Council. The function of prosecutor, in accordance with further regulations, shall be carried out by the Prosecutor of the National Court.
- (2) Members of the senate who decided the case in the first place and the prosecutor who took part in the original proceedings are excluded from the special appeal proceedings.

Paragraph 30f

When the accused is dead the President of the senate conducting the case is bound to appoint a defending counsel to defend his interests.

Paragraph 30g

- (1) A special appeal must be presented in writing to the Court which originally decided the case. This Court, after making a decision in accordance with para. 30b, clause 2, is bound immediately to lay the appeal together with the relevant documents before the court competent to decide the special appeal (para. 30e). The Court which originally tried the case and the prosecutor of this Court are entitled to annex their reports to the documents.
- (2) When the legal conditions laid down in para. 30c and 30d are absent, the appropriate Court shall, in accordance with para. 30e, refuse permission to make a special appeal, by a decision of the Court, and shall deliver the decision to the person who presented the special appeal. When there are no grounds for refusal and the special appeal refers to evidence or facts which must be procured or confirmed, the Court shall entrust a judge who is a member of the senate with procuring such evidence

or confirming such facts. The judge thus entrusted shall proceed in accordance with the regulations in force for procuring evidence, with this difference, that when there is no legal obstacle he shall put the witnesses on oath. When this has been done the president shall arrange a private meeting of the senate. At this meeting the judge entrusted with procuring the evidence shall give a report of the measures which he has taken. If the senate considers it necessary to supplement the steps taken by the judge so entrusted, it shall instruct him to take the appropriate measures. If at this stage of the proceedings it sees reason for refusal, it shall pass a resolution to this effect. Otherwise, after hearing the prosecutor and the accused or his defending counsel, it shall pass a resolution deciding whether or not to grant permission for fresh proceedings. The decision shall be communicated to the parties. If the procuring of evidence or the confirmation of facts, is not required, the procedure mentioned above must be carried out, except for the activities of the judge entrusted with procuring evidence.

(3) If the Court grants permission for new proceedings under clause 2, it shall (under para. 30h, clause 1) decide the matter:

a) in cases covered by para. 30d, clause 1, sub-sections a), b) and e), after giving the matter a hearing, during which use must be made of the same provisions as were applied in the previous trial;

b) in cases para. 30d, clause 1, sub-sections c) and d), at a public session after hearing the prosecutor, and the accused or his defending counsel.

Paragraph 30h

(1) If the Court ascertains, in the course of its proceedings under para. 30g, clause 3, that there are grounds for replacing the original verdict by a new decision or for reversing it,

a) it shall, in the case of para. 30d, clause 1, sub-sections a), b) or e), declare the original verdict or part of it null and void and replace it by a new decision;

b) in the case of para. 30d, clause 1, sub-section c) or d), it shall reverse the original verdict and refer the documents to the court or authority within whose competence the proceedings fall.

Otherwise the Court shall declare that it leaves the original verdict in force.

In all cases the Court shall come to a decision in the form of a final verdict.

(2) The appropriate provisions in force for the original verdict shall be valid for the execution of the new verdict. The sentence already served must be counted in the new sentence of detention imposed.

(3) If a verdict of acquittal has been passed, it must be published in the Official Gazette on the request of the accused or his defending counsel.

(4) A decision under clause 1 must be communicated to the parties.

Paragraph 30i

A special appeal under para. 30d, clause 1, sub-sections a) to d), wherever and by whomsoever it is lodged, must be referred to the Office of Prosecution of the National Court (para. 30c, clause 2).

Paragraph 30j

Fresh proceedings after a refusal to prosecute

If there has been a refusal to prosecute in a certain case, but reasons arise for a fresh prosecution, it shall be possible to proceed in the matter further if, on the proposal of the prosecutor who procured the evidence or ascertained the facts, proceeding in accordance with the regulations in force for procuring evidence, the People's Court gives permission for fresh proceedings.

Paragraph 30k

Recommendation to Mercy

(1) A recommendation to mercy must be lodged with the appropriate People's Court. This Court, after hearing the prosecutor and investigating the matter shall, by way of the Commissariat for Justice, the Presidential Office of the Slovak National Council and the Government, submit the documents and its proposal to the President of the Republic.

(2) A recommendation to mercy has no necessary delaying effect, but the Court which decided the case, the President of the Republic, the Government, the Presidential Office of the Slovak National Council and the Commissariat for Justice may allow a recommendation to have a delaying effect

Article XII

A new heading and a new paragraph are to be inserted before paragraph 31 as follows:

"PART IV

Concluding Provisions

Paragraph 30l

(1) The authority appointed to nominate the Assistant Judges of the People's Court shall also appoint their deputies, to a number corresponding to practical needs but at least equal to the number of Assistant Judges.

(2) The Commissariat for Justice shall appoint a suitable number of clerks for the National Court; and the appropriate District National Committee shall appoint a suitable number of clerks for the District People's Court and the Local People's Court."

Article XIII

After para. 32 a new paragraph shall be inserted as follows:

"Paragraph 32a

The provisions of this Decree apply to punishable offences committed before its coming into force (before 23rd May, 1945)".

Article XIV

The validity of Decree No. 33/1945 as formulated in Decree No. 83/1945 of the Collection of Decrees of the Slovak National Council and as formulated in the present Decree is extended until December 31st, 1947.

Article XV

The present Decree shall be carried out by the Commissar for Justice together with the Commissar for the Interior.

Article XVI

The Commissar for Justice is empowered to draw up and publish in the Collection of Decrees of the Slovak National Council the full text of Decree No. 33/1945 in the Collection of Decrees of the Slovak National Council as amended and supplemented by the later decrees quoted above.

(Signed) Dr. Lettrich.

Declaration of the Commissar for Justice of

14th May, 1946,

regarding the complete text of the Decree for the punishment of fascist criminals, usurpers, traitors and collaborators and concerning the administration of the People's Courts.

In accordance with Article XVI of Decree No. 57/1946 of its Collection of Decrees of the Slovak National Council, I publish the full text of Decree No. 33/1945 as formulated in Decrees Nos. 83/1945 and 57/1946, Collection of Decrees of the Slovak National Council.

(Signed) Dr. Stefanik.

Annex to Declaration No. 58/1946, Collection

of Decrees of the Slovak National Council

Decree of the Slovak National Council

of 15th May, 1945

No. 33 in the Collection of Decrees of the Slovak National Council,
on the punishment of fascist criminals, usurpers, traitors and collaborators
and on the administration of the People's Courts.

The Slovak National Council has passed the following decree:

"PART I

Paragraph 1

Fascist usurpers

Any foreign national who

a) has supported the dismemberment of the Czechoslovak Republic or the destruction of its democratic government, or who

b) has taken part in political, economic or any other kind of oppression of the Slovak nation, especially any person who has terrorised or plundered the Slovak people, fought with the German Army on the territory of the Czechoslovak Republic against the Red Army, the other Allied armies, the Slovak uprising or the partisans in Slovakia, or who has in the course of such action committed murder, robbery, arson, extortion, or has been an informer or committed other outrages or acts of violence, or been in the service of nazi Germany or Horthy's Hungary,

Article XV

The present Decree shall be carried out by the Commissar for Justice together with the Commissar for the Interior.

Article XVI

The Commissar for Justice is empowered to draw up and publish in the Collection of Decrees of the Slovak National Council the full text of Decree No. 33/1945 in the Collection of Decrees of the Slovak National Council as amended and supplemented by the later decrees quoted above.

(Signed) Dr. Lettrich.

Declaration of the Commissar for Justice of

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regarding the complete text of the Decree for the punishment of fascist criminals, usurpers, traitors and collaborators and concerning the administration of the People's Courts.

In accordance with Article XVI of Decree No. 57/1946 of its Collection of Decrees of the Slovak National Council, I publish the full text of Decree No. 33/1945 as formulated in Decrees Nos. 83/1945 and 57/1946, Collection of Decrees of the Slovak National Council.

(Signed) Dr. Stefanik.

Annex to Declaration No. 58/1946, Collection
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Decree of the Slovak National Council
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a) has supported the dismemberment of the Czechoslovak Republic or the destruction of its democratic government, or who

b) has taken part in political, economic or any other kind of oppression of the Slovak nation, especially any person who has terrorised or plundered the Slovak people, fought with the German Army on the territory of the Czechoslovak Republic against the Red Army, the other Allied armies, the Slovak uprising or the partisans in Slovakia, or who has in the course of such action committed murder, robbery, arson, extortion, or has been an informer or committed other outrages or acts of violence, or been in the service of nazi Germany or Horthy's Hungary,

or has ordered or aided the deportation of Slovak nationals abroad, or been guilty of any other act against the Slovak national interest, shall be sentenced to death for his crime.

Paragraph 2

Quislings

Any Czechoslovak citizen who by his activities, but especially as a member of the Slovak Government, or Parliament, or in occupying a prominent position in politics or business or as a representative or prominent member of German, Hungarian or Slovak organisations,

a) supported the dismemberment of the Czechoslovak Republic or the abolition of its democratic government or the introduction of the fascist regime, especially any person who with this object took a leading or prominent part in the events which led to the 6th October, 1938 and the 14th March, 1939, or who by direct negotiation or otherwise helped in the formation of the Slovak state under the protection of Germany, or who,

b) gave notable support to the military, political or economic interests of Nazi Germany or Horthy's Hungary, sabotaged the war effort of the Union of Soviet Socialist Republics and the Allies, or injured the Slovak nation, the local democratic or anti-fascist organisations or groups leading the struggle for freedom, or who,

c) supported in any way the declaration of war and conduct of the war against the Union of Soviet Socialist Republics and the Allies, took an important part in it, or by his actions, especially acts of violence and extortion, disgraced the honour of the Slovak nation, or who

d) propagated defended or approved the activities and ideas of the fascist usurpers and the Quislings or who publicly disparaged the Union of Soviet Socialist Republics, the Allies or their governments and armies, shall be sentenced to death for his crime.

Paragraph 3

Collaborators

a) Any person who in any way whatsoever aided the activities of the fascist usurpers or the Quislings, co-operated with them with the intention of assisting the German conduct of the war, or injured the war effort of the Union of Soviet Socialist Republics and the Allies, or the Slovak nation's struggle for liberty, or

b) any person who ordered, organised or zealously carried out the persecution of democratic and anti-fascist persons and the organisations for their political activity, or who, contrary to the law, caused loss to another for racial, national, religious or political reasons and for his anti-fascist convictions, or who ordered or zealously carried out the transportation of Slovaks abroad to concentration camps or for work in the interest of the German conduct of the war, or

c) any person who as a member of a fascist organisation or by the use of political influence enriched himself at the expense of other citizens, or who became disproportionately rich in collaboration with the German or Hungarian usurpers or the Quislings at home or by exploiting war conditions, or

d) any important personality in public, political, economic or cultural life who placed his services at the disposal of the usurpers or of the fascist regime to help this regime to build, maintain and prolong the sufferings of the Slovak nation, or

e) any person who publicly propagated or approved the activities of collaborators (sub-sections a) to d)), shall be sentenced to 30 years detention and under especially aggravating circumstances to death.

Paragraph 4.

Betrayal of the Uprising

a) Any person who in any manner whatsoever thwarted the struggle of the Slovak nation against traitors and usurpers and for the freedom and restoration of the Czechoslovak Republic, or who thwarted the preparations for the national uprising or the participation of military units therein, or

b) any person who participated in any way in the efforts of the fascist usurpers or the quislings with the intention of suppressing the Slovak national uprising or preventing the struggle of the partisans, or who took part in the persecution of persons who had taken part in the uprising or in the struggle of the partisans, or gave information or otherwise helped the occupation army and authorities, or

c) any person who carried out propaganda for, or publicly defended, or approved, such treacherous activity, shall be sentenced to death.

Paragraph 5

Fascist Offenders

Any person who in his own locality has been a founder, organizer or propagandist of the Hlinka Slovak People's Party, the Hlinka Guard or any other fascist organization and has carried on activities favourable to the fascist regime; any person who was a prominent propagandist of fascist ideas, co-operation with Nazi Germany or war against the Union of Soviet Socialist Republics and the Allies; any person who carried on political activities as an enemy of the democratic system of the Czechoslovak Republic or who took part in anti-democratic, anti-communist, anti-Jewish or similar campaigns and persecution; any person who enriched himself at the expense of other citizens by using his political position; any person who committed any offence in the struggle for the freedom of the Slovak nation or in the war against the allied Union of Soviet Socialist Republics and the other Allies; or who oppressed other citizens, especially by compelling them to work for the German war interest, or otherwise injured their lives and property; or any person bearing the responsibility for the injury and humiliation caused to citizens locally by the usurpers and traitors - in so far as this act is not punishable under paragraphs 1 to 4 - shall be punished by relegation to a labour division for a period not exceeding 2 years and by deprivation of citizen rights for from 2 - 15 years, or by public censure only.

Paragraph 6

Mitigation of Sentence

(1) When the guilty person has, by his subsequent action, especially by taking part in the uprising, rendered important service in the anti-fascist struggle or in saving the lives of persons persecuted on political, national or racial grounds, it shall be possible to commute the death sentence to a sentence of detention for a period not exceeding 30 years, or in exceptional cases to set aside both secondary and principal penalties, in the course of which it shall be possible to restrict the loss of rights to the loss of the right to vote, to be elected or appointed to a public function or to vote in public matters and to loss of the right to be the editor or correspondent of a newspaper or the publisher of non-periodical printed matter, and in certain cases it shall also be possible to pass a sentence of public censure.

(2) In exceptional cases under clause 1 the Court may release the accused or waive the penalty.

Paragraph 7

Loss of rights

In pronouncing its verdict the Court shall at the same time announce the loss of civic rights except in the case of public censure.

Paragraph 8

Execution of the sentence

(1) The condemned man shall serve his sentence of detention in a penitentiary, or he may serve a part or the whole of the sentence in the special labour corps which will be set up for this purpose.

(2) The whole or a part of the property of the condemned man shall be declared by the Court to be confiscated to the State except in the case of persons condemned under paragraph 5.

PART II

Paragraph 9

The People's Courts

For the punishment of offences punishable under this Decree the following People's Courts shall be set up on Slovak territory:

- a) A National Court with its seat at Bratislava,
- b) District People's Courts having their seat in the county town.
- c) Local People's Courts in each administrative unit.

Paragraph 10

Procedure before the People's Courts

(1) The People's Court - except in the case mentioned in paragraph 30a, clause 2 - cannot proceed in the absence of the accused.

(2) An indictment can be presented to the People's Court by any citizen, any authority, or the police. The prosecutor concerned with the proceedings will examine the indictment and if he is of the opinion that the Court should refuse to prosecute, he shall submit the documents with his proposal to the People's Court, which shall decide the case or else lay a charge in writing before the president of the People's Court within the space of 8 days.

(3) When the criminal proceedings have been opened (after the indictment has been handed to the prosecutor of the People's Court or to the People's Court) the People's Court shall decide in a senate composed of its president and two assistant judges designated by him, whether the accused is to be imprisoned or not. In cases where the accused is under arrest at the time when the criminal proceedings open, the People's Court must decide without delay whether the accused should be kept under arrest or set at liberty.

(4) The whole period spent under arrest must be counted in the sentence of detention imposed.

(5) Pleas against the charge are not admissible.

(6) The whole procedure must be conducted with all speed so that the trial can begin 14 days after the charge has been laid before the president of the People's Court.

(7) The verdict must be passed and announced immediately after the termination of the trial. The verdict is to be pronounced "In the name of the Republic and of the Slovak nation."

(8) There is no appeal against the decision of the People's Courts.

The National Court

Paragraph 11

The National Court shall be set up in Bratislava for the whole territory of Slovakia.

Paragraph 12

It falls within the competence of the National Court to try such punishable offences mentioned in the present Decree as have been committed by:

- a) the ex-President of the Slovak Republic;
- b) the members of the Slovak Governments from March 14, 1939;
- c) the members of the Parliament of the Slovak Republic after March 14th, 1939;
- d) the members of the State Council after March 14th, 1939;
- e) the members of the High Command of Hlinka's Guard, the Hlinka Youth and their officers in official positions since 14th March, 1939;
- f) the propaganda chiefs since March 14th, 1939;
- g) ambassadors and ministers plenipotentiary since March 14th, 1939;
- h) the leaders of the national groups and their deputies;
- i) the leading officials in the anti-Jewish movement;
- j) the Commissioner of Police;
- k) the members of the supervisory senate of the High Court and the Public Prosecutor attached to it;
- l) any persons whom the Presidential Office of the Slovak National Council assigns to the competence of the National Court.

Paragraph 13

(1) The National Court shall sit and pass judgment as a senate consisting of seven members, namely its president and six assistant judges.

(2) The president of the senate and his deputy must be professional judges. They will be appointed and withdrawn by the Presidential Office of the Slovak National Council.

(3) The assistant judges will be appointed and withdrawn by the Presidential Office of the Slovak National Council.

(4) The president (a vice-president) appointed and the assistant judges are bound to undertake their function and to carry out the duties connected with it conscientiously. The assistant judges are specially bound to attend the proceedings (meetings) of the senate on the invitation

of the president (a vice president), and they must not absent themselves before the end of the proceedings without his permission. If they fail to carry out their duties without sufficient justification, the Presidential Office of the Slovak National Council, on the notification of the president, shall withdraw them and replace them by other persons.

(5) Any assistant judge who fails to fulfill his functions in the senate to which he has been regularly appointed, without the justification of an insurmountable obstacle, or who absents himself without the permission of the president of the senate or who refuses to carry out any other duty connected with his office unless prevented by an insurmountable obstacle, may be fined by the president of the senate up to the sum of 10,000 kcs. The assistant judge may lodge an appeal against this decision within 8 days from the delivery of the decision. Appeals will be decided by a special senate, which shall be made up of the president and two assistant judges of the competent senate. If the assistant judge subsequently justifies his conduct by an insurmountable obstacle, the president is to reverse the decision and cancel the imposition of the fine. In other cases worthy of consideration the president may reduce the fine in accordance with the circumstances. The decision regarding the imposition of the fine is an executive function. The fine shall be collected by distraint warrant. The fines collected shall be credited to the Presidential Office of the Slovak National Council. The payment of the fine does not exclude a notification under clause 4 for the purpose of appeal by the assistant judge in question.

Paragraph 14

Any person appointed as assistant judge (a deputy assistant judge) of the senate of the National Court must fulfill the following conditions, that is to say he must

- a) be over the age of 21,
- b) be able to read and write,
- c) be a citizen of the Czechoslovak Republic,
- d) be of unblemished moral character and politically unimpeachable.

Paragraph 15

(1) Prosecutions in the National Court shall be handled by prosecutors of the Office of Prosecution of the National Court.

(2) The leading prosecutor of the Office of Prosecution and the other prosecutors shall be appointed and withdrawn by the Presidential Office of the Slovak National Council.

(3) In carrying out his functions, the leading prosecutor shall be under the Presidential Office of the Slovak National Council, but as regards questions of staff and organisation he shall be under the Commissariat for Justice.

(4) The prosecutors appointed are bound by their office to undertake and carry out conscientiously the duties connected with it.

Paragraph 16

Any person accused in the National Court may select a defending counsel for himself from among the list of counsel drawn up by the Commissariat for Justice. The president of the senate may at any time appoint a person to defend the accused. He is bound to do so if the accused demands it. The accused must draw attention to this right at the time when the notice of prosecution is delivered to him.

Paragraph 17

The Court shall decide by a majority vote. The assistant judges shall cast their votes first and after them the president.

Paragraph 18

The minutes of the trial shall be signed by all the members of the senate and by the clerk to the court.

Paragraph 19

(1) When pronouncing the death penalty the Court shall state in the sentence whether the penalty is to be carried out by hanging or shooting.

(2) When the accused has been condemned to death, the Court - immediately after the sentence has been pronounced - shall, at a private session after hearing the prosecutor, decide whether to recommend the condemned man to mercy and if so what penalty it regards as suitable in place of the death penalty. If the Court does not make a recommendation to mercy and if no reprieve from the sentence has been granted within 48 hours, the immediate execution of the death sentence must be ordered. But if the Court makes a recommendation to mercy it shall submit the relevant documents with its recommendation through the High Court, the Presidential Office of the Slovak National Council and the Government to the President of the Republic. The plea for mercy submitted by the condemned man or another shall be annexed to the document. In this case the death penalty shall not be carried out until the President of the Republic has decided whether or not to reprieve the condemned man.

(3) The death sentence by shooting shall be carried out by the police.

(4) The measures connected with the execution of the death sentence shall be taken by the Office of the Public Prosecutor in the district in which the Court is sitting, on the written request of the president of the deciding senate passing the sentence and in accordance with the regulations in force for the execution of death sentences imposed by the District Court of Second Instance. The function of the judge appointed by the District Court of Second Instance is carried out during the execution of the sentence by the judge appointed by the appropriate District Court of Second Instance or by an Assistant judge of the deciding senate, appointed by the president of this senate.

Paragraph 20

Sentences imposed in accordance with the law by the National Court shall be executed by the competent Public Prosecutor's Office.

District People's Courts

Paragraph 21

The District People's Court shall be set up at the county town for the whole circuit.

Paragraph 21a

The Commissariat for Justice may set up a special senate (or senates) of the District People's Courts and appoint the president (or vice-president) and also the necessary number of prosecutors (and their deputies). The assistant judges (and their deputies) shall be appointed to this senate (or senates) by the Commissariat for Justice on the proposal of the Commissariat for the Interior.

(2) The commissariat for Justice can entrust the Senate (or senates) set up under clause 1 with the temporary execution of the agenda or part of the agenda of any District People's Court.

Paragraph 21b

(1) The Commissariat for the Interior may set up a special senate (or senates) for the Local People's Courts and appoint its president (or vice-president), the assistant judges (and their deputies) and also the prosecutor (and his deputy) for this senate (or senates).

(2) The Commissariat for the Interior can entrust the senate (or senates) set up under clause 1 with the temporary execution of the agenda or part of the agenda of any local People's Court.

Paragraph 21c

The Commissariat for Justice may extend the competence of a District People's Court to another district (or districts).

Paragraph 21d

The Commissariat for Justice may, up to the time when the sentence is pronounced, withdraw the proceedings in a certain case from the appropriate District People's Court and order the case to be tried before another District People's Court.

Paragraph 22

All offences punishable under this Decree fall within the competence of the District People's Court except those which are exclusively assigned to the competence of the National Court, and also those which may be removed from the competence of the District People's Court by the Presidential Office of the Slovak National Council and assigned to the National Court.

Paragraph 23

(1) The District People's Court shall come to decisions in a senate of 5 members, formed of the president and 4 assistant judges.

(2) The president of the senate and his deputy must be professional judges. They shall be appointed and withdrawn by the Commissariat for Justice, as far as possible on the proposal of the competent District National Committee.

(3) Assistant judges shall be appointed and withdrawn by the appropriate District National Committee.

(4) The provisions of paragraph 13, clauses 4 and 5, are similarly valid for the District People's Courts.

Paragraph 24

(1) The prosecution in the District People's Court shall be dealt with by the prosecutor.

(2) The prosecutor and his deputy shall be appointed from among persons expert in the law, and withdrawn by the Commissariat for Justice as far as possible on the proposal of the appropriate District National Committee.

(3) In the exercise of his functions the prosecutor shall be under the Commissariat for Justice.

(4) The provisions of paragraph 15, clause 4 also apply to the District People's Courts.

Paragraph 25

The provisions of paragraphs 14, 16 to 20 also apply to the District People's Courts.

Paragraph 25a

The Commissariat for Justice shall supervise the administration of the District People's Courts.

The Local People's Court.

Paragraph 26

A local People's Court shall be set up at the seat of the local National Committee for this administrative area.

Paragraph 27

All offences punishable under paragraph 5 of this decree fall within the competence of the local People's Court.

Paragraph 28

(1) The local People's Court shall pass decisions in a senate of from 5 to 11 members, composed of the president and from 4 to 10 assistant judges.

(2) The president and the prosecutor shall be appointed and withdrawn by the District National Committee.

(3) The assistant judges shall be appointed and withdrawn by the District National Committee on the proposal of the local National Committee.

(4) The provisions of paragraph 14 are also applicable to the local People's Courts.

(5) The president, prosecutor and assistant judges appointed are bound to undertake their functions and to carry out conscientiously the duties connected with them. It is the special duty of the president to see to the orderly carrying out of the work of the Court and the special duty of the assistant judges to attend the proceedings of the People's Court on the invitation of the president and they may not absent themselves before the end of the proceedings without his permission. If they fail to fulfill these obligations without sufficient justification the District National Committee shall recall them and replace them by other persons.

Paragraph 29

The execution of the sentence imposed by the local People's Court shall be supervised by the prosecutor of the District People's Court of the district concerned.

Paragraph 30

Any person accused before the local People's Court may choose a defending counsel for himself, but not from among the counsel and judges.

(4) The provisions of paragraph 15, clause 4 also apply to the District People's Courts.

Paragraph 25

The provisions of paragraphs 14, 16 to 20 also apply to the District People's Courts.

Paragraph 25a

The Commissariat for Justice shall supervise the administration of the District People's Courts.

The Local People's Court.

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A local People's Court shall be set up at the seat of the local National Committee for this administrative area.

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All offences punishable under paragraph 5 of this decree fall within the competence of the local People's Court.

Paragraph 28

(1) The local People's Court shall pass decisions in a senate of from 5 to 11 members, composed of the president and from 4 to 10 assistant judges.

(2) The president and the prosecutor shall be appointed and withdrawn by the District National Committee.

(3) The assistant judges shall be appointed and withdrawn by the District National Committee on the proposal of the local National Committee.

(4) The provisions of paragraph 14 are also applicable to the local People's Courts.

(5) The president, prosecutor and assistant judges appointed are bound to undertake their functions and to carry out conscientiously the duties connected with them. It is the special duty of the president to see to the orderly carrying out of the work of the Court and the special duty of the assistant judges to attend the proceedings of the People's Court on the invitation of the president and they may not absent themselves before the end of the proceedings without his permission. If they fail to fulfill these obligations without sufficient justification the District National Committee shall recall them and replace them by other persons.

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The execution of the sentence imposed by the local People's Court shall be supervised by the prosecutor of the District People's Court of the district concerned.

Paragraph 30

Any person accused before the local People's Court may choose a defending counsel for himself, but not from among the counsel and judges.

PART III

Paragraph 30a

Proceedings in the absence of the Accused

(1) If the accused is living abroad, or if his whereabouts are unknown, the appropriate measures with a view to procuring his attendance shall be carried out on the proposal of the prosecutor by the president of the senate of the competent People's Court, in accordance with the provisions of Chapters XXIII and XXIV of the Penal Code, the punishable offences mentioned in paragraphs 1 to 4 being regarded as crimes and the punishable offences mentioned in paragraph 5 as misdemeanours. In the place of the president of the local People's Court these measures shall be taken by the President of the appropriate District People's Court, to whom, in such a case, the president of the local People's Court shall furnish the relevant documents.

(2) When the efforts to trace the accused are completed and the measures under clause 1 have been taken, the prosecutor may present the document containing the accusation against the absent accused, and the Court may try the case and pass sentence. In the place of the examination of the accused, his written statement or evidence must be read during the proceedings.

Special Appeal

Paragraph 30b

(1) The sentence of the People's Court can only be reversed by special appeal.

(2) The special appeal does not postpone the execution of the sentence, but the Court which passed the death sentence and the judge within whose competence it falls to decide on the special appeal may, for reasons of sufficient importance, postpone the execution of the death sentence until the special appeal has been heard.

Paragraph 30c

(1) A special appeal can be made against either an acquittal or a sentence.

(2) A special appeal can be lodged by the Office of Prosecutions of the National Court in favour of or against the accused, and in the cases mentioned in paragraph 30, clause 1, sub-section e), by the accused or his defending counsel.

Paragraph 30d

(1) A special appeal shall be permitted in the following cases:

a) when the punishable offence of another person had an influence on the decision of the Court condemning or acquitting the accused, on the definition of the offence or on the penalty;

b) when new and important evidence has appeared which may form an argument in favour of an alteration of the decision of the Court regarding condemnation or acquittal, the definition of the offence, or the penalty;

c) when the local People's Court has come to a decision in a case which falls within the competence of the National Court or of the District People's Court, or when the District People's Court has made a decision in a case which falls within the competence of the National Court;

d) when the People's Court has made a decision in a case which does not fall in any way within the competence of the People's Court;

e) in the case mentioned in paragraph 30 a, clause 2, when sentence has been passed.

(2) After the death of the accused a special appeal in his favour cannot be allowed.

Paragraph 30e

(1) Special appeals shall be decided by the National Court formed in the same way as when trying offences falling within its competence, but with this difference, that instead of two assistant judges there shall be two members of the Supreme Court, who (with two deputies) shall be appointed and withdrawn by the Presidential Office of the Slovak National Council. The function of prosecutor, in accordance with further regulations, shall be carried out by the Prosecutor of the National Court.

(2) Members of the senate who decided the case in the first place and the prosecutor who took part in the original proceedings are excluded from the special appeal proceedings.

Paragraph 30f

When the accused is dead the president of the senate conducting the case is bound to appoint a defending counsel to defend his interests.

Paragraph 30g

(1) A special appeal must be presented in writing to the Court which originally decided the case. This Court, after making a decision in accordance with paragraph 30b, clause 2, is bound immediately to lay the appeal, together with the relevant documents, before the court competent to decide the special appeal (paragraph 30e). The Court which originally tried the case and the prosecutor of this Court are entitled to annex their reports to the documents.

(2) When the legal conditions laid down in paragraph 30c and 30d are absent, the appropriate Court, shall, in accordance with paragraph 30e refuse permission to make a special appeal, by a decision of the Court, and shall deliver the decision to the person who presented the special appeal. When there are no grounds for refusal and the special appeal refers to evidence or facts which must be procured or confirmed, the Court shall entrust a judge who is a member of the senate with procuring such evidence or confirming such facts. The judge thus entrusted shall proceed in accordance with the regulations in force for procuring evidence, with this difference, that when there is no legal obstacle he shall put the witnesses on oath. When this has been done the president shall fix a private meeting of the senate. At this meeting the judge entrusted with procuring the evidence shall give a report of the measures which he has taken. If the senate considers it necessary to supplement the steps taken by the judge so entrusted, it shall instruct him to take the appropriate measures. If at this stage of the proceedings it sees reason for refusal, it shall pass a resolution to this effect. Otherwise, after hearing the prosecutor and the accused or his defending counsel, it shall make a ruling as to whether to grant permission for fresh proceedings or no. The decision shall be communicated to the parties. If the procuring of evidence or confirmation of facts is not required, the procedure mentioned above must be carried out, except for the activities of the judge entrusted with procuring evidence.

(3) If the Court grants permission for fresh proceedings under clause 2, it shall (under paragraph 30h, clause 1) decide the case;

a) in cases paragraph 30d, clause 1, sub-sections a), b) and e), after the proceedings, at which the provisions in force for proceeding in the essential case must be suitably applied;

b) in cases paragraph 30d, clause 1, sub-sections c) and d), at a public session after hearing the prosecutor and the accused or his defending counsel.

Paragraph 30h

(1) If the Court ascertains in the course of its proceedings under paragraph 30g, clause 3, that there are grounds for replacing the original verdict by a new decision or for reversing it,

a) it shall, in the case of paragraph 30d, clause 1, sub-sections a), b) or c), declare the original verdict or part of it null and void and replace it by a new decision;

b) in the case of paragraph 30d, clause 1, sub-sections c) or d), it shall reverse the original verdict and refer the documents to the court or authority within whose competence the proceedings fall.

Otherwise, the Court shall declare that it leaves the original verdict in force.

In all cases the Court shall come to a decision in the form of a final verdict.

(2) The appropriate provisions in force for the original verdict shall be valid for the execution of the new verdict. The sentence already served must be counted in the new sentence of detention imposed.

(3) If a verdict of acquittal has been passed, it must be published in the Official Gazette on the request of the accused or his defending counsel.

(4) A decision under clause 1 must be communicated to the parties.

Paragraph 30i

A special appeal under paragraph 30d, clause 1, sub-sections a) to d), wherever and by whomsoever it is lodged, must be referred to the Office of Prosecutions of the National Court (paragraph 30c, clause 2).

Paragraph 30j

Fresh proceedings after a refusal to prosecute

If there has been a refusal to prosecute in a certain case, but reasons arise for a fresh prosecution, it shall be possible to proceed in the matter further if, on the proposal of the prosecutor who procured the evidence or ascertained the facts (proceeding in accordance with the regulations in force for procuring evidence), the People's Court gives permission for fresh proceedings.

Paragraph 30k

Recommendation to mercy

(1) A recommendation to mercy must be lodged with the appropriate People's Court. This Court, after hearing the prosecutor and investigating the matter, shall, by way of the Commissariat for Justice, the Presidential

Office of the Slovak National Council and the Government, submit the documents and its proposal to the President of the Republic.

(2) A recommendation to mercy has no necessary delaying effect, but the Court which decided the case, the President of the Republic, the Government, the Presidential Office of the Slovak National Council and the Commissariat for Justice, may allow a delay in view of the recommendation.

PART IV

Concluding Provisions

Paragraph 301

(1) The authority appointed to nominate the assistant judges of the People's Court shall also appoint their deputies, to a number corresponding to practical needs but at least equal to the number of assistant judges.

(2) The Commissariat for Justice shall appoint a suitable number of clerks for the National Court; and the appropriate District National Committee shall appoint a suitable number of clerks for the District People's Court and the Local People's Court.

Paragraph 31

The office work for the National Court shall be done by the Supreme Court, in the case of the District People's Court it shall be done by the appropriate District Court of First Instance, and in the case of the local People's Court by the office of the local National Committee; in the case of the Office of Prosecutions of the National Court it shall be done by the Office of the Public Prosecutor for Slovakia, for the prosecutor at the District People's Court by the appropriate District Court of First Instance, for the prosecutor at the local People's Court by the appropriate office of the local National Committee.

Paragraph 32

Expenses connected with the setting up and functioning of the People's Courts will be met by the State out of the budget of the Presidential Office of the Slovak National Council.

Paragraph 32a

The provisions of this Decree apply to punishable offences committed before its coming into force (before 23rd May, 1945).

Paragraph 33

The present Decree shall come into force immediately, ^(*) and shall remain in force until 31st December, 1947; it is passed by the Presidential Office of the Slovak National Council with the body of Commissars; the Commissar for Justice with the Commissars participating (Decree No. 83/1945, Collection of Decrees of the Slovak National Council); the Commissar for Justice with the Commissar for the Interior (Decree No. 57/1946, Collection of Decrees of the Slovak National Council).

(Signed) Dr. Lettrich.

(*) Decree No. 33/1945, Collection of Decrees of the Slovak National Council, came into force on May 23rd, 1945, Decree No. 83/1945, Collection of Decrees of the Slovak National Council, on 3rd August, 1945, and Decree No. 57/1946, Collection of Decrees of the Slovak National Council, on 22nd May, 1946.

245. Law amending and supplementing the decrees of the President of the Republic on the Extraordinary People's Courts and prolonging their operation.

LAW

of 18th December, 1946,

amending and supplementing the decrees of the President of the Republic on the Extraordinary People's Courts and prolonging their operation.

The Constituent National Assembly of the Czechoslovak Republic has passed the following law:

Article I

The decree of the President of the Republic of 19th June 1945, No. 16 of the Collection of Laws, on the punishment of nazi criminals, traitors and their accomplices and on the Extraordinary People's Courts, as enunciated in the Law of 24th January, 1946, No. 22 of the Collection of Laws, is amended and supplemented as follows:

1. Following paragraph 22, a paragraph 22a shall be inserted as follows:

"Paragraph 22a

(1) To accept and carry out the function of People's Judge is the duty of the citizen. If a People's Judge violates this obligation without due cause, especially by failing to attend the trial, though duly summoned to it, or by absenting himself from the trial before its conclusion, without the consent of the President of the Senate, the president shall impose on him as a disciplinary penalty a fine not exceeding 10,000 crowns or imprisonment for a period not exceeding eight days, and, according to circumstances, may also require him to make good the expenses of the trial which has failed to be held. The accused may lodge an appeal against this sentence within the space of eight days and the appeal shall be decided by the President of the Extraordinary People's Court, whose decision shall be final.

(2) The fine shall be paid into the treasury of the State."

2. The following sentence shall be added to paragraph 29, clause 1:

"Four votes shall be required in support of a resolution which reduces the penalty to less than the minimum prescribed or changes the method of its application to a milder one or remits the penalty (para. 16, clause 2)."

3. The following sentence shall be added to para. 29, clause 2:

"The stipulations of clause 1, second sentence, also apply here."

4. Para. 31, clause 1. The first sentence shall read thus;

"There is no appeal from the decision of the Extraordinary People's Courts."

5. Para. 31, clause 3, shall run as follows:

"(3) An appeal for the preservation of the law is allowable."

6. Para. 31. The following shall be added as clause 4:

"(4) The decision on a proposal to renew criminal proceedings shall be made by the court of first instance at whose seat the Extraordinary People's

Court which decided the case is set up. It shall, however, be guided by the rules of criminal procedure with regard to the resumption of the prosecution. The fresh trial shall be held before the Extraordinary People's Court under the conditions laid down in para. 21."

7. Para. 32. The following shall be added as clause 3:

"(3) If offences punishable under this decree are tried by the regular court, then in the case of an offence which would otherwise fall within the jurisdiction of the assize court, the entire proceedings shall be conducted by the court of first instance in accordance with the regulations governing procedure in cases assigned to this court."

Article II

The decree of the President of the Republic of 19th June, 1945, No. 17, Collection of Laws, regarding the National Court, is amended and supplemented as follows:

1. Para. 12, clause 1. The first sentence shall run:

"The trial by the National Court shall be opened after the case has been announced and the general particulars verified by the reading of the indictment or accusation (para. 8, clause 4) and shall as a rule be concluded within the space of fourteen days from its inauguration."

2. Para. 13, clause 1. The following sentence is to be added:

"Five votes shall, however, be required in support of a resolution which reduces the penalty to less than the minimum prescribed or changes the method of its application to a milder one or remits the penalty (para. 16, clause 2 of the Retribution Decree)."

3. Para. 13, clause 3. The following sentence shall be added:

"The provisions of clause 1, second sentence, also apply here."

4. Para. 15 shall run as follows:

"Paragraph 15

(1) There is no appeal from the decision of the National Court.

(2) An appeal of nullity is admissible with regard to the observance of the law. The National Court shall decide on any proposal to renew criminal proceedings."

5. Para. 16, clause 3 is to be deleted.

Article III

Paragraph 1.

The operation of Decree No. 16/1945 in the Collection of Laws, as enunciated in Law No. 22/1946 in the said Collection and in Decree No. 17/1945 in the Collection, prolonged by the Law of 8th July, 1946, No. 149 in the Collection of Laws, concerning the prolongation of the operation of the Decree of the President of the Republic on the Extraordinary People's Courts, is further prolonged until 4th May, 1947.

Court which decided the case is set up. It shall, however, be guided by the rules of criminal procedure with regard to the resumption of the prosecution. The fresh trial shall be held before the Extraordinary People's Court under the conditions laid down in para. 21."

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2. Para. 13, clause 1. The following sentence is to be added:

"Five votes shall, however, be required in support of a resolution which reduces the penalty to less than the minimum prescribed or changes the method of its application to a milder one or remits the penalty (para. 16, clause 2 of the Retribution Decree)."

3. Para. 13, clause 3. The following sentence shall be added:

"The provisions of clause 1, second sentence, also apply here."

4. Para. 15 shall run as follows:

"Paragraph 15

(1) There is no appeal from the decision of the National Court.

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Paragraph 2

(1) In the case of criminal proceedings which were opened in the courts (Extraordinary People's Court and National Court) before the termination of the operation of the decrees mentioned in Art. III, para. 1, for offences punishable under the Retribution Decree or in which information concerning these punishable offences has reached the Public Prosecutor's Office (Public Prosecutor of the Extraordinary People's Court, National Public Prosecutor) and the proceedings have not been concluded by a legal verdict in the case itself, the ordinary court shall proceed in accordance with the provisions governing procedure which were previously in force. In so doing it shall apply the provisions of substantive law contained in the Retribution Decree.

(2) In so far as it falls within the competence of the assize court to try these offences, the proceedings shall take place in the court of first instance in accordance with the regulations governing procedure in this court. Motions and accusations laid before the Extraordinary People's Court or the National Court lose their validity and all functions which have hitherto been discharged by these courts shall be regarded as functions of judicial investigation.

(3) The decision on a proposal to renew criminal proceedings shall be taken by the court of first instance at whose seat the Extraordinary People's Court or National Court which decided the case was set up.

Article IV

The Minister of Justice shall prepare and publish in the Collection of Laws and Regulations the full text of Decree No. 16/1945 of the Collection of Laws as formulated in Law No. 22/1946 of the Collection, and the full text of Decree No. 17/1945 of the Collection, giving the uninterrupted sequence of paragraphs, and embodying the amendments introduced by this law.

Article V

This Law will come into force on 9th January, 1947; it is agreed to by all the members of the Government.

Paragraph 2

(1) In the case of criminal proceedings which were opened in the courts (Extraordinary People's Court and National Court) before the termination of the operation of the decrees mentioned in Art. III, para. 1, for offences punishable under the Retribution Decree or in which information concerning these punishable offences has reached the Public Prosecutor's Office (Public Prosecutor of the Extraordinary People's Court, National Public Prosecutor) and the proceedings have not been concluded by a legal verdict in the case itself, the ordinary court shall proceed in accordance with the provisions governing procedure which were previously in force. In so doing it shall apply the provisions of substantive law contained in the Retribution Decree.

(2) In so far as it falls within the competence of the assize court to try these offences, the proceedings shall take place in the court of first instance in accordance with the regulations governing procedure in this court. Motions and accusations laid before the Extraordinary People's Court or the National Court lose their validity and all functions which have hitherto been discharged by these courts shall be regarded as functions of judicial investigation.

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(2) In so far as it falls within the competence of the assize court to try these offences, the proceedings shall take place in the court of first instance in accordance with the regulations governing procedure in this court. Motions and accusations laid before the Extraordinary People's Court or the National Court lose their validity and all functions which have hitherto been discharged by these courts shall be regarded as functions of judicial investigation.

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This Law will come into force on 9th January, 1947; it is agreed to by all the members of the Government.

UNITED NATIONS WAR CRIMES COMMISSION.

MISC. 113.

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

19th December, 1947.

<u>EUROPE: Countries whose reports comprise war criminals only.</u>	<u>Cases tried.</u>	<u>Accused involved.</u>	<u>Death.</u>	<u>Imprisonment.</u>	<u>Acquitted.</u>	<u>Remarks.</u>
United States. USFET)	380	1,400	364	831	205	as at 1. 9.47.
USMET)						
Britain. BAOR	258	853	202	406	245	as at 1.12.47.
CMF & BTA.						
France.	83	373	147	193	33	as at 1.11.47.
Greece.	6	11	3	7	1	as at 1.10.47.
Netherlands.	1	1	1	-	-	as at 1. 9.47.
Norway.	16	25	8	16	1	as at 2. 7. 47.
Yugoslavia.	5	79	63	16	-	as at 1. 5.47.
TOTAL:	749	2,742	788	1,469	485.	
<u>EUROPE: Countries whose reports show war criminals & collaborators combined.</u>						
Czechoslovakia.	-	18,496	362	13,969	4,165	as at 31.10.46.
Poland.	-	9,121	712	3,682	4,727	as at 31. 3.47.
TOTAL:	-	27,617	1,074	17,651	8,892.	
<u>FAR EAST:</u>						
United States.	202	574	140	380	54	as at 2. 5.47.
Britain	361	1,057	296	647	114	as at 1.12.47.
Australia.	259	769	138	397	234	as at 1.12.47.
Netherlands East Indies.	117	195	84	105	6	as at 1. 9.47.
TOTAL:	939	2,595	658	1,529	408	

Misc. No. 114
9th December, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

CONTROL COMMISSION COURTS IN
THE BRITISH ZONE OF GERMANY.

Military Government - Germany.

Ordinance No. 68 - Control Commission Courts.

Ordinance No. 72 - Criminal Procedure in
Control Commission Courts.

Control Commission Courts were established in the British Zone of Germany by Ordinance No. 68 (published in the Military Government Gazette Germany, British Zone of Control, Nos. 15 and 17.)

Ordinance No. 72 (published in the Military Government Gazette Germany, British Zone of Control No. 17), regulated the criminal procedure in these courts.

Both ordinances came into force on the 1st January 1947.

I. Preceding Events.

Control Commission Courts replaced Military Government Courts.⁽¹⁾ The latter were established by Ordinance No. 2 issued on 18th September 1944 by General Eisenhower, as Supreme Commander, Allied Expeditionary Force, for the territory occupied by the forces under his command. When, on 14th July 1945 the Commander-in-Chief of the British Zone of Control assumed all authority and power previously possessed and exercised by the Supreme Commander Allied Expeditionary Force within the British Zone, all enactments and orders issued by or under the authority of the Supreme Commander Allied Expeditionary Force and effective within the British Zone of Control on 14th July 1945 were confirmed by Ordinance No. 4 of the same date, which provided that they were to continue in force throughout the British Zone until repealed or amended. Thus, Ordinance No. 2 which constitutes the legal basis for the Military Government Courts remained in force in the British Zone of Control until it was repealed by Ordinance No. 68 (Art. XXVI, paragraph 47).

II. Organisation of the Control Commission Courts.

The Control Commission Courts are:

- (a) the Supreme Court comprising the High Court exercising original criminal and civil jurisdiction and the Court of Appeal, and
- (b) the Summary Courts.

The Control Commission Courts differ considerably in their composition from the Military Government Courts. The members of the Military

(1) Military Government Courts, their Jurisdiction, Rules of Procedure, etc., have been dealt with in Doc. C.132.

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Government Courts are officers of the Allied Forces (Art.IV, paragraph 4 of Ordinance No.2).⁽¹⁾ Any judge of the Supreme Court, established by Ordinance No.68, i.e., the Chief Judge, the Judges of the Court of Appeal, and the Judges of the High Court, must be qualified to practice as an advocate in a Court having unlimited jurisdiction either in civil or criminal matters in any part of the British Empire and must have been qualified for not less than 10 years⁽²⁾ to practice as an advocate or solicitor or must have held judicial office there. (Art.IV, paragraph 5 of Ordinance No.68).

A Summary Court consists of a single magistrate. The Ordinance contains no provision with regard to the magistrate's legal qualification.

III. Jurisdiction of the Control Commission Courts.⁽³⁾

The Control Commission Courts (like Military Government Courts) have jurisdiction over all persons in the British Zone except persons other than civilians who are subject to Military, Naval or Air Force law and are serving under the command of the Commander-in-Chief of the British Forces of Occupation or any other commander of any forces of the United Nations. (Art.II, paragraph 2 of Ordinance No.68).

They have jurisdiction to try:

- (a) All offences against the laws and usages of war. (Art.III, 3(a));
- (b) All offences under any proclamation, law, Ordinance, Notice or Order issued by or under the authority of the Allied Control Council for Germany in force in the British Zone, or by or under the authority of the Supreme Commander of the Allied Forces or of the Commander-in-Chief. (Art.III, 3(b));
- (c) All offences against German law (Art.III, 3(c)).⁽⁴⁾

Ad (a): Jurisdiction over offences against the laws and usages of war is exercised in the British Zone by both the Control Commission Courts and the British Military Courts established under Royal Warrant dated 14th June 1945⁽⁵⁾

The jurisdiction of the British Military Courts is limited to offences against the laws and usages of war. For instance, in trials of members of the staff of concentration camps, British Military Courts can take into account solely offences against allied nationals which were committed during the war. The jurisdiction of Control Commission Courts, on the other hand, covers not only violations of the laws and customs of war, but, as will be shown below, all war crimes in the wider sense of the word. In cases such as the concentration camp cases mentioned before, Control Commission Courts can, therefore, deal also with offences committed before the outbreak of war or against persons who are not allied nationals.

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- (1) Art.IV, paragraph 4 of Ordinance No.2 was amended in the British Zone by Ordinance No.27 of the 30th March 1946 which provided that members of Military Government Courts may also be civilian officers of Military Government.
 - (2) In the case of a "Commissioner of the High Court" a practice of 5 years as an advocate in one of the courts specified in Art.IV, para.5 is sufficient. (Art.IX, para.12 of the Ordinance No.68.)
 - (3) The present paper does not deal with the jurisdiction of the Control Commission Courts in civil matters.
 - (4) Cf. Art.II, para.2 of Ordinance No.2 and Doc.C.132, Section IV.
 - (5) The Army Order No.81/45 (Regulations for the Trial of War Criminals) has been dealt with in Doc.C.131; the first and second amendments to the Army Order No.81/45 (Army Orders Nos. 127/45 and 8/46 have been dealt with in Doc.Misc. No.13.

Ad (b): The jurisdiction of the Control Commission Courts over all offences under any law issued by the Allied Control Council includes the jurisdiction over offences defined in Art. II of Control Council Law No. 10, namely crimes against peace, war crimes, ⁽¹⁾ crimes against humanity and membership in a group or organisation declared criminal by the International Military Tribunal. ⁽²⁾

Ordinance No. 47 dated 30th August 1946 ⁽³⁾ authorises the German Ordinary Courts to exercise jurisdiction over crimes against humanity as far as they were committed by German citizens against other German citizens or Stateless persons. This jurisdiction of the German courts, is, however, not an exclusive one but concurrent with that of the Control Commission Courts (Art. II, paragraph 3(d) of Ordinance No. 20 of 1st January 1946.)

The Control Commission Courts, on the other hand, do not share their jurisdiction over all other crimes against humanity and over crimes against peace with any other court established in the British Zone.

Ad (c): The extent to which German law remained in force after the occupation of Germany by the Allied Forces and especially after the Declaration regarding the defeat of Germany and the assumption of supreme authority with respect to Germany by the Governments of the United Kingdom, the United States of America, the U.S.S.R. and the Provisional Government of the French Republic dated 5th June 1945 ⁽⁴⁾ has been discussed in connection with the Military Government Courts ⁽⁵⁾ which also exercised jurisdiction over offences against German law. (Art. II, 2(c) of Ordinance No. 2).

IV. Power to make an Order in the Nature of Habeas Corpus.

Pursuant to Art. VIII paragraph 11 of Ordinance No. 68, Control Commission Courts are empowered to make an order that any person illegally or improperly detained in public or private custody within the limits of the British Zone be set at liberty. A petition for such order is to be heard and determined by a judge of the High Court.

V. Criminal Procedure in Control Commission Courts.

The criminal procedure in Control Commission Courts is regulated by Ordinance No. 72 ⁽⁵⁾. The procedure in Control Commission Courts corresponds in general to that in Military Government Courts. ⁽⁶⁾

Whereas there is no appeal against the decision of a Military Government Court, Art. XI paragraph 20 of Ordinance No. 68 provides that the Court of Appeal shall review the record of every case in which

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- (1) The jurisdiction of the Control Commission Courts over war crimes, i.e. the violations of the laws and customs of war, is based on Art. III paragraph 3 (a) and (b) of Ordinance No. 68.
 - (2) A paper on the jurisdiction over membership of criminal groups or organisations is in preparation.
 - (3) The text of Ordinance No. 47 has been circulated in Doc. Misc. No. 56.
 - (4) Doc. C. 132, page 4, Art. (iii).
 - (5) The less detailed rules of procedure of the Military Government Courts were repealed by Ordinance No. 72.
 - (6) With regard to the procedure in Military Government Courts and in particular to the rights of the accused, cf. Doc. C. 132, pp 5 - 6.

(a) a sentence of death has been passed⁽¹⁾ or (b) a petition for review has been presented by or on behalf of a person convicted by a High Court, or (c) a decision of the High Court is certified by the Registrar of the Supreme Court or a decision of a Summary Court is certified by the Chief Legal Office of a region as fit for review by the Court of Appeal.

Moreover, the Court of Appeal may review from time to time all sentences of penal servitude and imprisonment (Art.XI paragraph 24 of Ordinance No.68).

The record of every case in which a person has been convicted by a Summary Court⁽²⁾ is to be reviewed by an officer appointed for this purpose.

VI. The Activities of the Control Commission Courts.

The Secretariat has not yet had at its disposal a comprehensive report on the actual working of the Control Commission Courts. The information so far available shows that at least some trials concerning violations of the laws and customs of war have taken place before Control Commission Courts.⁽³⁾

Thus, in February and March 1947, the trial of former members of the staff of the Esterwegen Penal Camp accused of causing the death of and ill-treatment of a number of political prisoners mainly of Belgian nationality during 1943/45⁽⁴⁾ was held before the High Court of Oldenburg.

A number of trials concerning crimes against humanity committed by Germans against Germans or Stateless persons were conducted in the British Zone by Military Government Courts,⁽⁵⁾ and later by Control Commission Courts.

VII. Summary.

The Control Commission Courts established by Ordinance No.68 replaced on the 1st January 1947 the Military Government Courts in the British Zone.

Their jurisdiction covers crimes against peace, war crimes, crimes against humanity and membership in criminal groups or organisations as defined by Control Council Law No.10. Their jurisdiction over war crimes (violations of the laws and customs of war) is concurrent with that of the British Military Courts established under the Royal Warrant of 14th June 1945, and their jurisdiction over crimes against humanity committed by Germans against German citizens and Stateless persons with that of the German Ordinary Courts.

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- (1) No sentence of death must be executed unless and until it is confirmed in writing by the Commander-in-Chief or his deputy (cf. Art.VII, para.11 of Ordinance No.2 which contains a similar provision regarding death sentences passed by Military Government Courts.)
 - (2) Cf. Art.VI paragraphs 9 and 10 of Ordinance No.2.
 - (3) The Military Government Courts established in the British Zone which also exercised jurisdiction over war crimes in the narrower sense of the word, (Cf. Section III above) actually exercised this jurisdiction only exceptionally if at all. The Secretariat has received no report on such trials before Military Government Courts in the British Zone of Germany.
 - (4) Monthly Report of the Control Commission for Germany (British Element) Vol.II, No.6, June 1947.

(Footnotes Continued on Page 5.)

The jurisdiction of Control Commission Courts is not limited to war crimes in the narrower sense of the word (like that of the British Military Courts) and to certain types of crimes against humanity (like the jurisdiction of the German Ordinary Courts) but covers all war crimes in the wider sense of the word. These courts can, therefore, try cases where the accused are charged with war crimes and/or crimes against humanity (such as members of the staff of concentration camps).

A judge of the Supreme Court (Court of Appeal and High Court) must be qualified to practice as an advocate in any part of the British Empire or must have held judicial office there. Such or a similar legal qualification was not required for the appointment as judge of a Military Government Court.

The rules of procedure of the Control Commission Courts provide for an extensive review of the decisions of both the High Court and the Summary Courts. The procedure of the Control Commission Courts differs mainly in this respect from the procedure in Military Government Courts which gives no right of appeal.

The Military Government Courts established in the British Zone dealt with offences against the laws and customs of war only exceptionally if at all. A number of such cases have been tried by Control Commission Courts.

Footnotes Continued from Previous Page.

- (5) Cf. Col. Rathbone's report in the meeting of the Commission held on the 16th October 1946 (Doc. M. 114 page 2, pen ultimate paragraph, page 4 last paragraph and page 5 paragraph 3.) According to Colonel Rathbone's report such trials were held before Military Government Courts "in order that some precedents of sentences might be set for German courts when they take them over."