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DOCUMENTS



UNITED NATIONS WAR CRIMES COMMISSION

PROGRESS REPORT OF WAR CRIME TRIALS

At the Moscow Conference on November 1st, 1943, it was agreed that those German officers and men and members of the Nazi party who have been responsible for, or have taken a consenting part in the above atrocities, massacres and executions, will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the Free Governments which will be erected therein.

Public attention has in recent months naturally been concentrated on the great trial at Nuremberg, but many other trials have been taking place simultaneously in other parts of Europe and in Asia which merit attention. The results of some of these trials are reaching the United Nations War Crimes Commission from different Allied countries. The Commission regards these reports as encouraging, and expects that the next few months will show even better results. The investigation of the crimes and the collection of evidence involves a vast amount of preliminary work by teams of legal specialists, while the tracing and arrest of the wanted persons, many of whom have been living in disguise with false identity papers, has proved such a complicated task that one Detection Agency has already earned for itself the name of "Operation Haystack".

The fact that persons wanted for trial by one country are being held as potential witnesses by another Allied country, or by the Nuremberg Tribunal, has also been a cause of delay in many cases. Now that this preliminary work has been largely completed, and numbers of the wanted men are at last in the hands of the "countries in which their abominable deeds were done", the courts should be able to proceed with the trials with less fear of delay. The following figures illustrate the results that have already been attained:-

Returns received from the United States Forces European Theatre, the British Army of the Rhine, the Central Mediterranean Forces, the Allied Land Forces South East Asia, as well as from Australia and France, show that out of a total of 717 defendants who have been tried for war crimes 278 were sentenced to death, 306 to terms of imprisonment, and 133 acquitted.

An earlier official report on Czechoslovak trials of war criminals and traitors covering October and November 1945, and dealing only with the Western provinces of Bohemia and Moravia, showed that 1,291 persons had been tried. Death sentences were passed on 44 and various terms of imprisonment - including 52 life sentences - on 1,036. The total number of imprisonment years imposed amounted to 8,348. Some 60 cases were dealt with by the ordinary courts.

Reports on trials conducted solely by United States Naval Forces in the "P.O.A." (a name given generally to the area between North America and part of South America on the East and the Phillipine Archipelago and Japan on the West - some of the area being South of the Equator) showed that, out of 42 defendants, 17 were sentenced to death, and 21 to terms of imprisonment. Other cases were still being dealt with.

A.2.  
10th May, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

CROWCASS

CROWCASS is now in the process of moving to Berlin. All communications addressed to CROWCASS, after 15th May, should be addressed:

CROWCASS,  
c/o 6889 Berlin Documentation Center,  
APO 742,  
BERLIN.

No. 8 Detention List has just been completed and Wanted List No. 11 will be published within the next ten days.

G.A. Ledingham,  
Colonel

Secretary-General.



A 3.  
14th May, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Chinese Representative on Far Eastern and  
Pacific Sub-Commission.

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Information has been received that the Chinese Government have appointed Dr. LIU Chieh, Vice Minister of Foreign Affairs, as their Representative on the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission.

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IMMEDIATE

A. 4.

May 17th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

The following cables relating to the Wuppertal and Neuengamme trials have been received from the British Army of the Rhine:

AK53/15                      SDS War Crimes Committee                      150324

FROM    EXFOR            151530B

TO       UNWCC

BT

A(PS)/4163. RESTRICTED. WAR CRIMES NEUENGAMME 1 REQUEST REPORT BY MAY 25 WHETHER FOLLOWING ACCUSED IN ABOVE MENTIONED CASE CONDEMNED TO DEATH ARE REQUIRED FOR FURTHER INTERROGATION. MAX PAULY. ANTON THUMANN. DR BRUNO KITTEL. WILL DREIMANN. HEINRICH DRUGE. WILLI WARNOCKE. JOHANN REESE. ADOLF SPECK. ANDRESS BREMS. WILLI BAHRE. DR ALFRED TRYEBINSKI. ALL ABOVE ON STAFF OF NEUENGAMME CONCENTRATION CAMP

BT 151500B

IN            JEF  
CHECKER    J.M.C.  
ACKED      18 20

AK/62/15                      SDS War Crimes Commission                      150472

FROM    EXFOR            151830B

TO       UNWCC    LONDON

BT

A(PS)/4211. RESTRICTED. SUBJECT WAR CRIMES TRIALS. MILITARY COURT HELD AT WUPPERTAL ON 6-10 MAY. ACCUSED CHARGED WITH KILLING BRITISH AND ALLIED PW AND FRENCH CIVILIANS AT GAGGENAU ON 25th NOV 45. DEATH BY SHOOTING FOR BUCK. NUSSBERGER. OSTERTAG. ULLRICH. NEUSCHWANGER. IMPRISONMENT. YEARS. ZIMMERMAN 10. DINKEL 8. WUNSCH 4. KORB 3. VETTER 2. SENTENCES SUBJECT TO CONFIRMATION. ACQUITTED MUTH. REQUEST REPORT BY 24 MAY WHETHER SECURITY OBJECTIONS TO RELEASE OF MUTH. AND EXECUTION OF DEATH SENTENCES. BUCK AND WUNSCH WANTED BY FRENCH GOV

BT 1518430B

IN            JEF  
CHECKER    J.M.C.  
ACKED      22 15

It should be noted, in regard to cable 151830B (Wuppertal Trial) that a man named Josef MUTH has been charged by the French and U.S.A. National Offices. In regard to cable 151530B (Neuengamme Trial), it is observed that all the men named have been charged either by the Belgian, British, French or Yugoslav Governments in connection with the Neuengamme Camp.

It is requested that the information asked for in the cables be sent to the Secretary General not later than 1 p.m. on Wednesday, May 22nd.

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AK/62/15                      SDS War Crimes Commission                      150472

FROM    EXFOR            151830B

TO       U N W C C    LONDON

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A. 5.

document does  
not exist.



A. 6.

UNITED NATIONS WAR CRIMES COMMISSION

COPY OF LETTER RECEIVED BY SIR ROBERT CRAIGIE.

(U 5876/120/73)

FOREIGN OFFICE, S.W. 1.  
17th June, 1946.

IMMEDIATE.

Dear Sir Robert,

As you know the Attorney General is to make the principal final speech for the prosecution at Nuremburg. The British prosecuting team would like in drafting his speech to be able to illustrate the terrible results of aggressive war by the inclusion of figures showing the world casualties it involved.

For this purpose the simplest division would probably be the following:-

- A. Killed in battle or Died of wounds.
- B. Wounded.
- C. Killed otherwise than in battle, i.e. died as hostages or deportees whether in concentrations camps or labour camps, or killed by air raids, and perhaps also those who died in partisan warfare (though these last might really be made into a separate category and I expect many of the Member Governments of the Commission would prefer it so.)

It appears to us that the most speedy and reliable way of obtaining these figures would be for the various delegates on the Commission to get them as soon as possible from their Governments by telegraph and we should be grateful if you would ask delegates to co-operate with us by so doing.

The telegraphic information, in order to have evidentiary value, would need to be supported by an official certificate and we should be glad if, when the delegates telegraph, they ask their Governments to send a following certificate confirming the figures sent by telegram.

For your information and that of any other members of the Commission, we would of course also include the figures for the Soviet Union which we hope to obtain through other channels and for any other combatant ally e.g. Brazil not represented on the Commission. We also hope to obtain some estimate of Enemy casualties from the various competent authorities.

The attached White Paper shows the United Kingdom casualties which we propose to forward to Nuremburg.

Yours sincerely,

Sgd.....R.A. Beaumont.

UNITED NATIONS WAR CRIMES COMMISSION

A. 7.

20th June, 1946.

Copy of semi-official letter from  
Colonel G.R. Bradshaw C.B.E., Deputy-Director  
of Personal Services (C), to Sir Robert  
Craigie, read at meeting of Commission on 19th  
June and circulated by request.

B.M. 21/32 DDPS(C).

War Office Annexe,  
20 Eaton Square,  
S.W.1.

4th June, 1946.

Dear Sir Robert,

I have been trying to get a few impressions concerning the effect of minor war criminal trials on the German public, about which you expressed some interest the other day. These notes are based on conversations with some of the Permanent Presidents working in Rhine Army.

(a) Public interest in trials.

There was a considerable attendance of the public at the Neungamme trial held in Hamburg, with a daily queue for the four or five hundred seats available.

In Hanover and Holtz Minden the court rooms, though small, were quite full. Polish cases have been well attended by Polish displaced persons.

I think it is likely that many spectators have some sort of special interest in the Camps or in the accused; but there is no doubt that a number come out of sheer curiosity, or in order to brush up their English, or even, earlier in the year, to keep warm.

There is little or no attendance where courts are held inside British camps - for example, at a trial recently held at 5 Div. H.Q. at Brunswick, no public were present

(b) German opinion of fairness of trials.

At the end of the Neungamme trial the chief German counsel got up and said that he spoke on behalf of all the German counsel in that Court, and that they were all of the opinion that real justice had returned to Germany at last. Since 1933 many of them had risked their lives pleading, but now they felt that they could really say everything they wanted without fear of personal consequences.

This is a very general attitude amongst the German counsel, who frequently express gratitude for the help and latitude given to them by our military courts.

(c) Efficiency of German counsel.

German counsel are usually well-mannered and often show considerable ability. But they have little idea of British procedure and are not quick to grasp it. They accept the validity of documents without question and are disinclined to point out that certain evidence is inadmissible.

They like to put their accused in the witness box whenever possible, although this often proves to be to the accused's disadvantage. This may well be owing to the fact that under German law the accused does not give evidence on oath.

(d) Evidence.

We endeavour to produce live witnesses in Court whenever possible, since affidavits without actual corroboration in Court are most unsatisfactory. Many affidavits strike the Court as too ready-made and they often display a suspicious similarity between witnesses in the same case.

Sometimes courts find it difficult to decide whether a witness is telling the truth or is merely activated by a motive of revenge with little regard for the guilt of the victim.

A number of trials, too, are dealing with events which have taken place a long time ago.

I am afraid there is very little meat in what I have written, but if I can discover anything of more interest I will let you know.

Yours sincerely,

Sgd.....G.R. Bradshaw.

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A.8.  
July 2nd, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

The following Press handouts are the last to be released by the Public Relations department of this Commission:-

April 27th - ANIMATED SKELETONS FIGHT FOR GRASS.

A sworn statement regarding the German atrocities committed in Mauthausen Concentration Camp and made by Captain J.A.R. Starr, a resident of Newcastle-under-Lyme, is now in the hands of the United Nations War Crimes Commission. Captain Starr who was taken prisoner in July 1943, says that Mauthausen was an extermination camp more than a concentration camp. Indeed, the words, "You will never come out" were engraved upon the prison gate.

During his incarceration there were some forty-five thousand inmates, including German criminals, who were put in charge of, and had the right of life or death, over prisoners. The death roll was 500 a day through starvation, illness, beatings, gas, being thrown over a stone quarry, chewed up by hungry dogs, hanged or shot.

When prisoners came in, the ill were made to undress. When Captain Starr arrived it was bitterly cold and sick people were kept in a state of complete nudity for the whole day. In the evening they were forced by brutal beatings into a hot shower, after which, they were forced into the open again until well into the night with no clothes or any means of drying themselves. Early in the morning they were pushed into the showers again and then brutally driven into the open. Many collapsed and died, and others died from the beatings they received while being forced in and out of the showers.

There was the usual gas chamber at Mauthausen, and every day some 200 were marched in and exterminated. Captain Starr was in No.3. Camp and each night, the German criminals in charge, thrashed them with thongs to make them huddle together, head to feet like sardines, to make room for all. In March 1945, No.3. camp was evacuated and a thousand inmates, all sick to the point of death, were driven into five huts. Every article was moved out, blankets, palliasses and feeding bowls, until nothing remained. The camp was then locked up, and a thousand sick inmates abandoned to perish from hunger. The gates were only opened to collect the dead.

Captain Starr himself has seen animated skeletons fighting with each other to obtain a blade of grass to eat.

In April 1945, American Fortresses raided Linz, near Mauthausen. Some were brought down and the crews baled out. Captain Starr saw the Camp Commandant ride in on a horse dragging behind him two American airmen bound by rope. Some prisoners caught escaping from P.O.W. camps were brought to

/Mauthausen.

Mauthausen and made to run up 80 steps from a quarry, carrying on their shoulders a huge block of stone. When prisoners fell exhausted, the S.S. guards used huge hammers to break the stone on their backs, and so kill them. Forty-five American and British prisoners were killed this way.

Other methods were the injection of petrol into the prisoner's veins and the use of a height-measuring stand. When the top measuring piece was brought to the level of the head of the prisoner being measured, a bullet was automatically fired into the back of his neck. Captain Starr says "Had I not escaped, I never expected to come out".

APRIL 29th.

CANDID CONFESSION.

Heinrich Joekel was Camp Commander at the Terezin Concentration Camp where sixty thousand Jews were forced to live in a space that normally housed 8,000 persons. The ghastly conditions in this camp can well be imagined. Besides this, the camp was used as a transit station for Jews who were later sent to other camps, and living conditions thus went from bad to worse. The following extract, now in the hands of the United Nations War Crimes Commission, was taken from a statement made to the Czechoslovak Authorities by Heinrich Joekel himself when he was finally captured:-

Question: "Do you admit that you have put prisoners in solitary confinement, completely naked and manacled, and that they were beaten to death with sticks?"

Answer: "I admit it; the German authorities at Prague ordered it, and it was on my own initiative that I used severe methods against prisoners who were attempting to escape."

Question: "Do you admit that political prisoners were killed by poisoned coffee?"

Answer: "At a Gestapo meeting in Prague I was ordered to provide poison for the extermination of political prisoners. On my orders the guard attempted to poison such prisoners in solitary confinement with chemical matter from tablets which were used for disinfection purposes. He put these tablets into the coffee and served it to the prisoners, but the effect was not satisfactory. I only remember one para-trooper being successfully killed by this means".

MAY 1st

MORE WAR CRIMINALS.

The 30th list of war criminals containing the names of 510 Germans was issued at to-day's meeting in London of the United Nations War Crimes Commission.

A secret list like this is placed in the hands of  
/various

military agencies on the Continent and elsewhere so that those "wanted" may be kept in custody or immediately arrested.

MAY 7th - TWENTY-TWO GERMAN GENERALS ARE PRISONERS.

Twenty-two German Generals are now held in the former concentration camp at Dachau. Amongst them are Field Marshals Walter von Brauchitsch, Albert Kesselring and Erhard Milch, as well as Generals Alexander von Falkenhausen and Nikolaus von Falkenhorst.

They are housed and fed as prisoners-of-war.

MAY 8th - COMPLIANT JUSTICE

Papers found in the secret archives of the German Ministry of Justice at Kassel, now in the hands of the United Nations War Crimes Commission, afford a glimpse of the beginnings of the Nazi terror and the luke-warm defence of "legal independence" offered by the German judicial authorities, who seem to have been content to acquiesce in any perversions of Justice so long as judicial forms were outwardly complied with.

In August, 1933, soon after Hitler had assumed power, a Communist-suspect died of injuries received during interrogation by two SA guards in the newly formed concentration camp at Dachau. Reports addressed by the Nuremberg Public Prosecutor at the end of August 1933, to his superior, the State Attorney, show that the former had immediately ordered a post mortem, as required by the regulations, and this had revealed that the deceased died as a result of a brutal "oriental bastonade". The legal officers, however, complained that the Police were obstructing their investigations and they stoutly protested against this interference with legal independence; the State Attorney wrote to the Minister of Justice expressing concern lest the impression might result that barbarous crimes were being hushed up, and suggesting that this might easily be avoided by holding a trial in camera. After further protests by the judicial authorities and the submission of the question to Martin Bormann, afterwards Hitler's deputy, the Gestapo appeared to give way, and it was ruled that the investigation should proceed without hindrance from the Police.

The Public Prosecutor's report to the State Attorney on the inquiry, dated December 11, 1933, showed that revolting methods of violence and torture had been employed to force confessions out of suspected Communists, (e.g. 100 lashes with rubber truncheons and oxtails, including bastonades on the soles of the feet, injections, pumping of air into the stomach etc.) Witnesses examined had admitted that these were common occurrences. One Police official, asked whether the punishment such as the deceased had suffered was frequent, had answered: "Oh, yes,. That happened often, the only difference being that some were able to stand it, whilst others were not."

/Strange...



Strange to relate, however, the Nuremberg Public Prosecutor, now wrote to his superior acquiescing "for well considered reasons" in the demand of the Police for the quashing of further proceedings against the two SA guards! These reasons were that if the guards had committed the murder three weeks earlier they would have benefited by the amnesty, and so escaped punishment; and that even if the cases were tried in camera, the facts would be sure to leak out to the detriment of the Party, the Police and the State, and worse still - foreign countries would become acquainted with the story.

The correspondence closes with a notification by the Ministry of Justice quashing the prosecution.

It must, indeed, have been a relief for the judicial authorities when the Gestapo ruled that bodies of internees dying from non-natural causes were to be immediately cremated.

MAY 14th -

ON TRIAL TODAY

Tomorrow's trial at Hanover will see in the dock Under-Officer Metz in connection with the shooting of two British officers inside Camp Offlag 7b during an air raid, in February 1944.

Information now in the hands of the United Nations War Crimes Commission shows that Metz is charged with ordering the shooting of a British officer prisoner-of-war who was returning to his hut during the raid. When a fellow British officer came out with his hands well above his head to assist his dying comrade it is alleged that he was also shot by Metz's command.

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MAY 15th -

MORE GERMAN WAR CRIMINALS.

The 31st list of War Criminals containing the names of 503 Germans was issued at today's meeting in London of the United Nations War Crimes Commission. These secret lists are immediately placed in the hands of various military agencies on the Continent and elsewhere so that those wanted may be held in custody or immediately arrested.

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MAY 16th -

PROGRESS REPORT OF WAR CRIME TRIALS

At the Moscow Conference on November 1st, 1943, it was agreed that those German officers and men and members of the Nazi party who have been responsible for, or have taken a consenting part in the above atrocities, massacres and executions, will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the Free Governments which will be erected therein.

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simultaneously in other parts of Europe and in Asia which merit attention. The results of some of these trials are reaching the United Nations War Crimes Commission from different Allied countries. The Commission regards these reports as encouraging, and expects that the next few months will show even better results. The investigation of the crimes and the collection of evidence involves a vast amount of preliminary work by teams of legal specialists, while the tracing and arrest of the wanted persons, many of whom have been living in disguise with false identity papers, has proved such a complicated task that one Detection Agency has already earned for itself the name of "Operation Haystack".

The fact that persons wanted for trial by one country are being held as potential witnesses by another Allied country, or by the Nuremberg Tribunal, has also been a cause of delay in many cases. Now that this preliminary work has been largely completed, and numbers of the wanted men are at last in the hands of the "Countries" in which their abominable deeds were done, the courts should be able to proceed with the trials with less fear of delay. The following figures illustrate the results that have already been attained:-

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Reports on trials conducted solely by United States Naval Forces in the "P.O.A" (a name given generally to the area between North America and part of South America on the East and the Phillipine Archipelago and Japan on the West - some of the area being South of the Equator) showed that, out of 42 defendants, 17 were sentenced to death, and 24 to terms of imprisonment. Other cases were still being dealt with.

APRIL 29th.

MORE WAR CRIMINALS.

The 32nd list of war criminals approved at today's meeting in London of the United Nations War Crimes Commission contains the names of 569 German war criminals and brings the total number of war criminals listed by the Commission up to date to over 15,500.

The 19th list of suspects was also issued and contains the names of 99 Germans. Such secret lists are immediately placed in the hands of various military agencies on the Continent and elsewhere so that all those "wanted" may be retained in custody or immediately arrested and held.

29th APRIL - GERMANS MAKE USE OF HUMAN CROPS.

An order issued by Police General Pohl, head of the S.S. Concentration Camp Service, and dated 6th August 1942, is now in the hands of the United Nations War Crimes Commission.

It is addressed to the Commanders of sixteen concentration camps to the effect that all human hair becoming available in such camps is to be utilised. "When cut, human hair can be turned into industrial felts and spun into yarns. Women's hair, cut and combed is manufactured into anklets for U-boat crews and into felt stockings for workers. It is therefore decreed that all available hair of female prisoners is to be disinfected and stored. Cut hair of male prisoners can only be made use of if it is an inch in length."

General Pohl goes on to decree that male prisoners' hair is to be allowed to grow to the required length before cutting. To prevent attempts at escape by prisoners whose hair was growing, commanders were advised to render prisoners conspicuous by clipping a narrow strip of hair right across their scalps.

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25.5.46. - MURDER OF BABIES.

Appalling evidence now in the hands of the United Nations War Crimes Commission shows that from May to December, 1944, the system of instituting children's clinics for the illegitimate offspring of Eastern Slav workers was started. This policy was nothing less than the literal liquidation of the children in question who were separated from their mothers when only a few days old and put into a clinic.

At once clinic it appears that 114 children were admitted between May and December 1944, and only 12 survived. In all cases death appears to be the result of the natural effect of early separation from the parent, filthy conditions, insufficient and unskilled attention and lack of food.

The poor children were kept in small wooden boxes with a bare amount of straw which was never cleaned or changed. They lay screaming in their filthy surroundings and on the rare occasions when they were fed, the food was totally unsuitable. The whole scheme was a deliberate policy of exterminating unwanted children. The trial of those already found guilty of these offenses has sent two to death and others to long terms of imprisonment.

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June 5th, - DISCOVERY OF WAR CRIMINALS.

An instance of how war criminals guilt is discovered is now disclosed by the United Nations War Crimes Commission. A loyal Italian parish priest's statement to a British officer about happenings in Italy during 1943 resulted in the recent execution of Fascists who were brought to trial.

The priest related how a British officer escaped from his local prison and was sheltered by a family in Verona but one day he went outside for a breath of fresh air and his appearance was reported to the local authorities.

The Black Fascist Brigade turned up in force and immediately arrested the British officer and the son of the house. Both were taken to the local Fascist Headquarters where sentence of execution was immediately passed. They were stabbed before being shot.

June 6th - MORE JAPANESE WAR CRIMINALS

At this week's meeting of the United Nations War Crimes Commission held in London the names of 450 more Japanese war criminals were approved on List 33-37.

These secret lists are handed over immediately to District Military Agencies who hold or arrest the criminals involved.

June 6th - RAVENSBRUCKE CAMP ATROCITIES.

Information is now in the hands of the United Nations War Crimes Commission from a Polish woman, who escaped from the Ravensbrücke Camp after three years of horror, describes how doctors operated upon the female inmates condemned to death. Her evidence states that 74 women were used in these experiments and many died.

Operations were carried out on victims to test the effects of infections artificially introduced into muscles or bones. Pieces of glass, iron and string were forced into open wounds and left in the legs, which were then encased in plaster of paris.

June 19th - HE NEVER TALKED

An Italian war crime case soon to be heard in Italy, will produce evidence of the torture and killing of an R.A.F. Pilot Officer in 1944. The Officer in question after being shot down joined up with Italian Partisans, but was discovered and arrested.

He was brought before a Fascist German tribunal and was questioned regarding his secret associations with the Partisans. He refused to answer and was thereupon strung up by the wrists

/to...

to a door and beaten with raw hide whips. Red hot embers and irons were then run over and pressed into his body.

He suffered such torture for over a week, and was locked in a cell, hand cuffed and received no medical attention for wounds and burns, which went septic.

Next he was brought before a tribunal consisting entirely of Fascists. At this trial, a woman, the mistress of an Italian Officer on the tribunal, said she could make him talk and persuaded the court to allow her dogs to be set upon him.

As this brought no word from the victim they covered his stomach with petrol and set fire to it. After this he was taken out to a bridge over the river near the court, heavy stones were attached to his body, and he was thrown in. He struggled to the bank some distance down but was seen, dragged ashore and shot dead.

He never talked. Even one of the accused witnesses says "The courage of the Englishman was magnificent throughout."

Four of the Italians concerned in this atrocity have already been liquidated by Partisan Tribunals for the part they played.

June 19th Q

NO TWO TRIALS ON SAME CHARGE.

The United Nations War Crimes Commission, in a statement issued last night, made it clear that Germans sentenced in connection with the killing and burning of four British women parachutists and now being held for a further trial on French soil will face new charges in France.

The second trial "will not be held in respect of the crime for which they were sentenced at Wuppertal but in respect of other crimes with which they are charged by the French authorities.

"Any impression that war criminals can be tried twice on the same charge in different zones or countries would be incorrect".

June 25th -

LORD WRIGHT RETURNS TO U.K.

Lord Wright, Chairman of the United Nations War Crimes Commission, who left on April 8th to attend the International Military Tribunal at Tokyo is due to return to London to-day.

29th June - THE STORY OF KAMBURI CAMP 1943 - SIAM.

This was the base camp for the prison parties working on the notorious Burma-Siam railway in the forced construction of which thousands of Allied war prisoners lost their lives. After the discovery of several secret wireless sets in subsidiary camps adjoining the main camp which had been operated entirely by prisoners-of-war with considerable success in regard to broadcasting Victory news, six officers and a number of other ranks were brought to the main camp for interrogation by the Japanese Camp Commandant.

Two officers were immediately beaten by Korean guards, and three others (an officer and two non-commissioned ranks) were so severely beaten that they spent many months in hospital and scars still remain.

This case has already been tried in Singapore and the following sentences awarded:-

Camp Commandant Major Chida - 4 years imprisonment.  
Sergeant Major Urakawa and Sergeant Watanee, both to life imprisonment.  
Konai and Igima were both sentenced to death.

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30th June - KAMBURI CAMP ATROCITIES

Captain W.M. Drower, of the Intelligence Corps, went to Kamburi in 1945 from another railway camp to act as interpreter. In the middle of May Captain Drower unfortunately had words with Captain Noguchi, the Japanese commandant, in regard to the beating up of British officers which was constantly taking place in the camp. Captain Drower gave the commandant a few home truths and as a result the Jap commandant lost his temper as also did his Adjutant Lieut. Takazaki (recently condemned to death for other war crimes) and both proceeded to beat up Drower with all the implements they could lay their hands upon.

According to one spectator who witnessed this atrocity the stubbornness of the British captain completely spoilt the party. Much of the office furniture where the incident took place was destroyed during the fracas and in revenge Captain Noguchi had Captain Drower imprisoned in a tiny air-raid shelter for four months until Japan capitulated.

Captain Drower said that whilst he was in the shelter which was too small to lie down in and ankle deep in water scorpions and centipedes were dropped in by the guards. He was so terribly ill with malaria and starvation that even when his comrades managed to smuggle food to him he was quite unable to eat it. In prison Captain Drower was not once allowed to read, wash, shave, have his hair cut or receive any medical attention. He was even denied a blanket and had no garments but a torn shirt and pair of shorts. Captain Drower's normal weight was 14½ stone but one of his brother officers who was the first to meet him in his cell at the end of hostilities judged him to be about 9 stone. He is now back to his normal weight, so God help the Japs.

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A. 9.  
8th July, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Copy of letter received by Lord Wright  
from Lieutenant E. W. Kintner Acting  
United States Commissioner on the United  
Nations War Crimes Commission.

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London, July 5, 1946.

Dear Lord Wright,

I am in receipt of a message from United States authorities in Italy stating that August SCHIFFER, Heinz ANDERGASSEN and Albert STORZ, German nationals convicted of war crimes in the Mediterranean Theater of Operations, are to be executed on July 15, 1946. The message in question desires to know whether this office wishes to interrogate these Germans before execution. While we do not intend doing so, we would appreciate knowing by July 10th whether or not any other member Government on the Commission would desire this office to try to make arrangements for interrogation of any one of these convicted German war Criminals.

Yours sincerely,

Sgd....EARL W. KINTNER.

Lieutenant, USNR.  
Acting United States Commissioner  
United Nations War Crimes Commission.

A.10  
30th July, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Letter received by Secretary-General from  
the Acting Secretary-General of United Nations.

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UNITED NATIONS . NATIONS UNIES

Ref.No: 102 C

22nd July, 1946.

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

"The collection and publication of information concerning human rights arising from trials of war criminals, quislings and traitors and in particular from the Nuremberg and Tokyo trials".

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

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

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Doc.A.11  
31st July, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Letter received by Lord Wright from  
Commander Mouton, Netherlands Representative.

Ref: VIIIa/118

30th July, 1946.

Dear Lord Wright,

At the last meeting at which the tracing and surrender of alleged war criminals was discussed, I did not participate in the discussion because I did not wish to pass any critical remarks while I was not satisfied that my own liaison teams in Germany were working efficiently.

I cannot, however, conceal my great concern regarding the course of events in this particular matter.

Whereas my predecessor the late Dr. de Moor was able to say in his report of the 16th August, 1944 (C42) that

"with regard to the capture and surrender of war criminals we have been more successful" (compared with the other activities and recommendations of the Commission) and that "The work done by the Commission on this question forms an almost complete plan",

I, as his successor, deeply regret to confess that I feel that this particular point is now the weakest link in the chain. I am even inclined to fear that if no immediate drastic measures are taken to strengthen this link the chain may break altogether.

The reason I have not raised this point before, is that until the circulation of C.210 I was firmly convinced that the Allied Military Authorities were actively engaged in the search for war criminals, which I believe was again confirmed in Colonel Ledingham's report of February 1946 (C.171).

It was a shocking surprise to learn from C.210 that this task was being left exclusively to the liaison teams, which as the name indicates, were never devised for this work, which in my opinion they are physically incompetent to do, to such an extent.

As Committee II has been active in this respect in the past (before it died down a year ago) I request you to consider whether this Committee should again be instructed to make a proposal as soon as possible for the measures to be taken.

I still believe that the search for a large number of war criminals is bound to yield a bigger harvest than the small list adopted in the last meeting,



- 2 -

in which it is demanded that the number be kept as low as possible.

I should appreciate it very much if you would bring this matter up in the Commission meeting of July 31st.

Yours sincerely,

Sgd: (Commander M.W. Mouton)  
The Netherlands Representative on the  
United Nations War Crimes Commission.

The Right Hon. The Lord Wright of Durley, P.C., LL.D.,

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CONFIDENTIAL

A. 12  
August 29th. 1946.

TRIAL OF MAJOR JAPANESE WAR CRIMINALS

The Major War Criminals trial re-opened on 3 June with the hearing of counsel's motions, the most important of which, a request by the defence for more time to acquaint themselves with the case, was granted by postponement for ten days. The opening speech for the prosecution, a 54-page document, was, however, read by Mr. Keenan on 4 June. Mr. Keenan left Japan for the U. S. A. on 9 June, for a stay of about four weeks.

Petitions that Matsuoka and Okawa be excluded from the indictment on grounds of health were refused, but permission for them to be removed to hospital from Sugamo prison was granted. Both Matsuoka and Okawa were transferred to Japanese hospitals under directives dated 9 and 13 June respectively. They have since been represented in court by their counsel. On 28 June Matsuoka died of tuberculosis and his name was stricken from the indictment.

The installation of earphones with 3-way switches in all seats of the court (including the public gallery) has helped to speed up proceedings slightly for whenever prepared speeches are being heard translations into Japanese and Russian are given concurrently. The quality of the prepared Japanese translations is excellent, and that of extempore interpretation is much improved, though still somewhat patchy.

The proceedings recommenced on 13 June with the introduction by the prosecution of 88 international treaties and other documents as evidence and the display of charts showing Japan's territorial expansion. The prosecution completed their exposition of the organisation of Japanese politics for war in a couple of days, and then went on to deal with the organisation of public opinion for war. They tried to prove that this was carried out through the entire educational system of the country, and that it extended over newspapers, plays, films, the wireless, etc. The next section of their case, preparation for war against Manchuria, was started on 25 June.

After the first two days' experience of the slowing-up of the proceedings caused by the translation of each question and answer in the examination and cross-examination of witnesses the Tribunal permitted the presentation of evidence in the form of affidavits, on which the witness . .

is cross-examined by the opposing counsel. This procedure has caused a good many protests on technical grounds from the defence, but has cut down the waste of time. So far the witnesses have not made a very good showing for the prosecution for they are generally taken up at some point by the defence, and much of their evidence has been as favourable to the defence as to the prosecution. Several of the witnesses for the prosecution appear to judge from their demeanour under cross-examination, to have made statements in their affidavits which they have been unwilling or unable to substantiate in open court.

Mr. W. Maung, the Burmese assistant prosecutor, arrived in Tokyo at the beginning of the month but returned almost at once to Burma to collect evidence. Mr. Robert Oneto, the associate French prosecutor, made his first appearance in court on 5 June and the Philippine judge, Mr. Justice Delfin Jaranilla, who arrived on 7 June, sat on the Tribunal for the first time on 13 June (a defence motion to disqualify him, as a sufferer in the Bataan "Death March", and therefore prejudiced, having been dismissed).

On 17 June the chief American defence counsel and five of his American colleagues resigned giving no official explanation.

Twenty-two Japanese headed by Vice-Admiral SAKONJU Naomase, have been detained in Sugamo prison in connection with the execution of sixty-seven British, Indian and Chinese survivors of the "Behar", sunk in the Indian Ocean in March, 1944.

A directive of 22 June ordered the arrest of twenty former puppet Chinese diplomats and consuls now in Japan.



A. 13.

document does  
not exist.

SECRET

DOC.A 14  
2nd September, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

Provisions of Draft Peace Treaties

Letter from the Greek Representative

to

The Chairman of the Commission.

London, 31st August, 1946.

My dear Lord Wright,

As I notice in Misc.No:43 the draft Peace Treaty with Italy and the other enemy countries have been made available to the Commission's Secretariat by courtesy of the Foreign Office of the United Kingdom.

On examining the Peace Treaties while in Paris, I had the impression that the provision regarding the apprehension and surrender of war criminals were too general in terms; the task of the apprehension and surrender of the war criminals was left completely to the discretion of the Enemy Governments which, it is to be feared, may not comply strictly to the obligations imposed upon them by the relevant provisions of the Peace Treaties.

It also appeared to me that the recommendations of the Commission to the member Governments relative to the Articles on war criminals to be inserted in the Peace Treaties have not been taken into consideration. This is perhaps due either to the fact that the Council of Foreign Ministers have deemed the recommendations inadequate or that they have not had the opportunity of examining them.

Whatever the reason, I am of opinion that the Commission examine thoroughly the provisions of the draft Peace Treaties and, if it is found necessary, submit a new recommendation to the member Governments.

I am convinced that such a recommendation coming from a competent body cannot but weigh on the discussions of the Commissions at the Paris Conference.

If my suggestion meets with your approval, as the Conference in Paris may soon reach the junction of the discussion of the relevant Articles, I venture to submit the opinion that you convene a special meeting before September 11th when the Commission is due to meet.

I am attaching herewith a draft resolution for your kind consideration. ++

I am, dear Lord Wright,

Yours sincerely,

Sgd: (C.Stavropoulos)

++The draft resolution is being circulated as Doc.A.15

SECRET

DOC. A. 15  
2nd September, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

SUGGESTED AMENDMENT OF THE ARTICLE ON WAR  
CRIMINALS CONTAINED IN THE DRAFT PEACE  
TREATIES WITH ITALY AND OTHER COUNTRIES.

Draft Note by the Chairman of the Commission to  
the Governments represented on the Commission.

Draft proposed by Mr. Stavropoulos.

The United Nations War Crimes Commission have had the opportunity of examining the provisions regarding the apprehension and surrender of war criminals and traitors contained in the Draft Peace Treaties with Italy, Bulgaria, Hungary, Rumania and Finland.

In the Commission's opinion, the provisions of the Treaties are too general in terms; they also leave the task of apprehension and surrender of the war criminals completely to the discretion of the Enemy Governments; they do not take steps to ensure the loyal and conscientious collaboration of the officials of the enemy State who will be responsible for the execution of the provisions regarding war criminals.

The above might seriously affect and eventually jeopardise the work of the prosecution of the war criminals. Therefore, on behalf of the United Nations War Crimes Commission, I beg to submit herewith to the Governments represented on the Commission for their consideration an amended text of the Article on War Criminals, which is considered to contain the provisions necessary for the purpose.

AMENDMENT TO PROPOSED TEXT OF ARTICLE 38 OF THE DRAFT PEACE  
TREATY WITH ITALY. (1) (2).

1. Italy shall take the necessary steps to ensure the apprehension and surrender for trial of :

- (a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace and humanity.
- (b) Nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war.

2. The provisions of paragraph 1 of this Article shall apply notwithstanding any procedure or prosecution before a court military or civil of Italy, irrespective of whether such proceedings have ended in a conviction or in an acquittal, provided that if a sentence has been imposed the penalty already undergone shall be taken into account in fixing any sentence which may be imposed.

- 1) In the Commission's opinion, the same text should be used in the Treaties with the other countries subject only to substitution of the name of the State concerned for that of Italy.
- 2) The Commission's proposals are underlined.



3. Italy undertakes to comply forthwith with all requests of the U.N. Government concerned relating to the identification, discovery, apprehension, arrest and surrender of the accused persons mentioned in paragraph 1 of the article, without any right to examine the case upon its merits; provided that in the case of persons mentioned in sub-paragraph (a) of para. 1 the name of the accused person appears in the Lists of the United Nations War Crimes Commission. The U.N. Government concerned will be given every facility to supervise the way in which their requests are carried out.

4. Italy undertakes to disclose and produce any records or documents or any other things, the production of which may be considered necessary to ensure the full knowledge of the acts with which the accused are charged and the just appreciation of responsibility, and to assist in any other way in which such assistance may be required.

5. At the request of the United Nations Government concerned, Italy will likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

6. Any disagreement concerning the application of the provisions or paragraphs 1 to 5 of this Article shall be referred by any of the Governments concerned to the Ambassadors in Rome of the Union of Soviet Socialist Republics, United Kingdom, United States of America, and France, who will reach agreement with regard to the difficulty.

7. Italy will on demand surrender to the civil or military authorities of the United Nations for trial before such tribunal as the United Nations may appoint for the purpose:

- (a) any person accused of obstructing the execution of the foregoing provisions or failing to comply with any direction relating thereto, For this purpose the Italian authorities shall, when requested to do so, provide the United Nations with the names of the officials who are responsible for the execution of the provisions of this instrument;
- (b) any persons accused of aiding and abetting a person whose surrender has been demanded, in evading apprehension, arrest or surrender;
- (c) any person accused of destroying or concealing documentary evidence, impeding or obstructing the calling or the examination of witnesses, or of attempting to do so;
- (d) any persons inciting another to resist in any way the provisions concerning the surrender and the punishment of criminals covered by these provisions;
- (e) any Italian official accused of prosecuting or punishing or any individual accused of molesting anyone in any way for having reported to the authorities or agencies of the United Nations any evasion of - or resistance to - the foregoing provisions concerning the surrender or punishment of persons accused of crimes covered by these provisions.

8. The offences enumerated in Section 7 shall not be subject to the jurisdiction of Italian courts.

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UNITED NATIONS WAR CRIMES COMMISSION

SUGGESTED AMENDMENT OF THE ARTICLES ON WAR  
CRIMINALS CONTAINED IN THE DRAFT PEACE  
TREATIES WITH ITALY AND OTHER COUNTRIES.

Draft Note by the Chairman of the Commission to  
the Governments represented on the Commission.

Amended Draft Resolution:

In the Commission's opinion the provisions of the Draft Peace Treaties with Italy (Art. 38), with Roumania (Art. 6), with Bulgaria, (Art. 5), with Hungary, (Art. 5) and with Finland (Art. 9), regarding the apprehension and surrender of war criminals are too general in terms; they leave the task of apprehension and surrender of the war criminals practically to the discretion of the Enemy Governments; they do not take steps to ensure the loyal and conscientious collaboration of the officials of the enemy States who will be responsible for the execution of the provisions regarding war criminals.

The above might seriously affect and eventually jeopardise the work of the prosecution of the war criminals.

While not expressing an opinion on the problem of the prosecution of nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war, the United Nations War Crimes Commission presents to its Member Governments for consideration, its views on the provisions of the Peace Treaties dealing with war criminals.

In the Commission's view it would be valuable if the above quoted Articles of the Draft Peace Treaties were supplemented in a way that the texts of the respective Articles of the Peace Treaties would read as follows(1):

Text of Article 38 of the Draft Peace Treaty with Italy (embodying the Commission's proposals): (2)

1. Italy shall take the necessary steps to ensure the apprehension and surrender for trial of:

- (a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace and humanity.
- (b) Nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war.

2. The provisions of paragraph 1 of this Article shall apply notwithstanding any procedure or prosecution before a court military or civil of Italy, irrespective of whether such proceedings have ended in a conviction or in an acquittal, provided that if a sentence has been imposed the penalty already undergone shall be taken into account in fixing any sentence which may be imposed.

(1) The underlined parts of the texts are those recommended by the Commission.

(2) It is suggested that the same text should be used in the Treaties with the other countries, subject only to the substitution of the name of the State concerned for that of Italy and having regard to the different composition of the Board of Diplomatic Envoys vested with the right to decide in case of disagreement.



3. Italy undertakes to comply forthwith with all requests of the United Nations Government concerned relating to the identification, discovery, apprehension, arrest and surrender of the accused persons mentioned in paragraph 1 of this article. The United Nations Government concerned will be given every facility to supervise the way in which their requests are carried out.

4. At the request of the United Nations Government concerned, Italy will likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

5. Italy undertakes to disclose and produce any records or documents or any other things, the production of which may be considered necessary to ensure the full knowledge of the acts with which the accused are charged and the just appreciation of responsibility, and to assist in any other way in which such assistance may be required.

6. Italy undertakes to pass and enforce legislation making it a penal offence.

(a) to obstruct the execution of the foregoing provisions or to fail to comply with any direction relating thereto;

(b) to aid or abet a person whose surrender has been demanded in evading apprehension or surrender;

(c) to destroy or conceal documentary evidence, to impede or obstruct the calling or examination of witnesses;

(d) to incite another person to resist in any way the provisions concerning the apprehension and surrender of such persons.

(e) It shall further be a penal offence for any Italian Official to prosecute or punish any person for having reported to the authorities or agencies of any of the United Nations, any evasion of, or resistance to the foregoing provisions.

7. Any disagreement concerning the application of the provisions of the foregoing paragraphs of this Article shall be referred by any of the Governments concerned to the Ambassadors in Rome of the Union of Soviet Socialist Republics, United Kingdom, United States of America, and France, who will reach agreement with regard to the difficulty, provided that whenever the surrender of a person is asked for by the United Nations Government concerned, the person is to be apprehended and kept in custody until such time as the four Ambassadors reach agreement with regard to the difficulty.



SECRET.

Doc. A.17.  
6th September, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

The Provisions of the Draft Peace Treaties regarding  
War Criminals.

Alternative Text for a Draft Resolution.

The Secretariat herewith presents an alternative text of Documents A.15 and A.16. This text attempts to embody the suggestions made during the discussion of the papers Misc.43, A.15 and A.16 in the meeting of the Commission held on 4th September 1946. In particular, it avoids formulating a definite text for inclusion in the Treaties.

The United Nations War Crimes Commission has had the opportunity of examining the provisions regarding the apprehension and surrender of war criminals, contained in the Draft Peace Treaties with Italy, (Art.38), with Roumania (Art.6.), with Bulgaria (Art.5), with Hungary (Art.5) and with Finland (Art.9).

While not expressing an opinion on the problem of the prosecution of nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war, the United Nations War Crimes Commission presents to its Member Governments for consideration its views on the provisions of the Peace Treaties dealing with war criminals.

The Commission refers to its Recommendations, Docs. C.31 and C.34, and adds the following observations:

The proposed text of the Peace Treaties contains a number of provisions which constitute valuable progress in the development of International Law on the subject of war crimes. This is the case particularly with regard to the provisions as to the perpetrators of crimes against peace and crimes against humanity, and the re-affirmation of the principle of individual responsibility for international delinquencies.

The Draft Treaties lay upon the ex-enemy governments a duty to take "the necessary steps" to ensure the apprehension and surrender for trial of the persons concerned. In the opinion of the United Nations War Crimes Commission, the general expression "to take the necessary steps" leaves the task of apprehension and surrender of the war criminals in practice to the discretion of the ex-enemy governments.

Considering that the provisions regarding war criminals in the five Peace Treaties will, at least to a certain extent, create a precedent for future arrangements, particularly for those with Germany and Japan, the United Nations War Crimes Commission is of the opinion that it would be valuable if the Articles of the Draft Peace Treaties, which are quoted above, were supplemented in such a way as to take account of the following points:

1. The provisions of Art.38 of the Draft Peace Treaty with Italy (and the corresponding provisions of the four other Treaties) should apply notwithstanding any proceedings or prosecution before a court of the ex-enemy country. An express provision to this effect was contained in Art.228 of the Peace Treaty of Versailles.

2. The ex-enemy government should comply forthwith with all requests of the United Nations Government concerned relating to the identification, discovery, apprehension, arrest and surrender of the accused persons. The United Nations Government concerned should be given every facility to supervise the way in which its requests are carried out.

3. The provisions of paragraph 2 of the respective Articles of the Draft Peace Treaties dealing with the question of witnesses to be made available by the ex-enemy government should be supplemented by a provision corresponding to Art. 230 of the Peace Treaty of Versailles and the ex-enemy government should undertake to disclose and produce any records or documents or other things, the production of which may be considered necessary to ensure the full knowledge of the acts with which the accused are charged and the just appreciation of responsibility, and to assist in any other way in which such assistance may be required.

4. In the opinion of the United Nations War Crimes Commission, "necessary steps" should include provisions safeguarding the loyal and conscientious collaboration of the officials of the ex-enemy State, who will be responsible for the execution of the provisions of the Treaties. The ex-enemy government should, therefore, undertake to pass and enforce legislation making it a penal offence:

- (a) to obstruct the execution of the foregoing provisions or to fail to comply with any direction relating thereto;
- (b) to aid or abet a person whose surrender has been demanded in evading apprehension or surrender;
- (c) to destroy or conceal documentary evidence, to impede or obstruct the calling or examination of witnesses;
- (d) to incite another person to resist in any way the provisions concerning the apprehension and surrender of such persons;
- (e) for any ex-enemy official to prosecute or punish any person for having reported to the authorities or agencies of any of the United Nations, any evasion of, or resistance to the foregoing provisions.

5. Under the Draft Treaties any disagreement concerning the application of the provisions will be referred to the Diplomatic Envoys of the Great Powers concerned at the capital of the ex-enemy State.

With regard to demands for the apprehension and surrender of accused persons, in the opinion of the Commission, a difference could be made between the apprehension of accused persons on the one hand and their surrender for trial on the other. While the surrender, in the event of disagreement, should remain dependent on the decision of the Ambassadors, the apprehension of wanted persons by the enemy government should be compulsory, and the latter should not be entitled to leave the accused person at large until the decision of the Ambassadors has been given.

It should therefore be provided that whenever the surrender of a person is asked for by the United Nations Government concerned, the person is to be apprehended and kept in custody until such time as the Ambassadors reach agreement with regard to the difficulty.



SECRET

DOC. A. 18  
17th September, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

The Provisions of the Draft Peace Treaties  
regarding War Criminals.

Text of the Draft Resolution

containing

certain verbal amendments to

Doc. A. 17 which have been suggested to the Secretariat.

The verbal amendments of Doc. A. 17, contained in the present paper, are underlined. This paper suggests the omission of paragraphs 2 and 3, on page 1 of Doc. A. 17, and of parts of points 2 and 3, on page 2.

The United Nations War Crimes Commission has had the opportunity of examining the provisions regarding the apprehension and surrender of war criminals, contained in the Draft Peace Treaties with Italy (Art. 38), with Roumania, (Art. 6), with Bulgaria, (Art. 5), with Hungary (Art. 5), and with Finland (Art. 9).

While not expressing an opinion on the problem of the prosecution of nationals of the Allied and Associated Powers accused of having violated their national law by treason or collaboration with the enemy during the war, the United Nations War Crimes Commission presents to its Member Governments for consideration its views on the provisions of the Peace Treaties dealing with war criminals.

The Draft Treaties lay upon the ex-enemy governments a duty to take "the necessary steps" to ensure the apprehension and surrender for trial of the persons concerned. In the opinion of the United Nations War Crimes Commission, the general expression "to take the necessary steps" might seem to leave the task of apprehension and surrender of the war criminals in practice to the discretion of the ex-enemy governments.

Considering that the provisions regarding war criminals in the five Peace Treaties will, at least to a certain extent, create a precedent for future arrangements, particularly for those with Germany and Japan, the United Nations War Crimes Commission is of the opinion that it would be most valuable if the Articles of the Draft Peace Treaties, which are quoted above, could be supplemented in such a way as to take account of the following points:

1. The provisions of Art. 38 of the Draft Peace Treaty with Italy (and the corresponding provisions of the four other treaties) might well be made applicable notwithstanding any proceedings or prosecution before a court of the ex-enemy country. An express provision to this effect was contained in Art. 228 of the Peace Treaty of Versailles.
2. The ex-enemy government should be required to comply with all requests of the United Nations Government concerned relating to the identification, discovery, apprehension, arrest and surrender of the accused persons, and to keep the United Nations Government concerned fully and promptly informed of the manner in which effect is being given to its request.
3. The provisions of paragraph 2 of the respective Articles of the Draft Peace Treaties dealing with the question of witnesses to be made available by the ex-enemy government should be supplemented by a



provision corresponding to Art. 230 of the Peace Treaty of Versailles and the ex-enemy government should undertake to disclose and produce any records or documents or other evidence, the production of which may be considered necessary to secure full knowledge of the acts with which the accused are charged.

4. In the opinion of the United Nations War Crimes Commission, there should be some provisions safeguarding the loyal and conscientious collaboration of the officials of the ex-enemy State, who will be responsible for the execution of the provisions of the Treaties. The ex-enemy government should undertake to pass and enforce legislation making it a penal offence:

- (a) To obstruct the execution of the foregoing provisions or to fail to comply with any direction relating thereto;
- (b) to aid or abet a person whose surrender has been demanded in evading apprehension or surrender;
- (c) to destroy or conceal documentary evidence, to impede or obstruct the calling or examination of witnesses;
- (d) to incite another person to resist in any way the provisions concerning the apprehension and surrender of such persons;
- (e) for any ex-enemy official to prosecute or punish any person for having reported to the authorities or agencies of any of the United Nations, any evasion of, or resistance to the foregoing provisions.

5. Under the Draft Treaties any disagreement concerning the application of the provisions will be referred to the Diplomatic Envoys of the Great Powers concerned at the capital of the ex-enemy State.

The Commission suggests that with regard to demands for the apprehension and surrender of accused persons, a difference could be made between the apprehension of accused persons on the one hand and their surrender for trial on the other. While the surrender, in the event of disagreement, should remain dependent on the decision of the Ambassadors, the apprehension of wanted persons by the enemy government should be compulsory, and the latter should not be entitled to leave the accused person at large until the decision of the ambassadors has been given. The Commission therefore suggests that whenever the surrender of a person is asked for by a United Nations Government, the person concerned should be apprehended and kept in custody until such time as the ambassadors reach agreement with regard to the difficulty.

The Commission trusts that the above suggestions will be taken into favourable consideration by the governments of the United Nations.

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A. 19

document does  
not exist.

FAR EASTERN COMMISSION.

Minutes of Special Meeting of the Far Eastern Commission to  
hear Lord Wright, Chairman of the United Nations War Crimes  
Commission, held in Main Conference Room, 2516 Massachusetts  
Avenue, N.W. Friday, 14th June, 1946.

REPRESENTATIVES PRESENT.

General Frank R. McCoy, Chairman	(U.S.A.)
Major J. Plimsoll	(Australia)
Mr. Paul Tremblay	(Canada)
Mr. Timothy Tien-tseh Mar	(China)
Mr. R. R. Saksena	(India)
Dr. A. D. A. de Kat Angelina	(Netherlands)
Sir Carl Berendsen	(New Zealand)
Dr. Melquiades J. Gamboa	(Phillipines)
Rear Admiral S. S. Ramishvili	(U.S.S.R.)
Sir George Sansom	(U.K.)

SECRETARY-GENERAL

Mr. Nelson T. Johnson

GUEST SPEAKER

Lord Wright



#### FAR EASTERN COMMISSION

Minutes of Special Meeting of the Far Eastern Commission  
to hear Lord Wright, Chairman of the United Nations War  
Crimes Commission, held in Main Conference Room, 2316  
Massachusetts Avenue, N.W., Friday, 14th June, 1946.

MR. JOHNSON opened the meeting at 3:05 p.m. He explained that General McCoy was unavoidably absent, but would return before the end of the meeting.

MR. JOHNSON said that the special informal meeting had been called so that the Commission might take advantage of the brief presence in Washington of Lord Wright, Chairman of the United Nations War Crimes Commission. Lord Wright had just returned from Japan, where he had attended the opening of the trial of war criminals, and would leave shortly to return to London. MR. JOHNSON presented Lord Wright to the Commission.

(The following is a transcript of Lord Wright's remarks:)

LORD WRIGHT: Mr. Chairman and gentlemen, I am certainly honored by being asked to come here. I feel that I am quite unworthy of that honor because I see great authorities on Japan and everything connected with Japan sitting at this table, particularly, Sir George Sansom and others. I feel rather a globe-trotter among so many experienced gentlemen.

I went, of course, primarily to look into the question of the trials, and I went as a person interested in the law, and interested in the law relating to the punishment of war criminals. Perhaps a few high authorities in the political and juridical world regard the question as merely an added nuisance, but I believe that at heart, they realize it is much more.

The ordinary man in the street among the allied nations is certainly deeply interested in the course of the proceedings for the punishment of the war criminals and is strongly anxious that something be done. In a sense, with all the pressing problems which occupy us the trials may seem somewhat unnecessary, something which relates to the past. We hear the ancient adage: "Let bygones be bygones, etc." But they are really related to the future and are most essential from the point-of-view of the future. I think that any actual serious steps are pertinent which secure a regard for international law, and which make leaders of States and high politicians realize that they are responsible in their own persons. That's the test of the responsibility -- responsibility in their own persons for the reckless or wicked or aggressive anti-human character of their deeds.

It is in order to establish these two guiding principles for the future of the world that I, personally, take an interest in these proceedings. There are, of course, many widows and orphans who have suffered from the terrible evils of this war, and there are, of course, the many devastated homes and ruined lives of those who have survived. There must be millions of people in the world now who verily have perished, who will go about morally and physically naked for the rest of their lives. The more I think of these people, the more satisfied I am that war is a terrible evil. When we were young we used to think of the wonderful pictures of armed knights, charging each other. It was very attractive, indeed, and we used to think of the wonderful lines of troops drawn up facing each other bravely, with firm ranks, with courage and determination and splendour. We realized of course, that these things for very many men were the climax of the training to which they devoted their lives. They were the pathway to glory and

distinction for the individuals concerned. That was true enough, and to a certain extent a war is still the climax of a soldier's career. We have, every one of us, many friends who are soldiers, whom we admire, both for their courage and their character as well as for their intellectual powers.

But for all that and even if you add to that that war is a great discipline of courage and devotion and self-sacrifice -- add all these things together and you do not get anything which would compensate for the incredible war which we have just come through. We ought not to neglect anything which will help even in a remote degree to render such evil things of the past and not things of the future.

We have to remember now that unknown mysteries of the atomic bomb have introduced elements which none of us -- I ought not to say "none" because there are so many wise people here -- dreamed of before. You may get on a plane and see a large and peaceful and happy city smiling under the moonlight, people in bed and happy and you may drop a small object and the whole city and its hundreds of thousands of people may go to ruin and destruction, and the whole magnificent array of wealth and prosperity and happiness may go up in smoke. Now that is a terrible prospect.

I shouldn't hesitate to say that our friend who drops the atomic bomb has taken care that he gets away. I shouldn't hesitate for a moment to describe him as a murderer. A murderer is a man who takes the lives of his fellows without due legal justification. I am assuming, of course that what he did was done in the course of an unjust or aggressive war. Well, now, what is the justification there? I think he broke every rule of international law which is relevant to such circumstances. I treat him as not a private individual -- if he was a private individual no one would hesitate to call him a murderer -- but I regard him as a member of some armed or other national force who was sent out by his Cabinet, his Prime Minister, or his Dictator, or whoever is in control, with instructions to carry his little package and to drop it at the appropriate moment.

In the first place, if he was doing it merely out of reckless mischief no one would hesitate to say that he was a murderer. If he does it under the orders of some potentate, some powerful person, some leader of the nation sitting some distance away in the comfort of his office, he is a man who drops the thing knowing what he is doing is murder, but equally guilty is the man sitting in the back-ground who says: "Go and drop it". They are both murderers and so is everybody else who is a party aiding and abetting that scheme.

It has always puzzled me that people should refuse to think of murder as murder if, in fact, it is done on a large scale and again if it is said it is done with political motives. I agree that a single murder is always interesting. Everybody knows how interesting the papers are when you have a full account of a murder. You like to know all about it. You like to run over the pictures when the man is tried and you want to know what happens and all that. That is murder. I regret that people are apt to take so narrow a view. Think of the man who destroys hundreds of thousands, millions of lives. He may be able to justify that but not on the ground that he did it as being the head of the State or one of the leaders or that he did it as a politician or for political motives. These are not in themselves justifications. The naked fact remains that he has been destroying human life without due justification and if anyone says that isn't a crime I venture to refer to the most ancient catalogue of crimes. There was what we called in our Bible the ancient admonition: "Thou shalt not murder". I don't believe there is anyone alive who would regard the taking of human life as anything but murder.



You see, then, that war, if unjustified is simply the initiation of a long series of murders and the destruction of human life. Of course, one has to realize that the right of self-defence is feasible and is common to everyone, every person and every State.

If you are attacked, you defend yourself and sometimes you have a defensive action which takes the form of aggression in the sense that the threatened individual takes the first steps in order to defend himself, and there are many complications. But I don't think anyone doubts, unless he is writing a thesis, as Aristotle used to say: "...there is a difference between defence and offence; there is aggressive war and offensive war, and a just war and an unjust war."

One of the things that will be made clear, I hope, is that political motives do not, as such, constitute justification of murder. Political motives may be legitimate or may be illegitimate. I say if an act is done from a political motive, you don't get a step further in justifying it. If it is justified, then it doesn't matter that it is a political motive. If it was unjustified, equally it doesn't matter that it is a political motive, because politics is merely self-regard on a large scale, not an individual thinking of his own advantage. You wouldn't call it political, you would say it was selfish in an individual. But if it is done on a national scale, then you would call it political, but you don't change the character of the act. The act is either justified or unjustified and the test is not what is convenient for the aggressor in the long run, the politician who does the act -- the test is something quite different. The test is whether it is right or wrong.

When I lead various discussions, I can't help coming back to these simple and elementary ideas which I think are still valid and still lie at the root of things and, though they are often obscured and forgotten, are there all the time. It is in order prevent people from forgetting things like that that I think these trials, no matter how imperfect they are, should be supported and justified. Really it is the future we are thinking about, not the past, for the past is beyond reparation. The only thing is not to let it happen again.

The mere fact that these trials have been held and the mere fact that moral rules have been laid down and punishments have been assigned to individuals who infringe these moral rules can't go a long way, perhaps, to putting a final end to the inherent weakness of humans. But the more you help, the more you raise in the world at large a feeling that war is an evil and the greatest of evils, that it should be the last resort and should not be accepted except in an extremity for defensive purposes, the more you are checking the exploits and the admonitions of an Alexander, or a Genghis Khan, or an Emperor William, the more you realize what lies at the bottom of all that, that it is mere greed and aggrandizement and the evils that follow on it, the more that is realized in the world at large,.....the less likely, in a very qualified degree, are such things to happen.

The early part of this century was very much occupied with the idea of war, and we all know the various institutions which were established. What I think people don't remember sometimes is how extremely sweeping and important was the Pact of Paris in 1928, where all the great nations of the world agreed to renounce war as an instrument of policy. The nation which without due cause resorts to war is breaking a moral rule embodied in the Treaty, but most important of all, a rule of international law.



But we come back again to a clear recognition that war which is organized murder is not only evil but unlawful. If that is so, everyone who in a sufficient degree of responsibility has aimed or taken part in doing that, taking part in the promotion or organizing, or initiation of war, is an instrument or agent in unlawful conduct and he is liable as an evil-doer and a criminal.

I am afraid I have been rather long in talking various platitudes. I think of my friend who once described the eighteen miles from Tokyo to Yokohama as the eighteen longest miles in the world. On each side of these eighteen miles, as you all know, there is an area of devastation of wooden buildings swept away by fire. There was a strong gale, sixty or seventy miles an hour, and the flames spread with most tremendous activity and the whole place became a devastated ruin. It is perfectly true that the big concrete buildings are standing, more or less. It is a terrible area of destruction and I am devotedly sorry for all the people who were living there; but, after all, they brought it upon themselves, or rather their leaders brought it upon them. I heard on every side in Tokyo, and you have also heard, that the Japanese people are quite sympathetic with the trials and are quite anxious that the leaders who brought about this terrible mess should suffer some penalty for what they have done. No doubt Sir George will support me, no doubt he has looked out on the ground all around and seen these people building with any wood or corrugated iron that they could get hold of, building their sheds. And there is quite a colony springing up all over but it is a very unhappy sort of desolation.

The people in Japan, so far as I made out, seemed very orderly and peacefully disposed. I haven't heard from anybody that I have spoken to that there are any signs of underground movements. Externally, anyhow, the position is very, very peaceful.

It all seemed to me, wandering about as I did for a few weeks, that the women are the brighter sex of the Japanese. I am not referring to the geishas, because I didn't attend a geisha performance, but I was told by a man who went to see what it was like that it was extremely dull. He said he sat for about three hours with a lot of chatting going on and everybody very cheerful, but it was all in Japanese and for the life of him he couldn't make out what they were saying or what they were doing. Certainly at the excellent Imperial Hotel you do find very charming waitresses gaily attired in kimonos. The younger women in the street seem to be reverting rather to the less attractive western manner of wearing skirts or even occasionally shorts, and shoes instead of the sandals in which they cluttered about in the old-fashioned way.

There are universities at Tokyo, more than one, I think. The Tokyo University is a wonderful institution which seems to be in full swing. It hadn't been hit at all, so far as I could see.

Then all the troops are clamouring -- Americans especially. The Americans are those I saw principally. They are all clamouring to go home, which is not unnatural, and the American military authorities have been billeting large cantonments in which life will be made more bearable for the occupation troops. They will have to do something to provide amusements, rest houses and other conveniences which would make life endurable to the soldier. But it is a thing which will not cease to be difficult as time goes on.

The country in Japan, so far as I have seen -- and I covered an area of many hundred square miles -- looks extremely prosperous. Their methods of manuring the soil are not altogether in conformance with European ideas and the result is that you never, as I understand, eat Japanese grown vegetables because of the soil and manure in which

they are produced. But it is a beautiful country and cultivated with the greatest care and success. It seems to me more like a market garden than any ordinary cultivated area in England. Everything is done by hand. I never saw anything like the machines which we and the Americans use in our agriculture - I haven't seen anything like that. I have seen them cutting down their wheat and their other grain by hand. It is all grown in nice rows with a little space in between so that the man wielding the sickle can get a good hack at it. Of course, it doesn't sound very economical in a country like America, but in Japan, apparently, labour is almost a glut in the market.

The crops looked to me extremely good. Rice, of course, was not so far advanced, but even there it looks as if they might have a good crop.

On the trial itself, that is, the trial of the major criminals, it has, I think, now got under way. I was at the opening just as I had been at the opening at Nuremberg.

(General McCoy entered the conference room at this time.)

I thought the opening address by Mr. Keenan was very admirable. I suppose reports haven't reached you yet, but I thought it contained a very admirable survey of the general scope of what was going to be laid before the judges, and also of the principles of law on which the court was proceeding. I'd like to emphasize that the court is proceeding on principles of law.

It is perfectly true that the Charter lays down what the scope of their jurisdiction is to be. What is laid down is not something invented or promulgated or laid down, however, but it is in accordance with international law -- that part of international law which leads to these questions and agrees with these questions, and, I confess, agrees with my own view. It is likely, I am afraid, to be a rather long trial. I tried to figure it out and it seemed to me that what is called the opening, the series of speeches stating the facts and putting in the relevant documents on which the trial is based, might take five, six, seven, or eight weeks. I have never heard any suggestion that it would take less than five weeks,

As soon as that is done, you have twenty-six defendants, two of them, and possibly a third more or less out of action, and their cases, I take it, may not be gone into. I presume that will leave twenty-three. Suppose you give each defendant three days in which he may state his defence and in which he may be cross-examined by the prosecuting counsel. There you have sixty-nine days. At five days a week you will get, say, fourteen weeks, so that the total is in the neighbourhood of twenty-six weeks -- six months. Things may pan out shorter, I don't know. But, of course, if you go into this method of investigating war crimes it must take a long time. I don't see any way out of it. Our friends in Nuremberg took nine or ten months. I don't think Tokyo will be quite so long and there is a tremendous desire on everyone's side to expedite things as far as possible.

A perfect army of defenders came down by air from America a week or two ago. That made it more difficult to continue the trial without further adjournments. I think now the period of adjournments is over and the trial will proceed regularly without any intermission or delay.

It is striking to see eleven judges all sitting in a row; all attired in black silk gowns. I should think it must be rather a job to handle a team of that sort. I have heard it said if you let the defending counsel get out-of-hand, they are as difficult to stop as a four-in-hand is if you let the horses get out of control, but I hope that neither the



defending nor the prosecuting counsel will get out-of-hand and that the judges won't get out-of-hand. Things ought to go nicely, but eleven judges are rather a handful to manage. There have been cases of courts of some repute in which even nine judges have proved to have had difficulty, and with eleven you have two more. Let us hope for the best.

But they have got down to their work, and the prosecuting counsel are certainly working very hard, so far as I can judge, along very well-organized lines.

The court building was, I think a military building. It is a big building which has been handed over entirely to the International Military Tribunal. There are a series of corridors opening out on each other and a great many rooms where you have I don't know how many hundreds of workers, all hard at work in examining and sifting and organizing the evidence and preparing it for presentation in a convenient form to the court.

One great problem that they have had to consider is the question of translating. The documents which have been found in Japan or any documents from that side have all been translated, not an easy job, and in the court itself the interpreters often seem to be very much puzzled by the appropriate word to be used in somewhat more technical language. It is inevitable that there will be matters of that sort. I have every hope and expectation, though, that the trial will proceed, that a just result will be arrived at, that it will meet with the approval of the world, and that it won't take too long. Supposing it took four or five months. That is a very small period of time if it is really a worthwhile decision because it is something which will have its effect upon the world directly and indirectly for many generations, for many centuries to come.

General MacArthur is extremely interested in everything connected with war criminals. I think he was largely responsible for the Yamashita and Hotta cases which started off. They constituted of course, a different type of trial. They were the big trials in which not the politicians and statesmen were the figures and in which soldiers of different ranks up to Generals were charged, not with general offences like initiating war, but with particular offences, against the laws of war committed against particular people.

You have all heard of what they call the "death march" in which 1600 European or allied prisoners were marched through the mountains of Borneo. At the end of the march there were only six surviving. That was a terrible business and there are other instances of that sort; of men being beaten, of prisoners being bayoneted merely out of malice and spite, of nurses maltreated and murdered, of hostages killed, and of widespread destruction in the occupied countries. All these are offences against the laws of war and no one would dispute that the punishment of them after trial is legitimate exercise of the rights of the captors and legitimate acts of justice done. These were the major criminals as they were called in the Moscow Declaration. The minor criminals are the other criminals under that Declaration. The ones we have been discussing form the other class, but the view is that there are in different degrees infringements of that part of the international law which deals with the laws of war and that in their different ways they are both brought under the same condemnation if the offences are established.

I am afraid I have been very long and I hope you will ask me some questions because, obviously, I might not have addressed my mind to things which interest you most; possibly, talked about things which interested myself and not of things which interested you.



SECRETARY-GENERAL: Might I ask one question? Did you gather the attitude of the Japanese jurists towards the treatment of war crimes?

LORD WRIGHT: No, I was rather unfortunate in that respect. There was the language difficulty and I was not brought into company with any of the jurists. I don't know what their views were. But, after all, Japan has always had a great many cultivated people and some very good lawyers. I was unfortunate, I didn't come across them. (To Sir George) I don't know if when you were there you came across anyone.

SIR GEORGE SANSOM: No, I didn't. I did find that most people I talked to not only had no objection to the trials but rather favoured them.

LORD WRIGHT: Yes, everyone agrees they are in favour of the trials.

Of the criminals, I confess I was rather impressed by Tojo, who struck me as a determined man -- a man with a will of his own and a clear, cultivated and intelligent mind. Of course, naturally, I didn't meet him, but I watched him a good deal as he sat with an imperturbable, inscrutable expression. I never saw his face change in any moment, except at one time when Keenan was delivering his speech, which he did very fairly and temperately. I noticed Tojo taking notes and looking preoccupied. I don't say he looked conscience-stricken. He was preoccupied -- I put it quite generally. As to the others, I thought they were a very unappetizing-looking lot and I couldn't detect any signs of animation or intelligence in any of them at any time.

GENERAL MCCOY: Who were their counsellors, Lord Wright? I missed so much of your talk that you may have told the others, but are the counsellors for the defence all Japanese?

LORD WRIGHT: No, they have got some Japanese. There's a man whose name I can't pronounce, a well-known Japanese lawyer, who takes an active part; but in addition to that the American Government sent out twenty-six lawyers whom they chose here in Washington or New York. But they hadn't really got into action when I left. One or two of them argued shortly, but they are all there to see that the interests of each prisoner are adequately protected. There were also Japanese counsellors in addition to that one who took an active part, but I didn't see as many Japanese counsellors, as I saw German counsellors at Nuremberg. I think at Nuremberg the counsellors were almost entirely German. At some of the minor trials of minor offenders that I attended there was a mixture. Sometimes the American or the British advocate took the burden and was supported by German advocates; sometimes the reverse. But apart from one or two prominent Japanese, I think most of the counsel were sent over from America. They have rigged up these ear-phones which you have no doubt heard about, and they seem to be working all right.

GENERAL MCCOY: Had the trials developed far enough to give you any idea whether they would appear to make statements in their own defence?

LORD WRIGHT: No, so far, when I left, they had finished the opening speech by Mr. Keenan, the principal prosecutor, and apart from some minor observations from the defence that's as far as they had got. The prosecuting counsel will go on for another four or five weeks relating the case in detail before the courts. How far the Japanese or American defence counsel will intervene at the stage is

impossible to say. They will intervene to some extent because they will have to make objections. But, primarily, during that period the main work will be done by the prosecutor. I think we may assume that the defendants will make statements on their own account; possibly, give evidence; possibly, be cross-examined. I think that's generally expected. That would follow the lines of the Nuremberg trial and it would be the ordinary practice of a man sent up. He is entitled to make his own defence in his own way.

The court room was very well-arranged, but it was devilish hot, even last week. I should think they will have to, if they go through the summer season, July or September, air-condition that room if it is to be bearable.

SIR CARL BERENDSEN: I wonder whether you can help me in one of my difficulties. I agree with you that one of the most astounding phenomena to any visitor to Japan is the obvious docility of the people and you have presented a picture of a people who in a sense were anxious to see the war criminals punished. But how does one reconcile that apparent or possibly superficial docility with the widespread hostility and inhumanity of their methods of conducting war? Are you yourself, Lord Wright, of the opinion that what we are seeing is one of the best-known qualities of the possum?

LORD WRIGHT: Of what?

SIR CARL BERENDSEN: The possum -- the gentleman who plays dead when it seems convenient to do so.

LORD WRIGHT: I don't know. It is a problem. I was talking to General King, who was General Wainwright's second in command, and who was captured at Corregidor. He had a terrible time and he summed it up by saying: "The Japanese are a cruel people".

GENERAL MCCOY: Are what?

LORD WRIGHT: A cruel people, and so they must be. I think partly it may have been the Germans. They imitated the Germans very much and the Germans always started off with what they called "frightfulness" because they had been taught to believe by their international lawyers that you can start a war whenever you like and conduct it with any methods which are likely to terminate the war successfully. The whole object is to end the war and means don't matter. One of the best ways of ending the war was thought to be frightfulness and I think they have imbibed that same idea. But these accounts which you hear and read are almost incredible, like working people to death in the mines.

DR. DE KAT: Lord Wright, have these defendants in one way or another been given a way to express themselves on their own feeling of guilty or not guilty?

LORD WRIGHT: All they have been asked is guilty or not guilty and they have all said not guilty. That is the Anglo-American method. In some countries we regard a man as not guilty until he has been found guilty. In some systems of law a prisoner in court is regarded as guilty unless he can prove that he is innocent. But following, I think, the Anglo-American method he has been asked straight out: "Do you plead guilty or not guilty?" He says "not guilty" and then the thing proceeds and, therefore, the prosecution has to start because it starts with that dead fact against it. It would be otherwise if, prima-facie, the man who stood in the dock was regarded as guilty. You might say: "If you are not guilty what are you doing in the dock?" We don't regard it that way, and, therefore, we follow the procedure at Tokyo as at Nuremberg.



Japanese is certainly difficult to translate. I thought the translators they had, four or five of them sitting altogether, improved even in the short time that I saw them, but it is certainly a difficulty. The earphones are tuned primarily for the English, but there is a button you can press which turns on the Japanese. You get the Japanese from the translators who sit in a glass box as in Nuremberg and translate into Japanese as the proceedings go on. If you are sitting near their box you will hear a murmur because they are turning it into Japanese. I think it is very difficult but they seem to have done it fairly successfully. The man who wants Japanese presses the right button and hears the Japanese and doesn't hear the English. It is a very clever way.

SIR CARL BERENDSEN: It is extremely difficult even for experts to convey the exact shade of meaning from one language to another.

LORD WRIGHT: You never can. If you wanted exact shades where would you be? This is a working world.

SIR CARL BERENDSEN: The exact shade there may be something approaching black, but it must add greatly to the difficulty of administering justice.

LORD WRIGHT: Of course, in England we are very familiar with proceedings which take place and in which one or more of the parties speaks a foreign language. No translation can ever be precisely accurate. But you edit. You can always stop if you come to something very delicate, where it is necessary to have a delicate shade of meaning explained.

I have had a good deal of experience when I was a judge a long time ago trying cases through interpreters and I think for all practical purposes one got a fair result. You could always tell if there was any difficulty and stop until it was cleared up. However, that's inevitable. The same thing is equally true in Germany.

SIR CARL BERENDSEN: But they are probably more competent interpreters.

LORD WRIGHT: I think these interpreters are pretty good, but I should think there's more community of thought between England and Germany than between England and Japan.

SECRETARY-GENERAL: Are there any more questions that you would like to ask Lord Wright?

I am sure everyone here appreciates the fact, Lord Wright, that you have been willing to come here and take part of your very valuable time. I am sure that we will all remember it with interest and try to pass it on to those who should hear it.

Thank you very much sir.

LORD WRIGHT: I am very much obliged to you for giving me this opportunity and I hope the time hasn't been wasted.

(The meeting adjourned at 4.10 p.m.)



FAR EASTERN COMMISSION.

Minutes of Special Meeting of the Far Eastern Commission to  
hear Lord Wright, Chairman of the United Nations War Crimes  
Commission, held in Main Conference Room, 2516 Massachusetts  
Avenue, N.W. Friday, 14th June, 1946.

REPRESENTATIVES PRESENT.

General Frank R. McCoy, Chairman	(U.S.A.)
Major J. Plimsoll	(Australia)
Mr. Paul Tremblay	(Canada)
Mr. Timothy Tien-tseh Mar	(China)
Mr. R. R. Saksena	(India)
Dr. A. D. A. de Kat Angelina	(Netherlands)
Sir Carl Berendsen	(New Zealand)
Dr. Melquiades J. Gamboa	(Phillipines)
Rear Admiral S. S. Ramishvili	(U.S.S.R.)
Sir George Sansom	(U.K.)

SECRETARY-GENERAL

Mr. Nelson T. Johnson

GUEST SPEAKER

Lord Wright

FAR EASTERN COMMISSION

Minutes of Special Meeting of the Far Eastern Commission  
to hear Lord Wright, Chairman of the United Nations War  
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Massachusetts Avenue, N.W., Friday, 14th June, 1946.

MR. JOHNSON opened the meeting at 3:05 p.m. He explained that General McCoy was unavoidably absent, but would return before the end of the meeting.

MR. JOHNSON said that the special informal meeting had been called so that the Commission might take advantage of the brief presence in Washington of Lord Wright, Chairman of the United Nations War Crimes Commission. Lord Wright had just returned from Japan, where he had attended the opening of the trial of war criminals, and would leave shortly to return to London. MR. JOHNSON presented Lord Wright to the Commission.

(The following is a transcript of Lord Wright's remarks:)

LORD WRIGHT: Mr. Chairman and gentlemen, I am certainly honored by being asked to come here. I feel that I am quite unworthy of that honor because I see great authorities on Japan and everything connected with Japan sitting at this table, particularly, Sir George Sansom and others. I feel rather a globe-trotter among so many experienced gentlemen.

I went, of course, primarily to look into the question of the trials, and I went as a person interested in the law, and interested in the law relating to the punishment of war criminals. Perhaps a few high authorities in the political and juridical world regard the question as merely an added nuisance, but I believe that at heart, they realize it is much more.

The ordinary man in the street among the allied nations is certainly deeply interested in the course of the proceedings for the punishment of the war criminals and is strongly anxious that something be done. In a sense, with all the pressing problems which occupy us the trials may seem somewhat unnecessary, something which relates to the past. We hear the ancient adage: "Let bygones be bygones, etc." But they are really related to the future and are most essential from the point-of-view of the future. I think that any actual serious steps are pertinent which secure a regard for international law, and which make leaders of States and high politicians realize that they are responsible in their own persons. That's the test of the responsibility -- responsibility in their own persons for the reckless or wicked or aggressive anti-human character of their deeds.

It is in order to establish these two guiding principles for the future of the world that I, personally, take an interest in these proceedings. There are, of course, many widows and orphans who have suffered from the terrible evils of this war, and there are, of course, the many devastated homes and ruined lives of those who have survived. There must be millions of people in the world now who verily have perished, who will go about morally and physically naked for the rest of their lives. The more I think of these people, the more satisfied I am that war is a terrible evil. When we were young we used to think of the wonderful pictures of armed knights, charging each other. It was very attractive, indeed, and we used to think of the wonderful lines of troops drawn up facing each other bravely, with firm ranks, with courage and determination and splendour. We realized of course, that these things for very many men were the climax of the training to which they devoted their lives. They were the pathway to glory and



distinction for the individuals concerned. That was true enough, and to a certain extent a war is still the climax of a soldier's career. We have, every one of us, many friends who are soldiers, whom we admire, both for their courage and their character as well as for their intellectual powers.

But for all that and even if you add to that that war is a great discipline of courage and devotion and self-sacrifice -- add all these things together and you do not get anything which would compensate for the incredible war which we have just come through. We ought not to neglect anything which will help even in a remote degree to render such evil things of the past and not things of the future.

We have to remember now that unknown mysteries of the atomic bomb have introduced elements which none of us -- I ought not to say "none" because there are so many wise people here -- dreamed of before. You may get on a plane and see a large and peaceful and happy city smiling under the moonlight, people in bed and happy and you may drop a small object and the whole city and its hundreds of thousands of people may go to ruin and destruction, and the whole magnificent array of wealth and prosperity and happiness may go up in smoke. Now that is a terrible prospect.

I shouldn't hesitate to say that our friend who drops the atomic bomb has taken care that he gets away. I shouldn't hesitate for a moment to describe him as a murderer. A murderer is a man who takes the lives of his fellows without due legal justification. I am assuming, of course that what he did was done in the course of an unjust or aggressive war. Well, now, what is the justification there? I think he broke every rule of international law which is relevant to such circumstances. I treat him as not a private individual -- if he was a private individual no one would hesitate to call him a murderer -- but I regard him as a member of some armed or other national force who was sent out by his Cabinet, his Prime Minister, or his Dictator, or whoever is in control, with instructions to carry his little package and to drop it at the appropriate moment.

In the first place, if he was doing it merely out of reckless mischief no one would hesitate to say that he was a murderer. If he does it under the orders of some potentate, some powerful person, some leader of the nation sitting some distance away in the comfort of his office, he is a man who drops the thing knowing what he is doing is murder, but equally guilty is the man sitting in the background who says: "Go and drop it". They are both murderers and so is everybody else who is a party aiding and abetting that scheme.

It has always puzzled me that people should refuse to think of murder as murder if, in fact, it is done on a large scale and again if it is said it is done with political motives. I agree that a single murder is always interesting. Everybody knows how interesting the papers are when you have a full account of a murder. You like to know all about it. You like to run over the pictures when the man is tried and you want to know what happens and all that. That is murder. I regret that people are apt to take so narrow a view. Think of the man who destroys hundreds of thousands, millions of lives. He may be able to justify that but not on the ground that he did it as being the head of the State or one of the leaders or that he did it as a politician or for political motives. These are not in themselves justifications. The naked fact remains that he has been destroying human life without due justification and if anyone says that isn't a crime I venture to refer to the most ancient catalogue of crimes. There was what we called in our Bible the ancient admonition: "Thou shalt not murder". I don't believe there is anyone alive who would regard the taking of human life as anything but murder.



You see, then, that war, if unjustified is simply the initiation of a long series of murders and the destruction of human life. Of course, one has to realize that the right of self-defence is feasible and is common to everyone, every person and every State.

If you are attacked, you defend yourself and sometimes you have a defensive action which takes the form of aggression in the sense that the threatened individual takes the first steps in order to defend himself, and there are many complications. But I don't think anyone doubts, unless he is writing a thesis, as Aristotle used to say: "...there is a difference between defence and offence; there is aggressive war and offensive war, and a just war and an unjust war."

One of the things that will be made clear, I hope, is that political motives do not, as such, constitute justification of murder. Political motives may be legitimate or may be illegitimate. I say if an act is done from a political motive, you don't get a step further in justifying it. If it is justified, then it doesn't matter that it is a political motive. If it was unjustified, equally it doesn't matter that it is a political motive, because politics is merely self-regard on a large scale, not an individual thinking of his own advantage. You wouldn't call it political, you would say it was selfish in an individual. But if it is done on a national scale, then you would call it political, but you don't change the character of the act. The act is either justified or unjustified and the test is not what is convenient for the aggressor in the long run, the politician who does the act -- the test is something quite different. The test is whether it is right or wrong.

When I lead various discussions, I can't help coming back to these simple and elementary ideas which I think are still valid and still lie at the root of things and, though they are often obscured and forgotten, are there all the time. It is in order prevent people from forgetting things like that that I think these trials, no matter how imperfect they are, should be supported and justified. Really it is the future we are thinking about, not the past, for the past is beyond reparation. The only thing is not to let it happen again.

The mere fact that these trials have been held and the mere fact that moral rules have been laid down and punishments have been assigned to individuals who infringe these moral rules can't go a long way, perhaps, to putting a final end to the inherent weakness of humans. But the more you help, the more you raise in the world at large a feeling that war is an evil and the greatest of evils, that it should be the last resort and should not be accepted except in an extremity for defensive purposes, the more you are checking the exploits and the admonitions of an Alexander, or a Genghis Khan, or an Emperor William, the more you realize what lies at the bottom of all that, that it is mere greed and aggrandizement and the evils that follow on it, the more that is realized in the world at large,.....the less likely, in a very qualified degree, are such things to happen.

The early part of this century was very much occupied with the idea of war, and we all know the various institutions which were established. What I think people don't remember sometimes is how extremely sweeping and important was the Pact of Paris in 1928, where all the great nations of the world agreed to renounce war as an instrument of policy. The nation which without due cause resorts to war is breaking a moral rule embodied in the Treaty, but most important of all, a rule of international law.

But we come back again to a clear recognition that war which is organized murder is not only evil but unlawful. If that is so, everyone who in a sufficient degree of responsibility has aimed or taken part in doing that, taking part in the promotion or organizing, or initiation of war, is an instrument or agent in unlawful conduct and he is liable as an evil-doer and a criminal.

I am afraid I have been rather long in talking various platitudes. I think of my friend who once described the eighteen miles from Tokyo to Yokohama as the eighteen longest miles in the world. On each side of these eighteen miles, as you all know, there is an area of devastation of wooden buildings swept away by fire. There was a strong gale, sixty or seventy miles an hour, and the flames spread with most tremendous activity and the whole place became a devastated ruin. It is perfectly true that the big concrete buildings are standing, more or less. It is a terrible area of destruction and I am devotedly sorry for all the people who were living there; but, after all, they brought it upon themselves, or rather their leaders brought it upon them. I heard on every side in Tokyo, and you have also heard, that the Japanese people are quite sympathetic with the trials and are quite anxious that the leaders who brought about this terrible mess should suffer some penalty for what they have done. No doubt Sir George will support us, no doubt he has looked out on the ground all around and seen these people building with any wood or corrugated iron that they could get hold of, building their sheds. And there is quite a colony springing up all over but it is a very unhappy sort of desolation.

The people in Japan, so far as I made out, seemed very orderly and peacefully disposed. I haven't heard from anybody that I have spoken to that there are any signs of underground movements. Externally, anyhow, the position is very, very peaceful.

It all seemed to me, wandering about as I did for a few weeks, that the women are the brighter sex of the Japanese. I am not referring to the geishas, because I didn't attend a geisha performance, but I was told by a man who went to see what it was like that it was extremely dull. He said he sat for about three hours with a lot of chatting going on and everybody very cheerful, but it was all in Japanese and for the life of him he couldn't make out what they were saying or what they were doing. Certainly at the excellent Imperial Hotel you do find very charming waitresses gaily attired in kimonos. The younger women in the street seem to be reverting rather to the less attractive western manner of wearing skirts or even occasionally shorts, and shoes instead of the sandals in which they cluttered about in the old-fashioned way.

There are universities at Tokyo, more than one, I think. The Tokyo University is a wonderful institution which seems to be in full swing. It hadn't been hit at all, so far as I could see.

Then all the troops are clamouring -- Americans especially. The Americans are those I saw principally. They are all clamouring to go home, which is not unnatural, and the American military authorities have been billeting large cantonments in which life will be made more bearable for the occupation troops. They will have to do something to provide amusements, rest houses and other conveniences which would make life endurable to the soldier. But it is a thing which will not cease to be difficult as time goes on.

The country in Japan, so far as I have seen -- and I covered an area of many hundred square miles -- looks extremely prosperous. Their methods of manuring the soil are not altogether in conformance with European ideas and the result is that you never, as I understand, eat Japanese grown vegetables because of the soil and manure in which



they are produced. But it is a beautiful country and cultivated with the greatest care and success. It seems to me more like a market garden than any ordinary cultivated area in England. Everything is done by hand. I never saw anything like the machines which we and the Americans use in our agriculture - I haven't seen anything like that. I have seen them cutting down their wheat and their other grain by hand. It is all grown in nice rows with a little space in between so that the man wielding the sickle can get a good hack at it. Of course, it doesn't sound very economical in a country like America, but in Japan, apparently, labour is almost a glut in the market.

The crops looked to me extremely good. Rice, of course, was not so far advanced, but even there it looks as if they might have a good crop.

On the trial itself, that is, the trial of the major criminals, it has, I think, now got under way. I was at the opening just as I had been at the opening at Nuremberg.

(General McCoy entered the conference room at this time)

I thought the opening address by Mr. Keenan was very admirable. I suppose reports haven't reached you yet, but I thought it contained a very admirable survey of the general scope of what was going to be laid before the judges, and also of the principles of law on which the court was proceeding. I'd like to emphasize that the court is proceeding on principles of law.

It is perfectly true that the Charter lays down what the scope of their jurisdiction is to be. What is laid down is not something invented or promulgated or laid down, however, but it is in accordance with international law -- that part of international law which leads to these questions and agrees with these questions, and, I confess, agrees with my own view. It is likely, I am afraid, to be a rather long trial. I tried to figure it out and it seemed to me that what is called the opening, the series of speeches stating the facts and putting in the relevant documents on which the trial is based, might take five, six, seven, or eight weeks. I have never heard any suggestion that it would take less than five weeks,

As soon as that is done, you have twenty-six defendants, two of them, and possibly a third more or less out of action, and their cases, I take it, may not be gone into. I presume that will leave twenty-three. Suppose you give each defendant three days in which he may state his defence and in which he may be cross-examined by the prosecuting counsel. There you have sixty-nine days. At five days a week you will get, say, fourteen weeks, so that the total is in the neighbourhood of twenty-six weeks -- six months. Things may pan out shorter, I don't know. But, of course, if you go into this method of investigating war crimes it must take a long time. I don't see any way out of it. Our friends in Nuremberg took nine or ten months. I don't think Tokyo will be quite so long and there is a tremendous desire on everyone's side to expedite things as far as possible.

A perfect army of defenders came down by air from America a week or two ago. That made it more difficult to continue the trial without further adjournments. I think now the period of adjournments is over and the trial will proceed regularly without any intermission or delay.

It is striking to see eleven judges all sitting in a row; all attired in black silk gowns. I should think it must be rather a job to handle a team of that sort. I have heard it said if you let the defending counsel get out-of-hand, they are as difficult to stop as a four-in-hand is if you let the horses get out of control, but I hope that neither the



defending nor the prosecuting counsel will get out-of-hand and that the judges won't get out-of-hand. Things ought to go nicely, but eleven judges are rather a handful to manage. There have been cases of courts of some repute in which even nine judges have proved to have had difficulty, and with eleven you have two more. Let us hope for the best.

But they have got down to their work, and the prosecuting counsel are certainly working very hard, so far as I can judge, along very well-organized lines.

The court building was, I think a military building. It is a big building which has been handed over entirely to the International Military Tribunal. There are a series of corridors opening out on each other and a great many rooms where you have I don't know how many hundreds of workers, all hard at work in examining and sifting and organizing the evidence and preparing it for presentation in a convenient form to the court.

One great problem that they have had to consider is the question of translating. The documents which have been found in Japan or any documents from that side have all been translated, not an easy job, and in the court itself the interpreters often seem to be very much puzzled by the appropriate word to be used in somewhat more technical language. It is inevitable that there will be matters of that sort. I have every hope and expectation, though, that the trial will proceed, that a just result will be arrived at, that it will meet with the approval of the world, and that it won't take too long. Supposing it took four or five months. That is a very small period of time if it is really a worthwhile decision because it is something which will have its effect upon the world directly and indirectly for many generations, for many centuries to come.

General MacArthur is extremely interested in everything connected with war criminals. I think he was largely responsible for the Yamashita and Hotta cases which started off. They constituted of course, a different type of trial. They were the big trials in which not the politicians and statesmen were the figures and in which soldiers of different ranks up to Generals were charged, not with general offences like initiating war, but with particular offences, against the laws of war committed against particular people.

You have all heard of what they call the "death march" in which 1600 European or allied prisoners were marched through the mountains of Borneo. At the end of the march there were only six surviving. That was a terrible business and there are other instances of that sort; of men being beaten, of prisoners being bayoneted merely out of malice and spite, of nurses maltreated and murdered, of hostages killed, and of widespread destruction in the occupied countries. All these are offences against the laws of war and no one would dispute that the punishment of them after trial is legitimate exercise of the rights of the captors and legitimate acts of justice done. These were the major criminals as they were called in the Moscow Declaration. The minor criminals are the other criminals under that Declaration. The ones we have been discussing form the other class, but the view is that there are in different degrees infringements of that part of the international law which deals with the laws of war and that in their different ways they are both brought under the same condemnation if the offences are established.

I am afraid I have been very long and I hope you will ask me some questions because, obviously, I might not have addressed my mind to things which interest you most; possibly, talked about things which interested myself and not of things which interested you.

SECRETARY-GENERAL: Might I ask one question? Did you gather the attitude of the Japanese jurists towards the treatment of war crimes?

LORD WRIGHT: No, I was rather unfortunate in that respect. There was the language difficulty and I was not brought into company with any of the jurists. I don't know what their views were. But, after all, Japan has always had a great many cultivated people and some very good lawyers. I was unfortunate, I didn't come across them. (To Sir George) I don't know if when you were there you came across anyone.

SIR GEORGE SANSON: No, I didn't. I did find that most people I talked to not only had no objection to the trials but rather favoured them.

LORD WRIGHT: Yes, everyone agrees they are in favour of the trials.

Of the criminals, I confess I was rather impressed by Tojo, who struck me as a determined man -- a man with a will of his own and a clear, cultivated and intelligent mind. Of course, naturally, I didn't meet him, but I watched him a good deal as he sat with an imperturbable, inscrutable expression. I never saw his face change in any moment, except at one time when Keenan was delivering his speech, which he did very fairly and temperately. I noticed Tojo taking notes and looking preoccupied. I don't say he looked conscience-stricken. He was preoccupied -- I put it quite generally. As to the others, I thought they were a very unappetizing-looking lot and I couldn't detect any signs of animation or intelligence in any of them at any time.

GENERAL MCCOY: Who were their counsellors, Lord Wright? I missed so much of your talk that you may have told the others, but are the counsellors for the defence all Japanese?

LORD WRIGHT: No, they have got some Japanese. There's a man whose name I can't pronounce, a well-known Japanese lawyer, who takes an active part; but in addition to that the American Government sent out twenty-six lawyers whom they chose here in Washington or New York. But they hadn't really got into action when I left. One or two of them argued shortly, but they are all there to see that the interests of each prisoner are adequately protected. There were also Japanese counsellors in addition to that one who took an active part, but I didn't see as many Japanese counsellors, as I saw German counsellors at Nuremberg. I think at Nuremberg the counsellors were almost entirely German. At some of the minor trials of minor offenders that I attended there was a mixture. Sometimes the American or the British advocate took the burden and was supported by German advocates; sometimes the reverse. But apart from one or two prominent Japanese, I think most of the counsel were sent over from America. They have rigged up these ear-phones which you have no doubt heard about, and they seem to be working all right.

GENERAL MCCOY: Had the trials developed far enough to give you any idea whether they would appear to make statements in their own defence?

LORD WRIGHT: No, so far, when I left, they had finished the opening speech by Mr. Keenan, the principal prosecutor, and apart from some minor observations from the defence that's as far as they had got. The prosecuting counsel will go on for another four or five weeks relating the case in detail before the court. How far the Japanese or American defence counsel will intervene at that stage is



impossible to say. They will intervene to some extent because they will have to make objections. But, primarily, during that period the main work will be done by the prosecutor. I think we may assume that the defendants will make statements on their own account; possibly, give evidence; possibly, be cross-examined. I think that's generally expected. That would follow the lines of the Nuremberg trial and it would be the ordinary practice of a man sent up. He is entitled to make his own defence in his own way.

The court room was very well-arranged, but it was devilish hot, even last week. I should think they will have to, if they go through the summer season, July or September, air-condition that room if it is to be bearable.

SIR CARL BERENDSEN: I wonder whether you can help me in one of my difficulties. I agree with you that one of the most astounding phenomena to any visitor to Japan is the obvious docility of the people and you have presented a picture of a people who in a sense were anxious to see the war criminals punished. But how does one reconcile that apparent or possibly superficial docility with the widespread hostility and inhumanity of their methods of conducting war? Are you yourself, Lord Wright, of the opinion that what we are seeing is one of the best-known qualities of the possum?

LORD WRIGHT: Of what?

SIR CARL BERENDSEN: The possum -- the gentleman who plays dead when it seems convenient to do so.

LORD WRIGHT: I don't know. It is a problem. I was talking to General King, who was General Wainwright's second in command, and who was captured at Corregidor. He had a terrible time and he summed it up by saying: "The Japanese are a cruel people".

GENERAL MCCOY: Are what?

LORD WRIGHT: A cruel people, and so they must be. I think partly it may have been the Germans. They imitated the Germans very much and the Germans always started off with what they called "frightfulness" because they had been taught to believe by their international lawyers that you can start a war whenever you like and conduct it with any methods which are likely to terminate the war successfully. The whole object is to end the war and means don't matter. One of the best ways of ending the war was thought to be frightfulness and I think they have imbibed that same idea. But these accounts which you hear and read are almost incredible, like working people to death in the mines.

DR. DE KAT: Lord Wright, have these defendants in one way or another been given a way to express themselves on their own feeling of guilty or not guilty?

LORD WRIGHT: All they have been asked is guilty or not guilty and they have all said not guilty. That is the Anglo-American method. In some countries we regard a man as not guilty until he has been found guilty. In some systems of law a prisoner in court is regarded as guilty unless he can prove that he is innocent. But following, I think, the Anglo-American method he has been asked straight out: "Do you plead guilty or not guilty?" He says "not guilty" and then the thing proceeds and, therefore, the prosecution has to start because it starts with that dead fact against it. It would be otherwise if, *prima-facie*, the man who stood in the dock was regarded as guilty. You might say: "If you are not guilty what are you doing in the dock?" We don't regard it that way, and, therefore, we follow the procedure at Tokyo as at Nuremberg.



Japanese is certainly difficult to translate. I thought the translators they had, four or five of them sitting altogether, improved even in the short time that I saw them, but it is certainly a difficulty. The earphones are tuned primarily for the English, but there is a button you can press which turns on the Japanese. You get the Japanese from the translators who sit in a glass box as in Nuremberg and translate into Japanese as the proceedings go on. If you are sitting near their box you will hear a murmur because they are turning it into Japanese. I think it is very difficult but they seem to have done it fairly successfully. The man who wants Japanese presses the right button and hears the Japanese and doesn't hear the English. It is a very clever way.

SIR CARL BERENDSEN: It is extremely difficult even for experts to convey the exact shade of meaning from one language to another.

LORD WRIGHT: You never can. If you wanted exact shades where would you be? This is a working world.

SIR CARL BERENDSEN: The exact shade there may be something approaching black, but it must add greatly to the difficulty of administering justice.

LORD WRIGHT: Of course, in England we are very familiar with proceedings which take place and in which one or more of the parties speaks a foreign language. No translation can ever be precisely accurate. But you edit. You can always stop if you come to something very delicate, where it is necessary to have a delicate shade of meaning explained.

I have had a good deal of experience when I was a judge a long time ago trying cases through interpreters and I think for all practical purposes one got a fair result. You could always tell if there was any difficulty and stop until it was cleared up. However, that's inevitable. The same thing is equally true in Germany.

SIR CARL BERENDSEN: But they are probably more competent interpreters.

LORD WRIGHT: I think these interpreters are pretty good, but I should think there's more community of thought between England and Germany than between England and Japan.

SECRETARY-GENERAL: Are there any more questions that you would like to ask Lord Wright?

I am sure everyone here appreciates the fact, Lord Wright, that you have been willing to come here and take part of your very valuable time. I am sure that we will all remember it with interest and try to pass it on to those who should hear it.

Thank you very much sir.

LORD WRIGHT: I am very much obliged to you for giving me this opportunity and I hope the time hasn't been wasted.

(The meeting adjourned at 4.10 p.m.)

FAR EASTERN COMMISSION.

Minutes of Special Meeting of the Far Eastern Commission to  
hear Lord Wright, Chairman of the United Nations War Crimes  
Commission, held in Main Conference Room, 2516 Massachusetts  
Avenue, N.W. Friday, 14th June, 1946.

REPRESENTATIVES PRESENT.

General Frank R. McCoy, Chairman	(U.S.A.)
Major J. Plimsoll	(Australia)
Mr. Paul Tremblay	(Canada)
Mr. Timothy Tien-tseh Mar	(China)
Mr. R. R. Saksena	(India)
Dr. A. D. A. de Kat Angelina	(Netherlands)
Sir Carl Berendsen	(New Zealand)
Dr. Melquiades J. Gamboa	(Phillipines)
Rear Admiral S. S. Ramishvili	(U.S.S.R.)
Sir George Sansom	(U.K.)

SECRETARY-GENERAL

Mr. Nelson T. Johnson

GUEST SPEAKER

Lord Wright

# FAR EASTERN COMMISSION

Minutes of Special Meeting of the Far Eastern Commission  
to hear Lord Wright, Chairman of the United Nations War  
Crimes Commission, held in Main Conference Room, 2316  
Massachusetts Avenue, N.W., Friday, 14th June, 1946.

MR. JOHNSON opened the meeting at 3:05 p.m. He explained that General McCoy was unavoidably absent, but would return before the end of the meeting.

MR. JOHNSON said that the special informal meeting had been called so that the Commission might take advantage of the brief presence in Washington of Lord Wright, Chairman of the United Nations War Crimes Commission. Lord Wright had just returned from Japan, where he had attended the opening of the trial of war criminals, and would leave shortly to return to London. MR. JOHNSON presented Lord Wright to the Commission.

(The following is a transcript of Lord Wright's remarks:)

LORD WRIGHT: Mr. Chairman and gentlemen, I am certainly honored by being asked to come here. I feel that I am quite unworthy of that honor because I see great authorities on Japan and everything connected with Japan sitting at this table, particularly, Sir George Sansom and others. I feel rather a globe-trotter among so many experienced gentlemen.

I went, of course, primarily to look into the question of the trials, and I went as a person interested in the law, and interested in the law relating to the punishment of war criminals. Perhaps a few high authorities in the political and juridical world regard the question as merely an added nuisance, but I believe that at heart, they realize it is much more.

The ordinary man in the street among the allied nations is certainly deeply interested in the course of the proceedings for the punishment of the war criminals and is strongly anxious that something be done. In a sense, with all the pressing problems which occupy us the trials may seem somewhat unnecessary, something which relates to the past. We hear the ancient adage: "Let bygones be bygones, etc." But they are really related to the future and are most essential from the point-of-view of the future. I think that any actual serious steps are pertinent which secure a regard for international law, and which make leaders of States and high politicians realize that they are responsible in their own persons. That's the test of the responsibility -- responsibility in their own persons for the reckless or wicked or aggressive anti-human character of their deeds.

It is in order to establish these two guiding principles for the future of the world that I, personally, take an interest in these proceedings. There are, of course, many widows and orphans who have suffered from the terrible evils of this war, and there are, of course, the many devastated homes and ruined lives of those who have survived. There must be millions of people in the world now who verily have perished, who will go about morally and physically naked for the rest of their lives. The more I think of these people, the more satisfied I am that war is a terrible evil. When we were young we used to think of the wonderful pictures of armed knights, charging each other. It was very attractive, indeed, and we used to think of the wonderful lines of troops drawn up facing each other bravely, with firm ranks, with courage and determination and splendour. We realized of course, that these things for very many men were the climax of the training to which they devoted their lives. They were the pathway to glory and



distinction for the individuals concerned. That was true enough, and to a certain extent a war is still the climax of a soldier's career. We have, every one of us, many friends who are soldiers, whom we admire, both for their courage and their character as well as for their intellectual powers.

But for all that and even if you add to that that war is a great discipline of courage and devotion and self-sacrifice -- add all these things together and you do not get anything which would compensate for the incredible war which we have just come through. We ought not to neglect anything which will help even in a remote degree to render such evil things of the past and not things of the future.

We have to remember now that unknown mysteries of the atomic bomb have introduced elements which none of us -- I ought not to say "none" because there are so many wise people here -- dreamed of before. You may get on a plane and see a large and peaceful and happy city smiling under the moonlight, people in bed and happy and you may drop a small object and the whole city and its hundreds of thousands of people may go to ruin and destruction, and the whole magnificent array of wealth and prosperity and happiness may go up in smoke. Now that is a terrible prospect.

I shouldn't hesitate to say that our friend who drops the atomic bomb has taken care that he gets away. I shouldn't hesitate for a moment to describe him as a murderer. A murderer is a man who takes the lives of his fellows without due legal justification. I am assuming, of course that what he did was done in the course of an unjust or aggressive war. Well, now, what is the justification there? I think he broke every rule of international law which is relevant to such circumstances. I treat him as not a private individual -- if he was a private individual no one would hesitate to call him a murderer -- but I regard him as a member of some armed or other national force who was sent out by his Cabinet, his Prime Minister, or his Dictator, or whoever is in control, with instructions to carry his little package and to drop it at the appropriate moment.

In the first place, if he was doing it merely out of reckless mischief no one would hesitate to say that he was a murderer. If he does it under the orders of some potentate, some powerful person, some leader of the nation sitting some distance away in the comfort of his office, he is a man who drops the thing knowing what he is doing is murder, but equally guilty is the man sitting in the background who says: "Go and drop it". They are both murderers and so is everybody else who is a party aiding and abetting that scheme.

It has always puzzled me that people should refuse to think of murder as murder if, in fact, it is done on a large scale and again if it is said it is done with political motives. I agree that a single murder is always interesting. Everybody knows how interesting the papers are when you have a full account of a murder. You like to know all about it. You like to run over the pictures when the man is tried and you want to know what happens and all that. That is murder. I regret that people are apt to take so narrow a view. Think of the man who destroys hundreds of thousands, millions of lives. He may be able to justify that but not on the ground that he did it as being the head of the State or one of the leaders or that he did it as a politician or for political motives. These are not in themselves justifications. The naked fact remains that he has been destroying human life without due justification and if anyone says that isn't a crime I venture to refer to the most ancient catalogue of crimes. There was what we called in our Bible the ancient admonition: "Thou shalt not murder". I don't believe there is anyone alive who would regard the taking of human life as anything but murder.

You see, then, that war, if unjustified is simply the initiation of a long series of murders and the destruction of human life. Of course, one has to realize that the right of self-defence is feasible and is common to everyone, every person and every State.

If you are attacked, you defend yourself and sometimes you have a defensive action which takes the form of aggression in the sense that the threatened individual takes the first steps in order to defend himself, and there are many complications. But I don't think anyone doubts, unless he is writing a thesis, as Aristotle used to say: "...there is a difference between defence and offence; there is aggressive war and offensive war, and a just war and an unjust war."

One of the things that will be made clear, I hope, is that political motives do not, as such, constitute justification of murder. Political motives may be legitimate or may be illegitimate. I say if an act is done from a political motive, you don't get a step further in justifying it. If it is justified, then it doesn't matter that it is a political motive. If it was unjustified, equally it doesn't matter that it is a political motive, because politics is merely self-regard on a large scale, not an individual thinking of his own advantage. You wouldn't call it political, you would say it was selfish in an individual. But if it is done on a national scale, then you would call it political, but you don't change the character of the act. The act is either justified or unjustified and the test is not what is convenient for the aggressor in the long run, the politician who does the act -- the test is something quite different. The test is whether it is right or wrong.

When I lead various discussions, I can't help coming back to these simple and elementary ideas which I think are still valid and still lie at the root of things and, though they are often obscured and forgotten, are there all the time. It is in order prevent people from forgetting things like that that I think these trials, no matter how imperfect they are, should be supported and justified. Really it is the future we are thinking about, not the past, for the past is beyond reparation. The only thing is not to let it happen again.

The mere fact that these trials have been held and the mere fact that moral rules have been laid down and punishments have been assigned to individuals who infringe these moral rules can't go a long way, perhaps, to putting a final end to the inherent weakness of humans. But the more you help, the more you raise in the world at large a feeling that war is an evil and the greatest of evils, that it should be the last resort and should not be accepted except in an extremity for defensive purposes, the more you are checking the exploits and the admonitions of an Alexander, or a Genghis Khan, or an Emperor William, the more you realize what lies at the bottom of all that, that it is mere greed and aggrandizement and the evils that follow on it, the more that is realized in the world at large,.....the less likely, in a very qualified degree, are such things to happen.

The early part of this century was very much occupied with the idea of war, and we all know the various institutions which were established. What I think people don't remember sometimes is how extremely sweeping and important was the Pact of Paris in 1928, where all the great nations of the world agreed to renounce war as an instrument of policy. The nation which without due cause resorts to war is breaking a moral rule embodied in the Treaty, but most important of all, a rule of international law.



But we come back again to a clear recognition that war which is organized murder is not only evil but unlawful. If that is so, everyone who in a sufficient degree of responsibility has aimed or taken part in doing that, taking part in the promotion or organizing, or initiation of war, is an instrument or agent in unlawful conduct and he is liable as an evil-doer and a criminal.

I am afraid I have been rather long in talking various platitudes. I think of my friend who once described the eighteen miles from Tokyo to Yokohama as the eighteen longest miles in the world. On each side of these eighteen miles, as you all know, there is an area of devastation of wooden buildings swept away by fire. There was a strong gale, sixty or seventy miles an hour, and the flames spread with most tremendous activity and the whole place became a devastated ruin. It is perfectly true that the big concrete buildings are standing, more or less. It is a terrible area of destruction and I am devotedly sorry for all the people who were living there; but, after all, they brought it upon themselves, or rather their leaders brought it upon them. I heard on every side in Tokyo, and you have also heard, that the Japanese people are quite sympathetic with the trials and are quite anxious that the leaders who brought about this terrible mess should suffer some penalty for what they have done. No doubt Sir George will support me, no doubt he has looked out on the ground all around and seen these people building with any wood or corrugated iron that they could get hold of, building their sheds. And there is quite a colony springing up all over but it is a very unhappy sort of desolation.

The people in Japan, so far as I made out, seemed very orderly and peacefully disposed. I haven't heard from anybody that I have spoken to that there are any signs of underground movements. Externally, anyhow, the position is very, very peaceful.

It all seemed to me, wandering about as I did for a few weeks, that the women are the brighter sex of the Japanese. I am not referring to the geishas, because I didn't attend a geisha performance, but I was told by a man who went to see what it was like that it was extremely dull. He said he sat for about three hours with a lot of chatting going on and everybody very cheerful, but it was all in Japanese and for the life of him he couldn't make out what they were saying or what they were doing. Certainly at the excellent Imperial Hotel you do find very charming waitresses gaily attired in kimonos. The younger women in the street seem to be reverting rather to the less attractive western manner of wearing skirts or even occasionally shorts, and shoes instead of the sandals in which they clattered about in the old-fashioned way.

There are universities at Tokyo, more than one, I think. The Tokyo University is a wonderful institution which seems to be in full swing. It hadn't been hit at all, so far as I could see.

Then all the troops are clamouring -- Americans especially. The Americans are those I saw principally. They are all clamouring to go home, which is not unnatural, and the American military authorities have been billeting large cantonments in which life will be made more bearable for the occupation troops. They will have to do something to provide amusements, rest houses and other conveniences which would make life endurable to the soldier. But it is a thing which will not cease to be difficult as time goes on.

The country in Japan, so far as I have seen -- and I covered an area of many hundred square miles -- looks extremely prosperous. Their methods of manuring the soil are not altogether in conformance with European ideas and the result is that you never, as I understand, eat Japanese grown vegetables because of the soil and manure in which



they are produced. But it is a beautiful country and cultivated with the greatest care and success. It seems to me more like a market garden than any ordinary cultivated area in England. Everything is done by hand. I never saw anything like the machines which we and the Americans use in our agriculture - I haven't seen anything like that. I have seen them cutting down their wheat and their other grain by hand. It is all grown in nice rows with a little space in between so that the man wielding the sickle can get a good hack at it. Of course, it doesn't sound very economical in a country like America, but in Japan, apparently, labour is almost a glut in the market.

The crops looked to me extremely good. Rice, of course, was not so far advanced, but even there it looks as if they might have a good crop.

On the trial itself, that is, the trial of the major criminals, it has, I think, now got under way. I was at the opening just as I had been at the opening at Nuremberg.

(General McCoy entered the conference room at this time.)

I thought the opening address by Mr. Keenan was very admirable. I suppose reports haven't reached you yet, but I thought it contained a very admirable survey of the general scope of what was going to be laid before the judges, and also of the principles of law on which the court was proceeding. I'd like to emphasize that the court is proceeding on principles of law.

It is perfectly true that the Charter lays down what the scope of their jurisdiction is to be. What is laid down is not something invented or promulgated or laid down, however, but it is in accordance with international law -- that part of international law which leads to these questions and agrees with these questions, and, I confess, agrees with my own view. It is likely, I am afraid, to be a rather long trial. I tried to figure it out and it seemed to me that what is called the opening, the series of speeches stating the facts and putting in the relevant documents on which the trial is based, might take five, six, seven, or eight weeks. I have never heard any suggestion that it would take less than five weeks,

As soon as that is done, you have twenty-six defendants, two of them, and possibly a third more or less out of action, and their cases, I take it, may not be gone into. I presume that will leave twenty-three. Suppose you give each defendant three days in which he may state his defence and in which he may be cross-examined by the prosecuting counsel. There you have sixty-nine days. At five days a week you will get, say, fourteen weeks, so that the total is in the neighbourhood of twenty-six weeks -- six months. Things may pan out shorter, I don't know. But, of course, if you go into this method of investigating war crimes it must take a long time. I don't see any way out of it. Our friends in Nuremberg took nine or ten months. I don't think Tokyo will be quite so long and there is a tremendous desire on everyone's side to expedite things as far as possible.

A perfect army of defenders came down by air from America a week or two ago. That made it more difficult to continue the trial without further adjournments. I think now the period of adjournments is over and the trial will proceed regularly without any intermission or delay.

It is striking to see eleven judges all sitting in a row; all attired in black silk gowns. I should think it must be rather a job to handle a team of that sort. I have heard it said if you let the defending counsel get out-of-hand, they are as difficult to stop as a four-in-hand is if you let the horses get out of control, but I hope that neither the

defending nor the prosecuting counsel will get out-of-hand and that the judges won't get out-of-hand. Things ought to go nicely, but eleven judges are rather a handful to manage. There have been cases of courts of some repute in which even nine judges have proved to have had difficulty, and with eleven you have two more. Let us hope for the best.

But they have got down to their work, and the prosecuting counsel are certainly working very hard, so far as I can judge, along very well-organized lines.

The court building was, I think a military building. It is a big building which has been handed over entirely to the International Military Tribunal. There are a series of corridors opening out on each other and a great many rooms where you have I don't know how many hundreds of workers, all hard at work in examining and sifting and organizing the evidence and preparing it for presentation in a convenient form to the court.

One great problem that they have had to consider is the question of translating. The documents which have been found in Japan or any documents from that side have all been translated, not an easy job, and in the court itself the interpreters often seem to be very much puzzled by the appropriate word to be used in somewhat more technical language. It is inevitable that there will be matters of that sort. I have every hope and expectation, though, that the trial will proceed, that a just result will be arrived at, that it will meet with the approval of the world, and that it won't take too long. Supposing it took four or five months. That is a very small period of time if it is really a worthwhile decision because it is something which will have its effect upon the world directly and indirectly for many generations, for many centuries to come.

General MacArthur is extremely interested in everything connected with war criminals. I think he was largely responsible for the Yamashita and Homma cases which started off. They constituted of course, a different type of trial. They were the big trials in which not the politicians and statesmen were the figures and in which soldiers of different ranks up to Generals were charged, not with general offences like initiating war, but with particular offences, against the laws of war committed against particular people.

You have all heard of what they call the "death march" in which 1600 European or allied prisoners were marched through the mountains of Borneo. At the end of the march there were only six surviving. That was a terrible business and there are other instances of that sort; of men being beaten, of prisoners being bayoneted merely out of malice and spite, of nurses maltreated and murdered, of hostages killed, and of widespread destruction in the occupied countries. All these are offences against the laws of war and no one would dispute that the punishment of them after trial is legitimate exercise of the rights of the captors and legitimate acts of justice done. These were the major criminals as they were called in the Moscow Declaration. The minor criminals are the other criminals under that Declaration. The ones we have been discussing form the other class, but the view is that there are in different degrees infringements of that part of the international law which deals with the laws of war and that in their different ways they are both brought under the same condemnation if the offences are established.

I am afraid I have been very long and I hope you will ask me some questions because, obviously, I might not have addressed my mind to things which interest you most; possibly, talked about things which interested myself and not of things which interested you.



SECRETARY-GENERAL: Might I ask one question? Did you gather the attitude of the Japanese jurists towards the treatment of war crimes?

LORD WRIGHT: No, I was rather unfortunate in that respect. There was the language difficulty and I was not brought into company with any of the jurists. I don't know what their views were. But, after all, Japan has always had a great many cultivated people and some very good lawyers. I was unfortunate, I didn't come across them. (To Sir George) I don't know if when you were there you came across anyone.

SIR GEORGE SANSOM: No, I didn't. I did find that most people I talked to not only had no objection to the trials but rather favoured them.

LORD WRIGHT: Yes, everyone agrees they are in favour of the trials.

Of the criminals, I confess I was rather impressed by Tojo, who struck me as a determined man -- a man with a will of his own and a clear, cultivated and intelligent mind. Of course, naturally, I didn't meet him, but I watched him a good deal as he sat with an imperturbable, inscrutable expression. I never saw his face change in any moment, except at one time when Keenan was delivering his speech, which he did very fairly and temperately. I noticed Tojo taking notes and looking preoccupied. I don't say he looked conscience-stricken. He was preoccupied -- I put it quite generally. As to the others, I thought they were a very unappetizing-looking lot and I couldn't detect any signs of animation or intelligence in any of them at any time.

GENERAL MCCOY: Who were their counsellors, Lord Wright? I missed so much of your talk that you may have told the others, but are the counsellors for the defence all Japanese?

LORD WRIGHT: No, they have got some Japanese. There's a man whose name I can't pronounce, a well-known Japanese lawyer, who takes an active part; but in addition to that the American Government sent out twenty-six lawyers whom they chose here in Washington or New York. But they hadn't really got into action when I left. One or two of them argued shortly, but they are all there to see that the interests of each prisoner are adequately protected. There were also Japanese counsellors in addition to that one who took an active part, but I didn't see as many Japanese counsellors, as I saw German counsellors at Nuremberg. I think at Nuremberg the counsellors were almost entirely German. At some of the minor trials of minor offenders that I attended there was a mixture. Sometimes the American or the British advocate took the burden and was supported by German advocates; sometimes the reverse. But apart from one or two prominent Japanese, I think most of the counsel were sent over from America. They have rigged up these ear-phones which you have no doubt heard about, and they seem to be working all right.

GENERAL MCCOY: Had the trials developed far enough to give you any idea whether they would appear to make statements in their own defence?

LORD WRIGHT: No, so far, when I left, they had finished the opening speech by Mr. Keenan, the principal prosecutor, and apart from some minor observations from the defence that's as far as they had got. The prosecuting counsel will go on for another four or five weeks relating the case in detail before the court. How far the Japanese or American defence counsel will intervene at that stage is



impossible to say. They will intervene to some extent because they will have to make objections. But, primarily, during that period the main work will be done by the prosecutor. I think we may assume that the defendants will make statements on their own account; possibly, give evidence; possibly, be cross-examined. I think that's generally expected. That would follow the lines of the Nuremberg trial and it would be the ordinary practice of a man sent up. He is entitled to make his own defence in his own way.

The court room was very well-arranged, but it was devilish hot, even last week. I should think they will have to, if they go through the summer season, July or September, air-condition that room if it is to be bearable.

SIR CARL BERENDSEN: I wonder whether you can help me in one of my difficulties. I agree with you that one of the most astounding phenomena to any visitor to Japan is the obvious docility of the people and you have presented a picture of a people who in a sense were anxious to see the war criminals punished. But how does one reconcile that apparent or possibly superficial docility with the widespread hostility and inhumanity of their methods of conducting war? Are you yourself, Lord Wright, of the opinion that what we are seeing is one of the best-known qualities of the possum?

LORD WRIGHT: Of what?

SIR CARL BERENDSEN: The possum -- the gentleman who plays dead when it seems convenient to do so.

LORD WRIGHT: I don't know. It is a problem. I was talking to General King, who was General Wainwright's second in command, and who was captured at Corregidor. He had a terrible time and he summed it up by saying: "The Japanese are a cruel people".

GENERAL MCCOY: Are what?

LORD WRIGHT: A cruel people, and so they must be. I think partly it may have been the Germans. They imitated the Germans very much and the Germans always started off with what they called "frightfulness" because they had been taught to believe by their international lawyers that you can start a war whenever you like and conduct it with any methods which are likely to terminate the war successfully. The whole object is to end the war and means don't matter. One of the best ways of ending the war was thought to be frightfulness and I think they have imbibed that same idea. But these accounts which you hear and read are almost incredible, like working people to death in the mines.

DR. DE KAT: Lord Wright, have these defendants in one way or another been given a way to express themselves on their own feeling of guilty or not guilty?

LORD WRIGHT: All they have been asked is guilty or not guilty and they have all said not guilty. That is the Anglo-American method. In some countries we regard a man as not guilty until he has been found guilty. In some systems of law a prisoner in court is regarded as guilty unless he can prove that he is innocent. But following, I think, the Anglo-American method he has been asked straight out: "Do you plead guilty or not guilty?" He says "not guilty" and then the thing proceeds and, therefore, the prosecution has to start because it starts with that dead fact against it. It would be otherwise if, prima-facie, the man who stood in the dock was regarded as guilty. You might say: "If you are not guilty what are you doing in the dock?" We don't regard it that way, and, therefore, we follow the procedure at Tokyo as at Nuremberg.

Japanese is certainly difficult to translate. I thought the translators they had, four or five of them sitting altogether, improved even in the short time that I saw them, but it is certainly a difficulty. The earphones are tuned primarily for the English, but there is a button you can press which turns on the Japanese. You get the Japanese from the translators who sit in a glass box as in Nuremberg and translate into Japanese as the proceedings go on. If you are sitting near their box you will hear a murmur because they are turning it into Japanese. I think it is very difficult but they seem to have done it fairly successfully. The man who wants Japanese presses the right button and hears the Japanese and doesn't hear the English. It is a very clever way.

SIR CARL BERENDSEN: It is extremely difficult even for experts to convey the exact shade of meaning from one language to another.

LORD WRIGHT: You never can. If you wanted exact shades where would you be? This is a working world.

SIR CARL BERENDSEN: The exact shade there may be something approaching black, but it must add greatly to the difficulty of administering justice.

LORD WRIGHT: Of course, in England we are very familiar with proceedings which take place and in which one or more of the parties speaks a foreign language. No translation can ever be precisely accurate. But you edit. You can always stop if you come to something very delicate, where it is necessary to have a delicate shade of meaning explained.

I have had a good deal of experience when I was a judge a long time ago trying cases through interpreters and I think for all practical purposes one got a fair result. You could always tell if there was any difficulty and stop until it was cleared up. However, that's inevitable. The same thing is equally true in Germany.

SIR CARL BERENDSEN: But they are probably more competent interpreters.

LORD WRIGHT: I think these interpreters are pretty good, but I should think there's more community of thought between England and Germany than between England and Japan.

SECRETARY-GENERAL: Are there any more questions that you would like to ask Lord Wright?

I am sure everyone here appreciates the fact, Lord Wright, that you have been willing to come here and take part of your very valuable time. I am sure that we will all remember it with interest and try to pass it on to those who should hear it.

Thank you very much sir.

LORD WRIGHT: I am very much obliged to you for giving me this opportunity and I hope the time hasn't been wasted.

(The meeting adjourned at 4.10 p.m.)



A. 21.

14th October, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Publications on War Crimes

by Messrs. Wm. Hodge & Co., Ltd.

Note on the present position.

In its meeting held on 31st July 1946, (M.110), the Commission discussed a Draft letter to Messrs. Wm. Hodge & Co., Annex to Doc. C.216. The Commission approved, inter alia, the suggestion that a lawyer conversant with such matters should be consulted before the letter was sent. It also took note of the statement that copies of the letter had been sent to several United Kingdom departments for their observations, and it was decided that as the replies were received and if there were no amendments, the letter should be sent to Messrs. Hodge & Co.

The draft letter, supplemented by suggestions of minor importance received from different British Government Departments, was submitted to H.M. Treasury Solicitor's Department for examination.

On 8th October 1946, the Legal Officer, Dr. Schwelb, had a conference with Mr. E.A.K. Ridley of the Treasury Solicitor's Office. Mr. Ridley strongly advised against writing to Messrs. Wm. Hodge & Co., the letter as drafted in the Annex to Doc. C.216, and recommended writing an informal letter which should not be considered as an agreement. In his view, it should be made clear that all was only a matter of intention and not an agreement. Mr. Ridley also pointed out that the less of the individual stipulations contained in Doc. C.216 inserted in the letter, the better.

The Legal Officer thereupon redrafted the letter in accordance with the advice received orally from Mr. Ridley.

On 9th October the redrafted letter was submitted to the Treasury Solicitor's Office and in a letter dated 11th October 1946, Mr. Ridley has now stated that he sees no objection to this draft from the legal standpoint, as it leaves the position sufficiently open for the negotiations of the arrangements with the member governments.

The amended text, as approved by the Treasury Solicitor's department, is annexed to this paper.

A N N E X.

Dear Sirs,

Reports on Trials of War Criminals.

I refer to our previous correspondence on the above subject and to our discussions with you at various times. The United Nations War Crimes Commission understands that you wish to make certain arrangements, in anticipation of agreements to be concluded between yourselves and Member Governments represented on the Commission, for the publication of war crimes trial reports.



The Commission is prepared to recommend to its Member Governments that they make use of the services you offer.

The Commission will do its best to afford you facilities for using, for your series of reports, the material belonging to the Member Governments and other material available to the Commission which you may wish to use.

It is understood that you will arrange for the preparation and editing of the reports to be in competent, responsible hands and that the reports will be subject to approval by the Commission.

Any arrangements reached between you and the Member Government concerned, will ensure that the agreement of this Commission is obtained to the person or persons to be entrusted with the editing of the individual trials and the person you may wish to appoint as General Editor for the whole scheme.

The draft of any commentaries and forewords to be included in the publications will be submitted to the Commission for approval and you will undertake to abide by any decisions which the Commission may deem fit to make in this respect.

The Commission does not undertake any financial or other responsibility for the publication.

If the Commission should be wound up before the work of publication is concluded, its supervisory functions would be exercised by an International or National body which would take over the Commission's activities.

You will make your own arrangements with the Member Governments concerned with regard to copyrights and financial questions.

The exact form of the collaboration of this Commission in the scheme will remain to be settled when the exact terms of publication are agreed upon between you and the respective governments.

Yours faithfully,

Colonel,  
Secretary General.

DOC. A. 22  
19th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

FOR THE INFORMATION OF MEMBERS.

At the special request of the B.B.C.,  
Lord Wright will broadcast at 7 o'clock, on Friday,  
22nd November, in the Third Programme, on "The  
Meaning of Nuremberg".

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DOC. A. 23  
19th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

Monsieur Alexander Dimitzas has been  
appointed as Greek Representative on the United  
Nations War Crimes Commission, in place of  
Monsieur Stavropoulos, who has been selected  
for other duties.

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Doc. A. 24,  
November 22, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

"THE MEANING OF NUREMBERG"

Broadcast by Lord Wright on Friday 22 November 1946  
by special request of the B.B.C.

In the Middle Ages a terrible pestilence called the Black Death swept over Europe. Historians say that more than 25 million human beings perished - great areas were desolated. In World War II it has been calculated that 22 million human beings perished, devastation on an immense scale was caused and incalculable misery was inflicted on humanity. The Black Death was a visitation of Providence; the war was caused and waged by the deliberate intention of human beings. The purpose of the Nuremberg trial was to establish who these were and to punish them for their evil deeds so far as they could be proved.

After the most thorough and exhaustive trial known to history, the Tribunal has condemned and sentenced certain of the men accused before it, acquitting three. The critics of the judgment appeal to what they say is a rule of law overriding the justice of the result; a super justice. They say that there is no precedent for establishing the crimes and imposing the punishment.

The crimes and atrocities committed by the Axis powers are beyond anything in history both in regard to their range and enormity. They are international in character and are to be judged according to rules of international law. I should think very ill of international law if it provided no means of punishing such crimes. The demands of the civilised nations for the trial and punishment was not the voice of hysterical passion like the cry "hang the Kaiser" in 1919. It was motivated by the deep and universal sense of humanity that such actions should not escape their just punishment.

No one would, I imagine, deny that murder is a crime. Murder includes the deliberate killing of human beings without justification of law. The killings charged at Nuremberg were killings which the Tribunal has held could not be justified under International Law, that is the laws or customs of war.

Let us take a few examples of crimes and murders done in the conduct of the war. The killing of hostages, the murder of prisoners of war, the extermination of Jews and others, the slaughter of millions in concentration camps and in occupied countries by manifold means, were all accomplished in flat breach of the Hague and Geneva Conventions. These are Conventions which had been solemnly agreed by all the assembled nations including the Axis powers for the humanisation so far as possible of the horrors of war. Are we to accept the old saying "one murder makes a felon, millions of murders make a hero?"

The magnitude and atrociousness of the crimes are so obvious there is no need for precedents. Suppose that in a remote and civilised island no one had committed murder: but one day some man came and murdered an inhabitant - Can it be thought that the man would go scot free because no one had anticipated such an evil deed and the penal code was silent? It is true that it would be against natural justice to punish a man for something which he could not know was a crime. But did any one of the accused really think that he was not committing a crime? Hitler actually told his generals that legality did not matter, success would wipe out every stain. When Keitel confirmed the order to destroy captured commandos, he rejected objections of his colleagues by replying that they were speaking the language of the old chivalrous war. The same may be seen all through inhumanity



the horrible chain of millions of murders, burning of women and children in the village churches, the murder without trial of four captured English air women who having been injected with some drug were perhaps still alive when wheeled on the trolleys into the cremation furnace. So also of the whole catalogue of infamous atrocities, torturings and slave labour. In the concentration camp at Auschwitz at least four million men and women perished in gas chambers or by executions or ill usage.

Let me remind you with a brief extract from the Tribunal's judgment:-

"It took from three to fifteen minutes to kill the people in the death chamber, depending upon climatic conditions. We knew when the people were dead because their screaming stopped. We usually waited about one half-hour before we opened the doors and removed the bodies. After the bodies were removed our special commandos took off the rings and extracted the gold from the teeth of the corpses".

I cannot subscribe to the doctrine of the higher justice (as it is called) which would hold immune the men whom the Tribunal has held responsible as leaders and organisers of these atrocious deeds and as parties to the common plan. It is an elementary precept of law everywhere that the man in the background who provides the gun to be fired, is as guilty as the man who pulls the trigger. That is the idea involved when the key men - the organisers of crime at the top levels - are held responsible. No man received the death sentence unless he was found guilty of murder, that is on the counts of war crimes or crimes against humanity.

The modern laws and customs of war, the validity of which so far as I can see has not been denied anywhere, date back to Grotius in the 17th century and earlier. Many hundreds of German military men and administrators, have been tried for specific atrocities committed by them, by Military Courts of the Allies and sentenced to death and executed. These prosecutions have been held under the various Conventions which constitute the International Law on this matter. These are not acts of head hunting but elementary justice. It would be strange and anomalous if the principals who instigated the crimes went scot free while their human instruments were punished. The established penalty under international law is death for heinous offences; for lesser offences a minor punishment may be imposed. I cannot see any departure from precedent or any novelty in the sentences of the Tribunal.

What is to some extent novel is that the heads of the Hitler Inner Council have been individually indicted and punished for initiating and waging a war of aggression. No one disputes that a war of self defence may lawfully be initiated and waged by a state and its heads. It has been said that no court can decide whether a war was one of self defence or one of unjustified aggression. That has been urged as a reason against ever seeking to bring to trial and to punish the leaders of a nation for the crime of war, an apt description of war of aggression. But in this case there can be no doubt that the war was a war of aggression. Hitler and his associates had blatantly and persistently boasted that they aimed at domination: they were the master race. For many years the Nazis had educated the Germans to hold this belief. Their doctrine was that they were completely justified in starting and waging the war for the purpose of German aggrandisement, with all its attendant horrors, at the expense of the inoffensive peoples of the world; and were likewise irresponsible for whatever means, however horrible and atrocious, they thought fit to use. This is the doctrine of the irresponsibility of the sovereign state and the corresponding irresponsibility of its individual agents. A monstrous and inhuman doctrine - the denial of all law, right, and justice between nations, the apotheosis of power politics, divorced from humanity or morality.

The Nuremberg trial has flatly rejected that diabolical theory. It has plainly and squarely held that war is an evil thing, that to start and wage a war of aggression is an international crime and indeed is the greatest of war crimes. Perhaps there may be unjust wars in the future. Human nature is hard to change and evil instincts are hard to eradicate. But it is something to the good to know, that the evil doers become subject to a law which may be enforced against them, individually. It is said that the only effect will be that future wars will be more ruthless; and that a man will fight with a noose round his neck. No war could be more cruel and ruthless than the war which has just ended. All law asserts that a man is answerable for his acts; and I know no reason why war should excuse men for evil deeds committed in war, whether they are politicians, leaders or fighters. It is surely obvious that men who know that what they do or seek to do, is a crime in the eyes of the civilised world, will think twice before they begin, if they know that they will have to answer for it. It is true that fear of the law does not stop crime, but it is a check. Murders would be more numerous if there was no law against murder. There is a further powerful deterrent factor to consider. The establishment of law slowly becomes part of the consciousness of civilised man. A man does not refrain from crimes merely because he is afraid of punishment but because the law which he or his fore-bears have helped to frame reminds him and teaches him that such acts are anti-social and wrong. Law creates an inhibition and a moral sense.

Those who say there is no law against aggressive war ignore the existence of international law. Since 1919 at least the nations have deliberately sought to outlaw war. Their final great pronouncement was the Pact of Paris, the Kellogg Briand Pact in 1928. This was a most solemn treaty made by sixty six nations who agreed to renounce war as an instrument of national policy. The aggressors in the last war were among these nations. That pact was a declaration of international law by practically the whole of the civilised nations. The Germans were guilty of a breach of that treaty and of the international law by initiating and waging war. Hitler and his gang were therefore individually principals in the common plan of breaking that international law. As the Tribunal said, the crime against peace was the most atrocious crime of all. They let loose the whole mass crimes of slaughter, terrorism and cruelty. They did so boasting of the ruthless cruelty with which they would wage war. They intended all that happened. They aided and abetted and were responsible for the mass of crimes. That was the common plan of crime which the Nuremberg Tribunal condemned and for which they punished the individuals responsible.

Even if hereafter, unjust wars cannot be prevented, at least after the Tribunal's decision, people will not be able to deny the law laid down by the Tribunal: it will be defended and maintained by the moral sense of humanity.

The responsibility of individuals for war crimes is an old doctrine which was recently reaffirmed by the Supreme Court of the United States of America in the case of the Saboteurs. But it is a very old doctrine. It was approved as long ago as 1474 in a great case in Breisach in the state of Baden where a governor who had been guilty of atrocities was tried by an international tribunal, found guilty and handed over to the executioner with the words: "let justice be done". Even in those days the court rejected the man's defence that he was only a soldier doing what he was told to do. That has been called in our days the defence of superior orders. It has long been held by jurists that the orders of superiors will not justify the perpetration of obvious crimes, though they may sometimes form an extenuation.

I need not remind you that Napoleon was exiled to St. Helena for life by the British Government, and with the assent of the Congress of Vienna - Blucher wanted to shoot him off hand. In 1919 the Versailles Treaty provided for the arraignment of the Kaiser and for his trial by a Tribunal established by the victorious powers as well as for the trial and



punishment of war criminals by Military Courts.

The Nuremberg Tribunal did not differ in principle from the recognised international law, nor did the law of its Charter. No one who has studied the Record can say that the result was a foregone conclusion. The Tribunal made the most careful discrimination between the different men in the dock, acquitting some, sentencing some to death, sentencing some to lesser punishments.

These then are answers to general criticisms made against the Nuremberg judgment. Now I wish to add a few general comments.

In the first place let me remind you that the content of the law is never a fixed and eternal thing. It grows and changes in conformity with the moral sense of the people to whom it belongs. Law is not static, and even precedents are interpreted by judges with modifications according to the spirit of their time.

International law accordingly is not static but developing, and in this as in any other sort of law there must be a moment in which a rule is newly applied. The solemn pacts of the nations are intended in this manner to develop and make international law. There is no other central law making authority such as there is in each state. International law for international crimes must be found in Conventions or treaties like the Pact of Paris, which the nations entered into in order to define the international law on the point. It was expressly intended to put the matter beyond controversy. Customs and decisions of Courts also help to form the law. The novel and arresting thing is that these declarations have now been put into use.

The truth was that the accused men speculated not only on succeeding, but on the chance that the victor nations would, as in the previous war in 1918 not press the criminality of their deeds to a trial. But that does not change the law. They had warnings enough from the leaders of the United Nations that they would be punished for their infamous deeds. They would not pretend, or be allowed to pretend that they did not know the law. Every criminal might say that, but it would not help him, for as you all know, ignorance of the law is no excuse.

Happily they were defeated and destroyed in the field, and the warnings they had received were fulfilled. It has been said, that it is wrong, that the victors in the war should have judged the defeated. But there is no other way in which the law can assert itself. Without strength all law is impotent. With strength, law can take an issue out of the dust of battle and submit it to an arbitration which is as near impartiality as anything which man has been able to invent.

Only by this means is it possible for man thoroughly to examine the causes and conduct of a conflict and decide whether the accused are guilty or not. For the first time on this scale, the Nuremberg trial has done that. It is a landmark in international law. It has established the right of the world to inquire into the acts of military men and into the acts of governments, statesmen and politicians charged with bringing about a war and with concerted and calculated breaches of treaty and of faith and of the laws of war. It was not undertaken to impress the Germans as some seem to believe. One may hope that in time it will impress the Germans; but that was not a primary object. It was undertaken to show that the things charged and proved against the defendants are not lawful, and it will stand for future generations as a proof that they will be punished. It looks to the future not to the past. It is a step, perhaps a big step to know that there is a community of nations, the prime object of which is to secure peace, under which the nations and their peoples, the decent men and women, can enjoy their lives in comfort, and to know that there is a law of that international community; a rule of law among nations, like the rule of law in the national life of citizens. All humanity, sick with contemplating the inexpressible evils of war, cries out for freedom from war, cries for peace.



DOC. A. 25  
November 25th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

TRIALS - BRITISH ZONE - GERMANY

Information has been received from Legal Division, Control Commission for Germany (British Element) that instructions have now been issued to enable the United Nations War Crimes Commission to receive one month's notice of any trials before the German Courts in which members of the United Nations are involved. This will enable representatives of the United Nations War Crimes Commission to attend trials by German Courts of crimes against humanity or crimes under ordinary German Law in which members of the United Nations are involved. Similar arrangements have been made in regard to crimes against humanity or against German Law tried by Military Government Courts. Members will be notified immediately the information referred to reaches the Commission.

Colonel,  
Secretary-General.

A. 26.  
27th November, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

CROWCASS.  
Listing of Allied Nationals charged with War Crimes.  
(Quislings/Traitors).

The following letter dated 19th November, 1946, has been received from CROWCASS, yesterday, and is circulated to members of the Commission for their consideration in the Meeting on the 27th November 1946 in conjunction with Doc. Misc. 57, paragraph III.

1. CROWCASS is still receiving a number of Wanted and Detention Reports in respect of Quislings and Traitors.
2. In all cases they have been or are being returned to the originators.
3. It is appreciated that some confusion exists in the minds of many when they try to differentiate between Quislings/Traitors and War Criminals.
4. The following method is the one which CROWCASS uses in deciding who is a Quisling/Traitor and who is a War Criminal.
  - (i) If a person is wanted by his own country (e.g. a Yugoslav national wanted by Yugoslavia) for a crime against his own country or his country's Nationals or because he joined the Nazi Party or S.S. (or their affiliations) in his own country he is a Quisling/Traitor.
  - (ii) If a person is detained for the reason given in (i) he is a Quisling/Traitor..
  - (iii) If an Allied National is wanted by another Allied Nation (e.g. a Netherlander wanted by Great Britain) for a War Crime committed against that nation or its nationals then that person is a War Criminal and will be registered and published as such.
  - (iv) If a person is detained for the reason given in (iii) above he is a War Criminal and will be registered and published as such.
5. We should appreciate your remarks on the foregoing in order that we may establish a uniform "yardstick". "

UNITED NATIONS WAR CRIMES COMMISSION.

A.27.

November 28th, 1946.

THE TRIALS OF WAR CRIMINALS IN POLAND

By Dr Tadeusz Cyprian.

Shortly after the liberation of Poland the National Committee of Liberation, the provisional central authority in Poland, issued a decree of August 31st, 1944 /Polish Official Gazette No. 4/1944/ concerning crimes connected with the war.

This decree established responsibility before Polish courts of all those who assisted the German occupation authorities by taking part in murder, ill-treatment, depriving of liberty and any form of persecution of Polish civilians and prisoners of war.

The punishments provided ranged from three years imprisonment to the death penalty. Incidental to some penalties was the loss of all civil rights and forfeiture of all property.

A second decree was issued on May 6th, 1945 /Polish Official Gazette No.17/ dealing with people who declared themselves to be willing to collaborate with the Germans, asking to be put on the German register/ Volksliste/. The penalty for doing so was labour camp for a limited period of time.

The third decree dated 22nd January, 1946, /Polish Official Gazette No.5/ concerned the setting up of the Supreme National Tribunal which was empowered to try all persons extradited by the Allied powers as well as Polish nationals guilty of criminal activity leading to the defeat of Poland in 1939/ collaboration with Germany, criminal negligence in preparing the defence of the country, policy leading to the defeat, etc/.

I do not intend to go into details as these were very ably explained by my colleague, Dr. Szerer, in his paper /Document 218/ of August 6th, 1946, already circulated to the members of the Commission. But my aim is to show to the members some figures and facts to enable them to see how these decrees have worked in Poland. I say "have worked" as conditions have changed greatly during that time, and on November 17th, 1946, Special Courts dealing with war criminals and quislings were abolished and all cases coming under the law mentioned in the first place in this paper are now tried by the ordinary criminal courts.

Although all trials of collaborators and traitors do not fall within the scope of this Commission, I would like to give here some figures concerning those trials as there were among the defendants many Germans and so-called Volksdeutsche who could be listed by the Commission if, instead of being caught on Polish soil, they were traced in occupied Germany.

It is impossible to separate these two groups of people concerned as the statistics do not discriminate between them. Therefore, I have to quote together figures comprising all persons subject to Polish law concerning war crimes, collaboration and treachery.

The number of cases entered in the registers of the Prosecutors' Offices throughout the whole country amounted, on July 1st, 1946, to

/44,762



44,762. Of these, no action was taken by the Prosecutor in 14,135 cases.

The number of cases submitted to the Special Courts with an indictment was 9,449; the rest were in the course of consideration by the Prosecutor.

The Special Courts tried 4,593 cases; the verdicts were - death penalty /631 cases/, imprisonment for over 10 years /306 cases/ imprisonment for under 10 years /1,534 cases/; the remaining cases were acquitted.

The Special Courts were abolished from the 17th November, 1946, as they had accomplished their task; they have cleared the atmosphere in the country in the difficult period after the war, when the Polish people were eager to get revenge on those Germans, Volksdeutsche and collaborators who remained in Poland or were caught while escaping. Those cases which remained were transferred to the ordinary Courts.

As the members of the Commission can see from the figures given above, the number of people tried and convicted is rather small.

There remains the question of the Germans extradited by the occupation authorities and, for the most part, listed by this Commission.

As I remarked, the Supreme National Tribunal was established to deal with them. It consists, as Dr. Szerer has already stated in his paper, of three judges of the Supreme Court and four members of the Polish Provisional Parliament. There are five State Prosecutors to deal with those cases, and the Chief Prosecutor for war crimes is entitled to commit a prisoner/German extradited to Poland/ either to the National Supreme Tribunal if he considers the case to be of national importance, or to send him to be tried by ordinary criminal court, if it is a "minor" case.

Working on this basis, there are about twenty-five Germans awaiting trial before the National Supreme Tribunal and about three hundred were sent to the ordinary criminal courts to be tried.

I should mention that extradition on a larger scale began only in the late summer of 1946, so that the time till now has been taken up with investigation, except for a few cases which were either already tried or are going to be tried in the near future.

The first trial was held in Poznan in June, 1946. The defendant was Arthur Greiser, the Reichstatthalter for Western Poland and President of the Danzig Senate. He was convicted, sentenced to death and hanged.

The second trial was held in September in Cracow. The defendant was Amon Goeth, the Commandant of the notorious Jewish concentration camp in Plaszow, near Cracow, who besides being responsible for the deaths of about 10,000 inmates, was found guilty of "liquidating" the Cracow and Tarnow ghettos when several thousand Jews met their deaths or were sent to other concentration camps where they perished.

Goeth was also convicted of having shot personally more than fifty Jews of whom the names, dates and circumstances of death were known. He was sentenced to death and hanged.

On December 17th, there will begin in Warsaw the trial of Governor Fischer, Gestapo Chief Meisinger, S.S. Colonel Daume and Fischer's deputy, Leist. The trial is expected to last for about fourteen days.

/In January...

In January, 1947, also in Warsaw, begins the trial of Rudolf Hoeess, the Commandant of the Oswiecim/Auschwitz/ camp, who is responsible for the deaths of more than four million people from all over Europe. It will last for about three weeks, and representatives of this Commission will be invited to attend.

The next two trials will be those of Dr. Joseph Buehler, the deputy of Hans Frank and head of the so-called "Government" of occupied Poland, which will be held in Cracow - the seat of that body - and of Forster, Gauleiter of Danzig. The latter trial will be held in Danzig, probably in March.

There will be a few more cases before the Supreme National Tribunal during the next year and perhaps even more than we can predict now, if more "big shots" are located in Germany and extradited to us.

Besides, there will be several war crime trials before ordinary criminal courts. Among them, the most important will be the trial of Oswiecim/Auschwitz/camp personnel - Germans - numbering about 150 persons: it will be the biggest mass trial in Poland. It will be held in Cracow, in which district Auschwitz camp lies.

Another will be the trial of Dachau guards in Torun, and several others in various towns of Poland.

I hope that, on my next visit to London, I shall be able to report to the Commission on the current trials. The information which I am glad to bring to-day will probably give to the members of the Commission some general orientation about the situation as it is to-day.

I could like to end this short report with a note on the new law that will be published in Poland during the month of December.

It deals with war crimes and crimes of collaboration, is meant to supersede the decree of August 31st, 1944, and is based entirely on the lines of the Nuremberg verdict.

The provisions of this law include penalties for crimes against humanity, war crimes, crimes against peace, it will declare to be criminals some groups and organisations and, generally speaking, it will be probably the first attempt to accept the international penal law as the binding rule in making communal laws.

UNITED NATIONS WAR CRIMES COMMISSION

DOC. A.28  
December 3rd, 1946.

WAR CRIMES - CRIMES AGAINST HUMANITY - BRITISH ZONE, GERMANY

1. Schedules showing the present position with regard to cases heard and pending in Military Government Courts - British Zone of Germany.
2. Dates of future trials and cases to be tried by German Tribunals will be made known as soon as they are determined.

NOTE:- Military Government Courts and German Courts come under control of the Legal Division of the Control Commission (British Element). Military Courts are the concern of the Judge Advocate General.

<u>Place of Trial</u>	<u>Date</u>	<u>Number of Accused.</u>	<u>Number Sentenced</u>	<u>Penalty</u>	<u>Nature of Case</u>
<u>SCHEDULE 1 - CASES HEARD</u>					
1. Oldenburg	5.8.46	10	6	Death	Murders committed in German Penal Camp.
2. Flensburg	25.9.46	11	4	3 death penalties 1 one years imprisonment (not yet reviewed)	Murder of Jewesses and atrocities in connection with the transfer of prisoners from one concentration camp to another.
<u>SCHEDULE 2 - CASES PENDING</u>					
1. Hamburg	2.12.46	8			Racial discrimination, namely sterilisation of Gipsies.
2. Oldenburg	15. 1.47	12			Cruelties in connection with the Emsland Penal Camps, particularly in respect of French and Belgium internees known as Nacht and Nebel prisoners.
3. Aachen	Unknown	(Investigation of this case almost completed) 12			Jewish Pogrom
4. Not yet decided	Unknown	Unknown			Euthanasia
5. Oldenburg	Unknown	2			Chief of Staff of the Emsland Penal Group
6. Oldenburg	Unknown	1			Murder of French prisoners of war.
7. Oldenburg	Unknown	8			Aftermath of case No. 1 mentioned in Schedule 1.
8. Duisburg	Unknown	(Investigation almost completed) 8			Murder of Trade Union Officials and larceny of the funds.



A. 29  
10 December 1946.

UNITED NATIONS WAR CRIMES COMMISSION

War Crimes - EISLAND PENAL CAMP CASE

1. The first of a series of trials concerning the above, will be held at the AUGUSTEUM, ELIZABETHSTRASSE OLDENBURG on the 15 January 1947.
2. This case concerns French and Belgium nationals both as witnesses and victims.
3. For your information, both French and Belgium War Crimes Liaison Groups have been kept fully informed of the proceedings, and it is expected that they will send a representative to the trial.

G. A. Ledingham, Colonel,  
Secretary General.

(Translation)

A. 30.

10th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

QUESTIONS WHICH THE FRENCH REPRESENTATIVES WISH  
TO DISCUSS WITH THE U.N.W.C.C. IN LONDON.

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1. THE PROCEDURE WHICH, IN THE FRENCH VIEW, SHOULD BE ADOPTED  
FOR TRIALS OF CONCENTRATION CAMP PERSONNEL.

The two main characteristics of concentration camp crimes  
are:

- (1) That they were committed by hundreds of persons,  
and, in most cases, in Germany.
- (2) That the 12 million victims who were exterminated  
in the camps included members of all the United  
Nations.

The Moscow Agreement of October 30th, 1943, did not  
indicate the courts which were to have jurisdiction in such cases,  
and persons accused of concentration camp crimes are consequently  
being tried wherever they chance to have been made prisoners by the  
hazards of war. In one case, the commandant of a camp was tried  
by the British, his four assistants by the Americans, and ten of  
the camp guards by another of the Allies.

It seems essential that the United Nations should come to an  
agreement to constitute mixed courts for the trial of war criminals  
of this kind.

The French, in their zone of occupation, have endeavoured to  
apply this idea of mixed tribunals; for example:

In the Neubrenne Camp Trial in May, 1946.

In the Wurtemberg Camps Trial, which opened on December 9th,  
1946. In this trial, Belgium, Holland, Poland, Luxembourg, and  
France were represented on the Bench and in the prosecuting staffs.

The French Government requested the British, American, and  
Soviet Governments, through diplomatic channels, to convene a Committee  
of Experts, or of Plenipotentiary Ministers, to conclude an agreement  
on this question, and to put it in written form.

The French Representatives request the U.N.W.C.C. to take whatever steps are appropriate with a view to enabling mixed courts to be constituted, in all cases, for the trial of concentration-camp war criminals.

2. PROSECUTION AND TRIAL OF MEMBERS OF ORGANISATIONS WHICH HAVE BEEN DECLARED TO BE CRIMINAL BODIES.

The Nuremberg Tribunal made various recommendations to the Control Council at Berlin.

The Berlin Control Council is, however, only able to legislate in regard to Germans who are in Germany.

But many--perhaps a majority--of the members of the criminal organisations are scattered among the different prisoner-of-war camps in the territories of the United Nations.

In France we have 30,000 prisoners of the SS., whereas a census of the members of the criminal organisations in the French zone of occupation only gave a total of 5,000.

It is only equitable that the laws under which these persons are tried should be analogous, both in substance and in form.

On October 19th, 1946, the French Government addressed a request, through diplomatic channels, to all the United Nations inviting them to appoint experts to conclude an agreement in regard to the prosecution and trial of members of organisations declared to be criminal, and to put the agreement in written form. No answer has been received to this request, except from the United States.

A solution of this question is, however, all the more necessary because divergences of views in regard to the interpretation of the Nuremberg Judgment are already apparent, especially in regard to the presumption of knowledge of the criminal objects of the organisation.

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The French representatives request the U.N.W.C.C. to draw the attention of their respective governments to the importance and urgency of this question.

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A.31  
December 13th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

M E M O R A N D U M

SUBJECT: Document A.30 dated 10 December 1946, discussed at a meeting of the Commission 11 December 1946.

1. Prosecution and Trial of Members of organisations which have been declared to be criminal bodies.
2. Procedure which, in the French view, should be adopted for trials of concentration camp personnel.

It was agreed by all Members present at the meeting of the Commission on 11th December that "members of the Commission should ascertain from their respective Governments whether and in what sense, they had replied to the French Government's request of October 19th, relative to the above matter".

In view of the fact that the French representative has suggested that the Commission should give its advisory opinion on these two questions the Commission will proceed to formulate the opinion requested at an early date.

A. 32.  
29th January, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

Draft of a Note on the  
Legal Aspect of the work of the  
United Nations War Crimes Commission.

The writer of this Note has been invited by Professor H. Lauterpacht, the Editor of the British Year Book of International Law, to contribute a Note on the legal work of the United Nations War Crimes Commission. With the permission of the Chairman and the Secretary General, the writer has accepted this invitation.

The following is the draft of the Note which he intends to submit to the Editor of the British Year Book of International Law for publication. ~~The title is as follows:~~

The United Nations War Crimes Commission and the Law of War Crimes <sup>(1)</sup>

I. Establishment of the Commission. Terms of Reference.

Legal Status and Organisation.

1. On 7th October 1942, it was announced simultaneously in London and Washington, with the concurrence of other allied nations, that a United Nations Commission for the investigation of war crimes would be set up. <sup>(2)</sup>  
This was the first practical step towards the accomplishment of the aim of the allied nations, announced in a great number of official statements, proclamations and agreements, to bring to justice, after the victorious conclusion of the Second World War, those persons who were guilty of war crimes. <sup>(3)</sup>

It was not, however, until 20th October 1943, that the actual establishment of the Commission took place, at a meeting of the representatives of 17 nations, held at the Foreign Office, London. <sup>(4)</sup>  
Representatives of the following governments and authorities were present at the inaugural meeting of the Commission: Australia, Belgium, Canada, China, Czechoslovakia, Greece, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, the Union of South Africa, the United Kingdom,

the United States of America, Yugoslavia, and the French Committee of National Liberation. The U.S.S.R. did not take part in the meeting and has not joined the Commission since. The Union of South Africa, though represented at the meeting, did not become a member of the organisation. After liberation, Denmark joined the Commission, which therefore has 17 member states at present.

The Lord Chancellor, who presided at the meeting, proposed that the Commission should serve two primary purposes:

1. It should investigate and record the evidence of war crimes, identifying where possible the individuals responsible.
2. It should report to the Governments concerned cases in which it appeared that adequate evidence might be expected to be forthcoming.

It seemed important, the Lord Chancellor declared, to draw a clear distinction between the preparatory investigatory work of the Commission and the procedure for the eventual trial of war criminals. The latter would represent a later stage and would be a question for decision by the governments concerned rather than by the proposed Commission. The Governments concerned would also be specially interested in the treatment of those who might properly be described as the arch criminals. It might well be felt that this was primarily a political question.<sup>(5)</sup>

The meeting decided to set up the Commission forthwith, with the terms of reference as outlined, reserving the question of the possible expansion of the scope of its investigations and functions for future consideration.

It was agreed that the headquarters of the Commission should be established in London, but that the Commission should be empowered to set up panels or arrange otherwise, in the light of the wishes of the Governments most closely concerned, for investigations on its behalf so far as these seemed appropriate. This provision was the basis for the eventual establishment of the Far Eastern Sub-Commission of the



United Nations War Crimes Commission.

In view of the way in which the question of chairmanship of international organisations and international conferences was subsequently dealt with in the organs of the United Nations and at the Peace Conference, it may be recalled that the Lord Chancellor informed the inaugural meeting that the United Kingdom Government had originally proposed that it should be left to the Commission to settle the question of Chairmanship at its first meeting. The Soviet Government, however, had proposed that the Chairmanship might suitably be held in rotation by the representatives of the United Kingdom, the United States of America, the U.S.S.R and China. It was agreed that it should be left to the Commission to settle the question of its first Chairman when it met, without prejudice to the question of roulement. Eventually, in the 4th meeting of the Commission, held on 11th January 1944, the United Kingdom delegate, Sir Cecil HURST, was elected Chairman. When, in January 1945, Sir Cecil resigned for reasons of ill-health, Lord WRIGHT, who represents the Commonwealth of Australia on the Commission, was elected Chairman and has been Chairman of the Commission since.

It was proposed at the meeting of 20th October 1943, that in addition to the Commission there should be established a committee of legal experts to be nominated by the various allied governments participating in the work of the Commission. The Committee would work concurrently with the Commission and in adequate contact with it. It would be charged with advising the Governments concerned upon matters of a technical nature, such as the type 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. The function of this Committee would be to formulate recommendations for the guidance of Governments. It would not be empowered to take any decisions which would be binding upon the Governments. Very soon afterwards, however, the Governments represented on the Commission came to the conclusion that the creation of an independent technical committee was unnecessary. The suggestion to establish it was therefore dropped and the Governments agreed that the Commission should deal in an

advisory capacity with the questions which would have been dealt with by the technical committee.

The United Nations War Crimes Commission has therefore two different jurisdictions: (a) on the one hand it makes, as it were, in its own right the decisions coming within its original investigating, recording and reporting function, and (b) it exercises advisory functions which originally were meant to be entrusted to an independent committee of technical experts.

2. The Commission is an international organisation.

The United Kingdom Diplomatic Privileges (Extension) Act of 1944 has been applied to it by the Diplomatic Privileges (Transport Organisation and War Crimes Commission) Order in Council, 1945.<sup>(6)</sup>

Under Article 2 of the Order, and Section 1, sub-section 2(a) of the Act of 1944, the Commission has the legal capacities of a body corporate.

The Diplomatic Privileges (Extension) Act, 1946, has so far not been applied to the Commission.

3. In respect of its "original" functions, which will be discussed presently, the Commission's work is prepared by its Committee on Facts and Evidence (Committee I) which throughout its existence has been presided over by the Belgian representative on the Commission. Committee II, under the chairmanship of the American delegate, prepared the Commission's recommendations respecting measures of enforcement which were considered necessary or advisable in order to make the prosecution of offenders effective.

For most of the time the Czechoslovak representative has been chairman of Committee III, the Legal Committee, which is responsible for the preparation of the Commission's decisions and resolutions involving such legal questions as arise in connection with the examination of individual cases (the Commission's original jurisdiction) and in making recommendations of a general nature.

The expenses of the Commission are covered by an equal basic contribution, paid by each member Government, and if the amount of expenditure exceeds the total expenditure, the excess is being allocated

to the member States in proportions which are similar to those adopted by the United Nations Relief and Rehabilitation Administration<sup>(7)</sup>, with the difference that an equal amount is allocated to the United Kingdom and the United States respectively, as is the case under the International Labour Office scale. The United Kingdom Government, in addition, supplies free of charge the office premises in London, the Chinese Government those of the Far-Eastern Sub-Commission at Chungking, later at Nanking. The United Kingdom representative has been chairman of the Finance Committee.

II. The "original" functions of the Commission: Examination of Cases:

Production of Lists of persons charged as war criminals.

When the Commission started its work it considered that there was no list of war crimes in existence which was authoritative in the sense that international law forbade an act not in the list being treated as a war crime and, conversely, obliged every State to treat as a war crime every act included in the list. After the first World War, the Responsibilities Commission of the Paris Peace Conference in 1919 agreed on a list of acts which it considered should be treated as war crimes. The United Nations War Crimes Commission decided not to attempt to draw up any list of war crimes at the beginning of its work which would tie the hands of the Governments of the United Nations. The reason was that if such a list were prepared, it might be thought necessary in some countries to give it statutory force so as to ensure that the courts which were given jurisdiction to try war crimes were competent to try such offences.<sup>(8)</sup> It seemed as if the ingenuity of the enemy was even then finding new ways of violating the laws and customs of war and it would have been inconvenient, in countries where the list of war crimes had been given statutory force, if new legislation would have been required to deal with new crimes which came to light. The Commission therefore decided to proceed upon the assumption that international law recognised the principle that a war crime was a violation of the laws and customs of war and that no question could be raised as to the right of the United Nations to put on trial as a war criminal in respect of such violation, any hostile offender who might fall into their hands. It was, however, considered convenient



for the Commission and for the National Offices which were going to prepare the individual cases and transmit them to the Commission, that there should be a working list enumerating the various headings under which war crimes could be grouped. As such a working list, the United Nations War Crimes Commission adopted the list of war crimes drawn up by the Responsibilities Commission of the Paris Peace Conference in 1919<sup>(9)</sup> which contains the following 32 items:

- i. Murder and massacres; systematic terrorism.
- ii. Putting hostages to death.
- iii. Torture of civilians.
- iv. Deliberate starvation of civilians.
- v. Rape.
- vi. Abduction of girls and women for the purpose of enforced prostitution.
- vii. Deportation of civilians.
- viii. Internment of civilians under inhuman conditions.
- ix. Forced labour of civilians in connection with the military operations of the enemy.
- x. Usurpation of sovereignty during military occupation.
- xi. Compulsory enlistment of soldiers among the inhabitants of occupied territory.
- xii. Attempts to denationalise the inhabitants of occupied territory.
- xiii. Pillage.
- xiv. Confiscation of property.
- xv. Exaction of illegitimate or of exorbitant contributions and requisitions.
- xvi. Debasement of the currency and issue of spurious currency.
- xvii. Imposition of collective penalties.
- xviii. Wanton devastation and destruction of property.
- xix. Deliberate bombardment of undefended places.
- xx. Wanton destruction of religious, charitable, educational and historic buildings and monuments.

- xxi. Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers or crew.
- xxii. Destruction of fishing boats and of relief ships.
- xxiii. Deliberate bombardment of hospitals.
- xxiv. Attack on and destruction of hospital ships.
- xxv. Breach of other rules relating to the Red Cross.
- xxvi. Use of deleterious and asphyxiating gases.
- xxvii. Use of explosive or expanding bullets and other inhuman appliances.
- xxviii. Directions to give no quarter.
- xxix. Ill-treatment of wounded and prisoners of war.
- xxx. Employment of prisoners of war on unauthorised works.
- xxxi. Misuse of flags of truce.
- xxxii. Poisoning of wells.<sup>(10)</sup>

Eventually, a 33rd item was added to this list by a later decision of the United Nations War Crimes Commission, namely:

" Indiscriminate mass arrests for the purpose of terrorising the population whether described as taking of hostages or not."

That this list is only a "working list", inconclusive as to any of the legal issues involved, is shown by the fact that<sup>(11)</sup> in subsequent international agreements and municipal enactments, a list of war crimes has not been adopted<sup>(12)</sup> and that in the actual work of the Commission no stress was laid on the classification of individual charges under the different headings of the 1919 list. [ In fulfilling its original task of investigating and recording the evidence of war crimes, the Commission has, since its establishment, examined cases involving well over ..... suspected or accused persons and produced lists of war criminals, containing the names of ..... persons of German, Italian, Albanian, Hungarian, Bulgarian, Roumanian and Japanese nationality against whom, in the opinion of the Commission, a prima facie case of having committed war crimes has been established. The lists also include persons of allied and neutral citizenship who had served with the armed forces of the Axis States.

The placing of the name of a person on the Commission's lists is always preceded by an examination of the material submitted by the respective allied Government, particularly documents of municipal military and police authorities and depositions of witnesses. In very many cases, the Commission, when deciding whether or not a person should be placed on the list, has to examine legal questions, sometimes of a novel nature. When, on the conclusion of the Commission's work, the proceedings of its Committee I concerning the listing of individual offenders will be available for research, they will afford the student valuable information on state practice applied on an international level through a number of years, in respect of many - sometimes rather involved - questions of international law.

Among the preliminary legal problems with which the Commission has been faced, one of the most important, was the question whether the term "war crime" as used in the Commission's terms of reference, was to be understood in the narrower sense and therefore restricted to violations of the laws and customs of war, or whether it comprised also what later, in the London Agreement of 8th August 1945, was to become known as crimes against peace and crimes against humanity.<sup>(13)</sup> Eventually the Commission decided that "crimes against peace and against humanity as referred to in the Four-Power Agreement of 8th August, 1945, are war crimes within the jurisdiction of the Commission". This interpretation appears to have been confirmed by the Judgment of the International Military Tribunal at Nuremberg, where it is said that to initiate a war of aggression is the supreme international crime which differs from other war crimes in that it contains within itself the accumulated evil of the whole,<sup>(14)</sup> and where the crime against humanity is treated as a subsidiary type of war crime.<sup>(15)</sup> This interpretation is further borne out by the Charter of the International Military Tribunal of the Far East and by the Indictment against the persons accused to have been the Japanese major war criminals.<sup>(16)</sup> Moreover, Article 5 (VII)(b) of the quadripartite Vienna Agreement on the Machinery of Control in Austria,<sup>(17)</sup> of 28th June 1946, enumerates among the activities reserved to the Allied Commission "the tracing, arrest and



handing-over of any person wanted by other United Nations" (than the Big Four) for "war crimes and crimes against humanity" and "included in the lists of the United Nations Commission for War Crimes".

The following are examples of questions of substantive law which the Commission had to examine and decide over and over again when dealing with particular charges brought before it by National Offices:

The defence of military necessity, particularly in connection with

charges for the destruction of property, of dykes, port

installations, of a library, of works of art;

the legality of pecuniary reprisals imposed on the civilian population

by an occupant;

the question whether and to what extent judges, including military

judges, can be called to account for crimes committed in the

exercise of their functions, particularly in connection with

the different types of special courts and courts martial

instituted by the German authorities and the Italian "Tribunale

Speciale per la Difesa dello Stato";

the question as to whether perpetrators of crimes committed on

Czechoslovak territory at the beginning of 1939 can be

prosecuted (crimes against humanity);

the legal qualification of acts of persecution committed during the

war by Italian authorities against Italian nationals of Yugoslav

race;

the definition of crimes against humanity under the basic documents

of 1945;

the question to what extent attempts to denationalise the inhabitants

of occupied territory are criminal;

the legal status of guerrilla fighters and partisans, particularly

applied to the Yugoslav Army of National Liberation and the

F.F.I. on the one hand, and to the Italian Fascist Republican

formations - after September 1943 - on the other;

the criminal responsibility of administrators of seized property in

occupied territory, particularly of Jewish property;

the responsibility of commanders for offences committed by their subordinates and of administrators of occupied territory;

the responsibility of persons holding key positions in the political, military and economic life of Germany and of Japan;

racial discrimination in food allocation by the occupation authorities;

compelling the inhabitants of occupied territory to work at places where military operations, as distinguished from military preparations, were being conducted;

employment of prisoners of war on unauthorised work;

the interpretation of the detailed provisions of the 1929 Prisoners of War Convention;

the compulsory enlistment of the inhabitants of occupied territory in the armed forces of the occupant, particularly in connection with German activities in Alsace-Lorraine;

the question of the responsibility of judges who sentenced to death, as deserters from the German army, Alsatians who had been drafted into the German army;

the question whether voluntary recruitment of inhabitants of occupied territory for the armies of the occupant is permitted;

the seizure of means of transport by an occupying force;

crimes committed in concentration camps; the responsibility of concentration camp personnel;

membership in criminal organisations;

responsibility for unjustified imprisonment;

the responsibility of the commander of an Italian submarine who torpedoed a French merchant vessel on sight after the conclusion of the French-Italian armistice of 1940;

the question whether a German officer who scuttled a German submarine after the surrender, has committed a war crime;

the criminality of the use of Dutch uniforms, on 10th May 1940, by members of the German army;

the implications of the war crime of "usurpation of sovereignty";

The proceedings leading up to the listing of a person are ex parte proceedings. A short time after the United Nations War Crimes Commission had been created, it recommended to its member governments that national war crimes offices should be established to investigate, in the first instance, reports concerning war crimes and to submit to the Commission in the form requested, charges concerning these offences. In response to the Commission's recommendation, these agencies have been set up by all member Governments.

In examining the charges submitted by the National Offices, the Commission decides whether there is a case justifying the arrest and handing over for trial of the person charged. The charges are examined in the presence of representatives of the Government (National Office) which submitted them. The Commission then reports to the member Government cases in which there appears to be either prima facie evidence that a war crime had been committed, sufficient to justify the apprehension and prosecution of the individual accused, or else sufficient grounds to consider the wanted persons as suspects or material witnesses. This is being done in the form of the Commission's lists of war criminals with which, in addition to the Governments, all apprehending authorities are currently supplied.

The Commission itself has no executive power, no detective staff or agency; responsibility for the apprehension of the wanted person rests, therefore, with the military or other national or occupational authorities.

The Soviet Union not being a member of the Commission<sup>(18)</sup>, the most important authorities in charge of persons accused of war crimes were, in the earlier stages, Supreme headquarters, Allied Expeditionary Force, (SHAEF) and later, the Control Council for Germany, particularly the Commanders of the Western Zones. The allied military and occupational authorities have never applied to requests for the handing over of persons wanted for war crimes, the technical provisions applicable in cases of extradition. The general principle has been that the respective commanders shall comply with requests for the handing over of



wanted persons provided he has no reason to doubt the bona fides of the allied request for the alleged war criminals in question and provided the persons wanted were not required as defendants or witnesses for trials before the International Military Tribunal or before the courts of the respective Zones themselves. Persons listed as war criminals on the lists compiled by the United Nations War Crimes Commission were to be handed over without question, subject to the general requirements indicated.

The Control Council Law No.10<sup>(19)</sup> eventually regulated the question of handing over of persons accused of war crimes in its Art. IV on the following principles: When any person in a zone in Germany is alleged to have committed a crime, as defined in Art. II, (crimes against peace, war crimes, crimes against humanity, membership in categories of a criminal group or organisation declared criminal by the International Military Tribunal) in a country other than Germany or in another zone, the Government of that nation or the commander of the latter zone, as the case may be, may request the commander of the zone in which the person is located for his arrest and delivery for trial to the country or zone in which the crime was committed. Such request for delivery shall be granted by the commander receiving it, unless he believes such person is wanted for trial or as a witness by the International Military Tribunal, or in Germany, or by a nation other than the one making the request, or the commander is not satisfied that delivery should be made, in any of which cases he shall have the right to forward the said request to the Legal Directorate of the Allied Control Authority.

The listing of wanted persons by the Commission is relevant under this procedure because of the wide discretion granted to the zone commander to "satisfy himself" that delivery should be made; the fact that a person is on the Commission's list is evidence of a prima facie case having been made against him. In Austria, only persons listed may be surrendered.

In addition to the listing of persons at the instance of one or more of its Member Governments, the Commission has, in exceptional cases, also placed persons on its lists on its own initiative, acting on the information collected by its own Research Office.

The Commission does not cease to be interested in a case when the alleged criminal has been listed. Throughout, it has been in touch with, and has taken a great interest in, all investigating, prosecuting and registering agencies established by the different allied and inter-allied bodies in Germany and elsewhere, and has given advice, suggestions and help in making the prosecution of persons suspected of war crimes, effective.

The Commission has also collected the transcripts, records and judgments of courts dealing with persons accused of war crimes.

### III. The advisory Functions of the Commission.

As will be shown presently, the Commission has adopted a great number of formal recommendations to its Member Governments, a great part of which have, in one form or another, been accepted and acted upon. These formal recommendations did not, however, exhaust both the activities of the Commission and the influence exercised by it in this field.

When the Commission was established in 1943, many questions both of principle and of practical application were still unsettled and in the beginning, opinions on some of the controversial questions were divided also within the Commission, as, to a certain extent, they remained among lawyers even after the practical aspects had been settled by the Four-Power Agreement, the Nuremberg proceedings and the subsequent trials. But also in respect to highly controversial questions in which the Commission did not adopt any recommendations, as, e.g., whether the initiation of a war of aggression is a crime, its discussions exercised considerable influence on the actual decisions which eventually were taken by the Governments of the Allied Nations.

#### 1. Preparations for Armistice Conventions and Peace Treaties.

Among the earlier recommendations which the Commission made to its member Governments, were proposals for draft articles to be inserted in the Armistice Conventions to be concluded both with Germany and the other Axis Powers. These recommendations were, in general, based on the provisions which had been inserted in the Peace Treaties at the conclusion

of the First World War, but they tried to embody additional provisions which seemed appropriate in view of the experience gained in the unsuccessful attempts to apply the 1919 provisions, and in view of the changed and, to a great extent, aggravated conditions under which the Second World War was being waged.

It was also suggested to insert in the Armistice documents provisions making impossible such sabotage of the Armistice stipulations as had been experienced after the first World War.

The actual Armistice Instruments with the smaller Axis countries which were eventually adopted imposed on the defeated States the obligation to collaborate with the allied authorities in the apprehension and trial of persons accused of war crimes.<sup>(20)</sup> The Italian Armistice conditions contained Italy's obligation to apprehend and surrender into the hands of the United Nations Benito Mussolini, his chief fascist associates and all persons suspected of having committed war crimes or analogous offences, whose names appear on lists to be communicated by the United Nations. Italy undertook to comply with any instructions given by the United Nations to this purpose.<sup>(21)</sup> Similar provisions were inserted in the Four-Power Declaration regarding the defeat of Germany and the assumption of supreme authority with respect to Germany of 5th June 1945,<sup>(22)</sup> and repeated in Control Council Proclamation No. 2, to the people of Germany of 20th September 1945, Section I, paragraphs 36 and 37.<sup>(23)</sup> The duty was imposed upon the German authorities to furnish any information and documents and to secure the attendance of any witnesses required by the allied representatives for the trial of the principal Nazi leaders, as specified by the allied representatives and all persons from time to time named or designated by rank or employment by the allied representatives as being suspected of having committed, ordered or abetted war crimes or analogous offences and to give all other aid and assistance for these purposes. The German authorities were further obliged to comply with any instructions given by the allied representatives in regard to the property of any such person.



The provisions were extended to cover also nationals of any of the United Nations who are alleged to have committed an offence against his national law.

In the Proclamation to the Japanese people, made by the Potsdam Conference of 26th July 1945, the right of the allied nations to mete out stern justice to all war criminals was expressly reserved.<sup>(24)</sup>

When the Draft Peace Treaties with the Axis satellite countries were discussed in Paris in 1946, the Commission again presented recommendations for the inclusion of detailed provisions aiming at giving effect to the desire of the allied nations to bring to justice the perpetrators of war crimes. By that time, of course, a considerable part of this task, both with regard to the principle and to its practical application, had been achieved by the setting up of the International Military Tribunal and in the hundreds of trials before municipal and occupational courts throughout Europe and the Far East.

All the Draft Peace Treaties contain provisions regarding the surrender of persons accused of war crimes, crimes against peace, crimes against humanity and of collaborators of allied nationality.<sup>(25)</sup>

2) Draft Conventions for inter-allied surrender of war criminals.

In addition to the provisions regarding the handing over by the enemy of persons accused of war crimes (see supra under (1)), the Commission also suggested the conclusion of a Convention for the surrender of war criminals and other war offenders as between the allied States themselves. The Draft Convention which the Commission submitted to its member Governments, was an adaptation of a draft prepared in London by the Ministers of Justice of some of the allied Governments. The Commission's draft provided for the surrender as a result of executive or administrative procedure and covered, in addition to persons suspected of war crimes proper, also nationals of the United Nations who had aided the enemy against their own country. The purpose of the Draft Convention was to make certain that the United Nations reciprocally transfer to one another, persons in their power who are wanted for trial as war criminals or "quislings", or have already been convicted on such

charges, and to secure this result in the simplest possible way, and in particular, excluding the possibility of refusing surrender on the ground that the acts charged have the character of political offences.

Although some Governments expressed their readiness to sign and ratify the Draft Convention, it did not materialise in the proposed form because some members, particularly the Big Powers, maintained that since the persons wanted would be prisoners of war in the hands of the armed forces of the requested State, or refugees present in its territory without legal authorisation, everything could be done by executive action, and there was no need for treaty provisions. In actual practice, the most important part of the problem, the handing over of enemy personnel and collaborators found in Germany, has been solved without difficulty, the surrender of these persons having been granted by military commanders and by the zone and control authorities under the provisions of Art. IV of the Control Council Law No.10, which has already been mentioned.<sup>(26)</sup>

3. Recommendations for the establishment of inter-allied joint courts and Military Tribunals.

In a number of recommendations and draft conventions, the United Nations War Crimes Commission tried to contribute towards the establishment of the necessary judicial machinery capable of dealing swiftly with the great number of persons which it was foreseen would be accused of war crimes. The Commission particularly recommended the creation of a United Nations War Crimes Court or Tribunal and the employment of military tribunals, where necessary of an inter-allied or mixed character. These recommendations influenced not only the creation of the International Military Tribunal by the Four-Power Agreement of 8th August 1945, but also the establishment of numerous national and mixed inter-allied Military Tribunals invested with jurisdiction over war crimes. The most outstanding of such inter-allied Military Tribunals is the International Military Tribunal for the Far East, in Tokyo, which is the counterpart to the International Military Tribunal set up at Nuremberg.

The British Royal Warrant of 14th June 1945 (27) gives power to the Convening Officer in a case where he considers it desirable so to do, to appoint as a member of the Court, but not as President, one or more officers of an Allied Force serving under his command or placed at his disposal for the purpose. Similar provisions have been inserted in the analogous Canadian enactment (28) and in some of the Regulations made by the United States military authorities in the Far Eastern theatres of war. The latter provide for "International Military Commissions" consisting of representatives of other nations or of each nation concerned, appointed to try cases involving offences against two or more nations. (29)

4. Establishment of Offices of the Commission in occupied enemy territory. Investigating Teams.

Before the war ended, the Commission made recommendations dealing with various measures to ensure the capture of suspected persons and the establishment of offices of the Commission in occupied enemy territory. The substance of these proposals was, to a certain extent, realised by the appointment of allied investigating teams to operate in liaison with the allied military authorities in occupied Germany.

5. Extension of the Scope of the Retributive Action.

From the very beginning, the United Nations War Crimes Commission has been advocating the extension of the scope of retributive action of the United Nations, beyond the traditional notion of war crimes in the technical sense, i.e. of violations of the laws and customs of war. The Commission's endeavours in this respect were two-fold: on the one hand, they concerned the interpretation of its own terms of reference (see supra, after note 13); on the other they consisted in recommendations concerning the trial and punishment of crimes committed in territories occupied before the actual outbreak of war, or on Axis territory against Axis nationals and stateless persons. The great controversial question whether the initiation of a war of aggression was a crime, was much discussed within the Commission, with outside assistance from academic circles.



The Commission's deliberations and proposals had considerable influence on the inclusion, in the Charter of the International Military Tribunal, in the documents modelled after it, and in the Draft Peace Treaties, of provisions for the punishment of "crimes against humanity"<sup>(30)</sup> and the discussions within the Commission were one of the factors which contributed to the inclusion in the different agreements and instruments of provisions against crimes against peace.

6. The Defence of Superior Orders.

Soon after its establishment, the Commission closely investigated that pivotal problem in the whole structure of the repression of war crimes, namely, whether and to what extent, the plea of superior orders is a defence.

The statement of the law as contained in earlier editions of Oppenheim-Lauterpacht, in Chapter XIV of the British Manual of Military Law <sup>(31)</sup> and in the United States Basic Field Manual of Rules of Land Warfare<sup>(32)</sup>, had been challenged in many quarters.<sup>(33)</sup> Members of the United Nations War Crimes Commission too, strongly advocated a reconsideration of the sweeping assumption that the plea of superior orders was a defence in charges for war crimes. Eventually, the statements of the law were amended both in the British Manual of Military Law and in the United States Basic Field Manual, FM.27/10 on the Rules of Land Warfare, the former to the effect that "the question .... is governed by the major principle that members of the armed forces are bound to obey lawful orders only and that they cannot therefore escape liability if, in obedience to a command, they commit acts which both violate unchallenged rules of warfare and outrage the general sentiment of humanity."<sup>(34)</sup> The amendment to the latter now contains the ruling that the fact that acts violating the accepted laws and customs of war "were done pursuant to order of a superior or government sanction may be taken into consideration in determining the culpability either by way of defence or in mitigation of punishment."<sup>(35)</sup>

(— The two Manuals are, of course, not legislative instruments, but only publications setting out the law. The amendments to the British and

American Manuals are, therefore, not alterations of the law, but corrections of opinions on existing law which, as is stated in a footnote to the British Amendment, had been shown to be "inconsistent with the view of most writers upon the subject and also with the decision of the German Supreme Court in the case of the Llandovery Castle."<sup>(36)</sup>

Recent positive municipal enactments bearing on the plea of superior orders and either excluding or restricting it, are to be found, inter alia, in the French Ordinance concerning the suppression of war crimes of 28th August, 1944<sup>(37)</sup>, in the Czechoslovak Retribution Decree<sup>(38)</sup> in the Danish Act on the Punishment of War Crimes,<sup>(39)</sup> and in some United States Regulations for the trial of war criminals.<sup>(40)</sup>

The Charter of the International Military Tribunal and the documents which were drafted with the Charter as their model, provide that the fact that the defendants acted pursuant to order of their government or of a superior, shall not free them from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.<sup>(41)</sup> The Judgment of the International Military Tribunal very succinctly summed up the law by stating that the true test which is found in varying degrees in the criminal law of most nations is not the existence of the order but whether moral choice was, in effect, possible.<sup>(42)</sup>

## 7. Criminal Groups and Organisations.

The United Nations War Crimes Commission devoted much attention to the phenomenon of mass criminality for which certain organisations were responsible. "Having ascertained that countless crimes have been committed during the war by organised gangs, Gestapo groups, S.S., or Military units, sometimes entire formations", the Commission made the following recommendations to the member Governments:

- (a) to seek out the leading criminals responsible for the organisation of criminal enterprises including systematic terrorism, planned looting and the general policy of atrocities against the peoples of the occupied States, in order to punish all the organisers of such crimes;

- (b) to commit for trial either jointly or individually all those who, as members of these criminal gangs, have taken part in any way in the carrying out of crimes committed collectively by groups, formations or units.

Such recommendations and the preparatory work and discussions preceding them, have influenced both municipal and international enactments which were subsequently made. The problem was not entirely new; both the French<sup>(43)</sup> and the Belgian<sup>(44)</sup> Criminal Codes contain provisions against what is called "associations de malfaiteurs". An example of legislation based on similar considerations is a statute enacted in India for the suppression of thuggery in 1836<sup>(45)</sup>.

The British Royal Warrant of 18th June 1945<sup>(46)</sup> made provisions for speeding up the trial of member of units or groups implicated in criminal activities by providing in Regulation 8 (2):

"where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as prima facie evidence of the responsibility of each member of that unit or group for that crime".

Later, the following provision was added:

"In any such case all or any members of any such unit or group may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the Court."<sup>(47)</sup>

Similar provisions were adopted by the Commonwealth of Australia,<sup>(48)</sup> and by the Dominion of Canada.<sup>(49)</sup>

The United States Military Authorities issued various Regulations and Directives for Europe and for the Far East, which also contain provisions covering the trial of offences involving concerted criminal action on the part of units, groups and organisations and mass atrocities.<sup>(50)</sup>

The Charter of the International Military Tribunal contains far-reaching provisions of a novel character concerning groups or organisations to be declared criminal in its Arts. 9 and 10, these provisions



have also been made part of the local law of Germany by the Control Council Law No.10. The Judgment of the International Military Tribunal placed a restrictive interpretation on these provisions and made important recommendations with regard to them.<sup>(51)</sup>

8. Proposals regarding the codification of  
International Law.

On the eve of the San Francisco Conference, the Commission proposed the embodying in the Charter of the United Nations of 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 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."

These recommendations were not embodied in the Charter of the United Nations in so many words, but the provisions of the Charter concerning the measures for the prevention and removal of threats to peace and for the suppression of acts of aggression,<sup>(52)</sup> and those dealing with promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion<sup>(53)</sup> show that the Commission's recommendations were in line with the general trend of allied opinion. Subsequent events within the United Nations Assembly and within the United Nations Economic and Social Council, particularly the Assembly Resolution on the affirmation of the principles of international law, recognized by the Charter of the Nuremberg Tribunal<sup>(54)</sup> and on the so-called crime of Genocide<sup>(55)</sup> show that the United Nations is proceeding on the lines recommended by the Commission early in 1945.

IV. Legal Publications.

The records, judgments and other documents of the trials for war crimes conducted by national (military, occupational) Courts of the different countries are being collected by the Commission.

Reports on these trials, giving summaries of the proceedings, and provided with annotations and explanations, are being published by it. When this note went to press the first Volume of the "Law Reports of Trials of War Criminals"<sup>(56)</sup> had appeared. Further volumes, containing reports on cases tried in British, United States, French, Canadian, Norwegian and other Courts are in preparation.

The Commission is also publishing a volume, or volumes, containing the texts of international agreements and municipal enactments by both allied and former enemy states, touching on the problem of war crimes in the wider sense.

EGON SCHWELB.

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FOOTNOTES.

- (1) o.f. M.E. Bathurst, The United Nations War Crimes Commission, (39) American Journal of International Law, (July 1945), p.565; War Crimes - Work of the United Nations Commission - International Concept of Justice. The Times (newspaper), 18th December 1946.
- (2) Hansard, House of Lords, Vol.124, No.86, col.577. (7th October, 1942).
- (3) The Declarations and statements are collected in:  
    "Punishment for War Crimes:" The Inter-Allied Declaration signed at St. James's Palace, London on 13th January, 1942, and Relative Documents (issued by the Inter-Allied information Committee, published by H.M. Stationery Office, London)  
    "Punishment for War Crimes (2)" Collective Notes presented to the Governments of Great Britain, the U.S.S.R., and the U.S.A. and Relative Correspondence; (ibid);  
    "War Crimes and the Punishment of War Criminals"; Information Paper No.1, issued by the Reference Division, United Nations Information Organisation;

The Molotov Notes on German Atrocities (Issued by His Majesty's Stationery Office on behalf of the Embassy of the U.S.S.R. in London 1942);

The Third Molotov Note on German Atrocities, (ibid);

For the text of the Moscow Declaration of October 1943, see:

Lauterpacht, The Law of Nations and the Punishment of War Crimes, this Year Book, 1944, p.60, note 1; see also: M.E.Bathurst, l.c.n.1.

- (4) The Diplomatic Protocol of 20th October, 1943, has not been made public.
- (5) of the Moscow Declaration, for text see Lauterpacht, l.c. The Decision envisaged in Moscow was made through the Four-Power Agreement of 8th August, 1945.
- (6) S.R. & O 1945, No.1211, amended by the Diplomatic Privileges (General Amendment) Order in Council, 1946, S.R. & O 1946, No.2202.
- (7) Resolution No.38, adopted by the Council of UNRRA at Atlantic City, November-December 1943, Miscellaneous No.6.(1943), Cmd. 6497, p.33.
- (8) One of the members of the United Nations War Crimes Commission, the Commonwealth of Australia, has actually introduced into its municipal legislation the 1919 list with some additions and modifications; Commonwealth of Australia War Crimes Act, 1945, (No.48 of 1945), (Sec.3. and Instrument of Appointment referred to.)
- (9) Violation of the laws and customs of War. Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919. Carnegie Endowment for International Peace, Division of International Law, Pamphlet No.32; see also American Journal of International Law, 1920.
- (10) For a criticism of this list see: Lauterpacht, l.c., p.78.
- (11) Apart from the exception mentioned in note (8). The Australian Act contains, however, in addition to the enumeration based on the 1919 list, as it were, as a clausula generalis the item: a violation of the laws and usages of war.



- (12) Charter of the International Military Tribunal annexed to the Four Power Agreement of 8th August, 1945, Article 6; Charter of the International Military Tribunal for the Far East, Article 5; British Royal Warrant of 14th June, 1945, A.O. 81/1945; Canadian War Crimes Act, 1946, Schedule, para.2(f); Regulations issued by the United States Military Authorities in the different Theatres of war, etc.
- (13) cf. the statements made in the British House of Commons on 4th October 1944, and 31st January 1945, quoted in this Year Book, p....
- (14) Cmd. 6964, p.13.
- (15) see this Year Book, p....
- (16) see this Year Book, p....
- (17) Treaty Series No.49 (1946), Cmd.6958, p.21.
- (18) see however, the quadripartite Agreement regarding Austria, quoted in note (17)
- (19) Official Gazette of the Control Council for Germany, No.3., page 50.  
Military Government Gazette, Germany, British Zone of Control, No.5., p.10.
- (20) Armistice with Roumania, Cmd. 6585, Art. 14.  
Armistice with Finland, Cmd. 6586, Art. 13.  
Armistice with Bulgaria, Cmd. 6587, Art. 6.  
Armistice with Hungary, Department of State Bulletin, Vol.XII, No.291, 21st January, 1945, page 83, Art. XIV.
- (21) Cmd. 6693, Protocol signed at Brindisi on 9th November 1943, amending Art. 29 of the Instrument of Surrender of 29th September 1943.
- (22) Cmd. 6648.
- (23) Official Gazette of the Control Council for Germany, No.1, p.8;  
Military Government Gazette, Germany, British Zone of Control, No.5., p.27.
- (24) Department of State Bulletin, Vol.XIII, No.318, 29th July 1945, p.137.

- (25) Italy, No.1 (1946), Cmd.6892, Part III: War Criminals, Art.38.
  - Romania, No.1 (1946), Cmd.6896, Art. 6.
  - Hungary, No.1 (1946), Cmd. 6894, Art. 5.
  - Bulgaria, No.1 (1946), Cmd. 6895, Art.5.
  - Finland, No.1 (1946), Cmd. 6897, Art. 9.
- (26) see supra, note (19)
- (27) A.O.81/1945, Regulation 5(3).
- (28) War Crimes Act, 1946, 10 George VI, Chap.73, Schedule, Regulation 7(4).
- (29) Law Reports of Trials of War Crimes, selected and prepared by the  
United Nations War Crimes Commission, Vol.1., Annex II, p.114.
- (30) See Article "Crimes against Humanity", in this Year Book, p....
- (31) paragraph 443.
- (32) paragraph 345.
- (33) see e.g., Lauterpacht, this Year Book, 1944, p.69 et seq; Oppenheim-  
Lauterpacht Vol.II, 6th Edition, 1940, and revised edition 1944,  
para.253, p.453; Sack (60) Law Quarterly Review (1944), p.225.
- (34) Amendments No.34 to the British Manual of Military Law No.29, April 1944;  
see Rowson in (60) Law Quarterly Review (1944), p.225.
- (35) Changes No.1 of the Rules of Land Warfare dated 15th November 1944,  
FM.27/10, C.1.
- (36) cf. the Note on the Peleus Trial in Law Reports of Trials of War  
Criminals, Vol.I, p.19 and Note on the Dostler trial, ibid, p.32.
- (37) Article 3.
- (38) No.16 of 1945, Section 13(3).
- (39) of 12th July 1946, Section 4.
- (40) see Law Reports of Trials of War Criminals, Vol. I, Annex II, p.120.
- (41) Art.8 of the Charter of the International Military Tribunal annexed to  
the London Agreement of 8th August 1945; Article 6 of the Charter  
of the International Military Tribunal for the Far East; Art.II  
(4)(b) of Control Council Law No.10.
- (42) Cmd. 6964, p.42.
- (43) Articles 265-267.
- (44) Articles 322-326.

- (45) Act No.30 of 1836, cf. A.L.Goodhart, Judicial Review, Vol.58, April 1946, p.18.
- (46) Army Order 81/1945.
- (47) Army Order 127/1945 Amendments No.1 to the Royal Warrant A.O.81/1945.
- (48) Statutory Rules 1945, No.164, Rule 12.
- (49) War Crimes Act, 1946, Schedule, Regulations 10(3).
- (50) cf. the paragraph on crimes committed by units or groups in Annex II of "Law Reports of Trials of War Criminals" selected and prepared by the United Nations War Crimes Commission, Vol. I, p.118.
- (51) Cmd. 6964, p.67.
- (52) Art. 1(1)
- (53) Art. 1 (3); Art. 13 (1)(b); Art. 55(c); Art.76(c).
- (54) Doc. A/236, adopted 11th December 1946.
- (55) United Nations Weekly Bulletin, Vol.1, No.20, (December 17, 1946).
- (56) Published for the United Nations War Crimes Commission by H.M. Stationery Office.



CONFIDENTIAL.

A. 33.

February 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

WAR CRIME TRIALS IN THE FAR EAST.

The following extracts from reports concerning the Tokyo Major War Criminals trial and other trials have been communicated by the United Kingdom Commissioner and are now circulated to heads of delegations.

I. Extract from a report dated 10th December 1946:

On the 1st November the "Naval Preparations for War" phase of the prosecution case in the Major War Criminals Trial was concluded and a new phase, "Relations between the United States and Great Britain on the one hand and Japan on the other" was opened, with evidence on Japan's naval building programme. During the course of this the Tribunal drew the attention of the court to the statement from the judgment at the Nuremberg trials that evidence of conspiracy should not date too far back. The evidence during this phase was documentary and was largely devoted to proving Japan's diplomatic duplicity. Japan's protestations, in diplomatic correspondence between herself and the United States, that she had no ambitions in China or Manchuria and meant no prejudice to others were contrasted with the Japanese soldiery's vandalism in their treatment of foreign nationals' property in China (in particular) and Japan's complete disregard for protests on the subject. Though the bulk of this evidence was about American interests, it was brought out, by reference for example to the wholesale arrests of British correspondents and the death of Reuters representative, Mr Cox, in the summer of 1940, that the Japanese were pursuing a policy equally detrimental to British interests. Interesting points during this phase of the prosecution were a cable from the defendant, SHIGEMITSU, then Japanese Ambassador in London, to the Japanese Foreign Office recommending that Japan should take advantage of the war in Europe to strengthen her position in Asia; Mr CHURCHILL's warning to MATSUOKA, while he was Foreign Minister in 1941, that Japan should not enter the war; and extracts from the defendant KIDO's diary regarding disagreement in Japan over MATSUOKA's "North and South" policy.

The next phase, which dealt with Japan's final preparations, from the 1st June to the 7th December, 1941, to wage war, lasted from the 12th to the 27th November. A large part of the evidence in the early stages of this phase was taken from an interrogation of the defendant TOJO conducted in Sugamo prison in February of this year, and from excerpts from the defendant KIDO's diary. The salient points emerging from this were: an admission by TOJO of his responsibility for calling the Imperial Conference in July 1941 which decided upon war in any case, and also for the movement of Japanese troops into French Indo-China; that the Emperor had questioned the defendant NAGANO very closely on Japan's chances of winning a sweeping victory; that it was Admiral YAMAMOTO who planned the attack on Pearl Harbour; that the Foreign Minister TOGO had on the 5th November, 1941, urged Admiral NOMURA to continue the negotiations in Washington, although the defendant NAGANO had on the 3rd November ordered the attack on Pearl Harbour, and that NOMURA had thereupon asked permission to resign. TOJO also admitted theoretical responsibility for the fall of the KONOYE Cabinet, which had wished to seek the solution of Japan and America's differences by diplomatic means.

Referring to the time Japan gained to attack Pearl Harbour unexpectedly by delaying formal breaking off of diplomatic relations, it was shown that the Emperor had insisted on the breaking off of relations before war, and that TOJO had many times been reminded of this

Admiral NOMURA did not consider the last message which he delivered to the Americans as a formal breaking off of relations. A considerable amount of evidence was heard in this connection regarding the timing of and delay to messages passing between America and Japan and particularly to the delay in delivery of President ROOSEVELT's message to the Emperor. An affidavit from Sir Robert CRAIGIE regarding Japanese tardiness in informing him of the existence of a state of war was also introduced and produced a defence request to have Sir Robert CRAIGIE brought to Tokyo for direct examination. The Tribunal refused this request. The final Japanese order to attack Pearl Harbour was given on the 1st December and a time chart was produced to show that Japan had actually started warlike operations before the issue of the Imperial Rescript declaring war.

From the 18th November to the 25th November Mr. Joseph BALLANTINE, formerly Special Assistant to the United States Secretary of State, gave evidence on the course of the diplomatic negotiations between America and Japan, in the course of which he ascribed the change in America's attitude to Japan during the Washington talks to Japan's breaking away from the Nine-Power Treaty. During this evidence the Chief Prosecutor, Mr. KEENAN, tried to shorten the evidence and evoked from the President of the Tribunal that a fair trial was more important than a speedy one.

On the 25th and 26th November Admiral RICHARDSON, Commander-in-Chief of the United States Fleet from January 1940 to February 1941, gave evidence of the Naval aspects of the attack on Pearl Harbour.

This phase of the prosecution was concluded on the 27th November with documents relating to the political crisis in Japan in 1944.

On the 27th and 29th November evidence was heard, out of order, on Japanese treatment of and atrocities to prisoners of war in Burma.

The Court did not sit on Armistice Day and on American Thanksgiving Day, 28th November.

Mr. KEENAN left Tokyo on 28th November for an indefinite stay in the United States for consultation with the American authorities about trials. The Indian Judge, Mr. PAL, returned to Tokyo on 30th November.

During the period from the 16th October to the 15th November five Japanese were tried at the Minor War Crimes Trials in Yokohama in cases involving British prisoners of war. Three received death sentences and the other two prison sentences of twelve and thirty years. Ten British prisoners of war were involved.

During the period from the 26th October to the 25th November progress has been made by the British Minor War Crimes Liaison Section of General Headquarters, Supreme Commander for the Allied Powers, to speed up the procedure for arrests of suspects wanted in South East Asia. Supreme Commander for the Allied Powers has agreed with the Section's suggestion for direct access to the Japanese Government on certain matters through a specially appointed Japanese Liaison Officer.



II. Extract from a report dated 9th January 1947 concerning the Tokyo Major War Criminals Trial.

Whereas the proceedings at the Major War Criminals Trial in Tokyo during the month of November were mainly of political interest the proceedings during December were such as to qualify for the title of a "month of horrors". Apart from the Dutch phase of the Prosecution which lasted from the 3rd to the 9th of December, almost the entire month was taken up with evidence of Japanese atrocities throughout the so-called "Greater East Asia Co-prosperity Sphere".

The Dutch phase met with immediate objection from the defense, who claimed that the Dutch prosecutors had no right to present a case, as Holland was not a "Potsdam" signatory. The defense also claimed that the case was being argued by Holland and not by the Netherlands East Indies authorities. Sir William WEBB dealt with this objection summarily as having no foundation in fact, law or reason. When, in putting the case of conspiracy against the Netherlands East Indies, the Dutch Prosecutor read the text of Japanese economic agreements with the Netherlands East Indies, the defense objected on the ground that no contract had been broken. But Sir William WEBB overruled the objection, saying that "agreements may facilitate aggressive war". The argument was made that the Japanese, by suppressing the news of Japan's surrender for one week and endeavouring to set up an independent Java, had continued their conspiracy even after the surrender, attempting to cheat Holland. The bulk of the Dutch case was given to describing Japanese rule in the Netherlands East Indies, with the usual tale of suppression and police control designed to reduce the country to a state of servitude similar to that of Korea and Formosa.

The Dutch phase was followed, on December 10th by the Philippine phase, which was devoted entirely to testimony - of a most lurid kind - about atrocities.

On December 16th, the Australian Prosecutor, Mr Justice HANSFIELD, introduced a new phase, "Breaches of the Laws and Customs of War". Herein he named the defendants TOJO, KIMURA, MUTO, SATE, TOGO, SHIGEMITSU, SHIMADA, OKA, NAGANO (who has subsequently died), SUZUKI, UMEZU, and ITAGAKI, by reason of the positions they held in the Japanese Government or armed forces, as directly responsible for the brutalities to prisoners of war. He gave some interesting figures on the subject. Whereas 7,130 (or 5.1 per cent) of a total of 142,319 British P.O.W's in Germany and Italy died in captivity, 12,433 (or 24.8 per cent) died of a total of 50,016 British P.O.W's in Japanese hands.

Thereafter, until the end of the month, evidence was heard on treatment of prisoners of war and internees not only in all the territories overrun by Japan, but also on the prison ships on which they were transferred from one country to another.

On December 30th, a defense motion for one month's recess at the end of the prosecution, in order that the defense might prepare its case, was heard, and the President, after discussion with his colleagues, agreed to grant a recess of a fortnight. In the hearing of this motion the prosecution stated that they expected to finish their case during the week beginning January 13th. I understand from the Chief British Prosecutor that this speed-up in the prosecution's case has been the result of permission granted by the Court to present much of the evidence of atrocities that was contained in affidavits in summary form. Also, the defense appears to have realised the undesirability of cross-examining atrocity witnesses. It is probable that before the recess the prosecution, in answer to defense motions, will present a paper linking the individual defendants to the various counts of the indictment. The prosecution may also present (and if it does it hopes to do so in documentary form) a 300 page summary of its case.



13th February 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

FORTHCOMING TRIALS IN THE BRITISH ZONE.

(Received in the Secretariat 12.2.47).

1. Trial of Englebert LAP and Karl NEULIST. (Oflag XII B case).

This trial will open at Essen on February 18th 1947.

The defendants are accused of responsibility for the wounding of a British Officer, P/W, at MADEMAR about September 1943.

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2. Trial of Karl MOELLER, Anton NICHOLAISEN and Claus SHOMACKER. (Eddelak case).

This trial will open at Hamburg on February 18th 1947.

The charges are as follows:

1. Against MOELLER and SHOMACKER. Ill-treatment of Allied Nationals employed as slave labour in the vicinity of EDELLAK between January 1st, 1941 and a date unknown in 1943.
  2. Against NICHOLAISEN and SHOMACKER. Ill-treatment of Allied Nationals in the vicinity of EDELLAK between a date unknown in 1943 and May, 1945.
  3. Against NICHOLAISEN only. For issuing instructions, whilst in charge of the LANDWACHT in EDELLAK, that Allied airmen were not to be taken prisoner of war alive.
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3. Trial of Rudolf GUENTHER, Ernst HOFFMAN, Gustav JEPSEN, Heinrich SUERIG, Otto THUEMMEL, Gottfried DROSSEN and Hans HORSTMANN. (Wilhelmshaven-Banterweg case).

This trial will open at Hamburg on February 4th 1947.

The defendants are accused of ill-treatment and killing of Allied Nationals interned in the BANTERWEG Concentration Camp between September 1944 and April 1945.

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4. Trial of Hugo GRUNER and Rudolf BIRLIN. (Rheinweller case).

This trial will open at Recklinghausen on February 20th 1947.

The defendants are accused of the killing of four unknown Allied airmen, P/W, on or about October 7th 1944 at SCHLIENGEN.

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