CHAPTER XIII

ARRANGEMENTS FOR THE SURRENDER OF WAR CRIMINALS

INTRODUCTORY NOTES

Whereas procedure for apprehension involved practical difficulties in locating individuals guilty of war crimes, the procedure of surrender raised legal problems, in that it was an operation of limited duration and for a specific purpose for which there were no precedents. The nearest rules and machinery were those relating to the extradition of criminals in time of peace. These were, however, never considered to be suited to the case of war criminals. The laws of extradition were designed to protect individuals wanted for trial by one country and residing in another, either from unfair trial, or from prosecution for acts whose criminality was disputable. In particular, they were devised with a view to protecting individuals from being prosecuted for so-called “political” crimes, which were in most cases the result of exercising in their own country fundamental political freedoms, considered to be inalienable rights in democratic countries. For these reasons the procedure of extradition, as it developed during the last century and a half, implied the sovereign right of a state to grant asylum to refugees or immigrants with whose judicial record it was satisfied, and the erection of a complicated and slow moving machinery for examining each case on its merits.

None of these factors applied to the case of war criminals. Their crimes were of such a heinous nature that there was no doubt as to their degree of criminality, and it was, therefore, even necessary to ensure that the normal procedure of extradition was not unwittingly applied in their case, and surrender refused on the grounds that the crime was of a political nature. This applied particularly to those countries which had a firmly established tradition of giving asylum to foreigners deemed to be bona fide “political” refugees. Consequently the rules, procedure and machinery advocated by the Commission, and those eventually developed by Allied Governments and military authorities, were from the outset divorced from the peace time notion of extradition. A technical distinction came to be drawn between extradition proper and the surrender of war criminals. This distinction enabled a practical scheme to be established, though its application was fraught with difficulties and obstacles of all kinds.

The right of any nation to bring captured criminals before its own courts for crimes committed on its territory or against its nationals was a firmly established practice of states, and was never disputed. Difficulties arose when the accused were apprehended by the authorities of one nation and were wanted for trial by another. These became still more complicated when a war criminal was apprehended by one nation and was claimed for trial by two or more nations.
This Chapter deals with discussions on the problems involved in determining conditions under which surrender was to be effected and the practical solutions found by the authorities concerned. One section deals with the proposals and recommendations of the Commission, and another with the actual arrangements made for surrendering war criminals to competent courts. Such activities of the Commission which were directly connected with these arrangements are included in the latter section. Two more sections deal respectively with the activities of other international bodies, and with the attitude of neutral governments.

A. PROPOSALS AND RECOMMENDATIONS OF THE COMMISSION

(i) DRAFT CONVENTION FOR THE SURRENDER OF WAR CRIMINALS

(1) Antecedents

During the first months of the Commission's activities much attention was paid to the question of how far existing rules of international law were adequate to cover the various phases of the procedure required for bringing war criminals to book, starting from their detection and arrest to their trial by the competent court. One of the phases considered from this viewpoint was that concerning the surrender of war criminals to the appropriate courts once they were apprehended.

(a) Reports of the London International Assembly

On this subject the Commission had the benefit of two reports made by members of the London International Assembly and studied by the latter in 1943, before the Commission had been formed by the Allied Governments concerned. One was a report submitted by the Czechoslovak member,\(^5\) to one of the Commissions of the Assembly (Commission for Questions concerned with the Liquidation of War). The other was a report of the said Commission to the Assembly, which was prepared by the Belgian member, who was Chairman of the Commission.\(^7\) Both reports agreed in substance that there were no fixed rules regarding the surrender of war criminals in particular, apart from the practice and treaties concerning the "extradition" of criminals in general. They also agreed that, so far as war criminals were concerned, the rules of extradition proper were "defective" and that there was a danger that many war criminals might escape punishment. The weakest point in the procedure for extradition was considered to be the lack of obligation on the part of the Governments to extradite criminals, deriving from the basic principle of the sovereign right of the requested State to decide upon each case with unfettered powers. To meet this situation both reports advocated in substance the following twofold course of action:

(a) The imposition of an obligation upon enemy powers to hand over war criminals under their jurisdiction to the power entitled to bring them to trial, by means of special clauses to be inserted in the terms of surrender (armistice) and/or peace treaties. Breaches of such obligation should be sanctioned by penalties.

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(1) II/5. The extradition of war criminals, report by Dr. V. Benes, dated 5.6.1943.
(2) II/4 Report of the Commission on some questions connected with the handing over of war criminals for trial (drawn up by M. de Baer).
(b) The conclusion of a special convention relating to the surrender of war criminals between the Allied nations to be eventually signed or adhered to by the neutral powers. Alternatively, the signing of a separate and temporary agreement with neutral powers, failing which concerted action should be undertaken by the Allied nations, with full pressure if need be, to induce neutrals to hand over war criminals without difficulty.

The above course was, thus, to cover all types of cases where a war criminal was to be handed over by one country to another, that is:

(a) The surrender of a war criminal by an enemy power to the Allied power concerned;

(b) The surrender of a war criminal by one Allied power to another;

(c) The surrender of a war criminal by a neutral state to an Allied nation.

In presenting their suggestions the authors of the reports made reference to the failure to secure the surrender of war criminals after the First World War and emphasised the importance of building up the legal machinery on time and with efficient means of enforcement. They both underlined the advisability of creating a purely executive procedure, thus departing from the judicial one governing the "extradition" proper, with a view to facilitating and expediting the trials of war criminals. They developed in detail numerous questions which they suggested should be dealt with in the proposed inter-allied convention, including those relating to conflicting claims for trial of the same criminal.

(b) Draft Convention of the Ministers of Justice

In addition to the above two reports, the Commission had also the benefit of a formal Draft Convention prepared by the Ministers of Justice of five Allied Governments in exile in London—those of Belgium, France, Luxembourg, the Netherlands and Norway.

The Draft was substantially prepared on the lines of the two reports of the London International Assembly, with the additional feature that it was constructed so as to include the handing over of traitors (quislings) in addition to war criminals proper. It was also conceived to include the surrender of a war criminal already tried and condemned by one nation, and wanted for trial by another nation, for other war crimes falling under its own jurisdiction. The Draft excluded, from the procedure devised in it, war criminals guilty of minor offences entailing a punishment of less than 3 years imprisonment. It stressed specifically that the procedure embodied constituted "an exceptional measure which did not prejudice the existing extradition treaties in any way"; thus underlining the fact that the procedure to be applied to war criminals was different from that concerning the "extradition" of criminals in general.

Regarding this different procedure, the Draft contained, in the first place, an enumeration of the conditions to be fulfilled when applying for the surrender of war criminals or traitors. These were separately laid down for individuals wanted for trial and not yet convicted by any nation, and for those already tried and convicted by a nation. In the former case the requesting State had to communicate particulars regarding the identity of the wanted individual, his crime and the maximum penalty which it entailed; a copy of the indictment or warrant for arrest; a summary
of the evidence in support; and a reference to the court before which the individual was to be tried. The request was to be accompanied by written assurances that there would be a fair trial, securing fundamental rights to the accused. In the case of an individual already convicted, the request had to contain a copy of the judgment with a summary of the evidence proving the guilt of the individual condemned.

A provision was inserted declaring the right of the requested State not to hand over its own nationals in certain cases. These were: when the accused had already been found guilty or not guilty by its national court for the offence in respect of which the surrender was requested (res judicata); when criminal proceedings against the accused were instituted for the same offence in his own country within six months of the date the request for his surrender was received; and, finally, when the requested State had found that the evidence submitted would be insufficient under its national laws to obtain a conviction, had the offence been committed within its jurisdiction.

In the case of an individual wanted for trial by several countries, the Draft provided that he should be handed over first to the country whose legislation contained the heaviest penalty. In case of equal penalties, the surrender was to be effected to the country having first requested it.

Rules were set forth for the disposal of individuals in specific cases. The surrender of an individual already under investigation or trial by the requested State was to be suspended. Where an individual was sentenced to detention in a penal institution in the requested country and was to be surrendered for another trial, the execution of the sentence was to be postponed. Whenever the sentence consisted of the death penalty, this was to be carried out without suspension, the assumption being that this would satisfy any requesting country that justice had been done.

Throughout the Draft the competent authorities to deal with the surrender of war criminals and traitors were considered to be the judicial authorities, thus making the procedure envisaged very similar to that of "extradition".

Drafted as it was, the Ministers of Justice blueprint was intended to operate both between the Allied nations themselves and between them and neutral states. This was expressed in a provision declaring that the Convention would "remain open to the signature of all Allied and Associated Powers of the United Nations and of Neutral States".

(2) Work of the Commission

(a) Enforcement Committee's Draft

The above Draft was introduced at the first meeting of the Enforcement Committee, held on 11th February, 1944, by the Dutch delegate, who suggested that it be taken as a basis for recommending a convention to the member Governments. The Draft was accordingly circulated to members of the Committee.(1)

(1) SC 2/1 142.44. Draft Convention for the surrender of war criminals (drawn up by the Ministers of Justice of certain of the occupied countries).
At the Committee’s second meeting, held on 22nd February, 1944, a discussion took place as to whether such a convention was required or not. The view prevailing that it was required, the Committee started to consider the matter in substance. Members opposed to a convention criticised the Draft from the following points of view:

(a) That it covered acts which were not war crimes in the proper sense, namely acts of traitors and quislings;

(b) That it required formalities and safeguards analogous to those of normal extradition treaties, and therefore did not meet the main requirement in the case of war criminals, namely, to make their surrender easy and speedy.

It was at this early stage that the suggestion was made that for war criminals a simplified administrative procedure was sufficient. The critics were of the opinion that the insertion of the criminals’ names on the Commission’s Lists should be sufficient justification to obtain their surrender from one Allied country to another, and that clauses in the terms of armistice and/or peace treaties would likewise provide a sufficient means for securing their surrender from enemy countries. The only concession was made in regard to neutral countries, for which it was recognised that a convention might be needed.

However, those in favour of solving the questions involved by means of a convention maintained a majority, and the Committee worked on the matter from February until August, 1944. After much discussion and consideration of many drafts and memoranda, the Committee reached a compromise. It maintained the proposal of recommending a convention and prepared a draft of its own, but it departed from the Ministers of Justice Draft in two important aspects. Firstly, it recommended a purely administrative procedure, and not a judicial one such as in the Ministers’ Draft. Secondly, it came to the conclusion that it would not be wise to attempt to obtain adherence of neutrals to any formal agreement, and consequently limited its draft to the surrender of persons wanted for trial between Allied nations only. As to the enemy countries, it endorsed the views that their obligations should be settled in the respective terms of armistice and/or peace treaties. On the other hand, it retained the original suggestion to cover, by the convention, the surrender of traitors or quislings, and made special provision to this effect.

All these points were underlined in a draft Explanatory Memorandum, which was to be attached to the draft Convention, and in which the general purpose of the Committee’s draft was formulated in the following terms:

“The purpose in view is to make it certain that the United Nations will 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, avoiding the complications and delays of normal extradition procedure, and, in particular, excluding the possibility of refusing surrender on the ground that the acts charged have the character of political offences.”

(1) See docs. II/12 of 30.3.44; II/18 of 13.6.44; II/19 of 15.6.44; II/29 of 23.6.44; II/22 of 29.6.44; II/25 of 18.7.44.
(2) C.37. 25.7.44. Convention for the surrender of war criminals and other war offenders. Draft presented by Committee II.
(3) C.44 25.8.44. Convention for the surrender of war criminals and other war offenders, Draft explanatory memorandum prepared by Dr. Liang and the Secretary General.
This last point was expressly inserted in a provision following those in which war criminals and traitors or quislings were respectively defined for the purpose of their surrender. The provision said that the surrender of both categories would be carried out "notwithstanding any contention that the offence was of a political character". The rather complicated definition of the Ministers' Draft, covering both war criminals and traitors in a single formula, was split into two separate parts in order to draw a clear line between the two classes of individuals involved. War criminals were defined as:

"Persons charged with or convicted of war crimes, including offences against the laws and customs of war, which were committed either within the jurisdiction of the requesting State or against that State or its nationals or the armed forces of the State".

The main point in this definition was that it gave a wide scope to the notion of war crimes, by conveying that there were, or at least could be, war crimes which technically did not represent offences against the laws and customs of war. The definition of traitors and quislings was likewise constructed on a very wide scale, particularly in order to cover cases of collaboration with the enemy which technically did not fall within the concept of "treason". They were defined as:

"Persons, nationals, or former nationals, of the requesting State who are charged with or convicted of giving aid or comfort to the enemy or of an offence committed with the intent to further the cause of the enemy or of an offence committed by means of the power or opportunity afforded by a state of war or armed hostilities or by hostile occupation of territory of the requesting State".

The procedure itself, as previously pointed out, was made an executive or administrative one, and the conditions for applying for and obtaining surrender were reduced to a minimum. They were restricted to the submission of identification data of the criminal and of an ordinary description of his crime, with a reference to the maximum penalty in the requesting State. In addition, the provision of written assurances for a fair trial was retained, as was the requirement to present a copy of the judgment for those tried and sentenced in absentia. As a safeguard that the "extradition" procedure would never be used instead, it was explicitly stated that "the person whose surrender was requested would in no case have recourse to any form of judicial procedure provided in the extradition treaties, laws or regulations of the requested State".

The rest of the Committee's text followed the same lines as the Minister's Draft, providing similar solutions for the disposal of individuals wanted by more than one country; of nationals of the requested country; of persons under criminal proceedings in the requested State; and of persons already condemned to death or to other punishments.

(b) Commission's Recommendations

The Draft Convention with its Explanatory Memorandum was considered and approved by the Commission on 29th August, 1944, with a few verbal amendments in the Memorandum.\(^{(i)}\)

\(^{(i)}\) See M.29, 29.8.44.
Several members made reservations regarding the attitude of their Governments. They were not satisfied that the executive procedure, as distinct from the judicial one, would adequately cover all possible cases or meet all requirements. The United States representative thought that the article providing that in no case would the surrendered individual have the benefit of a judicial recourse under the extradition treaties, laws or regulations, of the requesting State, was incompatible with the United States Constitution and might compel his Government to reject the Convention or to make a reservation when signing it. The Belgian delegate stated that his Government wished to retain all the safeguards originally envisaged in the Ministers of Justice Draft and dropped in the Committee’s text, concerning the submission of judicial evidence against the wanted person to the requested State, and not merely of an ordinary description of the alleged crime. He also wished the retention of the clause requiring the requesting State to describe the court due to try the wanted person.

Hope was expressed for an early convening of the diplomatic conference necessary for negotiating and signing the Convention, under the auspices of the United Kingdom Government.

The Draft Convention was submitted to all member Governments for consideration on 4th September, 1944.(1)

(c) Attitude of Member Governments

In January, 1945, a communication was received from the Yugoslav Government that they approved, in principle, the Draft Convention. Similar communications were received from the Governments of Czechoslovakia, and of Australia,(2) the latter suggesting certain additional arrangements.

In April, 1945, the tenor of a letter sent by the Foreign Office on 29th March, to all member Governments, excepting the Dominions and India, was communicated to the Commission for information.(3) It contained a full statement on the views of the United Kingdom Government, which subsequently proved to be decisive for the ultimate attitude which was to be adopted by all Allied Governments and for the arrangements finally made by them in this field.

The British Government stated that “the powers they possessed were sufficient to enable this matter to be dealt with rapidly and satisfactorily by executive action, provided that it was kept on an informal basis and not made the subject of a formal treaty”. They declared that, under the existing national law, they were empowered to repatriate by way of deportation any undesirable alien, and that they were prepared to do so in the case of aliens against whom there was a prima facie case that they were war criminals, or were guilty of treachery involving active assistance to the enemy. They further declared that, in respect of war criminals, they

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(1) C.47. 4.9.44. Convention for the surrender of war criminals and other offenders, Draft explanatory memorandum.
(2) See M.45 24.1.45, M.50 28.2.45 and M.71 19.7.45.
(3) C.91. 16.4.45. Convention for the surrender of war criminals and other offenders. Letter from the United Kingdom Government to certain member Governments.
would “attach all due importance” to the Commission’s Lists of war criminals when deciding upon requests for their surrender to Allied Governments. As regards traitors or quislings they would be satisfied with only two conditions before turning them over to the requesting State: that the wanted persons were nationals of the requesting State, and that there was prima facie evidence “that they had actively assisted a State at war with their own country”. They specified that, in the case of prisoners of war wanted as war criminals or traitors, the military authorities had also sufficient powers to ensure their surrender, under the same administrative procedure and conditions.

As a consequence, the United Kingdom Government rejected the recommendation to sign a convention as unnecessary to achieve the object proposed. The lead it gave in this matter did have a decisive effect on the final settlement between the Allied Governments. They all, in the end, followed the lines of the United Kingdom procedure and established an informal administrative machinery, devoid of all the impediments deriving from the strict judicial procedure in the case of extradition proper. This machinery is described in another part of this Chapter.

Consequently, the recommended convention never came into being. An attempt was made by the Belgian Government to sign a convention on this subject with a number of countries, particularly with those of continental Europe, which, in the opinion of the Belgian Government, were restricted by national legislation and had no powers similar to those possessed by the United Kingdom Government.(2) This attempt did not materialise, all other Governments, including the continental ones, having found a way to proceed by executive action.

(ii) PROVISIONS IN THE DRAFT CONVENTION FOR THE TRIAL AND PUNISHMENT OF WAR CRIMINALS

At the same time as it was deliberating on the subject of the Draft Convention for the surrender of war criminals, the Committee on Enforcement had been studying a Draft Convention for the trial and punishment of war criminals, which resulted in the Convention for the Establishment of a United Nations War Crimes Court.(3) During early discussion on this Court, it had been advocated that the handing over of an accused person to the prosecuting authority of the International Court should not be regarded as extradition. In the final draft the Tribunal was vested with the power to require the surrender of war criminals from enemy countries, neutral states and Allied Governments as a result of an executive procedure. It was empowered to lodge such requests both in cases where it was competent to try the wanted individual and where the latter was to be delivered to a national court. Though this Convention was never signed, the principle that war criminals were to be handed over for trial in a summary, executive procedure was put into practice in regard to the defendants of the International Military Tribunals at Nuremberg and Tokyo.

(1) See M.68. 4.7.45.
(2) For more details see Chapter XIV Section B, p. 443.
(iii) RECOMMENDATIONS FOR THE INSERTION OF CLAUSES IN THE ARMISTICES
AND PEACE TREATIES

(1) Armistice Terms

As has already been indicated, the question of inserting provisions in
the armistice for the apprehension and surrender of war criminals had
recurred frequently during discussion in the Enforcement Committee on
the Draft Convention for the Surrender of War Criminals.

In March, 1944,(1) it was announced that the Belgian representative
had agreed to act as rapporteur to draft provisions for insertion in the
armistice terms. The matter was again raised at a meeting held on 2nd
May, 1944,(2) which was attended by the British Attorney General, Sir
Donald Somervell, when the recommendations made by the Belgian
representative(3) were discussed; these were to the effect that immediately
after the armistice all persons suspected of having any responsibility for
war crimes should be taken into custody. The Attorney General remarked
that such a measure would be facilitated if the names of the persons to be
arrested were available, but that such a proposal would have to be referred
to the Combined Chiefs of Staff for consideration.

By 12th May, 1944, the Committee on Enforcement, had agreed on the
draft of an article for insertion in the armistice terms.(6) While enunciating
the general principle that the United Nations may bring to trial before any
tribunal, national or international, persons accused of committing war
crimes, the article laid down that the German Reich should be under an
obligation to hand over persons within fifteen days of the demand for
surrender, and must co-operate with the United Nations authorities by
keeping the required persons in custody. Any United Nations' agency,
or authority of the United Nations in control of German territory, might
exercise the rights under the armistice provisions, while the Germans
must co-operate, by complying with any request for identification, appre-
hension, arrest and delivery of wanted persons, without the right to
examine each case on its merits, and must also assist in providing evidence
and witnesses. Penalties, up to a term of 20 years imprisonment, were laid
down for Germans who failed to comply with these provisions, who aided
or abetted the escape of wanted persons, or the destruction of evidence;
penalties were also provided for Germans who victimised their fellow-
citizens for co-operating with the Allies in this matter. These penalties
were only to be exercised by the courts of the United Nations.

This draft was considered by the Commission at its meeting on 30th
May, 1944,(5) when certain modifications were suggested, and the Chairman
produced a redraft of the text on 8th June.(6)

This latter draft included, among the obligations of the German

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(1) See M.12. 7.3.44.
(2) See M.16. 2.5.44.
(3) C.14. 25.4.44. Proposal by the Chairman of Committee I, p. 4.
(4) C.18. 12.5.44. Article on Surrender of War Criminals to be inserted in Terms
of Armistice with Germany.
(5) See M.20. 30.5.44.
(6) C.27. 8.6.44. Article to be inserted in Armistice terms with Germany for surrender
of persons to be placed on trial by the United Nations.
authorities immediately after the armistice, the duty to intern, and keep in custody until required, any or all members of the Gestapo and the S.S. Rather than laying down penalties for non-compliance with its provisions, the article demanded that the German authorities should surrender for trial before any United Nations tribunal, persons obstructing the execution of the provisions, or Germans who had punished others for co-operating with the Allies in their execution.

The draft was considered by the Commission at its meeting held on 13th June, 1944. It was decided to add a further clause to the effect that the German Government should undertake to:

"take and keep under control all property—both movable and immovable—belonging to persons whose surrender is demanded, and hold it at the disposal of the authorities of the United Nations".

This amendment was added in accordance with the practice in central European States, whereby confiscation of property is a normal form of criminal punishment; such a step, moreover, would allow for compensation to be made to the victims of war crimes.

The Yugoslav representative proposed that an article similar to that concerning the surrender of German war criminals should also be inserted in the armistices with the European satellites of Germany, and that reference should expressly be made to the forces which, in these satellite countries, corresponded to the Gestapo and the S.S.

The final text of the article was accepted, with certain minor amendments, by the Commission on 13th June, 1944, together with a covering note by the Chairman to the member Governments. The article was worded so as to apply to Germany, and the principles contained therein were recommended for use in the armistices with each of Germany's satellites. It was pointed out, however, that different provisions might be necessary in the case of Japan.

The text of the draft article for insertion in the armistice with Germany ran as follows:

"1 The United Nations may, if they so decide, bring to trial before any Tribunal, national or international, any persons accused of crimes connected with, or incidental to, hostilities conducted by Germany against any one or more of the United Nations. This provision shall apply notwithstanding any procedure or prosecution before a court, military or civil, of Germany or of any State or political entity acting in alliance or in concert with Germany, 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:

"2 To this effect Germany shall:

(a) take all necessary steps to hand over forthwith to the authorities of the United Nations any persons whose surrender is demanded either at the time when this instrument becomes effective or at some subsequent date;"

(1) See M.22. 13.6.44.
(2) Loc. cit.
(3) C.31. 16.6.44 Surrender by the Axis Powers of persons wanted for trial as war criminals.
(4) Loc. cit.
(b) give such assistance as may be required to the authorities of the United Nations in all measures necessary to give effect to the obligations recognised in Section 1;

(c) forthwith take and keep under control all property, both movable and immovable, belonging to persons whose surrender is demanded, and hold it at the disposal of the authorities of the United Nations;

(d) give such assistance as may be required to the authorities of the United Nations in interning forthwith and keeping in custody until such time as the authorities of the United Nations may otherwise direct, any or all members and former members of the Gestapo and the S.S.;

3. The right to apprehend the persons referred to in Section 2 may be exercised by any Agency, military or civil, acting on behalf of some or all of the United Nations which may be in control of German territory, or which may be appointed to give effect to the present provisions.

4. Such German authorities as may be allowed by the United Nations to continue or to exercise their functions shall take all necessary steps:

(a) to comply forthwith with all requests of the said agencies and authorities relating to the identification, discovery, apprehension, arrest and delivery of accused persons without regard to their nationality and without any right to examine the case upon its merits. Such agencies and authorities shall be given every facility to supervise the way in which their orders are carried out;

(b) 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, to obtain the presence of witnesses and to assist in any other way in which such assistance may be required.

5. Germany 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 German 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 person 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 person inciting another to resist in any way the provisions concerning the surrender and the punishment of criminals covered by these provisions;

(e) any German 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;

6. The offences enumerated in Section 5 shall not be subject to the jurisdiction of German courts”.

At the Commission’s meeting of 11th July, 1944,(1) the Chairman stated that he had made inquiries as to the organisations analogous to the German Gestapo and S.S., which should be mentioned in the armistice

(1) See M.24. 11.7.44.
with Germany's satellites. All information appeared to show that, while
the German Gestapo had itself operated to some extent in those states,
there were no native organisations analogous to the Gestapo and S.S.
in Roumania, Bulgaria and Hungary. The Yugoslav delegate pointed
out that the state and military police in those satellite states had, in
the countries they had occupied, committed much the same crimes as the S.S.
and Gestapo. He therefore repeated his previous proposal and specified
that the reference to be made in the armistices with these satellites should
concern the members of the state police who had occupied the positions
of district chiefs of civil or military police in any of the occupied countries.
This was approved and a recommendation to this effect was sent to members
of the Commission on 18th July, 1944(1).

In a letter to the Chairman of the Commission dated 4th January, 1945(2)
Mr. Eden, the British Foreign Secretary, stated that the Commission's
recommendations with regard to the provisions to be inserted in any
armistice with Germany and other enemy powers with the object of
securing the apprehension of alleged war criminals had been forwarded to
the European Advisory Commission. This body would no doubt take
full account of the recommendations of the Commission.

When the terms of Unconditional Surrender with Germany came to
be signed, Article 11, which dealt with the matter of war criminals, ran
as follows:(3)

"(a) The principal Nazi leaders as specified by the Allied Representatives,
and all persons from time to time named or designated by rank, office or
employment by the Allied Representatives as being suspected of having
committed, ordered or abetted war crimes or analogous offences, will be
apprehended and surrendered to the Allied Representatives.

"(b) The same will apply in the case of any national of any of the United
Nations who is alleged to have committed an offence against his national
law, and who may at any time be named or designated by rank, office or
employment by the Allied Representatives.

"(c) The German authorities and people will comply with any instructions
given by the Allied Representatives for the apprehension and surrender of
such persons."

The surrender document with Italy was signed at Malta on 29th
September, 1943, and amended at Brindisi on 9th November, 1943.
Article 29 of this document—the section dealing with war criminals—read
as follows:(4)—

"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 and who now or in the
future are on territory controlled by the Allied Military Command or by the
Italian Government, will forthwith be apprehended and surrendered into
the hands of the United Nations. Any instruction given by the United
Nations to this purpose will be complied with."

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(1) C.34. 18.7.44. Surrender by the Axis Powers of persons wanted for trial as war
criminals.

(2) C.68. 10.1.1945. Letter dated 4th January, 1945, from Mr. Eden to Sir Cecil Hurst
dealing with certain proposals submitted by the Commission to the Governments.

(3) H.M.S.O. Unconditional Surrender of Germany Declaration and other Documents. 
Germany No. 1 (1945) Cmnd. 5648.

(4) Misc. No. 43. 27.8.43. The Provisions of the Draft Peace Treaties concerning war
criminals. Note by the Legal Officer.
ARRANGEMENTS FOR SURRENDER OF WAR CRIMINALS

In the case of the armistices signed with the satellite powers at Moscow, the respective countries undertook to collaborate with the Allied Powers or Allied High Command in the apprehension and trial of persons accused of war crimes.

The Four Power Agreement of 4th July, 1945, signed in London, regarding the Allied control machinery in Austria, extended to that country the provisions of Article 11 of the Unconditional Surrender of Germany. A further Four Power Agreement, signed in Vienna on 28th June, 1946, empowered the Allied Commission to act directly in all matters connected with the surrender of war criminals to Allied nations, or to international tribunals. A notable feature was that this Agreement made express reference to the Commission’s Lists, when it laid down that the Allied Commission was required to secure the surrender of war criminals “included in the lists of the United Nations War Crimes Commission.”

The position with regard to the surrender of Japan was not quite so straightforward. During the Potsdam Conference, on 26th July, 1945, the President of the United States and the Prime Minister of Great Britain, with the concurrence of the President of China, issued a proclamation defining the terms of Japanese surrender. Under item 10 of this Proclamation, the statesmen announced their intention that “stern justice shall be meted out to all war criminals including those who have visited cruelties upon our prisoners”. In the actual terms of surrender, signed in Tokyo Bay on 2nd September, 1945, the Japanese agreed to accept the terms of the Potsdam Declaration and to obey any orders or regulations to this purpose issued by the Supreme Commander or his deputies.

(2) Draft Peace Treaties

By August, 1946, the Paris Peace Conference had drawn up the terms of the Draft Peace Treaties with Italy, Roumania, Bulgaria, Hungary and Finland, and the texts were communicated to the United Nations War Crimes Commission, through the British Foreign Office.

Article 38 of the Draft Peace Treaty with Italy ran as follows:

“(1) Italy will take the necessary steps to ensure the apprehension and surrender for trial of:

(a) Persons accused of having committed, ordered and abetted war crimes and crimes against 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) At the request of the United Nations Government concerned, Italy


(2) Art. 5 (vii) (b).

(3) Department of State Bulletin Vol. XIII, No. 318 (29.7.45).

(4) Misc. 43. 27.8.46. The Provisions of the Draft Peace Treaties concerning war criminals. Note by Egon Schwebel, Legal Officer.
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.

"(3) A disagreement concerning the application of the provisions of paragraphs (1) and (2) 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 ".

Similar provisions were inserted in the Draft Peace Treaties with Roumania (Article 6), Bulgaria (Article 5) Hungary (Article 5) and Finland (Article 9). In the case of the first three, disagreements regarding the application of the Peace Treaty were to be referred to the heads of diplomatic missions of the Soviet Union, the United States, Great Britain and France, while in the Draft Peace Treaty with Finland they were to refer to the heads of the British and Russian diplomatic missions in that country.

On 31st August, 1946, the Greek representative raised the question of the provisions relating to war criminals in the Draft Peace Treaties.(1) He stated that, when he had attended the Paris Peace Conference, he had gained the impression that the terms of the above provisions were too general, the task of apprehension and surrender being left completely to the discretion of the enemy Governments. No consideration appeared to have been given to the recommendations made by the Commission regarding the article on war crimes to be inserted in the armistice terms. He therefore suggested that the Commission should examine the draft provisions prepared by the Paris Conference and submit new recommendations through the member Governments. He proposed in particular the retention in substance of the specific obligations to be imposed upon the enemy States as recommended by the Commission on 13th June, 1944, for Germany, namely:

(a) The obligation to surrender war criminals notwithstanding any previous trial or proceedings held in the enemy State;

(b) The obligation to comply with apprehension and surrender requests without the right to enter into the merits of the case, and to give the United Nations all facilities to supervise the way in which their requests were being complied with;

(c) The obligation to produce records and documents required as evidence of war crimes;

(d) The obligation to surrender for punishment persons who had obstructed or hindered the operation of the peace treaty, or who had victimised those who had co-operated with the United Nations in the execution of the treaty.

Along with the above proposal, a draft was submitted by the Chairman of the Commission(2) which differed from the Greek draft in respect of two items only. The obligation of the enemy State to surrender persons preventing or otherwise harming the operation of the peace treaty, was altered to consist in the obligation to "pass and enforce legislation making it a penal offence" to commit such detrimental acts,—thus leaving retribu-

(1) A.14, 2.9.46. Provisions of the Draft Peace Treaties. Letter from the Greek Representative to the Chairman of the Commission dated 31st August, 1946.
(2) A.16, 4.9.46. Suggested amendment of the articles on war criminals contained in the Draft Peace Treaties with Italy and other countries.
tion in such cases to the enemy State itself under Allied supervision. An additional provision was inserted regarding matters to be referred to the ambassadors in the respective enemy countries. In such cases the war criminals concerned were to be kept in custody until decision was reached by the ambassadors.

Both drafts were considered by the Commission on 4th September, 1946. Most of the members were of the opinion that it would be more appropriate to submit the recommendation in the form of a general resolution, expressing only the principles involved, and to leave it to the negotiating Powers to formulate the actual provisions as they thought fit.

After examination of two further drafts prepared in order to comply with the above opinion, a resolution of principle was finally adopted by the Commission on 18th September by 9 votes to 1, with 3 abstentions. The resolution expressed the opinion of the Commission that, as formulated in the Draft Peace Treaties, the relevant provisions left the task of apprehension and surrender of the war criminals in practice to the discretion of the ex-enemy governments. It, therefore, suggested the insertion of stricter obligations, and recommended the adoption of the principles proposed by the Greek representative and the Chairman of the Commission. The majority approved the latter's draft as regards the procedure for the punishment of persons preventing the carrying into effect of the peace treaties.

On 16th October, 1946, information was received from the Greek representative that the resolution had reached the Peace Conference too late to be taken into consideration. It was, therefore, suggested that it should be referred to the next conference of the Four Foreign Ministers, due to take place in November, 1946. Such a step was, however, not undertaken, the majority of members holding the view that the submission made to the Paris Conference was sufficient to enable the Governments, including the four Powers, to take the resolution into account before the signing of the peace treaties.

In the final event, the provisions as prepared by the Paris Conference in the Draft Peace Treaties were embodied in the final texts of the Treaties with only small verbal amendments, the Commission's resolution producing no effect.

In March, 1947, the French representative raised the question of the bearing of the Italian Peace Treaty on the continued listing by the Commission of Italian war criminals, and on the machinery for their surrender. A joint meeting of the Committee on Facts and Evidence and the Legal Committee considered this matter on 20th March, 1947, and put forward certain recommendations, which were adopted by the Commission at its

(3) See M.114. 16.10.46.
(4) See M.115. 23.10.46.
(5) Doc. 1/84. 13.3.47. Note by the Secretary to Committee III on a Conference with Monsieur Maillard.
meeting on 26th March, 1947. It was decided that the Commission should continue to list Italian war criminals, but that it should not communicate such lists to the Italian Government until it received a request to do so. Continued listing would assist the ambassadors in Rome to establish whether or not a prima facie case existed, and also it would facilitate the transfer of Italians wanted for war crimes from one United Nation to another. As to how far war criminals were exempt from the provisions of Article 71 of the Peace Treaty, by which Italian prisoners of war in Allied hands were to be repatriated, it was decided that these could be detained by the Allies in accordance with Article 75 of the Geneva Prisoners of War Convention of 1929, whereby prisoners of war who are subject to criminal proceedings may be detained until the end of the proceedings or the expiration of the sentence. In the matter of the transfer of Italian war criminals between one United Nation and another, it was considered that the same provisions would apply. A report on the discussion was forwarded by the Chairman of the Commission to the four ambassadors in Rome, through the British Foreign Office. It was also agreed that applications for the surrender of Italian war criminals should be addressed direct to the Italian Government.

A similar decision was reached with regard to a Greek request for advice on procedure to be adopted in respect of Bulgarian war criminals. Since the Bulgarian Peace Treaty had laid the onus of apprehension and surrender of war criminals on the Bulgarian Government, it was to that Government that applications for surrender should be addressed.

(3) Peace Treaties with Germany and Austria

The Yugoslav representative brought a further recommendation before the Commission on 26th March, 1947, with a view to avoiding a repetition of the conditions in which the Commission’s recommendations concerning the Draft Peace Treaties had arrived too late to influence the decisions of the drafters of those Treaties. It was suggested that the Commission should make recommendations without delay to its member Governments concerning the provisions relating to war criminals to be inserted in the treaties with Austria and Germany.

Since it was the German and Austrian war criminals who had committed the most heinous crimes, it would be necessary to incorporate in the treaties with those countries more strongly-worded provisions concerning the degree of compulsion to which they should be subjected in the matter of apprehension and surrender of such persons. It was therefore suggested that the principles previously agreed to in respect of the satellite countries should again be recommended for insertion in the peace treaties with Germany and Austria, namely:

(a) Apprehension and surrender of war criminals was to be applicable notwithstanding any proceedings or prosecution before a German or Austrian court;

(b) The ex-enemy Government was not to have the right to examine the

(1) See M.125, 26.3.47.
(2) C.252, 24.3.47. Hearing of the Italian Peace Treaty on the position of Italian war criminals. Joint report by Committees I and III.
merits of the case whenever the names of the accused appeared on the lists of the U.N.W.C.C.;

c) Special provisions were to ensure that documents and evidence should be produced and not suppressed or destroyed;

d) The ex-enemy Governments were to pass and enforce legislation making it a penal offence to obstruct the execution of these provisions;

e) A distinction was to be made between apprehension and surrender; the first should be automatic on request, while in the case of disagreement, the question should be referred to the controlling power.

The Commission adopted this recommendation on 26th March, 1947, and circulated it in the form of suggestions to the member Governments.

At the time of writing no draft peace treaties with Germany and Austria have been published, so it is not possible to tell how far the recommendations of the Commission have been adopted by the member Governments.

(4) **Recommendation for the order of surrender of war criminals required for trial by several nations**

At the Conference of the Commission with representatives of the National Offices, which took place in London in May-June, 1945, proposals were made for the adoption of a recommendation regarding the order in which war criminals wanted for trial by several countries should be handed over to the requesting States.

It will be remembered that this question was considered both by the five Ministers of Justice and by the Commission's Enforcement Committee in their respective Draft Conventions for the surrender of war criminals. Both drafts laid down the rule that in such cases the wanted person was to be handed over first to the Government of the State whose national legislation contained the heaviest maximum penalty in respect of the crime for which the surrender was requested. Where the maximum penalties were the same, the surrender was to be made to the Government having first submitted the request for surrender.

At the Conference with the National Offices the Belgian delegate on the Commission raised the question of giving the Commission the authority of an arbitrator. He suggested the following recommendation:

"When an accused has been placed on the list of war criminals at the request of several of the United Nations, the War Crimes Commission shall act as arbitrator to decide to which Government he shall be surrendered". 

This principle was approved at a separate meeting held during the Conference by representatives of the National Offices, and was incorporated in a formal statement submitted by them to the Conference as representing their conclusions and suggestions to the Commission on the subjects considered during the Conference.

Upon the termination of the Conference the Belgian delegate brought the matter before the Commission, and proposed that it should recommend to member Governments a procedure of arbitration to solve all conflicting

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(1) See M.125. 26.3.47.
(2) For further details of this Conference see Chapter VII, Section D(i), p. 154 et seq.
(3) National Offices Conference. Minutes and Documents, p. 28.
(4) Loc. cit., Appendix IX, Noc. 10.
claims for the trial of the same criminal. He submitted a written proposal(1) and explained that, apart from the debates at the National Offices Conference, he had had discussions with representatives of Supreme Headquarters, Allied Expeditionary Force (S.H.A.E.F.), who asked for assistance in determining to whom a war criminal wanted for trial by several nations should first be delivered. He declared that in some cases an agreement between the countries concerned could be expected, but in others not. He noted that there were several criteria which could be applied when making an arbitral decision in case of conflict. Criminals could be handed over first to the country where they committed the worst crimes, or to that which had first submitted its claim, or on any other grounds. He suggested that the authority to be vested with arbitral powers should be the Commission, as recommended by the National Offices, or else the chief officer of the S.H.A.E.F. Recording Office in Paris (C.R.O.W.C.A.S.S.), who would make decisions after consulting the Commission.(2)

The proposal was considered by the Commission on 13th June, 1945, and met with its general approval. A recommendation was adopted(3) that, where the delivery of a war criminal was requested by several countries, member Governments should charge the Commission with the duty of deciding as arbitrator the order in which the accused should be tried by the said countries, or to delegate its task to some other body. The latter point was adopted with a view to entrusting the military authorities with this task, since they might prove to be in a better position to make such decisions. Member Governments were requested to state whether they agreed or not with the proposed procedure.

Favourable replies were received from Australia, Belgium, Czechoslovakia, the Netherlands, New Zealand and Yugoslavia.(4)

However, at a subsequent meeting, the Chairman and some other members informed the Commission that there were reports to the effect that Governments were considering entrusting either C.R.O.W.C.A.S.S. or the Allied Control Council for Germany with making the decisions.(5) This information proved later to be substantially correct. As will be seen, the Governments decided to entrust their military authorities with making such decisions and they laid down rules to this effect, in a special law enacted by the Allied Control Council for Germany.

No cases were ever brought for arbitration before the Commission, and by the time it wound up there were no reports of cases which aroused unsurmountable difficulties between the Governments concerned.

(5) Proposal for notification of the surrender of war criminals

In September, 1946, the Netherlands delegate, addressed a letter to the Chairman(6) in which he stated the following:

(1) C.123. 13.6.45. Order of trial of war criminals whose delivery is asked for by more than one of the United Nations. Proposal that the Commission should arbitrate. Presented by M. de Boor.
(2) See M.65. 13.6.45.
(3) C.123(1). 18.6.45. Order of trial of war criminals whose delivery is asked for by more than one of the United Nations. Recommendation adopted on 13th June, 1945.
(5) See M.82 24.10.45 and M.85 8.11.45.
(6) C.225. 10.9.46. Letter to Lord Wright from Commander Mouton.
There was no indication that, once a war criminal was surrendered to the requesting country, this was notified to all other countries. It therefore appeared that, in the absence of such notification, other countries searching for the same criminal were wasting valuable time in continuing their investigations. He, therefore, proposed that all cases of surrender should be notified by the National Offices to the Commission, which should issue lists of names of criminals handed over to one country, and distribute them to other member Governments, as well as to all detaining authorities. This would enable Allied investigating teams to stop investigation in all such cases.

The proposal was considered on 2nd October, 1946, (1) The Dutch representative amplified his proposal by suggesting that notification should be made not only when a criminal was surrendered, but also when he was found and arrested.

The Chairman and some members thought this matter would probably be better solved between the Governments or their investigating and liaison teams, in conjunction with the detaining military authorities, than by the Commission making a recommendation. The proposal was, therefore, adjourned and the Dutch delegate advised to approach the appropriate authorities. The British representative stated he would explore the field with the British authorities, and ask them to meet the point raised as far as practicable. The United States representative stated that C.R.O.W.C.A.S.S. was regularly preparing Detention Lists, containing the information required and being circulated to all concerned, and that a consolidated list would soon be distributed.

The question was not raised again. Before it terminated its functions the Commission received lists from several Governments, which it circulated to all its members.

B. RESOLUTIONS OF OTHER INTERNATIONAL BODIES

Ever since it was taken up by the Great Powers and their Allies, and made the object of special declarations, such as the St. James’s Declaration of 13th January, 1942, and the Moscow Declaration of 1st November, 1943, (2) the question of ensuring swift delivery of war criminals to competent courts had periodically been considered at international conferences. This resulted in the adoption of a number of resolutions stressing the importance of speeding up the procedure and effectuating the principle that every war criminal should be brought to trial.

(i) RESOLUTION OF THE INTER-AMERICAN CONFERENCE ON PROBLEMS OF WAR AND PEACE

At the Pan-American Conference held in Mexico in February-March,

(1) See M.113. 2.10.46.
(2) The Moscow Declaration was signed on 30th October, 1943, and published on 1st November, 1943. For text see Chapter V, D (iv), p. 107.
1945, a motion was carried on the adoption of the following resolution: 30

"Whereas:

During the present world war the leaders, as well as numerous officials and military and civilian agents of the Axis powers and their satellites, have committed heinous crimes, in violation of the laws of war, and in violation of existing treaties, of the rules of international law, or of the penal codes of civilised nations, or of the concepts of civilised life;

Individuals who have committed such crimes may have taken refuge in, or may seek refuge in, the territories of the American Republics,

Arrangements should be made to distinguish such criminals from ordinary political refugees.

The Inter-American Conference on problems of war and peace declares:

That the American Republics, faithful to the principles of humanity and law on which their civilisation is founded, repudiate war crimes and adhere to the Declaration of October 1943 by Great Britain, the United States of America and the Soviet Union in the sense that persons guilty of, responsible for, and accomplices in the commission of such crimes, shall be tried and sentenced; and, therefore;

Resolves:

(1) To recommend that the Governments of the American Republics do not give refuge to individuals guilty of, responsible for, or accomplices in, the commission of such crimes.

(2) To recommend that the Governments of the American Republics shall, upon the demand of any of the United Nations, and in accordance with the procedure set forth in the following paragraph, surrender individuals charged with the commission of such crimes to the United Nations making the request, or to the custody of the agency of the United Nations which may be established for the trial and punishment of such criminals.

(3) To request that the Inter-American Juridical Committee, having in mind the pertinent national legislation on the subject, prepare and submit for adoption by the Governments of the American Republics, appropriate rules for determining the status of individuals as war criminals, as well as the procedure to be followed for the return or delivery of such criminals ".

The above resolution was communicated by all representatives to their respective Governments.

(ii) Resolutions of the United Nations General Assembly

(1) Resolutions of 12th-13th February, 1946

During the First Part of the First Session of the United Nations General Assembly, held in London in January-February, 1946, a motion was introduced by the Byelorussian Republic. After study in Committees, and amendments proposed by the United Kingdom delegation, the following resolution was unanimously adopted by the General Assembly on 13th February, 1946: 31

"The General Assembly

Taking note of the Moscow Declaration of 1st November, 1943, by President Roosevelt, Marshal Stalin and Prime Minister Churchill, concerning enemy

(1) C.95. 25.4.45. Resolution adopted at the Inter-American Conference on problems of war and peace.
(2) C.179 February, 1946. Problems of war crimes on the agenda of the first session of the United Nations General Assembly."
atrocities in the course of the war, and of the declaration by certain Allied Governments of 13th January and 18th December, 1942, concerning the same matter; and

Taking note of the laws and usages of warfare established by Fourth Hague Convention of 1907; and

Taking note of the definition of war crimes and crimes against peace and against humanity contained in the Charter of the International Military Tribunal dated 8th August, 1945; and

Believing that certain war criminals continue to evade justice in the territories of certain states,

RECOMMENDS

That Members of the United Nations forthwith take all necessary measures to cause the arrest of those war criminals who have been responsible for or have taken a consenting part in the above crimes, and to cause them to 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 those countries; and

CALLS UPON

The Governments of States which are not Members of the United Nations also to take all necessary measures for the apprehension of such criminals in their respective territories with a view to their immediate removal to the countries in which the crimes were committed for the purpose of trial and punishment according to the laws of those countries ".

The matter was at the same time considered in connection with the question of refugees and displaced persons. The United Kingdom delegation had submitted a proposal for settling the status and fate of those refugees and displaced persons who were unwilling to be repatriated, particularly on political grounds. The delegations of the East-European countries, led by the U.S.S.R., objected to any scheme allowing for the re-settlement of displaced persons in countries other than those of their origin, on the grounds that most of them were war criminals or traitors. After much controversy on this point, a resolution providing for a procedure to regularise the status of bona fide refugees and displaced persons, and assist them in re-settling in countries willing to admit them, was adopted by the General Assembly on 12th February, 1946. It contained the following proviso: (1)

"THE GENERAL ASSEMBLY

recognising that the problem of refugees and displaced persons of all categories is one of immediate urgency and recognising the necessity of clearly distinguishing between genuine refugees and displaced persons, on the one hand, and the war criminals, quislings, and traitors... on the other;

(d) CONSIDERS that no action taken as a result of this resolution shall be of such a character as to interfere in any way with the surrender and punishment of war criminals, quislings and traitors, in conformity with present or future international arrangements or agreements ".

The surrender of war criminals from among refugees and displaced persons was further studied by a Special Committee appointed by the United Nations Economic and Social Council in pursuance of the above resolution. This Committee, after sitting from April to June, 1946,

(1) Loc. cit., p. 2.
submitted to the Economic and Social Council a recommendation on the measures to be undertaken to solve the problems raised by refugees and displaced persons. In this connection it recommended measures to ensure that war criminals would effectively be separated from bona fide refugees and surrendered to competent courts.(1)

These recommendations were incorporated in a resolution adopted by the General Assembly on 15th December, 1946, calling upon the Governments to take "urgent and adequate measures to effect a careful screening of all displaced persons, refugees, prisoners of war and persons of similar status, with a view to identifying all war criminals, quislings and traitors ".

(2) Resolution of 31st October, 1947

During the Second Regular Session of the General Assembly, held in New York from September to November, 1947, the question of the surrender of war criminals was raised again by the Yugoslav delegation, which submitted a draft resolution. Yugoslavia wanted the Assembly to record, in the proposed resolution, that certain member States and States applying for membership, were not surrendering war criminals as recommended in the Assembly's resolution of 13th February, 1946. She, therefore, moved that the Assembly call upon member States to "take immediate steps to apprehend and extradite war criminals"; to "proceed immediately against any war criminal who could be traced in their territory", and to "conclude and implement adequate bilateral conventions on extradition."

This proposal was rejected at committee level as containing unjustified charges against the other Governments. The committee produced a new draft based upon a United Kingdom proposal and submitted it to the General Assembly for adoption. In the Assembly, Yugoslavia re-introduced her resolution and was supported by the U.S.S.R. and all other Eastern European countries. They laid charges against Great Britain and the United States that they had "gone back on previous international agreements", and were declining to hand over war criminals according to these agreements. All charges were rebutted by the United Kingdom and United States delegations, and the two draft resolutions were put to the vote. The draft proposed by the United Kingdom and supported by the committee was adopted by a majority vote (42 against 7) on 31st October. It contained the following points:

(a) The Assembly recommended that Member Governments should continue with unabated energy to carry out their responsibilities regarding the surrender of war criminals.

(b) It also recommended that Member States desiring the surrender of alleged war criminals or traitors by other Members, in whose jurisdiction they were believed to be, should request their surrender as soon as possible, and should support their request with sufficient evidence to establish that a reasonable prima facie case existed as to identity and guilt.

(c) The Assembly noted what had so far been done in the matter of the surrender and punishment, after due trial, of the war criminals referred to in its resolution adopted on 13th February, 1946, which it reaffirmed.

(d) The Assembly also reaffirmed the resolutions on refugees adopted in 1946.0

The main point in the above resolution is that, of all the other resolutions of the General Assembly, it is the first to confirm and recognise that, in the field of war crimes, prima facie evidence is needed, but is at the same time sufficient for handing over war criminals to requesting States. The United Nations, thus, sanctioned the administrative procedure devised by the Allied military authorities after the war, and implicitly required that the prima facie evidence be submitted to them as a condition for obtaining the surrender. This point was relevant for the question of the validity of the United Nations War Crimes Commission's Lists in matters of surrender,—a question which was to arise in the Commission and give ground to contentions that the Commission's Lists were binding upon the military authorities and warranting automatic surrender. An account on this issue will be found later.

(iii) RESOLUTION OF THE PERMANENT INTERNATIONAL COMMISSION FOR THE
STUDY OF THE PUNISHMENT OF CRIMES AGAINST INTERNATIONAL LAW

A resolution was adopted by the "Commission Internationale Permanente pour l'étude de la répression des crimes contre le droit des gens et des faits commis dans l'intérêt de l'ennemi", during its session held in Brussels on 15th July, 1947. The said Commission considered that the right of asylum should not be extended to war criminals, and that all matters of extradition should be ruled, not by bilateral treaties, but by general convention, drafted by the United Nations. Its resolution was phrased in the following terms:

"La Commission réunie à Bruxelles, le 15 juillet 1947, sous la présidence de Monsieur Léon Cornill, Procureur Général à la Cour de Cassation de Belgique, formule, à l'unanimité, la recommandation suivante:

(1) Considérant, d'une part, le caractère odieux des crimes contre l'humanité et des crimes de guerre;
La Commission estime
Que le droit d'asile doit être refusé aux individus coupables de ces actes,

(2) Considérant, d'autre part, les nécessités de l'entraide internationale, dans la répression de la criminalité;
La Commission émet le vœu:
que l'extradition, en toutes matières, ne soit plus réglée par des traités bilatéraux, mais par une convention générale élaboré à l'initiative de l'Organisation des Nations Unies qui en contrôlerait l'exécution, par la Juridiction Pénale Internationale ".

C. EXECUTIVE PROCEDURE DEVISED BY THE ALLIED
AUTHORITIES

The administrative or executive procedure which was established by the Allied Governments in respect of the handing over of war criminals from one country to another, was devised and carried out by the military authorities within their own machinery. It functioned on the basis of

certain general rules laid down by the Governments. The surrender of war criminals from the ex-enemy countries was secured in the various documents regulating the obligations of ex-enemy countries in the field of war crimes and war criminals.

(i) GENERAL RULES

(1) Territories under United Kingdom Jurisdiction

Following the decision of the United Kingdom Government to proceed with the surrender of war criminals on an executive basis, the Foreign Office, in a letter dated 20th August, 1945, communicated to the Commission the conditions under which war criminals in British custody would be surrendered for trial. It informed the Commission that, on 11th July, 1945, the Combined (Anglo-American) Chiefs of Staff had taken a decision regarding the handing over of German war criminals. This decision authorised the Headquarters of the Supreme Commander, Allied Expeditionary Force (S.H.A.E.F.), covering the respective zones in Germany, and the Headquarters of the Supreme Allied Commander in the Mediterranean (S.A.C.M.E.D.), covering Italy and the respective zones in Austria, to hand over German war criminals held by the forces under their command to the Allied countries in which the crimes were committed, under the following conditions:

(a) That the criminals were not required as defendants or witnesses for trials before British Military Courts or for trials before the International Military Tribunal at Nuremberg;

(b) That the detaining authorities had no reason to doubt the bona fides of each particular request and that there were no special circumstances making the surrender undesirable;

(c) That the criminals were not wanted for trial or as witnesses by several countries.

No statements were made as to the ultimate disposal of war criminals in the above cases, but the implications were as follows:

(a) Where a war criminal was wanted for trial by a British court, or the International Military Tribunal at Nuremberg, these had a priority over other nations. The eventual disposal of witnesses wanted by other Allied courts in the same capacity or as war criminals, and that of war criminals tried under the above priority rule, was to be decided subsequently.

(b) Where there were reasons to doubt the bona fides of the Allied request, or where special circumstances made the surrender undesirable, discretionary power was retained to refuse the handing over. Such war criminals were liable to be tried by the British courts, though no obligation existed to do so.

(c) Where a war criminal was wanted for trial by several nations at the same time, special decision was to be taken as to the order in which he would be surrendered to the requesting countries. This question was subsequently decided upon in Law No. 10 of the Allied Control Council for Germany, an account of which will be found later.

Where none of the above cases stood in the way of handing over German war criminals, the following rules were to be applied:

(a) War criminals whose names appeared in the Commission’s lists were to be handed over "without question";

(1) C.143. 22.8.45. Surrender of war criminals by S.H.A.E.F. and S.A.C.M.E.D. Copy of letter dated 20th August, 1945, from the United Kingdom Foreign Office to the Chairman.
(b) Other war criminals were to be surrendered upon submission by the requesting authority to the detaining authority of a "plain statement" concerning a "specified crime committed on a specified date" and either at a specified place in the national territory or against nationals of the requesting State.

The above rules were subsequently extended to the surrender of Italian war criminals, and similar rules were applied by the British Commands in the Far East in respect of Japanese and other Far Eastern war criminals. In this latter part of the world, they were applied by the South-East Asia Command (S.E.A.C.), which had its headquarters in Singapore and which, as previously described, controlled an enormous area, including Burma, Siam, Malaya, the Andaman Islands, French Indo-China, Netherlands East Indies, Hong-Kong, Shanghai, Borneo and the islands stretching eastwards from Singapore to Morotai. S.E.A.C. maintained close liaison with the Dominions, and with the United States Dutch and French authorities in all matters regarding the surrender of war criminals.

In Europe, the British military authorities in charge of the procedure were the same as those described with regard to the tracing and apprehension of war criminals, i.e. for Germany the H.Q. of the British Army of the Rhine (B.A.O.R.), for Austria the H.Q. of the British troops in Austria (B.T.A.), and for Italy the H.Q. of the Central Mediterranean Forces (C.M.F.), with their war crimes branches or groups. The highest authority supervising their activities was the Judge Advocate General's Department of the War Office.

(2) Territories under United States Jurisdiction

On 3rd September, 1945, the United State representative on the Commission communicated the conditions prescribed by the United States military authorities. They were similar to those set up by the British authorities, and were likewise established in the first place for the surrender of German war criminals. There were, however, certain notable differences as regards the discretionary power of the detaining authorities, on the one hand, and some additional arrangements, on the other.

The procedure concerned the territory controlled by the Headquarters, United States Forces, European Theatre (U.S.F.E.T.), that is the American zone in Germany. It was operated by U.S.F.E.T.'s War Crimes Branch, which subsequently extended its competence to the American zone in Austria. The rules were contained in a Directive of the Commanding General, and, as explained by the United States representative, they superseded those originally issued by the Combined Chiefs of Staff on 11th July, 1945, in certain details falling within the authority of U.S.F.E.T.

The main rule was that "the Commanding General would promptly comply with requests" for the surrender of war criminals, except in

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(1) See Chapter XII, Section B (iii) 3. (1), p. 381 et seq.
(2) See Chapter XII, Section B (iii) 1. (a) (2), p. 362 et seq.
(3) C.146, 8.9.45. Surrender of War Criminals: effect given at present by U.S.F.E.T. to a person's having been put on the Commission's Lists. Letter from Colonel Hodgson to the Chairman.
cases which were similar to those provided for in the British rules, that is:

(a) Where the individual concerned was wanted for trial or as a witness
by "an International Military Tribunal". This formula differed from the
British in that it included, in addition to the Nuremberg Tribunal, the one
established in Tokyo, as well as any other International Tribunal which could
be set up.

(b) Where the individual concerned was wanted by more than one nation.
In this case the American rule was that the order of priority was to be referred
to and decided by the Allied Control Council in Berlin.

(c) Where the Commanding General "had doubts whether he should
deliver" a war criminal. In that case he had again to refer the matter to
the Control Council for decision.

Where there were no such cases, the surrender was to be effected under
the following rules:

(a) When deciding upon the case of an individual whose name appeared
in the Commission's lists "great weight" would be given to these lists, and
"in the absence of extraordinary circumstances" this would be taken as a
sufficient justification for surrendering war criminals.

(b) In the case of individuals not listed by the Commission, these could
be handed over if an "adequately supported request" was made by the
demanding Government.

Though identical in spirit, the above two rules were worded so as to
secure greater discretion for the detaining authorities than those formulated
in the letter of the Foreign Office. The main difference lay in that,
whereas the British rules provided that a listed war criminal would be
handed over "without question," on the sole basis of his name appearing
in the Commission's Lists, no such strict pledge was undertaken by the
American authorities. It will be seen later that this very point was to
arouse great concern on the part of certain Governments, and that the
British authorities eventually fell in line with the American.

The machinery to implement the above rules was determined by another
Directive of U.S.F.E.T.,(6) issued soon after the one already mentioned,
which provided further elaboration of certain rules. The procedure was
placed in the hands of the Theatre Judge Advocate General, U.S.F.E.T.
The authority to be consulted in the Control Council in Berlin, was, so
far as the American authorities were concerned, the Legal Division,
United States Group, Control Council. All requests for the surrender of
war criminals held by U.S.F.E.T. were to be submitted to the War Crimes
Branch of the Theatre Judge Advocate, and made on appropriate forms.

On 6th February, 1946, the United States representative informed the
Commission that, on 8th December, 1945, the Combined Chiefs of Staff
had authorised the surrender of Italian war criminals and war criminals
of all the other satellite ex-enemy States on the same terms as those pre-
scribed for German war criminals.(7)

Finally, as in the case of the British authorities, similar rules were
applied by the American authorities in the Far East, regarding the

by H.Q., U.S.F.E.T.
(2) See M.94. 6.2.46.
surrender of Japanese and other Far Eastern war criminals. The main authority in the field was the Headquarters of the Supreme Commander for the Allied Powers (S.C.A.P.) under General MacArthur, in Tokyo. The procedure was operated by a Legal Section and there was a branch in the Philippines (Manila). Apart from that there were United States War Crimes agencies in China, India and Burma, as well as in some islands of the Pacific.\(^1\)

All United States war crimes services were controlled by the Central War Crimes Branch of the United States Judge Advocate General, in Washington.

(ii) PROCEDURE UNDER ALLIED CONTROL COUNCIL LAW NO. 10

On 20th December, 1945, the Allied Control Council for Germany in Berlin issued a Special Law No. 10 regulating all matters concerning the punishment of war criminals in Germany. This Law unified the procedure of surrender in all four zones of occupation, and thus introduced the same rules for the occupying authorities of the United Kingdom, United States, U.S.S.R. and France.

Under these rules requests for surrender were to be submitted to the zonal Commander concerned. This procedure operated between the various zones, as well as between any one of them and the Governments making requests. Conditions for surrender were similar to those previously made by the British and American authorities, in that they related to similar cases in which the surrender was to be declined. Thus, the surrender could not be effected if the individual concerned was wanted for trial or as a witness by an International Military Tribunal or by a court in Germany; if he was wanted by more than one nation, or if the Commander was not satisfied that the handing over should be made. In all these cases, the Commander had the right, but not the obligation, to refer the request for decision to the Legal Directorate of the Allied Control Council.

Rules were prescribed as to how the Legal Directorate was to dispose of the above cases. They were as follows:\(^2\)

(a) A person wanted for trial or as a witness by an International Military Tribunal was not to be delivered for trial or required to give evidence outside Germany, as the case might be, except upon approval by the Committee of Chief Prosecutors acting under the London Agreement of 8th August, 1945. This rule ceased to be applicable after the dissolution of the International Military Tribunal at Nuremberg.

(b) A person wanted for trial by several authorities (other than an International Military Tribunal) was to be disposed of in accordance with the following priorities:

1. If wanted for trial in the zone in which he was located, the accused was not to be delivered elsewhere unless arrangements were made for his return after trial;
2. If wanted for trial in a zone other than that in which he was located, the accused was to be delivered to that zone in preference to delivery outside Germany, unless arrangements were made for his return to that zone after trial elsewhere;

\(^1\) See Chapter XII, Section B (iii) 3 (2), p. 383 et seq.
EXECUTIVE PROCEDURE DEVISED BY ALLIED AUTHORITIES

(3) If wanted for trial outside Germany by two or more of the United Nations, of one of which the accused was a citizen, that one had priority;

(4) If wanted for trial outside Germany by several countries, not all of which were United Nations, the United Nations had priority;

(5) If wanted for trial outside Germany by two or more of the United Nations, that which had the most serious charges against the accused, which were moreover supported by evidence, had priority.

In all other cases the zonal Commander had to comply with the request. No provisions were made as to what justification for the surrender was required, and no reference was made either to the Commission's Lists or to the *prima facie* evidence required for criminals not listed by the Commission. However, the practice of the zonal Commanders, at least so far as the British, American and French zones were concerned, was the one already described. Normally the Commission's Lists were considered sufficient for every criminal whose name appeared on them. In other cases, the requesting Government was expected to furnish sufficient data regarding the crime and the date and place of its commission, as well as regarding the identity of the criminal. The zonal Commanders, however, retained full discretionary power to decide each case on its merits.

When making his decision, the Commander was called to see to it that the delivery did not "become the means of defeating or unnecessarily delaying the carrying out of justice in another place". (Art. V). In this connection provision was made to the effect that "if within six months the delivered person had not been convicted" he had to be "returned upon demand of the Commander of the zone where he was located prior to delivery".

(iii) SURRENDER OF WAR CRIMINALS NOT APPEARING ON THE COMMISSION'S LISTS

(1) First Difficulties

(a) The Netherlands motion

In connection with the executive procedure for the surrender of war criminals as we saw it, a major issue arose in the Commission. It concerned the handing over of war criminals whose names did not appear in the Commission's Lists.

It will be remembered that under the rules devised by the British and United States military authorities, and later confirmed by the Allied Control Council Law No. 10, binding upon all four occupying powers in Germany, the military authorities were authorised to hand over criminals not listed by the Commission. On the other hand, the British and American authorities communicated their readiness to accept the Commission's Lists, except in special cases, as a sufficient ground for effecting the surrender. The British ruling in such cases was that war criminals would be surrendered "without question", and both British and Americans required in general practice that a war criminal be listed by the Commission before being surrendered. This ruling and practice were not superseded by Law No. 10, but on the contrary were supposed to be the actual procedure to be applied by the zonal Commander, in
cases in which he had called to comply with the requests under Art. IV of this Law.

In February, 1946, the Netherlands delegate informed the Commission of a letter sent by the Dutch War Crimes Commission in the British zone of Germany to the Dutch Minister of Justice. The Mission advised the Minister that, in order to obtain the surrender of a war criminal, it was not at all necessary to have the criminal's case examined by the Commission and his name entered in its Lists. The military authorities, the Mission said, practised direct delivery of any war criminal to the requesting country, on the basis of the same prima facie evidence as that submitted to the Commission. It, therefore, suggested that, in order to speed up the whole procedure, the submission of charges and evidence to the Commission be discontinued, and that all relevant material be sent direct to the military authorities.

This information brought to a head the very purpose of the Commission's work in drawing up Lists of war criminals, upon careful examination of the charges and evidence.

In a memorandum, (1) in which he communicated the content of the above letter, the Dutch delegate disagreed with the attitude both of his Government’s Mission and of the detaining authorities. He submitted that a complete by-passing of the Commission was contrary to its terms of reference, and to the general rules communicated by the British and United States authorities. He stressed that the Commission's work, in drawing up lists of those to be surrendered for trial, guaranteed a uniformity in decision, which could not be secured if the various detaining authorities were to supersede it in their respective local spheres of action. Supported by the Czech representative, he moved a resolution in which the Commission would express its protest and re-assert its authority under its terms of reference and the rules laid down by the British and American authorities.

The question was fully debated by the Commission at three consecutive meetings. (2) One matter of principle was agreed upon, namely that Law No. 10 gave the right to any Government to apply direct to the military authorities and to obtain surrender irrespective of whether a war criminal was or was not listed by the Commission. This point was particularly stressed by the French delegate, who insisted that any restriction in this respect would infringe upon the sovereign rights of States. It was, however, unanimously recognised that, should the proposal of the Dutch War Crimes Mission become a rule, there would be no further reason for the Commission to proceed with the drawing up of lists, which represented one of its main tasks. All members agreed that such a consequence would be unacceptable, and that this was obviously not desired by the Governments nor by their military authorities. The Belgian delegate was of the opinion that the omission of the Commission's Lists in Law No. 10 was due to the fact that Russia was not a member of the Commission, so that no reference to its Lists could be made in a legal document prescribing a proce-

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(1) Misc. 8, 7.2.46, Translation of letter from Netherlands War Crimes Mission in Germany, to the Netherlands Minister of Justice.

(2) Meetings on 6th, 13th and 20th February, 1946. See M.94, M.95 and M.96.
dure also binding upon Russia. The majority of members agreed that, taking into consideration all elements, the procedure as it stood under Law No. 10 and under the rules made by the military authorities, was in fact devised to allow the surrender of war criminals not listed by the Commission as an exceptional measure only, where certain factors, such as time, required that the handing over be effected without waiting for the criminal to be listed. The normal procedure should require that war criminals be listed before being handed over.

The conclusion was reached that a communication to this effect should be made to the Governments in the form of a resolution.

(ii) Resolution of 20th February, 1946

After further discussion and consideration of several drafts, the Commission adopted on 20th February, 1946, the following resolution.(1)

"The United Nations War Crimes Commission is unable to accept the view which has been suggested by the authorities of one of its member States that it is unnecessary for a case to be referred to the Commission before a request is made to the Military authorities for the surrender of a war criminal for trial. Such a view would not be in accordance either with the International Resolution defining the duties of the Commission or with the practice of the American authorities as explained by Colonel Hodgson in his letter of 3rd September, 1945, or with the practice of the British authorities, as stated in a letter from the Foreign Office dated 20th August, 1945. The normal procedure is for the Commission after due investigation to put the accused on their List and it follows that it is departed from when an accused person is handed over without being listed by the Commission. Such a departure under existing directives, is only justified as an exceptional measure and after careful examination of each case on its merits by the Commanding Officer of the forces by whom the accused is held. It is the hope of the Commission that in any such cases the member Governments will at the same time forward a copy of the dossier to the United Nations War Crimes Commission".

The Commission thus recommended that the powers retained by the military authorities in their original communication, and those conferred on them by Law No. 10 with regard to the surrender of war criminals not listed by the Commission, should be used only in exceptional cases, and that even then war criminals thus surrendered should subsequently be listed by the Commission.

(c) Action of the British Government

In view of the fact that the communication of the Netherlands representative was related to the practice of the British military authorities in Germany, the United Kingdom delegate made special representations to the Foreign Office. The latter was requested to agree with the Commission's resolution and to issue instructions to the military authorities.

On 22nd June, 1946 the Foreign Office informed the Commission that the United Kingdom Government had endorsed the resolution and that instructions were being sent to all British Commands in Europe. The contents of the following instructions sent to the Headquarters of the British Army of the Rhine (B.A.O.R.) were communicated: (2)

(1) C.177, 22.2.46, Procedure for surrender of war criminals; resolution adopted by the Commission on 20th February, 1946.
(2) Misc. 35, 27.6.46, Handing over of war criminals; exchange of correspondence.
ARRANGEMENTS FOR SURRENDER OF WAR CRIMINALS

"Instructions for handing over alleged war criminals to allied countries"

(1) A person wanted by an Allied country for a war crime committed against its nationals should normally be handed over to that country for trial only when he has been listed by the U.N.W.C.C. as a war criminal on a charge brought by that country. Unlisted persons should only be handed over in cases of exceptional urgency and then only after satisfactory prima facie evidence of guilt has been produced. In such cases the country to whom the accused is handed over should be requested to make an immediate application to the U.N.W.C.C. for his listing as a war criminal.

(2) In the event of any country requesting the handing-over of a person whose case has been considered and rejected by the U.N.W.C.C., the case should, in view of the possible political implications, be referred to the War Office for consideration.

(3) The above instruments apply only to handovers for trial. There is no objection to the temporary loan, at your discretion, of unlisted persons for interrogation or to give evidence in other cases.”

Confirmation was subsequently received that the British authorities were strictly complying with the above instructions, and that a similar procedure was also being carried out by the American authorities within the terms of their own regulations.

(2) Further Developments

In May, 1946, the Yugoslav delegate made a written communication to members of the Commission. He declared that, according to information received from the Yugoslav War Crimes Commission, the resolution of 20th February had been “misinterpreted by the military authorities in Austria and Germany”. These authorities, he said, were now taking the opposite attitude to that indicated by the Dutch representatives, by declining to hand over in all cases war criminals not listed by the Commission. He thought this was at variance with the resolution which recognised the surrender of such individuals “as an exceptional measure”. After the resolution was adopted the military authorities did not make any exception. He referred to specific cases where unlisted war criminals were discovered by the Yugoslav investigating teams, and stressed that the refusal to hand them over, on the sole ground that they were not listed by the Commission, caused considerable delay in bringing them to trial, during which time the accused could escape. In his opinion such cases were precisely those envisaged in the resolution as “exceptional”. He therefore moved that a letter be circulated to all detaining authorities making it clear that wherever the listing was only a matter of time, or wherever the accused was likely to escape and to be released, if in custody, he should be surrendered on the basis of the prima facie evidence directly presented to the military authorities, without waiting for the Commission to list him.

The Chairman of the Commission and the majority of members, while appreciating the difficulties of the Yugoslav authorities, disagreed with the proposal. They were of the opinion that any new approach to the

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(1) C.203, June, 1946, Procedure for surrender of war criminals. Communication made by Dr. R. Zlukovic regarding the inappropriate interpretation of the U.N.W.C.C.’s resolution adopted on 20th February, 1946, (Doc. C. 177) by the military authorities.

(2) See M.107 5.6.46 and M.108 19.6.46.
military authorities after the resolution of 20th February had been accepted by them and carried out, would endanger the principle involved, i.e. that normally a man could not be surrendered before having been listed by the Commission. The Yugoslav proposal was, therefore, rejected. However, to meet the main point raised by the Yugoslav delegate—that concerning the time factor—the Commission decided, on the suggestion of the Belgian delegate, to give priority to the examination of cases implicating war criminals located by the investigating authorities and not yet listed. For criminals listed in such urgent cases a special certificate was to be delivered to the Government concerned, thus making the surrender possible before the printing and distribution of regular lists of war criminals. A note to this effect was communicated to all member Governments(6) and the procedure applied henceforth.

(iv) SURRENDER OF WAR CRIMINALS LISTED BY THE COMMISSION

(1) Cases involving United States Authorities

In May, 1947, the Yugoslav delegate made the following communication:(9)

The Yugoslav investigating team with the United States Forces, European Theatre (U.S.F.E.T.), had reported that, since October, 1946, the American authorities in Germany were declining to hand over war criminals who had been listed by the Commission, and were asking that in all such cases the same facts and evidence as those presented to the Commission be submitted to them as well. This meant that these authorities did not feel bound by the Commission's decisions, and that they were thus invalidating its procedure and ignoring its Lists. The Yugoslav delegate quoted a letter received from U.S.F.E.T. in one of the specific cases involved, requiring that the request for surrender be "accompanied by a clear statement of the law violated, the acts charged as violation, and evidence affording a reasonable support to the charge". The Yugoslav delegate asked the Commission to "find a way in which to remedy this very unsatisfactory position".

The issue thus raised was whether the Lists of the Commission had a binding effect upon the military authorities, so as to result in an automatic surrender of all individuals listed by the Commission.

The matter was considered by the Commission on 21st May, 1947.(9) The United States representative stated that, under the existing rules, the Commission's Lists were not necessarily regarded as conclusive and surrender was therefore not automatic. The American authorities, as well as the authorities of other Governments represented on the Commission, had always reserved the right to inquire into each case, including those where the Commission had listed a war criminal and thereby decided that he should be surrendered for trial to the country concerned.

(1) C.205, 14.6.46, Listing of Urgent Charges. Communication to members and National Offices regarding the procedure.
(2) C.156, 16.5.47, Surrender of war criminals by the American authorities—letter and enclosure received from Dr. R. Zivković, Yugoslav representative.
(3) See M.127. 21.5.47.
The Chairman agreed with this view, and added that there was nothing to prevent the detaining authorities from questioning the Commission's Lists. The matter was adjourned sine die.

(2) **Attitude of the British Authorities**

The above attitude of the United States authorities towards the Lists of the Commission was confirmed to be also that of the British authorities. In a memorandum concerning the handing over of war criminals from the British zone of Germany, the United Kingdom representative informed the Commission of the following:①

By requiring in some cases that *prima facie* evidence be submitted even when a war criminal was listed by the Commission, the British Government had not changed their policy. They had always accepted the Commission's Lists "as normally constituting" a sufficient justification for automatic surrender, but at the same time they had from the outset reserved "the right to make further investigations in any particular case where that appeared necessary". The British authorities had no intention of minimising the value of the Commission's Lists, and they regarded them in themselves as "evidence", though not necessarily as *prima facie* evidence warranting automatic surrender. This procedure was fully in accord with the existing rules, particularly with those provided by the Allied Control Council Law No. 10.

The above attitude of the British and American authorities met with the approval of the Committee on Facts and Evidence in particular, in connection with a number of cases which it had to revise in the light of additional facts.

(3) **Release of war criminals listed by the Commission after a certain date**

In July, 1947, the Commission received information from the British and American authorities in Germany that, in view of the need to terminate war crimes trials within a reasonable period of time, the following measure had been decided:②

If war criminals detained by the above authorities were not taken over by the countries claiming them for trial by a certain date, those detained would be released from custody. The information stressed that this would automatically include all such detained persons as were listed by the Commission. The measure concerned a total of 1,211 persons wanted for trial by 11 nations, and the date limits were 1st October for the British and 1st November, 1947, for the American zones. By those dates it was intended to clear all pending cases of surrender.

The information was put on the agenda of the meeting on 24th September, 1947,③ at the request of the Belgian and Netherlands representa-

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① A.60, 24.11.47, *Extradition of war criminals from the British zone. Memorandum by Sir Robert Craigie*.


③ See M.130. 24.9.47.
tives, who expressed their concern at what they considered to be an unjustified measure restricting the surrender of war criminals. Consideration of the matter was, however, adjourned in order to enable the British and United States representatives to obtain details as to what was proposed to be done in respect of war criminals after they had been released.

The question was again brought before the Commission in January, 1948, at the request of the Polish delegate. In a detailed letter, addressed to the Chairman on 16th December, 1947, the Polish delegate stated that, since 1st November, 1947, the American authorities in Germany no longer accepted surrender requests, even concerning war criminals listed by the Commission. He complained that this "nullified the work of the Commission as regards its value in the province of extradition from the American zone". In all cases which the American authorities deemed it appropriate, the same facts and evidence submitted to the Commission for the listing of war criminals, had to be produced in support of an application for surrender.

The Polish representative repeated the point previously made by the Yugoslav representative and contended that, once a war criminal was listed by the Commission, his automatic surrender "constituted a duty which could not be unilaterally altered". He conceded, however, that surrender could be withheld in case of additional facts or evidence, requiring re-examination of the whole case. He illustrated his argument by reference to a number of specific cases where, in his opinion, the submission of further evidence to the United States authorities was not justified. Finally, he asked the Commission to make a recommendation in which it would re-assert the validity of its Lists for the automatic surrender of war criminals; request that no date limits be made for the acceptance of further surrender requests; and take urgent action for the surrender of war criminals "residing or hiding in different zones".

The above proposal was considered by the Commission on 7th January, 1948. Opening the discussion, the Chairman said the main point to be examined was once again the effect of the Allied Control Council Law No. 10 for Germany. This Law was "obligatory and definite". Quoting the relevant provisions, he pointed out that the detaining authorities had full discretion in deciding any request for surrender. They could consult any one and adopt any method of proceeding, but in all cases the final decision was theirs. As to the Commission's Lists, they were not and could not be conclusive from the point of view of surrender. The Commission's task was only to establish, on the evidence submitted, whether a prima facie case existed against the accused. The question of the accused's surrender was different, and in many cases a higher standard of evidence was required to this effect. Therefore he could not agree with those criticising the powers of the military authorities. In view of these powers as they stood under the existing laws, the Commission could and should not make a recommendation which would be at variance with them, as well as with the considered opinion of the majority of its members.

(1) A.61, 16.12.47, Letter from Colonel Muskat to Lord Wright.
(2) See M.132, 7.1.48.
The Polish delegate maintained his attitude and moved the adoption of a resolution on the following lines:

(a) That the United Nations War Crimes Commission should appeal to member States to take urgent action for the surrender of war criminals in all pending cases.

(b) That wherever there was no further evidence to be considered, war criminals whose names appeared in the Commission's Lists should be handed over automatically.

(c) That any limitation of date regarding the surrender should be considered as contrary to the existing declarations and agreements concerning the punishment of war criminals.

It will be noted that the above motion was in line with the proposals which had previously been submitted to the United Nations General Assembly, at its Second Session, by the Yugoslav delegation and supported by the U.S.S.R. and the other Eastern European countries, and which were all rejected as laying unjustified charges against the other nations.1)

The Polish motion was supported by the Yugoslav and Czech delegates.

Replying to the criticism addressed to the American authorities, the United States representative stated that the American authorities had not taken a strict attitude in respect of the date limit, and that in practice they had resumed admitting surrender requests in individual cases. According to instructions issued on 17th November, 1947, such requests were being admitted by the Legal Division, United States Military Government in Berlin, and these instructions were communicated to all Allied nations concerned. They did not constitute any unilateral alteration of the normal procedure, but only a change of the authority to deal with surrender requests after 1st November, 1947.

He then denied the accuracy of the information given by the Polish delegate regarding specific cases referred to by him. In one case, part of the additional evidence required was submitted by the Polish authorities, and the one unanswered was that concerning the designation of the law violated. In this case the accused subsequently committed suicide and, therefore, could not be cited as a case in which surrender had been declined. The United States representative then referred to the resolution of the United Nations of 31st October, 1947, which the Polish delegate had quoted to strengthen his motion. This resolution, he stressed, explicitly required the submission by the requesting State to the requested authorities of prima facie evidence as to the identity and guilt of the accused. The American authorities had done nothing other than act on the lines of this rule. He underlined the fact that the Polish delegate had submitted questions and cases which had all been thoroughly examined several months before in one of the United Nations Committees, during the Second Regular Session of the General Assembly, and in respect of which the majority decided that no reproach could be made to Governments that they were not carrying out their responsibilities in the matter of surrender. Finally, he mentioned that Poland had been one of the most favoured countries in obtaining delivery of war criminals from the United States zone—she

(1) See Section B (ii) (2), p. 413 above.
obtained 1,200 criminals—more than any other Allied country, except France.

When a vote was taken on the Polish motion it was rejected by 7 votes against, 3 in favour and 5 abstentions.

In this last stage of the Commission's activities it was, thus, definitely established that, in respect of the executive procedure which had been devised by the Allied Governments in order to secure the surrender of war criminals, Governments holding war criminals in their custody reserved the right to decide all requests with unfettered powers in all cases, including those in which the Commission had found that a prima facie case of guilt existed. The ultimate decision in all such cases was given to the military authorities, which were left free to determine whether they would consult any other authority before making decision, or whether they would proceed without consultation.

D. ATTITUDE OF NEUTRAL STATES

(i) ACTION BY THE ALLIED GOVERNMENTS

The determination of the Allied Governments to bring war criminals to book after the failure experienced at the end of World War I, caused them to display great concern about the attitude of the neutral governments comparatively long before the end of World War II was in sight. The abortive attempt at securing the surrender of the ex-Kaiser, in connection with the Versailles Treaty (Art. 227), from the then neutral Government of the Netherlands, and the lack of arrangements to obtain the surrender of many war criminals who had sought refuge in the territory of other neutral countries during or after World War I, were, no doubt, vivid in the minds of those responsible in the Allied Governments during the late World War.

As early as 1943 consultations took place between the United Kingdom, the United States and Soviet Governments. As a result, the representatives of the United Kingdom in Turkey, Switzerland, the Argentine, Portugal, Spain and Sweden were instructed, in July, 1943, to make the following communication to the Government to which they were accredited:

"In view of the developments in Italy and the possibility that Mussolini and other prominent Fascists and persons guilty of war crimes may attempt to take refuge in neutral territory, His Majesty's Government in the United Kingdom feel obliged to call upon all neutral countries to refuse asylum to any such persons and to declare that they would regard any shelter, assistance or protection given to such persons as a violation of the principles for which the United Nations are fighting, and which they are determined to carry into effect by every means in their power ".

The United States Government instructed their diplomatic representatives to give a similar official notice. The Soviet Government instructed their representatives at Stockholm and Ankara, which were presumably the principal places affected as far as they were concerned, to make a similar communication.

In the summer of 1944 a warning on similar lines was repeated by the United States Government, which transmitted to the neutral Governments a public statement made by President Roosevelt in Washington. The statement declared that it was difficult to believe that asylum or protection to war criminals would be granted by any neutral Government, and that the United States Government would consider the harbouring of any of the Axis leaders, or their henchmen by a neutral Government as contrary to the principles for which the United Nations were waging war. The United Kingdom Government adopted and countersigned the declaration. (1)

(ii) REACTION OF NEUTRAL COUNTRIES

Soon after these steps were undertaken favourable replies were reported from the neutral Governments.

In September, 1944, the Secretary of State of the United States, Mr. Cordell Hull, announced that “Sweden, Turkey, Switzerland and Spain had assured the State Department that they would not help Axis and Fascist fugitives to escape just punishment”. By the end of the month the State Department also received assurances from the Argentine Government. These were to the effect that in no event would persons accused of war crimes be allowed into Argentine territory or permitted to create capital deposits or acquire property of any kind. At about the same time press reports quoted statements made by members of the Swedish Cabinet. On 6th September, the Swedish Minister of Social Welfare, Hr. Gustav Moeller, was reported to have declared, with reference to war criminals, that “it could be taken for granted that Sweden would close its frontiers in the face of an invasion of such refugees, and should anyone slip through he would be returned to his own country” (2). This statement was subsequently confirmed by the Swedish Minister for Foreign Affairs and by the Minister of Justice who, in October, 1944 and March, 1945, declared that their country would not become “an asylum for war criminals”. The Minister of Justice stressed that the Government would reserve the right to examine each individual case, but that it would at the same time “urge” that war criminals be “legally tried in the countries to which they return”. (3)

In October, 1944, Mr. Richard Law, Under-Secretary of State, declared in the House of Commons that the Portuguese Government had informed the United Kingdom that “it would not, by granting asylum in its territory, permit war criminals to escape the decisions of the national or international tribunals competent to try them.” (4) A few days later Mr. Anthony Eden, the Foreign Secretary, made a similar statement to the House, concerning assurances received from the Spanish Government. (5) On 15th November, 1944, the Swiss Government made its attitude known in a statement delivered in the Parliament in Berne. While declaring that it “intended to exercise the unquestionable right of a sovereign State to give asylum to a fugitive whom it considered worthy thereof”, the Swiss Government

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(1) Loc. cit.
(2) The Daily Telegraph, 6.9.1944.
(3) News Digest, 24.3.1945.
(4) The Times, 12.10.1944.
(5) The Times, 15.10.1944.
made it clear that "asylum could not be granted to persons who had
committed acts contrary to the laws of war or whose past gave evidence of
conceptions incompatible with the fundamental traditions of law and
humanity". At about the same time the Government of Eire made
its views known to the United Kingdom Government. On 14th November,
1944, a spokesman of the United Kingdom Government declared, in the
House of Commons, that the Government of Eire had stated that they
could not give assurances which would preclude them from exercising
the right to grant asylum "should justice, charity, or the honour or interest
of the nation so require". However, the Irish Government stated at the
same time that, since the present war began, it had been their "uniform
practice to deny admission to all aliens whose presence would be at
variance with the policy of neutrality or detrimental to the interests of
the Irish people, or inconsistent with the desire of the Irish people to
avoid injury to the interests of friendly States, and that when such aliens
landed they were deported to their countries of origin as soon as possible".
The United Kingdom's spokesman then stated that, in the view of the
British Government, it would be "detrimental to the interests of the Irish
people" were war criminals to be harboured in Eire.  

On 7th February, 1945, the Lord Chancellor, Viscount Simon, made a
general statement in the House of Lords to the effect that assurances had
been received from the Governments of Portugal, Spain, Sweden, the
Argentine and Switzerland.

(iii) FURTHER DEVELOPMENTS ON GOVERNMENTAL LEVEL

Soon after the reception of such assurances it appeared that the
major Allied Governments were not entirely satisfied that in no case would
a war criminal find refuge in neutral countries. In February, 1945,
the Acting Secretary of State of the United States Government, Mr.
Joseph Grew, declared that the United States Government "were not
satisfied with the attitude of a number of neutral Governments, and would
not be until it had unequivocal assurances from all neutral Governments
that they would refuse entry to any war criminals who might enter
illegally." In March, 1945, the British Foreign Secretary, Mr. Eden,
said in the House of Commons that assurances received were "broadly
speaking not satisfactory". In April of the same year, in the United
States, the Foreign Affairs Committee of the House of Representatives
adopted a resolution insisting that the United States Government should
pursue war criminals taking refuge in neutral countries.

As could be expected, the question of obtaining satisfactory assurances
from neutral states without infringing their sovereign rights, had from the
outset been a delicate matter. Some of these states displayed great concern
in making it clear that this was the limit for complying with the requests of
the belligerent Powers, such as the Swiss and Irish Governments did in

(1) See M.125. 26.3.47. p. 4. Text communicated by the U.S representative at
the War Crimes Commission's meeting of 26th March, 1947.
(2) The Times, 15.11.1944.
(3) The Times, 8.2.1945.
(4) The Times, 10.2.1945.
(5) Hansard, 28.3.1945.
their declarations. Some showed resentment when the belligerent Powers became too insistent. This can be illustrated by quoting a passage from one of the articles which appeared in the Swedish press at the time. Replying to the above-mentioned resolution of the United States House of Representatives, the Aftonbladet of 26th April, 1945, stated that "the Swedes felt no solidarity with those responsible for these deeds (i.e. war crimes) and therefore needed no warnings from the U.S.A."(1)

On the other hand, the true attitude of the belligerent Powers towards this delicate question can best be illustrated by a statement made by the Lord Chancellor of the United Kingdom Government in the House of Lords on 7th February, 1945. Opposing a motion that the House should adopt a resolution declaring that "the rights of neutrality" do not extend to the granting of asylum to Axis war criminals, the Lord Chancellor, Viscount Simon, found the motion inapposite to achieve the end, and raised the question whether a sovereign State could be compelled to surrender any portion of its sovereignty to give up a foreign fugitive. He then declared that it was not by the method of a resolution, which would deny one of the matters hitherto regarded in international and constitutional law as representing an attribute of sovereignty, that satisfactory results could be secured. He expressly stated that this was the attitude of both the United Kingdom and the United States Governments, which had contented themselves only in communicating their views to the neutral Governments, without touching upon the question of the rights of neutral states. As a consequence, the motion was withdrawn.(2)

(iv) ACTIVITIES OF THE COMMISSION

At the meetings of the Commission,(3) there were cases in which various member Governments reported that war criminals listed by the Commission upon their requests had taken refuge in neutral countries. In submitting such reports member Governments requested the Commission to issue certificates confirming that the Commission had examined the prima facie evidence presented against such war criminals, and that they had been inscribed in the Commission’s Lists as individuals who ought to be brought for trial before the competent national court. These certificates were requested with the purpose of being submitted to the neutral Governments, in order to obtain the surrender of the individuals concerned.

The Commission issued several such certificates, all of which concerned individuals alleged to have taken refuge in Switzerland. On 4th June, 1945, a certificate was issued to the Yugoslav Government regarding Giuseppe Bastianini, an Italian alleged war criminal; on 13th November, 1945, a certificate was issued to the same Government regarding another Italian alleged war criminal, Franco Scasselati; on 26th June, 1946, a certificate was issued to the Czechoslovak Government concerning a German alleged war criminal, Wilhelm Brueening; on 15th August, 1946.

(1) News Digest, 28.4.1945.
(2) The Times, 8.2.1945.
(3) The subject was discussed in several international bodies prior to the establishment of the U.N.W.C.C., in particular by the Cambridge "International Commission for Penal Reconstruction and Development", formed in 1941, where it was studied in a memorandum prepared by Professor H. Lauterpacht.
a certificate was issued to the Czechoslovak Government concerning a Hungarian alleged war criminal, Nandor Batisfalvy; and, finally, at the request of the Yugoslav Government, on 19th September, 1946, a certificate was issued regarding a German alleged war criminal, Stoecker.

While this was being done in the Commission, the question of securing the surrender of war criminals from neutral countries in cases still pending at the time, was considered by the United Nations during the first part of the First Session of the General Assembly, held in London in January-February, 1946. In the resolution adopted by the General Assembly on 13th February, 1946 and previously quoted, the latter, while recommending to member nations to take all measures required for the arrest and delivery of war criminals, called upon non-member States "to take all necessary measures for the apprehension of such criminals in their respective territories with a view to their immediate removal to the countries in which the crimes were committed for the purpose of trial and punishment according to the laws of those countries".

A year and a half later, on 31st October, 1947, the General Assembly reaffirmed the above principle in a new resolution adopted in regard to member nations, thus affecting those neutral states which had become members in the meantime (e.g. Sweden).(1)

Reports received by the Commission from member Governments on the results of their requests made to the neutral Governments for the surrender of war criminals, including those for whom certificates had been issued, were to the effect that no surrender had been obtained from such Governments.

On 24th February, 1947, the Czechoslovak representative informed the Commission that, in the case of Wilhelm Bruening, the Swiss Government had declined even to disclose whether the accused was actually in Swiss territory. The Czech representative stated that, after the request for the surrender of Bruening was lodged, no answer had been received. The Czech Legation in Berne thereafter approached the Swiss Government with a view to obtaining more information as to the accused’s whereabouts. The Swiss Government replied that they did not feel authorised to give information to foreign authorities on foreign nationals who were not subjects of the inquiring Government. They further declared that they were bound by the laws of the country, and that giving the information sought for would represent an exceptional case which would require a special decision of the Swiss Government. The Czech representative asked the Commission to adopt a resolution in order to remedy the position created by such an attitude on the part of neutral states, and to approach the Swiss Government with a view to inducing them to change their policy.

The question was thoroughly discussed by members of the Commission at their meetings held on 12th March, 26th March, 24th April and 21st May, 1947.(2)

(1) Sweden was admitted on 19th November, 1946.
(2) See M.124, 125, 126 and 127 of the same dates respectively.
Members were divided on the preliminary question as to whether such a resolution should be adopted at all. They agreed that, were a resolution to be passed, it would have to convey, expressly or implicitly, the contention that the Swiss Government were failing in their duty to deny asylum to war criminals. Those in favour of such a resolution were, apart from the delegate of Czechoslovakia, the representatives of Belgium, France, Poland and Yugoslavia. They expressed the opinion that, in view of the refusal of the Swiss Government to give even information on the whereabouts of war criminals believed to be in Swiss territory, a resolution on the lines proposed could perhaps influence the Swiss Government and other neutral Governments to revise their attitude. The Yugoslav delegate declared that none of the applications made by his Government to the Swiss Government had been complied with, and none of the war criminals listed by the Commission and applied for from the Swiss Government had been surrendered. Those opposed to this course of action were the representatives of the United Kingdom and of the United States. The British delegate declared that the resolution, particularly if it were to be communicated direct to the Swiss Government, would only do more harm than good. He suggested instead an approach through diplomatic channels, stating that if the Czechoslovak Government submitted a request to the United Kingdom Government to make representations to the Swiss Government on the particular case involved, his Government would undertake to do it; the more so that they had previously been in communication with the Swiss Government on the subject of the surrender of war criminals. He felt that it should be possible for the Swiss Government to answer inquiries as to whether a given individual was or was not in Switzerland, which was one of the main objects of the Czechoslovak request. He stated, however, that if the Commission felt that a resolution should be adopted he would not object. The United States delegate stated that he had instructions from his Government to vote against any resolution, for the reasons that any such resolution could be regarded as a direct affront in the eyes of the Swiss or any other neutral government; in addition, it might prejudice future discussion with the neutral Governments on a diplomatic level, because such Governments would be able to argue justifiably that a resolution of this nature, passed without a hearing of specific cases on their part, could be regarded as unfair. Finally, he stated that it seemed hardly appropriate to use the Commission as an instrument of pressure, forcing action which another country might not like to take or might like to be more deliberate in taking. The Chairman declared that, in face of the arguments raised against adopting a resolution, he would hesitate to ask the Commission to do so. At the meeting of 26th March, 1947, a vote was taken on this issue: 5 countries voted in favour of a resolution; 2 countries voted against; and 4 countries abstained. Delegates of 6 countries were absent. Later, Belgium joined those favouring the resolution. The motion to draft a resolution was thus carried.

Discussing the tenor of the resolution, those in favour agreed that it should be drafted in general terms and should make reference to all neutral Governments, without naming Switzerland or any other neutral country in particular. A point of divergence arose as to whether the resolution, when adopted, should be communicated direct to the neutral Governments,
or whether it should be communicated only to the Governments members of the Commission, with the suggestion that they should approach the neutral Governments if they felt it appropriate to do so. The latter course was adopted by a majority vote.

A draft resolution was discussed.(1) The draft contained a reference to communications received by the Commission that Governments of "certain neutral countries" had "shown disinclination to hand over for trial, before a court of one of the United Nations, persons accused of having committed war crimes", and that they have done so "even in cases where the names of the wanted persons appeared on the Lists issued by the Commission". The draft further contained an express statement regarding the care with which the Commission was examining charges and evidence brought before it, prior to placing names of war criminals on its Lists.

In this connection it was stated that the presence of a person's name on the Commission's Lists "indicated that, in the opinion of an important international body, a prima facie case had been established against the accused justifying his being brought to trial before the appropriate court", and that by failing "to hand over the accused for trial, the neutral Government concerned would be impeding, however unwittingly, the performance of the task for which the United Nations War Crimes Commission was created." It was further stated that "in cases where the presence of a war criminal in a particular neutral country was suspected, but not known for certain", the Commission "would greatly appreciate it if the inquiring United Nations Government could be informed whether or not the accused person was in fact residing in that country". Failure to give such information, it was stated, "might impede the prosecution of inquiries elsewhere, with the result that the perpetrator of some heinous crime may escape detection and trial". The draft also stressed the fact that, in the majority of cases, persons appearing on the Commission's Lists were accused "of crimes of a revolting and inhuman character" and that such persons had "no valid claim to the protection normally accorded to political refugees". It also contained a reference to the resolution adopted by the General Assembly of the United Nations on 13th February, 1946. In conclusion the draft resolution declared that the Commission recommended to member Governments to bring the above considerations "to the attention of the Governments of those neutral countries in which war criminals were believed to be sheltering, in the hope that the early surrender of such persons, in response to a request from a Government of the United Nations, may thereby be facilitated".

During the discussion several amendments were proposed, the most important of which was submitted by the Czech delegate. He suggested the insertion of an additional paragraph in which the Commission would declare it "its duty to report all cases where a neutral country failed to give a satisfactory reply to a member State with regard to a listed war criminal, to the Secretary-General of the United Nations". A deadlock reached on this subject by 5 votes in favour of the amendment, and 5 votes

(1) A.43, 22.4.47.
against, was solved by the casting vote of the Chairman against the amendment.

Eventually, on 21st May, 1947, the resolution was adopted without amendments, as proposed in the draft, by a majority vote.(1)

(1) C.257, 29.5.47, *Handing over of war criminals by neutral countries.*