

UNITED NATIONS WAR CRIMES COMMISSION.

Detention, Arrest and Handing Over of War Criminals in Austria.

(Note by the Secretary to Committee III)

- I. In Doc. Misc. No. 65, the provisions enacted by the Four Powers occupying Austria as far as they relate to the treatment of war criminals, have been circulated and annotated. In the quoted document, reference was made particularly to Art. V, paragraph 7 of the Four-Power Agreement dated Vienna, 28th June 1946.

Under this Agreement, the tracing, arrest and handing over of war criminals comes under the so-called reserve powers of the Allied Commission. In particular the Four-Power Agreement distinguishes between persons wanted by one of the four Powers or by the International Military Tribunal on the one hand, and persons wanted by other United Nations. In the case of persons wanted by one of the four Powers or by the International Military Tribunal, for war crimes or crimes against humanity, no condition is laid down for the tracing, arrest and handing over of such persons. In the case of persons wanted by other United Nations for war crimes or crimes against humanity, it is laid down that they will be traced, arrested and handed over if they are included in the lists of the United Nations War Crimes Commission.

- II. On 23rd December 1946, the Allied Council for Austria gave to the Austrian Minister of Justice more detailed instructions as to the detention, arrest and handing over of war criminals. The letter from the Allied Council to the Austrian Minister of Justice has been published in No. 13 of the Gazette of the Allied Commission for Austria, item 13. It reads as follows:

" 13. Detention, Arrest and Handing Over of War Criminals.

The Allied Council approved the following letter to be sent to the Minister of Justice:

1. The Austrian Government will be notified concerning the measures which it is necessary to take in regard to the persons you asked about in your letter.

2. The Austrian Government must submit regularly to the Allied Council, lists of all arrested war criminals. In regard to each person mentioned in the list submitted by the Austrian Government, it is necessary to be guided by the following general principles:

(a) If this person is looked for by an organization acting on behalf of the Four Powers, or by one of the Four Powers, the Austrian Government will have to submit to the Allied Council any information concerning the guilt of the given person which is at the disposal of the Austrian Government. The Allied Council may then give the Austrian authorities an order about his arrest and his immediate delivery to the authorities of the Government which are looking for him. If within the period of two meetings of the Allied Council following the day of the receipt of the information by the Allied Secretariat there is no decision by the Allied Council, then the High Commissioner of the zone where the war criminal is, may give an order for his arrest.



(b) If the person is sought by any other member of the United Nations, and if he is also included in the list of the United Nations Commission on War Criminals, the measures indicated in sub-paragraph (a) will apply to him.

(c) If the person does not fall under the two preceding sub-paragraphs, but comes within the jurisdiction of the Austrian Government, the latter will have the authority to try him with the reservation that the proceedings and the punishment will be subject to the control of the Allied Council.

3. Supplemental information concerning special cases mentioned in your letter will be sent to you.

Vienna, 23rd December, 1946."

As will be seen from paragraph 2(b) of the Allied Council letter, the inclusion of persons in the list of the United Nations War Crimes Commission is again stated as a condition for the handing over of persons to an Allied State other than one of the four occupying Powers.

III. In No.1 (14) of the Gazette of the Allied Commission for Austria, there is published an instruction sent by the Executive Committee on behalf of the Allied Council to the Federal Chancellor for Austria on 31st January 1947 concerning the disposal of 17 war criminals, two of them being listed on the Commission's list, and 15 not listed. The letter to the Federal Chancellor reads as follows:

" 9. Disposal of 17 War Criminals.

The Executive Committee, on behalf of the Allied Council, sent the following letter to the Federal Chancellor:

With reference to the letter of the Minister of Justice of 20th July 1946 (No. 20.886/46) addressed to the Chairman of the Allied Council for Austria and to the Allied Council's instructions in reply (SECA/702), the Allied Council directs that you be informed as follows:

Two of the individuals listed, namely Ignaz Hans Berger and Josef Kunert, are wanted by the Czechoslovak Government and their names appear in the list of the United Nations Commission on War Criminals.

The Allied Council directs that those individuals be handed over as soon as possible to the Czechoslovak Government for prosecution, as provided in the Allied Council's letter under reference. The Allied Council will inform the Czechoslovak Government of this.

Concerning the other 15 persons mentioned in the letter, who are detained by the Austrian authorities on charges of war crimes, you are advised that those individuals are not at present included in the United Nations War Criminals List. However, the Allied Council has no objections to decisions by the Austrian authorities that these persons be extradited to the interested countries as contemplated in the letter of 20th July 1946, but in each case it is necessary promptly to notify the Allied Council.

Vienna, 31st January, 1947. "