CHAPTER III

DEVELOPMENTS OF THE LAWS OF WAR DURING
THE FIRST WORLD WAR

PART I

THE 1919 COMMISSION ON RESPONSIBILITIES

A. COMPOSITION AND TERMS OF REFERENCE

In January, 1919, the Preliminary Peace Conference of Paris decided to create a Commission composed of fifteen members for the purpose of "inquiring into the responsibilities relating to the war." The member States were the following: United States, British Empire, France, Italy, Japan, each of them having two representatives, and Belgium, Greece, Poland, Roumania and Serbia, each represented by one delegate.

The Commission was charged with inquiring into and reporting upon the following matters:

(1) The responsibility of the authors of the war.

(2) The facts as to breaches of the laws and customs of war committed by the forces of the German Empire and their Allies, on land, on sea, and in the air during the 1914–1918 war.

(3) The degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs, and other individuals, however highly placed.

(4) The constitution and procedure of a tribunal appropriate for the trial of these offences.

(5) Any other matters cognate or ancillary to the above which might arise in the course of the inquiry, and which the Commission found it useful and relevant to take into consideration.

The Commission decided to appoint three Sub-Commissions.

Sub-Commission I, on Criminal Acts, was instructed to discover and collect the evidence necessary to establish the facts relating to culpable conduct which (a) brought about the world war and accompanied its inception, and (b) took place in the course of hostilities.

Sub-Commission II, on the Responsibility of the War, was instructed to consider whether, on the facts established by the Sub-Commission on Criminal Acts in relation to the conduct which brought about the world war and accompanied its inception, prosecutions could be instituted, and, if it decided that prosecutions could be undertaken, to prepare a report indicating the individual or individuals who were, in its opinion, guilty, and the court before which prosecutions should proceed.
Sub-Commission III, on the Responsibility for the Violation of the Laws and Customs of War, was instructed to consider whether, on the facts established by the Sub-Commission on Criminal Acts in relation to conduct which took place in the course of hostilities, prosecutions could be instituted, and if it decided that prosecutions could be undertaken, to prepare a report indicating the individual or individuals who were, in its opinion, guilty, and the court before which prosecutions should proceed.

On the 29th March, 1919, the Commission submitted its report to the Preliminary Peace Conference. The report was adopted by the Commission unanimously, subject to certain reservations by the United States and Japan. It dealt with the following matters:

1. Responsibility of the authors of the war (premeditation of the war, and violation of the neutrality of Belgium and Luxembourg).
2. Violations of the laws and customs of war.
3. Personal responsibility.
4. The constitution and procedure of an appropriate Tribunal.
5. Proposals as to provisions which should be inserted in the Preliminaries of Peace.

In the following paragraphs of this Chapter we shall deal only with those findings and recommendations of the Commission which concerned violations of the laws and customs of war, i.e. violations which in the subsequent developments have been brought within the notions of war crimes and crimes against humanity in the technical sense of these terms as laid down in the international enactments of 1945–1946.

B. FINDINGS AND RECOMMENDATIONS

1. VIOLATIONS OF THE LAWS AND CUSTOMS OF WAR

In its report of 29th March, 1919, the Commission stated that the large number of documents it had considered supplied abundant evidence of outrages of every description committed on land, at sea, and in the air, against the laws and customs of war and of the laws of humanity, and that in spite of explicit regulations, established customs, and the clear dictates of humanity, Germany and her Allies have piled outrage upon outrage.

In particular, the Commission established the fact that multiple violations of the rights of combatants, of the rights of civilians, and of the rights of both had been committed, which were the outcome of the "most cruel practices which primitive barbarism, aided by all the resources of modern science, could devise for the execution of a system of terrorism carefully planned and carried out to the end. Not even prisoners, or wounded, or women, or children have been respected by belligerents who deliberately

(1) and (2) Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of the American and Japanese Members of the Commission on Responsibilities, Conference of Paris, 1919. Carnegie Endowment for International Peace, Division of International Law, Pamphlet No. 32.
(3) As to those parts of the Report of 1919 Commission which are relevant to the development of the concept of crimes against peace, see Chapter IX. C. of this History.
sought to strike terror into every heart for the purpose of repressing all resistance.” Murders and massacres, tortures, shields formed of living human beings, collective penalties, the arrest and execution of hostages, the requisitioning of services for military purposes, the arbitrary destruction of public and private property, the aerial bombardment of open towns without there being any regular siege, the destruction of merchant ships without previous visit and without any precautions for the safety of passengers and crew, the massacre of prisoners, attacks on hospital ships, the poisoning of springs and of wells, outrages and profanations without regard for religion or the honour of individuals, the issue of counterfeit money, the methodical and deliberate destruction of industries with no other object than to promote German economic supremacy after the war, constitute the most striking examples of such violations, as recorded by the Commission.

(1) List of War Crimes

As a basis for future collection and classification of information concerning the charges as to breaches of the laws and customs of war, the Commission arrived at the following formal list of crimes or groups of crimes:

(1) Murders and massacres; systematic terrorism.
(2) Putting hostages to death.
(3) Torture of civilians.
(4) Deliberate starvation of civilians.
(5) Rape.
(6) Abduction of girls and women for the purpose of enforced prostitution.
(7) Deportation of civilians.
(8) Internment of civilians under inhuman conditions.
(9) Forced labour of civilians in connection with the military operations of the enemy.
(10) Usurpation of sovereignty during military occupation.
(11) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
(12) Attempts to denationalise the inhabitants of occupied territory.
(13) Pillage.
(14) Confiscation of property.
(15) Exaction of illegitimate or of exorbitant contributions and requisitions.
(16) Debasement of currency, and issue of spurious currency.
(17) Imposition of collective penalties.
(18) Wanton devastation and destruction of property.
(19) Deliberate bombardment of undefended places.
(20) Wanton destruction of religious, charitable, educational and historic buildings and monuments.
(21) Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers and crew.
(22) Destruction of fishing boats and of relief ships.
(23) Deliberate bombardment of hospitals.
(24) Attack on and destruction of hospital ships.
(25) Breach of other rules relating to the Red Cross.
(26) Use of deleterious and asphyxiating gases.
(27) Use of explosive or expanding bullets, and other inhuman appliances.
(28) Directions to give no quarter.
(29) Ill-treatment of wounded and prisoners of war.
(30) Employment of prisoners of war on unauthorised works.
(31) Misuse of flags of truce.
(32) Poisoning of wells.

(2) War Crimes and Crimes against Humanity

The substantial number of examples (charges) of offences committed by the authorities and forces of the Central Empires and their Allies that had been collected by the Commission(1) can be divided into two categories. To the first category, comprising the overwhelming majority of charges, belong offences which were committed in violation of the laws and customs of war and can be classified as war crimes in the narrower sense. The second category was composed of offences committed on the territory of Germany and her Allies against their own nationals. In particular, the Commission included among its findings information on various crimes violating the rights of civilians, such as those committed by Turkish and German authorities against Turkish subjects (i.e. the Armenians and the Greek speaking population of Turkey), or those committed by the Austrian troops against the population of Gorizia, which at the material time (1915) was Austrian territory. It would appear that the latter set of offences were those qualified by the Commission as crimes coming within the notion of violations of the "laws of humanity".

In connection with the massacres of the Armenian population which occurred at the beginning of the First World War in Turkey, it is to be mentioned that the Governments of France, Great Britain and Russia issued a declaration, on the 28th May, 1915, denouncing these massacres as "crimes against humanity and civilisation" for which all the members of the Turkish Government would be held responsible, together with its agents implicated in the massacres. The relevant part of this declaration reads as follows:

"En présence de ces nouveaux crimes de la Turquie contre l’humanité et la civilisation, les Gouvernements alliés font savoir publiquement à la Sublime Porte qu’ils tiendront personnellement responsables des dits crimes tous les membres du Gouvernement ottoman ainsi que ceux de ses agents qui se trouveraient impliqués dans de pareils massacres."(2)

The warning thus given to the Turkish Government on that occasion by the Governments of the Triple Entente dealt precisely with one of the types of acts which the modern term "crimes against humanity" is intended to

---

(2) The full text of the declaration is quoted in the Armenian Memorandum presented by the Greek Delegation to the Commission on Responsibilities, Conference of Paris, 1919.
cover, namely, inhumane acts committed by a government against its own subjects.

(3) Views of the Majority and Dissenting Reservations

The majority of the Commission came to the conclusion that the war of 1914–1919 "was carried on by the Central Empires together with their allies, Turkey and Bulgaria, by barbarous or illegitimate methods in violation of the established laws and customs of war and the elementary laws of humanity."

From the foregoing, it appears that the two categories of offences with which the Commission of Fifteen concerned itself, namely, violations of the laws and customs of war, on the one hand, and offences against the laws of humanity, on the other, correspond generally speaking to "war crimes" and "crimes against humanity," as they are distinguished in the two Charters of 1945 and 1946 and in the Control Council Law No. 10. Thus, in 1919 we find, for the first time, the specific juxtaposition of these two types of offences.

It is, however, not known whether the 1919 Commission, in using the term "crimes against the laws of humanity," had in mind offences which were not covered by the other expression "violation of the laws and customs of war," nor whether the Commission considered that crimes against any civilian population fall within the former category. It is common knowledge that in the First World War the Central Powers resorted to the persecution of their own nationals on a considerable scale, though not on a scale comparable with what happened in Nazi dominated Europe between 1933 and 1945. As examples may be mentioned the persecution of political opposition groups and of the Slavonic and Romanic races in Austria and Hungary, and the crimes committed against racial minorities in Bulgaria and Turkey.

In the Memorandum of Reservations presented to the Commission(1) the American members objected to the invocation of, and references to, the "laws and principles of humanity" included in the report, inter alia, on the ground that in contradistinction to the laws and customs of war, the laws and principles of humanity are not "a standard certain" to be found in books of authority and in the practice of nations, but they "vary with the individual, which, if for no other reason, should exclude them from consideration in a court of justice, especially one charged with the administration of criminal law."

In particular, the American representatives pointed out that "war was and is by its very nature inhuman, but acts consistent with the laws and customs of war, although these acts are inhuman, are nevertheless not the object of punishment by a court of justice. A judicial tribunal only deals with existing law and only administers existing law, leaving to another forum infractions of the moral law and actions contrary to the laws and principles of humanity. A further objection lies in the fact that the laws and principles of humanity are not certain, varying with time, place, and

---

circumstance, and accordingly, it may be, to the conscience of the individual judge. There is no fixed and universal standard of humanity.”

In connection with this part of the work of the Commission of Fifteen it may also be of some interest to record the American observations on the principles which should be the standard of justice in measuring charges of inhuman or atrocious conduct during the prosecution of a war.(1)

These propositions were the following:

(1) Slaying and maiming men in accordance with generally accepted rules of war are from their nature cruel and contrary to the modern conception of humanity.

(2) The methods of destruction of life and property in conformity with the accepted rules of war are admitted by civilised nations to be justifiable and no charge of cruelty, inhumanity, or impropriety lies against a party employing such methods.

(3) The principle underlying the accepted rules of war is the necessity of exercising physical force to protect national safety or to maintain national rights.

(4) Reprehensible cruelty is a matter of degree which cannot be justly determined by a fixed line of distinction, but one which fluctuates in accordance with the facts in each case, but the manifest departure from accepted rules and customs of war imposes upon the one so departing the burden of justifying his conduct, as he is prima facie guilty of a criminal act.

(5) The test of guilt in the perpetration of an act, which would be inhuman or otherwise reprehensible under normal conditions, is the necessity of that act to the protection of national safety or national rights measured chiefly by actual military advantage.

(6) The assertion by the perpetrator of an act that it is necessary for military reasons does not exonerate him from guilt if the facts and circumstances present reasonably strong grounds for establishing the needlessness of the act or for believing that the assertion is not made in good faith.

(7) While an act may be essentially reprehensible and the perpetrator entirely unwarranted in assuming it to be necessary from a military point of view, he must not be condemned as willfully violating the laws and customs of war or the principles of humanity unless it can be shown that the act was wanton and without reasonable excuse.

(8) A wanton act which causes needless suffering (and this includes such causes of suffering as destruction of property, deprivation of necessities of life, enforced labour, etc.) is cruel and criminal. The full measure of guilt attaches to a party who without adequate reasons perpetrates a needless act of cruelty. Such an act is a crime against civilisation, which is without palliation.

(9) It would appear, therefore, in determining the criminality of an act, that there should be considered the wantonness or malice of the perpetrator, the needlessness of the act from a military point of view, the perpetration of a justifiable act in a needlessly harsh or cruel manner, and the improper motive which inspired it.\(^{(1)}\)

(ii) PERSONAL RESPONSIBILITY AND MACHINERY FOR RETRIBUTION

Following its findings as to the barbarous and illegitimate methods by which the war was carried on, the 1919 Commission recommended that “all persons belonging to enemy countries, however high their position may have been, without distinction of rank, including chiefs of States, who have been guilty of offences against the laws and customs of war or the laws of humanity, are liable to criminal prosecution.”\(^{(2)}\)

In this connection the Commission expressly stated that in the hierarchy of persons in authority, there is no reason why rank, however exalted, should in any circumstances protect the holder from responsibility when that responsibility has been established before a properly constituted tribunal. That this principle should extend even to heads of States was supported by the view that the privileges, where it is recognised, of the alleged immunity and inviolability of a sovereign of a State is one of practical expediency in municipal law, and the fact that he is exempt from being prosecuted in a national court of his own country does not affect the position from an international point of view. The Commission went on to say that if the immunity of a sovereign is claimed to extend beyond the limits above stated, it would involve laying down the principle that the greatest outrages against the laws and customs of war and the laws of humanity, if proved against him, could in no circumstances be punished. The vindication of the principles of the laws and customs of war and the laws of humanity would be incomplete if a sovereign were not brought to trial and if at the same time other offenders less highly placed were punished. Moreover, the trial of the offenders might be seriously prejudiced if they attempted and were able to plead the superior orders of a sovereign against whom no steps had been or were being taken.

On the question of superior orders the Commission expressed the opinion that “civil and military authorities cannot be relieved from responsibility by the mere fact that a higher authority might have been convicted of the same offence. It will be for the court to decide whether a plea of superior orders is sufficient to acquit the person charged from responsibility.”

In accordance with the above considerations, the Commission recommended that in addition to the municipal courts, military or civil, which every belligerent has power, under international law, to set up for the trial of violations of the laws and customs of war, an International Court (a “High Tribunal”) should be constituted for the trial of outrages falling under four special categories of charges of violations of the laws and

\(^{(1)}\) “Memorandum on the Principles, etc. . . .”, op. cit. Italics introduced.
\(^{(2)}\) Report of the Commission on Responsibilities, op. cit. Chapter III.
customs of war and of the laws of humanity.\(^{(1)}\) The four categories of charges are the following:—

(1) Against persons belonging to enemy countries who have committed outrages against a number of civilians and soldiers of several allied nations, such as outrages committed in prison camps where prisoners of war of several nations were congregated or the crime of forced labour in mines where prisoners of more than one nationality were forced to work;

(2) Against persons of authority, belonging to enemy countries, whose orders were executed not only in one area or on one battle front, but whose orders affected the conduct of operations against several of the Allied armies;

(3) Against all authorities, civil or military, belonging to enemy countries, however high their position may have been, without distinction of rank, including the heads of States, who ordered, or, with knowledge thereof and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to or repressing, violations of the laws or customs of war (it being understood that no such abstention should constitute a defence for the actual perpetrators);

(4) Against such other persons belonging to enemy countries as, having regard to the character of the offence or the law of any belligerent country, it may be considered advisable not to proceed before a court other than the High Tribunal.\(^{(2)}\)

The above conclusions and recommendations were the logical outcome of the opinion stated by the Commission to the effect that "having regard to the multiplicity of crimes committed by those Powers which a short time before had on two occasions at the Hague protested their reverence for right, and their respect for the principles of humanity, the public conscience insists upon a sanction which will put clearly in the light that it is not permitted cynically to profess a disdain for the most sacred laws and the most formal undertakings."

However, the American representatives were unable to agree with the Commission’s conclusion that chiefs of States should be liable to criminal prosecution for offences against the laws and customs of war or the laws of humanity, and presented their reservations. They pointed out that this conclusion, if put into effect, would subject chiefs of States to a degree of responsibility hitherto unknown to municipal or international law, for which no precedents were to be found in the modern practice of nations. In this connection they made reference to the opinion of Chief Justice Marshall, in the case of Schooner Exchange v. McFadden and Others,\(^{(3)}\) in which the reasons are given for the exemption of the sovereign and the sovereign agent of a State from judicial process. The American representatives stated that this opinion "does not mean that the head of the State, whether he be called emperor, king, or chief executive, is not responsible for breaches of the law, but that he is responsible not to the judicial but to the political authority of his country. His act may and does bind his country and render it responsible for the acts which he has committed in its name and its behalf, or under cover of its authority; but he is, and it is submitted that he should be, only responsible to his country, as otherwise to hold would be to subject to foreign countries a chief executive,

\(^{(1)}\) See op. cit. Chapter IV.
\(^{(2)}\) For more detail as to the jurisdiction, constitution, procedure and the law to be applied by such a Tribunal see Chapter XIV, A, of this History.
\(^{(3)}\) Case decided by the Supreme Court of the United States in 1812 (7 Cranch, 116).
thus withdrawing him from the laws of his country, even its organic law, to which he owes obedience, and subordinating him to foreign jurisdictions to which neither he nor his country owes allegiance or obedience, thus denying the very conception of sovereignty.

"But the law to which the head of the State is responsible is the law of his country, not the law of a foreign country or group of countries; the tribunal to which he is responsible is the tribunal of his country, not of a foreign country or group of countries, and the punishment to be inflicted is the punishment prescribed by the law in force at the time of the commission of the act, not a punishment created after the commission of the act."(1)

These observations, the American representatives believed, however, to be applicable to a head of a State actually in office and engaged in the performance of his duties, and to his liability for violations of positive law in the strict and legal sense of the term. They were not intended to apply to what may be called political offences and political sanctions, such as for instance violations of the treaties guaranteeing the neutrality of Belgium and Luxembourg.

(iii) PROPOSALS FOR ENFORCEMENT

In order to make the retributive action effective the Commission came to the conclusions, and consequently recommended, that the following shall be provided by the Treaty of Peace:

(1) That the enemy Governments shall, notwithstanding that Peace may have been declared, recognise the jurisdiction of the National Tribunals and the High Tribunal, that all enemy persons alleged to have been guilty of offences against the laws and customs of war and the laws of humanity shall be excluded from any amnesty to which the belligerents may agree, and that the Governments of such persons shall undertake to surrender them to be tried.

(2) That the enemy Governments shall undertake to deliver up and give in such manner as may be determined thereby:

(i) The names of all persons in command or charge of or in any way exercising authority in or over all civilian internment camps, prisoner-of-war camps, branch camps, working camps and "commandos" and other places where prisoners were confined in any of their dominions or in territory at any time occupied by them, with respect to which such information is required, and all orders and instructions or copies of orders or instructions and reports in their possession or under their control relating to the administration and discipline of all such places in respect of which the supply of such documents as aforesaid shall be demanded;

(1) See op. cit. Annex II, Memorandum of Reservations, Section III.
THE PEACE TREATIES OF 1919-1923

(ii) All orders, instructions, copies of orders and instructions, General Staff plans of campaign, proceedings in Naval or Military Courts and Courts of Inquiry, reports and other documents in their possession or under their control which relate to acts or operations, whether in their dominions or in territory at any time occupied by them, which shall be alleged to have been done or carried out in breach of the laws and customs of war and the laws of humanity;

(iii) Such information as will indicate the persons who committed or were responsible for such acts or operations;

(iv) All logs, charts, reports and other documents relating to operations by submarines;

(v) All orders issued to submarines, with details or scope of operations by these vessels;

(vi) Such reports and other documents as may be demanded relating to operations alleged to have been conducted by enemy ships and their crews during the war contrary to the laws and customs of war and the laws of humanity.\(^1\)

In addition, the Commission recommended that the neutral Governments shall be approached with a view to obtaining the surrender for trial of persons within their territories who are charged with violations of the laws and customs of war and the laws of humanity.\(^2\)

PART II

THE PEACE TREATIES OF 1919-1923 AND THEIR IMPLEMENTATION

A. THE PEACE TREATIES OF 1919–1923

(f) PROPOSALS OF THE COMMISSION OF FIFTEEN

The 1919 Commission on Responsibilities concluded its task by preparing a draft of a set of provisions for insertion in treaties with enemy Governments with a view to assuring in a practical form, in accordance with its recommendations, the constitution, the recognition, and the mode of operation of the High Tribunal, and of the national Tribunals which had to be called to try "infractions of the laws and customs of war or the laws of humanity."

These provisions read as follows:

\textit{Provisions for Insertion in Treaties with Enemy Governments.}

\textit{Article I.}

The Enemy Government admits that even after the conclusion of peace, every Allied and Associated State may exercise, in respect of any enemy or former enemy, the right which it would have had during the war to try and

\(^1\) See op. cit. Chapter IV.

\(^2\) For the recommendations concerning the establishment of an International Court (a High Court), see Chapter XIV of this History.
punish any enemy who fell within its power and who had been guilty of a violation of the principles of the law of nations as these result from the usages established among civilised peoples, from the laws of humanity and from the dictates of public conscience.

Article II.

The Enemy Government recognises the right of the Allied and Associated States, after the conclusion of peace, to constitute a High Tribunal composed of members named by the Allied and Associated States in such numbers and in such proportions as they may think proper, and admits the jurisdiction of such tribunal to try and punish enemies or former enemies guilty during the war of violations of the principles of the law of nations as these result from the usages established among civilised peoples, from the laws of humanity and from the dictates of public conscience. It agrees that no trial or sentence by any of its own courts shall bar trial and sentence by the High Tribunal or by a national court belonging to one of the Allied or Associated States.

Article III.

The Enemy Government recognises the right of the High Tribunal to impose upon any person found guilty the punishment or punishments which may be imposed for such an offence or offences by any court in any country represented on the High Tribunal or in the country of the convicted person. The Enemy Government will not object to such punishment or punishments being carried out.

Article IV.

The Enemy Government agrees, on the demand of any of the Allied or Associated States, to take all possible measures for the purpose of the delivery to the designated authority, for trial by the High Tribunal or, at its instance, by a national court of one of such Allied or Associated States of any person alleged to be guilty of an offence against the laws and customs of war or the laws of humanity who may be in its territory or otherwise under its direction or control. No such person shall in any event be included in any amnesty or pardon.

Article V.

The Enemy Government agrees, on the demand of any of the Allied or Associated States, to furnish to it the name of any person at any time in its service who may be described by reference to his duties or station during the war or by reference to any other description which may make his identification possible and further agrees to furnish such other information as may appear likely to be useful for the purpose of designating the persons who may be tried before the High Tribunal or before one of the national courts of an Allied or Associated State for a crime against the laws and customs of war or the laws of humanity.

Article VI.

The Enemy Government agrees to furnish upon the demand of any Allied or Associated State all General Staff plans of campaign, orders, instructions, reports, logs, charts, correspondence, proceedings of courts, tribunals or investigating bodies, or such other documents or classes of documents as any Allied or Associated State may request as being likely to be useful for the purpose of identifying or as evidence for or against any person, and upon demand as aforesaid to furnish copies of any such documents.4

The recommendations of the Commission were carried by a majority of its members, the only dissenting members being the Americans and the Japanese. The latter were prepared to accept the whole scheme, provided that the recommendations concerning the liability of heads of States as well as those dealing with the responsibility for abstaining from

---

(1) See Report of the Commission on Responsibilities Chapter V and Annex IV.
preventing, putting an end to, or repressing acts in violation of the laws
and customs of war would be eliminated. The American members,
as has already been set out in the preceding Section, also objected to the
recommendations concerning the responsibility of chiefs of States who
have been guilty of offences against the laws and customs of war, neither
could they agree with those concerning the "laws of humanity," and they
proposed to institute a new "Committee of Inquiry." As this would
have postponed the whole matter indefinitely, the Commission refused to
agree to it, and submitted its report to the Preliminary Peace Conference
on 29th March, 1919.

(ii) PROVISIONS OF THE TREATY OF VERSAILLES

On 28th June, 1919, the Versailles Treaty was signed, in which the
following provisions dealing with the punishment of war criminals were
included:

Article 228.

The German Government recognizes the right of the Allied and Associated
powers to bring before military tribunals persons accused of having committed
acts in violation of the laws and customs of war. Such persons shall, if found
guilty, be sentenced to punishments laid down by law. This provision will
apply notwithstanding any proceedings or prosecution before a tribunal in
Germany or in the territory of her allies.

The German Government shall hand over to the Allied and Associated
Powers, or to such one of them as shall so request, all persons accused of
having committed an act in violation of the laws and customs of war, who
are specified either by name or by the rank, office or employment which they
held under the German authorities.

Article 229.

Persons guilty of criminal acts against the nationals of one of the Allied
and Associated Powers will be brought before the military Tribunals of that
Power.

Persons guilty of criminal acts against the nationals of more than one of
the Allied and Associated Powers will be brought before military tribunals
composted of members of the military tribunals of the Powers concerned.

In every case the accused will be entitled to name his own counsel.

Article 230.

The German Government undertakes to furnish all documents and informa-
tion of every kind, the production of which may be considered necessary to
guarante the full knowledge of the inexcusating the discovery of offenders
and the just appreciation of responsibility.

It will be seen that in this Treaty, as well as in the Peace Treaties with
Austria, Hungary and Bulgaria, the view of the American members
eventually prevailed, and the references to the "laws of humanity" do
not appear in these treaties. All the relevant provisions in these treaties,
with the exception of Article 227 of the Peace Treaty of Versailles, deal
only with acts in violation of the laws and customs of war. Thus, for
instance, in Article 228 of the Treaty of Versailles the German Govern-
ment recognised the right of the Allied and Associated Powers to bring
to justice persons accused of having committed acts in violation of the

(2) Peace Treaties of Saint-Germain-en-Laye (Articles 173-176), Trianon (Articles
157-159), and Neuilly-sur-Seine (Articles 118-120).
laws and customs of war, and it also subscribed to the obligation of handing over to these Powers all persons accused of having committed such acts.

As to the question of jurisdiction the Treaty stipulated that persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power, while persons guilty of such acts against the nationals of more than one of these Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned (Article 229).

Thus, the Peace Treaties of that period formally sanctioned the principle that any persons, civilians or members of the Armed Forces, accused of violations of the laws of war, could be tried and punished for such violations by the courts of the adversary. The authors of the Treaties, while accepting the main lines of the recommendations of the Commission, restricted, however, the jurisdiction to try the offenders to the military courts, either domestic or inter-allied, thus disregarding the existing legal systems of most Continental countries.

It is possible that if the Continental Allies had seen any likelihood of punishment being imposed in this way some of them would have brought to their legislation the alterations necessary for the operation of the measures envisaged in the Peace Treaties. It is, however, a fact that not one of them attempted any such modification. On the other hand, the Germans, finding out the difficulties in which the lack of preparation of suitable machinery had placed the Allies, and realizing that the giving of some sort of satisfaction to public opinion in Allied countries could not be avoided, speedily arranged for the trial of war criminals at home. In December, 1919, a law was passed conferring upon the Supreme Court of the Reich, at Leipzig, jurisdiction to try war criminals, and on 25th January, 1920, the German Government informed the Allies that they had organized the machinery to deal with their criminals themselves.

Similarly, the view of the American and Japanese members of the 1919 Commission eventually prevailed also as regards the question of the responsibility of chiefs of State for offences committed against the laws and customs of war. It is true that Article 227 of the Treaty of Versailles provided that the Allied and Associated Powers publicly arraign Wilhelm II of Hohenzollern, formerly the German Emperor, "for a supreme offence against international morality and the sanctity of treaties." The special tribunal envisaged for the trial of Wilhelm II was to be guided "by the highest motives of international policy, with a view to vindicating the solemn obligations of international undertakings and the validity of international morality." It is, however, evident that this arraignment of the Kaiser was not based on a charge of a violation of existing law; the ex-Kaiser was charged, according to what the authors of the Treaty considered to be the then existing state of international law, with offences against moral, not legal provisions.

In connection with the provisions of Articles 228–230 it may be recalled that when, during the Paris Peace Conference, the German delegation contended that a trial of the accused by tribunals appointed by the Allied
and Associated Powers would be a one-sided and inequitable proceeding, the Allied and Associated Powers replied that they "consider that it is impossible to entrust in any way the trial of those directly responsible for offences against humanity and international right to their accomplices in their crimes."(1)

It would appear, therefore, that the authors of the document referred to above considered acts in violation of the laws and customs of war, or at least some of them, as constituting simultaneously "war crimes" and "crimes against humanity" in a non-technical sense.

(iii) OTHER PEACE TREATIES

The first peace treaty with Turkey, namely, the Treaty of Sèvres, signed on 10th August, 1920, contained, in addition to the provisions dealing with violations of the laws and customs of war (Articles 226-228 corresponding to Articles 228-230 of the Treaty of Versailles), a further provision, Article 230, by which the Turkish Government undertook to hand over to the Allied Powers the persons responsible for the massacres committed during the war on Turkish territory. The relevant parts of this article read as follows:

"The Turkish Government undertakes to hand over to the Allied Powers the persons whose surrender may be required by the latter as being responsible for the massacres committed during the continuance of the state of war on territory which formed part of the Turkish Empire on the 1st August, 1914.

"The Allied Powers reserve to themselves the right to designate the Tribunal which shall try the persons so accused, and the Turkish Government undertakes to recognise such Tribunal.

"In the event of the League of Nations having created in sufficient time a Tribunal competent to deal with the said massacres, the Allied Powers reserve to themselves the right to bring the accused persons mentioned above before such Tribunal, and the Turkish Government undertakes equally to recognise such Tribunal."

The provisions of Article 230 of the Peace Treaty of Sèvres were obviously intended to cover, in conformity with the Allied note of 1915 referred to in the preceding part, offences which had been committed on Turkish territory against persons of Turkish citizenship, though of Armenian or Greek race. This article constitutes, therefore, a precedent for Articles 6(c) and 5(c) of the Nuremberg and Tokyo Charters, and offers an example of one of the categories of "crimes against humanity" as understood by these enactments.

The Treaty of Sèvres was, however, not ratified and did not come into force. It was replaced by the Treaty of Lausanne, signed on 24th July, 1923, which did not contain provisions respecting the punishment of war crimes, but was accompanied by a "Declaration of Amnesty" for all offences committed between the 1st August, 1914, and the 20th November, 1922.(2)

---

(2) "Declaration of Amnesty," and the Protocol attached to it, dated 24th July, 1923.
B. ATTEMPTS AT IMPLEMENTATION

(i) ACTION BY THE ALLIED AND GERMAN GOVERNMENTS

In accordance with the second paragraph of Art. 228 of the Treaty of Versailles, a long list of German war criminals, including many military and naval officers of high rank, was prepared in 1919, and handed over to Baron von Lersner, the German Ambassador in Paris, on 3rd February, 1920.

The list comprised 896 persons the surrender of whom was demanded by Great Britain (97), by Belgium (334), by France (334), by Italy (29), by Poland (57), and by Roumania (41). It included such names as Hindenburg, Ludendorff, Mackensen, Tirpitz, Bethmann-Hollweg, the Duke of Wurttemberg and Prince Rupprecht of Bavaria.

By virtue of the Treaty these persons should have been surrendered to the Allies, but the publication of the list roused such opposition that Lersner announced his intention of resigning. The German Government stated that it would find itself in a difficult political position if the Allied Governments insisted on their surrender. They threatened to oppose it by passive resistance and proposed a compromise: instead of handing the accused persons over to the Allies, the German Government would bring the accused persons for trial before the Supreme Court of the Empire in Leipzig.

The Allied Governments appointed a Commission to examine this proposal. This Commission declared the German offer compatible with Art. 228 of the Treaty, and it was accepted with the reservation that if justice was not administered in good faith and a fair punishment was not imposed upon the guilty, the Allies would set aside the proceedings and bring the accused for a new trial before their own courts.

The Allied Governments then selected among the accused the names of 45 persons against whom the most serious charges had been brought (seven of the names were contributed by the British Government) and this list was presented to the German Government.

It was agreed that the prosecution and trial would be conducted by the German authorities, without any interference from the Allies.

The charges against the accused of the British list were of two kinds: three of the accused (Comm. Patzig, Lieut.-Comm. Karl Neumann and Lieut.-Comm. Wilhelm Wernher) were Naval Commanders charged with outrages against the Laws of Maritime Warfare, the four others (N.C.O. Karl Heynen, Capt. Emil Muller, N.C.O. Trinke and Pte. Rob. Neumann) were charged with ill-treatment of prisoners of war.

Many difficulties were experienced: some of the accused had disappeared, others were residing abroad or could not be traced. Moreover, the German Government was not in a position to obtain evidence and information because most of the witnesses were residing in Allied countries where

(i) For this section of the History, the Commission is indebted to the article M. de Baer included in the Report on the Punishment of War Criminals published by the London International Assembly, London, 1945.
they had been demobilised, many had returned to civilian occupations and were scattered over the whole world. So it was agreed, at a Conference held at Spa in July, 1920, that the Allied Governments should themselves collect evidence and provide statements to the Public Prosecutor (Oberreichsanwalt) in Leipzig. Collecting this evidence was a complicated matter and took a long time: several of the witnesses were willing to give evidence in a British, but were unwilling to appear before a German court, and there were no means of compelling them to do so.

At a new Conference which was held in London in February, 1921, it was decided that the witnesses who were unable or unwilling to attend the trials at Leipzig would be examined at Bow Street in the presence of representatives of the accused and of the German Government. This was eventually done, the examination took place in April, and the depositions transmitted to the Leipzig Supreme Court before which the trials were opened on 23rd May.

Out of the seven above mentioned accused, three, namely, Patzig, Wernher and Trinke, could not be found and escaped trial altogether, the only remaining naval officer (Karl Neumann) was acquitted; the three other accused were soldiers, they were sentenced, one of them to ten month's, and the two others to six month's imprisonment. True, the German Government, impressed with this inadequate result, ordered the German Public Prosecutor to take action against two other German naval officers whose names, although connected with the Patzig case, did not appear on any of the lists: Lieutenants Dithmar and Boldt, each of whom was eventually sentenced to four years' imprisonment. In the meantime the Leipzig Court had dealt with four other cases: three at the instance of the French Government (General Stenger—Major Crusius—Lieut. Laule) and one at the instance of the Belgian Government (N.C.O. Randohr). All were acquitted, except Major Crusius, who was proved guilty of having shot several prisoners of war and who was sentenced to 2 years' imprisonment.

French and Allied indignation at these trials rose to such a pitch that the French Mission at Leipzig had to be recalled; the French Government made a strong protest to the German Government, the Belgian Government joined in and decided that the documents submitted to the Court would be withdrawn. Two other Generals (Krushka and von Schack), accused at the instance of the French Government, were acquitted after this withdrawal. As to the Italians, their Government submitted dossiers to the Leipzig Court, but in vain; these cases were just disregarded, and no action was taken upon them. In view of this, in February, 1922, Yugoslavia waived her right to try Bulgarian war criminals.

A fortnight before this (15th January, 1922), the Commission of Allied jurists appointed by the Supreme Council to inquire into the Leipzig trials had unanimously recommended to the Supreme Council that it was useless to proceed with further trials and that the German Government should be required to hand over the remaining accused to the Allies for trial. At this moment, the Leipzig Court had dealt with nine cases: three at the instance of the French Government, one at the instance of the
Belgian, four at the instance of the British, two on the initiative of the German Government. The Commission reached the conclusion that the Leipzig Court had not ensured retribution and the following resolution was moved: "in regard to the sentences the Commission is of unanimous opinion that some of the accused who were acquitted should have been condemned and that in the case of those condemned the sentences were not adequate."(1) Therefore it recommended that no fresh cases be sent to Leipzig, that full effect should be given to Art. 228 of the Treaty and that the German Government be made to hand over criminals for trial to the Allies.

This resolution caused considerable indignation in Germany. On 5th March, 1922, in Berlin, Field-Marshal von der Goltz, at a meeting of the Association of National Soldiers, protested against the surrender of war criminals to the Allies: "the world must realise," he said, "that 25,000 national soldiers, and the police and the Reichswehr are in alliance and that no catchpoll shall hand Germans over to the Allies."

In June, 1922, the Leipzig Court decided to proceed with the trials in the absence of any Allied delegation. The Michelson case was tried and the accused was acquitted. In December, a fresh batch of about 93 accused were brought to trial; among these were Mackensen, Bulow, etc.... In the vast majority of cases there was no public hearing, only six resulted in condemnation; as to the others, either "their innocence" was proved, or it was declared that "their misdeeds were not covered by German Law."

Thus ended the Leipzig trials. The net result of the trials was that out of a total of 901 cases of revolting crimes brought before the Leipzig Court, 888 accused were acquitted or summarily dismissed, and only 13 ended in a conviction; furthermore, although the sentences were so inadequate, those who had been convicted were not even made to serve their sentence. Several escaped, and the prison warders who had engineered their escape were publicly congratulated.

(ii) THE LEIPZIG TRIALS

Considering the small number of persons tried by the Supreme Court in Leipzig, it may be interesting to give a brief account of the acts with which they were charged.(2)

(1) **Naval cases submitted by the British Government**

(a) Lieut.-Comm. Karl Neumann, who was in command of the submarine U.67, was charged with the sinking of the Hospital Ship "Dover Castle" in the Mediterranean on 26th May, 1917, after having sunk a merchant vessel named the "Elm Moor." This officer was acquitted on the grounds that he had acted in obedience to superior orders, which, by German law, was a good ground of defence.(3)

(b) Lieutenants Dithmar and Boldt,(4) who were officers on board

---

(3) *The Times*, 1st, 2nd and 3rd June, 1921.
(4) *The Times*, 12th, 13th, 14th, 15th, 16th, 18th July, 1921.
the German submarine U.86, commanded by First Lieut. Patzig, were charged with the sinking of the Hospital Ship "Llandovery Castle" in the Atlantic in June, 1918. In this case the Commander had knowingly acted against orders. He could not be traced and escaped trial. Together with the two lieutenants, after the "Llandovery Castle" had been torpedoed and sunk at a place where the German orders forbade firing on any hospital ship, they deliberately shelled the lifeboats loaded with survivors with a view to suppressing any evidence of the crime, and succeeded in destroying all but one of them, with the consequent loss of 234 lives. One boat escaped, thanks to the darkness of the night. In the hope of concealing the crime further, the chart of the course of the submarine was falsified, any mention of the sinking was omitted in the Log Book, the accused pledged themselves to secrecy as to the facts and forced the crew to make the same promise. The date for the trial was only notified to the British Government less than three weeks in advance, and four of the principal British witnesses were at sea: one had just left the West Indies and another was at Vancouver, but they were called by wireless, as well as two others who were intercepted in New York, and, by means of special arrangements, all were able to reach Leipzig, but only just in time for the trials.

The two lieutenants, who were unashamed and proud to be barbarians, refused to make any statements, were sentenced on 17th July, 1921, as accessories, to four years' imprisonment, and the next day the German papers appeared with the headline: "Four years' imprisonment for U-Boat Heroes." They did not serve their sentence: Boldt escaped on 18th November from Hamburg prison with the help of German officials; Dihmar escaped on 31st January, 1922, from Naumburg prison, and public rejoicing followed their escape. When explanations were asked, the Allies were told that Dihmar and Boldt were both in Sweden.

(2) Military cases submitted by the British Government

(a) Heynen was an N.C.O. in charge of a prisoners' camp in Westphalia, who consistently ill-treated British prisoners. In the beginning the prisoners had refused the order to descend a coal-mine, because they had no experience of this sort of work which they considered helpful to the German war effort. The accused ordered the guards to drive them to work, using the butt end of their rifles and fists. He was acquitted on this charge. Other charges of "extremely rough acts of brutality against defenceless prisoners" such as striking and kicking sick prisoners whom he had knocked down were, however, proved against him and he was sentenced to ten months' imprisonment.

(b) Captain Muller was in charge of the prisoners' camp of Flavy-le-Martel. In this camp the sanitary conditions were appalling: infectious diseases, intestinal catarrh, ulcers and lice were common, sick men were compelled to work, prisoners collapsed at their work or during roll-call, blows, hits with the riding-cane were the rule, and insults and abuse were incessant. One of the prisoners who had been ill-treated died the next day,

(1) The Times, 9th July, 1921.
(2) The Times, 18th July, 1921.
(3) The Times, 25th, 26th, 27th May, 1921.
but, owing to lack of post-mortem examination, it could not be established that death was due to ill-treatment. A favourite amusement of the accused was to drive his horse into the prisoners’ ranks when they were standing at attention so that many were thrown down by the horse; another was to take photographs of the open-air latrine whilst the prisoners were using it in the throes of dysentery, but the court did not construe these facts as an ill-treatment or as an insult, merely as excessive keenness. So the court decided that he had not, according to German standards, behaved disgracefully, “that his honour as a citizen and an officer was untarnished,” and merely sentenced him to an imprisonment of six months.

(c) Private Rob. NEUMANN was one of the sentries of Pommernsdorf Camp, where about 200 prisoners were interned; the camp was under the command of N.C.O. Trinke, who could not be traced. Neumann was the most brutal of all the wardens of this camp where the prisoners were driven to work with the butts of the rifles, with the consequence that many of them suffered injuries. When one of them complained Neumann gave him such a thrashing that no more complaints were made. There was insufficient evidence to bring a conviction on the majority of charges, but in respect of thirteen of them, Neumann was proved guilty. Notwithstanding this, it was stated in the sentence that the trial “has not revealed any tendencies to cruelty or any brutal disposition in the accused,” and the Court merely imposed upon him a penalty of six months’ imprisonment.

(3) Cases submitted by the French Government

(a) General STENGEL, who was commanding one of the German armies, was charged with having issued the order that no quarter should be given and Major CRUSCIUS was charged with having carried out this order, causing the murder of large quantities of French prisoners, some of whom he had killed with his own revolver. Quantities of German witnesses were heard, all of whom admitted that they had killed prisoners and mainly French prisoners upon Cruscius’s orders and they unanimously accused Cruscius of having shot many with his own hand. A German medical officer, who was in charge of a first-aid post, declared that, after some of the wounded prisoners had been attended to by himself, Cruscius had had them shot. Cruscius admitted these facts but said that he had acted by order of General Stengel. This General was, however, acquitted, the Court being of the opinion that Cruscius had misinterpreted some strong language which had been used by the General. As to the Major, he was acquitted on most of the charges on the grounds that he was not master of his nerves, but was sentenced on one charge of manslaughter to two years’ imprisonment. When the Court delivered the sentence the crowd in the room cheered the two accused and hooted the members of the French Mission who had been attending the hearing. When General Stengel came out of the Court room he was carrying flowers which had been given by admirers. He received such a large quantity of letters congratulating him on his order for no quarter that on 11th July he published in the Press a notice saying how much he regretted that it was
impossible for him to thank individually all those who had written to him
and he begged them to accept this notice as expressing his gratitude.\(^1\)

(b) Lieutenant Laule was acquitted on 7th July for having had a
French captain killed after he had been made a prisoner. The Court
acquitted him on the grounds that the German private soldier who had
shot the prisoner had acted without orders, but it should be noted that this
soldier was never prosecuted.

c) General von Schack who was commanding the garrison of Cassel
and General Krushka who was commanding a prisoners' camp near
Cassel, were charged with having, through carelessness, caused the death
of about 3,000 prisoners. The conditions in which these prisoners
were housed and fed were veritably appalling and the deaths were mostly
due to typhoid. The public prosecution demanded the acquittal and the
Court returned with a verdict of "not guilty."

d) Doctor Michelson was accused of having beaten and ill-treated
several French prisoners in his own hospital, and of having wilfully
caused the death of several of them. Plenty of evidence was given as to
these ill-treatments, but nevertheless Michelson was acquitted on 4th July,
1922.\(^2\)

(4) Cases submitted by the Belgian Government

N.C.O. Randohr was charged with having arrested and confined
Belgian children at Grammont and of having used violence in order to
force them to admit that they had sabotaged telephone lines. Randohr
admitted having arrested the children but not having tortured them and
the Court acquitted him on the grounds that it was impossible to believe
child witnesses.

C. CONCLUSIONS

From the preceding it is apparent that the demand by public opinion
that the war criminals of 1914-1918 should be made to answer for their
crimes had ended in a failure. When one reads Articles 228 and 229 of
the Versailles Treaty it is obvious that the German offer to try the war
criminals before their own courts was in complete opposition with the
letter and with the spirit of the Treaty. The fact that only about ten
accused were sentenced to punishments which were quite out of proportion
with the gravity of the crimes, and that these penalties were never really
served, showed the German public that the provisions of the Treaty of
Versailles concerning retribution were being flouted, and led them to believe
that the other provisions of the Treaty could be just as easily disregarded.

In the beginning the trials seem to have been conducted impartially:
the presiding judge showed a real desire to ascertain the truth and expressed
his disgust at the horrors revealed, paying tribute to the objective sincerity
of the British witnesses. This did not, however, prevent the Court from
accompanying its findings by considerations that were contrary to the
principles of all civilised nations. The German public showed indignation
that German judges could be found to sentence the war criminals and the

\(^1\) The Times, 13th July, 1921.
\(^2\) Von Schack, Krushka and Michelson were tried after the recall of the Allied Missions.
Press brought all possible pressure to bear on the Court, how successfully, its decisions showed. What the more enlightened section of the audience found most shocking was not the horrors brought to light but the fact that those truly responsible were escaping punishment.

As for the reasons why Articles 228-230 of the Treaty of Versailles were not enforced, the following may be noted:

(1) That the sanctions came too late, when public opinion no longer upheld them. The Leipzig trials took place nearly three years after the end of the war, in some cases five years after the actual crime had been committed. The clauses concerning the punishment of war criminals should have been inserted not in the Peace Treaty but in the Armistice terms.

(2) The Allies were no longer united when the war was over; it is curious to note that from the American delegation came the strongest opposition to the creation of an international court, and to the trial of Wilhelm II.

(3) The world in 1919-1920 was not internationally mature to understand the consequences of a failure to ensure respect of the provisions of the Treaty. It was thought that the danger of war was averted for a long period, and the British and Americans, who had not so greatly suffered by the war, were not in favour of a severe enforcement of the clauses in question.

(4) Articles 228-230 were hastily and imperfectly framed, so that it would have been impossible to carry them out. They did not mention by what law penalties should be determined, and the Allied military courts by which the accused should have been tried could not have done so, owing to lack of jurisdiction.