

Note: This is a preliminary document intended exclusively for the personal use of members of the Commission and their substitutes.

SECRET

III/9
15 September, 1944.

UNITED NATIONS WAR CRIMES COMMISSION

REPORT OF THE SUB-COMMITTEE APPOINTED TO CONSIDER
WHETHER THE PREPARATION AND LAUNCHING OF THE PRESENT
WAR SHOULD BE CONSIDERED "WAR CRIMES"

On 6th June, 1944, the Commission had before it a resolution proposed by Committee III on the subject of the "Scope of the Retributive Action of the United Nations" (Doc. C.20). This resolution contained inter alia the following statement:

"From this general point of view the United Nations War Crimes Commission considers that the following categories of crimes are within the scope of its work:

"1. The crimes committed for the purpose of preparing or launching the war, irrespective of the territory where those crimes have been committed".

The Commission referred this statement back to the Committee for further consideration and the Committee invited Dr. Eßer, Lieut.-Col. Hodgson, Dr. de Moor, and Sir Arnold McNair (if he were willing to serve) to form a sub-committee to consider whether the crimes mentioned in the above extract, and the preparation and launching of the war itself should be considered as war crimes.

The other members, including Sir Arnold McNair, have met and considered a note which the latter has been good enough to prepare, (Doc. C.43). As the result of their discussions, the members Hodgson and de Moor recommend Committee III to adopt the following conclusions:

- (I) Acts committed by individuals merely for the purpose of preparing for and launching aggressive war and not falling within the next paragraph are, lege lata, not "war crimes".
- (II) Acts committed before the outbreak of war which command or procure the commission of "war crimes" after the outbreak of war, such as a pre-war instruction that no prisoners should be taken, which was followed and resulted in no prisoners being taken after the outbreak of war, are war crimes.
- (III) However, such acts as mentioned sub.(I) and especially the acts and outrages against the principles of the laws of nations and against international good faith perpetrated by the responsible leaders of the axis powers and their satellites in preparing and launching this war are of such gravity that they should be made the subject of a formal condemnation in the peace-treaties.
- (IV) It is desirable that for the future penal sanctions should be provided for such grave outrages against the elementary principles of international law.