CHAPTER V

VARIOUS DEVELOPMENTS IN THE CONCEPT OF WAR CRIMES DURING THE SECOND WORLD WAR
1939-1943

A. DECLARATIONS OF STATESMEN AND GOVERNMENTS

From the very beginning of the War in 1939, it had been apparent that the Germans were waging a ruthless and savage war, and were ignoring the established rules of warfare. In their rule in the occupied countries also, the Germans pursued the same policy of brutality, violating international conventions concerning the rights of the victors towards the population of occupied territories, to which Germany had given her adherence.

(i) DECLARATIONS OF THE POLISH AND CZECH GOVERNMENTS

It was from the Polish and Czechoslovak Governments in exile that the denunciation of these crimes first came. In November 1940, in a joint statement (1), they declared that the violence and cruelty to which their two countries had been subjected was unparalleled in human history. Among the brutalities instanced were—expulsion of population, banishment of hundreds and thousands of men and women to forced labour in Germany, mass executions and deportations to concentration camps, plundering of public and private property, extermination of the intellectual class and of cultural life, spoilage of treasures of science and art and the persecution of all religious beliefs.

A month later, in December 1940, the Polish Government, in a separate statement(2), denounced the German policy of denationalisation in Poland as being contrary to international law, and, in particular, to the Hague Convention of 1907 on the rights and usages of land warfare, which had been adhered to by the German Reich. It also denounced the German regulation which demanded complete allegiance to the German administration from persons engaged in any form of public service, and relieved them of any loyalty or obligation to the Polish state. This was held to be contrary to the principles by which an occupying power is free to carry on only a de facto government, and may not compel the population of an occupied country to undertake activities directed against their own state.

(ii) ROOSEVELT-CHURCHILL STATEMENTS OF 25TH OCTOBER 1941

The first public action of the Great Powers in denouncing to the world the atrocities committed by the Germans in occupied territory, was taken on 25th October 1941, when simultaneous declarations were made by the President of the United States—then a neutral nation—and the Prime Minister of Great Britain.

(1) The Times, 12th November, 1940.
(2) The Times, 20th December, 1940.
The text of President Roosevelt’s message ran as follows:\(^{(1)}\):

“...The practice of executing scores of innocent hostages in reprisal for isolated attacks on Germans in countries temporarily under the Nazi heel revolts a world already inured to suffering and brutality. Civilized peoples long ago adopted the basic principle that no man should be punished for the deed of another. Unable to apprehend the persons involved in these attacks, the Nazi characteristically slaughter fifty or a hundred innocent persons. Those who would 'collaborate' with Hitler and try to appease him cannot ignore this ghastly warning.

“The Nazis might have learned from the last war the impossibility of breaking men’s spirit by terrorism. Instead, they develop their lebensraum and new order by depths of frightfulness which even they have never approached before. These are the acts of desperate men who know in their hearts that they cannot win. Frightfulness can never bring peace to Europe. It only sows the seeds of hatred which will one day bring frightful retribution.”

On the same day Mr. Winston Churchill issued a declaration from No. 10 Downing Street, which ran as follows:\(^{(2)}\):

“...His Majesty’s Government associate themselves fully with the sentiments of horror and condemnation expressed by the President of the United States upon the Nazi butcheries in France. These cold-blooded executions of innocent people will only recoil upon the savages who order and execute them.

“The butcheries in France are an example of what Hitler’s Nazis are doing in many other countries under their yoke. The atrocities in Poland, in Yugoslavia, in Norway, in Holland, in Belgium and above all behind the German fronts in Russia, surpass anything that has been known since the darkest and most bestial ages of mankind. They are but a foretaste of what Hitler would inflict upon the British and American peoples if only he could get the power.

“Retribution for these crimes must henceforward take its place among the major purposes of the war.”

(iii) MOLOTOV NOTES ON WAR CRIMES

The atrocities committed behind the German lines in Russia, mentioned by Mr. Churchill as being among the crimes whose retribution would be one of the major purposes of the war, reached such brutality that on 7th November 1941 M. Molotov sent a note,\(^{(3)}\) on the atrocities committed against Red Army prisoners, to all nations having diplomatic relations with the U.S.S.R.

The note instanced, among other atrocities, that Red Army prisoners had been tortured and crushed by tanks; others had been burnt at the stake, others had been left to die of disease, or been exterminated by starvation, wounded in hospital had been bayoneted, while nurses and other women medical assistants had been raped. The note concluded with the words:

“All these facts are an outrageous violation by the German Government of the elementary principles and regulations of international law and of the International Agreement signed by representatives of Germany itself.

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\(^{(1)}\) Punishment for War Crimes—the Inter-Allied Declaration signed at St. James’s Palace London on 13th January and relative documents. Published by H.M. Stationery Office for the Inter-Allied Information Committee, page 15.

\(^{(2)}\) Loc. cit.

\(^{(3)}\) The Molotov Notes on German Atrocities. Notes sent by V. M. Molotov, People’s Commissar for Foreign Affairs, to all Governments with which the U.S.S.R. has diplomatic relations. Issued on behalf of the Embassy of the U.S.S.R. in London. (H.M. Stationery Office).
"In bringing these horrible facts to the notice of all countries with which the Soviet Union has diplomatic relations, the Soviet Government indignantly protests before the whole world against the barbaric violation by the German Government of the elementary rules of international law.

The Soviet Government indignantly protests against the brutal attitude of the German authorities towards Red Army prisoners, an attitude which violates the most elementary rules of human morality. It lays all the responsibility for these inhuman actions of the German military and civil authorities on the criminal Hitlerite Government."

Following the receipt of further information as to atrocities committed by members of the German Forces against the Soviet civilian population, Monsieur Molotov on 6th January 1942 circulated a further note(1) to all Governments having diplomatic relations with the Soviet Union.

In this note the Soviet Government told of the deliberate policy of the German Government against the civilians in the territories they had conquered; whole villages wiped out, robbery by German units, children robbed of food and clothing, public hangings, civilians forced to work on mine clearing and fortification building and shot after the task was completed, despoliation of cultural and religious monuments, children murdered by hundreds, women raped or used as a screen in front of advancing troops and other such horrors. The note repeated the protest made in the earlier note against the brutal attitude of the Germans, and declared that the Soviet Government held the Hitlerite Government responsible for these crimes committed by German troops.

(iv) THE INTER-ALLIED COMMISSION AND THE DECLARATION OF ST. JAMES’S OF 13TH JANUARY 1942

Statements such as these, however authoritative, have not the intrinsic value of law and after the 1914-18 war similar statements had been made and even an election won on the promise to "hang the Kaiser". To be effective, political statements must be transformed into a concrete scheme, officially supported by authority, suitable for practical realisation and provided with the necessary machinery. The first such steps were taken by the signature of the Declaration of St. James’s(2) on 13th January 1942, by the representatives of the Governments of Belgium, Czechoslovakia, France, Greece, Luxembourg, Norway, the Netherlands, Poland and Yugoslavia. The body which initiated the scheme was known first as the Inter-Allied Conference on the Punishment of War Crimes, but changed its name to the Inter-Allied Commission on the Punishment of War Crimes.

It had originally been arranged that the Chair of this Commission should be taken by each Power in rotation, with a different chairman for each meeting, but in June 1942, Monsieur Kaeckenbeck, Judicial Adviser to the Belgian Ministry of Foreign Affairs, was elected Chairman. The duties of the Secretariat were undertaken by Poland.

The Declaration ran as follows(3):

(1) Loc. cit.
(3) Loc. cit.
"Whereas Germany, since the beginning of the present conflict which arose out of her policy of aggression, has instituted in the occupied countries a regime of terror characterised amongst other things by imprisonments, mass expulsions, the execution of hostages and massacres,

"And whereas these acts of violence are being similarly committed by the Allies and Associates of the Reich and, in certain countries, by the accomplices of the occupying Power,

"And whereas international solidarity is necessary in order to avoid the repression of these acts of violence simply by acts of vengeance on the part of the general public, and in order to satisfy the sense of justice of the civilised world,

"Recalling that international law, and in particular the Convention signed at The Hague in 1907 regarding the laws and customs of land warfare, do not permit belligerents in occupied countries to commit acts of violence against civilians, to disregard the laws in force, or to overthrow national institutions,

(1) affirm that acts of violence thus inflicted upon the civilian populations have nothing in common with the conceptions of an act of war or a political crime as understood by civilised nations,

(2) take note of the declarations made in this respect on 25th October 1941, by the President of the United States of America and by the British Prime Minister,

(3) place among their principal war aims the punishment, through the channel of organised justice, of those guilty of or responsible for these crimes, whether they have ordered them, perpetrated them or participated in them,

(4) resolve to see to it in a spirit of international solidarity that (a) those guilty or responsible, whatever their nationality, are sought out, handed over to justice and judged, (b) that the sentences pronounced are carried out."

The Prime Ministers of Belgium, Czechoslovakia, Greece, the Netherlands, Poland and Yugoslavia signed on behalf of their Governments, General de Gaulle signed as President of the Free French Committee in Great Britain, Mr. Bech, Minister for Foreign Affairs, on behalf of Luxembourg and Mr. Trygve Lie, Minister for Foreign Affairs, on behalf of Norway. Mr. Anthony Eden, British Foreign Secretary, was present at the Conference, as were representatives of Australia, Canada, India, New Zealand, the Union of South Africa, the U.S.A., the U.S.S.R. and China.

An examination of the texts of the speeches(1) made at the time, reveals that many of the subsequent developments in the concept of the law of war crimes were already in the minds of the allied statesmen. Both Monsieur Pierlot, Prime Minister of Belgium, and Count Raczyński, Polish Foreign Minister, stressed the fact that the crimes committed by the Germans were offences against the common law, and should be treated with all the law's severity; Monsieur Pierlot further added that exemplary punishment to fit the greatness of the crime must be meted out. Monsieur Jan Sramek, Prime Minister of Czechoslovakia, pointed out that the crimes committed by the Germans could not be classified either as acts of war or as political crimes, and stated that these crimes were part of a pattern; they were part of a "criminal campaign well thought out and prepared in advance down to the smallest detail".

(1) Loc. cit. pp. 6-14.
General de Gaulle touched on the principle of the crime of aggressive war, later developed in the Nuremberg Charter, when he declared that “Germany alone is responsible for the outbreak of this war and that she shares with her allies and accomplices responsibility for all the atrocities that proceed from it.” Monsieur Emanuel Tsouderos, Prime Minister of Greece, touched on the question of superior orders when he stated that “henceforth butchers, gaolers, and looters of every kind will no longer be allowed individually to elude their responsibilities on the pretext that they are acting under orders from above.” “In this way,” declared M. Tsouderos, “a new principle of international penal law has come into being.” Monsieur Terje Wold, Norwegian Minister of Justice, declared the willingness of the Norwegian Government “to co-operate with all the other Allies to ensure that these Nazi criminals—for they are nothing but criminal—shall find retribution whenever and wherever they may be apprehended.”

It was Monsieur Joseph Bech, Minister of Foreign Affairs of Luxembourg, who combined the sentiments of all the other delegates when he declared:—

“President Roosevelt and Mr. Winston Churchill, in their rightful condemnation of such acts, have made themselves the interpreters of the conscience of outraged humanity . . . . The application of the principles laid down in the Declaration submitted for our signature, will prevent the war criminals from evading their just punishment . . . . It will be useless, when the day of victory comes, for the torturers of our peoples to claim that they only did what they were ordered to do and acted according to their laws. These laws and the application of them are now stigmatised by the Declaration of the Governments of the Occupied Countries as being contrary to law, the moral law as well as national and international law . . . . The guilty will be liable to the laws of the countries in which their crimes have been committed. If need be, our national legislative systems must be adapted to the aims laid down in our common Declaration and, if necessary, the repression of such crimes must be organised on an international bases.”

Mr. Wunz King, delegate of China, declared that the Chinese Government subscribed to the principles outlined in the Declaration, by which the crimes committed by the enemy occupying authorities were severely condemned and the authors were to be held accountable therefor, and it intended to apply the same principles to the Japanese occupying authorities in China when the time came.

Having secured the signature of the Declaration of St. James’s by the Governments of the occupied countries of Europe, the Inter-Allied Commission for the Punishment of War Crimes next attempted, by means of a questionnaire, to examine questions of broad principle. This action was, however, somewhat premature, since the different questions could not be resolved immediately, largely because none of the Great Powers were represented on the Commission.

The following points were studied:—

(1) Should provisions concerning the arrest and trial of Germans or their allies, accused of having committed crimes against the laws and customs of war, be included in the terms of the Armistice?
(2) Should the question of quislings be treated separately from that of guilty Germans?

(3) Should consideration be limited to those Germans accused of committing crimes against the Allies, or should it also include Germans guilty of crimes against German Jews?

(4) Should the degree of criminality be based on the law of the tribunal responsible for the trial, or should it merely be based on the more general provisions of the Hague Convention of 1907?

(5) Will the accused be entitled to plead superior orders? How are the different parties to the crime to be dealt with? Namely, those responsible for planning, inciting and carrying out the action, and those benefitting from it?

(6) Should the sentences imposed be those within the normal competence of the court, or should they be on a separate scale of punishment?

(7) Should the extradition of guilty Germans be agreed between the nine allied nations?

(8) Should a central interallied organisation be set up to collect evidence, detect and arrest the accused, with the aim of bringing the criminal before a competent tribunal?

The third question touched on a very delicate matter, raised moreover by Jewish organisations, which sought to enlarge the scope of the Declaration of St. James's, but, after some consultation, the matter was settled satisfactorily. It was recognised that the Declaration of St. James's was not limited and that if no particular mention had been made of the suffering of the Jews, it was because it had been considered that such a mention would have been a recognition of German racial theories.

The Commission arranged, with the assistance of the British Ministry of Information, that a pamphlet relating to the Conference of St. James's on 13th January 1942, should be published. This publication was discussed at the meetings of the Commission in May and June 1942, and was published under the title "Punishment for War Crimes" by the Inter-Allied Information Centre.

(v) NOTES DELIVERED TO THE VATICAN AND THE GREAT POWERS

In June 1942, atrocities having broken out afresh in the occupied territories, the Commission discussed the measures that could be taken to counteract them. The nine powers who signed the Declaration of St. James's decided to make a collective approach to the Governments of the United States, Great Britain, Soviet Russia and the Holy See.

In July 1942 the following note was presented, on behalf of the nine signatories, to the British Government by the Norwegian and Greek diplomatic representatives in London:

"The invader's acts of oppression and terrorism have recently developed to such an extent and assumed such forms as to arouse the fear that as the defeat of the enemy countries approaches, the regime of occupation will assume an ever more barbarous and merciless character, not excluding the extermination of whole groups of people.

"As is made clear in Dr. Goebbels' Berlin speech on June 15th 1942, Germany has severed all links with the rest of the world. This being so, to rely exclusively on the influence of public opinion would be in vain. No sense of responsibility will any longer exercise restraint on the action of the invaders.

"The signatories to the Inter-Allied Declaration of January 13th 1942 are therefore convinced that only very definite steps by the most powerful among the Allies can exert a deterrent influence.

"The Allied Ministers . . . express their firm hope that His Britannic Majesty's Government, whose Prime Minister, Mr. Winston Churchill, as early as October 25th 1941, included the punishment of war crimes among the principal war aims of the Allied countries, will take all measures, which they may consider timely in order to save innumerable innocent lives in the territories occupied by the enemy."

At the same time the Czechoslovak and French diplomatic representatives in Moscow, delivered a note in similar terms to the Soviet Government, ending with the words:

"... the above-mentioned Governments, anxious to spare, as much as possible the population of invaded countries trials more terrible than those already endured, and relying on the spirit of solidarity of all the United Nations in the face of a menace which is in reality nothing else than an inhuman method of forcing nations, against their will, to contribute to the enemy war effort or of extorting acts of adhesion to the so-called "new order," have decided to send an urgent appeal to the President of the Council of the People's Commissars of the Union of Soviet Socialist Republics, to give a solemn warning to the guilty."

The diplomatic representatives of the Netherlands, Yugoslavia and Luxembourg in Washington, presented a similar note to the President of the United States, asking him to issue a solemn warning to the guilty. In September 1942 a similar note was presented to the Holy See by the representatives of Belgium and Poland, to which the Governments of Brazil, Cuba, Peru and Uruguay gave their spontaneous support. Copies of reports on the atrocities committed in the occupied countries were attached to each of these notes.

(vi) DECLARATIONS OF THE STATESMEN OF THE GREAT POWERS

President Roosevelt was the first to reply to the note presented on behalf of the Governments of the Occupied Countries. On 21st August he issued a declaration to the effect that(1):

"When victory has been achieved, it is the purpose of the Government of the United States, as I know it is the purpose of each of the United Nations, to make appropriate use of the information and evidence in respect to these barbaric crimes of the invaders, in Europe and Asia. It seems only fair that they shall have to stand in courts of law in the very countries they are now oppressing and answer for their acts."

Mr. Churchill, in a speech in the House of Commons on 8th September 1942 declared:

"I wish most particularly to identify the British Government and the House of Commons with the solemn words which have been lately used by the President of the United States, namely, that those who are guilty of the Nazi crimes will have to stand up before tribunals in every land where their atrocities have been committed, in order that an indelible warning may be given to future ages and that successive generations of men may say 'so perish all who do the like again.'"

The Soviet Government, in a note dated 14th October 1942, replying to the note of the nine Governments, declared:

"The Soviet Government once more declares to the world its inflexible determination that the criminal Hitlerite Government and all its accomplices must and shall suffer deserved, stern punishment for the crimes perpetrated against the peoples of the Soviet Union and against all freedom-loving peoples in territories temporarily occupied by the German army and its accomplices.

"The Soviet Government approves and shares the just desire expressed in the collective note received that those guilty of the crimes indicated shall be handed over to judicial courts and prosecuted, and that the sentence passed on them shall be put into execution.

"The Soviet Government consider it essential to hand over without delay to the courts of the special international tribunal and to punish according to all the severity of the criminal code, any of the leaders of Fascist Germany who, in the course of the war, have fallen into the hands of States fighting against Hitlerite Germany."

Thus, for the first time in official pronouncements, it was agreed that the guilty should be handed over to the country in which their crimes had been committed, and should be tried by the courts of that country.

Meanwhile, in England, two semi-official bodies, namely the Cambridge Commission on Penal Reconstruction and Development, and the London International Assembly, had set up sub-committees to investigate problems relating to the punishment of war crimes; the deliberations of these bodies show the trend of thought which was developing on the subject in the minds of certain jurists during 1942 and 1943. Many of the subjects discussed by these bodies, at a time when the fortunes of war went very ill for the Allies, were developed and executed after the war. They also had their value in educating opinion, so that when the time came steps were taken to mete out just punishment.

B. THE WORK OF UNOFFICIAL BODIES

(i) THE WORK OF THE INTERNATIONAL COMMISSION FOR PENAL RECONSTRUCTION AND DEVELOPMENT

A Conference was organised in Cambridge on 14th November 1941 by the Cambridge Commission on Penal Reconstruction and Development.

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(2) Loc. cit. pp. 5-7.
—a body, composed of members of the Faculty of Law of Cambridge University and of jurists from the occupied countries of Europe, which was engaged in collecting information relative to the re-establishment of justice in Europe after the war. This was attended by representatives not only of the Universities of Oxford and Cambridge, but also of Belgium, Czechoslovakia, France, Greece, Luxembourg, the Netherlands, Norway, Poland and Yugoslavia. After hearing speeches on the subject of war crimes, the Conference set up a committee to consider the rules and procedure to govern the case of “Crimes against International Public Order”.

In May and June 1942 the members(1) of this Committee submitted their opinions as to the types of crimes to be punished, the courts which should adjudicate and the law to be applied. All were agreed that the Committee should consider the question of war crimes and should exclude acts committed by quislings and traitors, whose offences would be justiciable by municipal law. The definition of war crimes given by the Cambridge representative(2) was accepted as a basis for future discussion, namely:

“War crimes may properly be defined as such offences against the law of war as are criminal in the ordinary and accepted sense of fundamental rules of warfare and of general principles of criminal law by reason of their heinousness, their brutality, their ruthless disregard of the sanctity of human life and personality, or their wanton interference with rights of property unrelated to reasonably conceived requirements of military necessity.”

The opinion generally expressed was that, wherever possible, municipal law should be the system of law applicable to the trial of war criminals, but where this was not possible, it was suggested that the general principles of international law should be applied, and in this connection it was recommended that the Committee might undertake some work on the codification of international criminal law. Since municipal courts would, generally speaking, be the ones competent to try such cases, it was recommended that guarantees of impartiality should be included in their constitution, such as the inclusion of civil judges in military courts or the institution of quasi-international courts of appeal. It was evident that there would be a residue of cases outside the scope of the municipal courts and to deal with these cases some members recommended the formation of an international criminal court; others, however, did not think the time was ripe for the creation of such a court.

The judges of an international court should be allied and neutral nationals, but, in the event of only allied judges being available, it was considered that full publicity and freedom of press-reporting would ensure impartiality. It was recommended that an international prosecuting body should be set up or, failing that, that the prosecutor should be of the nationality of the victim. The State bringing the charge should also be


The members of this Committee were: M. Aulie (Norway), Dr. Benes (Czechoslovakia), M. Bodson (Luxembourg), Prof. Cassin (France), M. de Baer (Belgium), Dr. de Moor (Netherlands), Dr. Glaesser (Poland), M. Kaeczenbeck (Belgium), M. Stavropoulos (Greece) and Dr. Vlajic (Yugoslavia).

responsible for the custody of the offender before trial and execution of the sentence after trial, unless, as was visualised by some members, an international police force was in existence, in which case it would be the body responsible for such detention. The consensus of opinion was that a public pronouncement should be made warning the neutrals against granting asylum to war criminals wanted by the Allies. In this connection, some members considered that war crimes could not be regarded as political crimes, and therefore would be extraditable offences, and that application for extradition must be made for specific crimes, such as murder. There must be no repetition of the mistakes made by the Allies in 1919 when they applied for the extradition of the Kaiser for acts of international policy.

Concerning the plea of superior orders, the general opinion was that it should be limited in application, note being taken of the rank of the offender, and the degree of duress to which he was subject. The members considered that the immunity of heads of State outside their respective countries is a matter of courtesy, which can be withdrawn especially in time of war.

(1) Interim Report of 15th July 1942

By 15th July 1942 the Committee had reached certain conclusions, and, at a meeting held on that day, the following resolutions were agreed upon:—

(1) that, while many members held that the time was ripe for the institution of an international criminal court, they considered that the majority of war crimes would come within the jurisdiction of the municipal courts.

(2) that the Armistice terms should contain stipulations concerning the surrender of war criminals.

(3) that the Allied Governments should, by public declaration, warn neutral states of the inadvisability of granting asylum to war criminals.

Since these were only interim conclusions, it was decided to establish three sub-committees for further examination of the question of war crimes. The first of these(1) was to examine the scope of war crimes, how far they come within the competence of the municipal courts, and what crimes could not be covered by such courts. The second sub-committee(2) was to consider the plea of superior orders and the third(3) was to examine and report on the subject of extradition.

(2) Sub-Committee on War Crimes

This sub-committee never drew up a comprehensive report, but the consensus of opinion of the members divided war crimes into three main categories:—

(1) The members of this sub-committee were:—Monsieur de Baer (Belgium) Chairman, M. Burnay (France), Dr. Glaser (Poland) and Dr. Lauterpacht (Cambridge University).
(2) The members of this sub-committee were: Dr. de Moor (Netherlands), Chairman, Dr. Goodhart (Oxford) and Dr. Lauterpacht (Cambridge).
(3) The members of this sub-committee were: Dr. Benes (Czechoslovakia) Chairman, and Minister Vlaitsch (Yugoslavia).
(1) Acts connected with warfare and contrary to the laws of war, e.g. use of poison gas, attacks on hospital ships, etc.

(2) Acts not connected with warfare committed:
   (a) without authority, e.g. rape, murder, etc.
   (b) with the approval of or at the order of authority, e.g. mass murder, murder of hostages, deportation, etc.

(3) Serious crimes committed against property:
   (a) without authority, e.g. looting.
   (b) with the approval of or at the order of authority, e.g. wanton destruction, plundering of art treasures, etc.

The sub-committee set out to ascertain the extent to which the competence of municipal courts would cover war crimes committed in Germany and occupied Europe. It was found that most countries had competence to try their own nationals for crimes committed abroad, but none of the countries represented on the committee, with the exception of Poland, had jurisdiction over foreigners for crimes committed abroad, unless they were directed against the safety of the State. The municipal courts of these countries would, therefore, be unable to try Germans guilty of ill-treating slave-workers or internees of concentration camps in Germany.

With regard to the jurisdiction which military courts could exercise over civilians, it was ascertained that with the exception of the military courts of the United Kingdom, France and Czechoslovakia, which supersede civil courts in times of emergency, no other military courts had competence to try civilians for offences unconnected with the services. It was also found that British military courts would be the only ones with authority over civilians in enemy occupied territory, though Belgium and Luxembourg possessed constitutional means of establishing such courts.

It was also found that municipal courts would not have jurisdiction in such matters as the deliberate starvation of populations, the segregation of portions of the population and judicial murder.

To remedy the defects in municipal law with regard to war crimes, it was suggested that the codes of law of the respective Governments should be extended; as opposed to this, it was argued that it would be extremely difficult for Governments in exile to effect such changes in their legal codes. To deal with the residue of cases, such as those not covered by municipal courts, those effecting Jews and stateless persons in Germany, as well as cases where two or more states possessed jurisdiction, it was suggested that an international criminal court should be set up. Critics of the plan, however, considered that it would take too long to establish such a court, and the administration of justice by existing courts would be much speedier. Another suggestion was to the effect that military courts should be set up in Germany, but this was countered by the argument that this would necessitate an international convention on the lines of Article 228 of the Versailles Treaty, which, in turn, would entail an extension of national codes of law, and such courts would, moreover, appear to be purely vindictive. The general opinion was that the trial of residuary
cases, outside the scope of municipal courts, would require the establishment of some form of international criminal court.

(3) Sub-Committee on Superior Orders

The conclusion of this sub-committee was that, generally speaking, the codes of law of the respective countries recognise the plea of superior orders to be valid if the order is given by a superior to an inferior officer, within the course of his duty and within his normal competence, provided the order is not blatantly illegal. The conclusion reached was that each case must be considered on its own merits, but that the plea is not an automatic defence.

(4) Sub-Committee on Extradition

After examining the divergencies in the laws of extradition in peacetime, as between one nation and another, the sub-committee considered that this might, in itself, provide a protection for war criminals. The extradition of war criminals from Germany itself should be one of the conditions of the Armistice, and the German authorities should be compelled to co-operate with the Allies in finding, arresting and surrendering the wanted persons. With regard to extradition from neutral countries, the sub-committee recommended that a convention for the delivery of war criminals should be concluded with the neutral countries—possibly as part of the convention for the institution of an international criminal court—which should be operative for a period of three years after the war, whereby the delivery of war criminals should be treated as separate from the normal extradition of ordinary criminals.

(5) General Contributions of the Cambridge Commission

The Committee of the Cambridge Commission for Penal Reconstruction and Development, responsible for examining the question of crimes against international public order, never made any definite recommendation or produced a comprehensive report. Apart from collecting much information, which was subsequently used by other bodies, its members did, in several cases, prevail upon their respective Governments to extend their national codes of law to cover crimes committed against their own nationals abroad. It also contributed to the creation in official and

(1) The following laws have subsequently been promulgated, extending the jurisdiction of national codes of law to cover war crimes committed on national and enemy territory (this does not necessarily cover the laws promulgated extending the competence of national tribunals to try war criminals):
- Czechoslovakia—Decree No. 16 of 1945 (UNWCC doc. III/14).
- Denmark—Act on Punishment of War Crimes, assented to by the King of Denmark on 12th July 1946 (see UNWCC doc. Misc. 47).
- France—Decree of 28th August 1944 (made in Algiers) (see UNWCC Document Series No. 26).
- Greece—Law No. 533 of 3rd September 1945 (see UNWCC doc. Misc. 38).
- Norway—Law No. 14 of 12th December 1946 (see UNWCC doc. Misc. 87).
- Poland—Proclamation of the Minister of Justice of 11th December 1946, published in the Official Gazette of the Republic of Poland, 15th December 1946, No. 69, item 377 (see UNWCC doc. Misc. 87).
THE WORK OF UNOFFICIAL BODIES

(ii) THE WORK OF THE LONDON INTERNATIONAL ASSEMBLY

This body, created under the auspices of the League of Nations Union by Viscount Cecil of Chelwood, was not an official body, although its members were designated by the Allied Governments which were then in London. It was not committed to any policy, but made recommendations, through its members, to the Allied Governments.

The question of war crimes eventually became one of its major concerns having been first placed on the agenda of the Assembly on 20th October, 1941, when it was recommended that there should be some discrimination between acts of war that are permissible and those that are not; it was recommended that the study of this question should begin at once, and not be left until it was too late.

It was decided to set up a Commission to study the problem, but it was not until March 1942, after another discussion in the Assembly, that it was actually formed. This Commission held about 30 meetings and, in December 1943, produced a report of about 450 pages. Detailed work on the subject was done in the Commission, with occasional discussions during plenary meetings of the Assembly.

The Commission's work was closely followed by the Allied Governments in London and Washington, to whom, from the beginning, copies of all its proceedings were sent. Furthermore, since most members held important posts and were in a position to speak authoritatively, the discussions in the Commission and in the Assembly soon found an echo in legislative assemblies and government circles, in spite of the fact that the proceedings of the Assembly were kept strictly secret, and that, except on one or two occasions, no word was published about them in the Press.

There was an important discussion in the Assembly on 28th September 1942 when the Chairman of the Commission on War Crimes presented a report on the interim conclusions of his Commission. The first conclusion was that, at the earliest possible moment, a Protocol should be agreed between the Governments of the United Nations, defining what acts should be punishable as war crimes, and setting up machinery for the prosecution and punishment of such crimes, to take effect immediately after the Armistice. Secondly, that the Governments should begin at

(1) The members of the Commission were: M. de Baer (Belgium) Chairman, M. V. Benes (Czechoslovakia) Secretary, Mlle. I. van Steenkiste (Belgium) Asst. Secretary; Belgium—M. Dumon, M. Ch. Tschoffen; Brazil—Senor Luis Felipa de Rego Rangel; China—Dr. Liang; Czechoslovakia—Dr. J. Cisar, Dr. B. Fecer, H. E. M. V. Slaviv; France—Prof. Rene Cassin, M. J. Burnay M. Thurneyssen; Great Britain—Dr. W. R. Bisschop, Mr. Vernon Gattie, C.B.E., Mr. W. Latey, M.B.E., Dr. V. Lehmann, Dame Adelaide Livingstone, D.B.E., Dr. H. Winkel; India—Mr. A. Jusuf Ali, Dr. S. N. Ghose; Luxembourg—H. E. M. V. Bodson; Norway—Dr. A. Aule, H.E.M. E. A. Colban, M. P. P. Stabel; Poland—M. Nagorski; United States—Prof. Sheldon Glueck, Rev. M. Spencer; Yugoslavia—H.E.M. B. Vlaisch; Observers—M. Karavaev (U.S.S.R.), Miss Lazarus (LIA). Occasional Contributors—Lt.-Gen. Sir George MacDonagh, G.C.B., K.C.M.G., etc., Major-Gen. Prof. George Lelewer and M. Otto Friedburg.

(2) Reports on the Punishment of War Criminals: London International Assembly, p. 117. See also pp. 135-136.
once to study the question of revising their extradition laws and treaties and of establishing or codifying the fundamental principles of international law. The matter was debated at considerable length by the Assembly and members stressed the urgency of the problem, expressing the hope that official action should be taken at once to study the matter and the necessary legislation passed to provide adequate machinery.\(^{(1)}\)

In view of the subsequent developments in the conception of war crimes, it is interesting to note the discussions which were held even before December 1942 on matters such as the definition of war crimes, the defence of superior order etc.

\(^{(1)}\) Definition of War Crimes

As early as July 1942 the Commission had considered, alongside war crimes proper and atrocities against allied nationals, whether the violation of the Kellogg-Briand Pact, i.e. aggression\(^{(2)}\), and crimes committed in Germany against Jews and stateless persons, which later became known as “crimes against humanity,” should not be included in the scheme of punishment.

In respect of war crimes proper, i.e. violations of the law of war, the Commission soon found that the concept of war crimes is not a stable one, since it is subject to change according to the events of war (e.g. in respect of maritime warfare, aerial bombardment, etc.), and, therefore, mainly governed by moral law, the conscience of mankind and custom. The Commission first worked on a list based on that drafted in 1919 by the Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties, but, by November 1943\(^{(3)}\), the Commission recommended that the expression “war crimes” should also be understood to cover not only war crimes proper but also the preparation and the waging of an aggressive war, and crimes committed, within or outside any Axis country, for the purpose of racial or political extermination.

The question of the crime of aggression was touched upon in a resolution passed by the Assembly on 12th October 1942\(^{(4)}\), which, after considering the fact that the Assembly of the League of Nations had declared in a resolution in November 1927 that aggression was an international crime and that the Pact of Paris condemned recourse to war for the solution of international controversies, concluded that the Axis Powers had violated both the resolution and the Pact of Paris, to which they were both parties.

Dr. Ečer, a Czech member of the Commission, in November 1943, studied the question of the crime of aggressive war and, after examining the provisions of the unratified Geneva Protocol of 1924 and the Pact of Paris, reached the following conclusions\(^{(5)}\):—

\((a)\) “Aggressive war is a crime, and by its character an international crime, because it aims against peace and international order. The total aggressive war started by Germany and her allies in 1939 is additionally an international crime in its territorial extent and the number of victims of the aggression.”

(b) "Not only the aggressor States as such, but also their rulers and military leaders are personally responsible in the eyes of the law for the gigantic chain of crimes which compose this war and which are punishable under the criminal laws of the countries affected.

(c) "The penalty according to all these laws is death."

Concerning racial extermination, the Commission came to the conclusion that covering their crimes under a cloak of apparent legality should not help the Nazis to escape justice or that mere terminology or technicalities should not obscure the main issue. It recommended that "some crimes against mankind should be branded as such and made punishable by international law"(1) even when they were not punished by the lex loci. It is interesting to note that the official Declaration of 17th December 1942(2) on the policy concerning the atrocities against the Jews, was framed on the same lines as the views of the Commission.

Another of the Commission's proposals was that acts whose intention was to prevent the re-establishment of peace after the war should be considered as war crimes. This time, however, the military occupation of Germany and the ensuing jurisdiction conferred upon allied military courts, made it unnecessary to follow that proposal.

(2) Superior Orders

One of the main objections against the punishment of war criminals had been that they had all acted by order of their superiors, and that, therefore, only the superior officer should be punished. This same objection had been made in 1921, when Hindenburg had rendered the whole scheme ludicrous, by accepting responsibility for all criminal orders, thereby exculpating the Kaiser. To prevent a repetition of that deadlock, the Commission on war crimes proposed:

(1) that an order given by a superior to an inferior to commit a crime is not in itself a defence, but that the Court may consider whether the accused was placed in a state of compulsion and acquit him or mitigate the punishment accordingly;

(2) the defence that the accused was placed in a state of compulsion should be excluded in two cases. The first was when the act was so obviously heinous that it could not be accomplished without revoltng the conscience of an average human being. The second was when the accused, at the time, was a member of an organisation whose membership implied the execution of criminal orders(3). This was the first time that expression was given to the view that members of criminal organisations should be dealt with in a special manner.

(3) Responsibility of Statesmen, High Officials and Key Men

The members of the London International Assembly took great pains to destroy the prevailing theory, defended at Versailles by the United States representatives, that a head of State cannot be held personally responsible or tried for having framed a policy of aggression or one which

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(1) Resolution adopted by the L.I.A. on 12th October 1942, see L.I.A. Reports, p. 139.
(2) See page 106.
disregards the fundamental laws of mankind, and that even for violations of positive law he is responsible only to the tribunals and laws of his own country\(^1\). It was unanimously agreed\(^2\) that rank and position, however exalted, confers no immunity upon the accused in respect of war crimes, and that those in high places who ordered them should be held responsible, as well as the actual perpetrators. It would be illogical to punish the obscure subordinate, while the high official, who had, by legislative or administrative action, contrived to plan the criminal policy, escaped retribution.

(4) The Judicial Court

On 21st June 1943 a resolution\(^3\) was carried to the effect that, as far as possible, the domestic courts should deal with all war crimes which came within their respective jurisdictions. It was recommended that, whenever possible and necessary, each Ally should adjust its legislation and machinery to provide adequate and speedy punishment and extend the jurisdiction of domestic courts to war crimes committed abroad against its own nationals. It appeared, however, that few municipal courts would have competence to try Germans for crimes committed in Germany against allied nationals, stateless persons and Jews, and it was recommended that there should be some form of international tribunal to deal with these cases.

(5) International Criminal Court

The institution of such a court was one of the most important questions treated by the London International Assembly. It was placed on the Commission's agenda in April 1942\(^4\), and, in the following months, was the subject of many studies, papers and discussions\(^5\). Important contributions were made by Lord Maugham, Viscount Cecil of Chelwood, Dr. de Moor, Professor Cassin, Dr. Winierski, Justice Minister Bodson and others; Professor Sheldon Glueck of the Harvard Law School submitted his views in writing\(^6\). The Chairman of the Commission had already, in 1942, circulated a "Draft Convention for the Creation of an International Criminal Court," which took into account, _inter alia_, the proceedings of the Geneva Conference on the Repression of Terrorism\(^7\) and the Report of the Vienna Conference of the International Law Association. After amendment the draft reached its final form in October 1943\(^8\).

In the view of the Assembly the jurisdiction of an international court should be defined in the widest possible manner and should cover crimes hitherto unlisted as war crimes, such as the crime of aggression, but there

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\(^3\) _Reports on the Punishment of War Crimes_, page 153.


\(^6\) Prof. Glueck's views were subsequently published in the _Harvard Law Review_, Vol. LVI, No. 7, June 1943—"By What Tribunal Shall War Offenders be Tried?" by Sheldon Glueck.

\(^7\) Series of League of Nations Publications V. _Legal_ 138.

\(^8\) Pamphlet _Recommendations of the L.I.A._, p. 13.
were some categories of crimes which could definitely be considered to be within its jurisdiction, namely:

(1) crimes in respect of which no national court had jurisdiction (e.g. crimes committed against Jews and stateless persons and possibly against Allied nationals in Germany); this category was meant to include offences subsequently described as "crimes against humanity"

(2) crimes in respect of which a national court of any of the United Nations has jurisdiction, but which the State concerned elects, for political or other reasons, not to try in its own courts.

(3) crimes which have been committed or taken effect in several countries, or against the nationals of different countries.

(4) crimes committed by heads of State.

In these two latter categories of criminals were included the dictators, major criminals and key men who had conceived and framed the plans of aggression, racial extermination, systematic terrorism, mass murder, deportations, economic looting in Axis and occupied countries, and the establishment of concentration camps.

The Assembly considered that a codified international criminal law, agreed by the United Nations, would be the law which should be applied by the court. Failing such a codification, the court's decisions were to be governed by international custom, treaties, the generally accepted principles of criminal law, as well as judicial precedents and doctrine. The penalty to be imposed was at the discretion of the court.

With regard to the prosecuting authority, it was felt that, with a view to achieving harmony and unity in the prosecution and subsequently to the whole body of law which would be created by the judgments of the court, the decision as to what criminals should be prosecuted, and the task of prosecuting them, should be conferred on one Chief Prosecutor. He should act on behalf of the United Nations as a whole, assisted by a number of deputies of the nations interested in punishment. He should be in a position to control the type of cases that were brought before the court and to maintain an even balance between the requests of the nations concerned, whilst seeing that only heinous crimes with grievous consequences were tried.

This International Criminal Court was to be split up into a number of divisions. The members of the court were to be judges of the highest standing and repute.

(6) Apprehension of War Criminals

The Commission felt that the machinery of extradition is a slow and cumbersome business, ill-suited to speedy retribution after a war. Under existing conditions it was possible that a war criminal, charged by one United Nation, might find refuge in another United Nation and enjoy immunity there, thanks to a technical imperfection in legislation.

It was therefore suggested that the term extradition should be reserved for the traditional handing over of persons charged with extraditable
offences, and a new terminology was proposed, viz: (a) *surrender* for the handing over of a war criminal by an Axis to a United Nation; (b) *transfer* for the handing over of a war criminal by one United Nation to another. Both these operations could be carried out administratively, without judicial process or interference by any court\(^{(1)}\). Provisions for these operations were to be made respectively in the Armistice terms and in conventions to be agreed between the United Nations.

Surrender was to be carried out at the moment of the Armistice and afterwards by the authorities of the Axis countries, or by such local authorities as might be allowed to function in Axis countries after the victory. Serious penalties were proposed for Axis officials who refused to co-operate or obstructed the course of justice.

Transfer was to be a post-war measure, destined to last for three years only, during which period each Ally would undertake to hand over to any other Ally, on request, any persons whose transfer was demanded. This would ensure that the major war criminals, whose offences might be considered by some states as of a political character, should not escape under that plea.

In respect of neutral countries, it was envisaged that requests for the handing over of war criminals should be made after careful investigation by an inter-allied body, and that they should be backed by the full authority of the United Nations as a whole. It was pointed out that there always exists efficient and convenient means whereby the stay of a politically undesirable person can be prevented or stopped, namely by expulsion or refusal of admission, as had happened in the case of Trotsky. It was also urged that the names of war criminals should be communicated to neutral Governments to enable them to refuse admission.

(7) General Contributions of the London International Assembly

It is difficult to gauge the value of the work of the London International Assembly, but certain members of that body, namely M. de Baer (Belgium), Dr. Liang (China), Dr. Éeer (Czechoslovakia), M. Stavropoulos (Greece), Dr. de Moor (Netherlands), M. Bodson (Luxembourg) and M. Colban (Norway), subsequently became the representatives of their respective Governments on the United Nations War Crimes Commission, and therefore, brought to its deliberations the value of their earlier experience and study of the question of war crimes.

C. ACTIVITIES IN THE UNITED STATES 1942-43

It is not possible to cover the activities of the various bodies in the United States and elsewhere, who were engaged in discussing the question of the punishment of war crimes, but mention might perhaps be made of the activities of the Faculty of Law at Harvard University. As has been mentioned above, Professor Sheldon Glueck of that University was contributing, in writing, to the deliberations of the London International Assembly. In the early summer of 1943 he held a seminar among the students of the Faculty of Law on the subject of war crimes.

\(^{(1)}\) *Reports on the Punishment of War Crimes, L.I.A.*, p. 372.
Another body, under the direction of Mr. Charles Warren, historian of the U.S. Supreme Court and an international lawyer, advocated that provisions for the surrender of a specific list of war criminals should be included in the terms of surrender and that these terms should make it clear that the victors reserved the right to fix any punishment they chose. It was held that, owing to deficiencies in the law, many of the criminals could not be brought to trial, and it must be recognised that many minor criminals would escape punishment, owing to the impossibility of listing all their names in the terms of surrender(1).

On the other hand, a group of lawyers under Mr. Emilio von Hofmannstal, advocated the creation of a number of international criminal courts, with the collaboration of neutral lawyers, applying the law either of the place of the crime or else of the victim of the crime(2).

D. OFFICIAL PRONOUNCEMENTS

(i) DEBATE IN THE HOUSE OF LORDS 7TH OCTOBER 1942 AND THE SIMULTANEOUS DECLARATION OF PRESIDENT ROOSEVELT

A debate was initiated in the House of Lords by Lord Maugham, who was also a member of the London International Assembly, on 7th October 1942(3). Lord Simon, the Lord Chancellor, in replying to the debate, made two announcements. First, he announced the formation of a United Nations War Crimes Commission for the Investigation of War Crimes, whose task would be the naming and identifying, wherever possible, of the persons responsible for Nazi atrocities, and in particular of organised atrocities(4). Secondly, he announced that "named criminals wanted for war crimes should be caught and handed over at the time of and as a condition of the Armistice, with the right to require delivery of others as soon as the supplementary investigations are complete".

On the same day, President Roosevelt made the following statement(5):

"I now declare it to be the intention of the Government that the successful close of the war shall include provision for the surrender to the United Nations of war criminals.

"With a view to establishing responsibility of the guilty individuals through the collection and assessment of all available evidence, this Government is prepared to co-operate with the British and other Governments in establishing a United Nations Commission for the Investigation of War Crimes.

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(1) Evening Standard of 11th December, 1942.
(2) New York Times of 17th December, 1943.
(4) op. cit. cols. 577-387. On 3rd October 1942, the Foreign Office had written a note to the Inter-Allied Commission on the Punishment of War Crimes, asking whether it agreed that provisions for the arrest and surrender of war criminals should be included in the terms of the Armistice, and whether it was agreeable to the institution of a "Fact Finding Commission". The Commission gave its general agreement to both these provisions, so the Lord Chancellor was speaking with the support of the Governments of the Occupied Countries. The Inter-Allied Commission did continue to hold meetings in February, March and June 1943, when it discussed and drafted provisions concerning war criminals to be inserted in the Armistice. Its activities ceased on 23rd October 1943, with the establishment of the United Nations Commission for the Investigation of War Crimes. For details of the Debate in the House of Lords see Chapter VI, p. 109 et seq.
(5) "Punishment for War Crimes (2) " published by H.M. Stationery Office for the Inter-Allied Information Committee, pp. 9-10.
"The number of persons eventually found guilty will undoubtedly be extremely small compared to the total of enemy populations. It is not the intention of this Government or Governments associated with it to resort to mass reprisals. It is our intention that just and sure punishment shall be meted out to the ringleaders responsible for the organised murder of thousands of innocent persons and the commission of atrocities which have violated every tenet of the Christian faith."

(ii) STATEMENT MADE BY MR. EDEN IN THE HOUSE OF COMMONS ON 17TH DECEMBER 1942

Meanwhile, reports reached London of the deliberate German policy of exterminating the Jews by mass-execution or extermination in concentration camps. On 17th December 1942, in reply to a question as to whether he had any statement to make regarding the plan of the German Government to deport all Jews from occupied countries of Eastern Europe and to put them to death, Mr. Eden, the Foreign Secretary, stated:

"I regret to have to inform the House that reliable reports have recently reached His Majesty's Government regarding the barbarous and inhuman treatment to which Jews are being subjected in German-occupied Europe. They have in particular received wide publicity in the Press. His Majesty's Government in the United Kingdom have, as a result, been in communication with the other Allied Governments directly concerned, and I should like to take this opportunity to communicate to the House the text of the following declaration which is being published to-day at this hour in London, Moscow and Washington.

"‘The attention of the Governments of Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, the U.S.A., the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and Yugoslavia, and the French Committee of National Liberation, has been drawn to numerous reports from Europe that the German authorities, not content to denying to persons of Jewish race in all the territories over which their barbarous rule has been extended the most elementary human rights, are now carrying into effect Hitler’s oft repeated intention to exterminate the Jewish people in Europe. From all the occupied countries Jews are being transported, in conditions of appalling horror and brutality, to Eastern Europe. In Poland, which has been made the principal Nazi slaughterhouse, the ghettos established by the Nazi invaders are being systematically emptied of all Jews except a few highly-skilled workers required for war industries. None of those taken away are ever heard of again. The able-bodied are slowly worked to death in labour camps. The infirm are left to die of exposure and starvation or are deliberately massacred in mass executions. The number of victims of these bloody cruelties is reckoned in many hundreds of thousands of entirely innocent men, women and children.

"The above-mentioned Governments and the French National Committee condemn in the strongest possible terms this bestial policy of cold-blooded extermination. They declare that such events can only strengthen the resolve of all freedom-loving peoples to overthrow the barbarous Hitlerite tyranny. They reaffirm their solemn resolution to ensure that those responsible for these crimes shall not escape retribution, and to press on with the necessary practical measures to this end."

(iii) THE UNITED KINGDOM DECLARATION OF 30TH AUGUST 1943

Following the receipt of further information which reached the British Government concerning crimes committed in Poland by the German invaders, such as mass murder, deportation for forced labour in Germany,

the forced separation of families, with children being brought up in Germany or sold to German settlers, and in other cases men, women and children sent to concentration camps, the British Government declared its resolve:

"to punish the instigators and actual perpetrators of the crimes. They declare that, so long as such atrocities continue to be committed by the representatives and in the name of Germany, they must be taken into account against the time of the final settlement of Germany." (1)

(iv) THE MOSCOW DECLARATION OF 1ST NOVEMBER 1943

The most important pronouncement made by Allied statesmen on the subject of war crimes, and one which set the pattern for the trial, not only of the major war criminals, but also of those responsible for atrocities in occupied countries, was the declaration made at the Moscow meeting of Marshal Stalin, President Roosevelt and Prime Minister Churchill. This Declaration ran as follows:— (2)

"The United Kingdom, the United States and the Soviet Union have received from many quarters evidence of the atrocities, massacres and cold-blooded mass executions which are being perpetrated by the Hitlerite forces in many of the countries they have overrun and from which they are now being steadily expelled.

"The brutalities of Hitlerite domination are no new thing and all peoples or territories in their grip have suffered from the worst form of government by terror.

"What is new is that many of these territories are now being redeemed by the advancing armies of the liberating powers and that, in their desperation, the recouling Hitlerite Huns are redoubling their ruthless cruelties. This is now evidenced with particular clearness by the monstrous crimes of the Hitlerites on the territory of the Soviet Union which is being liberated from the Hitlerites and on French and Italian territory.

"Accordingly, the aforesaid three Allied Powers, speaking in the interest of the 32 United Nations, hereby solemnly declare and give full warning of their declaration as follows:

"At the time of the granting of any armistice to any Government which may be set up in Germany, those German officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in the above atrocities, massacres and executions will 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 these liberated countries and of the Free Governments which will be erected therein. Lists will be compiled in all possible detail from all these countries, having regard especially to the invaded parts of the Soviet Union, to Poland and Czechoslovakia, to Yugoslavia and Greece, including Crete and other islands, to Norway, Denmark, the Netherlands, Belgium, Luxembourg, France and Italy.

"These Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian or Norwegian hostages or of Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland, or in the territories of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the peoples they have outraged.

"Let those who have hitherto not imbrued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three

(2) The Times, 3rd November 1943.
Allied Powers will pursue them to the uttermost ends of the earth and will deliver them to the accusers in order that justice may be done.

"The above declaration is without prejudice to the case of the major criminals whose offences have no particular geographical location and who will be punished by a joint decision of the Governments of the Allies."

It was thus publicly declared that the Germans who had been responsible for the commission of offences in occupied territory would be taken back to the scene of their crime and judged according to the law of the country in which the crime had been committed, while the Allies reserved to themselves the right to deal with the major criminals whose offences had no specific location.

The declarations of the Allied leaders following this often contained reference to the punishment of war criminals, but it was the Moscow Declaration which set the pattern that was followed after the war for the punishment of the guilty men, and the trial of the major war criminals.