

9/45.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

Notes of Meeting of Committee III held on 9th October, 1945 at 3 p.m.

In the Chair, M. Stavropoulos, Greece.

There were also present:

Dr. Mayr-Harting,	Czechoslovakia,
Dr. Erik Schram-Nielsen,	Denmark,
Commander M.W. Mouton,	Netherlands,
Dr. Radomir Zivković,	Yugoslavia.

In the absence of the Chairman, Dr. Eder and the Acting Chairman, Mr. Wold, M. Stavropoulos took the chair, the Committee having unanimously ruled, that in the absence of the Chairman and the Acting Chairman, the other members of Committee III will take the chair in turn.

I. Criminality of attempts to Denationalise the Inhabitants of Occupied Territory.

Dr. MAYR-HARTING referred to the report carried in the last meeting of the Committee, and in the meantime distributed as Doc. C.149 and submitted for consideration, whether Committee III should not, in addition to this report, propose to the Commission an alteration in the working list of War Crimes by replacing the present item "denationalisation" by the term Genocide as proposed by Dr. Lenkin in Chapter IX of his book "Axis Rule in Occupied Europe."

M. STAVROPOULOS pointed out that Dr. Lenkin's term is wider than the term "denationalisation". He said the Committee were concerned with other aspects. In the case of murder it could be ignored that the general intention was denationalisation.

Dr. MAYR-HARTING did not agree with this view and referred to Dr. Lenkin's distinctions between physical and cultural "genocide" etc. The same distinction is drawn in Doc.C.149, Par II.

Dr. ZIVKOVIC also declared that in his view genocide was the wider term. Committee III should not propose any addition to its report, but should leave it to the members of the Commission to use the term "genocide". In his view this notion of "genocide" should not be identified with denationalisation. If one starts from the fundamental motive of an aggressor to kill either the body or the soul of the nation then anything that has been done by Germany, or to a certain extent, by Italy, towards some of the United Nations would fall within the term "genocide".

The discussion was concluded with the general assent to the proposition that it should be left to the Commission as such to consider the possibility of replacing or supplementing the working list of war crimes, and Committee III would deal with this question if it were referred to it by the Commission.

II. The Czechoslovak Case No.26 (Classification of Crime committed in Czechoslovakia in March 1939.)

The Committee discussed the question referred to it by Committee I as stated in Doc.III/16 and in the Minutes No.31, of the Meeting held by Committee I on the 19th September 1945.

The Chairman, (M. STAVROPOULOS) pointed out that the problem before the Committee was whether or not the Four Power Declaration of 8th August, 1945, had made a change in the relevant provisions of International Law.

Dr. MAYR-HARTING said: The question arose in connection with the Czechoslovak charge No.26 which dealt with a case the type of which occurred very frequently between the Munich Conference (29th September 1938) and the occupation of the rest of Czechoslovakia (15th March 1939). SS gangs came to Czechoslovakia to provoke "incidents" which served the German propoganda machine with samples of the alleged terrorisation of the remnants of the German left in Czechoslovakia after Munich. These incidents purported to be one of the pretexts for the occupation of the remnants of the Republic. During the beginning of March 1939 (i.e. before the occupation of the rest of the Republic) Dietz came with a band of SS men to the Moravian town of Jihlava, and with the help of local German Youth Organisations provoked a clash with the Czechoslovak Police and members of the local Czechoslovak population. Both amongst the Police and the Czechoslovak population were victims of this outrage. According to a declaration of the President of the Czechoslovak Republic made by virtue of the Czechoslovak Constitution Czechoslovakia has considered herself in a state of war with Germany since September 1938. The Czechoslovak National Office therefore considers the present case as a war crime in the technical sense. When the case was considered in Committee I last year, some of its members felt that they could not accept this view. The criminal was therefore listed on B2 only. In the opinion of the Czechoslovak authorities the position in International law has been changed by the Four Powers Agreement of 8th August 1945. Dr. Mayr-Harting particularly referred to Article 6, paragraph c, of the Charter of the International Military Tribunal dealing with crimes against humanity, enumerating murder and other crimes committed against any civilian population, before or during the war. If the major criminals are to be prosecuted for crimes against humanity in the same way, we have to prosecute the minor criminals too not only for war crimes in the technical sense but also for crimes against humanity. If war crimes and crimes against humanity of the major criminals are dealt with in the same way as far as procedure is concerned, it is a matter of course that also the crimes against humanity of the minor criminals are dealt with in the same way as their war crimes. The consequence is that minor criminals are to be surrendered for their crimes against humanity as well to the State in the territory of which these crimes were committed. Before this can be done they have to be charged at and listed by the Commission. Dr. Mayr-Harting went on to state that the United Kingdom delegate, had, in Committee I, disagreed with this view, and this was the reason why the question had been brought before Committee III. Dr. Mayr-Harting proposed that Committee III should not deal with the aspect of the case based on the consideration whether or not Czechoslovakia was at war at the beginning of March 1939, but that Committee III should restrict itself to the question whether crimes against humanity committed against allied subjects or on allied territory should be dealt with in the same way as war crimes.

Dr. MAYR-HARTING recalled the lengthy discussions conducted in this Commission in the matter of crimes committed against the Jews in Germany and quoted the following paragraph from the letter from the then Lord Chancellor, to Sir Cecil Hurst, dated 23rd August, 1944:

" Thirdly, in your letter of 31st May you refer to a "Category of enemy atrocities which does not fall within the definition of war crimes, namely, atrocities committed on racial, political or religious grounds in enemy territory. This would open a very wide field. No doubt you have in mind particularly the atrocities committed against the Jews. I assume there is no doubt that the massacres which have occurred in occupied territories would come within the category of war crimes and there would be no question as to their being within the Commission's terms of reference.

No doubt they are part of a policy which the Nazi Government have adopted from the outset, and I can fully understand the Commission wishing to receive and consider and report on evidence which throw light on what one might describe as the extermination policy. I think I can probably express the view of His Majesty's Government by saying that it would not desire the Commission to place any unnecessary restriction on the evidence which may be rendered to it on this general subject. I feel I should warn you, however, that the question of acts of this kind committed in enemy territory raises serious difficulties, and it would probably be better that the Commission should not concern itself with these until the matter has been fully considered in the light of your recent recommendations. His Majesty's Government do attach very great importance to the investigation which they feel sure is proceeding of the massacres committed in the occupied territories and the identification of those responsible. "

Dr. MAYR-HARTING, commenting on this paragraph, said that the then Lord Chancellor distinguished between two categories of crimes against humanity, namely, (1) crimes committed in occupied territories and (2) crimes committed in Germany. If for a moment we admitted that, at the beginning of March, 1939, there was no war, we find in the Czechoslovak case No.26, a third category of crimes against humanity, namely crimes committed in Allied territory, not occupied, before the war.

Dr. MAYR-HARTING further quoted the statement made on January 31st, 1945, in the British House of Commons by the then Minister of State, Mr. Richard Law, as follows: "Crimes committed by Germans against Germans are in a different category from war crimes and cannot be dealt with under the same procedure. But in spite of this, I can assure my Hon. friend that His Majesty's Government will do their utmost to ensure that these crimes do not go unpunished. It is the desire of His Majesty's Government that the authorities in post-war Germany shall mete out to the perpetrators of these crimes the punishments which they deserve." "The authorities to which I refer are the authorities who will be in control in Germany when the war comes to an end. I think I can leave it to my hon. and learned friend to imagine who those authorities will be."

If we now investigate, Dr. MAYR-HARTING continued, in which direction this programme has been fulfilled and in which direction it has not been fulfilled, we find the following: From the provisions regulating the establishment of Military Government Courts in Germany, as summarised and commented upon in Dr. Schwelb's paper Doc.C.132, it can be seen that these Courts are competent to try crimes against humanity especially those committed by Germans against Germans in Germany. The programme outlined by Mr. Richard Law, has been given effect as far as minor criminals are concerned in two directions. A machinery has been created for the punishment of crimes against humanity and the procedure is different from that applied in the case of war crimes in the narrower sense.

Through the Agreement of the 8th August 1945, again machinery has been created, but in this case the procedure is the same for war crimes and for crimes against humanity. The question arises whether the "3rd category"

of crimes against humanity in the sense mentioned previously, i.e. crimes against humanity committed before the war on Allied territory or against Allied nationals is to be dealt with in the way as category I is being dealt with, or in the way Category II is being dealt with. The question is, are crimes against humanity committed before the war on Allied territory, to be treated like war crimes, or like crimes committed against Germans?

Dr. MAYR-HARTING went on to point out that the Nazis have before and during the war committed crimes which form part of a policy adopted by the Nazi government from the outset. The reason which led to the Moscow Declaration that war criminals are to be surrendered to the countries where they have committed their crimes, holds good also as to crimes against humanity. The crimes against humanity are part of the same policy from which the war crimes proper emanated. In the meeting of Committee I on 19th September 1945, the United Kingdom representative declared: We fully agree, however, that Dietz, who was guilty of a crime on Czechoslovak soil, should be transferred to the Czechoslovak authorities as a criminal, but not as a war criminal.

Commenting on this statement, Dr. MAYR-HARTING said: I am just wondering how that can be managed because the Continental Extradition Treaties are not applicable, under them no State surrenders its own subjects: a criminal like Sepp Dietz can only be surrendered if he is dealt with like a war criminal. Dr. Mayr-Harting further dealt with Mr. Beaumont's view which was to the effect that Article 6 of the Charter of the International Military Tribunal was only an indictment and did not as yet constitute a tried and accepted principle of International law. He said that he did not agree with this view and that in his opinion a new law had been created by the Four Power Agreement. Apart from this, the Czechoslovak National Office did not ask the Commission for a sentence against Dietz; the submitting of a charge to the Commission is certainly not more than an indictment. Whether there is a law making, what Dietz had done, a criminal offence would be found out by the Czechoslovak Courts as well as it will be found out by the International Military Tribunal with regard to the major war criminals.

M. STAVROPOULOS said that Dietz had, no doubt, committed a crime. There was no German Government in existence, and why do not the Czechoslovak authorities ask the American, British, French or Russian Military authorities to hand the man over to them in order that he should be tried as a common criminal.

Dr. MAYR-HARTING replied that there was no legal basis for that.

M. STAVROPOULOS referred to the papers containing statements by the British and American authorities according to which the Allied Governments could ask the military authorities for surrender.

Dr. MAYR-HARTING replied that he thought that all of us were opposed to the idea that persons should be handed over who are not on our lists, but apart from that there was no mention in the correspondence in question of other criminals than war criminals.

M. STAVROPOULOS said that if it was not a war crime, it was outside our authority.

Dr. ZIVKOVIC said that the question was whether offences committed before September 1939 were war crimes. The reply depended on whether the Czechoslovak Republic was then in a state of war. If the reply is given from the traditional point of view of International law, it is: no,

and then the reply to our question is: it is not a war crime. If it is not a war crime, we have to consider the statements by the Lord Chancellor and by Mr. Richard Law, and we have now before us the Agreement of 8th August, 1945. In Dr. Zivković's view Article 6 of the Charter has to be read in connection with the Articles of the Agreement, particularly with Articles 4 and 6. The whole paper (Cmd. 6668) speaks of war crimes. Article 6 of the Charter speaks of persons "who committed any of the following crimes." It is not by accident that the war criminals are held responsible for all three types of crimes which are akin. There is no intention to separate the three categories of Article 6 (a, b, c) into water-tight compartments. Articles 4 and 6 of the Agreement do not refer to the narrow group of war crimes within the meaning of Article 6, paragraph (b). Crimes against peace (Paragraph (a)) are the exclusive speciality of the major war criminals, but not only the planners, i.e. the major war criminals, but also the actual perpetrators are to be punished, but how can any government say we want to try the perpetrators of war-crimes, but we do not want to try the perpetrators of crimes against humanity? Dr. Zivković fully agreed with Dr. Mayr-Harting's opinion that crimes falling under paragraph (b) and crimes falling under paragraph (c), should be dealt with on the same footing. It was more difficult for him to accept the view that Czechoslovakia was at war with Germany before the rest of the United Nations were at war. In his opinion we have here a conspicuous case of a crime against humanity. Dr. Zivković believed that the War Crimes Commission was entitled to register such charges and to supply the names of the registered criminals to the Allied military authorities for surrender to the requesting Government. Had this Agreement of 8th August been signed before the War Crimes Commission was formed, there would not have been any doubt for this Commission to deal with all these crimes. Dr. Zivković said lists of key men had been produced and charges against major war criminals had been listed, regardless of the fact whether the demanding Governments will be able to try the major war criminals. Dr. Zivković's conclusions were: Crimes against humanity fall within the competence of the United Nations War Crimes Commission, the crimes committed by Dietz are crimes against humanity, therefore they are to be registered by the War Crimes Commission.

Dr. SCHRAM-NIELSEN said that he was in agreement with Dr. Zivković's conclusions, but that he arrived at them by a different argument. In his view the relevant point was that a crime had been committed in circumstances which are corresponding to war. Nowadays war starts in a different way from ^{which} it started in previous times, e.g. no declaration of war. The circumstances under which the crime of Dietz was committed corresponded to war, it was a fight between men belonging to armed formations of different nations.

Dr. MAYR-HARTING pointed out that there had also been committed crimes against humanity in circumstances not corresponding to war, e.g. raids by Germans on Czechoslovak territory in order to murder the political opponents of Nazism who had found refuge in Czechoslovakia.

Dr. ZIVKOVIC said that the Commission could open a new file for the listing of criminals against humanity.

M. STAVROPOULOS: We consider them criminals and propose something new.

Dr. MAYR-HARTING: All crimes falling under Article 6 (c) are on our working list of war crimes. We could list Dietz, e.g. for murder.

M. STAVROPOULOS: A list should be produced of people who have committed crimes against humanity, which will enable the respective Governments to go to the military authorities and ask for their surrender.

Dr. MAYR-HARTING: In our opinion there is no reason why they should not be surrendered, and therefore the Commission must list them. If we start a list we must start from the opinion that the people listed therein shall be surrendered.

Dr. ZIVKOVIC: The principle is that the perpetrators of crimes against humanity should be surrendered to the Governments concerned.

Dr. SCHRAM-NIELSEN: Is a German who has committed a murder in Denmark say in 1925 also to be surrendered?

Commander MCUTON: What is the time limit back to history?

Dr. MAYR-HARTING: The crimes must be part of the policy adopted by the Nazis.

Dr. SCHRAM-NIELSEN: There must be a sort of relation to the policy which led to the war.

Dr. ZIVKOVIC: We have to cover 1) all the cases of crimes which were committed against the inhabitants of the Axis countries prosecuted by their own Governments, Jews, Anti-Fascists and so on, 2) Allied nationals who either during or before the war fell into the hands of the Axis powers were unpleasant to the Axis Governments and were ill-treated or exterminated, they also should be listed and surrendered. The question of jurisdiction was, of course, more complicated.

Dr. ZIVKOVIC mentioned the Yugoslav cases which were now before Committee I where Italians were accused of having committed crimes against Italian citizens of the Yugoslav race.

Dr. SCHRAM-NIELSEN: We ought to call them war criminals in the wider sense, it is always necessary that they were "acting in the interests of the European Axis countries". A war crime may be committed before the war.

Dr. MAYR-HARTING: We can come to the conclusion that the case in question falls under (b) and not (c).

Dr. ZIVKOVIC: We can classify that charge as alleging a war crime according to paragraph (b) and not as a crime against humanity under paragraph (c), then we need not discuss whether crimes against humanity are to be listed.

Dr. SCHRAM-NIELSEN: The whole agreement deals with War Criminals, therefore the crimes under Article 6, a, b, c, are all war crimes in the wider sense, and the crimes falling under Article 6, paragraph (b) are war crimes in the narrower sense.

Dr. ZIVKOVIC said that cases like the Yugoslav cases against Italians for crimes against Italian nationals should also be examined and listed by the Commission. Whether they can be listed formally in the same way as war crimes in the narrower sense and surrendered to the Yugoslav Courts is a different matter.

Dr. ZIVKOVIC would like Committee III to reach a conclusion in principle that the Commission should list: (1) Crimes against Axis citizens, these have to be listed somehow. (2) Crimes against Allied Nationals. These have to be listed as War Criminals. They have to be surrendered to the Governments concerned in the same way as war criminals proper. (3) To leave it to Committee I, to determine the practical way how to advise the Military Authorities, etc. etc.

Dr. MAYR-HARTING felt that Committee III would prejudice the Yugoslav cases which will come up to it, if it comes to so wide a conclusion today. He would prefer Dr. Schram-Nielsen's opinion and the wider question should be the subject matter of a new meeting at a time when Committee III will have received from Committee I, the material relating to the Yugoslav cases. The committee should not go further than is necessary at present.

Dr. ZIVKOVIC: You are attaining a principle only for the sake of a particular case. We should try to reach a principle for a series of cases which may be brought before the War Crimes Commission.

Dr. MAYR-HARTING: The principle covers all crimes against humanity, committed against Allied Nationals or on Allied territory.

Dr. SCHRAM-NIELSEN: We can never go further than to say that all crimes mentioned under Article 6, are war crimes in a wider sense. If they have acted in the interests of the European Axis they are war criminals in the wider sense.

Dr. ZIVKOVIC: This principle cannot do anybody any harm.

Dr. MAYR-HARTING: It could be argued that para (c) covers only crimes against enemy nationals and that the analogous crimes committed against Allied subjects or on Allied territory fall under para (b).

Commander MCUTON asked the Secretary whether any material was available as to the discussions which led to the formulation of Article 6 of the Charter.

Mr. SCHWELB said that to his knowledge nothing had been published except the statement by Mr. Justice Jackson in "The Times" of 9th August 1945.

Commander MCUTON: The present case does not constitute a war crime within paragraph (b). Are we entitled to give an interpretation to Article 6, which deals only with the jurisdiction of the International Military Tribunal?

M. STAVROPOULOS: If the case falls within (b) our task is finished.

Commander MCUTON: In my opinion it does not fall within (b)

Dr. ZIVKOVIC: It does not fall within (b) but the question is whether or not it is to be treated as if it were falling under (b). In my opinion it falls under (c).

M. STAVROPOULOS summed up that the Commission's opinion appeared to be that crimes against Allied Nationals committed before the war fell under paragraph (c), first sentence. The question was whether Committee III should say that the terms of reference of the United Nations War Crimes Commission covered war crimes in the wider sense or whether Committee III should make a suggestion that the Commission ought to have their terms of reference extended.

Dr. ZIVKOVIC: In the opinion of Committee III, they are war crimes in the wider sense, and if this should not be acceptable to the Commission, the Commission should ask for the extension of the terms of reference.

M. STAVROPOULOS: We can say that since the Agreement exists, we must compile a list of people who have committed crimes against humanity.

Dr. MAYR-HARTING: We have to decide that this type is so similar to war crimes in the narrower sense that we assume it was within our terms of reference. I do not think we should propose that the Commission ask for the extension of their terms of reference.

Commander JOUTON: I disagree completely with the view expressed by Mr. Beaumont that the agreement of the 8th August was only an indictment.

Dr. ZIVKOVIC: Article 6 was an agreement "constitutif de droit."

Dr. SCHRAM-NIELSEN: If what is said in Article 6, is not the law, what has the tribunal to act upon?

M. STAVROPOULOS contrasted the position in 1919 where the question had only been studied with the position created by the Agreement of 8th August. What is stated in Article 6 of the Charter purports to be law today.

Dr. SCHRAM-NIELSEN: Every sentence of the Court must be based on the law laid down in the Agreement.

Dr. SCHWELB was asked to prepare a report of Committee III based on the views expressed in today's discussion.

III. LAW REPORT SERIES No.1.

The consideration of Document III/19 and the Law Reports Series No.1. was adjourned to the next meeting of Committee III which will be held on 16th October 1945 at 3 p.m.