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PRELIMINARY PEACE CONFERENCE

REPORT

PRESENTED TO THE PRELIMINARY PEACE
CONFERENCE BY THE COMMISSION ON THE
RESPONSIBILITY OF THE AUTHORS OF THE
WAR AND ON ENFORCEMENT OF PENALTIES

MARCH 29, 1919

STAMPED
AND
SEALED

(E Pluribus Unum)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I certify that the document hereunto annexed is a true photostatic copy of the text of an official print of the document entitled "Report Presented to the Preliminary Peace Conference by the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties" in the files of the Department of State.

SEAL
DEPARTMENT OF STATE
UNITED STATES
OF
AMERICA

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the Department of State to be affixed at the City of Washington, in the District of Columbia, this first day of May, 1946.

/s/ Dean Acheson
Acting Secretary of State
of the
United States of America

PARIS PEACE CONFERENCE
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PRELIMINARY PEACE CONFERENCE.

R E P O R T

PRESENTED TO THE PRELIMINARY PEACE CONFERENCE

BY THE

C O M M I S S I O N

ON THE

RESPONSIBILITY OF THE AUTHORS

OF THE WAR

AND ON

ENFORCEMENT OF PENALTIES.

March 29, 1919.

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PRELIMINARY PEACE CONFERENCE

Commission on the Responsibility of the Authors of the War
and on Enforcement of Penalties.

THE Preliminary Peace Conference at the plenary Session on the 25th January, 1919 (Minute No. 2), decided to create, for the purpose of enquiring into the responsibilities relating to the war, a Commission composed of fifteen members, two to be named by each of the Great Powers (United States of America, British Empire, France, Italy and Japan) and five elected from among the Powers with special interests.

The Commission was charged to enquire into and report upon the following points: --

1. The responsibility of the authors of the war.
2. The facts as to breaches of the laws and customs of war committed by the forces of the German Empire and their Allies, on land, on sea, and in the air during the present war.
3. The degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs, and other individuals, however highly placed.
4. The constitution and procedure of a tribunal appropriate for the trial of these offences.
5. Any other matters cognate or ancillary to the above which may arise in the course of the enquiry, and which the Commission finds it useful and relevant to take into consideration.

At a meeting of the Powers with special interests held on the 27th January, 1919, Belgium, Greece, Poland, Roumania and Serbia were chosen as the Powers who should name representatives. (Minute No. 2. Annex VI.)

After the several States had nominated their respective representatives, the Commission was constituted as follows:--

UNITED STATES OF AMERICA:

Hon. Robert Lansing.
Major James Brown Scott.

BRITISH EMPIRE:

The Rt. Hon. Sir Gordon Hewart, K.C., M.P.
or
Sir Ernest Pollock, K.B.E., K.C., M.P.
The Rt. Hon. W. F. Massey.

FRANCE:

Mr. Andre Tardieu.
(Alternate: Captain R. Masson.)
Mr. F. Larnaude.

ITALY:

Mr. Scialoja.

(Alternates: Mr. Ricci Busatti, Mr. G. Tosti.)

Mr. Raimondo. Later, Mr. Brambilla (3rd February); Mr. M. d'Amelio (16th February).

JAPAN:

Mr. Adatci.

Mr. Nagaoka. Later, Mr. S. Tachi (15th February).

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BELGIUM:

Mr. Rolin-Jaequemyns.

GREECE:

Mr. N. Politis.

POLAND:

Mr. C. Skirmunt. Later, Mr. N. Lubienski (14th February).

ROUMANIA:

Mr. S. Rosental.

SERBIA:

Professor Slobodan Yovanovitch
(Alternates: Mr. Koumanoudi, Mr. Novacovitch.)

Mr. Lansing was selected as Chairman of the Commission, and as Vice-Chairmen, Sir Gordon Hewart or Sir Ernest Pollock and Mr. Scialoja. Mr. A. De Lapradelle (France) was named General Secretary and the Secretaries of the Commission were: -

Mr. A. Kirk, United States of America; Lieutenant-Colonel O. M. Biggar, British Empire; Mr. G. H. Tosti, Italy; Mr. Kuriyama, Japan; Lieutenant Baron J. Guillaume, Belgium; Mr. Spyridion Marchetti, Greece; Mr. Casimir Rybinski, Poland.

Mr. G. H. Carmerlynck, Professeur Agrégé of the University of France, acted as interpreter to the Commission.

The Commission decided to appoint three Sub-Commissions.

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

(b) took place in the course of hostilities.

This Sub-Commission selected Mr. W. F. Massey as its Chairman.

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

This Sub-Commission selected alternatively Sir Gordon Hewart or Sir Ernest Pollock as Chairman.

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

This Sub-Commission selected Mr. Lansing as its Chairman.

When the reports of the Sub-Commissions had been considered; a committee composed of Mr. Rolin-Jaequemyns, Sir Ernest Pollock and Mr. M. d'Amelio was appointed to draft the report of the Commission. This Committee was assisted by Mr. A de Lapradell and Lieutenant-Colonel O. M. Biggar.

The Commission has the honour to submit its report to the Preliminary Peace Conference. The report was adopted unanimously subject to certain reservations by the United States of America and certain other reservations by Japan. The United States Delegation has set forth its reservations and the reasons therefor in a memorandum attached hereto (Annex II) and the same course has been taken by the Japanese Delegation (Annex III).

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R E P O R T

PRESENTED TO THE PRELIMINARY PEACE CONFERENCE

BY THE

COMMISSION ON THE RESPONSIBILITY OF THE AUTHORS
OF THE WAR

AND ON

ENFORCEMENT OF PENALTIES.

CHAPTER I.

Responsibility of the Authors of the War.

On the question of the responsibility of the authors of the war, the Commission, after having examined a number of official documents relating to the origin of the world war, and to the violations of neutrality and of frontiers, which accompanied its inception, has determined that the responsibility for it lies wholly upon the Powers which declared war in pursuance of a policy of aggression, the concealment of which gives to the origin of this war the character of a dark conspiracy against the peace of Europe.

This responsibility rests first on Germany and Austria, secondly on Turkey and Bulgaria. The responsibility is made all the graver by reason of the violation by Germany and Austria of the neutrality of Belgium and Luxemburg, which they themselves had guaranteed. It is increased, with regard to both France and Serbia, by the violation of their frontiers before the declaration of war.

I. -Premeditation of the War.

A. -GERMANY AND AUSTRIA.

Many months before the crisis of 1914 the German Emperor had ceased to pose as the champion of peace. Naturally believing in the overwhelming superiority of his army, he openly showed his enmity towards France. General von Moltke said to the King of the Belgians: "This time the matter must be settled." In vain the King protested. The Emperor and his Chief of Staff remained no less fixed in their attitude. (1)

On the 28th June, 1914, occurred the assassination at Sarajevo of the heir-apparent of Austria. "It is the act of a little group of madmen," said Francis Joseph. (2) The act, committed as it was by a subject of Austria-Hungary on Austro-Hungarian territory, could in no wise compromise Serbia, which very correctly expressed its condolences (3) and stopped public rejoicings in Belgrade. If the Government of Vienna thought that there was any Serbian complicity, Serbia was ready (4) to seek out the guilty parties. But this attitude failed to satisfy Austria and still less Germany, who, after their first astonishment had passed, saw in this royal and national misfortune a pretext to initiate war.

At Potsdam a "decisive consultation" took place on the 5th July, 1914. (5) Vienna and Berlin decided upon this plan: "Vienna will send to Belgrade a very emphatic ultimatum with a very short limit of time." (6)

The Bavarian Minister, von Lerchenfeld, said in a confidential despatch dated the 18th July, 1914, the facts stated in which have never been officially denied: "It is clear that Serbia cannot accept the demands, which are inconsistent with the dignity of an independent State." (7) Count

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Lerchenfeld reveals in this report that, at the time it was made, the ultimatum to Serbia had been jointly decided upon by the Governments of Berlin and Vienna; that they were waiting to send it until President Pincare' and M. Viviani should have left for St. Petersburg; and that no illusions were cherished, either at Berlin or Vienna, as to the consequences which this threatening measure would involve. It was perfectly well known that war would be the result.

- (1) Yellow Book, M. Cambon to M. Pichon, 22nd November, 1913.
- (2) Message to his people. (3) Serbian Blue Book, page 30.
- (4) Yellow Book, No. 15, M. Cambon to M. Bienvenu Martin, 21st July, 1914.
- (5) Lichnowsky Memoir. (6) Dr. Muehlon's Memoir.
- (7) Report of the 18th July, 1914.

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The Bavarian Minister explains, moreover, that the only fear of the Berlin Government was that Austria-Hungary might hesitate and draw back at the last minute, and that on the otherhand Serbia, on the advice of France and Great Britain, might yield to the pressure put upon her. Now, "the Berlin Government considers that war is necessary." Therefore, it gave full powers to Count Berchtold, who instructed the Ballplatz on the 18th July, 1914, to negotiate with Bulgaria to induce her to enter into an alliance and to participate in the war.

In order to mask this understanding, it was arranged that the Emperor should go for a cruise in the North Sea, and that the Prussian Minister of War should go for a holiday, so that the Imperial Government might pretend that events had taken it completely by surprise.

Austria suddenly sent Serbia an ultimatum that she had carefully prepared in such a way as to make it impossible to accept. Nobody could be deceived: "the whole world understands that this ultimatum means war." (1) According to M. Sazonof, "Austria-Hungary wanted to devour Serbia." (2)

M. Sazonof asked Vienna for an extension of the short time limit of forty-eight hours given by Austria to Serbia for the most serious decision in its history. (3) Vienna refused the demand. On the 24th and 25th July England and France multiplied their efforts to persuade Serbia to satisfy the Austro-Hungarian demands. Russia threw in her weight on the side of conciliation. (4)

Contrary to the expectation of Austria-Hungary and Germany, Serbia yielded. She agreed to all the requirements of the ultimatum, subject to the single reservation that, in the judicial enquiry which she would commence for the purpose of seeking out the guilty parties, the participation of Austrian officials would be kept within the limits assigned by international law. "If the Austro-Hungarian

Government is not satisfied with this," Serbia declared she was ready "to submit to the decision of the Hague Tribunal." (5)

A quarter of an hour before the expiration of the time limit, at 5.45 on the 25th, M. Pachich, the Serbian Minister of Foreign Affairs, delivered this reply to Baron Geisl, the Austro-Hungarian Minister. On M. Pachich's return to his own office he found awaiting him a letter from Baron Geisl saying that he was not satisfied with the reply. At 6.30 the latter had left Belgrade, and even before he had arrived at Vienna, the Austro-Hungarian Government had handed his passports to M. Yovanovitch, the Serbian Minister, and had prepared thirty-three mobilisation proclamations, which were published on the following morning in the "Budapesti Közlöny," the official gazette of the Hungarian Government. On the 27th Sir Maurice de Bunsen telegraphed to Sir Edward Grey: "This country has gone wild with joy at the prospect of war with Serbia." (6) At midday on the 28th Austria declared war on Serbia. On the 29th the Austrian Army commenced the bombardment of Belgrade, and made its dispositions to cross the frontier.

The reiterated suggestions of the Entente Powers with a view to finding a peaceful solution of the dispute only produced evasive replies on the part of Berlin or promises of intervention with the Government of Vienna without any effectual steps being taken.

On the 24th of July Russia and England asked that the Powers should be granted a reasonable delay in which to work in concert for the maintenance of peace. Germany did not join in this request. (7)

On the 25th July Sir Edward Grey proposed mediation by four Powers (England, France, Italy and Germany). France (8) and Italy (9) immediately gave their concurrence. Germany (10) refused, alleging that it was not a question of mediation but of arbitration, as the Conference of the four Powers was called to make proposals, not to decide.

On the 26th July Russia proposed to negotiate directly with Austria. Austria refused. (11)

On the 27th July England proposed a European Conference. Germany refused. (12)

On the 29th July Sir Edwin Grey asked the Wilhelmstrasse to be good enough to "suggest any method by which the influence of the four Powers could be used together to prevent a war between Austria and Russia." (13) She was asked herself to say what she desired. (14) Her reply was evasive. (15)

- (1) Lichnowsky Memoir. (2) Austro-Hungarian Red Book, No. 16.
 (3) Blue Book, No. 26. (4) Yellow Book, No. 36; Blue Book, Nos. 12, 46, 55, 65, 94, 118. (5) Yellow Book, No. 46.
 (6) Blue Book, No. 41 (7) Russian Orange Book, No. 4.
 Yellow Book, No. 43. (8) Yellow Book, No. 70 (9) Yellow Book, No. 72, Blue Book, No. 49. (10) Blue Book, No. 43.
 (11) Yellow Book, No. 54. (12) Yellow Book, Nos. 68, 73.
 (13) Yellow Book, No. 97, Blue Book, No. 84.
 (14) Blue Book, No. 111 (15) Yellow Book, 97, 98, and 109.

On the same day, the 29th July, the Czar Nicholas II despatched to the Emperor William II a telegram suggesting that the Austro-Serbian problem should be submitted to the Hague Tribunal. This suggestion received no reply. This important telegram does not appear in the German White Book. It was made public by the Petrograd "Official Gazette" (January 1915).

The Bavarian Legation, in a report dated the 31st July, declared its conviction that the efforts of Sir Edward Grey to preserve peace would not hinder the march of events. (1)

As early as the 21st July German mobilisation had commenced by the recall of a certain number of classes of the reserve, (2) then of German officers in Switzerland, (3) and finally of the Metz garrison on the 25th July. (4) On the 26th July the German fleet was called back from Norway. (5)

The ENTENTE did not relax its conciliatory efforts, but the German Government systematically brought all its attempts to nought. When Austria consented for the first time on the 31st July to discuss the contents of the Serbian Note with the Russian Government and the Austro-Hungarian Ambassador received orders to "converse" with the Russian Minister of Foreign Affairs, (6) Germany made any negotiation impossible by sending her ultimatum to Russia. Prince Lichnowsky wrote that "a hint from Berlin would have been enough to decide Count Berchtold to content himself with a diplomatic success and to declare that he was satisfied with the Serbian reply, but this hint was not given. On the contrary they went forward towards war." (7)

On the 1st August the German Emperor addressed a telegram to the King of England (8) containing the following sentence: "The troops on my frontier are, at this moment, being kept back by telegraphic and telephonic orders from crossing the French frontier."

Now, war was not declared till two days after that date, and as the German mobilisation orders were issued on that same day, the 1st August, it follows that, as a matter of fact, the German army had been mobilised and concentrated in pursuance of previous orders.

The attitude of the ENTENTE nevertheless remained still to the very end so conciliatory that, at the very time at which the German fleet was bombarding Libau, Nicholas II gave his word of honour to William II that Russia would not undertake any aggressive action during the pourparlers, (9) and that when the German troops commenced their march across the French frontier M. Viviani telegraphed to all the French Ambassadors "we must not stop working for accommodation."

On the 3rd August von Schoen went to the Quai d'Orsay with the declaration of war against France. Lacking a real cause of complaint, Germany alleged, in her declaration of war, that bombs had been dropped by French aeroplanes in various districts in Germany. This statement was entirely

false. Moreover, it was either later admitted to be so (10) or no particulars were ever furnished by the German Government.

Moreover, in order to be manifestly above reproach, France was careful to withdraw her troops 10 kilom. from the German frontier. Notwithstanding this precaution, numerous officially established violations of French territory preceded the declaration of war (11).

The provocation was so flagrant that Italy, herself a member of the Triple Alliance, did not hesitate to declare that in view of the aggressive character of the war the casus foederis ceased to apply. (12)

(1) Second Report of Count Lerchenfeld, Bavarian Plenipotentiary at Berlin, published on the instructions of Kurt Eisner.

(2) Yellow Book, No. 15 (3) Yellow Book, No. 60.

(4) Yellow Book, No. 106 (5) Yellow Book, No. 58.

(6) Blue Book No. 133, Red Book. No. 55

(7) Lichnowsky-Memoir, p. 1 (8) White Book, Anlage 32; Yellow Book, Annex II bis, No. 2.

(9) Telegram from Nicholas II to William II. Yellow Book No. 6, Annex V.

(10) Statement of the municipality of Nuremburg, dated the 3rd April, 1916.

(11) Patrols of various strengths crossed the French frontier at fifteen points, one on the 30th July at Xures, eight on the 2nd August, and the others on the 3rd August, before war was declared. The French troops lost one killed and several wounded. The enemy left on French territory four killed, one of whom was an officer, and seven prisoners. At Suarce, on the 2nd August, the enemy carried off nine inhabitants, twenty-five horses, and thirteen carriages. Four incursions by German dirigibles took place between the 25th July and the 1st August. Finally, German aeroplanes flew over Luneville on the 3rd August, before the declaration of war, and dropped six bombs. (Yellow Book, Nos. 106, 136, 139 &c.)

(12) Yellow Book, No. 124.

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B.- TURKEY AND BULGARIA.

The conflict was, however, destined to become more widespread, and Germany and Austria were joined by allies.

Since the Balkan war the Young Turk Government had been drawing nearer and nearer Germany, whilst Germany on her part had constantly been extending her activities at Constantinople.

A few months before war broke out, Turkey handed over the command of her military and naval forces to the German General Liman von Sanders and the German Admiral Souchon.

In August, 1914, the former, acting under orders from the General Headquarters at Berlin, caused the Turkish Army to begin mobilising. (1)

Finally, on the 4th August, the understanding between Turkey and Germany was definitely formulated in an alliance (2). The consequence was that when the "Goeben" and the "Breslau" took refuge in the Bosphorus, Turkey closed the Dardanelles against the ENTENTE squadrons and war followed.

On the 14th October, 1915, Bulgaria declared war on Serbia, which country had been at war with Austria since the 28th July, 1914, and had been attacked on all fronts by a large Austro-German army since the 6th October, 1915. Serbia had however, committed no act of provocation against Bulgaria.

Serbia never formulated any claim against Bulgaria during the negotiations which took place between the ENTENTE Powers and Bulgaria prior to the latter's entry into the war. On the contrary, she was offering herself ready to make certain territorial concessions to Bulgaria in order to second the efforts of the ENTENTE Powers to induce Bulgaria to join them. According to Count Lerchenfeld's reports, however, Bulgaria had begun negotiations with the Central Powers as early as the 18th July, 1914, with a view to entering the war on their side. In April, 1915, the Bulgars made an armed attack against Serbia near Valandovo and Struvmitza, where a real battle was fought on Serbian territory. Being defeated, the Bulgars retired, ascribing this act of aggression to some comitadjis. An International Commission (composed of representatives of the ENTENTE) discovered, however, that there had been Bulgarian regular officers and soldiers among the dead and the prisoners. (3)

On the 6th September, 1915, Bulgaria and Austria-Hungary concluded a treaty which recited that they had agreed to undertake common military action against Serbia and by which Austria-Hungary guaranteed to Bulgaria certain accretions of territory at Serbia's expense, and also agreed, jointly with Germany, to make to the Bulgarian Government a war loan of 200,000,000 fr., to be increased if the war lasted more than four months (4). Even after this, M. Malinoff, one of the former Prime Ministers of Bulgaria, took part in negotiations with the ENTENTE, and while these negotiations were continuing, Bulgaria, on the 23rd September, mobilised, ostensibly to defend her neutrality.

No sooner had the army been mobilised and concentrated and Bulgarian forces massed on the whole length of the Serbian frontier, than the Bulgarian Government openly and categorically repudiated M. Malinoff, stating that he was in no way qualified to commit Bulgaria, and that he deserved "to be subjected to the utmost rigour of his country's laws for his conduct on that occasion." Some days later, Austro-German troops crossed the Danube and began to invade Serbia.

As soon as the Serbian troops began to retire, the Bulgars, on the pretext that the former had violated their frontier, launched the attack which eventually led to the complete subjugation of Serbia.

Two documents in the possession of the Serbian Government prove that this incident on the frontier was "arranged" and represented as a Serbian provocation. On the 10th October, 1915, the Secretary-General to the Foreign Office

at Sofia, at the request of the Bulgarian Minister for Foreign Affairs, sent the following communication to Count Tarnovski, Austro-Hungarian Minister at Sofia: - "In order to divest the attack on Serbia of the appearance of a preconceived plot, we shall, this evening or to-morrow morning, provoke a frontier incident in some uninhabited region." (5)
Also,

- (1) H. Morgenthau, "Secrets of the Bosphorus," London, 1918, pp. 39,40.
- (2) German White Book, 1913, 1917, Nos. 19 and 20.
- (3) Memorandum I of the Serbian Delegation, Chapter II, para. c.
- (4) Treaty between Bulgaria and Austria-Hungary, dated the 24th August, 1915 (furnished by the Serbian Delegation).
- (5) Memorandum I of the Serbian Delegation, Chapter II, para. c.

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on the 12th October, 1915, Count Tarnovski sent the following telegram to Vienna: - "The Generalissimo informs me that the desired incident on the Serbian frontier was arranged yesterday." (1)

Bulgaria, in fact, first attacked on the 12th October, 1915, two days before the declaration of war on Serbia, which took place on the 14th October, 1915. That this was the case does not prevent Bulgaria from asserting that the Serbs first crossed her frontier.

The above sequence of events proves that Bulgaria had premeditated war against Serbia, and perfidiously brought it about.

By means of German agents Enver Pasha and Talaat Pasha had, since the the spring of 1914, been aware of the Austro-German plan, i.e., an attack by Austria against Serbia, the intervention by Germany against France, the passage through Belgium, the occupation of Paris in a fortnight, the closing of the Straits by Turkey, and the readiness of Bulgaria to take action.

The Sultan acknowledged this plot to one of his intimates. It was indeed nothing but a plot engineered by heads of four States against the independence of Serbia and the peace of Europe.(2)

CONCLUSIONS.

1. The war was premeditated by the Central Powers together with their Allies, Turkey and Bulgaria, and was the result of acts deliberately committed in order to make it unavoidable.
2. Germany, in agreement with Austria-Hungary, deliberately worked to defeat all the many conciliatory proposals made by the Entente Powers and their repeated efforts to avoid war.

II. - VIOLATION OF THE NEUTRALITY OF BELGIUM AND LUXEMBURG.

A. - Belgium.

Germany is burdened by a specially heavy responsibility in respect of the violation of the neutrality of Belgium and Luxemburg. Article 1 of the Treaty of London of the 19th April, 1839, after declaring that Belgium should form a "perpetually neutral State," had placed this neutrality under the protection of Austria, France, Great Britain, Russia and Prussia. On the 9th August, 1870, Prussia had declared "her fixed determination to respect Belgian neutrality." On the 22nd July, 1870, Bismarck wrote to the Belgian Minister at Paris, "This declaration is rendered superfluous by existing treaties."

It may be of interest to recall that the attributes of neutrality were specifically defined by the fifth Hague Convention, of the 18th October, 1907. That Convention was declaratory of the law of nations, and contained these provisions - "The territory of neutral Powers is inviolable" (Article 1). "Belligerents are forbidden to move troops or convoys, whether of munitions of war or of supplies, across the territory of a neutral Power" (Article 2). "The fact of a neutral Power resisting, even by force, attempts against its neutrality cannot be regarded as a hostile act" (Article 10).

There can be no doubt of the binding force of the treaties which guaranteed the neutrality of Belgium. There is equally no doubt of Belgium's sincerity or of the sincerity of France in their recognition and respect of this neutrality.

On the 29th July, 1914, the day following the declaration of war by Austria-Hungary against Serbia, Belgium put her army on its reinforced peace strength, and so advised the Powers by which her neutrality was guaranteed and also Holland and Luxemburg. (3)

On the 31st July the French Minister at Brussels visited the Belgian Minister of Foreign Affairs to notify him of the state of war proclaimed in Germany and he spontaneously made the following statement: "I seize this opportunity to declare that no incursion of French troops into Belgium will take place, even if considerable forces are massed upon the frontiers of your country. France does not wish to incur the responsibility, so far as Belgium is concerned, of taking the first hostile act. Instructions in this sense will be given to the French authorities." (4)

On the 1st August, the Belgian Army was mobilised. (5)

(1) Memorandum of the Serbian Delegation, I. Chapter II, para. c.

(2) Basri, "L'Orient débalkanisé," chapter II, (Paris, 1919).

(3) Grey Book I, No. 8. (4) Grey Book I, No. 9.

(5) Grey Book I, No. 10.

On the 31st July, the British Government had asked the French and German Government separately if they were each of them ready to respect the neutrality of Belgium, provided that no other Power violated it. (1) In notifying the Belgian Government on the same day of the action taken by the British Government, the British Minister added: "In view of existing treaties, I am instructed to inform the Belgian Minister for Foreign Affairs of the above, and to say that Sir Edward Grey presumes that Belgium will do her utmost to maintain her neutrality, and that she desires and expects that the other Powers will respect and maintain it." (2) The immediate and quite definite reply of the Belgian Minister of Foreign Affairs was that Great Britain and the other nations guaranteeing Belgian independence could rest assured that she would neglect no effort to maintain her neutrality. (3)

On the same day, Paris and Berlin were officially asked the question to which reference was made in the British communication. At Paris the reply was categorical: "The French Government are resolved to respect the neutrality of Belgium, and it would only be in the event of some other Power violating that neutrality that France might find herself under the necessity, in order to assure the defence of her own security, to act otherwise." (4)

On the same day as this reply was made at Paris, the French Minister at Brussels made the following communication to M. Davignon, the Belgian Minister of Foreign Affairs: "I am authorised to declare that, in the event of an international war, the French Government, in accordance with the declarations they have always made, will respect the neutrality of Belgium. In the event of this neutrality not being respected by another Power, the French Government, to secure their own defence, might find it necessary to modify their attitude." (5)

It was decided that this communication should forthwith be made to the Belgian press.

Meanwhile the attitude of the German Government remained enigmatic. At Brussels the German Minister, Herr von Below, made efforts in his discussions to maintain confidence (6); but at Berlin, in reply to the question which had been officially asked by the British Government, the Secretary of State informed the British Ambassador that "he must consult the Emperor and the Chancellor before he could possibly answer." (7)

On the 2nd August, in the course of the day, Herr von Below insisted to the Belgian Minister, M. Davignon, upon the feelings of security which Belgium had the right to entertain towards her eastern neighbour, (8) and on the same day at 7 o'clock in the evening he sent him a "very confidential" note, which was nothing more than an ultimatum claiming free passage for German troops through Belgian territory. (9)

It was impossible to be under any delusion as to the purely imaginary character of the reason alleged by the German Government in support of its demand. It pretended that it had reliable information leaving "no doubt as to the

intention of France to move through Belgian territory" against Germany, and consequently had notified its decision to direct its forces to enter Belgium. (10)

The facts themselves supply the answer to the German allegation that France intended to violate Belgian neutrality. According to the French plan of mobilisation, the French forces were being concentrated at that very moment on the German frontier, and it was necessary, by reason of the situation created by the German violation of Belgian territory, to modify the arrangements for their transport.

In the meantime, at seven o'clock in the morning of the 3rd August, at the expiration of the time limit fixed by the ultimatum, Belgium had sent her reply to the German Minister. Affected neither by Germany's promises nor her threats, the Belgian Government boldly declared that an attack upon Belgian independence would constitute a flagrant violation of international law. "No strategic interest justifies such a violation of law. The Belgian Government, if they were to accept the proposals submitted to them, would sacrifice the honour of the nation and betray their duty towards Europe." In conclusion, the Belgian Government declared that

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|---------------------------|---------------------------|
| (1) Grey Book, I, No. 10. | (2) Grey Book I, No. 11. |
| (3) Grey Book I, No. 11. | (4) Blue Book, No. 125. |
| (5) Grey Book I, No. 15. | (6) Grey Book I, No. 19. |
| (7) Blue Book, No. 122. | (8) Grey Book, I, No. 19. |
| (9) Grey Book I, No. 20. | (10) Grey Book I, No. 20. |

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they were "firmly resolved to repel by all the means in their power every attack upon their rights." (1)

Even on the 3rd August, Belgium refused to appeal to the guarantee of the Powers until there was an actual violation of territory. (2) It was only on the 4th August, after German troops had entered Belgian territory, that the Belgian Government sent his passports to Herr von Below, (3) and it then appealed to Great Britain, France and Russia to co-operate as guaranteeing Powers in the defence of her territory. (4)

At this point it may be recalled that the pretext invoked by Germany in justification of the violation of Belgian neutrality, and the invasion of Belgian territory, seemed to the German Government itself of so little weight, that in Sir Edward Goschen's conversations with the German Chancellor, von Bethmann Hollweg, and with von Jagow, the Secretary of State, it was not a question of aggressive French intentions, but a "matter of life and death to Germany to advance through Belgium and violate the latter's neutrality," and of "a scrap of paper" (5). Further, in his speech on the 4th August, the German Chancellor made his well-known avowal: "Necessity knows no law. Our troops have occupied Luxemburg, and perhaps have already entered Belgian territory. Gentlemen,

that is a breach of international law. . . . We have been obliged to refuse to pay attention to the justifiable protests of Belgium and Luxemburg. The wrong - I speak openly - the wrong we are thereby committing we will try to make good as soon as our military aims have been attained. He who is menaced, as we are, and is fighting for his all can only consider how he is to hack his way through." To this avowal of the German Chancellor there is added the overwhelming testimony of Count von Lerchenfeld, who stated in a report of the 4th August, 1914, that the German General Staff considered it "necessary to cross Belgium: France can only be successfully attacked from that side. At the risk of bringing about the intervention of England, Germany cannot respect Belgian neutrality."(6)

As for the Austrian Government, it waited until the 28th August to declare war against Belgium (7), but as early as the middle of the month "the motor batteries sent by Austria have proved their excellence in the battles around Namur"(8), as appears from a proclamation of the German general who at the time was in command of the fortress of Liège, which German troops had seized. Consequently, the participation of Austria-Hungary in the violation of Belgian neutrality is aggravated by the fact that she took part in that violation without any previous declaration of war.

B. - LUXEMBURG.

The neutrality of Luxemburg was guaranteed by Article 2 of the Treaty of London, 11th May, 1867, Prussia and Austria-Hungary being two of the guarantor Powers. On the 2nd August, 1914, German troops penetrated the territory of the Grand Duchy. Mr. Eyschen, Minister of State of Luxemburg, immediately made an energetic protest. (9)

The German Government alleged "that military measures had become inevitable, because trustworthy news had been received that French forces were marching on Luxemburg." This allegation was at once refuted by Mr. Eyschen. (10)

CONCLUSION.

The neutrality of Belgium, guaranteed by the Treaties of the 19th April, 1839, and that of Luxemburg, guaranteed by the Treaty of the 11th May, 1867, were deliberately violated by Germany and Austria-Hungary.

CHAPTER II.

Violations of the Laws and Customs of War.

On the second point submitted by the Conference, the facts as to breaches of the laws and customs of war committed by the forces of the German Empire and their allies on land, on sea, and in the air, during the present war, the Commission has considered a large number of documents. The Report of the British Commission

- (1) Grey Book I, No. 22 (2) Grey Book I, No. 24.
 (3) Grey Book I, No. 30. (4) Grey Book I, No. 42.
 (5) Blue Book, No. 160. (6) Stenographische Berichte über
 die Verhandlungen des Reichstags, Dienstag, 4 August, 1914.
 See also E. Muhler, "Des Weltkrieges und das Völkerrecht,"
 Berlin, G. Reimer, 1915, pp. 24 et seq.
 (7) Grey Book I, No. 77. (8) Grey Book II, No. 104.
 (9) Yellow Book, No. 131. (10) Telegram to the German
 Ministry of Foreign Affairs, the 2nd August 1914.

drawn up by Lord Bryce, the labours of the French Commission presided over by M. Payelle, the numerous publications of the Belgian Government, the Memorandum submitted by the Belgian Delegation, the Memorandum of the Greek Delegation, the documents lodged by the Italian Government, the formal denunciation by the Greeks at the Conference of the crimes committed against Greek populations by the Bulgars, Turks and Greeks, the Memorandum of the Serbian Delegation, the Report of the Inter-Allied Commission on the violations of the Hague Conventions and of international law in general, committed between 1915 and 1918 by the Bulgars in occupied Serbia, the summary of the Polish Delegation, together with the Roumanian and Armenian Memoranda, supply abundant evidence of outrages of every description committed on land, at sea, and in the air, against the laws and customs of war and of the laws of humanity.

In spite of the explicit regulations, of established customs, and of the clear dictates of humanity, Germany and her allies have piled outrage upon outrage. Additions are daily and continually being made. By way of illustration a certain number of examples have been collected in Annex I. It is impossible to imagine a list of cases so diverse and so painful. Violations of the rights of combatants, of the rights of civilians, and of the rights of both, are multiplied in this list of the most cruel practices which primitive barbarism, aided by all the resources of modern science, could devise for the execution of a system of terrorism carefully planned and carried out to the end. Not even prisoners, or wounded, or women, or children have been respected by belligerents who deliberately sought to strike terror into every heart for the purpose of repressing all resistance. Murders and massacres, tortures, shields formed of living human beings, collective penalties, the arrest and execution of hostages, the requisitioning of services for military purposes, the arbitrary destruction of public and private property, the aerial bombardment of open towns without there being any regular siege, the destruction of merchant ships without previous visit and without any precautions for the safety of passengers and crew, the massacre of prisoners, attacks on hospital ships, the poisoning of springs and of wells, outrages and profanations without regard for religion or the honour of individuals, the issue of counterfeit money reported by the Polish Government, the methodical and deliberate destruction of industries with no other object than to promote German economic supremacy after the war, constitute the most striking list of crimes that has ever

been drawn up to the eternal shame of those who committed them. The facts are established. They are numerous and so vouched for that they admit of no doubt and cry for justice. The Commission, impressed by their number and gravity, thinks there are good grounds for the constitution of a special Commission, to collect and classify all outstanding information for the purpose of preparing a complete list of the charges under the following heads: -

The following is the list arrived at: -

- (1.) Murders and massacres; systematic terrorism.
- (2.) Putting hostages to death.
- (3.) Torture of civilians.
- (4.) Deliberate starvation of civilians.
- (5.) Rape.
- (6.) Abduction of girls and women for the purpose of enforced prostitution.
- (7.) Deportation of civilians.
- (8.) Internment of civilians under inhuman conditions.
- (9.) Forced labour of civilians in connection with the military operations of the enemy.
- (10.) Usurpation of sovereignty during military occupation.
- (11.) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
- (12.) Attempts to denationalise the inhabitants of occupied territory.
- (13.) Pillage.
- (14.) Confiscation of property.
- (15.) Exaction of illegitimate or of exorbitant contributions and requisitions.
- (16.) Debasement of the currency, and issue of spurious currency.
- (17.) Imposition of collective penalties.
- (18.) Wanton devastation and destruction of property.
- (19.) Deliberate bombardment of undefended places.
- (20.) Wanton destruction of religious, charitable, educational, and historic buildings and monuments.

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- (14.) Confiscation of property.
- (15.) Exaction of illegitimate or of exorbitant contributions and requisitions.
- (16.) Debasement of the currency, and issue of spurious currency.
- (17.) Imposition of collective penalties.
- (18.) Wanton devastation and destruction of property.
- (19.) Deliberate bombardment of undefended places.
- (20.) Wanton destruction of religious, charitable, educational, and historic buildings and monuments.
- (21.) Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers or crew.
- (22.) Destruction of fishing boats and of relief ships.

- (23.) Deliberate bombardment of hospitals.
- (24.) Attack on and destruction of hospital ships.
- (25.) Breach of other rules relating to the Red Cross.
- (26.) Use of deleterious and asphyxiating gases.
- (27.) Use of explosive or expanding bullets, and other inhuman appliances.
- (28.) Directions to give no quarter.
- (29.) Ill-treatment of wounded and prisoners of war.
- (30.) Employment of prisoners of war on unauthorised works.
- (31.) Misuse of flags of truce.
- (32.) Poisoning of wells.

The Commission desires to draw attention to the fact that the offences enumerated and the particulars given in Annex I are not regarded as complete and exhaustive; to these such additions can from time to time be made as may seem necessary.

CONCLUSIONS.

1. The war was carried on by the Central Empires together with their allies, Turkey and Bulgaria, by barbarous or illegitimate methods in violation of the established laws and customs of war and the elementary laws of humanity.

2. A Commission should be created for the purpose of collecting and classifying systematically all the information already had or to be obtained, in order to prepare as complete a list of facts as possible concerning the violations of the laws and customs of war committed by the forces of the German Empire and its Allies, on land, on sea and in the air, in the course of the present war.

CHAPTER III.

Personal Responsibility.

The third point submitted by the Conference is thus stated: - The degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs and other individuals, however highly placed.

For the purpose of dealing with this point, it is not necessary to wait for proof attaching guilt to particular individuals. It is quite clear from the information now before the Commission that there are grave charges which must be brought and investigated by a Court against a number of persons.

In these circumstances, the Commission desire to state expressly that in the hierarchy of persons in authority, there is no reason why rank, however exalted, should in any circumstances protect the holder of it from responsibility when that responsibility has been established before a

properly constituted tribunal. This extends even to the case of Heads of States. An argument has been raised to the contrary based upon the alleged immunity, and in particular the alleged inviolability, of a Sovereign of a State. But this privilege, where it is recognised, is one of practical expedience in municipal law, and is not fundamental. However, even if, in some countries, a Sovereign is exempt from being prosecuted in a national court of his own country the position from an international point of view is quite different.

We have later on in our Report proposed the establishment of a High Tribunal composed of judges drawn from many nations, and included the possibility of the trial before that Tribunal of a former Head of a State with the consent of that State itself secured by articles in the Treat of Peace. If the immunity of a Sovereign is claimed to extend beyond the limits above stated, it would involve laying down the principle that the greatest outrages against the laws and customs of war and the laws

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of humanity, if proved against him, could in no circumstances be punished. Such a conclusion would shock the conscience of civilized mankind.

In view of the grave charges which may be preferred against--to take one case -- the ex-Kaiser -- the vindication of the principles of the laws and customs of war and the laws of humanity which have been violated would be incomplete if he were not brought to trial and if other offenders less highly placed were punished. Moreover, the trial of the offenders might be seriously prejudiced if they attempted and were able to plead the superior orders of a Sovereign against whom no steps had been or were being taken.

There is little doubt that the ex-Kaiser and others in high authority were cognisant of and could at least have mitigated the barbarities committed during the course of the war. A word from them would have brought about a different method in the action of their subordinates on land, at sea and in the air.

We desire to say that civil and military authorities cannot be relieved from responsibility by the mere fact that a higher authority might have been convicted of the same offence. It will be for the Court to decide whether a plea of superior orders is sufficient to acquit the person charged from responsibility.

CONCLUSION

All persons belonging to enemy countries, without distinction of rank, including Chiefs of States, who have been guilty of offences against the laws and customs of war on the laws of humanity, are liable to criminal prosecution.

CHAPTER IV.

Constitution and Procedure of an appropriate Tribunal.

The fourth point submitted to the Commission is stated as follows: - The Constitution and Procedure of a Tribunal appropriate for the Trial of these Offences (crimes relating to the war).

On this question the Commission is of opinion that, having regard to the multiplicity of crimes committed by those Powers which a short time before had on two occasions at the Hague protested their reverence for right and their respect for the principles of humanity (1), the public conscience insists upon a sanction which will put clearly in the light that it is not permitted cynically to profess a disdain for the most sacred laws and the most formal undertakings.

Two classes of culpable acts present themselves:-

- (a) Acts which provoked the world war and accompanied its inception.
- (b) Violations of the laws and customs of war and the laws of humanity.

(a.) Acts which Provoked the War and Accompanied its Inception.

In this class the Commission has considered acts not strictly war crimes, but acts which provoked the war or accompanied its inception, such, to take outstanding examples, as the invasion of Luxemburg and Belgium.

The premeditation of a war of aggression, dissimulated under a peaceful pretence, then suddenly declared under false pretexts, is conduct which the public conscience reprobates and which history will condemn, but by reason of the purely optional character of the Institutions at The Hague for the maintenance of peace (International Commission of Enquiry, Mediation and Arbitration) a war of aggression may not be considered as an act directly contrary to positive law, or one which can be successfully brought before a tribunal such as the Commission is authorised to consider under its Terms of Reference.

Further, any enquiry into the authorship of the war must, to be exhaustive, extend over events that have happened during many years in different European countries, and must raise many difficult and complex problems which might be more fitly investigated by historians and statesmen than by a tribunal appropriate to the trial of offenders against the laws and customs of war. The need of prompt action is from this point of view important. Any tribunal appropriate to deal with the other

(1) See the declaration of Baron Marschall von Bieberstein, who, speaking at the Hague Conference of 1907 with regard to submarine mines, used the following expressions:- "Military operations are not governed solely by stipulations of international law. There are other factors. Conscience, good sense, and the sense of duty imposed by the principles of humanity will be the surest guides for the conduct of sailors, and will constitute the most effective guarantee

against abuses. The officers of the German Navy, I loudly proclaim it, will always fulfil in the strictest fashion the duties which emanate from the unwritten law of humanity and civilisation."

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offences to which reference is made might hardly be a good court to discuss and deal decisively with such a subject as the authorship of the war. The proceedings and discussions, charges and counter-charges, if adequately and dispassionately examined, might consume much time, and the result might conceivably confuse the simpler issues into which the tribunal will be charged to enquire. While this prolonged investigation was proceeding some witnesses might disappear, the recollection of others would become fainter and less trustworthy, offenders might escape, and the moral effect of tardily imposed punishment would be much less salutary than if punishment were inflicted while the memory of the wrong done was still fresh and the demand for punishment was insistent.

We therefore do not advise that the acts which provoked the war should be charged against their authors and made the subject of proceedings before a tribunal.

There can be no doubt that the invasion of Luxemburg by the Germans was a violation of the Treaty of London of 1867, and also that the invasion of Belgium was a violation of the Treaties of 1839. These Treaties secured neutrality for Luxemburg and Belgium, and in that term were included freedom, independence and security for the population living in those countries. They were contracts made between the High Contracting Parties to them, and involve an obligation which is recognised in international law.

The Treaty of 1839 with regard to Belgium and that of 1867 with regard to Luxemburg were deliberately violated, not by some outside Power, but by one of the very Powers which had undertaken not merely to respect their neutrality, but to compel its observance by any other Power which might attack it. The neglect of its duty by the guarantor adds to the gravity of the failure to fulfil the undertaking given. It was the transformation of a security into a peril, of a defence into an attack, of a protection into an assault. It constitutes, moreover, the absolute denial of the independence of States too weak to interpose a serious resistance, an assault upon the life of a nation which resists, an assault against its very existence while, before the resistance was made, the aggressor, in the guise of tempter, offered material compensations in return for the sacrifice of honour. The violation of international law was thus an aggravation of the attack upon the independence of States which is the fundamental principle of international right.

And thus a high-handed outrage was committed upon international engagements, deliberately, and for a purpose which cannot justify the conduct of those who were responsible.

The Commission is nevertheless of opinion that no criminal charge can be made against the responsible authorities or individuals (and notably the ex-Kaiser) on the special head of these breaches of neutrality, but the gravity of these gross outrages upon the law of nations and international good faith is such that the Commission thinks they should be the subject of a formal condemnation by the Conference.

CONCLUSIONS.

1. The acts which brought about the war should not be charged against their authors or made the subject of proceedings before a tribunal.

2. On the special head of the breaches of the neutrality of Luxemburg and Belgium, the gravity of these outrages upon the principles of the law of nations and upon international good faith is such that they should be made the subject of a formal condemnation by the Conference.

3. On the whole case, including both the acts which brought about the war and those which accompanied its inception, particularly the violation of the neutrality of Belgium and Luxemburg, it would be right for the Peace Conference, in a matter so unprecedented, to adopt special measures, and even to create a special organ in order to deal as they deserve with the authors of such acts.

4. It is desirable that for the future penal sanctions should be provided for such grave outrages against the elementary principles of international law.

(b.) Violations of the Laws and Customs of War and of the Laws of Humanity.

Every belligerent has, according to international law, the power and authority to try the individuals alleged to be guilty of the crimes of which an enumeration has been given in Chapter II on Violations of the Laws and Customs of War, if such persons have been taken prisoners or have otherwise fallen into its power. Each belligerent has, or has power to set up, pursuant to its own legislation, an appropriate tribunal, military or civil, for the trial of such cases. These courts would be able to try the incriminated persons according to their own procedure, and much complication and consequent delay would be avoided which would arise if all such cases were to be brought before a single tribunal.

There remain, however, a number of charges: -

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

- (b.) Against persons of authority, belonging to enemy countries, whose orders were executed not only in one area or on one battle front; but whose orders affected the conduct of operations against several of the Allied armies;
- (c.) Against all authorities, civil or military, belonging to enemy countries, however high their position may have been, without distinction of rank, including the heads of States, who ordered, or, with knowledge thereof and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to or repressing, violations of the laws or customs of war (it being understood that no such abstention should constitute a defence for the actual perpetrators);
- (d.) Against such other persons belonging to enemy countries as, having regard to the character of the offence or the law of any belligerent country, it may be considered advisable not to proceed before a court other than the High Tribunal hereafter referred to.

For the trial of outrages falling under these four categories the Commission is of opinion that a High Tribunal is essential and should be established according to the following plan: -

- (1.) It shall be composed of three persons appointed by each of the following Governments: - The United States of America, the British Empire, France, Italy and Japan, and one person appointed by each of the following Governments: Belgium, Greece, Poland, Portugal, Roumania, Serbia and Czech-Slovakia. The members shall be selected by each country from among the members of their national courts or tribunals, civil or military, and now in existence or erected as indicated above.
- (2.) The tribunal shall have power to appoint experts to assist it in the trial of any particular case or class of cases.
- (3.) The law to be applied by the tribunal shall be "the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity and from the dictates of public conscience."
- (4.) When the accused is found by the tribunal to be guilty, the tribunal shall have the power to sentence him to such punishment or punishments as may be imposed for such an offence or offences by any court in any country represented on the tribunal or in the country of the convicted person.
- (5.) The tribunal shall determine its own procedure. It shall have power to sit in divisions of not less than five members and to request any

national court to assume jurisdiction for the purpose of enquiry or for trial and judgment.

- (6.) The duty of selecting the cases for trial before the tribunal and of directing and conducting prosecution before it shall be imposed upon a Prosecuting Commission of five members, of whom one shall be appointed by the Governments of the United States of America, the British Empire, France, Italy and Japan, and for the assistance of which any other Government may delegate a representative.
- (7.) Applications by any Allied or Associated Government for the trial before the tribunal of any offender who has not been delivered up or who is at the disposition of some other Allied or Associated Government shall be addressed to the Prosecuting Commission, and a national court shall not proceed with the trial of any person who is selected for trial before the tribunal, but shall permit such person to be dealt with as directed by the Prosecuting Commission.
- (8.) No person shall be liable to be tried by a national court for an offence in respect of which charges have been preferred before the tribunal, but no

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trial or sentence by a court of an enemy country shall bar trial and sentence by the tribunal or by a national court belonging to one of the Allied or Associated States.

CONCLUSIONS.

The Commission has consequently the honour to recommend: -

1. That a High Tribunal be constituted as above set out.
2. That it shall be provided by the Treaty of Peace:-
 - (a.) That the enemy Governments shall, notwithstanding that Peace may have been declared, recognise the jurisdiction of the National Tribunals and the High Tribunal, that all enemy persons alleged to have been guilty of offences against the laws and customs of war and the laws of humanity shall be excluded from any amnesty to which the belligerents may agree, and that the Governments of such persons shall undertake to surrender them to be tried.
 - (b.) That the enemy Governments shall undertake to deliver up and give in such manner as may be determined thereby: -

- (i.) The names of all persons in command or charge of or in any way exercising authority in or over all civilian internment camps, prisoner-of-war camps, branch camps, working camps and "commandoes" and other places where prisoners were confined in any of their dominions or in territory at any time occupied by them, with respect to which such information is required, and all orders and instructions or copies of orders or instructions and reports in their possession or under their control relating to the administration and discipline of all such places in respect of which the supply of such documents as aforesaid shall be demanded;
- (ii.) All orders, instructions, copies of orders and instructions, General Staff plans of campaign, proceedings in Naval or Military Courts and Courts of Enquiry, reports and other documents in their possession or under their control which relate to acts or operations, whether in their dominions or in territory at any time occupied by them, which shall be alleged to have been done or carried out in breach of the laws and customs of war and the laws of humanity;
- (iii.) Such information as will indicate the persons who committed or were responsible for such acts or operations;
- (iv.) All logs, charts, reports and other documents relating to operations by submarines;
- (v.) All orders issued to submarines, with details or scope of operations by these vessels;
- (vi.) Such reports and other documents as may be demanded relating to operations alleged to have been conducted by enemy ships and their crews during the war contrary to the laws and customs of war and the laws of humanity.

3. That each Allied and Associated Government adopt such legislation as may be necessary to support the jurisdiction of the International Court, and to assure the carrying out of its sentences.

4. That the five States represented on the Prosecuting Commission shall jointly approach Neutral Governments with a view to obtaining the surrender for trial of persons within their territories who are charged by such States with violations of the laws and customs of war and the laws of humanity.

CHAPTER V.

Cognate Matters.

Finally, the Commission was asked to consider any other matters cognate or ancillary to the above which may arise in the course of the enquiry, and which the Commission finds it useful and relevant to take into consideration.

Under this head the Commission has considered it advisable to draft a set of provisions for insertion in the Preliminaries of Peace, for the assuring in practical form,

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in accordance with the recommendations at the end of the last chapter, the constitution, in recognition, and the mode of operation of the High Tribunal, and of the national tribunals which will be called to try infractions of the laws and customs of war or the laws of humanity.

The text of these provisions is set out in Annex IV.

March 29, 1919.

UNITED STATES OF AMERICA:-

Subject to the reservations set forth in the annexed Memorandum. (Annex II.)

ROBERT LANSING.
JAMES BROWN SCOTT.

BRITISH EMPIRE:-

ERNEST H. POLLOCK.
W. F. MASSEY.

FRANCE:-

A. TARDIEU.
F. LARNAUDE.

ITALY:-

V. SCIALOJA.
M. D'AMELIO.

JAPAN: -

Subject to the reservations set forth in the annexed Memorandum. (Annex III.)

M. ADATCHI.
S. TACHI.

BELGIUM:-

ROLIN-JAEQUEMYNS.

GREECE: -

N. POLITIS.

POLAND:-

L. LUBIENSKI.

ROUMANIA:-

S. ROSENAL.

SERBIA: -

SLOBODAN YOVANOVITCH.

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ANNEX III.

Reservations by the Japanese Delegation.

The Japanese Delegates on the Commission on Responsibilities are convinced that many crimes have been committed by the enemy in the course of the present war in violation of the fundamental principles of international law, and recognise that the principal responsibility rests upon individual enemies in high places. They are consequently of opinion that, in order to re-establish for the future the force of the principles thus infringed, it is important to discover practical means for the punishment of the persons responsible for such violations.

A question may be raised whether it can be admitted as a principle of the law of nations that a High Tribunal constituted by belligerents can, after a war is over, try an individual belonging to the opposite side, who may be presumed to be guilty of a crime against the laws and customs of war. It may further be asked whether international law recognises a penal law as applicable to those who are guilty.

In any event, it seems to us important to consider the consequences which would be created in the history of international law by the prosecution for breaches of the laws and customs of war of enemy heads of States before a tribunal constituted by the opposite party.

Our scruples become still greater when it is a question of indicting before a tribunal thus constituted highly-placed enemies on the sole ground that they abstained from preventing, putting an end to, or repressing acts in violation of the laws and customs of war, as is provided in clause (c) of section (b) of Chapter IV.

It is to be observed that to satisfy public opinion of the justice of the decision of the appropriate tribunal, it would be better to rely upon a strict interpretation of the principles of penal liability, and consequently not to make cases of abstention the basis of such responsibility.

In these circumstances the Japanese Delegates thought it possible to adhere, in the course of the discussions in the Commission, to a text which would eliminate from clause (c) of section (b) of Chapter IV both the words "including the heads of States," and the provision covering cases of

abstention, but they feel some hesitation in supporting the amended form which admits a criminal liability where the accused, with knowledge and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to, or repressing acts in violation of the laws and customs of war.

The Japanese Delegates desire to make clear that, subject to the above reservations, they are disposed to consider with the greatest care every suggestion calculated to bring about unanimity in the Commission.

M. ADATCI.
S. TACHI.

APRIL 4, 1919.

A CERTIFIED TRUE COPY

STEVE S. YAMAMOTO
O-888916
Captain, Infantry