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COMMISSION ON HUMAN RIGHTS

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ACTIVITIES OF THE UNITED NATIONS WAR CRIMES COMMISSION
IN THE COLLECTION AND PUBLICATION OF INFORMATION
CONCERNING HUMAN RIGHTS.

(The Secretariat has received the following statement from the United Nations War Crimes Commission).

PROGRESS REPORT

In a letter from the Director of the Division of Human Rights dated 15th May 1947, (Doc. A.45), the Chairman of the United Nations War Crimes Commission was informed that in the opinion of the Secretariat of the United Nations, the United Nations War Crimes Commission was in a better position than the United Nations Secretariat to undertake the work connected with the collection and publication of information concerning human rights arising from trials of war criminals, quislings and traitors. The Secretariat of the United Nations, would, therefore, be very glad if the United Nations War Crimes Commission could perform the work for which the Secretary-General of the United Nations had been requested to make arrangements by the Resolution of the Economic and Social Council of the 21st July 1946.

In their meeting held on the 21st May 1947, the United Nations War Crimes Commission decided to accept responsibility for the work to the extent outlined in Doc. C.259(1) (in particular in section III, paragraph 1 of that document) and in the letter of the Secretary General of the United Nations War Crimes Commission to the Director of the Human Rights Division dated 22nd May 1947. The Commission referred the whole question to its Legal Committee.

In view of the letter of the Director of the Human Rights Division dated 29th May 1947 requesting the United Nations War Crimes Commission to send to the United Nations Secretariat a Progress Report which might be submitted to the next meeting of the Human Rights Commission, the following Progress Report, giving, inter alia, an outline of the final report which is being prepared by the United Nations War Crimes Commission, has been drawn up.

I. PREPARATORY WORK

The collection and publication of information concerning human rights arising from trials of war criminals, etc. is

intended to assist the Commission on Human Rights in the preparation of their proposals, recommendations and reports, regarding an International Bill of Rights, international declarations and conventions on civil liberties, the protection of minorities, the prevention of discrimination on grounds of race, sex, language or religion and similar matters.

A definition of the human rights which are placed, or ought to be placed under the protection of International Law can only be the outcome of the work to which the United Nations War Crimes Commission has been asked to contribute. On the other hand, a selection of the material to be found in the war crimes trials and its treatment along the lines indicated in Doc. C.259(1) is hardly possible without some preliminary survey on the human rights which are to be taken into account in connection with the work in hand.

The following documents submitted to the Drafting Committee of the Commission on Human Rights formed the basis of an initial exploitation and delimitation of the field of work: The Drafting Declaration concerning Fundamental Human Rights submitted by the delegation of Panama to the San Francisco Conference; the United Kingdom Draft of an International Bill of Human Rights (both documents were discussed in Doc. III/98), and the Draft Outline of an International Bill of Rights prepared by the Secretariat of the United Nations (which has been commented upon in Doc. III/100).

It may be said in this connection, however, that it is neither possible nor necessary for the Report of the United Nations War Crimes Commission to deal with all the rights enumerated in these documents, nor is it intended to follow strictly the definitions of rights contained therein if a different delimitation is more convenient for purposes of dealing with the material available.

During the preparatory work, it was suggested that the collection of material undertaken by the United Nations War Crimes Commission be divided into two parts:

- (1) information on human rights arising out of the relationship between the State and persons under its jurisdiction,
- (2) information on human rights protected by the laws and customs of war, i.e. the rights arising out of the relationship between the subjects of a belligerent (members of the armed forces, prisoners of war and civilians including the inhabitants of occupied territory) and the enemy Power.

II. OUTLINE OF PART I.

INFORMATION ON HUMAN RIGHTS ARISING OUT OF THE RELATIONSHIP BETWEEN THE STATE AND PERSONS UNDER ITS JURISDICTION.

A. SOURCES.

Information throwing light on the violation of human rights mentioned under I, (section I above), and the protection

of these rights will be found:

(1) in trials concerning crimes against peace.

For example, Count One of the Nuremberg Indictment, which deals with the Common Plan or Conspiracy (Charter, Article 6, especially 6(a)) covers the steps taken by the Nazis to seize totalitarian control, over Germany and their measures, after they had acquired power, which were intended to secure that no effective resistance against them could arise within Germany itself.

In this connection, it is said that a few weeks after Hitler's appointment as Reich Chancellor, the clauses of the Weimar Constitution guaranteeing personal liberty, freedom of speech, of the press, of association and assembly, were suspended, that the Nazis shortly afterwards secured the passage by the Reichstag of a "Law for the Protection of the People and the Reich" giving Hitler and the members of his Cabinet plenary powers of legislation, and that again a short time later, all political parties except the Nazi Party were prohibited.

The Indictment goes on to describe how the Nazis set about "the consolidation of their position of power within Germany, the extermination of potential internal resistance and the placing of the German nation on a military footing". To that belongs, inter alia, the reduction of the Reichstag to a body of Nazi nominees, the curtailment of the freedom of popular elections, the purge of civil servants, the restriction of the independence of the judiciary, the system of terror against opponents and supposed or suspected opponents of the régime and the relentless persecution of the Jews. It was, in the opinion of the Indictment, "in order to make the German people amenable to their will, and to prepare them psychologically for war" that the Nazis reshaped the educational system and particularly the education and training of the German youth, that they imposed a supervision of all cultural activities and controlled the dissemination of information and the expression of opinion within Germany as well as the movement of intelligence of all kinds from and into Germany.

The Indictment then described how the Nazis, after they had gained political power, "organised Germany's economy to give effect to their political aims;" and it proceeds to show how the Nazis used the political and economic control of Germany, which they had gained by innumerable violations of individual and civic rights guaranteed by the Weimar Constitution, for the realisation of their aggressive plans.

In other words, the Nuremberg Indictment considers the violation of human rights and fundamental freedoms through which the Nazi Party acquired political and economic control of Germany as "steps deliberately taken to carry out a common plan" (Judgment, p.43) and considers therefore any significant participation of these violations ("...any significant participation in the affairs of the Nazi party or government....") as "evidence of a participation in a conspiracy that is in itself criminal" (Judgment, p.43).

The Tokyo indictment too, concerns itself with the internal measures of the "criminal militaristic clique" which dominated and directed the internal and foreign policies of Japan in the relevant years. They fall, however, it seems, exclusively within the period after the outbreak of the wars, dealt with in the indictment.

(2) in trials concerning crimes against humanity.

Information throwing light on the violation of human rights arising out of the relationship between the State and persons under its jurisdiction and the protection of these human rights will be found mainly in the trials of persons accused of crimes against humanity against their co-nationals. The trials in point are, besides those of quislings and traitors who were accused of war crimes or crimes against humanity in addition to their treasonable activities, the trials of persons accused of crimes against humanity committed against persons who are not of the nationality of the victorious powers.

Of the greatest importance in this connection are the trials of Germans accused of offences against Germans and stateless persons. These trials will furnish the bulk of the material for the part of the report outlined in Section II. It may, however, prove fruitful to compare this material with that to be found in some trials of quislings and of former enemy nationals (other than Germans) accused of offences against their co-nationals.

The collection of information concerning human rights arising from trials of Germans accused of offences committed against Germans and stateless persons will take into account the following trials:

- (i) the above-mentioned parts of the Nuremberg trial based on Count One of the Indictment;
- (ii) the parts of the Nuremberg trial based on Count Four of the Indictment (crimes against humanity);
- (iii) the parts of the Nuremberg Subsequent Proceedings trials dealing with offences against Germans and stateless persons;
- (iv) trials before German courts in the various zones of occupation, the nature of which must be defined more closely at the later stage in the research.

It is these trials which form, for the time being, the basis of the part of the report outlined in the following sections (B-D)

B. JURISDICTION OVER VIOLATIONS OF HUMAN RIGHTS OF GERMAN CITIZENS AND STATELESS PERSONS COMMITTED WITHIN THE TERRITORY OF THE GERMAN REICH:

(1) Jurisdiction before the Occupation of Germany

The part of the Report outlined in Section II of this paper will show how even flagrant violations of human rights have gone unpunished since no jurisdiction or no effective one covering those violations, existed at the time. (cf. Doc.C.259(1), XI(d) and XII).

(1) A survey of the violation of civic and individual rights of German subjects, in particular of those caused by the legislative power will be found in the transcripts of the Nuremberg trial, as far as they concern Counts One and Four.

Thus, the Prosecution, presenting the case as regards Count One, deals, to mention a few examples only, with the genesis and the promulgation of the "Law for the Protection of the People and the State" which for all practical purposes deprived the parliament of its legislative power, transferring it to the Reich Government; with the decree of the Reich Cabinet of 14th July 1933 by which the Nazi Party was constituted as the sole political party in

political party; with the purge of civil servants on racial and political grounds and their replacement by Party members and supporters which was accomplished by a series of Nazi laws and decrees, the first being the "Law for the Restoration of the Professional Civil Service" of 7th April 1933. (Transcript, Part I, p.107 et seq.)

A survey of the legislative measures violating civil and individual rights of German subjects, should further take into account the discriminatory legislation aimed against the Jews of which the so-called Nuremberg laws constitute only one aspect. In this connection, various enactments must be mentioned which violated the fundamental rights of the defence, during trial. Some of these were brought to the notice of the Nuremberg Court. In a more detailed way, they have probably been treated in the trial of Josef Altstötter and others (Subsequent Proceedings, Case No.3) and in other trials.

The investigation of the question how far judicial protection could be extended in Nazi Germany to persons whose rights and freedoms were violated by legislative measures, will deal with the provisions authorizing the Courts to control the constitutionality of laws. Such an investigation will probably confirm a view expressed during the hearing of the case of Tillesen (Hearing of the Appeal against the Judgment of the Tribunal at Offenburg given on 29th November 1946, by the Tribunal Général de Gouvernement Militaire de la Zone Française d'Occupation on the 23rd December 1946). According to this opinion (given at the request of the Prosecution by two German legal experts) the highest German courts had, at the time of the Weimar Republic, reserved for themselves the right of control and recognised it generally as the right of German courts. This right of control has been exercised not only as regards the legality of the promulgation of laws and ordinances (formal control) but also as regards the legality and in particular the constitutionality of their contents (substantial control).

(2) The description of the breakdown of the machinery existing in the Weimar Republic for the protection of civic and individual rights guaranteed by the constitution, will deal, inter alia, with the control to which the judiciary was subjected in Nazi Germany. The removal of judges from the bench for political or racial reasons and the subjection of judges to the strongest pressure to join the Nazi Party are here no less in point than the so-called "judges letters" which in 1942 were sent to all judges by the Government, instructing them as to the "general lines" that they must follow (cf. Nuremberg Judgment, p.7.)

Interference with the independence of the judiciary is only one of the measures which led to the dissolution of the machinery for the protection of the civic and individual rights of persons under the jurisdiction of the German Reich. Also of importance is the fact that during the Nazi Régime the control of the courts over the activities of the police ceased gradually and that in particular the activities of the Gestapo were subject neither to the control by administrative nor other courts. One has to bear in mind in this connection that, mainly the Gestapo, and to a lesser degree the other branches of Himmler's police, "were guided in their activities by principles based not so much on the law, as on the doctrines of the Nazi Party and the Führer", (cf. R. Lemkin, Axis Rule in Occupied Europe, p.17).

(3) The survey of the measures which deprived the courts virtually of their jurisdiction over violations of fundamental rights of German citizens must finally take into consideration amnesties and abolitions which prevented the punishment of even flagrant violations of human rights if committed on the order or in the interest of the Nazi Régime.

The Amnesty Ordinance of 21st March 1933, dealt with in the trial of Tillessen, mentioned above, which applied not merely to members of NSDAP but to everybody who "in the struggle for the national revival of the German people, for the preparation of such revival or in the struggle for the integrity of German territory" committed an offence and which, therefore, benefited the assassin of Erzberger Tillessen who at the time of this crime was not a member of the NSDAP, is one instance of a series of amnesties which barred the prosecution of crimes against German citizens.

Of hardly less importance is the fact that in innumerable cases criminal proceedings were stopped individually. A typical example was mentioned in the trial of Wilhelm Behring and Ernst Behring before the Land gericht Bremen. By a decision of the Supreme Party Tribunal (Special Bench), (a copy of which was submitted during the trial), all criminal proceedings were stopped which had been instituted as regards offences committed during anti-Jewish riots on the 9th and 10th November 1938. Only "crimes against public morals and against the German race" and cases of theft were handed over to the criminal courts.

(ii) Jurisdiction during the Occupation of Germany.

(1) The investigation of the jurisdiction over violations of human rights of German citizens and stateless persons which has been established by the Allies after the occupation of Germany, will deal with the parts of the Nuremberg trial mentioned above.

(a) It will be shown in detail which violations of human rights and fundamental freedoms are covered by Count One of the Indictment.

It will then be necessary to examine to what extent the views of the prosecution were accepted by the Tribunal. In the submission of the indictment, the measures of the Nazis intended to promote their aims, first to seize totalitarian control over Germany and later to consolidate their possession of power within Germany, are to be considered as steps "deliberately taken to carry out a common plan". Accordingly, all violations of civic and individual rights which served the Nazis to gain power in Germany and to retain it, are covered by Art. 6(a) of the Charter.

It is safe to say that the Tribunal did not fully share this opinion. In the section of the Judgment which deals with "The Law as to the Common Plan or Conspiracy", it is said: "The prosecution says, in effect, that any significant participation in the affairs of the Nazi Party or Government is evidence of a participation in a conspiracy that is in itself, criminal. Conspiracy is not defined in the Charter. But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action....The Tribunal must examine whether the concrete plan to wage war existed, and determine the participation in that concrete plan."

The Judgment, however, continues: "It is not necessary to decide whether a simple master conspiracy between the defendants has been established by the evidence. The seizure of power by the Nazi Party and the subsequent domination by the Nazi State of all spheres of economic and social life must, of course, be remembered when the later plans for waging war are examined."

An analysis of the relevant parts of the Judgment will show whether the accused who appeared responsible for the violations of civic and individual rights guaranteed by the Weimar Constitution were found guilty on Count One in view of these violations.

(b) A survey of the violations of human rights and fundamental freedoms of German citizens and stateless persons covered by Count Four of the indictment (Crimes against Humanity) will show to what extent these violations overlap those covered by Count One.

An analysis of the judgment as far as it deals with Count Four of the indictment will answer the question to what extent the Tribunal took into consideration the violations of civic and individual rights of German citizens which in the indictment fall under the heading of crimes against humanity.

Dealing with the law relating to war crimes and crimes against humanity, the judgment states: ".....The policy of persecution, repression and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the Government, was most ruthlessly carried out. The persecution of Jews during the same period is established beyond all doubt. To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal, is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crime. The Tribunal, therefore, cannot make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter, but from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity, and insofar as the inhuman acts charged in the indictment and committed after the beginning of the war did not constitute war crimes, they were all committed in execution of or in connection with, the aggressive war and therefore constituted crimes against humanity."

To gain an impression of the extent to which the Nuremberg Tribunal felt itself free to exercise jurisdiction over crimes against humanity committed against German citizens and stateless persons within the territory of the German Reich, it will, therefore, be necessary to examine whether at least some of the acts prior to the outbreak of war referred to in the indictment "have" (in the opinion of the Tribunal) "been in execution of or in connection with any crime within" (its) "jurisdiction". Here too, the most important material will be found in those parts of the judgment which deal individually with each accused.

In view of the opinion held in general by the Nuremberg Tribunal on the question of its jurisdiction over the acts with which the indictment deals under the heading "Crimes against Humanity", it has to be presumed that acts committed against German citizens and stateless persons after the outbreak of war were, as a rule, considered as crimes against humanity. A discussion of

the jurisdiction of the Nuremberg Tribunal as regards crimes against humanity committed against Germans and stateless persons, will, therefore, mainly take into account those of the acts referred to in the indictment which were committed after the outbreak of war.

(2) The investigation into the jurisdiction over violations of human rights of German citizens and stateless persons exercised after the occupation of Germany will deal with trials before various allied military courts established in Germany and with trials before German courts.

An examination of the substantive law applied by these courts will show that their jurisdiction as regards crimes against humanity is not subject to limitations similar to those imposed by Art.6(c) of the Charter as amended by the Berlin Protocol of 6th October 1945 on the International Military Tribunal.

Thus, one of the most important laws which is to be examined in this connection, Control Council Law No.10, describes as crimes against humanity, murder, extermination, enslavement, deportation and other inhuman acts or persecutions on political, racial or religious grounds, even if they were not committed in connection with crimes against peace or violations of the laws and customs of war.

In the judgment of the Landgericht Offenburg given in the case of Tillesen, it was held that acts of political persecution and in particular political murder, are to be considered as crimes against humanity as defined by both Art. 6(c) of the Charter and Control Council Law No.10, if they were connected with crimes against peace or war crimes. The Tribunal Général de Gouvernement Militaire de la Zone Française d'Occupation which quashed the judgment of the Landgericht Offenburg and which declared its judgment binding on all German judicial and administrative authorities as regards the grounds laid down by it in law and in fact, refuted this opinion. The Tribunal Général declared that Control Council Law No.10 has a wider object than that intended in the London Agreement and in the Charter of the International Military Tribunal, that Control Council Law No.10 does not contain the provision that crimes against humanity, to be liable to prosecution, have to be connected with crimes against peace or war crimes and that, therefore, persons accused of acts of political persecution may be prosecuted also in cases where there is no such connection. This decision will be compared with decisions given in similar cases by courts in other zones of occupation.

As at present violations of civic and individual rights of persons under the jurisdiction of the German Reich caused by Nazi legislation and administration - apart from exceptions which may be found in trials concerning crimes against peace (cf. section II.A (1) above) - are mainly prosecuted under the heading "crimes against humanity", it will be of importance to define the acts directed against German citizens and stateless persons which the Nuremberg Tribunal, allied military courts and German courts considered as crimes against humanity.

C. HUMAN RIGHTS IN THE TRIALS OF PERSONS ACCUSED OF OFFENCES COMMITTED AGAINST GERMAN CITIZENS AND STATELESS PERSONS

To avoid a superfluous repetition of the investigations being made in connection with war crimes trials proper (cf. Outline of Part II, especially section III.C. below), the report will here be limited to the points which cannot be sufficiently illustrated with the help of the material found in war crimes trials.

(1) In the section "Rights of Victims of Crimes against Humanity" (cf. Outline of Part II, Section III, C.(2)(a)), it will be necessary to examine to what extent a State appears to be entitled, in time of war or other national emergency, to restrict the fundamental rights of its citizens. Material valuable in this connection may be found in the transcripts of the Nuremberg Trial and in particular in the judgment insofar as it shows which of the measures, to which German citizens were subjected during the war, were considered as crimes against humanity. Some guidance may also be found in trials like that against Erhard Milch (Subsequent Proceedings Case No.2) who, inter alia, was accused of participation in plans and enterprises involving slave labour and deportation to slave labour of German nationals.

(2) In the section "Spheres in which the rights of the accused and the rights of the victims may be said to have conflicted at the time of the offence" (cf. Outline of Part II, Section III, C(2) (b)) it will be necessary to examine, inter alia, to what extent violations of human rights of German citizens were legal according to German law in force at the time.

In the trial of Josef Kramer and others held before a British Military Court at Luneburg, Germany, Colonel Smith, one of the defending officers pointed out that in Nazi Germany any differentiation between a legal Executive Order and an illegal one was not possible. In the first stages of Hitler's régime, the Reichstag had abandoned and handed over to Hitler all its powers and he became the Executive and Legislator in one. Part of these powers were delegated by Hitler to members of his cabinet and the heads of party organisations, and thus each of them had the force of law within his limits; their orders were law which every German had to obey insofar as they concerned him.

This opinion, which roughly speaking considers all violations of human rights which can be traced ultimately to the highest executive organs of Nazi Germany as legal according to German law, has to be contrasted with an opinion like that expressed in the judgment of the Tribunal Général in the case of Tillessen.

The latter judgment considers the Amnesty Ordinance of 21st March 1933 which was later supplemented by an Act described as "Reich Law" as void.

The reasons given are, inter alia, that the Reichstag elections of the 5th March 1933 had taken place in circumstances of flagrant illegality and violations for which the government had to be held responsible and that the so-called "Full Powers Act" of 23rd March 1933 was unconstitutional since it was passed by a Parliament, 82 duly elected members of which were barred from attendance and moreover, by concentrating all powers into Hitler's hands, violated principles of government generally recognised.

It is further pointed out that Hitler's government was neither before nor after the 21st March 1933, supported by a vote of confidence of a properly constituted parliament, as required by Art. 54 of the Constitution of 11th August 1919, then in force and that for all these reasons the Amnesty Ordinance of 21st March 1933 must be considered as unconstitutional.

It is obvious that the same arguments can be invoked to prove that the whole of the legislation of the Hitler Government (together with all ordinances emanating from this government or its members) was void according to German law.

According to Art.6(c) of the Charter and Art.II(e) of Control Council Law No.10, an act of atrocity or persecution constitutes a crime against humanity whether or not committed in violation of domestic law of the country where perpetrated. It may, nevertheless, be necessary to go into the question whether a crime against humanity violated this domestic law. Only after this question has been answered will it be possible to say to what extent retroactive laws had to be employed in the prosecution of crimes against humanity.

(3) In the section "The Rights of the Accused at the time of the Trial" it will be necessary to examine in a similar way as in the same section of the outline of Part II what rights the accused were granted in the various trials concerning crimes against humanity.

The rights granted to the accused in war crimes trials and trials concerning crimes against humanity represent, no doubt, more than a bare minimum indispensable for a fair trial. A comparison with trials like that of Altstötter and others (Subsequent Proceedings Trial No.3) where the accused were charged with participation in trials which violated the fundamental principles of justice and where, in particular, the rights of the defence were not sufficiently safeguarded, can show to what extent a violation of these rights by German courts appeared to be of such fundamental importance that criminal proceedings were instituted after the occupation of Germany.

III. OUTLINE OF PART II

INFORMATION ON HUMAN RIGHTS PROTECTED BY THE LAWS AND CUSTOMS OF WAR.

It is intended that the material under this heading will be arranged under the following headings:

- A. Introduction (unless a general Introduction to the Report as a whole is found preferable),
- B. The Rights of the Victims of War Crimes,
- C. Spheres in which the Rights of the Accused and the Rights of the Victims may be said to have conflicted at the time of the Offence,
- D. The Rights of the Accused at the Time of Trial.

If possible, this will be the primary division to be applied, and each of the four sections will contain all of the relevant material, from whatever source it may come. (It will be noted that a further sub-division is set out on p.17 et seq to be applied to the material relating to war crime trials other than those conducted by the International Military Tribunals. This further sub-division will be used to some extent in the other two sections of Part II of the Report, but it is too early to indicate at this stage, to what extent.)

In the process of compiling the material, however, it may be found that a different grouping is preferable. It may be found advisable to group the total bulk of the information into three main chapters, the first dealing with the Nuremberg Trial, the second with the Tokyo Trial and the last with all other trials. Each of these three chapters could then be sub-divided as suggested in B., C. and D. above.

For the purpose of arranging Section III of the Progress Report the second division has been applied only because it seems the most convenient for the purpose at present in view.

A. HUMAN RIGHTS IN THE NUREMBERG TRIAL.
(EXCEPTING CRIMES AGAINST GERMANS).

The sources for this part of the studies are as follows:

- (a) The Agreement of 8th August 1945, for the Prosecution and Punishment of the Major War Criminals of the European Axis, together with the Charter of the International Military Tribunal;
- (b) The Indictment presented to the International Military Tribunal on 18th October 1945;
- (c) The transcript of the proceedings, containing about 17,000 pages;
- (d) The Judgment of the Tribunal delivered on 30th September and 1st October 1946.

Apart from the necessary introduction, and subject to any modification which a detailed examination of the above material may require, it is proposed to present the information requested by the United Nations, insofar as it relates to the major war criminals tried at Nuremberg and excepting that part of the material dealing with charges of crimes against Germans, in the manner outlined in the following paragraphs.

(1) Part II of the Charter which sets forth the jurisdiction and general principles to be followed in the conduct of the trial of the major war criminals of the European Axis countries, and in particular, its Article 6, is, technically speaking, the law which the Charter required the Tribunal to administer, and by which the Tribunal was bound. The specific rules of Article 6, on the basis of which the Tribunal had to determine the guilt or innocence of the defendants, have laid down some novel principles of law, under which individuals are responsible to the community of nations for violations of rules of international criminal law, and according to which attacks on the fundamental rights of nations, as well as attacks on the fundamental liberties and constitutional rights, of peoples and of individual persons, constitute, in certain circumstances inhuman acts, and consequently, international crimes. It will, therefore, be the purpose of the report to give an analysis of the law as it is stated in Art.6 of the Charter, in relation to the involved question of human rights.

(2) In Doc. C.259(1) it has been pointed out that "every crime or nearly every crime violates a right and therewith a 'human right' in a wider, non-technical sense". This applies to almost all violations of the laws and customs of war and to all acts coming under the term "crime against humanity" as defined in the Charter. It may be added that the planning, preparation, initiation and waging of a war of aggression, declared by the Nuremberg Tribunal as a supreme international crime, constitutes also, in a general non-technical sense, a crime against humanity, which involves violations of human rights.

(3) For a number of reasons, and especially because the Tribunal in laying down which inhuman acts had been committed after the beginning of the war, or in connection with the war, referred in its decision directly to the Indictment, it will be necessary to examine this document more closely; furthermore it throws considerable light on the way in which Article 6 of the Charter was interpreted by the Prosecution.

(4) In order to give a comprehensive picture of what human rights have been violated in connection with specific crimes committed, and how they have been violated, it is proposed to bring under review and examination the following groups of crimes:

- (a) Murder and ill-treatment of civilian populations of, or in occupied territories, and on the high seas;
- (b) Deportation for slave labour and for other purposes of civilian populations of, or in, occupied territories;
- (c) Murder and ill-treatment of prisoners of war and of other members of the armed forces of the countries with whom Germany was at war and of persons on the high seas;
- (d) Killing of hostages;
- (e) Plunder of public and private property;
- (f) The exaction of collective penalties, pecuniary or otherwise;
- (g) Wanton destruction of cities, towns and villages and devastation not justified by military necessity;
- (h) Conscription of civilian labour;
- (i) Forcing civilians of occupied territories to swear allegiance to a hostile power;
- (j) Germanisation of occupied territories;
- (k) Murder, extermination, enslavement, deportation and other inhuman acts committed against civilian populations before and during the war;
- (l) Persecution on political, racial and religious grounds.

In its Judgment, the Tribunal stated that the evidence relating to war crimes and crimes against humanity had been overwhelming in its volume and its detail, to such an extent that it was impossible for the Judgment adequately to review it or to record the mass of documentary and oral evidence that had been presented. The Tribunal decided, therefore, to deal in its Judgment only quite generally with these crimes.

For this reason, it would appear of some considerable importance for the proper fulfilment of the task undertaken, not to rely only on the facts as they have been summarised in the Judgment, but to make the fullest possible use of the material produced before the Tribunal during its 403 open sessions.

As it is quite obvious that the collection of material to be presented to the United Nations could not indiscriminately deal with all common crimes and outrages such as murder, ill-treatment and the like, committed against innocent people, without any justification or necessity, it is proposed to limit the investigation mainly to such crimes or groups of crimes in the above list as are of primary importance to the question of insufficiency of, or lacunae in, the existing laws and usages of war and other provisions of international law which purport to afford protection against violations of human rights.

While dealing with the different groups of crimes indicated above and various categories of persons whose rights will be found to be touched upon, it is of course understood that the material will at the same time be arranged and examined in such a way as to bring into the foreground the various aspects of human rights or groups of rights such as life, health, personal integrity, freedom of movement, family rights, religious rights, property, etc., in accordance with the working list of the possible human rights which might in the meantime be established for the purpose by the Secretariat.

(5) In the parts of the report dealing with the Judgment, it will furthermore be necessary to examine and analyse the reactions of the Tribunal to the various violations of human rights, as well as the attitude of the Tribunal to the many legal problems which had arisen during the Trial, and its decisions in regard to them. Here, general legal questions will necessarily come under consideration, such as:

- (a) the attitude of the Tribunal to the law of the Charter;
- (b) the crime against peace as the supreme crime against humanity;
- (c) the refusal of the Tribunal to consider conspiracy to commit war crimes and crimes against humanity as a separate crime;
- (d) the pre-Charter international law as it has been applied by the Tribunal to the various crimes violating human rights;
- (e) the restrictive interpretation of the Charter in regard to the violations of human rights of persons who are not of the nationality of the victorious Powers;
- (f) the defence of superior orders and other subjects relative to the various spheres in which the rights of the accused and the rights of the victims may be said to have conflicted at the time of the offence (see Doc.III/96, p.2., section C.)

(6) One of the tasks of the report will also be to show how far the human rights of the accused perpetrators of war crimes themselves have been respected in the course of the Nuremberg Trial.

From this point of view, for instance, it will be necessary to examine in the first place the way in which the rules of procedure and evidence as laid down by the Charter and which the Tribunal was bound to apply followed those recognised in the courts of all civilised countries, and consequently whether the defendants had in fact been given the right to have the assistance of counsel, to be furnished with a copy of all documents, to present evidence in their own defence, and to cross-examine any witnesses called by the Prosecution.

Further it will be interesting to set out the arguments contained in the Judgment on the question of the legality of the Tribunal and of the problems relating to ex post facto legislation and the principles of nullum crimen, nulla poena sine lege.

In the last instance, it will be the aim of this part of the Report to consider the instances in which fairness to the accused found its expression in the attitude of the Tribunal to the various problems of substantive law which arose during the Trial. Here, as the most illustrative example of such an attitude, the restrictive interpretation of the sweeping provisions of the Charter concerning the criminality of the accused organisations by which the Tribunal excluded from its statement, inter alia, persons who had no knowledge of the criminal purposes of the organisations, will have to be elaborated. The analysis of the individual sentences and acquittals in regard to the individual defendants will also have some bearing on this particular question.

In conclusion, a word will be said concerning the view that the defendants at Nuremberg might well have been proceeded against by summary executive action and not by a court of law. Stress will be laid on the fact that preference had been given to adjudge their guilt according to law, rather than on any moral or ethical basis alone.

(7) Finally, it would also be of some interest, it is thought, if one of the sections of the report could be devoted to the presentation and examination of the Nazi principles which became the source and the basis of the policy of criminality which led finally to the unprecedented violations of human rights. Some elaboration of the inhuman ideas underlying the conception of a total war will be the subject of this particular section.

B. HUMAN RIGHTS IN THE TOKYO TRIAL.

The sources relevant to this section of the Report are the following:

- (a) The Charter of the International Military Tribunal for the Far East as amended by General Orders No. 20 of 26th April, 1946.
- (b) The Indictment submitted to the Tribunal on 29th April 1946.
- (c) The Transcripts of the Proceedings conducted by the Tribunal, made available to the United Nations War Crimes Commission by instalments.
- (d) As far as necessary the documentary evidence in support of the Indictment and of the Defence, presented to the Tribunal in the form of "Exhibits", also made available to the United Nations War Crimes Commission from time to time.

On 20th July 1947, the United Nations War Crimes Commission was in possession of 23,615 pages of the Transcripts, and of about 2,500 Exhibits submitted either by the prosecution or the defence.

The following paragraphs set out some of the topics and questions to be dealt with in this section of the Report.

(1) The Charter contains three groups of information relevant for the Report;

- (a) One is the information regarding the definition of the crimes falling within the jurisdiction of the Tribunal and having a direct bearing upon the scope within which the criminal nature of violations of human rights of the victims is to be ascertained by the Tribunal for its Judgment.

This information is contained in Art. 5(b) and (c) of the Charter, which give definitions of "conventional war crimes" and "crimes against humanity" and cover all criminal violations of human rights of the victims. These provisions will furnish information as regards the state of the law under which facts concerning violations of the rights of victims perpetrated by the Japanese had been or are to be considered by the Tribunal.

In this respect one of the points to be considered concerns the differences appearing in the definitions of war crimes and crimes against humanity as formulated in Art. 5 of the Far Eastern Charter and in Art. 6 of the Nuremberg Charter. So for instance, in the former the notion of war crimes is not developed as it is in the latter by an enumeration of the various types of war crimes. On the other hand, in the Far Eastern Charter there is no express statement that crimes against humanity are crimes committed against "any civilian population". It will have to be shown in the Report whether these technical differences had any bearing upon the substance of the law declared in the Far Eastern Charter as compared with the Nuremberg Charter, and upon the Judgment of the Far Eastern Tribunal when it is pronounced.

However, the above provisions will not give a direct and precise answer to the question what are or were all the specific human rights covered by them. The definitions contained in these provisions deal with "war crimes" and "crimes against humanity" as general categories including a series of violations of human rights, which are not defined as such.

Therefore, this part of the Report will be restricted to a brief analysis showing only the state of law declared in the Charter and its bearing upon the violations of human rights as prosecuted before the Far Eastern Tribunal and judged by it. As far as specific human rights themselves are concerned, and the question of the extent to which they were or were not covered by Article 5 as a result of the proceedings of the Far Eastern Tribunal, this will have to be referred partly to the analysis of the Judgment when it is pronounced, and partly to the analysis of other aspects of the question to be dealt with in connection with the Tokyo trial.

Finally, Article 5 of the Far Eastern Charter contains also a definition of "crimes against peace" which is similar to

the one appearing in Article 6(a) of the Nuremberg Charter. It is intended to analyse the question of the bearing which crimes against peace have or may have upon the violations of human rights in the light of the Indictment and of the fact and evidence considered by the Tribunal during its proceedings, and time permitting in the light of the Judgment when it is pronounced. It is proposed to consider this question both from the factual and juridical aspect, with a view to clarifying the position which the three criminal categories comprised in the definitions of Article 5 of Far Eastern Charter possess in law in regard to the violations of human rights.

- (b) Another group of information in the Charter is supplied by the provisions concerning the rights secured to the accused persons tried by the Tribunal.

This part will provide a direct and full answer as to the state of the law declared in the Charter, and as to the specific human rights protected within the category of "fair trial rights".

The information is contained in Articles 9 and 10 and partly in Article 15 of the Charter.

These articles cover the following rights of the accused:

- The right to know the substance of the indictment (Art. 9, a).
- The right to have the proceedings made intelligible by interpretation and translation (Art. 9, a. and b.).
- The right to be present at the trial, and apply for production of evidence (Art. 9, c. and e.).
- The right to be represented by Counsel and to conduct defence either in person or through Counsel (Art. 9, c. and d.).
- The right to make motions, applications and requests prior to the commencement of the trial (Art. 10).

Article 15 covers a number of secondary rights deriving from the fundamental rights enumerated in Art. 9, such as the right to make a concise opening statement (Art. 15, c.), the right to examine the witnesses including the accused giving testimony (Art. 15, e) and the right to address the Tribunal (Art. 15, d.).

Apart from the above Articles, provisions having a bearing upon the exercise of the rights of the accused are contained in Articles regulating the powers of the Tribunal, particularly those dealing with the rule of expeditious trial (Art. 12), the admissibility and relevance of the evidence (Art. 13) and the rules regarding appeal and confirmation of the Judgment (Art. 17).

- (c) Finally, the Charter gives information as to the various spheres in which it is recognised under the terms of the provisions that the rights of the victims and of the accused may have conflicted at the time of the criminal offence.

It is rightly proposed to devote a separate chapter or section to this particular aspect of the information.

The relevant information as far as the Charter is concerned is contained in its Art. 6. It deals with the plea of superior orders and the official position held by the accused at the time of the criminal offence, and with their respective effect upon the penal responsibility of each of the individuals accused.

Here again, the Charter gives an answer only insofar as the State of Law is concerned, under which this question is to be decided upon by the Tribunal. The information concerning the actual application of this rule of law by the Tribunal to each of the individual defendants is to be obtained from the proceedings when they are completed and from the judgment when it is pronounced.

(2) The information provided by the Indictment shows certain particular features and discloses certain shortcomings which deserve special attention.

The most striking feature is that one of the two criminal categories, covering the field of violations of human rights, namely, "Crimes against humanity", has been confined to a very narrow margin and practically set aside as unnecessary for the purposes of the prosecution.

As stressed in the "Summary" which accompanied the Indictment when forwarded to the United Nations War Crimes Commission, the prosecutors took the view that paragraph (b) of Article 5 providing for the "conventional war crimes", i.e. war crimes in the narrower sense, was "adequate to cover" also charges coming under paragraph (c), dealing with "crimes against humanity". Consequently they have laid all their charges coming under this grouping, as representing "breaches of the laws and customs of war contained in or proved by the practice of civilised nations and the various Conventions governing the conduct of hostilities, the treatment of prisoners of war, and of persons and property in occupied territories."

This course has been followed all through the relevant Counts of the Indictment, namely in Counts 53 and 55. These Counts come under Group Three of the charges, which is headed: "Conventional War Crimes and Crimes against Humanity". Yet in the text itself there is no further reference to "crimes against humanity". In Count 53 the accused are charged with a plan or conspiracy, the object of which was "to commit ... breaches of the laws and customs of war against the armed forces, many thousands of prisoners of war and civilians...." In Count 55, they are charged with having "disregarded their legal duty to take steps to secure the observances, and prevent breaches" of the existing "Conventions and assurances and the laws and customs of war", whereby they have "violated the laws of war."

The question which arises in this connection is whether by proceeding as described above the prosecutors had in fact neglected and discarded the notion of "crimes against humanity" altogether, or whether they had absorbed it one way or another under the notion of war crimes in the wider sense.

On the other hand, in contrast with the Nuremberg Indictment, the Far Eastern Indictment does not furnish to any degree particulars concerning actual war crimes or crimes against humanity committed by the Japanese. The charges in the Indictment are described in general terms only, so that insofar as full particulars are needed for the collection of information regarding the actual violations of human rights by the Japanese and the way in which they were considered and disposed of by the Far Eastern Tribunal, full information will be obtainable only when the Trial is ended. However, insofar as information is provided by the proceedings hitherto held before the Tribunal, it will be included in the Report if it is sent to the United Nations before the end of the Trial.

This information will be compiled from the Transcripts and Exhibits in the archives of the United Nations War Crimes Commission.

C. HUMAN RIGHTS IN TRIALS OTHER THAN THOSE CONDUCTED BY THE
INTERNATIONAL MILITARY TRIBUNALS.

(1) SOURCES

The sources being used in the compilation of this section of the report are the following:

(a) The Municipal Legislation of various countries relating to war crime trials insofar as notable application has been made of individual provisions thereof in such trials. An examination of the records of these trials shows that numerous discussions in Court of issues relevant to the present Report have turned on, or have included reference to, articles appearing among such municipal enactments. The rules of procedure embodied therein provide much material relevant to the rights of the accused to a fair trial, but the usefulness of municipal war crimes legislation is not confined to this aspect, for provisions have frequently been made relating for instance to the plea of superior orders, and to the responsibility of a commander for offences committed by his troops with and without his having ordered the commission thereof.

(b) The Records of War Crime Trials. The Secretariat of the United Nations War Crimes Commission had in its possession on 6th August 1947, records of 1,084 such trials, ranging from full verbatim transcripts of up to 4,055 pages in one instance (exclusive of separately printed exhibits) down to the barest of summaries.

The countries whose Courts have held these trials are the following: Australia, Canada, China, Czechoslovakia, France, Greece, the Netherlands, Norway, Poland, the United Kingdom and the United States.

Numerous further records which are currently arriving include the full transcripts of the Subsequent Proceedings Trials, which are being conducted by United States Military Tribunals in Nuremberg.

(2) CONTENTS.

(a) The section dealing with the Rights of Victims of War Crimes, and showing the extent to which such rights have been vindicated by war crime trials, has the following as its primary sub-division:

1. Inhabitants of occupied territories.
2. Other civilian populations.
3. Members of armed forces.
4. Prisoners of war.
5. The sick and wounded.
6. Medical personnel.
7. Captured spies.

These divisions are sub-divided as far as is necessary under various of the following headings, each of which represents a human right or group of rights:

- (i) Life,
- (ii) Health,
- (iii) Personal integrity,
- (iv) Freedom of movement,
- (v) Fair Trial,
- (vi) Family rights,
- (vii) Religious rights,
- (viii) Property,
- (ix) Civic rights.

Under each of the divisions numbered 1 - 7 the sub-divisions used are only those selected from among (i) - (ix) which are appropriate in view of the state of the law applied by the courts and the character of the material available. For instance, it is proving possible to arrange the material dealing with the rights of inhabitants of occupied territories under most if not all of these nine sub-headings, because of the wide variety of rights for whose violation war criminals have been punished. On the other hand, in dealing with the protection of the rights of captured spies as such, only the right to fair trial is being referred to.

This section, dealing with the rights of the victims of war crimes, includes, in addition to a quantity of material whose classification in accordance with the above scheme is proving quite straight forward, an examination of the following topics among others: the extension of judicial protection to cover persons taken from occupied territories and deported into enemy states; the extent of the protection afforded to civilians who take up arms against the occupant; the fact that it is not legally necessary in all circumstances to show that the criminal was actually an enemy national; the lack of protection of enemy nationals under the laws and customs of war, against offences committed by their fellow nationals; the remarkable scarcity of trials involving combatant troops as victims of illegal means of warfare, and also of trials involving allegations of violations of religious rights despite the existence of provisions of international law protecting the religious freedom of prisoners of war and of inhabitants of occupied territories; the interpretation of the provisions of the Geneva Prisoners of War Convention, and of those provisions of the Hague Convention which protect prisoners of war, so as to cover offences committed

on the line of march as well as in camp; the withdrawal of certain rights under the Geneva Convention, connected with trial, from prisoners accused of having committed war crimes; and the types of punishment meted out to persons found guilty of war crimes. (It is worthy of note, for instance, that the death sentence, which theoretically can be awarded to any war criminal, has not only been inflicted for offences involving killing, but has, for instance, been meted out also to persons found guilty of torture.)

(b) The section headed: Spheres in which the Rights of the Accused and the Rights of the Victims may be said to have conflicted at the time of the offence is divided into a number of parts, in each of which an attempt is being made to show how municipal enactments and judicial practice have struck the balance between conflicting claims to the Court's consideration. These parts deal with the following:

1. The extent of Responsibility of a Commander for crimes committed by his troops.
2. The defences of Superior Orders, Duress and Coercion.
3. The related defence of Legality under Municipal Law.
4. The defence of Necessity.
5. The defence of Legitimate Reprisals.
6. The defence of Reasonable Mistake of Fact.
7. The plea of Self Defence.

There are many municipal enactments or judicial decisions to show that a commander who orders the commission of an offence is guilty along with the person who carries it out; the interesting question, however, is the extent to which a commander of troops can be held liable for offences which he did not order, on the ground that he knew, or ought to have or must have known, of their perpetration and/or ought to have used his authority to prevent them from being committed. On this problem there are a number of trials and a few specific municipal enactments; it has been necessary, however, to find, inter alia, how far the latter have merely shifted a burden of proof rather than created substantive law by making the commander vicariously liable for offences committed by his troops. It will freely be admitted that the extent to which a commander can fairly be made liable for offences which he did not order is not easy to lay down and some criteria which have been suggested during the various trial proceedings are set out in the Report.

If time permits, it is proposed to insert also, at an appropriate place in the Report, some pages on the extent of liability of persons such as those who have kept watch or guard while a war crime was committed, those who took part in a lynching, yet without striking the final fatal blow, and those whose part in a crime consisted in passing on orders received from above for its commission. It may be possible also to investigate the question of liability for the attempted perpetrator of war crimes.

The problem raised by the question of the extent to which the defences of superior orders, duress and coercion can be admitted are of a different nature, but are no easier to answer. Defence Counsel have often argued that an accused would have been immediately executed for insubordination had he not carried out an order to perform a killing which was contrary to

international law; on the other hand, the rights of the unfortunate victim cannot be forgotten. Municipal enactments contain many provisions on this problem and an attempt has been made in the Report to show their common features, and interesting passages are quoted from the discussion in various trials of the defence of superior orders, which has been that most frequently pleaded by accused war criminals. Certain criteria for judging the admissibility of the defence have been suggested during these trials and these are also set out in the Report.

The sense of duty to obey the law of one's country is likely to be more abiding than the sense of duty towards the orders of a superior officer, but is probably in many circumstances less intense. Here again, however, the path of absolute justice has not always been easy to find. The treatment of this aspect is similar to that of the question of superior orders, duress and coercion.

On each of the remaining topics (4 - 7) there exist sufficient trials to enable some pages to be devoted to them, but the work in this connection has not yet advanced to such an extent as to enable anything very detailed to be said as to the content of the passages. It may be remarked, however, that the attitude taken to the last two defences has not unnaturally been much the same as that taken in the municipal courts of the various countries concerned.

(c) The final section deals with: The Rights of the Accused at the Time of Trial. Material relating to the rights of an accused to a fair trial has been derived from an analysis of the laws and rules of the different countries relating to the trial of war criminals and from a study of their application in practice.

The rules relating to evidence and procedure which are applied in trials by the courts of the various countries, and by the International Military Tribunals in Nuremberg and Tokyo, when viewed as a whole, are seen to represent an attempt to secure to the accused his rights to a fair trial while ensuring that the guilty shall not escape punishment because of legal technicalities. Certain typical examples have been treated under the following headings, to which others will probably be added subsequently:

1. The Right of Accused to know the substance of the Charge.
2. The Right of the Accused to be Present at Trial and to give Evidence.
3. The Right of the Accused to have the aid of Counsel.
4. The Right of the Accused to have the Proceedings made Intelligible to him by Interpretation.
5. Rules regarding Appeal and Confirmation.
6. The Stress placed on Expeditious Procedure.
7. Rules of Evidence in General.
8. The Admissibility of Affidavits.
9. The Admissibility of Pre-Trial Statements by one Accused against another.
10. The Admissibility of Hearsay Evidence.
11. Accused not Entitled to the Rights of a Prisoner of War as regards Trial.

It will be noted that the stress in the earlier headings is on rights of the accused while that in the latter headings is on provisions which ensure that the courts are not to be so bound by technical rules that the guilty shall benefit from the exceptional circumstances under which trials are held, and slip through the net of justice. It is clear that these latter provisions indirectly vindicate the rights of the victims of war crimes.

IV. THE STAGE REACHED IN DRAFTING THE REPORT

(1) INFORMATION ON HUMAN RIGHTS ARISING OUT OF THE RELATIONSHIP BETWEEN A STATE AND PERSONS UNDER ITS JURISDICTION.

An outline of Part I of the Report has been drafted enlarging on the points indicated in Section II of this paper. The outline has been based, for the time being, on the relevant parts of the Nuremberg indictment and judgment and on the transcripts of some of the trials of Germans accused of crimes against humanity against German nationals and stateless persons held before German courts.

A survey of the material necessary for this part of the Report has been given in Section II.A. of this paper. It is assumed that some modifications of the scheme given in Section II of this paper will suggest themselves after a careful study of the transcripts of the Nuremberg trial, which has not been possible so far, and after the whole of the material of which use will be made, has been assembled. Attention is at present being devoted particularly to the draft of these parts of the final report dealing with the Nuremberg trial as far as it concerns Counts One and Four of the indictment. (cf. Section II, sub-section B.2 (1).)

(2) INFORMATION ON HUMAN RIGHTS PROTECTED BY THE LAWS AND CUSTOMS OF WAR

(a) An outline of the part dealing with the Nuremberg trial of the major war criminals has been drafted and circulated in Doc. III/102 of which the most relevant points have been included in the present progress Report

At the present stage drafts concerning the historical aspect of the problem and the information indicated in Sections I, II and III of Doc. III/102 are in preparation.

(b) An outline of the part of the Report which deals with the Tokyo trial has been prepared containing more elaborate considerations on certain points of legal interest. In view of the fact that the Tokyo trial is still in progress, the outline has been prepared with particular regard to the provisions of the Far Eastern Charter and of charges contained in the Indictment submitted to the Far Eastern Tribunal. The relevant sources of information as a whole have been enumerated in Section III, B. above.

At the present time drafts for the final Report concerning the information supplied by the Charter and the Indictment are in preparation whereas the other two sources of information, which are as yet incomplete, are being scrutinised and analysed for drafts to be prepared in the near future.

(c) It remains to describe the stage reached in the drafting of the part of the Report which deals with trials of war criminals other than those conducted by the International Military Tribunal (Section III.C. above)

A scheme of working has been drawn up arranging the whole of the relevant material under the headings and sub-headings set out above (pp.17-18)

In execution of this scheme, certain passages are now in draft form, including an Introduction and the bulk of the sections on the Responsibility of Commanders for Offences committed by their Troops, on the Defence of Superior Orders and on the Rights of the Accused.

The last three sections follow the lines already described. The Introduction sets out certain aspects of the protection of fundamental rights in municipal law systems and uses these as an analogy to be followed in the study of war crime trials from the same point of view. These introductory pages also point out and illustrate the difficulty of defining and drawing up, before studying the material available, any list of human rights the extent of whose protection in war crime trials is to be demonstrated, and emphasises that anyone making an investigation of war crime trials from the point of view of the protection or vindication of human rights must be left to some extent free to segregate and define for himself the relevant rights in the manner which he finds most convenient for the purpose of arranging and analysing the material with which he is confronted. Finally, the Introduction demonstrates in passing, that, while the vast majority of war crimes with which the courts have been called upon to deal have constituted violations of human rights, this has not invariably been so. The present intention is to amalgamate the Introduction, at a later stage, into a general Introduction to the whole Report.