UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.4/1010
24 November 1969
ENGLISH
ORIGINAL: VARIOUS

COMMISSION ON HUMAN RIGHTS
Twenty-sixth session

QUESTION OF THE PUNISHMENT OF WAR CRIMINALS AND OF PERSONS WHO HAVE COMMITTED CRIMES AGAINST HUMANITY

Note by the Secretary-General

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Introduction

1. In paragraph 1 of its resolution 9 (XXV) of 7 March 1969, entitled "Question of the punishment of war criminals and of persons who have committed crimes against humanity", the Commission on Human Rights requested States Members of the United Nations and members of the specialized agencies "which have not yet done so to submit information to the Secretary-General on matters concerning the arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, the exchange of documentation relating thereto and the criteria for determining compensation to the victims of such crimes".

2. In paragraph 2 of the same resolution, the Commission further requested Member States to submit to the Secretary-General comments on the general observations in paragraphs 405-412 of his study entitled "Study as regards ensuring the arrest, extradition and punishment of persons responsible for war crimes and crimes against humanity and the exchange of documentation relating thereto" (E/CN.4/983 and Add.1-2).

3. In paragraph 3 of the resolution, the Commission decided to consider the question of further measures to ensure the careful investigation of war crimes and crimes against humanity, and the detention, arrest, extradition and punishment of persons who have committed such crimes, and also the question of criteria for determining compensation to the victims of war crimes and crimes against humanity as a priority item at its twenty-sixth session in the light of the views expressed in the Commission during its twenty-fifth session and of any additional information and comments received from Member States.

4. In pursuance of this resolution, the Secretary-General sent notes verbales on 7 May 1969 to States Members of the United Nations and members of the specialized agencies requesting them to submit the information requested under paragraph 1 of resolution 9 (XXV) and to Member States requesting them to submit the comments requested under operative paragraph 2 of resolution 9 (XXV).

5. The Secretary-General submits herewith to the Commission on Human Rights the texts of replies received as of 10 November 1969 from the Governments in pursuance of the Secretary-General's notes of May 1969. These replies are reproduced under the following headings:

I. Information concerning the arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity and the exchange of documentation related thereto;

II. Information concerning the criteria for determining compensation to the victims of war crimes and crimes against humanity;

III. Comments on the general observations in paragraphs 405-412 of the Secretary-General's study (E/CN.4/983 and Add.1-2).

6. Section I includes replies from the Governments of Cambodia, Canada, Denmark, France, Hungary, Italy, Jamaica, Mexico and the Netherlands; section II includes replies from the Governments of Cambodia, Canada, the Central African Republic, Czechoslovakia, Dahomey, the Dominican Republic, Germany (Federal Republic of), Greece, Guatemala, Hungary, Israel, Mexico, Norway, Poland, Portugal and Switzerland; section III includes replies from the Governments of Austria, Cambodia, Canada, Czechoslovakia, Denmark, Italy, Jamaica, Mexico, the Netherlands, Norway, Togo and the United Kingdom. It may be mentioned that section II also includes those replies to previous notes verbales of 17 May and 18 December 1968 received after the issuance of the Secretary-General's study (E/CN.4/983 and Add.1-2) referred to in paragraph 2 above.

I. Information concerning the arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity and the exchange of documentation related thereto

CAMBODIA

[Original: French]
5 September 1969

In Cambodia there is no special legislation to prevent the application of statutory limitations to war crimes and crimes against humanity or to ensure the arrest, extradition and punishment of persons guilty of such crimes; nor have steps been taken to make available to other States documentation relating thereto now in the possession of the Cambodian authorities. This is because Cambodia has not been affected by this kind of offence.

CANADA

[Original: English]
10 October 1969

Prosecution of a person guilty of having committed a war crime in Canada would be carried out under the provisions of the Criminal Code of Canada dealing with the specific offence committed, such as murder, manslaughter or assault. With respect to persons alleged to have committed a war crime outside Canada and who are found in Canada, Section 3 of the Geneva Conventions Act, enacted by the Canadian Parliament in 1965, provides that "(1) Any grave breach of any of the Geneva Conventions of 1949, as therein defined, that would, if committed in Canada, be an offence under the Criminal Code or other Act of the Parliament of Canada, is an offence under such provision of the Criminal Code or other Act if committed outside Canada. (2) Where a person has committed an act or omission that is an offence by virtue of this section, the offence is within the competence of and may be tried and punished by the court having jurisdiction in respect of similar offences in Canada where that person is found in the same manner as if the offence had been committed in that place, or by any other court to which jurisdiction has been lawfully transferred." Because the prosecutions

of war criminals and persons committing crimes against humanity would be carried out pursuant to the provisions of the Criminal Code of Canada, the punishment of the offenders would also be in accordance with the provisions of the Code. Also, with respect to persons alleged to have committed war crimes outside Canada, extradition could be granted if the criminal act constituted an offence made extraditable by an extradition treaty between Canada and the jurisdiction where the act was committed.

DENMARK

/Original: English/
19 August 1969

In criminal cases regarding crimes such as those referred to in the Secretary-General's note SO 214 (5) of 19 October 1966 /i.e. war crimes and crimes against humanity/, the procedure adopted by Denmark is similar to that applied to criminal cases in general. However, section 5 of Act No. 260 of 1 June 1945, supplementary to the Administration of Justice Act, as amended by Act No. 599 of 21 December 1945, provides for obligatory imprisonment of persons who, on the basis of the evidence produced, are presumed to have committed one of the crimes referred to in the Act Supplementary to the Civil Criminal Code, relating to Treason and other Crimes against the Independence and Security of the State.

The aforementioned provisions apply also to violations of the Act on Punishment of War Crimes.

FRANCE

/Original: French/
2 September 1969

1. Punishment of war crimes and crimes against humanity under French law

On the international level, the only crime that may be described as a "crime against humanity" would seem to be genocide.

/...

The United Nations Convention of 9 December 1948 defined the crime of genocide as being any of the following acts committed, whether in time of peace or in time of war, with intent to destroy a whole national, ethnical, racial or religious group, as such:

(a) Killing;

(b) Causing serious bodily or mental harm;

(c) Inflicting on the group conditions of life calculated to bring about its physical destruction;

(d) Preventing births within the group;

(e) Transferring children of the group to another group.

Under French domestic law, the term "genocide" is no more than a special designation, based on intent (the destruction of a whole group, as such), applied to acts for the punishment of which adequate provision was made under ordinary criminal law. For this reason, ratification by France of the above-mentioned Convention did not necessitate any change in French legislation.

War crimes

On the other hand, French legislation makes special provision for the category of "war crimes".

Such crimes are punishable under the ordinance of 28 August 1944, article 1 of which provides for the prosecution in French military courts of "enemy nationals or foreign agents in the service of an emeny Government or enemy interests who are guilty of crimes or offences committed subsequent to the commencement of hostilities either in France or in a Territory subject to French authority either against a French national, French-protected person, a stateless person residing in French territory before 17 June 1940 or a refugee in a French Territory, or against the property of any of the physical persons mentioned above or of any French bodies corporate when such offences - even when committed during or on the pretext of the existence of the state of war - are not justifiable under the laws and usages of warfare".

2. Extradition and prosecution of war criminals

(i) War criminals may be extradited, either by France to other countries or to France by other countries, provided the general conditions for extradition established in the national legislation of the countries concerned or in the extradition conventions to which they are parties are met.

One such condition is that the statute of limitations has not lapsed in either the claimant or claimee country. In France, however, that barrier has been removed by Act. No. 64-1326, promulgated on 26 December 1964, which designates war crimes as being "by their nature not subject to any period of limitation".

On the other hand, a number of other countries which were not directly affected by the war, especially countries outside of Europe, often refuse to co-operate in the extradition of war criminals despite the fact that the United Nations General Assembly called upon them to do so (resolution of 13 February 1946).

(ii) Under the provisions of the 1952 Convention between the Federal Republic of Germany and the three Western allies, German courts are responsible for prosecuting German war criminals residing in Germany for offences committed outside of that country.

The Basic Law of the Federal Republic and the bilateral extradition agreements between Germany and other countries such as France prohibit the surrender of nationals, as in fact do almost all European laws and treaties.

German tribunals have on several occasions prosecuted German nationals for war crimes committed abroad but the German authorities, who have taken very limited measures to set back the date when the statute of limitations becomes applicable, usually refuse to prosecute individuals who have already been sentenced in France in absentia (which is usually the case) on grounds that the aforementioned 1952 Convention does not allow them to prosecute unless investigation of the case was not "finally completed" and that that condition is not met in cases where a "verdict of guilty" is pronounced in France in absentia.

The above-mentioned offences are considered by the Court of Cassation to be offences under ordinary law, and all the procedural and substantive rules of French law are in principle applicable to the prosecution thereof.

The principle of assimilating war crimes to crimes under ordinary law has been laid down in French legislation, and, in particular, in the new Code of Military Justice, promulgated by Act No. 65-542 of 8 July 1965.

One article of this Code, article 363, reads as follows:

> "Without prejudice to the punishment under criminal proceedings of acts constituting crimes or offences under ordinary law, and in particular, acts contrary to the laws and usages of warfare or to international conventions, the military offences set out below are punishable under the provisions of this Section."

3. Statutory limitations as regards war crimes and crimes against humanity

Under Act No. 64-1326 of 26 December 1964, "crimes against humanity as defined by the resolution of the United Nations of 13 February 1946, which takes note of the definition of crimes against humanity contained in the Charter of the International Military Tribunal dated 8 August 1945, are by their nature not subject to any period of limitation".

Previously such offences, which were considered offences under ordinary law in French legislation, had been subject to the same rules of statutory limitation as other offences, as regards both the application of statutory limitation and the execution of the sentence.

There is as yet no jurisprudence on the application of the above-mentioned Act.

The standing courts-martial of the armed forces will have to ascertain in each particular case which of the war crimes punishable under domestic law come within the enumeration given in article 6 (c) of the Charter of the International Military Tribunal and, by reason of their savagery or viciousness, also constitute crimes against humanity.

HUNGARY

[Original: English]
20 August 1969

The Hungarian statutory regulations concerning the punishment of war criminals as well as the sentences passed in connexion with war crimes give evidence that the Hungarian People's Republic has done everything to punish these acts. /...

In article 14 of the Armistice Agreement concluded at Moscow on 20 January 1945, Hungary undertook to assist in arresting persons responsible for war crimes, to extradite them to the Governments concerned and to pass judgement on such persons. In article 6 of the Paris Treaty of Peace again Hungary undertook to ensure the apprehension and surrender for trial of persons guilty of war crimes and crimes against peace or humanity.

In conformity with the obligation under the Armistice Agreement the **Provisional** National Government on 25 January 1945 drafted Order-in-Council No. 81/1945 on people's jurisdiction. The Order came into force on 5 February 1945 and was given statutory effect under Act VII of 1945 passed by the National Assembly. This act of legislation defined the criteria of war crimes and crimes against humanity and prescribed the penalties to be applied. These provisions are still in force today. The Act established people's tribunals for the purpose. Since the gradual suppression on the people's tribunals the cases of war crimes and crimes against humanity have been remitted to the ordinary courts.

As part of the war criminals avoided trial by fleeing abroad or otherwise, the Presidential Council of the **Hungarian** People's Republic on 10 November 1964 issued Law-Decree No. 27 of 1964, providing for the non-applicability of statutory limitations to war crimes as well as to the related sentences of imprisonment for fifteen years and upwards. This statute thus preceded the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which was adopted by the United Nations General Assembly on 26 November 1968. The Hungarian People's Republic was among the first to sign the Convention.

The severity of the sentences passed on war criminals is shown by the following figures taken from the statistics of Hungarian judicial practice:

From 1945 until the end of 1968 Hungarian courts passed definitive judgement on 20,941 persons found guilty of war crimes or crimes against humanity. Included in this figure were 380 death sentences, while 18,331 convicted persons were imprisoned and 2,026 sentenced to penal servitude. Owing to this consistent practice of law enforcement war crimes in this country are detected today in rare instances. Yet there have been in the past three years some cases where old war

crimes have come to light. Altogether thirty-one persons were tried, of whom three persons were sentenced to death and eleven to imprisonment for over twelve years.

During the last stage of the Second World War a considerable part of the Hungarian war criminals left the country together with the fleeing German and Hungarian troops. To arraign them, therefore, it was necessary to seek their extradition from the alleged authorities of occupation in Germany and Austria. In 1945 and 1946, upon the request of the Allied Control Commission in Hungary, the United States occupation authorities surrendered a number of principal war criminals to the Hungarian judiciary. Among the extradited Hungarian war criminals were Ferenc Szálasi, the "Führer" of Hungarian fascists; former Prime Ministers László Bárdossy, Béla Imrédy and Döme Sztójay, who were responsible for having plunged the nation into war; ex-Minister of the Interior Andor Jaross, who had directed the deportation of half a million Hungarian nationals of Jewish descent, and former Under-Secretary, László Endre. These war criminals met with adequate punishment.

Several efforts to obtain the surrender of further war criminals have been of no avail. Thus, in 1947, the Hungarian Government made a demand for extradition, provided with warrants of arrest issued by the competent court, seeking the surrender of 470 war criminals from the High Command of the United States forces of occupation, but no one of those persons has been extradited up to this day. At present about 390 war criminals, most of whom live in the Federal Republic of Germany, are kept on file with the Hungarian law enforcement agencies. All Hungarian efforts to secure their extradition have remained in consequence of discrimination applied against the Hungarian People's Republic. Here follows a list of some war criminals of Hungarian nationality who live abroad and whose prosecution is impossible because their State of residence has declined to extradite them to Hungary:

- Colonel-General Henrik Werth, ex-chief of staff, had a prime role in Hungary's participation in the invasion of Yugoslavia and then in Hungary's entry into war against the Soviet Union, and is primarily responsible for the death of 40,000 Jews forced into labour service in the Ukraine;

- Staff Colonel Vilmos Dominich, as president of a special military tribunal, sentenced to death leaders of the Hungarian national resistance (Endre Bajcsy-Zsilinszky, Vilmos Tarcsay, etc.) and ordered political offenders and allied prisoners of war to be executed or deported to Germany;

- Police Superintendent Dr. Nándor Batizfalfy, an internment camp commander, carried out deportation by transgressing his competence and took part in the creation of ghettos in country towns;

- Gendarme Captain László Kun organized the liquidation of the anti-German resistance movement and held a leading post in the political police of the Hungarian fascist régime.

Following the German occupation of Hungary on 19 March 1944, a great number of German nationals committed serious war crimes in Hungary. Although, under the provisions of the international convention for the prosecution and punishment of the principal war criminals of the European axis Powers, signed on 8 August 1945, war criminals should be tried by court of the country in whose territory they had committed their criminal acts, neither the United States authorities of occupation nor the official organs of the Federal Republic of Germany have ever surrendered these German nationals to the judicial agencies of the Hungarian People's Republic. Some of these criminals are as follows:

- SS Major Hermann Krumey, who on direct orders from Himmler carried through the deportation of the Hungarian Jewry;

- Kurt von Brunhof, attaché of Embassy, who took a main hand in the preparation of the fascist take-over of 15 October 1944.

A notorious German officer now living in Austria, who committed war crimes in Hungary, is SS Lieutenant-Colonel Dr. Wilhelm Höttl, one of the chiefs or the wartime German security service in Budapest. The Austrian authorities refused to extradite him on the ground that Dr. Höttl is an Austrian national. The Hungarian judiciary made available to them the documentary evidence of Dr. Höttl's culpability, but the Austrian public prosecutor stayed the criminal proceedings.

The Hungarian People's Republic endeavours to render other States every necessary assistance in detecting war crimes and to promote the effectiveness of criminal proceedings. This is significant because several Nazi war criminals committed crimes in more than one country.

Hungary's assistance to the law-enforcement organs of other countries consists mainly in the exchange of documents. With regard to war criminals of German nationality, for example, detailed information has been supplied to the competent organs of the German Democratic Republic. The same kind of assistance has been provided also to the Institute for the Investigation of War Crimes, which has its headquarters in Ludwigshafen, Federal Republic of Germany. In recent years co-operation between the Hungarian People's Republic and the neighbouring States has been instrumental in detecting a number of serious war crimes.

Judicial assistance in concrete matters rendered to the authorities of other States is considered equally important. Thus, in the case of war criminal Ranz Novak, records of the evidence given by Hungarian witnesses were sent to the Vienna court and summonses were served on the witnesses.

Although there is no bilateral agreement of judicial assistance between the Hungarian People's Republic and the Federal Republic of Germany, Hungary willingly complies with requests from that State in the cases of war criminals. For example, in the criminal case of Karl Schulze and Anton Streitwiesel, SS officers of the concentration camp at Mauthausen, witnesses living in Hungary were summoned at the request of the Cologne prosecutor's office.

In connexion with the trial at Frankfurt am Main of the aforementioned Krumeh and SS officer Hunsche, the Hungarian authorities questioned a number of witnesses and made it possible for them to appear before the judicial authorities of the Federal Republic of Germany and even enabled prosecuting attorneys from the Federal Republic to take part in the investigation conducted in the territory of the Hungarian People's Republic.

It cannot be left out of consideration that, in respect of demands connected with cases of war criminals, the Hungarian People's Republic is often discriminated against, especially on the part of authorities of the Federal Republic of Germany. Hungary's intention to help is often to no avail, and in cases of war crimes which had a bearing to Hungary, too, the courts of the Federal Republic fail to give judgement against persons whose guilt is supported by conclusive evidence.

ITALY

[Original: Italian]
3 October 1969

Information of a general nature on Italian legal procedures relating to the punishment of war crimes and crimes against humanity has already been transmitted following the requests for comments by Member States on the Draft Convention on the Non-Applicability of Statutory Limitations which was adopted by the General Assembly at its twenty-third session with numerous abstentions, including that of Italy.

More recently, details on the measures put into effect by the Convention on the Prevention and Punishment of the Crime of Genocide were given in reply to Note SO 236 of 3 July 1969 (E/CN.4/Sub.2/303).

Since those measures have considerably broadened Italian legislation in respect of crimes against humanity, the provisions are now available to you in their entirety and in their present form.

Italy's legal system does not provide special legislation for war crimes. These crimes are therefore punished in accordance with the criminal procedure of ordinary law and the acts which materially constitute the crime are always considered to be criminal acts under criminal law.

Consequently, persons prosecuted for crimes committed in connexion with war enjoy de jure and de facto the same substantive and procedural guarantees as are normally allowed by law in respect of any individual charged with a crime.

In the Italian legal system, statutory limitations are not applicable in the case of more serious and violent crimes, namely those for which the law prescribes rigorous imprisonment for life or the death penalty, in exceptional cases under the military code of law. Therefore, statutory limitations do not apply under Italian law to acts which constitute war crimes sufficiently serious to be punished as such.

Liability to prosecution and punishment for crimes against humanity is governed by the same rules of criminal procedure as liability in respect of war crimes, except for the crime of genocide, which is governed by special legislation under ordinary law and a constitutional law, which have recently been enacted.

In particular, under the constitutional law of 21 June 1967, No. 1, constitutional rules are not applicable to the crime of genocide (last paragraph of article 10 and article 26) and they prohibit the extradition of aliens or Italian citizens guilty of political crimes. Thus, for practical purposes, the crime of genocide is excluded from the list of crimes committed for political reasons.

Under the successive law of 9 October 1967, No. 962, concerning the punishment and prevention of the crime of genocide, the different types of acts grouped under this crime have been incorporated into the Italian legal system (modelled on the definitions contained in the International Convention); appropriate penalties for the various types of acts have been provided and it has been established that competence in such matters rests with the Assize Court.

JAMAICA*

[Original: English]
18 August 1969

On 23 September 1968 Jamaica's instrument of accession to the Convention on the Prevention and Punishment of the Crime of Genocide was deposited with the Secretary-General, and that domestic legislation has since been enacted to give that Convention effect.

MEXICO

[Original: Spanish]
9 September 1969

By incorporating the crime of genocide in its criminal law under the title of the Penal Code relating to crimes against humanity (15 November 1966, published in Diaro Oficial of the Federation, 20 January 1967), Mexico has established the general legal conditions for the arrest, extradition and punishment of persons who commit that crime.

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* This is in addition to its reply of 23 February 1967.

In view of the principle of "nullum crimen, nulla poena, sine lege" embodied in article 14 of our Constitution, the establishment of the criminal offence described in article 149 bis of the Penal Code (Genocide) resolves the problems connected with the arrest, extradition and punishment of persons found guilty of this crime.

(a) Arrest is feasible and would be lawful provided that, as stated in article 16 of the Constitution, the order of apprehension or detention is issued by judicial authority subsequent to denunciation of "a specific act which the law penalizes by corporal punishment", and as the crime of genocide carries a penalty of from twenty to forty years' imprisonment, arrest for this crime is entirely within the law.

(b) With regard to extradition, Mexican law and the various treaties and conventions to which Mexico is a party require as a precondition of extradition that the act in respect of which the requisition for extradition has been issued should constitute an offence under Mexican law. This prerequisite has been met through the inclusion of genocide as a criminal offence in the criminal laws now in force.

(c) Punishment is the consequence of the judicial declaration of "responsibility" for the commission of an offence. Genocide, being an offence, is punishable.

There has been no occasion to apply the law with regard to extradition for the crime of genocide. Nor has the Government of Mexico issued or received any requisition for the extradition of any person accused of war crimes or crimes against humanity.

With respect to the second matter on which information has been requested (criteria for determining compensation to the victims of war crimes and crimes against humanity), as a result of the inclusion of the crime of genocide in Mexican criminal law, the criteria which would be used in determining the amount of compensation to be paid to the victims of the crime of genocide referred to in article 149 bis of the Penal Code may be deduced from articles 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of the Penal Code, all of which relate to the financial penalties imposed on persons found guilty of certain offences.

Article 30, part II is particularly relevant in this connexion:

> Art. 30 - "Reparation of the damage comprises: ...
>
> "II. Compensation for the material and mental damage sustained by the victim and his family."

NETHERLANDS

/Original: English/
11 November 1969

On 4 September 1969, it submitted to Parliament a bill excluding the application of statutory limitations to war crimes and crimes against humanity. It would also point out that a war criminal was extradited by the Netherlands in 1966, the person in question being accused of an offence that was punishable under the law of the country concerned and that constituted murder under Netherlands law. In this case the Netherlands paid regard, inter alia, to the Inter-Allied Declaration on Punishment for War Crimes signed in St. James' Palace, London, on 13 January 1942, to the Moscow Declaration concerning Responsibility of Hitlerites for Committed Atrocities, of 30 October 1943, and to resolution 3 (XXI) of 9 April 1965 of the United Nations Commission on Human Rights (Question of Punishment of War Criminals and of Persons who have committed Crimes against Humanity).

II. Information concerning the criteria for determining compensation to the victims of war crimes and crimes against humanity

CAMBODIA

/Original: French/
5 September 1969

Neither the legislature nor the Government of Cambodia has had occasion to apply the criteria for determining compensation to the victims of war crimes and crimes against humanity.

CANADA

/Original: English/
10 October 1969

Canadian experience in dealing with claims for compensation for victims of war crimes is limited to that of the War Crimes Advisory Commission which dealt with a number of submissions arising from the Second World War. At the time of the consideration of these claims, the funds available for compensation were limited. This factor necessarily influenced the criteria on which compensation was based. The Commission divided claims into three categories; death, personal injury and maltreatment, and property damage. Two general principles were enunciated. These were that the claimant must have suffered beyond the general burdens of war time and that the damage suffered must not have been too remote. The Commission then determined that compensation should only be paid in cases of personal injury resulting in impairment to earning capacity and that compensation for maltreatment in excess of hardships borne of necessity would be on a per diem basis up to an established maximum payment. Compensation for loss or damage to property was based on the reasonable market value of the property at the time of loss rather than its cost of replacement. Canada, in view of its limited experience in this field, is not in a position to suggest criteria which might be employed in the future on questions of this kind.

CENTRAL AFRICAN REPUBLIC

/Original: French/
26 February 1969

It is impossible to submit information on the criteria used in determining compensation to the victims of war crimes and crimes against humanity.

Bearing in mind, however, the general principles of law, the following criteria might be applied in determining the compensation to be paid to the victims of these acts:

(a) Age of the victim; his social position (qualifications and skills): type of employment, the income therefrom, prospects of improving his status;

(b) In the case of a member of one of the professions, his professional reputation; the size of his practice; his professional income;

(c) If he is a manufacturer, merchant or farmer: the size of the enterprise or agricultural holding; the income he derived therefrom, the prospects he had for expanding his business or landholding;

(d) Personal fortune of the victim (real and movable property);

(e) Type of crime (murder, deportation, maltreatment);

(f) Length of period of deportation, where applicable;

(g) Physical and mental suffering sustained;

(h) Family circumstances of the victim: married, with or without children and dependants;

(i) The privations or sufferings borne by his dependants as a result of the loss of their main provider;

(j) The fact that the children cannot attain the position to which they might have aspired had it not been for the crime committed against the person of their parent(s);

(k) The degree to which the victim's health has been affected by the crime;

(l) The loss of earning power resulting from the crime or its consequences (partial or total incapacity for work) and due to loss of employment, discontinuing the practice of a professional closing down a business or relinquishing an agricultural holding;

(m) Current replacement value of movable or real property looted or destroyed by the perpetrators of the crime.

(n) Total or partial loss of income resulting from the destruction, disappearance or loss of movable or real property.

These are the main criteria which, in the view of the Central African Republic, should be used in determining the compensation to be paid to the victims of war crimes or crimes against humanity.

CZECHOSLOVAKIA

/Original: English/
26 February 1969

The criteria that might be used in the future for determining compensation to the victims of war crimes and crimes against humanity:

(1) The State is responsible for damages caused by its organizations or nationals to organizations or nationals of another State affecting their lives, health, property and rights for political, national, racial, religious and other reasons.

(2) The responsible State is obliged to pay to the victims promptly an adequate and effective compensation.

(3) Compensation is paid not only for a direct damage but also for an individual one (lost profit).

(4) Compensation may be made through total reimbursement on the basis of an international agreement concluded between the States or through individual arrangement or through these two forms.

(5) Compensation is made in the first place by bringing the object into original state, and if not possible, by payment.

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* *

The Czechoslovak Government fully accepts and welcomes the initiative encouraging adoption of generally valid principles to the effect that any person who has become a victim of a war crime or a crime against humanity and as a result

suffered injury to health and property, moral or other losses, should have the right, without any periods of limitation, to request full compensation.

This right should be legally adjusted by the systems of law of the respective countries in such a way that any person suffered, as indicated above, as a result of a war crime or a crime against humanity might raise his claims for compensation at a court of the country of which the perpetrator of the war crimes or the crime against humanity is a national.

This is connected with provisions stipulating the obligation of a competent court to deal with such a claim and to pass its decision. The right of a person for compensation for damage caused to him even as a result of a crime of general nature is known to the systems of law of almost all countries of the world and, accordingly, it seems logical and correct that it be recognized also and in particular as concerns the victims of war crimes and crimes against humanity.

In regulating the claim for compensation provisions should be adopted to codify the principle that the right claiming compensation may be exercised also by relatives and heirs of the victim and, moreover, by the assignee or the state procesutor of the country of which the victim is a national.

Although it is assumed that the compensation to be claimed will generally be compensation for property damage, it is believed that it would be suitable to stipulate the principle that the damage did not always result only in diminishing the property of the victim of a war crime or a crime against humanity but also in other material damage, e.g. loss by damage to an object or loss of sickness insurance benefits, pension insurance benefits, etc. Smart money, compensation for inconvenience in social assertion, mutilation, etc. should be regarded as counter-values of compensation for damage.

DAHOMEY

/Original: French/
11 February 1969

Dahomean nationals who are victims of war crimes and crimes against humanity committed before the country attained independence are subject to French legislation.

Since independence, Dahomey has not been involved in any war and the question of compensation to victims of war crimes and crimes against humanity therefore does not arise.

DOMINICAN REPUBLIC

[Original: Spanish]
22 July 1969

It is an established principle of our positive law that liability for damages derives directly from the law and indirectly from the act of the individual inflicting the damages. The Dominican Civil Code states that any act of an individual which causes damage to others creates a liability on the part of the perpetrator to make reparation for the damage. Consequently, civil liability does not exist unless there is a wrongful act which has inflicted damage or injury. This is established in the provisions of article 1382 of the Dominican Civil Code, which constitute the criteria for determining monetary compensation.

The problem raised in the Secretary-General's note can be appropriately dealt with, in our opinion, by the application of those criteria, pure and simple, at the international level. Once the criminal liability of a State or its representatives has been established, appropriate compensation would be granted to the victims of acts designated as war crimes or crimes against humanity. It is also our opinion that the State, as the legal entity held civilly liable, would only be liable if it was a legally constituted government, that is, not a de facto régime.

We consider that juridical proceedings aimed at prosecuting the guilty parties and compelling them to make reparation should be protected by a long period of limitation in view of the particularly serious nature of war crimes and crimes against humanity. They are so serious as to warrant punishment wherever they may be committed and should therefore be governed by conventions, agreements and treaties providing for the prosecution of the guilty parties

whenever they can be apprehended. Since police and security legislation directly involves the sovereignty of States, it is evident that there must be a legal instrument binding on all nations which, as members of the international community, have ratified those punitive measures in accordance with their respective established internal procedures and have thus assumed responsibility for their effective implementation and enforcement.

FEDERAL REPUBLIC OF GERMANY

/Original: English/
15 April 1969

To make amends for national socialist crimes against humanity, and especially for the persecution of political opponents, was from the outset one of the most important and most urgent tasks with which the new Germany was faced after the collapse of the Hitler régime. Thus, the Federal Republic of Germany was the first country to recognize a moral responsibility for crimes against humanity and to take the necessary action.

Amends for national socialist injustice started to be made in the Federal Republic of Germany immediately after the Second World War in 1945. It was the urban and rural communities - then the only working German authorities - that began to help the victims of persecution, by granting them social allowances, financial assistance and pensions. As from 1947, the Western occupying Powers, who at that time exercised governmental and legislative authority in the western part of Germany, created the initial legal basis for the restitution of dispossessed property. Indemnification for all other damage caused by the national socialist régime was to a large extent left to German legislation.

With regard to the individual criteria for determining all kinds of indemnification payments, reference is made to the following laws:

Federal Law on Compensation for Victims of National Socialist Persecution (Bundesgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung - Bundesentschädigungsgesetz - BEG) of 29 June 1956 (Federal Law Gazette I, p. 559),

as amended by the Second Law to Amend the BEG (so-called BEG-Schlussgesetz) of 14 September 1965 (Federal Law Gazette I, p. 1315). This law provides for compensation for loss of life, bodily injury or damage to health, loss of freedom and property and professional or economic advancement. Such compensation takes mainly the form of immediate assistance, capital payments, annuities, medical and remedial treatment.

Federal Restitution Law (Bundesgesetz zur Regelung der rückerstattungsrecht rückerstattungsrechtlichen Geldverbindlichkeiten des Deutschen Reichs und gleichgestellter Rechtsträger - Bundesrückerstattungsgesetz - BRüG) of 19 July 1957 (Federal Law Gazette I, p. 734), as amended by the Law of 15 December 1965 (Federal Law Gazette I, p. 809).

Law on the Reparation of National Socialist Injustice against Members of the Public Service (Gesetz zur Regelung der Wiedergutmachung nationalsozialistischen Unrechts für Angehörige des öffentlichen Dienstes), as amended by the Law of 15 December 1965 (Federal Law Gazette I, p. 2073).

The Federal Compensation Law (BEG) is the nucleus of compensation payments to individuals. From 1 October 1953 to 1 July 1968 approximately $5,938 million have been paid under this law. Some $185 million paid before the entry into force of the Federal Compensation Law have to be added to this amount so that by 1 July 1968 a total of approximately $6,125 million has been made available for individual compensation payments. This amount will probably rise to over $8,525 million before all payments under this law are finally settled.

Payments under the Federal Restitution Law (BRüG), which regulates compensation for confiscated property, came to approximately $765 million by 1 July 1968, and this amount is expected to rise by a further $297.5 million.

Payments are also made under other indemnification laws and special regulations, e.g. indemnification to public servants, indemnification with regard to war victims' pensions and social insurance legislation, grants to the persecutee organizations and the welfare of surviving victims of pseudo-medical experiments with human beings. Some $700 million has already been made available for these purposes and a further $125 million will still have to be paid out.

In an agreement signed in 1952, the Federal Republic of Germany has undertaken to supply goods to the value of $750 million for settling and reintegrating of uprooted and destitute refugees from Germany and areas formerly under German rule now living in Israel. In addition, an amount of $112.5 million has been placed at the disposal of the Jewish Conference for Material Claims against Germany as a hardship fund for persecuted Jews outside Israel. These payments were made by 30 June 1965.

Finally, there are the indemnification agreements which the Federal Republic of Germany has concluded with twelve European States. Under those agreements, the Federal Government has undertaken to pay a lump-sum in compensation of personal damage suffered by persecuted nationals of those States and/or their widows or orphans, and who on formal grounds do not have any claims under the Federal Compensation Law. Global payments of this kind have so far amounted to $250 million.

The following table indicates the amounts of compensation for national socialist injustice:

	(millions of dollars)
Already paid under	
Federal Compensation Law	6,125
Federal Restitution Law	765
Agreement with Israel	862.5
Agreements with twelve States on lump-sum payments	250
Other payments (Public service, etc.)	700
Total	8,702.5
Estimated payments up to 1975 under	
Federal Compensation Law	2,400
Federal Restitution Law	297.5
Other payments (Public service, etc.)	125
Total	2,822.5

Estimated total payments up to 1975 under	(millions of dollars)
Federal Compensation Law	8,525
Federal Restitution Law	1,062.5
Agreement with Israel	862.5
Agreements with twelve countries on lump-sum payments	250
Other payments (Public service, etc.)	825
Total	11,525

Furthermore, pensions will be payable under the Federal Compensation Law beyond the year 2000 and will require an estimated additional amount of far more than $4,000 million.

Although compensation payments have not yet been concluded, it can already be said that the Federal Republic of Germany has succeeded in mitigating the material consequences of past injustice. Its efforts to make amends have also met with the appreciation of those having suffered damage.

GREECE*

/Original: English/
29 July 1969

The Greek Government has granted pensions to

(a) Greek citizens who, as a result of their participation in the battle of Crete, had been crippled to a degree affecting their capability for work by at least 25 per cent,

(b) Greek citizens who as a result of reprisals taken against them by the enemy have been crippled to a degree of at least 25 per cent,

(c) Greek citizens belonging to officially recognized guerrilla units and/or organizations of resistance who have been wounded in fighting against the enemy or in carrying out acts of espionage and/or sabotage against him and who have been crippled to a degree of 25 per cent and over. Pensions are also allotted to the families of persons who have been killed during the aforesaid

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* This is in addition to its note of 4 June 1968.

activities as well as to the families of persons who being entitled to compensations died thereafter,

(d) Civilians who became invalids to a degree of over 25 per cent as a result of either war activities or by accidental explosion of bombs, mines, booby-traps, etc., during the after-war period.

The provisions of paragraph (c) above regarding pensions to the families of persons entitled to compensation equally apply in the case of paragraph (d).

GUATEMALA

/Original: Spanish/
17 March 1969

With regard to the first question contained in the note, the Government of Guatemala has not had occasion to apply any criterion for determining compensation to the victims of war crimes or crimes against humanity, since, fortunately, no Guatemalan national has been the victim of such crimes and, consequently, our Government has not had to deal with any monetary claim for which it might have had to determine the amount of compensation.

With respect to the second question, it is the view of the Government of Guatemala that, when the damage has been inflicted by persons employed by a State, the only factor which should be taken into account is the damage caused to the victim or to his heirs, since the State's capacity to pay is practically unlimited.

In the case of war crimes or crimes against humanity, the following criteria could be used as guidelines for determining compensation: (a) the degree of damage done and the personal circumstances of the victim, criteria which are applied in internal legislation, and (b) whether it is also appropriate to impose so-called "punitive damages" which are in the nature of a penalty. The particularly serious nature of this type of crime would justify the additional penalty of the aforementioned punitive damages.

HUNGARY

/Original: English/
20 August 1969

As is well known, the ways and means of reparation of damage caused to the victims of nazism were originally provided for in the western half of Germany by regulations issued by the Western Powers of occupation and the compensation acts of the various Laender, and later - after the constitution of the Federal Republic of Germany - by federal legislation.

Reparation (Wiedergutmachung) is practically aimed at repairing any damage caused to life, physical integrity, health and personal liberty and paying for the loss arising from the removal of the property of persecuted persons. In West German legal terminology the first is called "Entschaedigung" and the second is "Rückerstattung".

The settlement of "Entschaedigung" is built upon the co-called subjective-territorial principle. This means that compensation within this scope can in principle be granted only to persons whose residence at certain moments was in the territory of the former German Reich (the so-called "Wohnsitzvoraussetzung" clause), but even this only if at the date of the decision on compensation the person concerned resides in a country whose government maintains diplomatic relations with the Government of the Federal Republic (the so-called "diplomatic clause").

Article 239 of the 1956 Federal Compensation Act ("Bundesentschaedigungsgesetz") authorizes the Government of the Federal Republic of Germany to enter into global agreements on compensation with groups of persons whose damage can be imputed to nazi persecution but who are in no subjective connexion with the territory where the law is in force. On the strength of this authorization the Government of the Federal Republic concluded agreements with the Governments of twelve States for the compensation of their nationals in lump-sums.

The Compensation Act of 1965 ("Bundesentschaedigungs-Schlussgesetz") makes possible in principle the limited individual compensation of such persecuted persons who lack the aforesaid criterion "Wohnsitzvoraussetzung"), but the

"diplomatic clause" must apply here as well. Moreover, the law makes a provision of disqualification in case the claimant on 31 December 1965 lived in a country from whose territory the German-speaking population was relocated after the Second World War (so-called "Vertreibungsgebiet").

As against the above provisions, the federal regulation of the question of "Rückerstattung" (the 1957 "Bundesrückerstattungsgesetz" and its supplements) is built on the so-called objective-territorial principle, which means that a connexion has to have existed between the territory where the law is in force and the object (property) whose unlawful removal is the underlying reason for the claim to compensation. This territory ("Geltungsbereich des Gesetzes") is the area of today's Federal Republic of Germany and Berlin. The connexion in question may be either that removal took place within that area or that the removed property happened later to get there.

The "diplomatic clause" applies also in this legal domain, but usually in a milder way, namely so that the payment of the fixed compensation is postponed until the establishment of diplomatic relations.

These legislative regulations on compensation prescribe an obligation to announce claims, so that about 60,000 former victims of nazism living in Hungary have notified claims on their own right or otherwise.

Few of the claims to "Entschaedigung" made by victims living in Hungary have so far been judged on their merits. Notably only those in which a chance subjective-territorial connexion had existed with the victim (e.g. the victim had fled to Hungary from Nazi Germany), or in which the persecuted person was a victim of sham medical tests. The actual settlement of the former cases has been interrupted because of the application of the "diplomatic clause", but the compensation of the latter category of victims is going on successfully through the instrumentality of the International Red Cross; altogether DM11 million has so far been collected on this account.

The Hungarian claims to "Rückerstattung" have been studied formally for ten years now. Practically no actual compensation has so far been paid because the competent West German agencies have delayed action by administrative measures as well as by groundless pretexts.

In December 1966 a special tribunal of international composition ("Oberstes Rückerstattungsgericht") over-ruled the German objection that in article 30 of the Paris Treaty of Peace Hungary had waived all claims on behalf of the Hungarian nationals persecuted by nazism. Thereafter, during 1967 and 1968, talks were conducted with the view of a global settlement, and an agreement was ultimately initialled by Hungary's Committee of the Victims of Nazism and the competent West German agencies. Pursuant to this agreement, the Federal Republic of Germany undertook to pay DM150 million as global settlement of the Hungarian claims to "Rückerstattung". Lately, however, the Federal Republic has retracted from the arrangement unilaterally, insisting that every case should be judged separately. The Hungarian side has registered a protest against the unilateral act of withdrawal.

ISRAEL

[Original: English]
21 March 1969

Resolution XXIV, adopted by the Commission on Human Rights on 7 March 1968, requested the Secretary-General, in a study asked for by the Commission, to include an "examination of criteria for determining compensation to the victims of war crimes and crimes against humanity". In the course of the 987th meeting of the Commission, the wish was also expressed to obtain "the views received from Member States... concerning the criteria which might be used in the future" in a similar context. As to this second point, the Government of Israel is of the opinion that such views may be formulated only after the study and proper evaluation of the criteria applied in the past have become available.

Regarding criteria applied in the past, the only international agreement on this subject to which Israel is a party, is the agreement (with schedule, annexes, exchanges of letter and protocols) with the Federal Republic of Germany, signed at Luxembourg, on 10 September 1952, and which came into force on

27 March 1953 (United Nations, Treaty Series, vol. 162, p. 206). The purpose of that Agreement is set out in the Preamble as follows:

> "Whereas unspeakable criminal acts were perpetrated against the Jewish people during the Nationalist-Socialist regime of terror;
>
> And whereas by a declaration in the Bundestag on 27 September 1951, the Government of the Federal Republic of Germany made known their determination within the limits of their capacity, to make good the material damage caused by these acts;
>
> And whereas the State of Israel has assumed the heavy burden of resettling so great a number of uprooted and destitute Jewish refugees from Germany and from territories formerly under German rule and has on this basis advanced a claim against the Federal Republic of Germany for global recompense for the cost of the integration of these refugees."

The Agreement is eloquent evidence of the complexity of the problem involved and of the fact that only the parties directly concerned can, in a process of frank negotation, ventilate all its aspects, evaluate the impact of historical events, estimate the economic values involved, and appreciate the adequacy of administrative measures and of the financial outlay necessary for the remedial measures envisaged. The Agreement was limited to a single purpose-resettlement - and left out of consideration other matters, such as property compensation.

All the operative provisions of the Agreement are related to the amount agreed upon (article 1) and to its payment, dealt with in other articles. The amount in question appears to strike some balance between the actual disbursements on the part of Israel for the resettlement of certain groups of refugees, as then appeared to be the case, and the economic capacity, as it then existed, of the Federal Republic of Germany. It should be stressed that the resettlement, as far as Israel is concerned, had, and still has, the meaning of social integration of groups within the same homogeneous ethnic and religious stock, so that a community of life and services was implied, and indeed was decisive for the success of the process of rehabilitation and integration. This process was adopted by Israel as a matter of course, though it was clear that many of the requirements could not be expressed in terms of money and actual

cost to Israel. Moreover, no relationship was established between the amounts involved and any over-all estimate of the economic values destroyed, and nothing may be deduced as to this matter from the stipulations agreed upon by the parties. Thus, only little can be distilled for purposes of generalization from the contractual transaction which the agreement represents, except the plain inference that a complex of problems and considerations of that kind may be settled only and exclusively in the process of direct, candid and patient negotiations, in which each party is ready to accommodate itself to economic and social realities as at the time of negotiation.

It should, however, also be noted that the bilateral agreement between the Governments concerned is no more than a part of the totality of legal considerations of relevance. It is, therefore, neither exclusive nor comprehensive, and other important criteria are found in the autonomous legislation, jurisprudence and administrative practice of the Federal Republic of Germany. Many points of crucial importance have been made clear only after assiduous historical and medical studies.

It may be mentioned that, parallel to the diplomatic negotiations of plenipotentiary governmental representatives in 1952, negotiations had been carried on between representatives of the Government of the Federal Republic of Germany, and of the Conference on Jewish Material Claims against Germany. The outcome of these negotiations is recorded in a Protocol No. 1, which is attached to the intergovernmental agreement and likewise published in vol. 162 of the United Nations Treaty Series, at page 270.

MEXICO

[Original: Spanish]
9 September 1969

The criterion for determining the payment of compensation is both objective and subjective.

The damage caused by the crime is determined objectively by taking into consideration the economic value of the property or rights affected by the

wrongful act; the amount of compensation is determined subjectively on the basis of the moral damage caused by the crime, subject in all cases to the evidence adduced for purposes of determining compensation.

The right to reparations for damages caused by the crimes takes precedence over other obligations incumbent upon the offender and can be asserted in the form and terms prescribed by ordinary law.

Article 29, paragraph 2, of the Penal Code is particularly relevant to this aspect of compensation. It states that the reparation for damages for which the offender is liable is in the nature of a public penalty because, in the context of the obligation incumbent on the ministerio publico to require payment of such reparations ex officio, the judicial authority, in its final decision, shall in any event have to refer to the problem of compensating the victim of the crime.

NORWAY

/Original: English/
26 August 1969

(a) Criteria used so far

Victims of war crimes and crimes against humanity can, according to general rules of the Norwegian law of torts, claim compensation for economic loss caused by a criminal act from the perpetrator of the crime. To a certain extent, compensation can be granted also for damage of a non-economic nature.

According to a provisional Act of 5 April 1947, individuals having suffered injuries or losses as a result of the Second World War could apply for compensation from the Government. Whether or not compensation would be granted, and to what extent, was decided on a discretionary basis, taking into consideration, inter alia, the economic position and needs of the individual in question, his national attitude, and whether he had rendered valuable patriotic services, or had suffered from particularly serious criminal acts.

Under an agreement dated 7 August 1959, the Federal Republic of Germany placed at the disposal of the Norwegian Government a lump-sum to be distributed among Norwegian subjects who had been held as political prisoners during the occupation of Norway in 1940-45, and to surviving dependants of deceased political prisoners, with certain specified disqualifications. Provisions for the distribution of this sum are contained in an Act of 25 March 1960. According to the Act, specific sums should be granted if imprisonment had caused a degree of disablement of at least 30 per cent for at least five years, or where prisoners had died during imprisonment. For all other cases, the funds available for compensation were to be distributed among those entitled thereto according to the duration of their imprisonment.

Two Acts of 13 December 1946, established schemes for public "war pensions" for military personnel, personnel of the underground military forces and civilians, for war injuries and deaths due to acts of war during the Second World War. Entitled to benefits under the schemes were military servicemen suffering from permanent injury or illness inflicted upon them in active war service, civilians injured by act of war within the Realm, or during service aboard Norwegian ships, or while in political imprisonment - and surviving dependants. Certain specified disqualifications apply. Benefits are normally paid as an annual pension based on an estimation of the income the person in question could have enjoyed if not injured, the degree of disablement, and the age of dependent children.

(b) Criteria to be used in the future

The criteria for assessment of compensation to victims of war crimes and crimes against humanity should be viewed in close relation with the law of torts and the social security legislation in each country. This issue, therefore, does not appear to be well suited for international regulation, and should accordingly remain the legislative responsibility of the individual State. The criteria mentioned under paragraph (a) will most probably be applicable also in the future.

POLAND

/Original: English/
27 September 1969

I

The Government of the Polish People's Republic believes that the question of responsibility for war crimes and crimes against humanity cannot be limited to regulation of the problem of the criminal liability alone of the persons guilty of such crimes, and that the principles of civil liability for damage caused as a consequence of war crimes and crimes against humanity should also be defined in an appropriate United Nations document.

Liability arising out of war crimes and crimes against humanity involves the following sets of elements:

(a) prosecution of the persons guilty of these crimes;

(b) compensation to the victims of these crimes.

The first of these points - criminal responsibility for war crimes - has been regulated by the enactments of international law, in particular by the United Nations Convention of 26 November 1968 on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The second, on the other hand - the question of compensation or material liability - has yet to be settled in sufficient detail by international law.

The absence of detailed provisions relating to this matter in international law has helped to create a situation preventing the satisfaction since the Second World War of the civil claims of citizens of the Polish State who were victims of the German Third Reich as an aggressor State and one which illegally occupied Polish territory and employed criminal forms of occupation terror against Polish citizens.

The acts of international law - the Fourth Hague Convention of 1907 - and the legal acts connected with the Second World War provide legal grounds for physical persons to claim compensation for war crimes and crimes against humanity of which they were victims.

The civil claims for compensation filed by Polish citizens as a consequence of the war crimes and crimes against humanity committed during the Second World War against citizens of the Polish State have not yet been settled by the Government of the German Federal Republic. The legislation in force in the GFR and its interpretation by the administration and courts in that country have given rise to a number of discriminatory barriers with the result that Polish citizens are unable to press their civil claims arising out of the damage suffered as a result of war crimes and crimes against humanity.

The claims of Polish citizens who were victims of war crimes and crimes against humanity embrace civil claims for compensation by:

(a) The widows, orphans and relatives - the heirs of victims whose death was caused by the extermination policy and terror of the nazi invaders, by persecution in nazi camps, prisons or other places of detention, or outside the camps and prisons as a result of wounds and injuries received or excessive labour.

(b) The widows, orphans and relatives of victims who died in the circumstances described in (a) above, where they suffered damage and privation as a result of the loss of the family provider.

(c) Persons who suffered bodily injury or damage to health or damage to their property as a result of criminal treatment by the nazi aggressors.

(d) Persons compulsorily deported to forced labour in the German Reich or forced to perform slave labour anywhere, for unpaid or only partially paid remuneration and benefits and for a lower level of earnings than those of German employees in the same category of remuneration as Polish citizens.

(e) Persons who suffered damage as result of labour in excess of their age or capacity, lack of welfare services, leave, or medical treatment, the employment of children and juveniles, accidents at work.

(f) Persons who suffered as a result of the loss of employment during the period necessary to acquire professional skills and persons who were forced to leave their homes, workshops or places of employment.

(g) Persons who suffered complete or partial physical disability as a result of the terror of the nazi invaders, together with the consequences of experiments dangerous to health or life and the expenses connected with medical care and treatment.

In connexion with the regulations issued in the GFR which exclude the possibility of inheriting claims for compensation, the necessity is emphasized of introducing the principle of inheritability of claims for compensation for damage suffered as a result of war crimes and crimes against humanity if the persons entitled to it have died before obtaining compensation.

In her domestic legislation Poland includes the period of detention in nazi camps as qualification for pensions and other social security benefits such as free medical treatment, etc.

II

The legislation in force in the German Federal Republic concerning compensation for the victims of nazi war crimes and crimes against humanity discriminates against the citizens of certain States, Poland among them. Although it admits liability for compensation, it also contains a number of provisions which in effect deny Polish citizens all possibility of seeking compensation from the GFR authorities. This discrimination against Polish citizens among others in its laws on compensation is not only contrary to the universal rules of international law but also the Constitution of the German Federal Republic (article 3, section 3, prohibiting worse treatment of foreign nationals and article 25 on the equality of nations and races). These provisions, and their judicial interpretation in particular, are a continuation of the discrimination practised against other nations and races by the national-socialist régime. Dismissing claims for compensation by Polish citizens the courts in the GFR have frequently in their judgements employed an interpretation of the law which, in essence, justifies the persecutions of the Poles by the nazi occupation authorities. In this way the discriminatory nature of the GFR legislation is aggravated still further by its judicial interpretation.

III

Claims by Polish citizens for compensation on the grounds specified in I above have been dismissed by the GFR with the argument that they are subject to prescription and in other cases that they have been filed prematurely.

The defence of prescription is based in the laws and court judgements of the GFR on its domestic legislation, specifically on Bundesentschädigungsgesetz (BEG). However, the question of compensation for war crimes and crimes against humanity committed by the German Third Reich is not only a matter of the internal law of the GFR. To the extent that it can be regulated by the legislation of the GFR, it has been drafted in BEG in such terms as to prevent suits being lodged in due time and multiply procedural difficulties. The object of the GFR Government is to see that actions for war compensation become subject to prescription and so lapse. International law does not recognize application of statutory limitations to war crimes and crimes against humanity and from this it follows that there can be no prescription in the case of claims arising out of them.

The GFR Government maintains that claims for compensation on the part of Polish citizens are premature. This putative prematurity is, according to the view it takes, connected with the absence of a peace treaty with Germany which could form the only legal basis for settling war compensations. The point must therefore be made that referring the question of compensation in the case of civil claims to a future peace treaty with Germany cannot be regarded as acting in good faith. For this reason the GFR Government bears the responsibility for the lack of political decisions and appropriate legislation which would furnish the grounds for a final regulation of the matter of indemnifying Polish citizens who were victims of war crimes and crimes against humanity.

The claims of Polish citizens on the grounds specified in I above are outstanding and are not subject to prescription regardless of all the relations between the States concerned and of the conclusion of a peace treaty.

In this field the GFR treats the States of Western Europe in one way and those of Eastern Europe in another. Despite the principle professed by the GFR Government that the question of compensation for war crimes and crimes against humanity can only be settled in a peace treaty, it has concluded a number of agreements with the Governments of twelve Western States and with Israel. In these agreements, concluded individually, various issues relating to compensation among other things for slave labour, have already been settled.

IV

The system of forcible deportation of Polish nationals to labour in the German Reich has been recognized as a war crime within the meaning of both the Statute of the International Military Tribunal and of the Fourth Hague Convention of 1907. From an analysis of the judgements delivered in trials arising from the Second World War it can be concluded that deportation to forced labour and slave labour for the benefit of the German occupant forms grounds for two types of compensation claims.

One is addressed to the German State and it springs from the Fourth Hague Convention which guaranteed the fundamental human rights of individuals on the territory of a State occupied in time of war.

The second claim arises out of the performance of compulsory labour obligations without just reward, above all in enemy establishments. The grounds are also to be found in the Fourth Hague Convention, but the claim is made against German industrial plants and companies. It is the right of individuals although the legal basis is furnished by an act of international law.

As regards Polish claims of compensation for slave labour addressed to industrial plants and companies based on the territory of the GFR, IG-Farben in particular, the following needs to be said:

(a) The claims were filed with the competent GFR authorities and the actions were heard in the GFR courts. They were conducted in such a way as to make a settlement impossible;

(b) The defendants included IG-Farben, in other words, a concern which played a certain specific role in the preparation of the aggression against Poland by the German Third Reich and during the Second World War.

The Allied Control Council in Germany defined the status and liability of IG-Farben in certain legal acts. In 1957 IG-Farben announced that as of 1 January 1968 it would discontinue payment of compensation both to former concentration camp prisoners and to all persons who had been deported and performed slave labour in its plants. On the strength of this decision the trustees of the IG-Farben estate dismissed, among others, over 5,CCO claims by Polish citizens who had been prisoners at Auschwitz.

/...

Polish citizens have failed to receive compensation not only from IG-Farben but also from all other business and farming concerns and institutions, including private persons who played a direct or indirect part in preparing the aggression against Poland and the prosecution of the extermination policies of the Third Reich with regard to citizens of Polish State.

V

In the light of the tragic experience of the Polish people during the Second World War and the rules of international law regarding war crimes and crimes against humanity, the Government of the Polish People's Republic submits the following criteria for determining compensation to the victims of war crimes and crimes against humanity:

(a) The legal principles of compensation for the victims of war crimes and crimes against humanity should provide for:

(i) the non-application of limitations to compensation for war crimes and crimes against humanity committed by an aggressor or occupying State;

(ii) material liability for war crimes and crimes against humanity in the from of compensation should be regulated by an appropriate act of general international law in a manner ruling out all discrimination;

(iii) an aggressor State is materially liable for war crimes and crimes against humanity committed by its citizens;

(iv) war reparations do not include compensation for war crimes and crimes against humanity;

(v) claims on the grounds of damage of this kind are hereditary and are transferred to the heirs of a claimant who died before receiving compensation;

(vi) in judging these claims the requirements of equity and good faith should be observed.

(b) The following persons are entitled to bring civil actions for compensation:

(i) the widows and orphans or relatives - the heirs of victims whose death was caused by the extermination policy and terror of an occupant;

(ii) persons persecuted in camps, prisons and places of detention illegally organized by an occupying State;

(iii) persons compulsorily deported to forced labour and performing slave labour;

(iv) persons performing forced or slave labour, required to work in excess of their age and capacities, deprived of welfare services, leave and medical treatment; the employment of children, juveniles and disabled persons;

(v) persons who suffered damage as a result of the loss of employment during the period necessary to acquire professional skills and persons who were forced by an invader to leave their homes, workshops or places of employment;

(vi) persons who have suffered complete or partial physical disability caused by the terror of an invader, together with the consequences of experiments dangerous to health and life;

(vii) persons who have suffered damage and physical and mental suffering as a result of criminal treatment by an invader;

(viii) prisoners of war who performed slave or forced labour contrary to the binding conventions relating to war prisoners;

(ix) survivors of persons who were murdered or died as a result of inhuman treatment by an occupant, widows, orphans and relatives.

(c) Claims for compensation arising out of war crimes and crimes against humanity may not be treated as lapsed or premature. For this reason they should be regulated regardless of whether:

(i) the State which was occupied has or has not concluded a peace treaty with the State which invaded and occupied it or with its successor;

(ii) the State which was occupied does or does not maintain diplomatic relations with the State which invaded and occupied it or with its successor.

(d) Claims for compensation on the grounds of war crimes and crimes against humanity may not be treated on the basis of the internal civil legislation of a given State but of the relevant acts of general international law.

These criteria form only a part of the basic criteria which should be adopted and regulated in the appropriate United Nations act.

PORTUGAL

/Original: English/
7 April 1969

No measure of a legislative procedural or administrative character appears to have been adopted in Portugal concerning the subject-matter under study, and that any case falling within that category, and coming up in the future, shall be treated in conformity with the generic principles of the laws presently in force.

SWITZERLAND

/Original: French/
1 April 1969

The solutions adopted by Switzerland may be summarized as follows:

(a) Agreement concluded on 21 January 1965 between Switzerland and Japan concerning the settlement of certain Swiss claims against Japan.

The agreement covers the payment to Switzerland by Japan of a lump-sum of 12,250,000 Swiss francs. The Swiss Government has established a Commission for the purpose of distributing this amount.

(b) Agreement of 29 June 1961 between Switzerland and the Federal Republic of Germany concerning the payment of benefits to Swiss victims of national socialist persecution.

(i) A federal order of 20 December 1957 provided the basis for granting advance benefits to Swiss victims of national socialist persecution. They were called "advance" because they were paid by the Confederation on its own initiative, prior to any agreement with the Federal Republic of Germany. The amounts paid in each individual case were determined in accordance with the moral and material circumstances of each claimant.

The main criteria used to determine the benefits were the following: moral injury in case the victim died, loss of support, personal injury and damage to health, deprivation of liberty and inhuman treatment, damage to property, damage as regards employment and interruption of professional education.

(ii) On 29 June 1961, an agreement was signed between the Federal Republic of Germany and Switzerland. Under the terms of this Agreement, the Federal Republic of Germany paid Switzerland a total of 10 million German marks, and left it to the Swiss Government to distribute this sum to the Swiss victims of national socialist persecution. It was distributed according to the procedures set forth in the legislation mentioned under (i).

(c) In addition to entering into bilateral agreements, Switzerland has taken indpendent measures to assist certain victims of the Second World War.

(i) Special assistance was established immediately after the end of the Second World War for Swiss war victims. On 13 June 1957, an order was issued providing for a special grant of 128,940,000 Swiss francs for these persons. It was within the framework of this legislation, for example, that assistance was provided for Swiss victims of war crimes and crimes against humanity. The main beneficiaries of this assistance were Swiss nationals who had been deprived of their livelihood and were no longer able to establish themselves in the kind of position which they might normally have expected to attain. This assistance was given, for the most part, in the form of a lump-sum benefit; it was also given in the form of a pension or a loan, as appropriate. The type of benefit was determined according to the particular circumstances of each case. The amount of the benefit was determined on the basis of the previous circumstances of the victim and how serious he considered the loss he had suffered. His present financial circumstances and income, family obligations, age and future prospects were also duly taken into account.

(ii) During the last war, Switzerland granted refuge to many aliens who had requested asylum. These persons, particularly civilian refugees and emigrants, included many victims of war crimes and crimes against humanity. The Swiss authorities granted them certain benefits, which were determined according to the merits of each case. The criteria used were substantially similar to those mentioned under (i).

III. Comments on the general observations in paragraphs 405-412 of the Secretary-General's study (E/CN.4/983 and Add.1-2), entitled "Study as regards ensuring the arrest, extradition and punishment of persons responsible for war crimes and crimes against humanity and the exchange of documentation relating thereto"

AUSTRIA

[Original: English]
16 October 1969

As to point 410 of document E/CN.4/983, the Austrian authorities would consider it useful if the Commission on Human Rights, as suggested in the aforementioned document, dealt in greater detail with the existing problems of intergovernmental co-operation with regard to the finding and collection of evidence, and to extradition. As far as the Austrian legal order is concerned, however, these problems seem to be more of a practical than of a judicial nature.

In the investigation of war crimes, special importance has to be attached to the exchange of documentary evidence. Under Austrian law, the procurement and transmission of such documents constitutes a case of legal assistance and therefore falls under the general definition of the concept of legal assistance, as contained in relevant treaties and conventions signed by Austria. Since no detailed provisions on the exchange of documents exist, no objection is being raised against the proposal contained under point 411, to study the problem more closely.

As regards the extradition of war criminals (point 412), the documents suggest that the Human Rights Commission further investigate into this problem, so as to reconcile the laws and bilateral treaties on extradition with the relevant principles of international law. The Austrian authorities will closely follow the work of the Human Rights Commission in this field.

CAMBODIA

/Original: French/
5 September 1969

It would be desirable for the Commission on Human Rights to draw up standard clauses, or the text of an international convention concerning the conditions and procedure for the extradition of persons responsible for war crimes and crimes against humanity.

CANADA

/Original: English/
10 October 1969

Canada has ratified the Geneva Red Cross Conventions of 1949 and the 1948 Convention on Genocide and has no objection to definitions of war crimes and crimes against humanity derived from these Conventions. Any attempt at an expansion of these definition is a judicial function and one that should be based on the accepted principles of international law and should not incorporate contentious political implications.

With respect to the suggestion of the periodic submission of statistical and other information concerning the progress made in the prevention and punishment of war crimes and crimes against humanity, it is considered that Canada, in view of the limited scope of the problems in the Canadian situation, would have little of value to offer.

As indicated in paragraph 2 of this note, the prosecution of such offences as those considered in paragraph 4 would have been in accordance with the provisions of the Canadian Criminal Code and other federal statutes and the regular judicial procedures of the Canadian courts would be followed.

On the basis of information available, the Canadian position on co-operation in the finding and collection of evidence would be based on individual requests by interested Governments.

At the present time, Canada's laws relating to extradition are a matter of bilateral arrangement. Accordingly, any collation of laws and treaites on extradition to which Canada is a party, with general international rules on the subject, with a view to the formulation of standard clauses to be included in the laws and bilateral treaties of individual States, would have to be considered on the merits of the particular formulation.

CZECHOSLOVAKIA

[Original: English]
23 September 1969

The Czechoslovak Government fully agrees with the views expressed in paragraphs 405-412 of the Secretary-General's report and deems it necessary particularly to underline the necessity of concluding an international agreement concerning the question of the search for and acquisition of evidence that would include the obligation to exchange documents at all stages of proceedings. The only criterion of principle for transmitting documents should be legitimate legal interest in using such materials for the prosecution and just punishment of war crimes and crimes against humanity. As already indicated in its study submitted with reference to the Secretary-General's note of 19 October 1966, Czechoslovakia is making such documents available and its position on the problem has remained unchanged.

As concerns the question of extradition of persons guilty of war crimes or crimes against humanity, the Czechoslovak Government believes it is necessary to add that the international convention on the subject should include a confirmation of the principles on the handing over of the criminals who perpetrated such crimes to the States on whose territories the crimes were committed. These principles have been fully respected by the Czechoslovak Government, as stated in the above-mentioned report under point 5 (a).

DENMARK

/Original: English/
19 August 1969

The Danish Government has not in connexion with the international co-operation on legal aid and extradition encountered such difficulties as are mentioned by the Secretary-General. The Danish Government has no comments on the views expressed by the Secretary-General in paragraphs 405-412.

ITALY

/Original: Italian/
3 October 1969

It should be stated that Italy's abstention in the vote on the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity was determined - notwithstanding the support given in principle to a convention to affirm the principle of the non-applicability of statutory limitations to such crimes - by the following characteristics of the Convention: the fact that the definition of the crimes contained in the first article is vague, from the juridical point of view; the fact that the Convention is not confined to crimes of a "serious nature"; the retroactivity of its provisions, which is contrary to the Italian Constitution.

Nevertheless, the Italian Government agrees in principle with the observations contained in paragraphs 405-412 of the study prepared by the Secretary-General.

In particular, it agrees that there should be more international co-operation in uncovering and collecting evidence of war crimes and crimes against humanity (stated in paragraph 411) and on the advisability of a study in greater depth of the problem of bringing national legislation and bilateral extradition treaties with the international rules on the subject (paragraph 412).

However, from a practical point of view, it is the opinion of the Italian Government that the International Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, by reason of its serious defects, does not provide a basis for broad agreement between States for

the development of international co-operation on the subject and, even less, for general solidarity.

The elaboration of new international instruments or the establishment of an appropriate organ or the formulation of standard clauses would be likely to result in procedures which would prove ineffectual for the most part if they were based on such a convention, or if they were weakened by defects similar to those in the convention itself.

JAMAICA

[Original: English]
18 August 1969

The Government of Jamaica agrees to support, in principle, proposals which would ensure the preparation of an international convention on the procedures applicable to the extradition of persons responsible for war crimes and crimes against humanity. This does not imply any prior commitment that Jamaica would autonatically become a party to such a convention.

MEXICO

[Original: Spanish]
9 September 1969

Taking into account the work done by the specialized agencies, the national legislations of the various countries reveal a definite tendency to designate acts which constitute war crimes and crimes against humanity as an offence in their respective legal codes.

In view of the liberal principles usually embodied in criminal laws such as the strict application of penal law and non-retroactivity which may be prejudicial thereto, there is an obvious need to reach agreement by concluding a multinational convention which would permit extradition of persons accused of those crimes. Mexico, for example, has concluded bilateral extradition treaties which contain an enumeration of specific acts which may lead to extradition. Clearly, the

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enumeration does not include so-called war crimes or crimes against humanity either when so designated or when classified as genocide. In any given case, this would prevent the surrender of a criminal, whose constitutional rights, including, as mentioned above, the strict application and non-retroactivity of penal law, will be respected at all times and in all circumstances.

Under a bilateral convention governing extradition, this difficulty would cease to exist.

It would also be advisable as early as possible to draft and conclude conventions for the collection of evidence establishing the guilt of those accused of war crimes and of crimes against humanity. Although in this particular field, Mexico was not affected by the consequences of the Second World War, it has always shown its interest and concern to ensure that the acts which in fact constitute a crime do not go unpunished. Since the most effective way of establishing guilt is to make available the evidence existing in one State for action in another, it is essential to conclude appropriate conventions which should specify the obligations of signatories and the special circumstances in which the required evidence may be refused.

The other problems and questions dealt with in paragraphs 405 to 412 of the Secretary-General's study do not concern Mexico since, as stated above, Mexico was not affected in this respect by the consequences of the last World War and has never been the claimant or respondent in any case involving the extradition of persons guilty of war crimes and crimes against humanity.

Since Mexico has incorporated the crime of genocide in its criminal legislation, it is in a position to conclude the treaties and conventions required for the effective prosecution and punishment of persons guilty of that type of crime.

NETHERLANDS

/Original: English/
11 November 1969

It is suggested in paragraphs 405-412 of document E/CN.4/983 of the United Nations Commission on Human Rights that the following points be given consideration:

(a) the drawing up of recommendations designed to give effect to the observance of internationally accepted obligations with regard to the punishment and extradition of war criminals;

(b) the preparation of agreements concerning the exchange of documents to be used as evidence in proceedings against war criminals;

(c) the amendment of extradition laws to reconcile them with the general international rules on the extradition of war criminals.

The Netherlands Government is in agreement with the view expressed in paragraph 406 that there is no necessity to redefine at international level war crimes and crimes against humanity or to reaffirm the obligation to prosecute and extradite war criminals. The usefulness of making further recommendations based on statistical data still to be collected, as referred to in paragraph 401 (cf. paragraph 407), would seem dubious.

In chapter IV of document E/CN.4/983 the difficulties entailed in the exchange of documents in proceedings against war criminals are discussed, including those encountered by countries between which agreements on judicial assistance in criminal matters are in existence. One such difficulty is that documents cannot be provided for the preliminary investigations, because the agreements in question cover only judicial assistance in matters which are already before the court. Difficulties also arise in connexion with the provisions of such agreements which exclude judicial assistance in cases concerning political offences or which make dual criminal status a condition for the provision of judicial assistance. Consideration might be given to the United Nations taking an initiative in seeking a solution to these and similar problems and in promoting the conclusion of agreements where these do not yet exist. It should be noted that, as far as the Netherlands is concerned, the regulations governing the granting of international judicial assistance in criminal proceedings is formulated in very broad terms in articles 552h-552q of the Netherlands Code of Criminal Procedure.

The United Nations could also make a positive contribution towards amending laws on extradition. As is pointed out in chapter VI of document E/CN.4/983, there are grave lacunae in such laws. In addition, the extradition of war criminals is often rendered impossible because of express provisions in laws and agreements. The Netherlands Government is in agreement with the idea that this

question be studied in detail and solutions sought. What the Netherlands Government has in mind at the moment is not a complete extradition convention, but a convention consolidating the rules of existing international agreements which provide for international judicial assistance in respect of war criminals, that will remove existing obstacles.

NORWAY

[Original: English]
26 August 1969

Norwegian authorities have serious doubts as to the value of obtaining additional reports from States as proposed in paragraph 407 (cf. paragraphs 401-402), taking into consideration the amount of work implied in the elaboration of such reports.

TOGO

[Original: French]
1 July 1969

The Togolese Government considers that the Commission on Human Rights should formulate specific recommendations for submission to the Governments of Member States, particularly with regard to the compensation of victims of war crimes and the elaboration of conventions governing the exchange of documentation where it is not subject to international regulation.

UNITED KINGDOM

[Original: English]
19 September 1969

(a) Her Majesty's Government have no objection to the suggestion made in paragraph 407.

(b) Her Majesty's Government agree with the conslusions drawn in paragraph 409.

(c) As regards paragraph 410, Her Majesty's Government agree that the main area of difficulty is the question of international co-operation.

(d) As regards paragraph 411 which deals with international co-operation in the exchange of documentary evidence, Her Majesty's Government have already expressed their readiness to help in any way possible (paragraph 18 of E/CN.4/927/Add.2 of 2 February 1967); but they are not convinced that there is a need to formalize the arrangements for exchanging documentation along the lines suggested in the last two sentences of this paragraph.

(e) Her Majesty's Government agree that the problems which arise in the context of the extradition of criminals of this kind might appropriately be studied further by the Human Rights Commission, as suggested in paragraph 412.
