

IX. INTERNATIONAL EVENTS

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HUMAN RIGHTS

Numerous non-governmental organizations in the United States and other countries had been concerned during the years of World War II with educating public opinion to the importance of the principle of international protection of human rights, to the idea of including within the scope of any international organization which might be established the task of protecting basic human rights within the borders of otherwise sovereign countries. As the war drew to a close, the need for pressing toward this goal became urgent.

Last year's Review of the Year contained an account of the San Francisco Conference and the activities of the non-governmental organizations which were in considerable measure responsible for the inclusion in the United Nations Charter of the clauses on the protection of human rights. Among the organizations mentioned which shared in these activities, and which continued to be actively interested during the opening meetings of the Commission on Human Rights, were the American Association for United Nations, American Bar Association, American Civil Liberties Union, Federal Council of Churches of Christ, Catholic Association for International Peace, Church Peace Union and Congress of Industrial Organizations.

In addition, several Jewish organizations were actively interested in the progress of the idea of international protection of human rights. These included the American Jewish Conference, the World Jewish Congress, the Board of Deputies of British Jews, and the Anglo-Jewish Association. Perhaps the most active was the American Jewish Committee.

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Preparatory Stages

The activities of these groups resulted in the inclusion in the UN Charter, completed and signed on June 26, 1945, of a number of references to human rights and fundamental freedoms. Thus, the progress of the United Nations include the achievement of "international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to races, sex, language, or religion." (Article 1, section 3). The Charter makes it mandatory upon the Economic and Social Council to "set up commissions in economic and social fields and for the promotion of human rights, and such other commission as may be required for the performance of its functions." (Article 68)

On October 17, the Preparatory Commission of the United Nations adopted a set of recommendations covering the functions of the Commission on Human Rights. These comprised the following:

- (a) formulation of an international bill of rights;
- (b) formulation of recommendations for an international declaration or convention on such matters as civil liberties, status of women, freedom of information;
- (c) protection of minorities;
- (d) prevention of discrimination on grounds of race, sex, language or religion; and
- (e) any matters within the field of human rights considered likely to impair the general welfare or friendly relations among members.

Studies, recommendations and provision of information and other services would be made at the request of the General Assembly or of the Economic and Social Council, whether on its own initiative or at the request of the Security Council or the Trusteeship Council.

These recommendations were accepted in substantially the same form by the General Assembly of the UN at its first session in January 1946 in London, and on January 29, it authorized the Economic and Social Council to establish a Commission on Human Rights. One month later,

on February 29, the Economic and Social Council adopted a resolution providing for the initial composition of the Commission on Human Rights and of a Subcommission on the Status of Women.

The Commission established on the basis of this resolution, was only intended to be nuclear and preparatory in nature. Its membership was fixed at nine persons appointed in their individual capacities, and not as representatives of governments. It was assigned the task of preparing for submission to the Economic and Social Council, scheduled to hold its second meeting in New York on May 25, draft proposals covering the structure and functions of the permanent and full Commission. The members attending the meetings of the nuclear Commission, held April 29 to May 20, were Mrs. Eleanor Roosevelt, (U. S. A.), Professor René Cassin (France), Mr. K. C. Neogy (India), Dr. C. L. Hsia (China), Mr. Nikoli Kriukov replaced by Mr. Alexander Borisov (U. S. S. R.), and Mr. Dusan Brksh (Yugoslavia). Mr. Paal Berg (Norway), M. Fernand Dehousse (Belgium), and Mr. Victor Paul Haya de le Torre (Peru) were unable to attend. The officers were Mrs. Roosevelt (Chairman), Professor Cassin (Vice-Chairman) and Mr. Neogy (Rapporteur).

Proposals of American Jewish Committee

At the opening meeting on April 29, the nuclear Commission was presented with a number of memoranda from governments and private organizations containing suggestions regarding the functions and structure of the permanent Commission. One of the non-governmental organizations which was in close touch with the activities of the Commission was the American Jewish Committee, which on the opening day submitted to it a list of proposed clauses for inclusion in the International Bill of Rights. This list included clauses guaranteeing to every person freedom of conscience and belief, of religion, of religious worship and practice, public and private, and of religious association and the right of every person to form and hold opinions, to listen to and receive opinions, to give free expression of opinion, and to receive and convey information. It asked for freedom of communication, of press and the radio; for the right to form

proper political, economic, religious, educational and cultural associations. It asked for each person the right to the nationality of the state where he was born, and a guarantee against deprivation of his nationality by way of punishment or because of race, religion, language or descent, as well as for protection against any arbitrary discrimination by reason of race, sex, language, or religion in the legal provisions of any country relating to the person or property of any individual. It asked that each state be obligated to protect all persons and groups of persons against organized incitement to discrimination or injury on the grounds of race, sex, language or religion.

The American Jewish Committee memorandum also stressed the importance of devising procedures to make the human rights provisions of the Charter effective in practice. Thus it requested a machinery of supervision; the incorporation of the International Bill of Rights in the constitutions of the member nations; the conferring by each member nation upon its courts of the power and duty to pass judgment on violations of the bill; the right of individuals and private organizations, as well as states, to petition the Commission in order to call attention to violations of the Bill; and the empowering of the Commission through appropriate channels to call upon the General Assembly or the Security Council to intervene in any case of violation. It also recommended that the Bill be made part of international law and that violations of its provisions be deemed a breach of international law and cognizable by the International Court of Justice.

The American Jewish Committee also brought to the attention of the Commission a memorandum which, on April 26, it had submitted to Secretary of State Byrnes proposing the inclusion of principles of human rights in the peace treaties with former enemy states. These principles included several not requested for the International Bill of Rights: no person shall "be denied the right of emigration and no emigrant shall be denied the right of voluntary expatriation, nor the right of taking along movable property and disposing freely of such possessions as cannot be taken along;" citizens of these countries (Bulgaria, Hungary, Italy, Rumania) "shall have the right to establish and maintain schools and

cultural and religious institutions; if public funds are allocated for such schools and institutions, there shall be no discrimination on the ground of race, sex, language or religion; every person shall have the right to use his own language before the courts and other authorities of the State, as well as in his private, cultural and commercial relations."

In a letter to the American Jewish Committee, Acting Secretary of State Dean Acheson asserted that consideration for human rights must enter into international agreements, and informed the Committee that its memorandum was being circulated to State Department offices working on the treaties and to those working with the Commission on Human Rights.

Numerous other Jewish, as well as non-Jewish organizations, as noted above, were also active and submitted to the Commission detailed and valuable recommendations regarding the structure and functions of the Commission and the contents of the proposed Bill of Rights. In addition, the Commission received memoranda from member governments of the UN containing either suggestions of private organizations in their countries which they endorsed or the government's own official proposals. Outstanding among the documents of this sort were: a Draft Declaration on Human Rights by the Cuban Delegation to the UN; a Statement of Essential Human Rights presented by the Delegation of Panama; an official memorandum on the Establishment of a Subcommittee on Freedom of Information submitted by the United States Delegation; a Draft Resolution concerning the calling of an International Press Conference submitted by the Philippine Delegation; and a memorandum from the Chinese Government endorsing freedom of the press.

Public Hearings

The Nuclear Commission manifested in the course of its deliberations recognition of the importance of a public opinion alerted to the problems of human rights, and of harnessing public opinion in support of its work. Thus on May 13 it initiated a valuable precedent by arranging a hearing at which witnesses appeared to present the views of non-governmental organizations. At this meeting, Judge Joseph M.

Proskauer, President of the American Jewish Committee, urged the integration of the International Bill of Rights into the body of International Law, with infractions coming under the jurisdiction of the International Court of Justice. He also urged the adoption of constitutional measures by all nations prohibiting any governmental conduct or action which would tend to impair fundamental rights or freedoms, and suggested that the United Nations issue a declaration stating that it is the duty of every nation to promote effective legal measures for the enforcement of the International Bill of Rights.

His views were supported, and additional suggestions offered, by Judge William L. Ransom for the American Bar Association; Roger Baldwin for the American Civil Liberties Union, the American Law Institute and the International League for the Rights of Man; Rose Schneiderman for the National Women's Trade Union League; and James Rosenberg for the Committee on Human Rights of the National Conference of Christians and Jews. Others who testified at this meeting were Edward Reddan for the Motion Picture Association of America; Frederick O. Nolde for the Federal Council of the Churches of Christ in America; and the Rev. George B. Ford for the Church Peace Union. Clark M. Eichelberger, Director of the American Association for the United Nations, introduced the representatives.

Recommendations of Nuclear Commission

The Nuclear Commission completed its deliberations on May 20 and officially adopted for submission to the Economic and Social Council a set of recommendations covering the composition, program of action and powers of the permanent Commission.

The Commission recommended that the Economic and Social Council have the Secretariat compile a year book, the first edition of which should contain all declarations and bills of human rights now in force in the various countries; to collect and publish information on the activities of the various organs of the United Nations dealing with human rights and fundamental freedoms; to collect and publish informa-

tion on human rights arising from trials of war criminals, especially the Nuremberg and Tokyo trials; to publish a survey of the development of human rights, as well as of the plans and declarations on human rights by specialized agencies and non-governmental national and international organizations. The Commission also recommended that the Economic and Social Council might suggest to member nations the establishment of information groups or local human rights committees within their countries which would transmit periodical information to the Commission on the observance of human rights in their countries, both in their legal systems and in their administrative practice.

The Nuclear Commission report recommended that the full Commission draft an international bill of rights as soon as possible which, upon completion, should be circulated among the member governments for their suggestions. The Nuclear Commission should be authorized to proceed with preparations for such a bill even before the appointment of the full Commission. By way of preparing for the drafting of an international bill of rights, it was suggested that where possible, regional conferences be held similar to the Inter-American Conference of War and Peace held in Mexico City in March 1945, at which valuable proposals on the problem of international protection of human rights were adopted. Such conferences would make available the opinions and ideas on the subject of the peoples of Europe, Asia and Africa—opinions and ideas which are rooted in their differing needs, problems and experiences. If these should prove impracticable, the advice of individual experts from the different regions should be sought.

The Commission recommended that "without waiting for the International Bill of Rights to be written, the general principle should be accepted that provisions for basic human rights be included in international treaties, particularly the peace treaties, that similar provisions should be accepted by all States, Members of the United Nations, and by States seeking admission to the United Nations."

Perhaps the most important recommendation of the Commission was the statement that "the purpose of the United Nations with regard to the promotion and observance of human rights as defined in the Charter of the United Na-

tions, could only be fulfilled if provisions were made for the implementation of the observance of human rights and of international bill of rights." It was suggested that pending the eventual establishment of an agency for this purpose, the Commission on Human Rights "might be recognized as qualified to aid the appropriate organs of the United Nations in the tasks defined for the General Assembly and the Economic and Social Council . . . concerning the observance of human rights and fundamental freedoms for all, and to aid the Security Council . . . by pointing to cases where violation of human rights committed in one country may, by its gravity, its frequency, or its systematic nature, constitute a threat to the peace."

With regard to the definitive composition of the Commission, the nuclear Commission recommended that it consist of eighteen highly qualified persons serving as non-government representatives for terms of three years and eligible for reappointment. Of the first eighteen members appointed, the term of office of six should expire at the end of one year, of six others at the end of two years and of the last six at the end of three years. The eighteen members should be appointed by the Economic and Social Council out of a list of nominees submitted by the member states of the United Nations, all states having the right to nominate not more than two individuals who need not be nationals of their own country. "The Economic and Social Council should at all times pay due regard to equitable geographical distribution and to personal qualifications of nominees for service on the Commission."

The nuclear Commission also recommended that the full Commission be authorized by the Economic and Social Council to call in *ad hoc* working groups of non-governmental experts to advise and guide it in its tasks, as well as to invite representatives of appropriate specialized agencies, some of whom would be working on human rights in their special fields (for example, ILO in the field of labor, UNESCO in the field of education) to take part in its meetings.

While the report of the Commission on Human Rights was adopted without major differences of opinion, the representative of the Soviet Union, Alexander Borisov, dissented from the recommendation that members of the Commission

and its subcommissions should serve as non-governmental representatives, and abstained from voting on the proposal for regional conferences and for implementation, explaining that he had not yet been able to study with sufficient care the records of the meetings of the Commission and the various documents submitted to it.

Together with its own report, the nuclear Commission transmitted to the Economic and Social Council the report of the Sub-Commission on the Status of Women, which met from April 29 to May 13. The latter report dealt with the definitive composition of the permanent Sub-Commission and laid down principles covering political, civil, social, economic and educational rights of women.

The nuclear Commission also recommended that, for the time being, the number of subcommissions set up by it should be limited, and that in addition to the existing Sub-commission on the Status of Women, a Sub-commission on Freedom of Information and the Press, consisting of twelve members, should be established. The function of this Sub-commission should be "to examine what rights, obligations, and practices should be included in the concept of freedom of information and to report to the Commission on Human Rights on any issue that may arise from such examination." Its members should be selected in the same manner as the Commission and should be representative of the different stages of development to be found in the different regions of the world. Any program undertaken concerning freedom of information should take into account the different media available in different regions of the world, and the differing local conditions, problems and regulations. It was noted that the field of information included press, radio, television, movies, magazines, books and other media.

The motive which impelled the Commission to recommend the establishment of the Subcommission on Freedom of Press and Information, before any other, was explained by Mrs. Roosevelt when she reported on May 25 to the Economic and Social Council:

We suggested that you name a Subcommission on Freedom of Information and the Press because we felt that freedom of information included all types of communi-

cation—it included radio, movies, books, magazines, and the press—and that perhaps, that was the one absolute necessity to really drafting a bill of human rights, because it is only the free information of what happens to people throughout the world which forms a basis for public opinion. And it is public opinion which will really make it possible to enforce any bill of human rights, and no bill of human rights will be worth anything unless it is enforced.

Recommendations of Economic and Social Council

The Economic and Social Council commenced its meetings on May 25, and began the consideration of the reports of its nuclear commissions. The differences in basic conception between the Soviet Union and the other governments of Eastern Europe and the Western Nations, over the structure and functions of the Commission on Human Rights, revealed themselves in sharp outline. At the very outset, the Soviet member of the Council reiterated the viewpoint of his government favoring the appointment of representatives of governments as members of the commissions rather than in their individual capacities.

On June 17, the Economic and Social Council, sitting as a committee of the whole, adopted the principle that members of all of its commissions should sit as governmental representatives. This was the Soviet view and was adopted over the objections of the United States and the United Kingdom by a vote of 11-to-5, with two states abstaining.

In accepting the Soviet view, the Council overlooked the recommendations of most of its nuclear commissions. The Soviet delegate argued that the commissions were working bodies of the United Nations and would be mere "discussion clubs" unless their members represented government viewpoints. The United States view, supported by the United Kingdom, was that the commissions are "advisory bodies" rather than "working bodies," and political judgment and compromise would be effected when commission decisions came before the Council or General Assembly.

The Soviet delegate also favored placing the primary emphasis upon the problem of racial discrimination which

was widely prevalent in many parts of the world rather than on freedom of the press.

The Council turned over the report of the nuclear Commission for study by a twelve-man drafting committee. This committee, on the whole, found most of the recommendations of the nuclear Commission to be acceptable. It agreed by a 6 to 4 vote that authority should be granted the Commission to deal with "any matter concerning human rights." The clause had been opposed by the Russian delegate on the ground that it was too inclusive and not specific enough, that it would empower the Commission to deal with "political questions," and that the Commission might find itself on the territory of the Security Council. Mrs. Roosevelt, who was present as a "witness" before the drafting committee, explained that there was no intention of encroaching on the functions of the Security Council, but that the amendment was necessary to give the Commission authority to action on every problem within its jurisdiction, and that political considerations were often so tied up with the question of human rights that the Commission would meet them, no matter what its terms of reference.

The drafting committee also agreed to recommend that the UN members should be "invited to consider the desirability" of establishing information groups within their respective countries to collaborate with them in furthering the work of the Commission. This wording represented a compromise from the original formulation which was weakened because the Soviet delegate objected to making the establishment of such groups or committees mandatory.

The recommendation of the nuclear Commission that human rights clauses be included in the peace treaties was heatedly debated in the drafting committee, and adopted over the opposition of the Soviet and Ukrainian delegates. The Soviet delegate objected to this proposal on the ground that the prime task of the United Nations—to disarm Germany and the Fascist countries—had not yet been accomplished and that the ideological re-education of the peoples of the former enemy countries had not been completed. To restore the full liberty to them now would give the Fascist groups among them strength and allow them to prepare for a third World War. The peoples of these countries should

be made ready for liberty before they receive it. The Ukrainian delegate argued that the peace treaties "were not treaties of forgiveness but guarantees that the ex-enemy countries would not start another war. It might be necessary to limit human rights in the peace treaties in order to ensure that there should be no more war." He felt that such a recommendation would be applying pressure on the foreign ministers engaged in writing the peace treaties.

The final wording of the recommendation as adopted by the drafting committee read: "Pending the adoption of an international bill of rights, the general principle shall be accepted that international treaties involving basic human rights, including to the fullest extent practicable treaties of peace, shall conform to the fundamental standards relative to such rights set forth in the Charter."

The drafting committee unanimously recommended that the Sub-Commission on the Status of Women should be raised to the rank of a Commission, and that the Commission on Human Rights should be empowered to establish a Sub-Commission on Freedom of Information and the Press, the function of the latter to be the examination of "what rights, obligations, and practices should be included in the concept of freedom of information, and to report to the Commission on Human Rights on any issues that may arise from such examination."

As a result of Russian insistence, the drafting commission recommended the establishment of sub-commissions on minorities and discrimination. The wording of the recommendation empowering the Commission on Human Rights to establish a Sub-Commission on the Protection of Minorities read: "Unless the Commission otherwise decides, the function of the Sub-Commission shall be, in the first instance, to examine what provisions should be adopted in the definition of the principles which are to be applied in the field of protection of minorities, and to deal with the urgent problems in this field by making recommendations to the Commission." The recommendation calling for setting up a Sub-Commission on the Prevention of Discrimination is worded: "The Commission on Human Rights is empowered to establish a Sub-Commission on the prevention of discrimination on the grounds of race, sex, language, or religion.

Unless the Commission otherwise decides, the function of the Sub-Commission shall be, in the first instance, to examine what provisions should be adopted in the definition of the principles which are to be applied in the field of the prevention of discrimination, and to deal with the urgent problems in this field by making recommendations to the Commission."

The drafting committee also accepted the recommendation of the nuclear Commission on the question of implementation. Its recommendation read: "Considering that the purpose of the United Nations with regard to the promotion and observance of human rights, as defined in the Charter of the United Nations, can only be fulfilled if provisions are made for the implementation of human rights and of an international bill of rights, the Council requests the Commission on Human Rights to submit at an early date suggestions regarding the ways and means for the effective implementation of human rights and fundamental freedoms, with a view to assisting the Economic and Social Council in working out arrangements for such implementation with other appropriate organs of the United Nations." This recommendation was adopted unanimously.

At the time of writing, only the groundwork had been laid for a working Commission on Human Rights. Much remained to be done and the obstacles were many. Chief among them was the general mistrust between the Soviet Union and the Western democracies. In part this was a result of differing conceptions as to which human ideals and aspirations were more basic—racial and economic equality or the political freedoms. Upon the resolution of this conflict rested the future of the UN, of the international system for the protection of rights of man, and of international peace.

REFUGEES

With the end of the war, the United Nations were faced with the difficult problem of deciding the fate of millions of refugees and displaced persons. In Europe, the problem was rendered exceedingly complex and controversial by the fact that new governments had risen to power in most of the

countries of origin of these refugees and displaced persons. Thus, the new governments of Poland and Yugoslavia had repudiated the exile governments which had had their seats in London, with the result that several hundred thousand Poles and Yugoslavs, whose sympathies lay with the London governments, declined to be repatriated. Added to these were several hundred thousand Latvians, Lithuanians and Estonians whose countries had been annexed by the Soviet Union and who refused to return. Undoubtedly, there were among the refugees and displaced persons considerable numbers who had in one way or another collaborated with the Nazis. The representatives of the governments of these countries urged on every occasion that these refugees and displaced persons be repatriated, or at least, deprived of international assistance.

However, there were among the refugees and displaced persons hundreds of thousands who had legitimate claims not to be repatriated, but to be assisted and maintained until such time as they could be resettled elsewhere. These persons included refugees and displaced persons who, though not collaborators in any sense, were out of sympathy with the regimes in power in their countries of origin, and who feared persecution should they return. They included also a large number of Jews whose native lands were but graveyards haunted by memories of persecution and death at the hands of the Nazis and their satellites. The governments of the Western countries, especially the United States and the United Kingdom, constantly stressed the problem of these persons and argued for as broad a definition of refugees and displaced persons as possible. (The number of refugees and displaced persons requiring international assistance, according to an estimate submitted on May 2 to the Special Committee on Refugees, by Sir Herbert Emerson, Director of the Intergovernmental Committee on Refugees, was 1,193,000).

At most of the international meetings where the issue was debated—in the UNRRA, the General Assembly, the Economic and Social Council, the Special Committee on Refugees—the legitimacy of claims of Jews not to be repatriated, was recognized. It was apparent, however, that the Jewish refugees and displaced persons were being in-

directly victimized by the conflicts which raged around the problem of the *non-Jewish* Poles, Yugoslavs, Ukrainians, etc.

However, the status of the Jewish refugees and displaced persons was not simple. As noted in the report of the Anglo-American Committee of Inquiry, the Jewish occupants of displaced persons centers in Germany and Austria were not all displaced persons in the strict sense of the term, that is, persons outside their national boundaries by reason of the war. The chief reason for this was that there had been a considerable movement of Jews into the American and British zones of Germany and Austria *after* the cessation of hostilities. Most of these had fled from Poland, and, in smaller numbers, from Rumania and Hungary. They were still infiltrating into these zones at the time of writing, with the expectation of generous treatment, the hope of finding relatives, the special activity in America on behalf of Jewish relief, and the feeling that the shortest route to Palestine was through the American zone of occupation. Included among those Jews claiming the status of refugees and displaced persons were several thousand Austrian and German Jews whose claim, since they were not outside of their countries of origin, had no technical validity.

Recommendations of General Assembly

At the first session of the General Assembly, held in London in January 1946, the difference between the Russian and the British and American approach to the problem became evident. Russia, Poland and Yugoslavia urged that international assistance be extended only to German Jews and Spanish Republicans; other refugees and displaced persons were either Nazis, collaborators, or persons under their influence, or deluded persons who would willingly return to their native countries were they not deceived by anti-democratic propaganda. The Western countries held to the view that aid should be extended to all refugees regardless of their country of origin or the reason for their refusing to return except in cases where there was clear evidence that they were war criminals.

The plan finally adopted by the General Assembly, on February 12, was a compromise suggested by Mrs. Eleanor

Roosevelt, American delegate. This plan recommended that the whole matter of refugees and displaced persons be referred to the Economic and Social Council for further study on the basis of the following principles:

- (1) The problem of refugees and displaced persons is international in scope and nature;
- (2) No refugees or displaced persons shall be compelled to return to their country of origin if, after receiving full knowledge of the facts, they have expressed valid objections to returning;
- (3) The main task concerning displaced persons is to encourage and assist, in every way possible, their early return to their countries of origin, possibly through the conclusion of bilateral arrangements;
- (4) Two categories of persons cannot benefit from the terms of the preceding paragraph;
 - (a) war criminals, traitors and quislings;
 - (b) Germans, whether transferred to Germany from other States or who fled to other States from Germany in order to avoid falling into the hands of allied troops.
- (5) An international organization to be either recognized or set up as a result of the Special Committee's report, to deal with the future of refugees or displaced persons.

Upon completing its study, the Economic and Social Council was to recommend the establishment of a new United Nations refugee agency to supplant UNRRA's displaced persons division and the Intergovernmental Committee on Refugees, and to function within the terms of these principles.

Special Committee of Economic and Social Council

On February 20, the Economic and Social Council established a Special Committee on Refugees and Displaced Persons, and assigned to it the task of preparing a report for submission to the Council at its second session scheduled to open in New York on May 25. This report was to be reviewed by the Council which, on the basis of it, was to submit recommendations to the General Assembly at its next session in New York in September.

The Special Committee, which commenced its meetings in London on April 8, was composed of representatives of the following twenty member nations: Australia, Belgium, Brazil, Byelorussia, Canada, China, Colombia, Czechoslovakia, Dominican Republic, France, Lebanon, Netherlands, New Zealand, Peru, Poland, Ukraine, U.S.S.R., United Kingdom, United States, and Yugoslavia. Sir Herbert Emerson, director of the Intergovernmental Committee on Refugees, and Herbert Lehman, then Director-General of UNRRA, were invited to attend the meetings of the Special Committee in a consultative capacity. The British representative, Hector McNeil, was elected chairman.

As was foreseen, the debate was resumed in the Special Committee, with the lines of conflict drawn very much as they had been in the earlier meetings.

On May 3, the Special Committee adopted a resolution setting up a subcommittee to examine memoranda submitted by Jewish organizations. This subcommittee considered the memoranda and letters of the following Jewish organizations: Jewish Agency for Palestine; American Jewish Committee; joint memorandum of American Jewish Conference, Board of Deputies of British Jews and World Jewish Congress; Commission of Jewish War Orphans in Europe; Council for the Protection of the Rights and Interests of Jews from Germany; Association of Jewish Refugees in Great Britain; Anglo-Jewish Association; and Agudas Israel World Organization.

The subcommittee found that these memoranda emphasized the urgency of the problem and the necessity for as early a solution as possible; that Jewish refugees and displaced persons were mainly non-repatriable, due not to political considerations, but rather to psychological motives; and that the main task of the future organization of refugees and displaced persons should be to secure the permanent resettlement of these persons mainly in Palestine, but also elsewhere. Other suggestions included in the memoranda of the Jewish organizations were: aid to the Jewish Agency for Palestine in obtaining travel documents, transport, etc., for transferred Jewish refugees and DPs; consideration of the case of Jewish refugees from Germany and Austria, who,

having been deprived of their nationality by fascist regimes, do not desire to be regarded as nationals of their countries of origin; consideration of interim measures of education and retraining, with special emphasis on the bringing up of Jewish orphans in their traditional cultural and religious environment; and consideration of steps to be taken in order to ask for relaxation of the laws of naturalization in the countries of resettlement or of present residence.

The Special Committee completed its work on June 1 and presented to the Economic and Social Council a voluminous and controversial report, containing majority and minority opinions on many basic issues. This report was considered by the Council for almost three weeks, and on June 20, it adopted a draft constitution for the new international refugee organization (IRO). This draft was to be circulated among members of the UN, who were to submit their comments for consideration at the third session of the Council. The resulting amended draft was to be considered, finally, by the General Assembly at its next session in September.

Lack of space makes it impossible to include a detailed account of the various aspects of the refugee and displaced persons problem as debated in the Special Committee or the Economic and Social Council. Suffice it to mention only one of the highlights of the debate in the Council which had a bearing on the Palestine problem.

On June 19, the Lebanese delegate to the Economic and Social Council, the only spokesman of the Arab League in it, submitted resolutions which would have prevented the organization from sponsoring any scheme that would create "political difficulties" in the countries of resettlement or in neighboring countries, and from helping any resettlement plan that did not have the consent of the peoples of the receiving countries, and without consulting the United Nations "most directly concerned." All or part of these resolutions were supported by the Russian, Yugoslavian, Czechoslovak and Indian delegates. However, they were voted down by the Council as a result of the opposition of the United States, British, French and other representatives.

Draft Constitution of IRO

The Draft Constitution, adopted by the Council, opened with a preamble listing the principles on the basis of which the IRO was to function. The most important part of the Draft Constitution was Annex I on "Definitions," in which were defined the categories of persons coming within the mandate of the IRO. Again, these categories were defined in the light of a set of general principles: the main object of the IRO is to bring about a rapid and equitable solution of the problem of bona fide refugees and displaced persons; its main task concerning displaced persons is to encourage and assist their early return to their countries of origin; no international assistance should be given to traitors, quislings and war criminals, and nothing should be done to prevent in any way their surrender and punishment; the assistance of the IRO should not be exploited to encourage subversive or hostile activities against the government of any member of the United Nations; the IRO should insure that its assistance is not exploited by persons who clearly are unwilling to return to their countries of origin because they prefer idleness to facing the hardships of helping in the reconstruction of their countries; it should, on the other hand, assure that no bona fide or deserving refugee or displaced person is deprived of its assistance. A "refugee" was defined as "a person who has left, or who is outside of, his country of nationality or former habitual residence, and who, whether or not he had retained his nationality," belongs to one of the following categories:¹ a) victims of Nazi, fascist, quisling or similar regimes; b) Spanish Republicans and other victims of the Falangist regime in Spain; c) "victims of persecution for reasons of race, religion, nationality, or political opinions, provided these opinions are not in conflict with the principles of the United Nations as laid down in the preamble of the Charter . . ."; d) persons who were considered refugees before the outbreak of World War II, and who enjoy the status of refugees under an established system of international or intergovernmental protection or assistance.

¹ Persons in the first three of the following categories were to be reckoned as refugees whether they enjoyed international status as refugees or not.

The term "refugee," was also to be applied to a person (other than a displaced person as defined below) "who is outside of his country of nationality or former habitual residence, and who, as a result of events subsequent to the outbreak of World War II, is unable or unwilling to avail himself of the protection of the government of his country of nationality or former nationality."

The term "refugee" was also to apply to "a person of Jewish origin or, having resided in Germany or Austria as a foreigner or stateless person, was a victim of Nazi persecution, and who was detained in or was obliged to flee from, and was subsequently returned to, one of those countries as a result of enemy action, or of war circumstances, and who has not yet been firmly resettled therein." (Part I, Section A, paragraph 3). The latter paragraph covered the case of all German and Austrian Jews who were in their countries of origin, and was inserted against the opposition of the British delegate who objected to the placing of such Jews in the categories of refugees and displaced persons.

The term "displaced person" was defined as applying to a person who as a result of the actions of the Nazi, fascist, quisling or similar regimes, "has been deported from or has been obliged to leave, his country of nationality or former habitual residence, such as persons who were compelled to undertake forced labor or who were deported for racial, religious or political reasons."

Except for refugees from Franco Spain, and persons of Jewish origin in Germany and Austria, or foreigners and stateless in the latter countries who were victims of Nazi persecution (to whom no conditions were attached), all of the categories of persons enumerated above were to be eligible for IRO assistance in the form either of aid in repatriation, "or if they are unable to return to their countries of nationality or former habitual residence, or if they have definitely, in complete freedom, and after receiving full knowledge of the facts, including adequate information from the governments of their countries of nationality or former habitual residence, expressed *valid objections* to returning to those countries."

"Valid objections" were defined as follows: "persecution, or fear, based on reasonable grounds, of persecution because

of race, religion, nationality or political opinion, provided these opinions are not in conflict with the principles of the UN . . . ” In the case of victims of Nazi, fascist, quisling or other regimes, or victims of persecution on grounds of race, religion, national or political opinions (providing these were not in conflict with principles of UN), compelling family reasons arising out of previous persecution, or compelling reasons of infirmity or illness, were to be deemed “valid objections.” The latter class of “valid objections,” in particular, as well as the previous one, covered the case of most Jewish refugees and displaced persons.

The categories of persons who were excluded from IRO assistance included: 1) war criminals, quislings, traitors; 2) any other persons who assisted the enemy in persecuting the civil population of member countries of the UN . . . ; 3) persons of German ethnic origin (whether German nationals or members of German minorities in other countries); 4) persons who since the end of hostilities in World War II participated in any organization aiming at the overthrow of any member government of the UN, or leaders of movements hostile to the government of the country of origin (being a Member of the UN), “or sponsors of movements encouraging refugees not to return to their country of origin.” None of these excluding categories applied to Jews in any degree, although the latter clause might conceivably have been interpreted in an anti-Zionist sense.

Membership in the IRO, which was to have the status of a specialized agency of the UN, working in a defined relationship with the Economic and Social Council, was to be open to members of the UN or to “any other peace-loving states, not members of the UN.”

Thus, in the formulation adopted by the Economic and Social Council for circulation among the member states of the UN, the planned IRO was authorized to render assistance to virtually all classes of Jewish refugees and displaced persons, as well as to German and Austrian Jews who were still residing in their countries of origin. Its authorization included assistance also to persons who had fled from their countries of origin *after* the cessation of hostilities. Thus, all of the so-called “infiltrates”—Jews from Eastern Europe who had filtered into the occupation zones of Germany after

the conclusion of hostilities in Europe—were eligible for the assistance of the IRO.

However, its assistance was limited to “genuine refugees and DP’s.” Its terms of reference did not include assistance to persons, except German and Austrian Jews, who were residing in their countries of nationality or habitual residence. Thus, it was not empowered to assist in the migration of any of the Jews of Eastern Europe. This limitation of its scope meant that the goal of an international responsibility for the overall problem of migration, which Jewish organizations had hoped to see realized after the war, had not yet been achieved.

At the time of writing, the Draft Constitution had been circulated among members of the United Nations for their comments prior to the September meeting of the General Assembly. There was no reason to believe that the issues had been resolved and that they would not again be sharply debated in the General Assembly. It was hoped that the controversies would not again flare up and prevent the IRO from commencing its activities before December 31, 1946, the terminal date for the care of DP’s by the military and UNRRA.

REPARATIONS

One of the difficult international problems which faced the Great Powers during the period under review, was that of reparations. This was a problem which had plagued the world after the first Great War, and—in the opinion of some—had contributed in no small measure to the strained relations and economic confusion which led to World War II.¹

In contrast to the former war, from which there resulted no distinctly Jewish aspect of the reparations problem, during World War II, the Jews were singled out as a group for

¹The problem of “reparations” as discussed in this context should not be confused with “restitution” and “compensation.” The latter two problems concern the claims of individuals or groups of individuals within the state, against other individuals or groups of individuals, or against the state itself, on the grounds of violated property rights, and are based on the recognized legal principles of the state. They are thus not primarily international issues, but mainly domestic ones. This does not, however, imply that the disregard of individual claims of this nature should not be a matter of international concern. On the other hand, the term “reparations” refers to the validation of claims of states against other states as redress for war damages, and is for this reason discussed in the “international” section of the present Review of the Year.

special plunder persecution and extermination. Billions of dollars of individual and community property were stolen and destroyed. The end of the war left a helpless remnant of Jews in Europe in dire need of outside assistance for rehabilitation and resettlement.

As the war drew to a close, Jewish organizations in the United States and abroad, basing their demands on the recognized special sufferings of the Jews, submitted requests to the Allied Governments for a share for the Jews in the total reparations imposed on Germany. Demands to this effect were submitted jointly by the American Jewish Conference, World Jewish Congress, and Board of Deputies of British Jews; and by the Jewish Agency for Palestine, the American Jewish Committee and other Jewish organizations in the United States and abroad.

On January 14, 1946, the United States Department of State published the text of the reparations agreement negotiated in Paris the previous month. This agreement contained a clause providing for a fund to be used for the rehabilitation of non-repatriable victims of German concentration camps and for those persons of German and Austrian nationality who had been forced to leave Germany on account of religious or racial persecution. The fund was to consist of about five million dollars derived from seized German non-monetary gold holdings, including wedding rings, jewelry, tooth fillings, and other articles taken by Germans from their victims. Another twenty-five million dollars was to be derived from German assets in neutral countries. In addition to these roughly thirty million dollars, the fund was to be augmented from the assets in neutral countries which had formerly belonged to victims of Nazi action who had died and left no heirs. The entire fund was to be administered under an agreement worked out by the Government of the United States, United Kingdom, France, Czechoslovakia and Yugoslavia, in collaboration with the Intergovernmental Committee on Refugees. The fund was to be used only for the purposes of rehabilitation and resettlement, and not to compensate individual losses, or as a substitute for individual restitution of property.

When it was formally announced that such a fund had been agreed on, the Jewish organizations were concerned lest the sum allotted for assistance to these non-repatriable victims of German action, be made dependent on a surplus being left after other claims on German external assets had been satisfied, with the risk that this sum might never be made available to the Jews. In response to memoranda requesting that the Jewish claims be recognized as a first and prior charge on the proceeds of German external assets, the Department of State informed the Jewish organizations that under the Paris Reparations Agreement this would be the procedure.

On May 9, 1946, Dr. Eli Ginsberg, Professor of Economics at Columbia University, was named American representative to a conference of the five powers named above, to be held in Paris for the purpose of working out the details of the manner in which the fund was to be set up and the specific purposes for which it was to be expended. It was announced on June 19 that the Conference had assigned 90 percent of the \$25,000,000 to be used for the rehabilitation of European Jews, including Jews of Germany and Austria who wish to emigrate from those countries. The agreement specified that \$2,500,000 of this sum was to be used for non-Jewish victims. The rehabilitation fund was to be administered by the Intergovernmental Committee on Refugees, or transferred to its successor if it should be dissolved. The agreement also disclosed that France, on behalf of the five Governments that signed the agreement, would make representations to the neutral countries to make available all assets in those countries, of Jews who died and left no heirs. Ninety-five per cent of the "heirless funds" surrendered were to be allocated for the rehabilitation and resettlement of Jews. The Czechoslovak and Yugoslav delegates signed an annex to the agreement stating that their acceptance of the proposal on "heirless funds" did not imply that their Governments were relinquishing their claims for inheritances that belong to the State under international law. The volume of these funds had not been assessed at the time of writing.

UNITED NATIONS RELIEF AND REHABILITATION ASSOCIATION

During the year under review, UNRRA was faced with carrying out in full measure the purposes set out for it in its Articles of Agreement, signed November 9, 1943, by the representatives of 44 allied and associated nations at the White House, Washington, D.C. These purposes called for extension to the peoples of the liberated countries of "aid and relief from their sufferings, food, clothing and shelter, aid in the prevention of pestilence and the recovery of the health of the people." In addition, they called for preparation and arrangements to "be made for the return of prisoners and exiles to their homes and for assistance in the resumption of urgently needed agricultural and industrial production . . ."

According to its Articles of Agreement, UNRRA was established only for the purpose of rendering assistance to members of the United Nations, upon request. Most of the United Nations of Western Europe—France, Belgium, Netherlands, Luxembourg, Denmark and Norway—did not apply for such assistance. Those of Eastern and Southern Europe—Greece, Yugoslavia, Albania, Czechoslovakia and Poland—did apply, as did also the Ukrainian and Byelorussian Soviet Republics. In the Far East, China requested and received full scale UNRRA assistance.

However, despite the fact that according to its original Articles of Agreement, UNRRA was not authorized to render assistance to enemy or former enemy countries, it was empowered to do so by resolutions adopted at subsequent meetings of its Council and Central Committee. Thus, at its London session in August 1945, the Council adopted a resolution (No. 71) authorizing the extension of assistance to displaced persons of enemy or ex-enemy nationality, although upon the insistence of the governments of the Eastern European countries, it specified that no aid might be given DPs charged with collaboration or war crimes, and that every effort should be made to encourage repatriation. At this session UNRRA was authorized to extend limited but general relief services to Italy and Austria, as well as, at a later

date, to carry on a small (\$4,000,000) and specific program of medical aid in Hungary. By special agreement with the American, British and French military government authorities in Germany and Austria, UNRRA also was authorized to take over the administration of the DP assembly centers in those countries, administered until that time by the respective military authorities.

Thus, during the period under review, millions of persons in Europe and the Far East, who otherwise would not have had the physical strength and morale to survive were kept alive by UNRRA. UNRRA was also largely responsible for the repatriation of millions of persons from Germany and other countries to which they had been displaced. The surviving Jews of Europe, as part of the liberated populations, were also thus succored.

UNRRA also assisted the Jews who had been displaced or fled after the cessation of hostilities, to Germany. Few of the Jewish DPs and refugees asked to be repatriated by UNRRA. An UNRRA report of March 1946 estimated these at 79,000, of which 46,000 were receiving aid in UNRRA assembly centers and an unknown number in communities. Most of these Jews were of United Nations nationality, chiefly Polish. About 29,000 were stateless or of ex-enemy nationality, originally from Hungary, Rumania, Austria and Germany.

Many of the activities of UNRRA were carried on through the agency of voluntary organizations, especially the American Jewish Joint Distribution Committee (J.D.C.). It was estimated in March 1946 that between eighty to ninety per cent of the Jews in Germany were receiving some form of UNRRA assistance, either directly or through the voluntary agencies.

In Austria, there were 17,150 Jews, of whom 10,000 were in the U.S. zone, exclusive of the 5,000 in the city of Vienna, who benefited in some measure from UNRRA aid. In Italy, there were about 15,000 foreign Jews who were receiving UNRRA aid.

The UNRRA assistance to DPs took the form of supervision of internal administration of the DP centers; coordination and supervision of voluntary agencies in the centers; provision of amenity supplies (tobacco, candy, recreational

and educational services, etc.); operation of a central tracing bureau; and cooperation with the military occupation authorities in arranging repatriation of the DPs, including their reception in their home countries. It was not UNRRA's function to arrange the resettlement of DPs in countries other than those of their previous residence. Accordingly, it could not undertake any plan of resettlement into new areas.

In general, the UNRRA activities in caring for DPs in Germany were subordinate and supplementary to those of the military authorities. The overall responsibility for the care of the DPs—the provision of shelter, food, fuel, clothing, medical items and transportation, and the maintenance of security precautions—belonged to the latter.

The conflicting views of the governments of Eastern Europe and of Western Europe and the United States with regard to the handling of the refugee and DP problem, discussed in another section of this review,¹ occupied the stage much of the time during the two UNRRA Council Sessions held during the period under review. In London, in August 1945, the Polish delegation submitted motions asking that UNRRA terminate its activities by January 1, 1946. The Yugoslav delegation, supported by the Czechoslovak and Russian delegations, urged the adoption of regulations forbidding the granting of assistance to DPs without the consent of their countries of origin. The main intent of these proposals was to withdraw assistance from the allegedly pro-fascist elements as well as elements in opposition to the governments in power in the East European States, who were claimed to have found refuge in large numbers in the camps. There was considerable evidence that such persons were benefitting from UNRRA assistance. The United States and Great Britain urged that the adoption of these proposals would cause great hardship to and even endanger the lives of the large numbers of persons in the camps who were not war criminals and traitors, whose motive in refusing to be repatriated was honest disagreement with the governments in power.

However, there appeared to be unanimity in the Council

¹ See section on Refugees, above.

in regard to the legitimacy of the claim of all Jewish DPs to UNRRA assistance. Although it was feared that had the motions calling for the early termination of UNRRA's activities, or for the conditioning of UNRRA assistance upon the consent of the governments of the countries of origin of the DPs, been adopted, some hardship would likely have befallen numbers of individual Jews. These proposals were successfully opposed by the United States and British delegates, who prevailed upon the Council to care for persons not wishing to be repatriated until the next Session when the question would again be taken up.

The controversy was resumed at the next Council session at Atlantic City, N. J., in March 1946. The Polish and Ukrainian delegations charged that in the DP camps propaganda was being spread warning the persons sheltered in the camps against returning to their homelands, that aid was being given to war criminals; and that pro-fascist activities were flourishing in the camps. The British-American viewpoint again prevailed when, on March 28, the Council decided to continue caring for DPs without consent of the governments of their countries of origin, until the next regular session of the Council. However, as a concession to the East European viewpoint, it also agreed to do everything in its power to encourage the early repatriation of the DPs and to facilitate in the camps the receipt of full information from the countries of origin of the DPs.

The delegations to the March Council Session received memoranda strongly urging that the Jewish DPs be permitted to emigrate to countries of their choosing, observing that the majority of them wanted to migrate to Palestine. They recommended improved living conditions for the DPs, as well as occupational therapy, vocational training and guidance, educational facilities and establishment of industrial and agricultural projects. The joint memorandum of the World Jewish Congress, American Jewish Conference and Board of Deputies of British Jews urged the establishment of all-Jewish hospitals, inasmuch "as most of the patients dread ministrations by German scientists," and employment of Jewish DPs on UNRRA's supervisory staff. The Jewish Labor Committee memorandum urged resettlement of Jews in homes and communities rather than camps

as a temporary relief measure. The American Jewish Committee proposed that unaccompanied displaced children and minors now under UNRRA care in occupied areas, who lack proper care, should be placed in the care of responsible agencies, groups or individuals able to care for them outside these areas, until they can be permanently resettled. It also urged that Nazi victims who moved across national boundaries since the cessation of hostilities, and hence are not eligible for UNRRA assistance, should be included in the authorized care of UNRRA. The Hebrew Committee of National Liberation pointed out that despite specific resolutions adopted at the second Council session in September 1944 (Montreal), making Jews in Axis countries eligible for UNRRA relief, nothing had been done for them to date.

Some of these recommendations were adopted in practice by the UNRRA and the military authorities in many camps in Germany. One of the resolutions adopted by the Council on March 28, called for completion of registration of DPs and the compilation of data on their skills and employment qualifications to be made available for repatriation and resettlement agencies. The UNRRA Council also resolved to do everything possible to expedite the early creation of a United Nations body to take over the whole problem of displaced persons and immigration, in such a way as to facilitate resettlement and otherwise provide a solution to the problems that will confront the remaining displaced persons when the Administration's assistance comes to an end. It was reported that some military government officials had attempted, on their own initiative, to obtain information from several countries of potential immigration on the admission of DPs and that the army was trying to create employment opportunities in connection with the reorganization of its establishment in Germany.

Unfortunately, in the main, the problem of the Jewish DPs remained unsolved. Their desire for resettlement in Palestine was involved in difficult political controversy. The offers of immigration opportunities in other countries were either impractical, vague or non-existent. The procrastination in finding places for them to settle and begin their lives anew, it was reported at the time of writing, had brought their endurance to a breaking point.

WAR CRIMES TRIALS

Nuremberg Trials

Early in May 1945, the collapse of the German armies and the actual and imminent capture of the principal Nazi criminals made a decision on the manner in which they would be brought to justice imperative. The Commission for the Investigation of War Crimes therefore proposed to its member nations the establishment of an international court to deal with the major war criminals. Meanwhile, the United States independently proposed to the United Kingdom, France and the Soviet Union that the four powers join in a protocol establishing an International Military Tribunal, defining its jurisdiction and powers, naming the categories of acts to be declared crimes, and describing the individuals and organizations to be placed on trial.

On May 2, President Truman appointed Justice Robert H. Jackson of the United States Supreme Court as Chief of Counsel for the United States in the Prosecution of Axis War Criminals. Justice Jackson was assigned the task not merely of assembling the United States case, but of making preparations for the trial itself. On June 7, President Truman made public Justice Jackson's *Report on Trials for War Criminals*, which became the basis of United States policy, and which was in large part reflected in the eventual arrangements for the prosecution of war criminals.

Defining the scope of his recommendations, Justice Jackson pointed out that his responsibility extended only to "the case of major criminals whose offenses have no particular geographical localization and who will be punished by joint decisions of the governments of the Allies," and did not include localized cases of any kind. Crimes against military law, he stated, would be dealt with on the spot by the Allied armies, while traitors and criminals who were returned to the scene of their crimes, would be punished by the individual countries as they saw fit.

Justice Jackson explained the need for the trials in the following words:

.. We have many such men in our possession. What shall we do with them? We could, of course, set them at large without a hearing. But it has cost unmeasured thousands of American lives to beat and bind these men. To free them without trial would mock the dead and make cynics of the living. On the other hand, we could execute or otherwise punish them without a hearing. But indiscriminating executions or punishments without definite findings of guilt fairly arrived at, would violate pledges repeatedly given, and would not set easily on the American conscience or be remembered by our children with pride. The only other course is to determine the innocence or guilt of the accused after a hearing as dispassionate as the times and horrors we deal with will permit, and upon a record that will leave our reasons and motives clear.

Justice Jackson's report called for the trial of

a large number of individuals and officials who were in authority in the government, in the military establishment, including the General Staff, and in the financial, industrial and economic life of Germany who by all civilized standards are provable to be common criminals.

He further proposed:

to establish the criminal character of several voluntary organizations which have played a cruel and controlling part in subjugating first the German people and then their neighbors. . . .

In defining war crimes, Justice Jackson urged that those activities be regarded as war crimes "which fundamentally outraged the conscience of the American people and brought them finally to the conviction that their own liberty and civilization could not persist in the same world with the Nazi power," and which "were criminal by standards generally accepted in all civilized countries."

On this basis, he recommended that the Nazi leaders be charged with three major categories of crimes:

(a) Atrocities or offenses against persons or property constituting violations of International Law, including

the laws, rules and customs of land and naval warfare

....

(b) Atrocities and offenses, including atrocities and persecutions on racial and religious grounds, committed since 1933. . .

(c) Invasions of other countries and initiation of wars of aggression in violation of International Law or treaties.

After the publication of Justice Jackson's report, negotiations between the United States, Great Britain, France, and the Soviet Union continued. At the end of June, representatives of the four powers met in London to arrange the constitution and terms of reference of the International Military Tribunal.

On the whole, the position of Justice Jackson was accepted by the other three powers, and the London agreement and Charter were signed on August 8, subsequently receiving the adherence of fifteen other nations.

In general, the Charter followed the lines of the proposals submitted by Justice Jackson in June. In Article VI of the Charter, three categories of acts were declared crimes of which the Tribunal was to take cognizance. These were:

(a) Crimes against peace. Under this heading were included wars of aggression and wars in violation of international treaties, agreements, or assurances, and participation in a common plan or conspiracy for the accomplishment of such acts.

(b) War crimes; i.e., violations of the laws of customs of war.

(c) "Crimes against humanity, namely, murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war; or persecution on political, racial or religious grounds in execution of, or in connection with, any crimes within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

The crimes committed in connection with the wholesale annihilation and spoliation of European Jewry fell primarily in the third category; some were also covered by the second.

The London Agreement and Charter created an International Military Tribunal, consisting of one judge and one alternate from each of the four signatory powers. Each of the powers was also to name one of the four chief prosecutors.

The judges met in Berlin on October 8 and constituted themselves as a court. The United States appointed former Attorney General Francis Biddle as Judge and Justice John Parker of the Circuit Court of Appeals as his alternate. Great Britain was represented by Lord Justice Lawrence as Judge and Justice Norman Birkett as alternate. The French and Russian Judges were, respectively, Professor Henri Donnedieu de Vabre and Major General I. J. Nikitchenko; their alternates Justice Robert Falco and A. F. Volkoff. Justice Lawrence was named as President of the Court. As Chief Prosecutors, Justice Jackson acted for the United States, Attorney General Hartley Shawcross for Great Britain, R. A. Rudenko for the Soviet Union, and former Minister of Justice Francois de Menthon for France.

On October 18, the prosecution presented the Tribunal with a 35,000 word indictment against twenty-four top figures in the German Government, the Nazi Party and affiliated organizations, the German Army and Navy, and German industry and finance. The individuals named in the indictment were Reichsmarshal Herman Goering; former Deputy Fuehrer Rudolf Hess; Robert Ley, head of the German Labor Front; General Wilhelm Keitel, Chief of the German High Command; Ernst Kaltenbrunner, SS police and Gestapo general; Dr. Alfred Rosenberg, "philosopher" of Nazism; Hans Frank, Governor General of Poland; Dr. Wilhelm Frick, Minister of the Interior and SS General; Julius Streicher, publisher of *Der Stuermer*; Dr. Walter Funk, Minister of Economics; the steel and munitions manufacturer, Gustave Krupp von Bohlen und Halbach; Grand Admiral Karl Doenitz, head of the German government at the time of the surrender; Grand Admiral Erich Raeder; Reich Youth Leader Baldur von Schirach; Fritz Sauckel, organizer of the system of slave labor by foreign workers; General Alfred Jodl, Chief of Hitler's General Staff; Deputy Fuehrer Martin Bormann; Dr. Albert Speer, head of the Todt Organization; Baron Konstantin von Neurath, former

Foreign Minister and Protector of Bohemia-Moravia; and Hans Fritzsche, head of German radio propaganda.

In addition, the indictment named as groups and organizations to be declared criminal by reasons of their aims and the means employed for their accomplishment, the Reich Cabinet, the leadership Corps of the Nazi Party, the SS including the SD, the SA, the Gestapo, the General Staff and the High Command of the German Army.

The indictment consisted of four counts of which Count One, The Common Plan of Conspiracy, presented a comprehensive summary of the Nazi terror within Germany and the Nazi policy of deceit and aggression against neighboring countries, from the inception of the Nazi Party to the attack on Pearl Harbor. Count Two dealt with Crimes Against Peace; Count Three with War Crimes; and Count Four with Crimes Against Humanity.

The indictments dealt in large measure with the crimes committed against Jews. The premeditated destruction of European Jewry, as a constituent element of the Nazi master plan, ran as a recurrent theme throughout the whole document.

Count One charged that while

implementing their "master race" policy, the conspirators joined in a program of relentless persecution of the Jews, designed to exterminate them. Annihilation of the Jews became an official state policy, carried out both by official action and by incitements to mob and individual violence. The conspirators openly avowed their purpose.

Quoting from the anti-Jewish utterances of Alfred Rosenberg, Robert Ley and Julius Streicher, who proclaimed that the struggle would not be abandoned "until the last Jew in Europe has been exterminated and is actually dead," the indictment stressed that "these avowals and incitements were typical of the Nazi conspirators through the course of their conspiracy."

In one short sentence the indictment surveyed the elimination, step by step, of European Jewry, leading toward final mass annihilation:

The program of action against the Jews included disfranchisement, stigmatization, denial of civil rights, subjecting their persons and property to violence, deportation, enslavement, enforced labor, starvation, murder and mass extermination.

Itemizing the cruelties visited upon the civilian populations in the occupied Western and Eastern territories, Count Two (War Crimes) described the methods used by the Nazi henchmen:

The murders and ill-treatments were carried out by divers means including shooting, hanging, gassing, starvation, gross overcrowding, systematic under-nutrition, systematic imposition of labor tasks beyond the strength of those ordered to carry them out, inadequate provision of surgical and medical services, kickings, beatings, brutality and torture of all kinds, including the use of hot irons and pulling out of fingernails and the performance of experiments by means of operations and otherwise, on living human subjects. . .

They conducted deliberate and systematic genocide, viz. the extermination of racial and national groups, against civilian populations of certain occupied territories in order to destroy particular races and classes of people, and national, racial or religious groups, particularly Jews, Poles and Gypsies and others.

The indictment stated that about 1,500,000 persons were exterminated in Maidanek and about 4,000,000 in Auschwitz; 1,000,000 were killed and tortured in Rovno and the Rovno region and hundreds and thousands in other cities and localities of Poland, the Baltic countries, White Russia, the Ukraine and other countries. Although the victims were named only as "citizens of Poland, the USSR, the United States, Great Britain, Czechoslovakia, France and other countries" or "peaceful citizens," Count Four (Crimes Against Humanity) specified expressly that millions of the victims mentioned as Poles, Russians, Americans and so forth were Jews.

The trial opened in Nuremberg on November 20. Only twenty-one of the twenty-four defendants actually went on trial in person. Robert Ley committed suicide in his prison

cell before the trial, leaving a political testament in which he declared that anti-Semitism had been a mistake, and called for the reconciliation of Jews and Germans, and their cooperation for the rebuilding of Germany and the welfare of the world. Martin Bormann was still unfound, and was placed on trial *in absentia*. Gustav Krupp was declared by Allied physicians to be suffering from senile dementia, and hence incapable of standing trial.

In his opening speech, Justice Jackson declared:

It is my purpose to show a plan and design to which all Nazis were fanatically committed, to annihilate all Jewish people. . . .

The persecution of the Jews was a continuous and deliberate policy. It was a policy directed against other nations as well as against the Jews themselves. Anti-Semitism was promoted to divide and embitter the democratic peoples and to soften their resistance to the Nazi aggression. . . . Anti-Semitism also has been aptly credited with being a "spearhead of terror." The ghetto was the laboratory for testing repressive measures. Jewish property was the first to be expropriated, but the custom grew and included similar measures against the anti-Nazi Germans, Poles, Czechs, Frenchmen and Belgians. Extermination of the Jews enabled the Nazis to bring a practiced hand to similar measures against Poles, Serbs and Greeks. The plight of the Jews was a constant threat to opposition or discontent among other elements of Europe's population—pacifists, conservatives, Communists, Catholics, Protestants, Socialists. It was in fact a threat to every dissenting opinion and to every non-Nazi's life. . . . Nor was it directed against individual Jews for personal bad citizenship or unpopularity. The avowed purpose was the destruction of the Jewish people as a whole, as an end in itself, as a measure of preparation for war, and as a discipline for conquered peoples.

Recording the magnitude of Jewish losses, Justice Jackson exclaimed: "History does not record a crime ever perpetrated against as many victims or one ever carried out with such calculated cruelty!"

At the time of writing, the trials had been in session for more than half a year. The documentation of the case against the Nazi leaders had progressed to a point where no doubt remained that the reports of their criminal activities which had horrified a hardened world, were exceeded by the realities. The criminal acts of the Nazis and their satellite partners had been placed on record, so that the world might not ever in the future attribute the reports to wartime "propaganda." The record was available as a warning of the kind of world that awaited mankind were the theories of racialism ever again to become the guiding principles of a nation.

Though at the time of writing not all of the testimony had been heard, the character of arguments offered by the defendants, in regard to their share in the plunder and extermination of the Jews of Europe, indicated a clear pattern.

Most of the defendants disclaimed responsibility. They had had no hand in the formulation of the anti-Jewish program. They had but mechanically fulfilled orders. They were mere unimportant cogs in a machine in which Hitler was the mainspring. Germany was a state in which one man—the Fuehrer—had devised all of the criminal plans and hypnotized his sometimes doubtful followers into blind obedience. The defendants had had no knowledge of the extent of the outrages and horrors. They had exerted their influence to befriend Jews. Only one or two of them, possibly out of hope of winning the sympathy of the court, had confessed to full responsibility for the crimes against the Jews.

However, the prosecution had picked apart every strand of the defense fabric and proved it to be woven of utter falsehood. Systematically, citing document after document, a web of guilt had been woven about each defendant and about large segments of the German nation.

The prosecution established beyond a doubt that the anti-Jewish activities carried on by the Nazis were part of a planned operation and not mere uncontrolled outbursts. A crucial witness to this accusation was Dieter Wisliceny, a Gestapo specialist on Jewish affairs, who testified that the killing of the Jews was a planned operation carried out in two years. He testified that there had been three stages in the campaign against the Jews. Until 1940 the Nazis had

tried to "solve the Jewish problem in Germany" through emigration. From 1940 to 1942, the Jews had been concentrated in ghettos in Eastern Europe. In April 1942, Hitler gave his order for "planned extermination and liquidation of the Jewish people," a process which continued until 1944. The man directly in charge of carrying out this order was Adolf Eichmann, chief of the Gestapo's Jewish section.

Nazi records were cited to prove that the major Nazi organizations, with the knowledge and consent of their members, had been used to spread Nazi fanaticism, beat down political opposition, lead campaigns against the churches, trade unions and Jews, and build up the armed forces in violation of the Versailles Treaty. These organizations, which included 1,000,000 Storm Troopers (S.A.), 400,000 Elite Guards (S.S.) under the command of Heinrich Himmler, and 600,000 members of the Nazi Leadership Corps, were the agencies through which orders for anti-Jewish pogroms and confiscations of Jewish property were carried out. The records proved that the Gestapo had worked hand in glove with the Reich Cabinet, the general staff and high command in rounding up slave laborers, in exterminating Jews, Poles and Russians, and in slaughtering prisoners.

It was established beyond a doubt that the supreme command of the German armed forces was implicated in the Nazi persecution and extermination plans. Perhaps the most damning evidence was the testimony of Otto Ohlendorf, former Major General of Police and subordinate of Ernst Kaltenbrunner, who told of having seen a written agreement entered into by Heinrich Himmler and Reinhardt Heydrich, former Reich Protector for Bohemia-Moravia, with leaders of the supreme command of the Wehrmacht and of the Army. This agreement, signed shortly before the invasion of Russia, provided for the establishment of action groups of the security service (S.D.) to exterminate Jews and communist leaders in the areas behind the advancing armies.

From Nazi records, it was shown that the "spontaneous" uprising against the Jews of Germany following the assassination on November 10, 1938, of Vom Rath, Secretary of the German Legation in Paris, far from being spontaneous, had been planned to the last detail.

From directives issued by Fritz Sauckel, Nazi manpower Czar, it was demonstrated that the German people lied when they insisted that foreign laborers had come to Germany voluntarily and that the German people had lived in ignorance of the cruel mistreatment suffered by them.

Heinrich Himmler was known to have ordered Jews, Gypsies, Russians, Ukrainians, Poles, and even Germans, removed from prisons in concentration camps to be worked to death.

Walter Funk, German Minister of Economics, was proved to have been responsible for the execution of the measures which drove the Jews from the economic life of Germany and stripped them of their possessions. He was shown to have arranged with Himmler to receive in the deposit vaults of the Reichsbank, of which he was director, gold, jewels and other valuables seized from the Jews.

Baldur von Schirach, leader of the Hitler Youth Movement, was proved to have organized the deportation to Poland of 60,000 Vienna Jews.

It was demonstrated from a directive issued by Colonel General Alfred Jodl on behalf of the High Command, ordering two battalions of the Elite Guard to Denmark to evacuate Jews, that he was responsible for the death of more than 500 Danish Jews.

Goering's protestations of friendship for Jews were disproved by a decree, issued by him on May 1, 1941, calling on the Nazi party, the armed forces and the state machinery, to fight "Jews, Free Masons, and affiliated groups." This decree had been accompanied by a memorandum in which Goering had hailed the decision of Alfred Rosenberg to form special staffs in occupied territories to confiscate all material and cultural possessions of these groups.

Hans Frank was charged with the death of over 3,000,000 Jews. His diary was quoted as containing a boast that "there would not be enough forests in Poland" to supply paper for the lists of Jews and Poles he had slaughtered. He admitted having decreed ghettos in Poland, the marking of Jews and the introduction of forced labor.

Von Ribbentrop's attempt to pose as one who was not familiar with the party doctrine of racial superiority, and as an opponent of anti-Jewish measures, was frustrated by

the prosecution's reading of orders instructing German ambassadors abroad to consider creation of anti-Jewish offices within their embassies and to bolster the anti-Semitic activities being conducted by the Nazis in those countries. His guilt was proved by a large number of other documents, including an order to Otto Abetz, Nazi Ambassador in Paris, to cooperate with the Gestapo in confiscating Jewish treasures and other property, and a ruling that Jews of foreign citizenship residing in countries under German occupation were to be shipped to concentration camps. He admitted having upbraided Mussolini because of the Italian policy of mercy toward Jews in Southern France; having owned homes in the heart of concentration camps—and therefore, unable to have been ignorant of what transpired in them—and having been, together with other officials of his foreign office, associated with Gestapo Chief Himmler. He conceded that all German officials had participated in the government's anti-Semitic policy.

The orders for the bloody extermination of the Warsaw Ghetto in 1943, were shown to have emanated directly from Ernst Kaltenbrunner to the German security police. Kaltenbrunner, as well as Ribbentrop and Keitel, was shown to have been involved in the deportation of Jews from France. Keitel was proved to have received detailed reports of atrocities, gas chambers and murder factories, and to have willingly gone along with them.

Alfred Rosenberg, formerly Reich Minister of Eastern Occupied Territories and outstanding Nazi "philosopher," was compelled to acknowledge responsibility for slave labor laws, and for the decrees causing the removal of Ukrainian people to the Reich, "to destroy the biological potentialities of these people."

The gassing of 3,000,000 Jews in the Oswiecim extermination camp was, by the testimony of its commander, Rudolf Hoess, who was captured on March 8, carried out on the direct orders of Heinrich Himmler.

By and large, the trial clarified in specific detail the magnitude of the Jewish tragedy under the Nazis. It showed, for example, that of the 3,500,000 Jews in Poland in 1939, only 100,000 were left alive when the war ended, not counting approximately 200,000 who had fled to the U.S.S.R. A

secret report by a Nazi official in the Ukraine stated that 200,000 Jews had been murdered there by German security police, aided by volunteers from the Wehrmacht and members of the Quisling Ukrainian military formations. Of the pre-1941 Jewish population of over 900,000 of Larger Hungary as many as 600,000 had lost their lives. In Yugoslavia, the deaths reached about 70,000. Of the 250,000 Frenchmen taken to German concentration camps, only about 5,000 returned. Out of 110,000 deported Dutch Jews, only 5,000 returned.

On December 14, a key document of the prosecution, a German Secret Police estimate, prepared by SS Colonel Adolf Eichmann at the behest of Gestapo Chief Heinrich Himmler, was placed before the tribunal. The authenticity of this estimate was sworn to by Dr. Wilhelm Hoettl, right-hand man of Ernst Kaltenbrunner and SS major in the Intelligence Section of the Reich Security office. It summarized the total loss of Jewish life as 4,000,000 killed in the various extermination camps, and 2,000,000 put to death in other ways, chiefly shot by operational squads of security police during the campaign against Russia.

Perhaps more important than the confirmation of the guilt of the Nazi leaders and organizations, was the reaction of the masses of the German people to the revelations. Reports by observers indicated that although most Germans were convinced that the defendants were guilty, a large part of the nation objected to the mass indictment of the Nazi organizations, for the obvious reason that almost every family had relatives in them. According to these reports, the basic German attitude of self-pity, rationalization and shifting of collective responsibility for the country's disaster to the men on trial, had not changed. As the trials progressed, the feeling grew that perhaps more tragic than the crimes of Nazism, was the manner in which millions of Germans were led to accept and condone those crimes.

Local Trials

Only the major war criminals, whose activities were international in scope, were brought before the International Military Tribunal at Nuremberg. However, many other

war criminals were tried by the courts of the various nations, and by the military courts of the Allied armies of occupation within Germany.

In France, Marshal Henri-Philippe Pétain was sentenced to life imprisonment. Pierre Laval was convicted and executed. Hundreds of lesser traitors and collaborationists were sentenced to prison or to death, many of them specifically for their part in the persecution of the Jews during the Nazi occupation.

In Poland, approximately 9,000 persons were tried or awaiting trial, including both Germans and Polish collaborationists. At the time of writing, hundreds had been executed.

In Russia, numerous high Nazis, including generals, had been sentenced to death at major trials in Smolensk, Bryansk and Leningrad, trials which were rated by the Russians on a par with Nuremberg.

In Hungary, approximately 130 war criminals had been sentenced to death by the People's Tribunals, including hundreds of prison sentences. These included the top Hungarian Nazis and collaborators, such as Ferenc Szalasi, former fuehrer of the Arrow Cross and Quisling head of State since October 15, 1944, and Bela Imredy, former Premier and Foreign Minister. Similarly, in Norway, Czechoslovakia, Belgium and Holland many thousands of traitors and other war criminals were brought to justice. Thousands of others are still being tried or awaiting trial.

In Germany itself, British and American military courts convicted and sentenced to execution or imprisonment many Nazis convicted of violations of the laws of war. Thus a British military commission tried the persons involved in the administration of the Belsen concentration camp, and imposed sentences upon 31 of the defendants including death sentences for eleven. The American occupation authorities similarly brought to trial a number of persons charged with the commission of atrocities at the Dachau concentration camp, near Munich in the American zone, and sentenced 36 of them to death.