

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

UNITED NATIONS WAR CRIMES COMMISSION.

Article on the United Nations War Crimes Commission

in

"The International Law Quarterly".

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

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

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

" The United Nations War Crimes Commission.

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

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

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

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

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

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

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

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

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

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