PO-CH / N.L / 0374

PART A

Part. A.

SECRET

(Circulate under cover and notify REGISTRY of movement)

Begins: 29/6/89.
Ends: 9/10/89.

Chancellor's (Lawson) Papers:

THE WAR CRIMES INQUIRY - ACTION AGAINST WORLD WAR TWO WAR CRIMINALS NOW LIVING IN GREAT BRITAIN

DD's: 25 Years

6/12/95.

PO -CH /NL/0374
PART A

CABINET OFFICE PAPER

The following Cabinet Office papers have been taken off the file. If you require access to these papers please contact the Cabinet Office.

Reference	Date Of Paper
C (89) 11 Copy 13	18 July 1989

SECRET AND PERSONAL

29/6/89.

Lord President

WAR CRIMES INQUIRY

We had a brief word yesterday about the handling of this report. As you know, I announced earlier this week in a Written Answer that I had received it. I am very grateful to you for agreeing to chair a restricted meeting of colleagues most closely involved to take a preliminary look at how we are going to deal with what could be a most difficult issue.

2. I enclose both parts of the report. The first part sets out the background to the inquiry and makes the recommendation in strong terms that we should introduce legislation to bring the UK in line with that of other countries in a comparable position to our own. The second part of the report summarises the material which led experienced and senior lawyers and prosecutors to this conclusion. I should be very grateful if you and colleagues could look at least at those sections of the second part which deal with the three cases (case numbers 11, 35 and 77) in which the Inquiry thinks that prosecution would be justified as well as the whole of part one of the report.

3. I am still waiting for the Attorney General's final confirmation that he believes it will be possible to publish part one of the report without prejudice to any subsequent legal proceedings. If he is able to give this confirmation, we clearly must publish part one of the report, although part two will need

/to remain

SECRET AND PERSONAL

to remain confidential. The immediate question which then arises is whether we should publish the report with a statement of the Government's intentions or simply an announcement that we are considering the position. I have discussed this with my Ministerial colleagues most closely concerned in the Home Office and the argument has been put to me that if we are minded to turn down the possibility of legislation it would be best to say so at once and face the likelihood of a strong but possibly short-lived reaction. This is not my personal view, however; I favour publication now and a statement of the Government's intentions in the autumn, after we have seen how the debate develops.

4. Any solution is bound to be extremely controversial. The decisions to be taken are fundamentally political. I have formed certain preliminary views, but will rehearse them in detail at the meeting you are calling. Broadly speaking, however, my present belief is that it will be extremely difficult to take no action on the report in view of the crimes disclosed in it and the action which has already been taken by other countries. I do not myself favour extradition to the Soviet Union, although that is something colleagues may wish to consider further in the light of their reading of the report. Whether any prosecutions, let alone convictions, would follow if we persuaded Parliament to change the law is a different matter. I nevertheless believe that it will be very difficult for us to justify total inaction.

5. We need finally to consider the question of the timing of an announcement if we did decide to legislate; this is itself of course full of difficulty.

/6. Copies

6. Copies of this go to the Prime Minister, the Foreign Secretary, the Lord Chancellor, the Secretary of State for Scotland, the Attorney General, the Lord Advocate and Sir Robin Butler.

Douglas Hurd.

29 June 1989

SECRET ~~AND~~ PERSONAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

CH/EXCHEQUER	
REC.	19 JUL 1989
ACTION	Mr. Mortimer
COPIES TO	CST
	Mr Monck
	Mrs Case
	Mr Brook

3 July 1989

received in CX office on 19 July.

Dear Colin,

WAR CRIMES INQUIRY

The Prime Minister has seen a copy of the Home Secretary's minute of 29 June to the Lord President, covering the report of the Inquiry into the presence in the United Kingdom of alleged war criminals from the last War and the question of what action should be taken against them.

The Prime Minister's own view is that we should accept the Inquiry's recommendations and legislate to make prosecution in this country possible. However, the matter will need to be discussed by Cabinet before a decision is taken. Whether we publish the report now and delay a statement of the Government's intentions until this autumn depends on how quickly discussion by Cabinet can be prepared and arranged. The Prime Minister's preference would be to publish before the recess with a statement of the Government's intention to legislate (assuming this is the decision of Cabinet).

I am copying this letter to the Private Secretaries to the Foreign Secretary, the Lord Chancellor, the Secretary of State for Scotland, the Attorney General, the Lord Advocate and to Sir Robin Butler.

Yours sincerely,

C. D. POWELL

Colin Walters, Esq.,
Home Office.

POWELL TO WALTERS 3 JUL

SECRET AND PERSONAL

PPP

000381

PRIME MINISTER

CH/EXCHEQUER

REC.	18 JUL 1989
ACTION	MR MORTIMER
COPIES TO	CST SIR T BURNS MR MONCK MRS CASE MR BROOK

18/7

13/7/89.

WAR CRIMES INQUIRY

I chaired a meeting this morning with Douglas Hurd and other interested colleagues to discuss the issues identified in Douglas's minute of 29 June covering the report of the Inquiry into the presence in the United Kingdom of alleged war criminals from the last war and the question of what action should be taken against them. Geoffrey Howe, James Mackay, Malcolm Rifkind, Patrick Mayhew, Peter Fraser and Tim Sainsbury were also present. The meeting also had before it your Private Secretary's letter of 3 July recording your preliminary views.

You will recall that under the law as it stands, British courts do not have jurisdiction over people who may now be British citizens or resident in the UK, but who were not British citizens or so resident at the time when they allegedly committed offences of murder or manslaughter. The Inquiry found evidence sufficient to warrant a prosecution in three of the 301 allegations it investigated, with substantial evidence also in a further three cases. There were another 75 cases in which the Inquiry recommended further investigation. On the basis of its findings, the Inquiry recommended the introduction of legislation to give the British courts jurisdiction over murder and manslaughter committed as war crimes (violations of the laws and customs of war) in Germany or German-occupied territory during the Second World War by persons who are now British citizens in the United Kingdom.

Colleagues present at my meeting expressed surprise at the strength of the evidence uncovered by the Inquiry, which was reflected in the firmness of the Inquiry's recommendations for action. Patrick Mayhew and Peter Fraser confirmed that the process of prosecution will be extremely difficult, not least because many (in at least one case, the majority) of prosecution witnesses live in the Soviet Union and have already made clear their unwillingness or inability to travel to the United Kingdom to give eivdence. If jurisdiction was taken, very difficult decisions would face the prosecuting authorities about whether or not to proceed in individual cases. The Lord Chief Justice was believed to have very strong reservations about the ability of the courts to cope with the complex and lengthy trials which would be involved. The resource implications for all the agencies involved would be very considerable: no provision has, of course, been made to meet these costs. Legislation to extend the jurisdiction of the British courts over the actions in question will be very controversial, not least among some of our own supporters in Parliament.

L PRESIDENT TO PM 13 JUL

SECRET AND PERSONAL

Nevertheless, the meeting agreed that, in the face of the Inquiry's firm findings and recommendations, there was simply no alternative to legislation. None of the alternatives identified by the Inquiry team - deprivation of citizenship, where applicable, and deportation; extradition; or prosecution in military courts under the Royal Warrant of 1945 - would be acceptable. In particular, a decision to extradite the accused to face trial in the Soviet Union was likely to prove even more controversial than a decision to legislate. Tim Sainsbury pointed out that a decision to legislate might bring renewed pressure for action to be taken against UK citizens, including former members of the Armed Forces, alleged themselves to have committed war crimes during the Second World War. But while this may present difficulties for the prosecuting authorities, it was not thought to count against legislating in the manner proposed by the Inquiry.

The meeting therefore agreed that Douglas should put forward a memorandum for consideration by Cabinet next Thursday recommending that legislation should be brought forward next Session in response to the Inquiry report. The precise scope of the legislation will need further consideration when the Bill is prepared, as will the consequences for the rest of the Government's provisional programme. You will recall that the Inquiry report recommends that certain investigations should be put in train in advance of legislation. Colleagues felt, however, that quite apart from the resource implications, it would not be right to put action in hand until Parliament had been able to express a clear view on the legislation question.

Assuming that Cabinet endorses Douglas's proposal, it is his intention to make an oral statement to the House later that day, in the course of which he would indicate that the Government's preliminary view was in favour of legislation as recommended by the Inquiry, but that before bringing forward proposals we would want to take account of the views of Parliament on the issues raised by the report. We would then arrange debates on the report in both Houses probably during the spillover. Part 1 of the report will be published to coincide with Douglas's statement: Douglas is putting to its authors some reservations which Peter Fraser has about one or two references in it which might possibly prejudice a successful prosecution. Douglas will also be writing to John Major about the resource implications of the report, and Douglas and Malcolm Rifkind will be respectively informing the Lord Chief Justice and the Lord Justice General of what is proposed before a statement is made to the House.

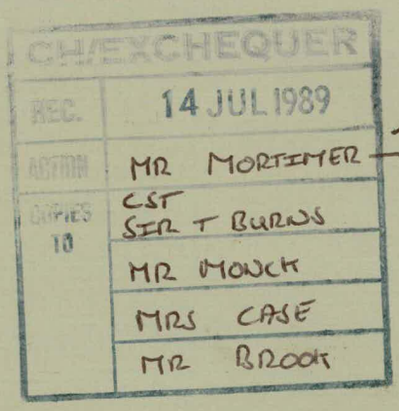
I am copying this minute to Geoffrey Howe, James Mackay, Douglas Hurd, Malcolm Rifkind, Patrick Mayhew, Peter Fraser and Tim Sainsbury, and to John Major, Sir Robin Butler and Philip Mawer (Cabinet Office).

JW

13 July 1989

Approved in draft by the Lord President and signed in his absence.

From: THE PRIVATE SECRETARY



14/7 WITH ATTACHMENT

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

14 July 1989

Dear Alex

ch / To be aware. Recommendations are at flag.

WAR CRIMES INQUIRY

The Home Secretary will be circulating early next week a paper for consideration by Cabinet on 20 July. In view of the difficulty of the issue, he thought colleagues might find it convenient to have before the weekend a copy of Part One of the report by Sir Thomas Hetherington and Mr William Chalmers, with which the paper will deal.

A copy of this letter, with a copy of Part One of the Report, goes to Private Secretaries to members of the Cabinet, the Chief Whip and to Trevor Woolley (Cabinet Office).

Yours sincerely

C J WALTERS

WALTERS TO ALLAN 14 JUL

Alex Allan, Esq
Private Secretary to the
Chancellor of the Exchequer
HM Treasury

WAR CRIMES INQUIRY

Report to the Home Secretary

1989

MEMBERS OF THE INQUIRY

Sir Thomas Hetherington KCB CBE TD QC

William Chalmers Esq CB MC

Secretary: David Ackland

Assistant Secretary: Diane Bacon

To: The Rt Hon Douglas Hurd, CBE, MP
Secretary of State for the Home Department

On 15 February 1988 you appointed us to undertake an inquiry into war crimes with the following terms of reference:

"(1) To obtain and examine relevant material, including material held by Government Departments and documents which have been or may be submitted by the Simon Wiesenthal Centre and others, relating to allegations that persons who are now British citizens or resident in the United Kingdom committed war crimes* during the Second World War;

(2) To interview persons who appear to possess relevant information relating to such allegations;

(3) To consider, in the light of the likely probative value in court proceedings in the UK of the relevant documentary material and of the evidence of potential witnesses, whether the law of the United Kingdom should be amended in order to make it possible to prosecute for war crimes persons who are now British citizens or resident in the United Kingdom;

(4) And to advise Her Majesty's Government accordingly.

(*For the purposes of this inquiry, the term "war crimes" extends only to crimes of murder, manslaughter or genocide committed in Germany and in territories occupied by German forces during the Second World War.)"

We have now completed our inquiry and have the honour to submit our report.

Sir Thomas Hetherington

William Chalmers

16 June 1989

ACKNOWLEDGEMENTS

This Inquiry has been essentially a team effort. We could not possibly have covered the background to war crimes, investigated the allegations which we received and conducted interviews both in this country and overseas had it not been for the invaluable assistance provided to us by a considerable number of people from a variety of agencies here and abroad.

We would like to make special mention of some of the individuals who helped us. The early chapters of the Report are substantially based on papers prepared by academic researchers. Chapter Two relies heavily on the work of Dr Wladyslaw Bartoszewski, of St Antony's College, Oxford, Chapter Three on that of Dr Anthony Glees, of Brunel University, Chapter Four, on that of Dr Martin Dean, and Chapter Five on that of Mr Anton Micaleff, of the University of Malta. In each case the papers were carefully and skilfully prepared and each has also answered queries we put to them courteously and promptly. We are most grateful for their contributions.

Dr Martin Dean was also engaged by us as a full-time researcher into records in this country, in USA, and in West Germany. He was assisted in this work by Miss Angela Routledge, who also accompanied us on most of our visits to the Soviet Union. Her knowledge of the Russian language was a great asset, particularly in a crisis, and she was a most helpful and cheerful travelling companion. Valuable research into German archives was also undertaken by Mr Christopher Lush and Mr Peter Lawrence. Mr Bob Dixon, of the Research Department of the Foreign and Commonwealth Office, was also extremely helpful in searching through German archives. Colonel Professor Gerald Draper provided us with some excellent advice based on his long expertise and knowledge in the field of war crimes.

A team of ex-Metropolitan Police officers, led by Mr John Cass, was responsible for the painstaking, and, from time to time, frustrating work of tracking down, and making enquiries about, persons alleged to be living in this country and to have committed war crimes. As well as Mr Cass, the team consisted of Mr Tim Dainton, Mr David Shephard, Mr Derek Rashbrook and Mr Brian Vickery. Each of them also accompanied us on overseas trips to interview witnesses, and were responsible for the video-taping of the interviews. This involved being in effect the baggage-master of the party, in charge of the equipment. This, like all their other duties, was carried out cheerfully and efficiently. We enjoyed their company, and are most grateful for all they did.

One of the outstanding features of the Inquiry was the development of a spirit of international co-operation and goodwill in this field. We experienced this at all levels, in many places, but in particular we would like to express our thanks for the immense help and encouragement we received from Mr Neal Sher and his colleagues of the Office of Special Investigations in Washington, and for the very considerable efforts made by Mr Vladimir Andreev, and his colleagues of the Office of the Procurator General in Moscow, in providing us with documentary evidence and to make available to us witnesses whom we wished to interview in the Soviet Union. On the visits which we made to Latvia, Lithuania, the Ukraine and Byelorussia we were accompanied either by Mme Natalya Kolesnikova or by Mr Victor Bozhedarov from the Moscow office, and we would especially like to

acknowledge the friendly courtesy and willing help which they extended to us. Likewise, in Israel where many of the survivor witnesses are to be found, the arrangements for our interviews were splendidly organised by Colonel Russek of the Israeli Police and members of his department.

As explained in more detail in Chapter Eight many persons in this and other countries were involved in war crime inquiries before we were appointed and they all willingly gave us the benefit of their experience. We refer particularly to Mr Simon Wiesenthal, the Hon Jules Deschenes in Canada, Mr A C C Menzies QC in Australia, Scottish Television and the All-Party Parliamentary War Crimes Group. We are indebted to them all.

Finally, we owe an immense debt to our Secretariat, seconded to us from the Home Office. The Secretary to the Inquiry, Mr David Ackland, has been a tower of strength. It has been necessary for him to work long hours, far beyond the normal call of duty. He has accompanied us on overseas trips, travelling many thousands of miles. He has also carried much of the burden of the preparation and co-ordination of this Report. The Assistant Secretary, Miss Diane Bacon, has also made a most significant contribution to the work of the Inquiry. She was responsible for organising most of the arrangements for our overseas travel, and the smoothness with which these arrangements were put into effect are largely due to her efficiency. She also accompanied us on some of our trips, where her good humour and ability to gain the confidence of those with whom we were working, were valuable assets. We would also like to express our sincere thanks to Miss Dorothy Allagoa, who carried the whole burden of the secretarial work for the greater part of the period of the Inquiry. Her imperturbability and cheerfulness under pressure were impressive. Miss Sue Mayhew, who succeeded her, has fitted into the team admirably. She too has proved a most willing and good humoured member of it, and has produced successive drafts of the Report with commendable patience and skill. To all of these we are extremely grateful.

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CHAPTER ONE

INTRODUCTION

The original allegations

1.1. On 22 October 1986 Rabbi Marvin Hier of the Simon Wiesenthal Centre (SWC) in Los Angeles wrote to the Prime Minister enclosing a list of seventeen alleged war criminals said to be living in Britain. This list was leaked, apparently from non-Governmental sources, and was published in a number of national newspapers. A photocopy of the list came into the possession of Scottish Television plc who decided to make a television programme about one of those named. When they approached the Embassy of the Soviet Union in London for assistance with their programme, they were given a further list of 34 suspects, which has often been referred to as the Scottish Television (STV) list. This list has also been published, in summary form, in the press.

1.2. The Home Office division responsible examined the lists and attempted to trace those named therein. On 8 February 1988 the Home Secretary was able to tell the House of Commons.

> "There were 17 names on the Simon Wiesenthal list. We believe that 10 may be alive in the United Kingdom. There were 34 names on a list provided through Scottish Television plc, of which we think that seven may be alive in the United Kingdom" (Official Report: Col.32).

Appointment of the Inquiry

1.3. It was on 8 February 1988 that the Home Secretary, in a statement to the House of Commons, announced the appointment of the Inquiry (Official Report: Cols.28-29).

1.4. The Home Secretary commented that the 1000 pages of material provided by the Simon Wiesenthal Centre, which included a 500 page encyclopaedia,

> "would not be sufficient to support a criminal prosecution, even if there were jurisdiction".

1.5. Our terms of reference (Page (i)) have three primary elements: to obtain and examine documentary evidence, to interview witnesses, and to consider the likely probative value of the material so obtained. The Home Secretary continued:

> "The British courts have jurisdiction over British citizens who have committed manslaughter or murder abroad, but do not have jurisdiction over people who may now be British citizens, or who may now live here and have done so for some time, if the allegations relate to events before they became British citizens or before they came to live here" (Official Report: Col.32).

In Scots Law the corresponding term for "manslaughter" is "culpuble homicide" and throughout the report any reference to manslaughter should be regarded as relating to culpable homicide in Scotland.

1.6. We were thus also asked in our terms of reference to advise the Government

> "whether the law of the United Kingdom should be amended in order to make it possible to prosecute for war crimes persons who are now British citizens or resident in the United Kingdom".

The report.

1.7. This report consists of two parts. The first, which we suggest should be published, contains a summary of the work that we have undertaken, background material which provides the context for our work and the decisions that have to be taken, and our findings, conclusions and recommendations. The second part of the report is an Annex containing a summary of each of the 301 cases that we have considered, together with a recommendation whether or not further action should be undertaken. For two reasons we recommend that this should not be published, and that the names of those against whom allegations have been made should not be revealed. If there are subsequent court proceedings in any of these cases, it may be alleged that prior publicity has made it impossible for the accused to receive a fair trial. If there are no proceedings it would be wrong to blacken the names of those alleged to be war criminals, often on the scantiest of evidence.

1.8. We regret therefore that the original seventeen names given to us by the Simon Wiesenthal Centre have been published in this country, particularly since at least one of the persons alleged by the Centre to be a war criminal, apparently on the basis of cold war propaganda, is a case of mistaken identity. Details of that case are included in the first part of this report to illustrate the dangers of making allegations without supporting evidence (Paragraph 8.71). Another name on the Centre's list has now been withdrawn, as the person said to have come to the United Kingdom is merely the namesake of a war criminal who has been tried in the Soviet Union. Similarly we regret the publicity that the list of 34 names given to Scottish Television has received. We have made no attempt to evaluate the evidence, or lack of it, against people on those or other lists whom we have found to be dead, since investigation of such cases would not have helped us to advise the Government whether or not the law should be changed. It may therefore be that others of the allegations are also ill-founded.

1.9. Our work can be divided into two main sections. The first was research into the background of the problem. Most of the allegations that we have received concern people from territories that are now part of the Soviet Union, or from Poland. It seemed to us appropriate to consider the history of these territories in order to understand why such people should serve the Germans and the capacities in which they did so (Chapter Two). It was also necessary to consider the policies of the British Governments of the time and how they were implemented to understand how such persons escaped punishment in the immediate post-war years (Chapter Three) and how they gained entry to the United Kingdom (Chapter Four). In order that discussion of possible legislative changes may be put into perspective, we considered it important that the present options available under English and Scots law be reviewed (Chapter Six), and to put the consideration therein, particularly of retrospectivity, into context we have also included a brief history of international law in this field in our report (Chapter Five). Different approaches to this problem have been adopted by different countries, and some of these are noted in Chapter Seven. Our consideration of these matters has been aided considerably by the researchers we have employed, who produced papers on which we have drawn in writing these chapters. They have also located other background and research materials which have been of use to us, some of which will be passed to the Home Secretary with our report. In their researches they have had access to materials in the Public Records Office, in

Government Departments, and elsewhere. We are particularly grateful to the assistance given to us in this aspect of our work by the Army Historical Branch of the Ministry of Defence, and the Research Department of the Foreign and Commonwealth Office, both of which were also able to help with tracing records of relevance to certain individual cases.

1.10. The second, and more important, aspect of our work, was the investigation of the individual cases before us, some of which concerned more than one suspect. The methodology of this work is briefly reviewed in Chapter Eight but for the reasons given above (Paragraph 1.7) we do not consider that it is appropriate that the detailed results of our investigations should be made public. The Annex containing a summary of each of the cases, together with the 301 case files and other research materials, will be submitted to the Home Secretary together with our report. To help us with our investigations we have employed five retired policemen, who have traced suspects, interviewed those members of the public in this country who have made allegations or who are possible witnesses, and pursued other evidence in this country. They have also videotaped interviews with witnesses abroad.

1.11. Our investigative work proceeded on two main fronts. A very small number of cases were examined in detail. These were selected because some evidence was already available. At the same time it was attempted to follow up all three hundred cases to some extent. Given the length of time that has passed since the crimes were allegedly committed, the difficulties of transliteration of names and the scanty information about the present whereabouts of the alleged criminals, this was not an easy task. Nonetheless considerable progress was made, particularly towards the end of the Inquiry, as our expertise increased. Researchers were also employed to help with this aspect of the work, searching for documents in specific cases in archives abroad, and also conducting general searches in such archives to assist with the work of tracing the suspects.

1.12. It is perhaps appropriate to consider briefly here the terms "war crime" and "war criminal", which are both much used, often in confusingly different ways. Most of what are termed "war crimes" in the Second World War were committed far from the front line and have little to do with the actual waging of war. Most of these crimes would be more appropriately termed

crimes of occupation, since they were committed in occupied territory after the fighting of the war itself had moved elsewhere. Crimes committed in territory occupied by military force were generally known as "violations of the laws and usages (or customs) of war" until replaced by the term "war crimes" at the Nuremberg Tribunal. Since then, this term has itself largely been superseded by the term "grave breaches" of the 1949 Geneva Conventions. The allegations considered in detail by the Inquiry all fall into this category. Our terms of reference require us to consider

> "murder, manslaughter and genocide committed in Germany or in territories occupied by German forces".

Whilst such crimes committed in occupied territory were violations of the laws and customs of war under international treaty law, crimes committed by a state against its own citizens on its own territory were not. It was to encompass such crimes that the concept of "crimes against humanity" was introduced. The allegations that we have considered in detail are crimes of occupation and were already in breach of international treaty law as violations of the laws and customs of war at the beginning of the Second World War.

1.13. Many of the people who came to this country after the war had fought, at some stage, for the Germans against the Russians. Sandwiched between two oppressive states they had reason to do so. Some of these fighting units were designated SS units, but were used simply as part of an army. There are many people who, to retain their civilian jobs, became nominal members of the Nazi party and often the only social or youth organisations permitted were ostensibly part of the Nazi party or one of its youth organisations. Many territories were annexed by the Soviet Union in 1939 under the terms of Stalin's pact with Hitler. When the Germans invaded those territories in 1941, those who stayed in their jobs or who chose to fight with the Germans against the Russian invaders were classed as collaborators or traitors by the Soviet Union, which regarded them as Soviet citizens by virtue of the two year Soviet occupation of those territories. Thus it may be possible to identify many people in this country who served the Germans, or who are "SS men", "Nazis", "collaborators" or "traitors". This does not, however, make them war criminals or imply that they have done anything reprehensible however much some media coverage may imply. We have tried not to conduct this Inquiry as a witch-hunt, but to respond to allegations made to us. We are sympathetic to the representations made to us by the community

associations in this country of people from the Baltic states and the Ukraine which complain that recent press articles imply that all members of such communities are war criminals and suggest that all such people should be investigated. While the non-prosecution of war criminals may be an omission which should now be repaired, it would be altogether wrong to damn all members of certain national communities in this country in the process. That resembles the Nazi philosophy and we should not make the same mistake.

CHAPTER TWO

HISTORY

2.1. Most of the allegations we have received concern persons who were born in what are now the Soviet Baltic Republics, Byelorussia and the Ukraine. At the beginning of the Second World War, parts of Lithuania, Byelorussia and the Ukraine were in Poland. Some understanding of the history of these territories is necessary in order that the events of the Second World War and the allegations that have been made be put into context. It is beyond the scope of this Inquiry to include a detailed account of the history of these territories: borders have moved and allegiances have fluctuated with a rapidity that is startling to an island race whose borders are defined by the sea. The authoritative history of the region has yet to be written: east and west would each like to paint a picture in vivid, but different, colours. The truth is complex. All this account can do is give some hint of that complexity, of the pressures on the inhabitants of these territories sandwiched between two Great Powers and of the reasons why service in the German forces did not appear repugnant to those peoples at that time as it now does to people in Britain . Because of the similarity of their histories, the Baltic states are, in part, considered together. The Ukraine and Byelorussia are considered separately.

Estonia until 1920

2.2. Estonia had no independent history until 1917. During the thirteenth century German knights established themselves in Livonia (Latvia and southern Estonia) while northern Estonia fell under Danish rule, although both Russia and Sweden also made shortlived incursions. In 1346 Denmark sold its sovereignty in northern Estonia to the Teutonic Order. In 1558 Muscovy, the precursor of Russia, invaded northern Estonia, which acknowledged the King of Sweden, who by 1581 had driven out the Russians. In 1561 the Teutonic Order lost Livonia to Poland-Lithuania, which in turn lost it to Sweden in 1629. Sweden ruled all of Estonia until 1721, when it ceded to Russia its Baltic interests, which were divided into three provinces of Russia: Estonia, Livonia and Courland. In the eighteenth and nineteenth centuries Estonia was gradually Russified.

2.3. By the spring of 1917 there was an active nationalist movement and in April the new Provisional Government of Russia gave Estonia a degree of autonomy. After the October Revolution the Estonian National Council, having refused an offer of independence under German protection, declared Estonia to be an independent state. In order to protect Estonia from both the Germans and the Russians, the Council made contacts with the western Allies and on 1 March 1918 Estonia was recognised by Great Britain and France. In August, Russia ceded Estonia to Germany and actions were taken - supported by the local German landowning elite - to incorporate Estonia into the German Empire. In November Russia denounced the treaty and indicated its intention to regain control of the Baltic states. The only force capable of offering resistance was the German army, which had remained in the area after the armistice to maintain order. On 18 November Germany recognised Estonia and later agreed to provide some military aid. By the end of 1918 there was a small Allied presence in the form of missions in Tallin and British naval units and some arms deliveries. After an offensive which captured parts of Estonia, the Soviets declared a provisional government of Estonia, but on 23 December 1918 the Soviet Central Executive Committee passed a resolution recognising the independence of the Estonian Soviet Republic. With the help of the Finns, Estonians quickly repulsed the Soviet invaders. Further complications were caused by the presence of German forces in the area - the Estonian army being strongly anti-German - and the activities of the White Russians, who wished both to overthrow the communist power and to regain the Baltic states for the Russian Empire. When news of the Versailles Peace Treaty reached the region the Allied missions arranged an armistice under which German troops left the region. Estonia was a free state and in 1920 signed a treaty with Russia in which the latter renounced all claims to Estonian territory.

Latvia until 1920

2.4. During the thirteenth century German knights conquered Latvia and ruled there for three centuries, although the wars between the rising states of Lithuania-Poland and Muscovy were fought partly on Latvian soil. Northern Latvia, Livonia, was incorporated into Poland in 1561, taken by Sweden in 1629 and annexed by Russia between 1710 and 1772. Southern Latvia, Courland, fell under Polish suzerainty in 1561 and to Russia in 1795. Latvian national

consciousness grew, as Latvians found themselves subject both to German landlords, a relic of the German period, and to Russian rule.

2.5. In March 1918 Courland was ceded by the Russians to the Germans, who also gained the right to occupy Livonia, which was then ceded to them in August. As in Estonia, the local German elite hoped to incorporate Latvia into the German Empire. In November Russia announced its intention to regain control of the Baltic states and a joint German-Latvian force to oppose this was agreed. In the succeeding Soviet offensive almost all Latvia was captured and a Soviet Republic formed, which was declared independent by Russia in December 1918. Latvians were anti-German, being resentful of the Baltic German minority, powerful landowners, who formed only about 8 per cent of the population. They were increasingly disturbed by German demands: maintenance of a divided national army (part German, part Latvian), Latvian nationality for any German who fought the Bolsheviks for four weeks, favourable conditions for German settlers, and many more. Relations worsened and in mid-April 1919, the Germans inspired a coup which left the non-Soviet parts of Latvia without a Government. The western Allies opposed Bolshevik influence, but were also worried by the increasing German influence, 90 per cent of the Latvian army being German. As in Estonia, the White Russian desire to regain the Baltic states for the Russian Empire was a complicating factor. In May 1919 Riga, the capital, was captured from the Russians, but the advance north of the German forces was halted by the Latvian and Estonian forces. As news of Versailles reached the region, the Allies intervened, and an armistice was arranged under which all German troops were to leave Latvia as soon as possible, and the previous Latvian Government was reinstated. In 1920 Russia signed a treaty renouncing all territorial claims in Latvia.

Lithuania until 1920

2.6. In the middle of the thirteenth century the territory of Lithuania was sandwiched between Prussia and Latvia, both dominated by the Teutonic Order of German knights. The defence of Lithuanian territory caused the awakening of national consciousness and the formation of a nation state. In the fourteenth century Lithuania expanded south and east, dominating the territory left leaderless by the fall of Kiev to the Tatars, and at its height the Lithuanian Empire reached the Black Sea. The marriage of their rulers led to the formation of the Polish-Lithuanian federation, which

defeated the Teutonic Order and destroyed German political power in the Baltic. In 1569 Poland and Lithuania formally became one country, rather than two countries with a single monarch. The areas of the Lithuanian empire outside ethnic Lithuania became increasingly Polonized but were then annexed by Russia from Poland in 1772 and 1793. Lithuania itself was annexed in 1795. Russification followed, although a strong Lithuanian national consciousness remained.

2.7. During the First World War, Lithuania had fallen under German occupation by 1917 and in March 1918 it was formally ceded by Russia to Germany under the terms of the Treaty of Brest-Litovsk, which ended the war between Germany and Russia after the Russian Revolution. When, in November, that treaty was denounced by the Russians, they rapidly regained large parts of Lithuania, and declared a Soviet Republic in the captured territory, which in December was declared independent. In March 1919 Lithuania began a counter-offensive with the help of Germany, and by August Lithuania was free of Russians. In April 1919, however, Vilnius, the ancient capital of Lithuania, whose inhabitants were to a large extent Polish and Jewish, was occupied by Polish forces. As German forces withdrew to East Prussia under the terms of the Versailles peace treaty, Lithuania made overtures to Russia, then engaged in war with Poland, for the return of Vilnius, which was occupied in July 1920 by the Red Army and ceded to Lithuania. Although provisionally recognised as Lithuanian by the western Allies, it fell finally to Poland in October 1920, having changed hands seven times. In 1920 Russia renounced all claims to Lithuanian territory.

The Baltic states between the wars

2.8. In Lithuania, there were only two sizeable minorities, the Poles and the Jews, who together constituted about one fifth of the population. The dispute over Vilnius, and the historical dominance of Poland in the area, caused Polish unpopularity. For a number of reasons there was resentment towards Jews as well. After the First World War many Jews preferred Lithuania to remain within Greater Russia, so that they and the Lithuanians would both be minorities within a larger entity. They feared that in an independent Lithuania they would become the single vulnerable minority. In 1919-1920 some anti-Jewish incidents were justified on the ground of Jewish pro-Bolshevik sympathies. Jews constituted a wealthy, educated middle-

class, and their concentration in urban areas made them conspicuous. They formed a disproportionately large part, as much as thirty per cent, of the Communist party, which was also largely urban based. The party was said to be small, having only 2,000 members. In 1926 there was a coup which turned Lithuania into an authoritarian right wing state which was followed by an increase in anti-semitism. The prominence of Jews in the small local communist party may have created a perception that Jews were involved in anti-state activities. There were 157,000 Jews in Lithuania in 1923, about 7 per cent of the population.

2.9. According to the 1925 census, there were 95,000 Jews in Latvia, about 5 per cent of the population. They were not considered a threat to Latvian independence and, until the 1934 right-wing takeover, enjoyed a considerable degree of freedom. Jewish left-wing parties were stronger than in Lithuania and some members showed a pro-communist enthusiasm in 1940.

2.10. Estonia had only a small Jewish population: 4,500 in 1922, less than half of one per cent of the population. It enjoyed full rights but because of its small numbers did not play a significant role in the country.

The Baltic states at the outbreak of the Second World War

2.11. In 1938-39 the Baltic states had two main foreign policy objectives: to defend their independence against possible Russian or German aggression and to preserve their socio-political systems against communism. The Soviet threat was perceived to be more dangerous, especially by the ruling elite which feared that Soviet invasion would result in mass killings and deportations to Siberia of the upper classes. On 7 June 1939 Estonia and Latvia signed a non-aggression pact with Germany. Lithuania, which had no common border with the Soviet Union, was protected from potential German attack by the Anglo-French guarantees to Poland, which had resumed diplomatic relations with Lithuania in March 1938. In March 1939 Germany invaded the Klaipeda district of Lithuania.

2.12. On 23 August 1939 the Third Reich signed the non-aggression pact with the Soviet Union, which is commonly referred to as the Ribbentrop-Molotov Pact. A secret protocol to this pact delineated the spheres of influence of the USSR and Germany, that is, the limits of their occupation. Estonia and

Latvia fell to the Soviet Union and Lithuania to Germany, although Lithuania was later exchanged for the Polish province of Lublin. Russia was permitted to station the Red Army in those states because of the alleged danger of British naval attack on Baltic shores. Theoretically the Baltic states were not to become communist states.

2.13. Mutual assistance pacts were signed by Estonia and Latvia with the Soviet Union in September and October 1939. These allowed the stationing of Soviet forces on Estonian and Latvian territory but declared that the sovereignty of those states and their political and economic organisations would remain intact.

2.14. Lithuania had no common border with the Soviet Union and regarded Germany and Poland as bigger threats. The Soviet Union invaded Poland in September 1939 to the extent allowed by the pact with Germany and occupied Vilnius for forty days before ceding it to Lithuania. During that time factories and machines were dismantled and transported to Russia. Foodstuffs and goods were either bought or confiscated and soon there was nothing left in the shops. The Soviet secret police, NKVD, with the help of local militias, mainly Byelorussians and Jews, carried out arrests amongst the Polish population and executed policemen and army officers. A mutual assistance pact was signed with the Soviet Union, similar to those previously concluded by Estonia and Latvia.

2.15. Between October 1939 and June 1940 the Baltic States retained their pre-war political structures and pursued quite independent internal policies The occupying Red Army was forbidden all contact with the local population. In mid-June 1940 the Soviet Union demanded the formation of new governments and the right to station unlimited numbers of Soviet soldiers in the Baltic States. The new governments which were formed were still democratic in nature. Soviet forces arrived in large numbers and some political arrests were made. Groups of communists and pro-Soviet elements cheered the arriving Russian troops and attacked police stations and some government buildings. The new governments, which did not include communists in their cabinets, proclaimed collaboration with the Soviet Union, full democratic rights, and the legalisation of the communist parties but did not include socialism and collectivisation in their programmes. Ten days after the change of governments it was announced that there was no longer any place for the

"former bourgeois parties". The local armies, some 500,000 strong, became peoples' armies, with a reorganised structure including political officers, who had ultimate control over the soldiers' behaviour.

2.16. In July 1940 this action was approved by Hitler but its legitimacy was not recognised by Britain or the United States. On July 14-15 elections took place in which only the communist parties were permitted to participate. Communist candidates reportedly polled between 92 and 97 per cent of the votes. Between 1 and 8 August Lithuania, Latvia and Estonia became republics of the USSR. Mass arrests took place of various groups of "counter-revolutionaries", including politicians, former officials, industrialists, civil servants, members of the intelligentsia, the judiciary and press, and land and other property owners. Many were tortured to death and others were sentenced to death or imprisonment during secret trials which contravened the rules of the Soviet legal system. The total number of victims of Soviet rule in the Baltic states between June 1940 and June 1941 is difficult to establish accurately, but it has been estimated that about 23,000 were killed, 35,000 injured and 140,000 deported to Russia where many of them perished. Those deported included past members of all banned organisations and those belonging to the wealthy social classes. The deportation provisions covered all nationalities - Jews, Poles and Germans as well as people of Baltic nationalities.

2.17. In all three republics the Soviet Union relied on the support of the local communist party members and sympathisers, of whom members of the Jewish community constituted a disproportionately large percentage. The Soviet Union was clearly perceived by many Jews as better than the Nazis and there was also anticipation that the Soviets would grant the national and social equality which had been lacking in the Baltic republics, especially under the right wing regimes of the 1930s. Jewish participation in the party was very visible. For example in Lithuania the lowest estimate for 1940 suggests that at least one third of Lithuanian communists were Jewish, and that half or more of the members of Komsomol, the Youth League of the Communist Party, were Jewish. In addition Jews were often better educated than the Gentile Estonian, Latvian or Lithuanian party members and were therefore appointed to many responsible, and therefore conspicuous, positions.

2.18. Jews effectively dominated the middle and higher levels of the party apparatus. Jewish communists were often engaged in the security services, the judiciary and as political officers in the Red Army. On 2 July 1940 the workers' guard, an auxiliary police helping the Soviets in "struggle against counter-revolutionary groups", was established in Latvia. In some areas of the country most of the militiamen were Jewish. The guard carried out the arrests and assisted with the deportation to Russia of the local population.

2.19. A vigorous propaganda campaign was conducted against "religious superstition". No religious denomination was spared this treatment. Church property was confiscated, religious holidays abolished and clergymen imprisoned, deported or killed. The Soviets did not tolerate any independent activities, be they political, social, religious or cultural. It should be stressed that the traditional Jewish population suffered as much as the non-Jewish. After the invasion the Soviet authorities removed Jewish subjects from schools, banned religious ceremonies, closed all Jewish organisations and abolished the use of the Hebrew language. Nonetheless members of the "non-traditional" Jewish population were prominent amongst the supporters and assistants of the occupying Soviet forces.

2.20. Since a growing number of Jews aligned themselves increasingly with the Soviet regime, often occupying conspicuous positions, the Nazi propaganda machine found it easy to encourage Balts to identify the whole of the Jewish community with the hated Soviet invader. This was a significant factor in the Jewish-Gentile relations in the Baltic states which provoked the violent and brutal reactions of some parts of the local population against the Jews when the Soviets withdrew in late June 1941, and may have been one of the reasons for the little help offered to the Jews under the Nazi occupation.

The Baltic states under German occupation

2.21. On 22 June 1941 when the German army attacked the Soviet Union, a Lithuanian corps of the Red Army, together with thousands of Lithuanian civilians, started an uprising against the Soviets and created a provisional government in Kaunas. A few days later Estonia, Latvia and Lithuania found themselves occupied by the Germans who did not recognise any of the provisional governments and declared the Baltic states to be part of Reichskommissariat Ostland. The area was to become a territory for German

settlement, the German minority having been evacuated in 1939-40 according to an agreement between Germany and the Soviet Union. It was planned that the Baltic nationalities would disappear through exile and assimilation. The German occupation was less severe for the local Gentile population than elsewhere in the east. Although Baltic hopes for autonomy were never realised indigenous councils were established and some self government developed in all three states, the councils becoming advisory organs with limited administrative authorities.

2.22. The mass murder of Jews took place in the Baltic States early in the war. Because of the flow of refugees into and out of the area it is difficult to be sure of the numbers involved, but the figures in this paragraph and the next give an idea of the scope of the horrors that occurred. By June 1941 there were 200-250,000 Jews in Lithuania (including 80-90,000 refugees from Poland in the Vilnius region), 80,000 in Latvia and 1,000 in Estonia. Some Jews, mainly former Soviet officials, escaped with the Red Army. They included over 50 per cent of Estonian Jews, 15 percent of Latvian Jews but only 6 per cent of those from Lithuania.

2.23. Between June and November 1941 the mass murder of Jews took place in all three Baltic states: over 170,000 were killed in Lithuania, about 70,000 in Latvia and virtually all in Estonia. At first the local population, encouraged by the German mobile killing squads, engaged in the killing and destruction of the Jewish properties. The most active were the Lithuanians who, according to German reports, killed some 3,800 Jews in Kaunas and 1,200 in other towns. Latvians killed 400-500 Jews in Riga. In Estonia there were no mass killings but a small number of Jewish communists were murdered. During July 1941 the German Einsatzgruppen, operating under the military administration, continued the killings. 15-17,000 Jews were killed in Lithuania. From August 1941 until December 1941 under German civilian rule, the Einsatzgruppen, together with their local helpers, killed about 150,000 Lithuanian and most Latvian Jews. In Lithuania only about 40,000 were left alive, living in three large ghettos. The Latvian Jewish population had declined to around 3,000 and Estonia was "Judenfrei". To help them in these mass killings the Eizsatzgruppen recruited auxiliary police. In Lithuania, anti-Soviet partisans were first encouraged to organise the "spontaneous" pogroms and then were disarmed and disbanded. Those of them who were considered reliable were organised in five police companies. They operated

first in Kaunas and from 13 July 1941 also in Vilnius, where 500 Jews were seized and killed by the Lithuanians every day. Einsatzkommando 3, with its Lithuanian auxiliaries, killed nearly 47,000 Jews in less than three months. In Latvia the auxiliary units proved to be equally efficient at killing, although one unit had to be disbanded after being caught stealing the property of the killed Jews. There was also a local unit in Estonia which killed the small number of remaining Jews. In addition, Gentiles were also killed, especially those associated with the Soviet authorities.

2.24. In general the majority of the population of the Baltic remained passive. There are very few accounts of help being offered to the Jews although there are reports of a few people who were killed whilst doing so.

2.25. The Baltic auxiliaries were horrifyingly enthusiastic and competent in the task that had been set them. As a result they were later used in other parts of the occupied east: in Byelorussia and in Poland, where they liquidated the ghettos, carried out deportations to the death camps, guarded camps and fulfilled other duties for the SS.

2.26. During 1942 there were few massacres of the Jews who remained, who were needed for the Nazi war effort. Early in 1943 small ghettos and camps were liquidated and on 21 June 1943 Himmler ordered the liquidation of the remaining ghettos. The ghetto in Vilnius was liquidated on 23-24 September 1943, some inhabitants being sent to Estonia and Latvia to work and others to extermination camps. Some were killed, some hid in non-Jewish areas or fled to the forests. Some were sent to labour camps. Final liquidations took place until the time of the German retreat in 1944. It is thought that no more than 3,000 Jews survived in Lithuania, although an unknown number of those who were sent to concentration camps elsewhere lived. During the summer of 1943 the Nazis introduced greater terror and punitive measures against the local Gentiles who refused to fight the Red Army. The local population, which had become disenchanted with Nazi rule and realised that autonomy was not to be granted to them, began actively to oppose the Nazis. This, however, was too late to affect the fate of the Jewish population.

2.27. Towards the end of the war many Balts were conscripted into Waffen SS units to fight on the Eastern front: Estonian, Latvian and Lithuanian legions were formed. Amongst the conscripts, however, were volunteers and

members of the auxiliary units that had been so successful in the elimination of the Jews.

Byelorussia

2.28. Byelorussia has never existed as an independent state. The minor principalities of the area came under the suzerainty of Kiev until its overthrow by the Tatars in 1240, when the territory fell under Lithuanian control. The union of Poland and Lithuania in 1569 led to increasing Polish influence until the three partitions of Poland (1772-95) in which Catherine the Great annexed Byelorussia, which was not acknowledged as a separate region but administered as part of Russia. Extremely backward, the territory lost 1½ million people by emigration, mainly to Siberia or the United States, in the fifty years prior to 1917.

2.29. After the February Revolution in Russia in 1917 a number of competing nationalist movements existed, some of them pro-communist. After the Treaty of Brest-Litovsk the German army entered Minsk and announced their intention of creating a Byelorussian state, which was to enjoy the protection of the Central Powers. Byelorussian governments were formed, neither of them very representative, in Vilnius and in Minsk. In March 1918 the Byelorussian National Republic was declared and diplomatic missions opened in Russian cities and some foreign capitals. The Republic, although under some control of the German military, was independent for about ten months. After the fall of Germany and Austria, Byelorussia was again partitioned between Poland and Soviet Russia. This remained the position under the peace treaty of 1921 ending the Polish-Russian war.

2.30. In Soviet Byelorussia a degree of Byelorussian nationalism was at first tolerated. By the late 1920s however such nationalism lost its propaganda value and local leaders were arrested, deported or liquidated. Enforced collectivisation caused famine and social disturbances. Mass deportations and executions of anyone who could lead the Byelorussians followed. The Soviet attack on Poland in 1939 resulted in the reunification of both parts of Byelorussia, which facilitated a revival of Byelorussian nationalism. This was again followed by a new wave of terror and intimidation, to prepare the ground for the election in western Byelorussia, which was aimed to join western Byelorussia legally to the Soviet Union by

means of a popular vote. The outcome was of course positive. Prior to the annexation anti-communism had been strong among the population but centred on religious, economic and social issues. The reunification of the state helped to rekindle Byelorussian nationalism and to concentrate anti-communism around that ideal. Some Byelorussians began to look to Germany, which had created the short lived independent Byelorussian state after the First World War, to support these interests.

2.31. The German takeover of Byelorussia after June 1941 was greeted with jubilation by the local population. Presumably it was hoped that this was a prelude to the formation of a Byelorussian state and an end to the repression which had been suffered under Soviet rule. The enthusiasm was however short lived.

2.32. Einsatzgruppen began to operate in Byelorussia and by December 1941 had killed 19,000 people, most of whom were Jewish. By the end of July 1942, around 50,000 Byelorussian Jews had been killed. The mass killing of Jews shocked the Byelorussian population, which refused to become involved. It proved impossible to stage "spontaneous" pogroms against the Jews. Many of the killings by the Einsatzgruppen were performed with the aid of the Baltic auxiliaries, particularly Lithuanians, who had by then finished the mass killings in the Baltic. Byelorussians did not form auxiliary units to assist the SS squads in killing Jews as the Baltic nations had done. By mid 1942 the Byelorussians were turning steadily against Germans. This was related to a number of issues, some of which had been in existence since the German occupation. These included peasant frustration with the lack of substantial agrarian reform, the mistreatment of prisoners of war, the continuing Nazi brutality against Jews and the general maltreatment of various other groups. It also began to appear that Germany was losing the war. There was an increase in partisan activities. The Germans, together with the local police units that they had formed in the towns and villages of Byelorussia, began "reprisals" against the Byelorussian population, destroying whole villages and slaughtering all the inhabitants if it was thought that the villagers had aided the partisans. These actions, together with the realisation that Germany had no plans for the creation of an independent Byelorussia, led to more opposition, which was put down with incredible brutality. It is said that almost one quarter of the 1939 population of what is now Byelorussia was killed during the German occupation.

The Ukraine

2.33. Like Byelorussia, what is now the Ukraine came under the suzerainty of Kiev until it fell to the Tatars. Lithuanian and Polish expansion into the sparsely populated Ukraine (literally: borderlands) imposed nobles on the peasants for the first time. Those who objected, who became known as Cossacks, meaning outlaw or adventurer, fled further south and east. In the sixteenth century both Poland and Russia established Cossack military colonies in the remoter parts of the Ukraine as a protection against Tatar incursions. In 1569 the Ukraine was incorporated into Poland, a move bitterly resisted by the Cossacks, who objected to the serfdom imposed upon them by the Poles. This resistance can be seen as the beginning of a Ukrainian national consciousness that has persisted until the present day. Ukrainian resistance to Polish rule culminated in an insurrection in 1648-52, and an appeal to Tsar Alexei for protection, which led to two Russo-Polish wars and the eventual partition of the Ukraine between Russia and Poland. Appeals by the western Ukraine to Sweden, and by the eastern Ukraine to the Ottoman Empire led to wars, but not to the restoration of a separate Ukrainian state. Apart from Galicia, part of the Polish Ukraine which came under Austrian rule in 1772, the Ukraine was united in Russia after the second partition of Poland in 1793. It was administered as part of Russia, Ukrainian nationalism was suppressed, and even the name of the Ukraine disappeared.

2.34. The Ukraine had a better developed national consciousness than Byelorussia and the benevolent Austrian rule in the western Ukraine between 1772 and 1914 had created a Ukrainian elite which had participated in the political process. This helped create political expectations for an independent Ukraine and to assist in its creation. After the February revolution in Russian, a Central Rada or council was formed as a national Ukrainian representative body, its goal being autonomy for the Ukraine. The Central Rada was recognised by the Russian provisional government in July 1917 and the Ukraine as a separate national and political entity. After the October revolution, the Central Rada announced the establishment of a sovereign Ukrainian state, theoretically in federation with Russia.

2.35. In December 1917 Soviet Russia invaded that part of the Ukraine controlled by the Rada, which in January 1918 declared the complete independence of the Ukraine. The Rada took part in the Brest-Litovsk negotiations and the Ukraine was recognised by the Central Powers. A request for military assistance led to the occupation of the state by the Germans and Russian recognition of Ukrainian independence. A conservative pro-German coup followed.

2.36. The defeat of the Germans in the west led to an uprising in December 1918 which reestablished the Ukrainian National Republic, under a collective government, the Directory of the Ukrainian Republic. It was plagued by both domestic problems and those resulting from Bolshevik, White Russian and Polish territorial ambitions. In April 1920 the Ukrainians renounced any claim to the western Ukraine in return for Polish military assistance. Petliura, the commander of the armed forces, became head of the government. The Polish Ukrainian forces advanced on Soviet-occupied Kiev but by August 1920 the Red Army counter-offensive had reached Warsaw. In the armistice agreement Poland recognised the Ukrainian Soviet republic and broke off relations with the Directory. The subsequent peace treaties divided Ukrainian territory between Soviet Russia and Poland.

2.37. Legally the Soviet Ukraine was a sovereign state in partial federation with Soviet Russia but by the end of 1923 the Soviet Union was created and the Ukraine became one of its republics. In the next 10 years there was a deliberate attempt to rally support for the communist party by increasing support for the Ukrainian language, culture and intellectual life.

2.38. By the late 1920s Stalin started to introduce the policy of forced collectivisation which encountered strong opposition in the countryside. In December 1929 he announced the elimination of the landowning peasants, the kulaks, as a class, who by that stage already had very limited property holdings. Faced by overwhelming opposition from the peasants, the Soviet authorities had by 1930 to abandon full compulsory collectivisation. At the same time it was decided to destroy the Ukrainian national culture and arrests, trials and purges of the Ukrainian intelligentsia took place. In order to destroy the social base of Ukrainian nationalism by subjugating the Ukrainian peasantry, Stalin demanded impossibly large deliveries of grain from the Ukraine. It was a policy of deliberate starvation. Millions of

people died as a result. In addition an intense anti-religious campaign was waged against all denominations.

2.39. In 1937 and 1938 tens of thousands of people were killed and hundreds of thousands of Ukrainians deported to hard labour as part of the purges.

2.40. Under the Ribbentrop-Molotov pact the Soviet Union occupied the Polish Ukraine in 1939. The Germans had for generations seen the Ukraine as a counterweight to Russia and Poland and as a possible bridge to the Caucasus. They toyed with the idea of creating a Ukrainian state in close alliance with Nazi Germany particularly because they regarded Ukrainians as racially superior to other Slavs. The Ukraine was to become the strongest element in the anti-Soviet protective zone. During the war years there would be an interim phase during which the Ukraine would provide Germany with food and raw material. A variety of Ukrainian emigre organisations were active in Germany and their involvement in the imminent occupation was discussed. It was clear that they were being prepared to organise a revolt or an uprising behind enemy lines: there was training in sabotage, propaganda and intelligence techniques. They were led to believe that an independent Ukraine, under German patronage, would be created.

2.41. After the German attack on the Soviet Union the NKVD deported thousands of people to the interior of Russia and killed thousands of Ukrainian and Polish political prisoners in Lvov where Ukrainian nationalists in turn started a revolt which was suppressed by the Red Army and the NKVD. In the summer of 1941 the Germans occupied the Ukraine. In an attempt to force the Germans' hand, Ukrainian nationalists staged a coup in Lvov in late June 1941 and announced the establishment of a Ukrainian state. All German thoughts of a Ukrainian state were abandoned and the Ukraine became the Reichskommissariat Ukraine by November 1941.

2.42. At first under German military occupation some Ukrainians were able to assume responsible positions in local administration and Ukrainian education and cultural life were permitted. With German civilian rule this ended: the Ukrainian nationalist leaders were disposed of and some Ukrainian political and cultural leaders were killed. In November 1941 large scale deportation of Ukrainians to work in Germany began. The Germans made no

effort to provide food or employment for the local population and the Gestapo was active against politically suspect Ukrainians.

2.43. There was a sense of relief at the Soviet withdrawal from Ukrainian territory and a hopeful and positive attitude towards the Germans. The Russian withdrawal was followed by pogroms against Jews by Ukrainians, even before the Germans had arrived and established control. It is estimated that around 30,000 Jews lost their lives during the first wave of killings in which Ukrainians participated. In August 1941 a Ukrainian voluntary militia was formed and began to cooperate with the Germans. They participated in the mass murders of Jews which were carried out systematically village by village and town by town in following years. Such units also participated in guarding extermination camps in Poland, in deportations from the ghettos, and in ghetto clearing operations.

2.44. In the spring of 1943 a Ukrainian volunteer SS division, the Galicia division, was formed on the initiative of the Ukrainian nationalists. The Ukrainian leadership hoped that by actively fighting the Red Army they would be able to gain concessions from the Nazis, at the least better treatment of Ukrainians, or at best the creation an independent state. The Nazis gave a commitment that the division would be used exclusively on the Eastern Front. Over 80,000 Ukrainians registered out of whom 19,000 were enlisted. The division fought the Red Army in Galicia in 1944, and later in Slovakia. It appears that many of those who fought with the Division had previously been members of the police or militia responsible for the deaths of Jews and others throughout the Ukraine.

2.45. Eventually disillusion with the Germans grew and hopes for an independent Ukraine faded. More people joined partisan groups, some of which were Soviet controlled and some of which were nationalist controlled.

Summary

2.46. By 1920, independent states had been formed in Lithuania, Latvia and Estonia, and Soviet Russia had no territorial claims in the area. The freeing of the area from Russian domination was largely due to the activities of German forces, Germany having territorial designs on the area. However, having forced the Russians to retreat, Germany was itself obliged to withdraw

under the terms of the Versailles treaty and thus became, unintentionally, the de facto liberator of the area from foreign influence. Despite distrust of German motives and of the wealthy Baltic German elite, sympathy for the German 'liberators' remained, particularly at times of later Soviet territorial aggression. After the First World War Byelorussia and the Ukraine also formed independent states with the help of the Germans, although neither of the new states were long lived: they were quickly divided between Poland and the Soviet Union. Nonetheless after the Ribbentrop-Molotov pact when all five countries were again occupied by the Soviets, they could all look back to a time when they had, thanks to German help, become independent.

2.47. In the inter-war years repression in the Soviet controlled parts of Byelorussia and the Ukraine been brutal. Forced collectivisation had led to famine and famine had also been deliberately induced. National leaders had been deported or executed. There had been religious persecution of all faiths. The Soviet occupation of the Baltic in 1939-41, although short, was brutal. Balts were deported and killed in large numbers and there was considerable suppression of religious and civil rights. In all five countries this oppression was another reason for welcoming the Germans, who, it was thought, could not be worse than the Russians.

2.48. In the Baltic Jews held prominent positions in the communist and other left wing parties and rose to positions of authority in the short lived Russian occupation. Their prominence was increased by their being urban and better educated than their Gentile fellow party members. Although relatively few Jews were active communists and other Jews suffered like the Gentile Balts under the Russian regime, Jews were associated with, and blamed for, many of the excesses of the Soviet period. This gave the Nazi propagandists a fertile field in which to sow their anti-semitic ideas.

2.49. Balts collaborated with the Germans in killing their Jewish fellow citizens and because of their successes in that task they were also employed to kill the Byelorussian Jews. In the Ukraine, the Ukrainian militia helped to kill the Jews and took part in actions against partisans. As in Byelorussia, raids against villages suspected of harbouring partisans frequently resulted in the destruction of the entire village and the slaughter of all its inhabitants. In the later stages of the war people from

each of these five territories joined military units to fight the Russians. Some were volunteers, others were conscripted. Many of those who did so had previously been auxiliaries or militia involved in the killings of Jews, "partisans", and "dissidents".

CHAPTER THREE

PUNISHMENT OF WAR CRIMINALS: THE BRITISH GOVERNMENT VIEW

3.1. This chapter considers British policy towards the punishment of war criminals. During the Second World War a number of commitments were made to track down, return and punish war criminals and traitors. It was recognised that to be successful such campaigns had to be swift and efficient: delays would prevent a return to normality in Europe and would lose the support of the British and German peoples. Lack of planning meant that at the end of the war the British army was ill-equipped to investigate or prosecute war crimes, and subsequently sufficient resources were not made available to the investigators and prosecutors. Consequently, as had been predicted, for a variety of reasons, public and political opinion turned against the continuation of trials and Britain's activities in this field in occupied Europe had come to an end by 1950, by which time responsibility had been handed to the emerging Federal Republic. Little thought was given to the problem of war criminals in the United Kingdom as this was believed to be unlikely to arise. No consideration is given herein to trials of Japanese war criminals, which fall outside the Inquiry's terms of reference.

THE DECISION TO PUNISH

3.2. As the Second World War progressed news began to reach the west of the terrible atrocities committed by the German forces and their hirelings against Jews and other civilians, and against prisoners of war, particularly on the Eastern Front. On 25 October 1941 the Prime Minister, Mr Churchill, declared that:

> "Retribution for these crimes will henceforward take its place among the major purposes of this war"

President Roosevelt made a similar announcement on the same day and Allied leaders made frequent similar statements in the following years.

3.3. The view expressed in Churchill's declaration was not, however, one shared by all his Cabinet colleagues. He had the support of the Lord Chancellor, Lord Simon, despite his having earned a reputation as an appeaser before the war, but Eden, the Foreign Secretary, and Grigg, the Secretary for War, together with their officials, remained unenthusiastic.

Both departments, but particularly the Foreign Office, tried to ensure that what they regarded as the damage done by Churchill's pronouncements was limited by establishing the minimum commitment consonant with the Prime Minister's words. The attitude of these two departments is partly explained by the War Office's conviction that the end of the war would bring an armistice with German troops still occupying territory and that massive reprisals would be inflicted upon them by the local populations which would largely obviate the need for trials. The Foreign Office expected to be able to bring pressure to bear on future German Governments to carry out the necessary punishments themselves.

3.4. In London on 13 January 1942 the Governments-in-exile of Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland and Yugoslavia, and the Free French, comprising the Inter-Allied Commission on the Punishment of War Crimes, issued the Declaration of St James's. This noted the horrors committed by Germany and her allies and recalled that international law, and in particular the Hague Convention of 1907 on the laws and customs of land warfare, did not permit belligerents in occupied countries to commit acts of violence against civilians and went on to:

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

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

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

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

3.5. On 6 July 1942 the British War Cabinet approved a note by the Prime Minister concerning the establishment of a United Nations Commission on Atrocities. This proposal resulted from discussions between Churchill and Roosevelt, without consultation with the other Allies.

3.6. The Cabinet also approved in general terms a policy on war criminals, the general principles of which were outlined in a note sent on 6 August 1942 to Allied Governments. This stated that policy and procedures, including the nature of the judicial tribunals, should be agreed between the Allied Governments. It also proposed that the punishment of war criminals should be disposed of as soon as possible after the war, in order:

"(a) to ensure rapid justice

(b) to prevent so far as possible wronged individuals from taking the law into their own hands and,

(c) to prevent trials dragging on for years and so delaying the return to a peaceful atmosphere in Europe."

The note continued:

"It may be desirable ultimately to fix a limited period after the termination of hostilities during which all trials should be instituted."

The note also proposed that each Allied Government should draw up lists of the criminals against whom it wished to proceed and to prepare evidence against them. Provision was to be included in the armistice terms for the immediate capture or surrender of war criminals, since after the First World War leaving such provision to the peace treaty had made it impossible to obtain custody of the persons required. Both the armistice and the peace treaty should require the surrender of any war criminals who were only identified later. The note drew a distinction between enemy war criminals and traitors. The latter were to be dealt with under their own national law, although some inter-Allied arrangements for surrender might be required. Finally it was also proposed that:

"In dealing with war criminals, whatever the Court, it should apply the existing laws of war and no specific ad hoc law should be enacted."

3.7. Answering a debate in the House of Lords on 7 October 1942 concerning the punishment of war criminals the Lord Chancellor, Lord Simon, said that there were two prerequisites for bringing a prosecution: the presence of the

accused person before the tribunal and sufficient evidence that the alleged crime had been committed. With regard to the former he reiterated the need for the surrender of alleged war criminals to be included in the terms of the Armistice. The gathering of proof, he said, would be tackled by a United Nations Commission for the Investigation of War Crimes. (Usually referred to as the UN War Crimes Commission, UNWCC). This was a development of Churchill and Roosevelt's plan for a Commission on Atrocities (Paragraph 3.5). The Lord Chancellor did not give a view on the nature of the tribunal or tribunals that would, in due course, hear war crimes cases.

3.8. On 30 October 1943, Roosevelt, Stalin and Churchill - again disregarding the views of Eden and the Foreign Office - signed the Moscow Declaration:

> "At the time of the granting of any armistice to any Government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for, or have taken a consenting part in, the above atrocities, massacres and executions, [this refers to details of atrocities listed before the Declaration proper] will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of those liberated countries and of the free Governments which will be created therein. Lists will be compiled in all possible detail from all those countries, having regard especially to the invaded parts of the Soviet Union, to Poland, to Czechoslovakia, to Yugoslavia and Greece, including Crete and other islands, to Norway, Denmark, the Netherlands, Belgium, Luxembourg, France and Italy.
>
> Thus, the Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian or Norwegian hostages or of Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland or in territories of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged.
>
> Let those who have hitherto not imbrued their hands with innocent blood beware lest they join the ranks of the guilty, for most

assuredly the three Allied Powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done".

It was made clear that notwithstanding the commitment to return war criminals to the sites of their crimes, major criminals whose offences had no particular location would be punished by the joint decision of the Governments of the Allies.

3.9. The Moscow Declaration did not specify what would be the fate of the major war criminals, whose offences had no particular location. In a note to the War Cabinet dated 9 November 1943, Churchill proposed that they should be declared 'world outlaws' and be shot without trial. Expecting that such major criminals would number 50, or 100 at the most, and would include the 'Hitler and Mussolini gangs and the Japanese War Lords' Churchill went on:

> "The persons named on the approved list will, by solemn decree of the 32 United Nations, be declared world outlaws. No penalty will be inflicted on anyone who puts them to death in any circumstances. No country will be allowed to harbour them without incurring alienation in effective forms from the life of the United Nations. As and when any of these persons fall into the hands of any of the troops or armed forces of the United Nations, the nearest officer of the rank or equivalent rank of Major-General will forthwith convene a Court of Inquiry, not for the purpose of determining the guilt or innocence of the accused, but merely to establish the fact of identification. Once identified, the said officer will have the outlaw or outlaws shot to death within six hours and without reference to higher authority".

Roosevelt concurred with this plan, but Stalin did not. As a consequence the International Military Tribunal at Nuremberg was set up.

OCCUPIED EUROPE: THE TOOLS FOR THE JOB

3.10. To bring war criminals to trial three things were necessary: evidence, suitable tribunals before which the alleged war criminals could appear, and the presence of the accused before the tribunal. The British Government participated in arrangements to achieve each of these.

United Nations War Crimes Commission

3.11. The Lord Chancellor's statement on 7 October 1942 announcing the formation of the United Nations War Crimes Commission (Paragraph 3.7) coincided with a similar one being made by the President of the United States. Lord Simon told the House of Lords that it was a proposal of the British and United States Governments which had been approved by the representatives of the European Governments-in-exile established in London and that the views of the Soviet Union, China, the Dominions and India had been sought, but by then not received. (Official report, Col 585). He omitted to say, however, that the proposal had been submitted as a fait accompli to the Soviet Embassy in London, which then had three days, the first two being the weekend, in which to obtain a response from Moscow. The lack of consultation may have been due to continuing distrust of the Soviet Union, which until two years previously had been the beneficiary of a pact with Germany which divided eastern Europe between them. During the course of the following year negotiations continued to establish the Commission, and its constituent meeting was held in London on 20 October 1943. Participating countries were the United Kingdom, Australia, Belgium, China, Czechoslovakia, France, Greece, India, Luxembourg, the Netherlands, Norway, Poland, the United States and Yugoslavia. Canada and Denmark later became members.

3.12. It was realised that the UNWCC could not be fully effective without the cooperation of the Soviet Union. The desire to include the Soviet Union as a member was the primary reason for the year-long delay between Lord Simon's announcement and the constituent meeting. The United Kingdom and the United States were, however, not prepared to agree to the Soviet Union's insistence that separate membership of the Commission should be granted to the seven Soviet Republics on whose territory the war had been fought (the Byelorussian, Estonian, Karelo-Finnish, Latvian, Lithuanian, Moldavian and Ukrainian Republics). The Soviet Union argued that if the British Dominions, which had not been invaded and had not suffered German atrocities on a massive scale, were granted separate representation, such representation should also be granted to the Soviet Republics which had suffered more than any other country, with the exception of Poland, at the hand of the German

invader. This not wholly unreasonable proposition was, however, unacceptable to the other members of the Commission. The Commission, recognising the importance of the participation of the USSR, made further enquiries in 1944, but was told that Soviet participation was still dependent on the representation of the seven Republics. In 1946 Soviet participation was invited on the same basis as Soviet representation in the United Nations, that is representation for Byelorussia and the Ukraine, in addition to that of the Soviet Union. In January 1947 this too was declined.

3.13. The Commission, realising that cooperation with the Soviet authorities was essential to its work, tried to promote an exchange of material. In April 1946 the Commission sent a complete set of its lists to the Soviet representative on the Allied Control Commission, and thereafter regularly sent its lists. These did not, however, include material gathered by the British about crimes committed in the territories annexed by the Soviet Union in 1939. It was argued that, as the Soviet Union was not a member of the Commission, and as the legal occupation of these territories was in dispute, it would be inappropriate to supply such material to the Commission. The Soviet authorities did not supply material in response to the Commission's lists as had been hoped.

3.14. The Commission was intended to serve two primary purposes

(i) to investigate and record the evidence of war crimes, identifying where possible the individuals responsible

(ii) to report to the Governments concerned cases in which it appeared that adequate evidence might be expected to be forthcoming.

In addition, however, it also provided a forum for the development of the legal concept of violations of the laws and customs of war.

3.15. The Commission gathered evidence from the national committees of the United Nations that constituted it, and, where the Commission was satisfied that a case was made out, the names of the suspects were added to the lists which were issued to members. Persons on such lists were to be tried by the country which had submitted the name to the United Nations.

3.16. The Commission was wound up on 31 March 1948. It had examined 8,178 charges involving 36,000 persons and issued 80 lists of war criminals. Lord Wright, by then UNWCC Chairman noted that "the closing of the Commission would not, however, imply that individual States could not, in their own countries, arrest and punish persons whom they had charged as war criminals". UNWCC files remain available to member states at the United Nations headquarters in New York. The 40,000 files include over 20,000 in which it was thought that sufficient evidence was available to allow a prosecution to take place.

Central Registry of War Criminals and Security Suspects

3.17. The Central Registry of War Criminals and Security Suspects (CROWCASS) was created by the British and Americans in Paris early in 1945. It registered those who were required by the Allies for any reason - as war criminals, as threats to security or as having held high rank in German organisations. Its lists, which incorporated those of the UNWCC, were issued to those in charge of internment camps, to war crimes investigators and to the intelligence services. Unlike UNWCC files, the CROWCASS lists did not give full details of the reasons why a particular suspect was wanted, but consisted of lists of people to be arrested and where they were required. It was also hoped to register those people held in internment camps so that cross-reference could be easily made, and suspects located. The information submitted to CROWCASS was to be held centrally on punched cards, to make its analysis and dissemination easier.

British Organisations

3.18. During the war, British Government Departments - the Treasury Solicitors' Department, the War Office, the Foreign Office - all began compiling lists of war criminals. The emphasis was, however, on crimes committed against British subjects, and relatively few names were collected. In March 1945 the War Office formed a section to coordinate such work.

3.19. A British War Crimes Group was set up under the auspices of the British Army of the Rhine (BAOR) in occupied Germany to investigate alleged war crimes.

3.20. The British Government participated in a variety of schemes to allow the prosecution of war criminals. Prosecution of major war criminals was possible at the International Military Tribunal (IMT), set up under the terms of the London Agreement of 8 August 1945 and the Charter annexed to it. Other alleged war criminals were to be tried in the courts of the individual Allies, and to this end trials were held in the British zone of occupied Germany under the authority of the Royal Warrant of 14 June 1945. In addition, Control Council Order Number 10 was an Allied law, which also allowed for trials in occupied Germany.

International Military Tribunal

3.21. The Nuremberg trials were established in accordance with the London Declaration of 8 August 1945 of the Governments of the United Kingdom, France, the Soviet Union and the United States of America. This noted that the Moscow Declaration had been "without prejudice to the case of major criminals whose offences have no particular geographic location and who will be punished by the joint decision of the Governments of the Allies" and established an International Military Tribunal for the trial of such criminals (Paragraphs 5.15 and 5.19). (It should be noted that a similar Tribunal was set up at Tokyo. The proceedings of that Tribunal have, however, no relevance to the work of this Inquiry).

Trials in the British zone

3.22. The Royal Warrant of 1945 made

> "provisions for the trial and punishment of violations of the law and usages of war"

which were committed during any war in which the United Kingdom was engaged after 2 September 1939. Annexed to the warrant were the regulations for the trial of war criminals (Paragraphs 5.15 and 6.3-6.5). Trials were to be held before Military Courts. Some investigators collected details and evidence of crimes and names of suspects were added to CROWCASS. Other investigators concentrated on searching for suspects. The Judge Advocate General's Branch was responsible for bringing prosecutions.

3.23. Control Council Order Number 10 was an order issued by the quadripartite Control Council in occupied Germany. Under its authority a limited number of war crimes trials were held in military government courts in the British zone, alongside those held in Military Courts under the authority of the Royal Warrant.

SECURING THE PRESENCE OF THE ACCUSED

3.24. If a case was to be heard, it was necessary that the accused be brought before a court. After the First World War there had been an intention to hold war crimes trials, but little was done as the accused were not surrendered to the Allies. The few who were tried were tried before German courts and either received derisory sentences or were acquitted. Most of the handful who did receive terms of imprisonment were allowed to "escape" from custody before finishing their sentences (Paragraph 5.11). A number of steps, in which Britain participated, were initiated to ensure that the same thing did not happen again.

Peace treaties

3.25. Article 11 of the Unconditional Surrender of 5 June 1945 imposed upon the German authorities and people a duty to apprehend and surrender to the Allies "all persons from time to time named or designated by rank, office or employment" by the Allies as "being suspected of having committed, ordered or abetted war crimes or analogous offences" and "any national of any of the United Nations who is alleged to have committed an offence against his national law". In 1918 an armistice had been concluded at a time before much of Germany had been occupied. By contrast in 1945, there was unconditional surrender, Germany was completely occupied by the Allies, and virtually all her fighting men were detained in camps. In theory, at least, alleged war criminals were much more directly under Allied control than they had been in 1918. Article 29 of the surrender document with Italy made similar provision. The 1947 Peace Treaty with Italy provides that Italy "shall take all necessary steps to ensure the apprehension and surrender for trial of ..... persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity". As yet, no peace treaty has been concluded with Germany.

The Commonwealth - Soviet pact

3.26. After the Second World War German citizens were virtually prohibited from coming to the United Kingdom. In consequence most of the allegations that have been made to the Inquiry concern persons from territory that is now part of the Soviet Union. The arrangements which were made for the return of Soviet citizens from this country and from occupied Europe to the Soviet Union are thus more important to our work than the terms of Germany's unconditional surrender. Normally prisoners of war and other foreign nationals who fall into the hands of a belligerent are repatriated as soon as possible after the cessation of hostilities. This was a stipulation of the 1929 Geneva Convention on the Treatment of Prisoners of War. This, however, presupposes the desire of the prisoner of war to return, which was by no means clear in the case of Soviet citizens who had been captured in enemy uniform. In its circular letter of 6 August 1942 to Allied Governments (Paragraph 3.6) the British Government made clear its belief that it was the responsibility of each of the Allies to deal with its own traitors and that some arrangements for such surrender would need to be made. No protection was extended to such persons under the terms of the 1929 Convention. During the war it was feared that repatriation to the Soviet Union of prisoners of war who had fought in German uniform might provoke retaliation against Allied prisoners held by the Germans. This fear diminished as the war progressed and on 6 October 1944 authorization was given by the Combined Chiefs of Staff to hand over Allied nationals who had served the enemy and were thus not entitled to prisoner of war status. On 11 February 1945 the Yalta Agreement, also called the Soviet-Commonwealth Repatriation Agreement or the Crimea Agreement, signed by the United Kingdom, on behalf of the Commonwealth, and the Soviet Union, made arrangement for the repatriation of Soviet citizens liberated by British and Commonwealth forces and of British subjects (including Commonwealth nationals) liberated by Soviet forces. It had no territorial limitation and no time limit.

3.27. An additional secret agreement made at Yalta gave liberated Soviet citizens in the United Kingdom the status of an Allied Force which placed them under Soviet administration and discipline until their repatriation. This status was granted by an Order in Council similar to those made in respect of the forces in the United Kingdom of the Allied Governments-in-exile. There was a considerable difference, however, between granting, say,

the Polish Government-in-exile the right to administer its troops in the United Kingdom under military discipline, and giving similar rights to the Soviet Government over its nationals who had fought for the enemy, who thereby lost their prisoner of war status entirely. The agreement included any Soviet citizen and so small numbers of women, children and old men who obviously could not be members of an Allied Force were nonetheless deemed so to be. The British Government was worried that the arrangement might be challenged in the courts or in Parliament and a few absconders were allowed to remain at large in order to avoid such challenges. All Soviet citizens in the United Kingdom were to be repatriated, whether or not they wished to go.

3.28. Repatriation began rapidly. From 22 May to 30 September 1945 over two million Soviet citizens were returned from western controlled areas of Germany and Austria to areas of Soviet control, over one million of them in the first three weeks. Some did not wish to return, but were forced so to do by British and American troops, whose distaste for the task rapidly became obvious.

3.29. Similarly displaced persons of other nationalities were repatriated from the British zone of occupied Europe, although the numbers of other nationalities were fewer. This policy applied to all nationals of the countries concerned, whether or not they were thought to be war criminals.

Extradition

3.30. Extradition of war criminals from the British zone to other countries was initially almost on demand: no details of the allegation or evidence were required.

OCCUPIED EUROPE: A REAPPRAISAL

3.31. As time passed the British Government ended its involvement in the punishment of war crimes. By the end of 1950, repatriation of people to the Soviet Union, Yugoslavia and other countries had ceased, British prosecution of war criminals in occupied Europe had ceased, and extradition of war criminals from the British zone had become highly circumscribed. The changes that occurred were incremental, and often occurred in practice before the

policy decision was formally taken. The following review does not attempt to be full.

3.32. In the 1945-50 Labour Government, Bevin, the Foreign Secretary, and Shawcross, the Attorney-General, were both initially supporters of war crimes trials. The Foreign Office and War Office were generally unenthusiastic and a lack of resources - both human and financial - underlay the initial failure of British efforts in this field. Gradually public and political opinion swung away from their continuation and they came to an end.

EVIDENCE

3.33. The UNWCC was weakened from the outset by the non-inclusion of the Soviet Union. The greatest atrocities occurred on what had become Soviet controlled territory and it was there that the most documentary and eyewitness evidence was to be found. Although the Commission released material to the Soviet Union, the gesture was not reciprocated possibly because the Soviet Union realised that western Governments were not supplying the Commission with all the information they possessed, particularly that concerning Soviet occupied territory. As a consequence UNWCC files were hopelessly inadequate as a master-list of war criminals.

3.34. CROWCASS was conceived on a grander scale than the UNWCC. It was to include far more names of suspects and to be able to locate them by cross-referencing with the lists of those held in camps. In practice, it had too few staff, too little accommodation and insufficient machinery to cope with the grandiose plan. At first it was even unable to get its lists printed for circulation without a three month delay. It soon began to collapse under the sheer volume of paper returns that it was receiving and lacked the capacity to process. In 1946 it was suggested that it move to Berlin to become a quadripartite responsibility. Although its equipment was moved it never began functioning there. Even during it short existence it produced two hundred separate lists, making checking a cumbersome task. Soviet allegations were sometimes, but rarely, added to CROWCASS.

3.35. Little effort was made at forward planning. Even by September 1944 little thought had been given to how evidence and the war criminals themselves would be found once Germany fell. The first war crimes

investigation team was formed at Belsen, and other investigators later recruited. The army, however, did not recognise the war crimes group as a priority and so in its early days, the months immediately after the war, it had to fight for men, transport and resources. At this time 8 million Germans were held in internment camps: virtually all the German fighting forces. Because the British and, to a lesser extent, the Americans did not have their war crimes investigation teams up and running, and because of the failure of CROWCASS to provide an efficient clearing house for information, the opportunity swiftly to arrest known war criminals and to identify others was lost. This, however, went unnoticed because of the 'successes' that were achieved, as major war criminals - Himmler, Goering, von Ribbentrop - were found, and many of the military leaders gave themselves up.

PROSECUTIONS

3.36. Major war criminals were tried at Nuremberg for war crimes, crimes against peace and crimes against humanity. Other trials were conducted by each of the Allies in their zones of occupation. An attempt to standardise procedures by introducing a Four Power law, the Control Council Law Number 10, in practice meant that, in the British zone at least, a variety of courts were available to try offenders. These were Military Courts, operating under the authority of the Royal Warrant; Military Government Courts, operating under the Control Council Law Number 10; and German courts, to whom certain types of cases were delegated. These last operated primarily under Occupation Law, but increasingly under the German penal code which does not recognise 'war crimes' as a special category of offence. In the Federal German view, the retrospective nature of the concept of war crimes as applied by the Four Powers is a breach of the Basic Law (the German constitution) which enshrines the principle of nulla poena sine lege. In the British zone, it was policy to give responsibility for war crimes trials to the German courts. No charges of crimes against peace were brought in the British zone. By August 1946 responsibility for crimes against humanity and war crimes committed by Germans against Germans or stateless persons had been given to the German courts. In December of that year prosecutions concerning membership of criminal organisations were also transferred. On 5 May 1949, Lord Henderson, the Parliamentary Under-Secretary of State for Foreign Affairs, made a statement to the House of Lords (Official Report: Cols 385-393). By that time British courts were hearing only cases concerning

violations of the laws and usages of war and crimes against humanity involving non-German victims. He announced the cessation of trials of crimes against the laws and usages of war, except for those trials already begun, and that of Field-Marshal von Manstein. He also announced the intention that all further cases of crimes against humanity, whatever the nationality of the victim, would be heard by German courts under the German penal code. From then, the only obligation that the British retained in occupied Europe was for the limited use of extradition powers outlined below (Paragraph 3.46): all prosecutions in the British zone were the affair of the German courts. In 1951 the relevant occupation legislation was abolished and henceforward all trials were carried out under German law. The termination of the occupation regime in Germany in 1955 brought to an end the possibility of extraditions from the British zone.

3.37. British prosecutors, like the investigators, were short of resources and lacked the support of the army. They were burdened by a complex bureaucracy which required all cases to be reviewed in London. They, too, were late on the scene and likely suspects, and many witnesses, had dispersed from camps before the prosecutors were ready. Many of the prosecutors were inexperienced and the Military Courts themselves often consisted of young, inexperienced officers. Sentences were frequently derisory.

3.38. It was evident that the lack of success appalled both Hartley Shawcross, the Attorney-General, and Ernest Bevin, the Foreign Secretary. In October 1945 Shawcross commented that there were tens of thousands of Germans responsible for millions of murders. He went on

> "We must set ourselves an absolute minimum of prosecuting at least ten per cent of those criminals in the British zone..... I am setting as an irreducible minimum that we try five hundred cases by 30 April 1946".

The Prime Minister, Attlee thought this insufficient as the deadline would leave a large number of criminals unpunished and at large. Bevin agreed:

> "War criminals should not escape scot-free since apart from other considerations, such a policy will not lighten our task in Germany".

3.39. The comparison between the American run Dachau trial and the Belsen trial run by the British was telling. All forty of the Dachau accused were convicted, twenty six being sentenced to death. Fifteen of the forty-five accused at Belsen were acquitted, and only 11 sentenced to death. Apart from one life sentence, the remainder received sentences between one and fifteen years. A Foreign Office official writing about the war crimes trials and sentences commented:

> "It is quite fantastic to go to all the trouble to try and convict these Germans (many of whom are the worst form of SS thug) and then impose periods of imprisonment which in some case run down to periods of a few months only".

3.40. The staff made available by the army for both investigators and for prosecutions continued to decline and in May 1946 Shawcross was forced to concede:

> "In these circumstances I can only suggest that the trials should continue to the end of the year and that we should then review the situation with a view to bringing them to an end except in the most serious of cases".

SECURING THE PRESENCE OF THE ACCUSED

Repatriation

3.41. Immediately after the war, the Soviet Union was seen as an ally and the British Government was keen to maintain good relations with it. Relations soon began to deteriorate, however, and the fate of many of those returned to the Soviet Union (and to Yugoslavia and Poland) began to become clear.

3.42. As was noted above (Paragraphs 3.26-3.27) Britain was obliged under the Crimea Agreement of 11 February 1945 to surrender all Soviet citizens under the control of Commonwealth forces in Europe, and to surrender all Soviet citizens in the United Kingdom, who had been deemed to be members of an Allied Force to facilitate their return to the USSR. In Europe an agreement between the Red Army and the Supreme Headquarters, Allied Expeditionary Force (SHAEF) dated 22 May 1945 made arrangements for this repatriation, which proceeded with great rapidity, some 2 million people

having been repatriated by 30 September 1945. On 27 May SHAEF forces were required to note that the British and American Governments "had not recognised any territorial changes brought about by the war and that all persons from such areas will not be returned to their home districts nor treated as Soviet citizens unless they affirmatively claim Soviet citizenship". It became increasingly obvious, however, that some Soviet nationals did not wish to be repatriated and that British and American troops were not keen to forcibly repatriate them. On 8 July 1945 SHAEF felt it necessary to remind British and American forces that "Soviet citizens identified as such by Authorised [ie Soviet] Repatriation Officers ... will be repatriated ... They will not be offered any option on this score". Some critics have commented that in the first rush of repatriations, and in the confusion created when even genuine Soviet citizens resisted repatriation, many people who were not citizens of the territories within the 1939 borders of the Soviet Union were also repatriated. It should be noted that even as late as July, the decision as to who was, and who was not, a Soviet citizen was to be made by a Soviet Repatriation Officer. The suggestion has also been made that decisions whether or not to repatriate were made on a block basis: if the majority of a unit appeared to be Soviet citizens, all of the unit was repatriated.

3.43. On 30 August 1945 a further reminder was issued by BAOR:
"In all cases where it is decided that a particular PWX/DP is satisfactorily identifiable as a Soviet citizen, he will be repatriated even if he is unwilling to go .... It is fully appreciated that compulsory movement of Soviet citizens who do not wish to be repatriated may be repugnant to [those] who have to enforce this order. It is, however, a duty to carry out a national pledged agreement". It was again made clear that compulsory repatriation should not be applied to citizens of those territories acquired by the Soviet Union after 1 September 1939, but that they should be allowed to return to their homes should they so wish.

3.44. By 1 July 1946 the categories of Soviet citizens to be "repatriated without regard to their wishes" had been reduced. Only those who were both citizens of and actually within the Soviet Union on 1 September 1939 and who could be shown to be traitors were to be returned against their will. It was not until 1 March 1949 that the British authorities in occupied Europe decided to accept no further applications for the extradition of traitors and

collaborators, although the papers of the period give the impression that in the intervening period higher levels of proof were required as British officers on the ground became more sceptical of Soviet claims.

3.45. The preceding paragraphs outline some of the stages through which British policy concerning the surrender of Soviet citizens passed: surrender without question of all such people in 1945; surrender of only certain categories in 1946, and a refusal to surrender any, even traitors or collaborators, in March 1949. Between 1945 and 1949 other considerations came into play which reduced the number of returnees: the initial willingness to accept the decision of Soviet Repatriation Officers as to who was a Soviet citizen declined as they became known for their brutality and arbitrariness; the initial sympathy shown by British and American forces, both officers and men, to those who did not wish to return and the reluctance to force them so to do increased as it became known what their fate might be; and the knowledge that after about August 1945 all western prisoners-of-war had been repatriated from the Russian zone. There was an increasing unwillingness to return people unless it could be shown clearly that they were Soviet citizens by 1 September 1939. The Balts were not Soviet citizens, and many Ukrainians and Byelorussians whose countries had before the war been divided between Poland and the Soviet Union decided that it was politic to have been Polish rather than Soviet citizens. These categories of people remained as displaced persons in Germany. British reluctance to return such people was perhaps best demonstrated in the case of the Ukrainian Galicia Division in Italy in 1947, (Paragraph 4.17) where it was considered better to bring them to the United Kingdom without proper screening, rather than leave them in Italy to be surrendered to the Soviet Union under the terms of the Italian peace treaty.

Extradition

3.46. The above discussion largely considers the fate of Soviet citizens, who, as Soviet citizens, fell to be repatriated. If they had served the Germans, it was for Soviet courts to try them as traitors and collaborators. Nonetheless, Britain also had an obligation to return war criminals, whatever their nationality, to the scenes of their crimes. At first, such people, if they could be identified, were surrendered merely on the application of the claimant country. In the light of early experience, it was decided by the

United Nations Assembly in October 1947, on British initiative, that requests for alleged war criminals should be supported with sufficient evidence to establish that a reasonable prima facie case existed as to identity and guilt. In order that such evidence might be better examined by the Military Governor, an extradition tribunal was established in the British zone in February 1948. The third stage of British policy was introduced in June 1948 when the British Military Governor announced the closing date of 1 September 1948 for all applications for surrender of alleged war criminals, except those showing a clear prima facie case of murder under the German penal code. The fourth was reached in May 1949 when the British Government added the extra condition requiring a satisfactory explanation why the application was made after 1 September 1948.

3.47. Although this discussion has largely considered Soviet citizens, similar changes of policy applied to the repatriation of other east European nationals, and the surrender of alleged war criminals to other eastern European countries.

THE REASONS FOR CHANGE

3.48. It is not possible to attribute the change in British policy in the period 1945-50 to any one factor. The factors considered below all contributed to the gradual changes in policy: no one of them was decisive.

3.49. When informing Allied Governments of its preliminary proposals concerning the prosecution of war criminals, the British Government in 1942 indicated that it might be desirable to fix a limited period after the termination of hostilities during which all trials should be instituted. It gave three reasons: to ensure rapid justice; to prevent wronged individuals taking the law into their own hands; and to prevent trials dragging on for years and so delaying the return to a peaceful atmosphere in Europe. The first and last of these remained concerns after the war.

3.50. To ensure rapid justice. It was thought desirable that cases be heard as soon as possible. Amongst other considerations was the dislike of holding accused people in custody for long periods without bringing them to trial, which was an accusation often levelled against the Nazi regime. The problem was also seen, in the light of the formation of the United Nations

Commission on Human Rights, as a fundamental breach of human rights. By 1948 Control Commission papers show concern that some people had been held pending trial for over three years. The judiciary concurred. A notorious example is that of Viktor Arajs, whose Arajs Kommando is thought to have killed 30,000 people in Latvia, and participated in many more murders in Latvia and elsewhere. He was released by a British Control Commission Court judge in February 1949, as the prosecution had failed to produce sufficient evidence to justify his continued detention. He was not re-arrested until 1975. In 1979 he was sentenced to life imprisonment by a Federal German court and died in imprisonment in 1988.

3.51. Return of peaceful atmosphere. Europe could not return to peaceful conditions whilst large areas of military occupation and administration remained. Fairly quickly therefore, some parts of the administration were delegated to Germans, including, as has been noted, responsibility for some war crimes trials. Immediately after the war 8 million German prisoners of war were held by the western Allies, of whom hundreds of thousands were members of organisations later judged criminal by the Nuremberg Tribunal. It was inconceivable that these men could continue to be held indefinitely. In addition, they were unproductive and needed to rebuild the economy of the shattered Germany. As Lord Elwyn Jones, who was a prosecutor at Nuremberg and later at the trial of Field Marshall von Manstein, one of the last war crimes trials in the British zone, states in his autobiography "In my Time".

> "Allied interest in continuing with further Nazi war crimes trials ended in 1949. By then the four-power administration of occupied Germany had virtually collapsed, and western Europe's attitude towards Germany and the Germans changed. A new chapter in the war crimes story then came to be written by the Germans themselves. They brought to trial some of their own compatriots and even today war crimes charges are still being dealt with in courts in the German Federal Republic. The truth about the Nazi tyranny has also been exposed by the Germans themselves, many of whom were its first victims".

3.52. Cold war. As relations between east and west declined the renewed vitality of the western zones of Germany became imperative, as the west looked to build up its defences against the new perceived enemy in the east.

3.53. **Repugnance at events in the east.** Reports began to emerge of the deaths of people sent back, for example, to the Soviet Union and to Yugoslavia, such as the executions of the Cossacks returned to the Soviet Union in May and June 1945. In case of Yugoslavia it seemed that the principal "war crime" being tried was belonging to the wrong political faction during the bloody and complicated fratricidal conflict that was the Second World War in Yugoslavia. As sympathy between east and west declined, and as human rights abuses continued in the east, there was less willingness to return people, when it was uncertain that they had been Soviet citizens before the war, when no detail could be given of the crimes they had allegedly committed and when the 'crimes' increasingly seemed to be political.

3.54. **The confidence of the German people.** After the First World War the treaty of Versailles imposed stringent financial and territorial penalties on Germany. To these are frequently attributed the rise of Hitler: the German people did not accept the penalties as fair, and in time came to resent them and to desire to take back what had been taken from them. A danger was perceived that the German people might become similarly disaffected by a lengthy series of trials. Lord Maugham, who in 1942 had been an ardent proponent of war crimes trials, speaking as early as 15 October 1946, summed up this view when addressing the House of Lords:

> "So long as [the trials] continue we shall have many Germans in our zone ... looking upon every execution as a sort of legal murder of soldiers and others whom they will not be able to believe are being justly tried and convicted ... Persons in confinement will also be considered ... as martyrs of the Fatherland ... After a couple of years it will be thought, 'This is revenge. They have punished the country enough, owing to lack of food and so on. We need no further demonstration of the views of the victorious nations after this terrible war'". (Official Report: Col 257).

3.55. **Numbers.** As the war drew to a close, for the first time the scale of the atrocities became obvious to the west. As a consequence there was a growing realisation that the numbers who could be identified, traced and punished would be small in relation to the total number of war criminals. Even in March 1945, Lord Wright, the Chairman of the United Nations War Crimes Commission, told the House of Lords he considered that it would be

more than satisfactory if ten per cent of all the criminals were apprehended and dealt with. (Official report, 20 March 1945, Cols 676-677). He said that the practical impossibility of punishing all the criminals did not mean that none should be punished: it was important that the principle of punishment be established:

> "Once it is felt that the idea of an international rule of law, and its suitable endorsement, have been established, with the support of sufficient precedents, humanity is glad to be relieved of the nightmare of the past ... The majority of the war criminals will find safety in their numbers. It is physically impossible to punish more than a fraction. All that can be done is to make examples".

A related question was knowing who should be punished. The Nazi party had eight million members. Were those who joined early more culpable, or those who joined later, when it had become obvious what the party stood for? What was the culpability of those who joined only because membership allowed them to retain their jobs? The Gestapo had nearly 50,000 members, and as many agents, the SS over 1,000,000 of whom 200,000 belonged to the Allgemeine SS. At the end of the war there were millions of fighting men in the German armed forces. In the end, the target of prosecuting ten per cent was not achieved even of the identified war criminals. Nonetheless in the post war context, with other competing priorities, it was considered that enough had been done.

3.56. **The British economy.** British war crimes trials could only continue in Europe while the occupation continued. After the war the British economy was in a parlous state and rationing still in force. It became increasingly difficult to justify the continuing expenditure of large sums administering occupied Germany, when resources were so scarce at home.

3.57. **Palestine.** Some commentators have suggested that continuing war crimes trials would have evoked sympathy for Jews, and so have made Britain's refusal to allow settlement in the mandated territory of Palestine more difficult to sustain, but we are not convinced of this.

3.58. **Public opinion.** Even in 1943, when he fully supported retribution for war crimes and even advocated the shooting on sight without trial of the leading war criminals, Churchill commented that the decision embodied in the

Moscow declaration to return war criminals to the sites of their crimes was wise as

> "the British nation ... would be incapable of carrying out mass executions for any length of time, especially as we have not suffered like the subjugated countries"

By 1946 Churchill himself, as evidenced by a speech in Zurich (19 September), had grown weary of war crimes trials.

> "There must be an end to retribution. We must turn our backs upon the horrors of the past, and we must look to the future".

This view increasingly came to represent public opinion.

WAR CRIMINALS IN THE UNITED KINGDOM

THE POLICY

3.59. Until the formation of this Inquiry the question of war criminals in the United Kingdom has been little considered by successive British Governments. This does not appear to be because of a wish to ignore the matter, but more due to a confidence that war criminals would not gain, and had not gained, admission to this country. This complacency came nearest to bring shaken by the Dering case (Paragraphs 3.70), but despite that, and the gaps in the screening procedures considered in Chapter 4, official and ministerial confidence remained high that the United Kingdom had not become a haven for war criminals.

Deportation

3.60. Some consideration was given to how such cases might be dealt with. Apart from extradition an unusual use of the Home Secretary's deportation powers was also proposed, but never used. In 1944, as prisoners of war began to be brought here from Europe in greater numbers, the Lord Chancellor, Lord Simon, proposed legislation to enable them to be tried here, although the draft bill would have allowed any war criminal to be tried here, however he had come to the United Kingdom. The idea was opposed by the Cabinet in case it provoked German retaliation against British prisoners of war. No further consideration was given to prosecutions in this country.

3.61. On 8 September 1944 the UNWCC forwarded to the Foreign Office a draft "Convention for the Surrender of War Criminals and other War Offenders" which had been prepared by the Commission. The purpose of the proposed convention was to ensure that the United Nations would reciprocally transfer war criminals or quislings to one another by:

> "avoiding the complications and delays of normal extradition procedure and .... excluding the possibility of refusing surrender on the grounds that the acts charged have the character of political offences".

3.62. Normal extradition practice includes a number of safeguards. An accused person is not surrendered except upon evidence establishing a prima facie case and a person who has been convicted in his absence is treated as an accused person: evidence establishing a prima facie case is still required. A person cannot be tried after surrender for any offence other than that for which he is surrendered and political offences are excluded. None of these safeguards were included in the draft convention and it was recognised that some Members might need to enact legislation in order to accept the convention. Many states reported difficulty with the proposed convention, because of the lack of normal extradition safeguards. The United States representative considered that the convention, denying the surrendered individuals access to the courts which would be available under extradition procedures, was incompatible with the United States constitution.

3.63. The draft was considered by the British Cabinet on 12 March 1945 in the light of a memorandum dated 28 February 1945 prepared by the Foreign Secretary. It was thought that Parliament would be unlikely to consent to pass legislation enacting the convention without some safeguards against mistakes or miscarriage of justice. Parliament might require judicial determination of the question of whether there was a prima facie case, necessitating the submission of documentary or other evidence by the requesting State. "Quisling" offences posed even more problems, as there was a fear that the Government might be obliged to surrender those whose "crime" was to belong to the wrong political faction in the requesting State. In the light of these difficulties it was thought that an attempt to enact legislation would take time, might not succeed, and might make the surrender of war criminals more, rather than less, difficult.

3.64. As a result it was decided to rely on the Home Secretary's powers of deportation. The Home Secretary has power to deport any alien civilian whose presence is not conducive to the public good. On 29 March 1945 the Foreign Secretary circulated a note to the Members of the UNWCC explaining that the Government considered that British participation in the proposed convention would prejudice the objects which it was designed to achieve.

The note went on:

> "5. Under existing law his Majesty's Government are empowered to repatriate by way of deportation any alien civilian if it is deemed to be conducive to the public good to do so, and they are prepared to treat as an undesirable alien civilian liable to deportation, any alien against whom there is a prima facie case that he is a war criminal or has been guilty of treachery involving active assistance to the enemy.
>
> 6. As regards war criminals, His Majesty's Government would of course attach all due importance to any report by the War Crimes Commission that a sufficient case existed to justify his being brought to trial. As regards traitors His Majesty's Government would desire to be satisfied that the person concerned was a national of the Allied country desiring his surrender and that a prima facie case exists showing that he had actively assisted a State at war with his own country".

The wording was carefully chosen: no blanket undertaking to deport was given. The power to make a deportation order is a personal, discretionary power of the Home Secretary and it was considered wrong that he, or his successors, should be bound to deport any person in respect of whom the UNWCC had reported that a sufficient case existed to justify his being brought to trial.

3.65. A certain unease remained, nonetheless, and it was hoped that the British Government's note would not attract too much attention. In normal Home Office practice such deportation would be regarded as disguised extradition, and be frowned upon, it being considered that before extradition an accused should have access to the courts.

3.66. Partly as a result of the British refusal to sign, the draft convention was withdrawn.

Extradition

3.67. The ordinary provisions relating to extradition remained available.

THE APPLICATION OF POLICY: 1945-50.

3.68. There were, in fact, few requests for extradition or deportation of war criminals in this period. The few requests for extradition failed on the grounds of insufficient evidence.

3.69. Deportation. A request made in 1947 by the Soviet Union for the repatriation of thirteen alleged war criminals said to be in the United Kingdom is interesting. Although three of the suspects were located, little was done in respect of the allegation. The men were not interviewed, largely because the Home Office was unable to find a suitable interpreter. The Foreign Office asked the Soviet Union for prima facie evidence which was not produced, and the matter was allowed to drop. It has been said that the Soviet failure to produce more convincing evidence to support its requests for persons held in the western zones of Europe and its failure to find people requested by the west in its own zone were due more to hopeless disorganisation than to a wish to be uncooperative. It is conceivable that their inability to respond to requests for evidence in these cases was another symptom of that disorganisation. It does not appear that the matter was considered at a senior level on either side.

3.70. The only case in which a deportation order was signed, using the powers of the Home Secretary to deport someone whose presence was not conductive to the public good, was that of Dr Wladyslaw Dering. He was accused by Poland of medical experiments at Auschwitz and of assisting in the selection of people to be gassed, and he gained admission to the United Kingdom as a member of the medical corps of the Polish Armed Forces in August 1946. The case came closest to dispelling the illusion that no war criminals had entered the United Kingdom, especially as Dering's name was on the UNWCC list, which should have precluded his admission to the United Kingdom. The case was considered by the Home Secretary, the Foreign Secretary and the Lord Chancellor, and eminent legal opinions were sought: they disagreed. The Lord Chancellor considered that a prima facie case had been established and the Home Secretary signed a deportation order. Further representations were

then made to the Home Secretary and so the only witness available in the west - the others were in Poland - was brought over from Paris and a rather strange procedure was enacted when he was examined by the Chief Metropolitan Magistrate. On the evidence before him the Magistrate decided that there was not a prima facie case against Dering. The Home Secretary then cancelled the deportation order: no further evidence was looked for. The case came to public attention again in 1964 when Dering sued the author, Leon Uris. Dering died shortly afterwards.

3.71. On 23 September 1950, Lord Henderson, Parliamentary Under Secretary of State for Foreign Affairs noted in a paper to the Cabinet that:

> "Parliamentary and public opinion has been critical of the trial of war criminals long after the end of hostilities, and it is considered that the time has long passed when it would have been possible to justify, as conducive to the public good of this country, the deportation of an alien at the request of a foreign Government solely on the grounds that there appeared to be a prima facie case that he was a war criminal or had been guilty of treachery involving active assistance to the enemy. The fact that the powers of deportation have never been exercised for this purpose would mean that such a use of them now could not be defended as the continuance of an existing practice".

3.72. The Cabinet, meeting on 28 September 1950 agreed that the recipients of the note of 29 March 1945 (Paragraph 3.64) should be informed that the United Kingdom Government had decided to withdraw this undertaking to surrender war criminals and traitors. A note of 1 December 1950 informed Members of the UNWCC of this decision.

AFTER 1950

3.73. By 1951 Britain took no part in war crimes proceedings - trials, repatriation or extraditions - on mainland Europe. Despite the Dering case, there remained a great degree of confidence that war criminals had not been able to come to the United Kingdom, and thus no thought was given to allowing their prosecution in this country.

3.74. In the years after 1950 the cold war developed and relations between East and West grew frostier. As a result requests by the Soviet Government to the British Government for the extradition of war criminals were few.

3.75. There is little difference in form between the various Soviet requests received in the thirty years after 1950, although obviously the details of the individual and his alleged crime varied. Reference was made to the Declaration of St James's of 13 January 1942, the Moscow Declaration of 30 October 1943, the Charter of the International Military Tribunal of 8 August 1945 and the resolutions of 13 February 1946 and 31 October 1947 of the United Nations General Assembly.

3.76. The British response seems not to have varied. The Charter of the International Military Tribunal was regarded as irrelevant, since it referred only to major war criminals, who had been named, and, with the exception of Bormann, accounted for. The other declarations referred to the punishment of war criminals, and with the exception of the St James's Declaration, to the return of such criminals to the scenes of their alleged crimes for trial. The British view was that after the cessation of hostilities the Government had taken all possible steps to comply with the principles set out in the Moscow Declaration. Britain had, unlike the Soviet Union, participated in the work of the United Nations War Crimes Commission and in arrangements made under the auspices of the Commission. Although Britain had undertaken in 1945 to deport any alien against whom there was a prima facie case that he was a war criminal, the undertaking was only given to the Allied Governments represented on the UNWCC of which the Soviet Government was not a member, and the undertaking was withdrawn in a letter of 1 December 1950 from the then Foreign Secretary to the Ambassadors in London of the Allied Governments represented on the United Nations War Crimes Commission. The United Nations resolutions, which did not impose any legal obligation on the United Kingdom, served to reiterate the Moscow Declaration and to call upon Members of the United Nations to surrender "forthwith" alleged war criminals to the scenes of their alleged crimes. In addition the 1947 resolution recommended Members desiring the surrender of alleged war criminals to:

"request such surrender as soon as possible"

Neither of these gave much support to Soviet requests for extradition made many years later.

3.77. Having thus dismissed Soviet claims that the United Kingdom had an obligation to return war criminals to the site of their crimes under the post-war repatriation and deportation agreements, British responses then merely noted that extradition was not possible due to the lack of an extradition treaty between the two countries. In some cases it was appropriate to note that the British Government did not recognise de jure the incorporation of certain territory into the Soviet Union during and after the Second World War.

3.78. It is unclear how seriously Britain took such requests. At that time there was a great deal of cold war propaganda aimed at prominent people in the emigre communities (this propaganda is the source of some of the Simon Wiesenthal Centre allegations). In our discussions with them, the Soviet prosecuting authorities have made it clear that they do not consider such allegations as a sound basis for prosecution and have dismissed them as propaganda. At the time British officials must have found it hard to tell fact from fiction in dealing with these requests.

3.79. We are aware of five Soviet extradition requests since 1950, each of which has received a similar response. In recent years changes in the Soviet Union have brought better relations between the Soviet Union and the United Kingdom which are exemplified by the cooperation that the Inquiry has received on its visits to the Soviet Union (Paragraphs 8.60-8.62). Prior to these changes no British Government would have considered extradition to the Soviet Union, and no Soviet Government would have considered allowing British police and prosecutors access to the Soviet Union. Policy changes in the Soviet Union have made it possible for the British Government to respond with a changed policy towards alleged war criminals, of which this Inquiry is the fruit.

SUMMARY

3.80. During the Second World War the Prime Minister, supported by the Lord Chancellor, made it clear that he considered retribution for German atrocities a major aim of the war effort. The Government participated in schemes to ensure that alleged war criminals were surrendered, evidence collected and appropriate tribunals set up. However, little planning was done before the end of the war to ensure that teams of investigators and

prosecutors were ready to begin work immediately, when the bulk of alleged war criminals were in captivity. When teams were set up, it was too little, too late: the men and resources applied were simply insufficient for the task. Despite the dissatisfaction expressed by the Prime Minister, the Foreign Secretary and the Attorney-General, the army in occupied Europe had other priorities. The two information gathering bodies, UNWCC and CROWCASS, both failed, the former because of mutual distrust between East and West, the latter because of insufficient resources to implement the overambitious plan it was proposed it should carry out. The failure to act swiftly immediately after the war meant that rather than demonstrating to the German people the horrors that had been committed in their name and providing an example of swift and efficient justice, the initiative became bogged down and achieved neither. Success would only have been possible with more forward planning, an efficient use of information such as that planned by CROWCASS, more cooperation between East and West and greater resources.

3.81. By 1950, Britain had moved away from its initial decision to punish war criminals. A number of factors, considered above, seem to have affected the decision. Those, and they are many, who find a conspiracy in everything and will find one in this decision, would do well to consider that it is difficult forty years on to judge the spirit and feeling of the time. The decision not to continue war crimes trials may now seem surprising, but it was not at the time. The Cabinet papers prior to Lord Henderson's announcement in the House of Lords in 1949, show concern that public and parliamentary opinion did not support the continuation of war crimes trials: even Churchill was contributing to Field-Marshal von Manstein's defence fund. The tone of that debate should be noted (House of Lords, 5 May 1949, Official Report, Cols 376-418). Not a single peer speaks in favour of the continuation of trials and there are calls for the cessation of trials, and, in particular, that the trial of von Manstein be not started. Lord Simon, who had been one of the strongest voices in the Cabinet proposing war crimes trials, spoke firmly against the continuation of prosecutions. It is instructive to compare the tone of that debate with that held in the same chamber on 7 October 1942 (Official Report, Cols 555-594), as an indication of how views changed. Those who argue matters in black and white might also wish to consider that two issues arising from the 1945-50 period still attract public attention. One, very relevant to this Inquiry, is why western governments allowed people from territories now part of the Soviet Union to

come to this country or to go the USA, Canada or Australia, after the war. The other, which sits in awkward juxtaposition to the first, is why those same governments sent back Soviet citizens and Yugoslavs to their deaths, rather than allowing them to come here. Simple answers then, as now, were not easy to come by.

3.82. The question of war criminals in the United Kingdom was largely not considered. It was thought that efficient screening would prevent such people reaching this country, although the Dering case momentarily jolted that unconcern. After 1950 the presence of alleged war criminals in this country became a minor issue. The few extradition requests received from the Soviet Union appear to have been considered in the context of the cold war and they were routinely refused due to the lack of an extradition treaty. No consideration appears to have been given to other steps which might be taken against the alleged criminals: indeed the charges appear not to have been investigated, although in fairness it must be said that the cold war would have been precluded this, as both documentary and eyewitness evidence was generally only available behind the Iron Curtain. There does not appear to have been any difference of opinion between the two major political parties on this issue, either during the war years, or afterwards.

CHAPTER FOUR

THE ENTRY OF EAST EUROPEANS TO THE UNITED KINGDOM

4.1. The vast majority of the allegations received by the Inquiry concern people from Eastern Europe - Poles, Ukrainians, Byelorussians, Lithuanians, Latvians and Estonians - and this chapter reviews the principal routes by which such people came to the United Kingdom towards the end of, and after the Second World War, and the efforts that were made to prevent the entry of possible war criminals.

ROUTES OF ENTRY

4.2. There were three major routes by which such people came to this country. Firstly, as the United Kingdom was suffering from a labour shortage efforts were made to relieve the problem by recruiting some of the millions of displaced persons then in Europe. A number of schemes were operated to bring such European Volunteer Workers (EVW) to the United Kingdom. These are considered in paragraphs 4.3-4.9 below. Secondly, during the war a number of occupied European countries had formed Governments-in-Exile in the United Kingdom, amongst them the Government of Poland. Consequently Britain also became the headquarters of the Polish Armed Forces (PAF), many of whose members fought for the Allies throughout the war. Some captured Poles, who had fought as Axis troops, were also later incorporated. Those members of the Polish forces who did not wish to return to a communist Poland were gradually civilianised and assimilated into British society under the auspices of the Polish Resettlement Corps (PRC) (Paragraphs 4.10-4.15). Lastly, some prisoners of war chose to remain in this country after the war. In the discussion of this group, surrendered enemy personnel brought to this country after the war are also considered (Paragraphs 4.16-4.17).

EUROPEAN VOLUNTEER WORKERS

4.3. After the war manpower shortages in certain industries encouraged the Government to recruit foreign labour from amongst the many displaced persons at that time in Europe. At a meeting of the Cabinet Foreign Labour Committee on 23 May 1946 the Minister of Labour was instructed to proceed with a scheme to recruit 1000 female Baltic displaced persons from camps in Germany for

domestic work in British sanatoria. The first recruits began arriving in the United Kingdom in October 1946.

4.4. As a result of the favourable reports received from their recruiting officers on the generally high standard of Baltic displaced persons in Germany, the Ministry of Labour wished to extend the scheme, now designated 'Balt Cygnet'. On 26th September 1946 the Foreign Labour Committee agreed that the scheme be expanded to include a total of 5,000 women, for domestic work in hospitals and Government hostels, as well as sanatoria. In addition authorisation was also given to recruit qualified nurses and other women for training as nurses. Their landing conditions required the women to work only in institutions approved by the Ministry of Labour, and not to remain in the United Kingdom for longer than twelve months in the first instance.

4.5. The success of the scheme encouraged its extension to other industries and to other recruiting areas. In January 1947 the Cabinet set a target of 100,000 foreign workers to be recruited by the end of the year. On 11 March 1947 the Minister of Labour, Isaacs, told the House of Commons that:

> "the scheme is now being extended to cover workers of both sexes both for industrial work and for domestic work in private houses. We are setting up a recruitment organisation which will cover the British zone in Austria as well as that in Germany" (Official Report Col. 1152).

Recruitment was primarily for coal mining, the textile industries and agriculture. The extended programme was known as the European Volunteer Workers (EVW) scheme and received the code name 'Westward Ho!'. The twelve month limit applied to Balt Cygnets was removed and recruits were given indefinite leave to remain.

4.6. EVWs were required to register with the police, to enter only employment specified by the Ministry of Labour and not to leave such employment without the consent of the Ministry. In general single persons were recruited as the Government had no wish to pay for the travel of their dependants to the United Kingdom nor to support and accommodate them once here. Undesirables were returnable to the British zone in Germany within 18 months of their arrival in the United Kingdom. Accommodation was provided by the National Service Hostels Corporation.

4.7. By December 1947 it was recognised that it was impossible to recruit the numbers required from existing sources and recruitment was extended to include Volksdeutsche (persons of Germanic origin born and living outside the 1939 German borders who had become unwelcome in their adopted countries), stateless displaced persons and displaced persons in Italy and Denmark. German nationals were excluded from the scheme.

4.8. In the spring of 1948 the peak of recruitment was reached. Thereafter demand for foreign workers in coal-mining decreased and by the end of that year the numbers recruited began to tail off. In March 1949 the recruitment of males officially ceased, having been in abeyance for some time.

4.9. By the end of 1950 Home Office figures gave the total number of EVWs and dependants who had arrived in the country as approximately 90,000, dependants accounting for less than four thousand of these. By then over four thousand EVWs had already left the country voluntarily or been deported. A smaller number were recruited during the 1950's.

POLISH ARMED FORCES

4.10. The exiled Government of Poland was based in London, which also became the headquarters of PAF. By the end of the war the total membership of PAF had risen to well over 200,000. Churchill acknowledged Britain's obligations to the gallant Poles who had fought alongside the Allies in a statement to the House of Commons on his return from Yalta.

> "His Majesty's Government will never forget the debt they owe to the Polish troops who have served them so valiantly and to all those who have fought under our command ... we should think it an honour to have such faithful and valiant warriors dwelling among us as if they were men of our own blood". (Official Report, 27 February 1945, Col.1284).

Some of these decided to return to Poland but many had no desire to live under a communist government.

4.11. As a consequence on 22 May 1946 Ernest Bevin, the Foreign Secretary, made a statement to the House of Commons.

> "As for those Poles who do not wish to return to Poland it is our aim to demobilise them as quickly as possible and to arrange for their settlement in civilian life.... [The] Government are going to enrol them into a specially created Resettlement Corps, which will be a British organisation and will for convenience be administered by Service Ministers. The Resettlement Corps will be essentially a transitional arrangement designed to facilitate the transition from military to...civilian life as soon as this becomes possible. Those for whom approved jobs can be found will go to them immediately. The others will be employed by [the] Government to the fullest possible extent in useful productive work such as reconstruction, and in appropriate cases will be given training. As soon as settlement is complete the Corps will cease to exist" (Official Report: Col 301).

4.12. Some members of PAF serving abroad were brought here and when the Polish Resettlement Corps was formed in the United Kingdom it had about 115,000 members. The intention was that the members would live in camps and be subject to military discipline until they were civilianised. For a country short of labour this was an ingenious solution: a reserve of labour was created, each member of which was only fully released into the civilian community once he had found permanent employment.

4.13. By the end of the war, however, PAF (and hence the PRC) no longer consisted solely of Churchill's 'gallant Poles' who had fought alongside the Allies. As the war progressed Poles who had fought with the Axis were captured and became prisoners of war. From September 1944 they were permitted to join PAF. Some 50,000 did so and thereafter many of them fought for the Allies. This process continued until the very end of the war although some of those who changed sides towards the end of the war never fought for the Allies. They probably numbered about 20,000 but no authoritative statistics are available. Their membership of PAF nonetheless entitled them to join the PRC and to remain in Britain. This attracted some adverse press comment at the time but official thinking at the time coincided with the generally accepted present-day historical view. This was that young Poles had been coerced into joining the Wehrmacht: they were not volunteers and had deserted to the Allies at the first opportunity. To the Germans

their recruitment had had the double attraction that they not only boosted the Wehrmacht, but also reduced the resources available to the Polish Resistance. Nonetheless, it is disconcerting that recruitment from the German army to the PAF continued until the last days of the war. There is evidence that some people managed to attach themselves to PAF even after the defeat of Germany. For example, the notorious Dr Dering (Paragraph 3.70) appears to have joined PAF in December 1945.

4.14. Another difficulty with the Corps was the inclusion of non-Poles. Ethnic groups other than Poles belonged to the Polish Forces although many of these - Lithuanians, Byelorussians, Ukrainians - came from territories parts of which had been within Poland's frontiers in 1939.

4.15. By 1952 approximately 90,000 Poles remained in the United Kingdom as civilians. It is not known how many of these fought on the Axis side, and of these, how many did not subsequently fight for the Allies.

PRISONERS OF WAR

4.16. A substantial number of German prisoners of war remained in the United Kingdom after the war. They were generally put to work in productive capacities. Some were repatriated to help in reconstruction work in Germany. The rate of repatriation increased as EVWs became available to take their place, particularly in agricultural work. Eventually some 15,000 German prisoners of war remained in Britain having already secured employment. The others had been repatriated by the end of 1948. One thousand Italian prisoners of war were also allowed to remain.

4.17. A separate group of surrendered enemy personnel were 8,000 Ukrainians from the Galicia SS Division who surrendered to the Allies in Austria in April 1945 and were held in a camp at Rimini in 1945. The peace treaty concluded by the Allies with Italy contained provisions that all citizens of Allied countries should be repatriated to their countries of origin. As the date of the foundation of the Italian Republic came closer the British Government was unprepared to return the Ukrainians to the Soviet Union and they were allowed to come to the United Kingdom.

OTHERS

4.18. German scientists. A number of German scientists and technicians were recruited to work in the United Kingdom and other western countries. From our researches it appears that those who came to the United Kingdom were screened before arrival in this country. While some were undoubtedly Nazis, there is no evidence that they had committed war crimes as defined in our terms of reference.

4.19. There were other possible routes of entry for East Europeans: some came on temporary permits as domestic servants, entertainers, industrial trainees and students. It is thought that few of these remained permanently in Britain. Some, mainly women, came to join their spouses here. It seems likely that few, if any, war criminals would have entered by these routes. It also appears that the immigration officers screening EVWs had not forgotten their more traditional role: they attempted to spot "bad hats" amongst those in DP camps and submitted their names to London to prevent their entry via the Channel ports.

SCREENING

EUROPEAN VOLUNTARY WORKERS

4.20. Recruitment of EVWs was from amongst displaced persons in camps in Europe. It was considered that as displaced person (DP) status was only granted after screening by the United Nations Relief and Rehabilitation Administration (UNRRA) (until July 1947, thereafter by the International Refugee Organisation (IRO)), and by the Control Commission in Germany (CCG) acting under the denazification laws, the risk of any undesirables reaching this country was small. The screening was designed to exclude from DP status collaborators, quislings and war criminals.

4.21. In January 1946 a change of policy allowed 36,000 non-German troops, including 19,000 Balts, to be given full DP status. It was said that such persons had been conscripted into the German service late in the war and thus could be treated more leniently. Before this decision was taken the prisoners of war were kept in separate camps from the displaced persons: it is assumed, although not clear from the papers available, that on their

conversion to DP status they were screened for war criminals, even though their collaboration was overlooked because of their supposed conscription into the German forces. This was of direct benefit to the Balts whose new status as DPs made them eligible for the 'Westward Ho!' scheme.

4.22. It is thought that screening by UNRRA (later IRO) prior to grant of DP status was against the United Nations War Crimes Commission (UNWCC) lists and against the Central Registry of War Criminals and Security Suspects (CROWCASS). However, Ms Alti Rodal, writing for the Canadian Deschenes Commission, has examined the IRO Officers' Eligibility Manual and concludes that the use of neither list was routine. CROWCASS, she asserts, had collapsed in May 1946 for administrative reasons, leaving 200 separate lists and sub-lists in circulation.

4.23. Potential EVW recruits were first interviewed by Ministry of Labour officials to gauge their suitability for the various types of work available. Then all those selected for 'Westward Ho!' were screened in a transit camp, whether or not they were screened on entering their DP camps. One immigration officer whom we have interviewed recalled that long questionnaires were filled in which were sent away for checking against police records and against the CROWCASS lists. Thereafter the DPs were interviewed.

4.24. Opinions varied at the time as to the efficacy of the screening even amongst those responsible for it. A report from one of the immigration officers at Munster records a "considerable divergence of opinion" between Control Commission Germany Intelligence Division, PW and DP, IRO, and that branch of the Rhine Army responsible for the demobilisation of prisoners of war, about the identification of SS members. Nonetheless, he commented that

> "the conclusion to be gathered is that theoretically no former SS members could have acquired DP status and eligibility for 'Westward Ho!'"

He obviously considered that given the "urgency and magnitude" of the operation and despite the fact that some may have slipped through the net by changing their names and identities the screening process was, on the whole, doing its job. He also surmised that war criminals who had remained undetected for a number of years would be unlikely to risk detection by offering themselves for screening under 'Westward Ho!'.

4.25. It does not appear relevant to us whether or not DPs were screened by UNRRA or IRO before admission to camps, since it appears that all those recruited for the European Volunteer Worker scheme were screened independently by the British authorities before coming to the United Kingdom. This screening, in its way, appears to have been quite extensive, although we have seen no individual screening records as these were not brought back to this country. There is evidence of long questionnaires being filled out, of interviews, and of annoyance in London that the checking of records in Berlin delayed the departure of EVWs for this country by 6-8 weeks.

4.26. The fact that a great deal of effort was expended in screening EVWs does not allow us to draw the conclusion that the screening was efficacious. The worst atrocities of the war took place in the territories east of Germany and in Poland, the Baltic, Byelorussia and the Ukraine the Germans found willing helpers to assist them with their massacres. Yet because the Soviet Union was not a member of the UNWCC the names of those responsible for crimes committed on what had become the territory of the Soviet Union were not added to the UNWCC lists of wanted war criminals. With few exceptions, persons of such nationalities were not added to the CROWCASS lists either. As a consequence the consolidated CROWCASS list of June 1948 lists only 1 Estonian, who appears again under Latvia, 6 Latvians, 2 Lithuanians, about 100 Poles, 24 Russians and 5 stateless persons. The last three categories presumably also include Byelorussians and Ukrainians. By contrast over 1,500 Italians and nearly 40,000 Germans are listed. Reliance on such lists made the screening process a charade. In addition, the cumbersome nature of such lists, which were sub-divided into smaller lists, and the difficulty of inconsistent transliterations would have made checking difficult. Suggestions that some people deceitfully changed their names have not been borne out in our investigations (Paragraph 8.28). Nonetheless the difficulty of checking the various possible forms of a name, if they were known, on a variety of lists and sublists would have been formidable. UNWCC records were compiled country by country - not helpful at a time of shifting borders and national allegiances and where units from one country might be active in another. (In our checking we have used an index alphabetized by computer, only recently available). CROWCASS too was constantly updated and is said at one stage to have consisted of over 200 lists (we have used a consolidated final version in our checking). Practically, therefore, it was difficult to use the lists.

Finally, it is possible that the date a suspect was first included on a check list was after the date on which he was screened.

4.27. Some of those admitted under the scheme, including the Balts referred to above (Paragraph 4.21), would have been former members of the Waffen SS. The decision to admit such people has been criticised. The rationale for making such people eligible for the EVW scheme was that they had joined the German forces late in the war, had been conscripted and had merely been fighting troops, unlike the Allgemeine SS, or general SS, which had responsibility for the concentration camps and other German atrocities. This last point is largely true. Although the SS rightly has a reputation for ruthless violence, the formation of the Waffen SS in 1939 seems to have been empire building by Himmler at the expense of the regular German army. By and large the Waffen SS fought as regular troops, and most fighting men from the eastern territories were recruited into the Waffen SS rather than into the Wehrmacht. The Waffen SS expanded rapidly in the last two years of the war. It was not true to say, however, that the Waffen SS consisted solely of conscripts, nor that all its members joined the German forces towards the end of the war. As the Germans retreated their need for the auxiliary police units and militia that they had formed to maintain control over the eastern territories declined: their need was for fighting men. As a consequence some of those who fought blamelessly in Waffen SS units had previously had far from spotless careers in units responsible for mass killings. From what such people sometimes said when interviewed under Operation Post Report (Paragraph 4.38) or when naturalised, it seems possible that they admitted their membership of auxiliary police units or militia to the screeners, who, however, appear not to have realised the significance of the admission. That people from the Baltic, Byelorussia and the Ukraine joined the German forces is understandable given the history of those territories, and their membership of the Waffen SS is no more reprehensible than joining any other German fighting unit. It is, however, of concern that it was not realised that many members of such units would have played other roles before joining the Waffen SS.

POLISH ARMED FORCES

4.28. Screening of the Polish forces was, on the whole, carried out, by the Poles themselves. A Home Office memorandum of March 1946 reveals some embarrassment on this point:

> "The question of screening Poles who had served with the Germans proved to be rather a delicate point as the Minister of Labour had assured the Trade Unions that all Poles who had been accepted for employment had been carefully screened to see if they had any Fascist tendencies. This assurance was given in the belief that the War Office had taken measures to screen Poles effectively, but the War Office in fact only screened those who applied for commissions in the PRC. Those who had deserted from the German ranks or had been captured while fighting with the Germans had only been screened by the Polish military authorities."

Although it is apparent that each member of the Corps would, at some stage, have been examined by an immigration officer before civilianisation, it is likely that this was to give them the appropriate permission to land in the United Kingdom rather than to screen them.

4.29. It is difficult to assess the practical effect of this lack of screening. Obviously for those who were with PAF throughout the war it is of no account. We are less sanguine, however, about those who were captured fighting for the Axis towards the end of the war, some of whom had previously served in auxiliary units in territory occupied by the Germans in the east.

PRISONERS OF WAR

4.30. Those Germans and Italians who remained in this country after the war were those judged to have no strong political opinion, and we have received few allegations against such people.

4.31. It was noted above (Paragraph 4.17) that some 8,000 Ukrainians were brought to the United Kingdom from Italy in 1947. Although some attempt was made to screen them in Italy resources and time made the effort limited and ineffectual. Only a small sample (180) were screened. The Ukrainians were therefore brought to the United Kingdom to prisoner of war camps without being screened. From there the vast majority appear to have been

civilianised by absorption into the European Volunteer Worker scheme. A small number were deported to Germany. Although there were plans by the Ukrainian Association of Great Britain to arrange for the whole group to travel to Canada, this does not appear to have occurred. Before the policy of civilianisation was agreed the full list of names was checked by the Foreign Office against the UNWCC lists: none of the men appeared. In addition each of the Ukrainians before being civilianised was seen by an immigration officer but this appears to have been solely in order to grant them civilian status in the United Kingdom.

4.32. Screening against the UNWCC lists brought no results, which, for the reasons given above (Paragraph 4.26), is hardly surprising. Like other Waffen SS units the Galicia SS Division was created to fight the Russians, which Ukrainians had every reason and every wish to do. The Division's history is, however, much disputed and it has been accused of committing atrocities in anti-partisan activities in Czechoslovakia and Yugoslavia. After the battle of Brody in July 1944 only 3,000 of the original 19,000 enlisted men survived, and it appears that the numbers were made up from the police and militia units no longer required in the Ukraine. The allegations that we have received against members of the Division relate to their activities before joining the Division.

4.33. In a diplomatic note of 27 February 1948 the Soviet Union requested the return of 124 officers of the Galicia Division presumably obtained from a nominal roll of one of the prisoner of war camps in the United Kingdom, where they then were. They were said to be

> "members of the SS Galicia Division which took part in the complement of the German army and perpetrated military crimes on the territory of the Soviet Union against Soviet citizens".

and their repatriation was requested under the Yalta agreement. Although UNWCC, CROWCASS and Berlin Document Centre records were searched, no evidence of war criminality could be found, although the search in Berlin revealed that some were SS officers, which was already known.

4.34. In its reply dated 21 April 1948 the Foreign Office said that the note had contained no evidence that the officers were Soviet citizens, war criminals or traitors. If the Soviet Government wished them to be repatriated it should produce evidence that they were Soviet citizens and evidence that they had committed war crimes, or for those shown to be Soviet citizens in 1939, that they had committed treachery. Surprisingly the matter then lapsed: there was no reply from the Soviet Embassy.

GOVERNMENT POLICY

4.35. Whatever policy with regard to the prosecution of war criminals may have been in 1945, and however it may have changed in the succeeding years (Chapter 3) there seems little doubt that it was a cornerstone of British policy that war criminals should be denied entry to the United Kingdom. We would not pretend to have undertaken a thorough review of all the Government papers, but the following extracts from official documents show a confidence that war criminals would not reach the United Kingdom.

4.36. In consideration of the possibility of the United Kingdom becoming signatory to the draft UNWCC convention in 1944 Home Office papers noted that:

> "The United Kingdom need not sign this convention because there is little or no likelihood of "War Criminals" or "Quislings" escaping to this country since for no doubt many years after the war all persons coming here from abroad will require a visa and those arriving without visas will - unless the immigration officers are satisfied - either be refused leave to land or landed subject to a time condition and could be got rid of without recourse to deportation".

4.37. In a note for immigration officers involved in 'Westward Ho!' in April 1947 the Ministry of Labour commented:

> "Everything possible will be done in collaboration with the authorities in Germany and Austria, and the Home Office in this country to ensure that undesirable displaced persons are not admitted to Great Britain",

and on 18 December 1948 a Home Office meeting was able to conclude that

"security: the existing screening arrangements for the registered DPs were as good as could be devised ... it was agreed that the screening of further categories to which it was proposed to extend recruitment would present more difficulties since no one knew anything about them. The recruiting teams would very likely obtain information from local sources but extra care would be taken in handling these wider categories"

and the Foreign Office, on 4 June 1947, was able to reassure Lord Inverchapel, the British representative to UNRRA, in response to Soviet concerns about British recruitment of DPs:

"No war criminals were knowingly registered as displaced persons".

4.38. UK Population. Canada, Australia and the United States of America had larger populations of the East European ethnic groups than did Britain. As a consequence after civilianisation many immigrants in Britain later travelled on to those three countries and other countries to join relatives or friends. From the late 1940s such immigrants began to be naturalised and no longer subject to immigration control. It is impossible to say how many of the people included in the categories above chose to remain in the United Kingdom but in the two years between October 1950 and September 1952, over 200,000 people were interviewed under Operation Post Report, which involved interviewing all people from Europe, and certain other countries, including pre-war refugees, in an attempt to identify possible communist fifth columnists.

SUMMARY

4.39. There seems little doubt that the Governments of the time intended to keep war criminals out of the United Kingdom, but labour shortages meant that it was necessary to utilise foreign labour, of which there were three major sources:

(a) the displaced person camps in Europe. For humanitarian reasons these seemed good recruiting grounds given the chaos in Europe. It also became obvious that the immigrants were hard-working and well-integrated.

(b) Prisoners of war and surrendered enemy personnel.

(c) the Polish Armed Forces.

All three groups contained some people who were citizens of territories which were in 1945 part of the Soviet Union, but which had not been in 1939. They had little desire to return home and given British reluctance to recognise Soviet territorial ambitions and the realisation of the fate that faced many of them for having fought, for understandable reasons, with the Germans against the Soviet Union, there was no intention to force them to return. It was also impossible to return our Polish allies against their will. Recruiting them to work here solved two problems: it reduced the number of displaced persons in occupied Europe, allowing an early return to normality there, and provided badly needed workers in the United Kingdom. This strategy involved an element of risk, however, since the chaos in occupied Europe meant that the backgrounds of the admitted persons could not be fully checked. Nonetheless, a great deal of effort went into screening EVWs before they arrived in this country. Prisoners of war and enemy personnel were screened here before civilianisation. There was no need to screen members of the Polish Armed Forces who had fought on the Allied side throughout the war. Of those who had fought for the Axis, only the officers were screened by the British. The others were screened by the Polish military authorities before being accepted into the Polish forces.

4.40. As far as the practical results are concerned it now seems irrelevant whether or not people were screened since the lists against which they were screened were defective, although the apparently careful process of screening may have deterred some people from attempting to come to this country. There was little possibility of effectively probing a person's background if he told a consistent story. There can be little doubt that the growing East-West suspicion which led to non-cooperation in these matters, and particularly the failure to include Soviet names on the UNWCC and CROWCASS lists, reduced the screening processes which did take place to a charade. To us the term 'screening' implies checking the antecedent history given by the subject, and searching for corroborative or refutatory evidence. But in the immediate post-war years little documentation concerning East Europeans was available in the west, and thus screening was reduced to checking against lists of war criminals which contained few names from the areas in question. Other screening difficulties centred around the unwieldy nature of the lists, the difficulties of spelling a name correctly to check it on the list, and the fact that someone could be added to the lists after he had already been screened. Of those cases considered by the Inquiry the name of only one, Dr

Wladyslaw Dering, appears on the CROWCASS and UNWCC lists. It therefore appears likely that none of the other persons whose cases we have considered would have been identified as war criminals even had they been screened. Nonetheless, despite the obvious flaws in the screening system, Government and official confidence remained that war criminals would not gain admittance to the United Kingdom. No consideration was ever given to extending the jurisdiction of the British courts to allow prosecution of war criminals in this country.

CHAPTER FIVE

INTERNATIONAL LAW

5.1. This chapter considers the development of violations of the laws and customs of war into the related concepts of war crimes and grave breaches (of the 1949 Geneva Conventions), and into the concepts of crimes against humanity and genocide which are also related. No consideration is given to the crime of waging aggressive war or to crimes against the peace, which fall outside the purview of this Inquiry. Since it is a basic principle of law that legislation should not be retroactive, that is, it should not make an act a prosecutable offence after the act has been performed, this chapter considers the position under international law of the various offences in 1939, before the Second World War. There is also a brief review of developments since then and consideration is given to the questions of retrospectivity and time limits.

LAWS AND CUSTOMS OF WAR BEFORE THE SECOND WORLD WAR

EARLY DEVELOPMENTS

5.2. The laws of war have developed from the Middle Ages and derive in part from the law of chivalry and in part from canon law and Roman law. No attempt is made here to review the earliest developments, but during the nineteenth century the laws began to be formalised and treaties were concluded between the European powers. Amongst these were the Declaration of Paris (1856), the Geneva Convention (1864), the Declaration of St Petersburg (1868), the Brussels Declaration (1874) and the Hague Conventions (1899). These last were an attempt to express in written form the customary laws of war as they existed in 1899. They were revised in 1907.

5.3. The fourth of the Hague Conventions of 1907 concerns the laws and customs of war on land. It was deemed necessary to revise the general laws and customs of war in order to define them with greater precision and to confine them "within limits intended to mitigate their severity as far as possible". While it was not thought possible to cover all circumstances which might arise it was agreed that "unforeseen cases" should not "be left to the arbitrary opinion of military commanders". It was declared that in

cases not covered by the rules of the convention "the inhabitants and belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience".

5.4. In its first article the Convention, which was ratified by states including the United Kingdom, France, Germany, Italy, Russia and the United States of America, required the contracting parties to issue instructions to their armed land forces which conformed to the regulations annexed to the Convention, which is the first known example of a legal obligation on states to instruct their armed forces on this topic. The Annex to the Convention is generally referred to as the Hague Rules. The matters covered therein include the status of belligerents, the humane treatment of prisoners of war, the treatment of the sick and wounded, limiting the means of injuring the enemy and military authority over the territory of the hostile state. Article 46 states that "individual life ... must be respected" and Article 50 states that "no collective penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which it cannot be regarded as collectively responsible". In large measure the various acts amounted to acts or omissions considered criminal offences under the laws of the civilised nations.

5.5. As a consequence both the United Kingdom and Germany modified their military manuals. Paragraph 443 of the 1914 British Manual of Military Law listed the following as violations of the laws of war which constituted war crimes: "Making use of poisoned and otherwise forbidden arms and ammunition; killing of the wounded; refusal of quarter; treacherous request of quarter; maltreatment of dead bodies on the battlefield; ill-treatment of prisoners of war; breaking of parole by prisoners of war; firing on undefended localities; abuse of flag and badge, and other violations of the Geneva Convention; use of civilian clothing by troops to conceal military character during battle; bombardment of hospitals and other privileged buildings; improper use of privileged buildings for military purposes; poisoning of wells and streams; pillage and purposeless destruction; ill-treatment of inhabitants in occupied territory." A substantially similar

list of war crimes was contained in the 1936 amendment to the revised Manual which was issued in 1929. Similarly the "Kriegsbrauch in Landkriege", instructions issued to the German armed forces following the Hague Conventions, stated that inhabitants of occupied territories should not suffer injury of life, limb, bodily injury, disturbance of domestic peace, or attack on family, honour or morality, and that such practices should be punished as if they were committed in Germany. The Code also expressly prohibited all aimless destruction, devastation and burning of the enemy's country.

5.6. Article 3 of the Convention stated that:

> "A belligerent party which violates the provisions of the said regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces".

Although the Convention does not specify that sanctions should be imposed on individuals who have violated the regulations, the British and German military handbooks (and those of other nations, which sometimes included the wording of the Conventions almost verbatim) are evidence that nations considered that violations of the laws of war involved criminal responsibility for those who committed them.

5.7. It has long been a generally recognised principle of international law that belligerent and neutral States have a right to exercise jurisdiction in respect of war crimes since they are crimes ex jure gentium. This right may be exercised over crimes alleged to have been committed not only by members of the enemy forces but also by enemy civilians and other persons of any nationality including those of allied or neutral States and may be exercised by a belligerent who, having occupied all or part of the enemy territory, is able to capture those war criminals who happen to be there. At the cessation of hostilities the duty to surrender persons charged with having committed war crimes from any occupied territory or any territory which a belligerent is in a position to occupy may be imposed upon the authorities of the defeated state as a condition of the armistice. A fortiori such a right must exist when there is an unconditional surrender. These are rights and duties that derive from the international law of war. After the conclusion of the peace treaty any special rights and responsibilities exercised by the victors do not derive from the law of war,

but have their basis in the peace treaty, to which all of the states participating in the hostilities are normally party and to which they thus formally assent. Although in previous centuries the peace treaty normally brought war crimes prosecutions to an end, there is no rule of international law preventing a victorious belligerent from including the surrender for trial of persons accused of war crimes as a provision of the peace treaty.

THE FIRST WORLD WAR

5.8. After the First World War the Preliminary Peace Conference of Paris in January 1919 created a Commission to inquire into the responsibilities relating to the war in which hostilities had, of course, ceased in November 1918. It was required to investigate inter alia the violations of the laws and customs of war, personal responsibility and the constitution and procedure of an appropriate Tribunal.

5.9. The Commission reported that gross violations of the rights of both belligerents and civilians had occurred. "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". Amongst the violations of the laws and customs of war the Commission included murders and massacres, systematic terrorism; putting hostages to death; torture of civilians; deliberate starvation of civilians; directions to give no quarter and many others. The full list of thirty two types of offences is an amplification and clarification of elements of the 1907 Convention.

5.10. The Commission held that each belligerent had the power under international law to set up municipal courts to try violations of the laws and customs of war, but also that an international court should be set up to deal with those whose offences were committed against peoples of different nations or over a wide geographic area. This was to include "all authorities ... who ordered, or, with knowledge thereof and with power to intervene, abstained from preventing or taking measures to prevent, putting to an end or repressing, violations of the laws or customs of war".

5.11. The Commission also considered that as superior orders were not by themselves a defence "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".

5.12. The Versailles Treaty with Germany came into force on 15 January 1920, fourteen months after the cessation of hostilities. It included recognition by Germany of the right of the Allies to the surrender of those who had committed violations for trials before military (but not civil) tribunals, either national or international, depending on the nature of the offences. The Allies formally demanded of Germany the extradition of 896 Germans accused of violating the laws of war. However, in view of the instability of the German government, the Allies subsequently agreed as a compromise to accept an offer by Germany to try a selected number of individuals before the Criminal Senate of the Imperial Court of Justice of Germany. In the event only twelve were actually prosecuted of whom six were convicted and received derisory sentences.

5.13. Although there was little success in securing convictions, despite the large catalogue of war crimes committed by the Germans and their allies in the First World War, it is important that the Hague Conventions of 1899 and 1907 were accepted by all parties as the law regulating the conduct of war. Neither Germany nor the Allies, despite the various charges and accusations made through diplomatic channels of violations of the laws and customs of war, ever denied the validity of these instruments as evidence of the law on war, or invoked their inapplicability as a defence to the military measures adopted. The peace treaties made with Germany and her allies do not specify either the laws and customs of war or the nature of the violations which are to be regarded as punishable war crimes.

THE SECOND WORLD WAR

VIOLATIONS OF THE LAWS AND CUSTOMS OF WAR: WAR CRIMES

5.14. The status of violations of the laws and customs of war as criminal offences under international law after 1920 and up to the Second World War was made clear in the Inter-Allied Declaration signed in 1942 at St James's

Palace, London, by the Governments in Exile. The Fourth Preambular paragraph of the Declaration states:

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

The signatories went on to resolve to punish "through the channel of organised justice those guilty or responsible for these crimes regardless whether they ordered them, perpetrated them or participated in them".

5.15. At the end of the Second World War a distinction was made between major war criminals - as defined by the Moscow Declaration (Paragraphs 3.8-3.9) - and others. Separate provisions concerning violations of the laws and customs of war were included in the Nuremberg Charter, the Tokyo Charter, the British Royal Warrant of 1945 and the Allied Control Council Law Number 10 of 1946. The Nuremberg provision (Article 6b) establishes the basis of the jurisdiction over major war criminals for war crimes (crimes against humanity are considered in Paragraph 5.19):

> "War crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to murder, ill treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages or devastation not justified by military necessity."

The Tokyo Charter, in contrast, simply contained in Article 6(b) - "War Crimes - namely violations of the laws of war". Allied Control Council Law Number 10, under which each occupying authority could bring persons to trial within its zone of occupation, followed the Nuremberg provision closely but introduced in its wording "atrocities and offences against persons or property constituting violations of the laws or customs of war". The Royal Warrant of 14 June 1945 and the Army Order putting it into effect, which allowed prosecutions in the British zone of occupation, defined a war crime as "a violation of the laws and usages of war committed during any war in which His Majesty has been or may be engaged at any time since 2 September 1939" (Paragraphs 6.3 -6.5).

5.16. In 1946, the U N General Assembly adopted by a unanimous vote a Resolution (No. 95 of 11 December 1946) affirming the principles of international law enunciated in the Charters and Judgments of the Nuremberg and Tokyo Military Tribunals.

5.17. In the period immediately after the war legislation was enacted in many countries which defined war crimes in various ways, but usually in accordance with the Conventions and Charter. Some defined war crimes simply as violations of the laws and customs of war (Norway, Belgium), although others (China, Australia) added an Annex or Schedule listing the offences covered. Israeli and Dutch law adopt the definition of war crimes given in the Nuremberg Charter whilst Yugoslav and Polish law have adapted that definition to take into consideration particular national interests.

5.18. It was argued by some defendants at Nuremberg that the Hague Convention was not binding on the participants in the Second World War due to the "general participation" clause in Article 2 of the Hague Convention of 1907. That clause provided:

> "The provisions contained in the regulations (Rules of Land Warfare) referred to in Article 1 as well as in the present Convention do not apply except between contracting powers, and then only if all the belligerents are parties to the Convention".

Several of the belligerents in the Second World War were not parties to the Convention. In its judgement the Tribunal noted that:

> "In the opinion of the Tribunal it is not necessary to decide this question. The rules of land warfare expressed in the Convention undoubtedly represented an advance over existing international law at the time of their adoption. But the convention expressly stated that it was an attempt "to revise the general laws and customs of war", which it thus recognised to be then existing, but by 1939 these rules laid down in the Convention were recognised by all civilized nations, and were regarded as being declaratory of the laws and customs of war which are referred to in Article 6(b) of the Charter".

That is, the Tribunal did not consider itself limited by the terms of the 1907 Convention since customary international law also considered the acts defined in the Charter to be "war crimes" even though not all the belligerent parties in the Second World War had become party to the Hague Conventions.

CRIMES AGAINST HUMANITY AND GENOCIDE

5.19. It is instructive to start this review with the definition given in the Constitution of the International Military Tribunal (IMT) at Nuremberg. Article 6(c) is as follows:

> CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

5.20. This definition of crimes against humanity, in terms of the acts themselves, is very similar to the Nuremberg definition of war crimes (Paragraph 5.15). War crimes, however, are violations of the laws and customs of war and these apply only to the behaviour of armies and occupying powers with regard to soldiers and civilians of the countries with which they are in conflict or which they are occupying. There is no provision in any of the international treaties considered above for punishment of crimes committed by a State against its own citizens or committed in territory occupied by an annexation which was militarily unopposed. It was difficult to accept, however, that atrocities committed by the Axis powers outside their borders during the war were crimes which could be tried as war crimes, but that atrocities of an identical nature committed within their own borders before or during the war, or outside their own borders before the war, were not triable.

5.21. The problem did not arise for the first time in the Second World War. During the First World War terrible atrocities were committed by Germany and her allies on their own territory against their own subjects. Possibly the most notable were the massacres of Armenians, who were Turkish subjects, by the Turkish authorities. These massacres were condemned in a declaration by the Governments of France, Great Britain and Russia on 28 May 1915 as "crimes against humanity and civilisation". The majority view of the Commission set up by the Preliminary Peace Conference in Paris in 1919 was that the war had been carried on "by barbarous or illegitimate methods in violation of the established laws and customs of war and the elementary laws of humanity". The Commission, whose members included representatives of the British Empire,

the United States, France, Italy and Japan, recommended that the national and international tribunals to be set up should be empowered to try those alleged to have been guilty of offences against the laws and customs of war and also those alleged to have been guilty of offences against the laws of humanity.

5.22. The American members of the Commission disagreed with this thinking, and objected to the inclusion of references to "the laws and principles of humanity" in the report. Unlike the laws and customs of war, the laws and principles of humanity were not of a universal standard to be found in books of authority and in the practice of nations, but varied "with the individual, which, if for no other reason, should exclude them from consideration in a court of justice, especially one charged with the administration of criminal law". The American representative stated that "war was and is by its very nature inhuman, but acts consistent with the laws and customs of war, although these acts are inhuman, are nevertheless not the object of punishment by a court of justice. A judicial tribunal only deals with existing law and only administers existing law, leaving to another forum infractions of the moral law and actions contrary to the laws and principles of humanity. A further objection lies in the fact that the laws and principles of humanity are not certain, varying with time, place and circumstance, and accordingly, it may be, to the conscience of the individual judge. There is no fixed and universal standard of humanity". As a result of the American objections there were no references to violations of the laws of humanity in the peace treaties of the First World War, and consequently no trials for these offences.

5.23. By 1941 it had become obvious that Germany was committing horrors on a scale previously unknown both on its own territory and on the territories of the countries that it had occupied. It has been noted elsewhere (Paragraph 3.2) that retribution for such crimes became one of the principal war aims of the Allies. At the fourth meeting of the Legal Committee of the United Nations War Crimes Commission (UNWCC) the American representative drew attention to the atrocities committed by the Nazis against German Jews and Catholics, and the other offences they had committed on religious and racial grounds. He considered that "crimes committed against stateless persons or against any persons because of their race or religion [were] crimes against humanity ... judiciable by the United Nations or their agencies as war crimes". Other delegates argued that crimes committed by a nation against

its own citizens could not be construed as war crimes. In addition, offences committed by the Nazis within or outwith their borders before September 1939 could not be considered as war crimes as they were committed prior to the outbreak of war. This was essentially the same question which had been left unresolved by the 1919 Commission of the Preliminary Peace Conference in Paris.

5.24. In essence, in the period immediately after the Second World War the concept of war crimes derived from international conventions agreed, accepted and put into practice by the civilised nations, which were themselves based on centuries of developing customary law. In contrast, although the "laws of humanity" are mentioned in the Hague Conventions (Paragraph 5.3) and the question of "crimes against humanity and civilianisation" had been raised after the First World War, there was no treaty law governing crimes against humanity. It was simply judged unacceptable that the perpetrators of such crimes should escape retribution because of a quirk concerning when or where the crime was committed. It has been said that their inclusion at Nuremberg was to set the law for the future, rather than to punish the perpetrators brought before the Tribunal, none of whom were convicted for crimes against humanity alone.

5.25. One argument for taking jurisdiction over crimes against humanity at Nuremberg was that while they could not be said to be rooted in past treaties, they were grounded in the general principles of law recognised by nations. The French Chief Prosecutor at Nuremberg refuted the charge that the concept of crimes against humanity constituted retrospective legislation by explaining in his opening speech that this class of crimes existed in the penal code of every civilised country "even though not codified in an inter-state penal code". He argued that crimes against humanity were not new offences in the sense that these acts were formerly not criminal. However, it was the first occasion on which the international community had asserted that individuals are responsible to the community of nations for violations of criminal law. It was judged that where crimes overstepped in magnitude and atrocity the bounds of what was tolerable, the international community had the competence to override the national sovereignty and municipal law of the states of which the perpetrators were subject and where the crimes had been committed. This was one of the principles established at Nuremberg.

5.26. The definition of crimes against humanity given in the Charter is, nonetheless, more circumscribed than might at first appear. A crime against humanity had to be related to other crimes within the jurisdiction of the International Military Tribunal (IMT). Thus although in, and prior to, 1945 there was a considerable body of opinion that the concept related to acts which were considered criminal offences under the penal laws of most civilised nations and thus perhaps were criminal offences under international law, the International Military Tribunal was able to consider only crimes against humanity committed by major war criminals in execution of, or in connection with, the plan to wage war. The link with war was essential for two reasons. Firstly, it gave further reason for the Tribunal to be given jurisdiction over the crimes committed. Although they were not war crimes per se, that is, breaches of the Hague Rules, they were linked with warfare and thus might be judged to fall within the "other cases" referred to in the preamble to the Hague Conventions (Paragraph 5.3) which were to be considered with reference to the "usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience". In addition, such a link also avoids the difficulty which emerges from an extension of 'crimes against humanity' uncoupled from their link with wartime. Such an extension, if associated with an element of universal jurisdiction, and perhaps even an obligation to prosecute (as is the case with, for example, the 1949 Geneva Conventions) would render the abuses of every authoritarian ruler prosecutable in this and every other country. Although the link with wartime is understandable , it detracts from the argument discussed earlier (Paragraph 5.25) that crimes against humanity are crimes proscribed under the laws of almost all the civilised nations and thus represent general principles of law recognised by the international community.

5.27. The IMT itself, in its judgement, considered that there was an insufficient link between crimes against humanity committed before the war and the war itself. In reference to the pre-war crimes, including those against citizens of Germany, the Nuremberg judgement states:

> "The Tribunal is of the opinion that revolting and horrible as many of those crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any [crime within the jurisdiction of the Tribunal, ie, a crime against the peace]. The Tribunal therefore cannot make a general declaration that the

acts before 1939 were Crimes against Humanity within the meaning of the Charter, but from the beginning of the war in 1939 War Crimes were committed on a vast scale, which were also Crimes against Humanity; and in so far as the inhuman acts charged in the Indictment, and committed after the beginning of the war, did not constitute War Crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted Crimes against Humanity".

5.28. Other acts, which might appear as serious as those crimes against humanity tried at Nuremberg, such as those committed by the Germans before the war, do not, in the judgement of the IMT, fall within the definition of crimes against humanity because they were not related to a crime against peace. The scope of the definition of crimes against humanity is further circumscribed by the requirement that the acts must be committed against 'any civilian population' which implies that isolated acts against individuals fall outside the concept of crimes against humanity.

5.29. Genocide can be considered as an offence which falls within the class of crimes against humanity. Because of the separate mention of it in the terms of reference of the Inquiry it is appropriate to note that although the IMT considered acts of "deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people and national, racial or religious groups, particularly Jews, Poles and Gypsies and others", it did not attempt to define the offence of genocide per se. The offence was considered as one of murder in occupied territory.

LATER DEVELOPMENTS

WAR CRIMES: GRAVE BREACHES OF THE GENEVA CONVENTIONS

5.30. In 1949 four Geneva Conventions were made under the auspices of the International Committee of the Red Cross. These concern the amelioration of the condition of the wounded and sick of the armed forces in the field and at sea, the treatment of prisoners of war and the protection of civilian persons in time of war. Each Convention contains provisions for the repression of

abuses and infractions. In each case the Contracting Parties are required to enact "any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the ... Convention". In addition, the Contracting Parties are under an obligation to search for persons alleged to have committed grave breaches of the Conventions and to prosecute them regardless of their nationality and of where the offences were committed (except in cases of extradition).

5.31. "Grave breaches" are defined similarly in each of the Conventions:

> "Grave breaches ... [are] those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly".

Additional "grave breaches" relating to prisoners of war are:

> "Compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention".

and concerning civilian persons in time of war:

> "Unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages".

5.32. Offences which are "grave breaches" of the Conventions are similar in nature to the violations of the laws and customs of war in the period prior to the Second World War, which came to be known as war crimes. Although in some respects the 1949 Conventions are noted to be complementary to the Regulations annexed to the 1899 and 1907 Hague Conventions it can be said that in many ways the concept of grave breaches of the Geneva Conventions has largely replaced the concept of war crimes in international law, and in the domestic law of many countries. All the major protagonists in the Second World War have ratified the 1949 Conventions.

5.33. However, the 1949 Conventions are of broader application than the 1899 and 1907 Conventions, which applied only to war between the Contracting States, that is to international armed conflict. Common Article 3 of each of the 1949 Conventions also applies to armed conflicts "not of an international character occurring in the territory" of the Contracting States and to a "partial or total occupation of ... territory ... even if the said occupation meets with no armed resistance". Acts committed during civil war and during a peaceful annexation are thus also "grave breaches" of the Conventions. Many acts that in the Second World War fell outside the concept of war crimes, and had to be considered as crimes against humanity, such as murders committed in countries where Hitler's occupation went militarily unopposed, fall within the definition of "grave breaches" of the Conventions.

5.34. Two Additional Protocols to the Geneva Conventions of 1949 were drafted by a Diplomatic Conference in Geneva in 1977. The First Additional Protocol states that:

> "In cases not covered by this Protocol or by other international agreement, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience"

which is derived from the preamble to the Fourth Hague Convention of 1907 (Paragraph 5.3). As in 1907, there is a reference to humanity and conscience, but its application is left uncertain. The 1977 Additional Protocols have as yet not been ratified by most of the major combatants of the Second World War - including the United Kingdom, the United States, and the USSR and both the Federal and Democratic Republics of Germany - largely, we understand, for reasons unconnected with the matters under the consideration of this Inquiry.

CRIMES AGAINST HUMANITY AND GENOCIDE

5.35. Since 1945 crimes against humanity have not been defined by international treaty - apart from the Nuremberg Charter - in the way that war crimes already had been in 1939. However, as noted above some aspects of what were considered at Nuremberg as crimes against humanity now fall within the scope of the 1949 Geneva Conventions. In addition, genocide, which may be considered as a group of offences falling within the concept of crimes

against humanity, is now defined by the Convention on the Prevention and Punishment of the Crime of Genocide (1948).

5.36. While the definition of "grave breaches" of the 1949 Geneva Conventions goes wider than that of violations of the laws of war, it does not protect citizens against the actions of their own states at a time when there is no armed conflict. Adherence to the Nuremberg Charter definition, if the provision connecting crimes against humanity to crimes against the peace is set aside, would cover acts committed by a state against its own citizens if the act was part of a larger campaign of such acts but an individual is not protected from an isolated act by his own state. As with the 1907 Conventions, the 1977 Additional Protocols to the 1949 Geneva Conventions provide that cases not covered by the Protocols or other international agreement should be considered under international law derived from custom, the principles of humanity and the dictates of public conscience. A precise definition remains lacking.

5.37. The position of genocide in international law was clarified by the Genocide Convention (1948) (Paragraph 6.7). A draft preamble of the Convention stated that note had been taken of the fact that the International Military Tribunal at Nuremberg had punished in its judgment under a different legal description certain persons who had committed acts similar to those which the Convention aimed at punishing. Members of the U N Ad Hoc Committee entrusted with drafting the Convention admitted that the Committee's work was a development of the concept of crimes against humanity established at Nuremberg. In the course of its work on a Draft Code of Offences against the Peace and Security of Mankind, Members of the International Law Commission recently (1986) recognised that genocide and crimes against humanity are two separate crimes.

RETROSPECTIVITY

5.38. There are other rules of international law which have a bearing on the prosecution of the offences considered in this chapter. Article 7(1) of the European Convention on Human Rights (ECHR) (1950) states:

> "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor

shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed".

Nonetheless, Article 7(2) of the same Convention makes a specific proviso to the above:

"This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognised by civilised nations".

It should be noted that Article 7(2) is not strictly an exception to Article 7(1), since it does not allow the passage of legislation to make an act an offence retrospectively: it merely allows nations later to take jurisdiction over acts which at the time of their commission were already regarded as criminal by the international standard. The Committee of Experts responsible for drafting of the Convention recognised that the test of Article 7(1) "did not affect laws, which under the very exceptional circumstances at the end of the Second World War, were passed in order to suppress war crimes, treason and collaboration with the enemy, and did not aim at any legal or moral condemnation of these laws". Article 7(2) was drafted, therefore, with war crimes in mind.

5.39. Almost identical articles for the non-applicability of retrospective legislation, and for a proviso pertaining to acts or omissions which were criminal according to the general principles of law recognised by the community of nations are contained in Articles 15(1) and 15(2) respectively of United Nations International Covenant on Civil and Political Rights (1966).

5.40. By contrast the United Nations Universal Declaration of Human Rights (1948) contains in Article 11(2) wording which is almost identical to that of Article 7(1) of the ECHR, but no proviso for war crimes. It might be considered that the later UN Covenant, which like the Declaration was adopted by the General Assembly, superseded or clarified this provision of the Declaration.

TIME LIMITS

5.41. The United Nations Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968) states that no statutory limitation shall apply to war crimes, including those defined by the Nuremberg Charter and "grave breaches" of the 1949 Geneva Conventions, crimes against humanity as defined in the Nuremberg Charter and also including certain acts arising from the policy of apartheid, and genocide as defined in the 1948 Convention. It has been ratified by relatively few states. The 1974 Council of Europe Convention requires Contracting States to ensure that statutory limitations shall not apply to genocide, as defined in the 1948 Convention, "grave breaches" of the 1949 Geneva Conventions and any comparable violations of the laws of war.

SUMMARY

5.42. It appears that in 1939 the 1899 and 1907 Hague Conventions were accepted by the civilised world as part of the international law governing the laws and customs of warfare. Elements from the regulations annexed to the Fourth Hague Convention had been incorporated into the military manuals of the United Kingdom and Germany, as well as those of other nations. Even though the trials after the First World War were unsatisfactory there was little doubt that Germany, like the victorious allies, accepted the principle that violations of the laws and customs of war defined by the Hague Conventions were crimes triable and punishable, either by the nation whose citizens had committed the offence or by the belligerent into whose hands the offender fell by capture or by surrender agreed in the armistice or in the peace treaty, in a national or an international tribunal. As noted above (Paragraph 5.7) the rights and responsibilities of the victor usually derive from the terms of the peace treaty, to which all parties to the hostilities have given their assent. However, the absence of a peace treaty with Germany after the Second World War creates an awkwardness with respect to the rights and responsibilities to which the Allies may now lay claim. The Nuremberg Charter and the other post war instruments mentioned above reaffirmed international adherence to the Hague Conventions, as did the subsequent UN General Assembly Resolution. In addition the judgement at Nuremberg held that the Hague Conventions had become so generally accepted by the community

of nations as to become part of customary international law. They therefore bound all belligerents whether or not they were party to the Conventions.

5.43. In 1939 there was no internationally accepted definition of crimes against humanity, as there was of violations of the laws and customs of war. The Nuremberg definition of 1945 appears partly to be based on the principle that some crimes are so patently against the laws of all civilised nations as to be regarded as crimes in international law, prosecutable by any nation. Nuremberg, being constituted to deal with a particular problem, that of the crimes committed by Hitler's Germany, did not attempt to apply such a wide definition, and restricted itself to consideration of crimes against humanity which to be prosecutable had to be linked to crimes against the peace. Some consider that a link with war was necessary to justify the Tribunal's being given jurisdiction over crimes against humanity and to avoid accusations of retrospectivity. No widely applicable definition of the concept of crimes against humanity has since emerged. Indeed, while the moral justification for trying crimes against humanity at Nuremberg is understandable, the legal justification is less clear. Some of the issues have, however, been explored above (Paragraphs 5.25-5.28).

5.44. Genocide was not defined by international convention until 1948.

5.45. International human rights conventions provide for the non-applicability of retrospective legislation, but contain exceptions relating to acts or omissions which were criminal by the international standard at the time of their commission. The exceptions were drafted with war crimes in mind. International conventions also provide that there shall be no statutory limitation on the prosecution of war crimes.

CHAPTER SIX

THE PRESENT LEGAL POSITION IN THE UNITED KINGDOM

6.1. This chapter considers briefly the legal remedies that are currently available in the United Kingdom with respect to persons now British citizens or resident here who have allegedly committed crimes abroad including war crimes, crimes against humanity and genocide. It also considers the position with regard to extraterritoriality, time limits and retrospectivity.

LEGAL REMEDIES

PROSECUTIONS

Murder and manslaughter

6.2. Section 9 of the Offences against the Person Act 1861 gives the courts in England, Wales and Northern Ireland jurisdiction over acts of murder or manslaughter committed on land abroad by "a subject of Her Majesty". Similar provision for jurisdiction in Scotland is made in section 6(1) of the Criminal Procedure (Scotland) Act 1975, which was a consolidating statute, the earlier provision having been enacted in section 29 of the Criminal Justice (Scotland) Act 1949. The Acts do not give British courts jurisdiction over murder and manslaughter committed abroad by persons who have subsequently become British subjects, and the Scottish provision was enacted after the Second World War.

Royal Warrant

6.3. After the Second World War, the British tried persons accused of war crimes before Military Courts which were convened under the authority of the Royal Warrant dated 14 June 1945 which provided Regulations for the Trial of War Criminals. Such courts were held both in Europe and the Far East. The Regulations provided for the trial and punishment of war crimes which they defined as "violation[s] of the laws and usages of war committed during any war in which His Majesty has been or may be engaged at any time since 2 September 1939." Military Courts are similar to General Courts-Martial, the most powerful kind of Service court, with powers of sentencing limited only

by the maximum penalty for the offence being tried. The Regulations contain specific provisions in respect of evidence and enable the court to take judicial notice of the laws and usages of war. Military Courts may be convened where it appears that a person "then within the limits of [the convening authority's] command has at any place whether within or without such limits committed a crime." Thus such courts have jurisdiction unfettered by the territorial limitations on civil courts trying criminal offences: they are mobile and may adjourn to receive evidence at other locations. Counsel may appear on behalf of the prosecution and the defendant. As with trials by courts-martial, the rules of procedure permit pre-trial investigations in the form of an abstract of evidence or a summary of evidence, which are similar to committal proceedings before magistrates. The Royal Warrant is not a basis for war crimes trials in the ordinary criminal courts of this country.

6.4. The Royal Warrant established Military Courts and provided for the application of the Army Act (of 1881) and the Army Rules of Procedure (of 1926) as if the Military Courts were Field General Courts-Martial and the accused were persons subject to military law charged with having committed offences on active service. The Director of Army Legal Services considers the Royal Warrant to be still extant and that it could easily be amended to refer to the current Army Act of 1955 and the Rules of Procedure (Army) of 1972 while itself remaining extant; subject to that, he considers that Military Courts remain available for the trial of persons who allegedly committed serious violations of the laws and usages of war during the Second World War.

6.5. The question of trials by Military Court established under a Royal Warrant raises some interesting issues. Some experts hold that Magna Carta and the restrictions on the Prerogative Powers following the abolition of the Star Chamber prevent the use of the Royal Warrant - an exercise of the Royal Legislative Prerogative - to set up Military Courts in the United Kingdom. Prosecutions may only be brought for offences for which the civil statutory time limit has not been passed, which would include all the indictable offences in which we are interested.

Geneva Conventions Act 1957

6.6. Section 1 of this Act makes it an offence for a person to commit or aid, abet or procure the commission by any other person of grave breaches of the 1949 Geneva Conventions. Such "grave breaches" include wilful killing and torture (Paragraphs 5.30-5.33). The Act gives British courts extraterritorial jurisdiction over such offences: prosecutions may take place in the United Kingdom wherever in the world the offence was committed and whatever the nationality of the offender. The Act is not, however, retrospective, and thus only "grave breaches" committed after enactment in 1957 may be prosecuted in this country.

Genocide Act 1969

6.7. This adopts the definition of the Genocide Convention 1948 (Paragraph 5.37), and makes genocide a criminal offence in English and Scots law, together with any attempt, conspiracy or incitement to commit such an offence. It contains the unusual provision that it allows extradition of a person accused of genocide where the alleged act was not an offence under the law in force at the time and place where it was allegedly committed and could thus be said to be retrospective with regard to its extradition provisions. It is not retrospective with regard to prosecutions in this country nor does it contain provisions to allow British courts jurisdiction over acts of genocide committed abroad. It therefore only allows the prosecution of acts of genocide committed in the United Kingdom after enactment in 1969. It made little if any substantive difference to domestic law since each of the individual acts prosecutable under the Act as genocide were already prosecutable here.

EXTRADITION

6.8. On 8 February 1988, in answer to questions following the statement in which he announced the formation of this Inquiry, the Home Secretary told the House of Commons:

> "Normally, for crimes committed abroad, the remedy that we would seek to apply would be that of extradition. However ... there would be great difficulties in this case, as we have no extradition arrangements with the Soviet Union, as the crimes alleged were

committed in territory over which the Soviet Union now has control and as no other country appears to have a standing in the matter". (Official report Col 29).

After an earlier meeting with representatives of the Simon Wiesenthal Centre he had said:

> "We don't have effective extradition arrangements with the Soviet Union and I made it clear that we wouldn't in any case consider sending people back to face trial in the Soviet Union".

The then Minister of State for the Home Department, Mr David Mellor, said during the Committee Stage of the 1987 Criminal Justice Bill:

> "My right hon. friend the Home Secretary made it clear to representatives of the Wiesenthal centre that we would not be prepared to extradite anyone under any circumstances to the Soviet Union". (Official report, 10 March 1987, Col 961)

6.9. Under the terms of the Criminal Justice Act 1988 it is no longer necessary for a treaty to exist between the United Kingdom and a foreign state for extradition to take place. When the provisions are brought into force the Secretary of State will be empowered to issue a certificate of special extradition arrangements to enable extradition to take place on an ad hoc basis.

6.10. The Secretary of State has a wide discretion in considering an application for extradition. He may have regard to the question whether the alleged criminal is likely to receive a fair trial if extradited and take into account other political factors which we consider briefly in Chapter Nine (Paragraphs 9.45-9.49).

DEPRIVATION OF CITIZENSHIP

6.11. Under section 40 of the British Nationality Act 1981, the Secretary of State has powers to deprive a registered or naturalised British citizen of his citizenship if he is satisfied that it was obtained by fraud, false representation or concealment of any material fact. Such persons may also be deprived of their citizenship if they are shown to be disloyal, to have had dealings with an enemy in time of war, or have been sentenced to imprisonment in any country for a term not less than twelve months within the period of five years following registration or naturalisation. In any of these cases

the Secretary of State must be satisfied that it is not conducive to the public good that the person concerned should continue to be a British citizen.

6.12. Article 8(1) of the 1961 UN Convention on the Reduction of Statelessness, which the United Kingdom ratified in 1966, states that "A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless". Under Article 8(3) a Contracting State may retain the right, as the United Kingdom did by means of a reservation on ratification, to deprive persons of their nationality and make them stateless in certain limited circumstances, notably if they are shown to be disloyal or to have had dealings with the enemy in time of war. This reservation is reflected in the provisions of the British Nationality Act sections 40(3) and (5) (paragraph 6.11). It is also permissible to deprive a person of British citizenship if it was obtained by fraud, false representation or concealment of any material fact, even if such deprivation would make him stateless. British obligations under the 1961 Convention prevent deprivation of citizenship on the grounds of imprisonment if the person concerned was thereby made stateless.

6.13. The procedure for deprivation is laid down in the British Nationality Act 1981, the British Nationality (General) Regulations 1982 and the British Citizenship (Deprivation) Rules 1982. Any person against whom the Secretary of State proposes to make a deprivation order is entitled to have the matter referred to a Committee of Inquiry, to whom the Secretary of State may himself also refer any case. The Committee must have a Chairman with judicial experience, in practice a High Court judge, and has the powers of the High Court with regard to witnesses and documents. The powers of deprivation in the 1981 Act are similar to those in the 1948 Act. They have been exercised on only ten occasions since 1948, and never under the powers of the 1981 Act. The Committee of Inquiry, which last met in 1958 and has had no new members appointed since 1961, considered five of these cases, and in each case recommended deprivation. In these few cases deprivation was consequent on conviction for a serious offence.

6.14. It is not possible to deport a British citizen. Should it be intended to deport an alleged war criminal who has gained British citizenship it would first be necessary to deprive him of his citizenship as described in the preceding paragraphs. Once a person has been deprived of his citizenship the fact that he was once a British citizen will have no bearing on the applicability of the deportation procedures to him. He will fall to be treated as any other foreign national, if he has retained an entitlement to foreign nationality, or as any other stateless person if he has not.

6.15. The 1954 UN Convention on the Status of Stateless Persons, which the United Kingdom ratified in 1959, is designed to improve the lot of stateless persons. For this reason Article 31 provides that a stateless person lawfully in the territory of a Contracting State shall not be expelled save on grounds of national security or public order. However, Article 1 provides that the Convention shall not apply to persons with respect to whom there are serious reasons for considering that "they have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes".

6.16. Deportation action aims to secure the removal and bar re-entry to the United Kingdom of those who have contravened the immigration control or who have offended here in a serious way. Removal directions normally involve return to the country of which the person is a national, or which last provided travel documentation.

6.17. Under the Immigration Act 1971 persons who are not British citizens may be liable to deportation if they remain beyond their permitted stay or otherwise breach their conditions of stay or if the Secretary of State deems their deportation to be conducive to the public good. Deportation may also be made on the recommendation of a court, if, having attained the age of seventeen, they are convicted of an offence punishable by imprisonment. Irish and Commonwealth citizens resident in the United Kingdom on 1 January 1973 who are of long residence are exempt from deportation.

6.18. Where a recommendation for deportation is made by a court, appeal is to a higher court and may be against conviction or sentence (including the recommendation). There is a further right of appeal to the immigration appellate authorities, but only against the removal directions given under the deportation order. Where the decision to deport is taken other than on the recommendation of a court appeals may be made to the immigration appellate authorities. A separate right of appeal is also available against the removal directions. No statutory right of appeal is available if a decision that the deportation is conducive to the public good is made by the Secretary of State as being in the interests of national security, or of the external relations of the United Kingdom or for other political reasons. Non-statutory arrangements exist for the review of such decisions.

6.19. Before a deportation order is made the Secretary of State is required by the Immigration Rules to take into account every relevant factor known to him, including age, length of residence and strength of connections with the United Kingdom; personal history, including character, conduct and employment record; domestic and compassionate circumstances; criminal record and any representations received on the person's behalf.

6.20. The use of the Secretary of State's powers to deport someone whose presence is not conducive to the public good (other than for national security or political reasons) is normally confined to cases where a convicted criminal has not been recommended for deportation by a court empowered to do so and it is considered that his offence in this country justifies such action. It is also used in cases of deliberate fraud or deception in the immigration field. It will be noted (Paragraphs 3.60-3.66) that in the period 1945-50 the Government was prepared to use the Secretary of State's powers to deport someone whose presence is not conducive to the public good in respect of alleged war criminals against whom a prima facie case had been made by other members of the United Nations War Crimes Commission. The powers were never in fact used. Even at that time there were misgivings, particularly from the Home Office, about using deportation as disguised extradition. It was judged, however, that for a limited period after the war there was sufficient public interest in bringing alleged war criminals to justice to justify such use of deportation powers. It was only in the case of Dr Dering (Paragraph 3.70) that an order was signed, although it was not, in fact, enforced. It is unlikely that the Immigration Appeal

Tribunal would now take the view that the presence of an alleged war criminal in the United Kingdom was not conducive to the public good if the person concerned had lived here for forty or more years without offending. For citizens of European Community countries it is also necessary to demonstrate that there is a present threat to the requirements of public policy or national security.

6.21. In recent years it has been Home Office policy not to make a deportation order if there is little practical chance that deportation will actually take place, that is, that a country will be found willing to accept the deported person.

APPLICABILITY TO THE ALLEGATIONS MADE TO THE INQUIRY

6.22. The Inquiry was asked to consider allegations that persons who are British citizens or now resident in Britain committed war crimes, defined as "crimes of murder, manslaughter or genocide committed in Germany and in territories occupied by German forces during the Second World War".

6.23. Under the terms of section 9 of the Offences against the Person Act 1861 and section 6(1) of the Criminal Procedure (Scotland) Act 1975, prosecutions can be brought in the British courts for murder or manslaughter committed by British subjects abroad. The few allegations of this nature which have been drawn to the attention of the Inquiry have been passed to the Director of Public Prosecutions. The majority of the allegations made to us concern persons who were not British at the time the alleged offences were committed, and thus fall outwith the purview of the British courts.

6.24. Prosecutions for serious war crimes would be possible abroad under the terms of the 1945 Royal Warrant but it is uncertain whether the warrant permits prosecution in the United Kingdom. We have not attempted to clarify this point as we consider prosecutions in a military court, without a jury, forty years after the cessation of hostilities, to be unacceptable.

6.25. The Geneva Conventions Act 1957 allows the prosecution in this country of any person, regardless of nationality, for "grave breaches" of the 1949 Geneva Conventions, committed anywhere in the world, which would include acts of murder and manslaughter. The Genocide Act 1969 provides for the

prosecution in this country of acts of genocide committed in this country. Neither Act is retrospective with respect to prosecution in this country, and so neither has any applicability to the prosecution here of the alleged crimes which the Inquiry was asked to investigate, although the Genocide Act permits extradition from this country for acts of genocide allegedly committed before enactment.

6.26. Extradition will be possible for murder, manslaughter or genocide committed anywhere in the world to any country in the world under special extradition arrangements when the provision made in the 1988 Criminal Justice Act is brought into force. The Home Secretary has, however, indicated that other factors disincline him to extradite to the Soviet Union, which now controls the territory on which most of the offences reported to the Inquiry allegedly took place. This is further considered in Chapter Nine.

6.27. Deprivation of citizenship is a rarely used procedure. Since 1948 it has only followed conviction for a serious crime. As prosecution of the allegations made to the Inquiry is not possible, neither is deprivation unless this policy is changed. It is impossible to judge how deprivation without prosecution would be regarded by the Committee of Inquiry, as it has never had to deal with such a case and has not met since 1958. For those who are registered or naturalised British citizens, deprivation would be a necessary prelude to deportation.

6.28. Deportation powers could be used if the Home Secretary were to deem that the presence of an alleged war criminal in the United Kingdom was not conducive to the public good. As it seems likely, however, that the only countries which would be willing to accept alleged war criminals are those which would wish to try them, the use of deportation powers could be challenged in the courts as disguised extradition. The Home Secretary is also required to consider the age, length of residence and character and conduct in this country of the potential deportee. In these circumstances it is unlikely that the Home Secretary or the Immigration Appeal Tribunal would consider it appropriate to deport an elderly person with forty or more years of residence in this country and no criminal record here to a country likely to bring him before a court for the same offences as are causing his deportation. Other restrictions on deportations apply to Irish, Commonwealth and European Community citizens. They are unlikely to be relevant to the

cases which we have considered. The 1954 Convention on Stateless Persons allows the deportation of stateless suspected war criminals.

EXTRATERRITORIALITY

6.29. British criminal law is essentially territorial in nature: with a few exceptions British courts only have jurisdiction over offences committed in the United Kingdom. Normally persons whose offences are committed abroad would be extradited, those whose offences are committed here would be prosecuted. Extradition is, however, not always feasible and for the crimes of murder and manslaughter Parliament extended the jurisdiction of British courts to allow them to try British subjects for those crimes, even when committed abroad. Another offence which the British courts have long had powers to try is piracy, irrespective of the nationality of the defendant, the victim or the ships involved. Other longstanding examples exist but these are generally limited in their application.

6.30. War crimes, or grave breaches of the 1949 Geneva Conventions, wherever in the world they are committed, are already triable in the United Kingdom under the Geneva Conventions Act 1957, which was passed in order that the United Kingdom be enabled to ratify the Conventions. This applies only to grave breaches of the Conventions committed since enactment. The Conventions require Contracting States to take extraterritorial powers over persons committing grave breaches and in 1957 Parliament did not demur from the proposition that war crimes are offences sufficiently serious for the British courts to be given jurisdiction over them, whatsoever the nationality of the person committing them and wheresoever they were committed.

6.31. Increases in international mobility and the changing nature of offences have meant that this country, has, since the Second World War, taken jurisdiction over a number of crimes wheresoever they were committed and whatsoever the nationality of the perpetrator or of the victim. These are generally crimes of sufficient magnitude for the international community to demonstrate a concern that the perpetrator should be denied refuge and should be brought to trial wherever he may be apprehended. In consequence, such offences have been regulated by special international treaty, to enable the ratification of which Parliament has given British courts extraterritorial jurisdiction over those offences. Examples in British law are included in

the Internationally Protected Persons Act 1978, the Suppression of Terrorism Act 1978, the Taking of Hostages Act 1982, the Aviation Security Act 1982, the Nuclear Material (Offences) Act 1983 and, for torture, the Criminal Justice Act 1988.

6.32. In summary, the United Kingdom, like most other countries, has been wary of extending the jurisdiction of its courts to cover any offence wherever it was committed. Although the jurisdiction of British courts is essentially territorial in nature, exceptions exist for particularly serious crimes - murder and manslaughter - and for crimes governed by international treaty, including grave breaches of the 1949 Geneva Conventions. It is therefore possible for the United Kingdom to take extraterritorial jurisdiction and there are precedents for it. The merits of such a decision are discussed in Chapter Nine (Paragraphs 9.26-9.30).

TIME LIMITS

6.33. In general, neither English or Scots law imposes time limits on the prosecution of indictable crimes. There are a few exceptions, which are not of relevance to this Inquiry.

6.34. Both the 1968 United Nations Convention and the 1974 Council of Europe Convention require states not to impose statutory limitation on the prosecution of war crimes. There are no bars, therefore, in either domestic or international law, to prosecuting war crimes simply because they were committed over forty years ago.

RETROSPECTIVITY

6.35. A law is retrospective if it applies to or affects actions in the past.

6.36. The principles nullem crimen sine lege and nulla poena sine lege are basic tenets of law, and are themselves included in the laws and constitutions of many countries. No state may enact legislation to deem an act a crime or render it punishable when it was not considered to be a criminal offence under the law at the time of its commission, and thus give its courts jurisdiction in respect of those acts. These principles are also

enshrined in international conventions and declarations including the International Covenant on Civil and Political Rights 1966 (Article 15); the European Convention on Human Rights 1950 (Article 7); and the Universal Declaration of Human Rights 1948 (Article 11).

6.37. To apply these principles to war crimes as defined by this Inquiry's terms of reference it is necessary to consider whether the acts or omissions were crimes at the time of their commission, and, if so, whether there was jurisdiction over them at the time of their commission and whether the British criminal courts could now have jurisdiction over them.

6.38. As far as violations of the laws and customs of war are concerned, there seems little doubt that by 1939 these were recognised as crimes by the community of nations, having been codified by the Hague Conventions of 1899 and 1907, which had been ratified by all the major protagonists in the Second World War. The Fourth Convention of 1907 binds the Contracting Powers, amongst other things, to respect individual life in occupied territory. Although after the First World War there was little success in bringing war crimes prosecutions, the Hague Conventions were recognised as the salient international law and no objection was raised to their application to acts of wanton killing in occupied territory. This would apply equally to hirelings of the occupying army committing such killings against their fellow nationals: the Conventions merely place the onus on the occupier to respect life in the occupied territory. The term violations of the laws and customs of war was substantially replaced by the term war crimes used in the Nuremberg Charter (Paragraphs 5.14-5.18).

6.39. The Hague Conventions do not, however, cover similar killings committed outside time of war, by a state on its own territory, or during a peaceful occupation. Thus murders of German citizens on German territory or of people on territory annexed by Germany without armed conflict were not violations of the laws and customs of war. To allow the prosecution for mass killings in such circumstances, the concept of crimes against humanity was introduced at Nuremberg. This had been discussed after the First World War, but no trials were held and no treaties defining such crimes drawn up. The Nuremberg list of crimes against humanity is similar to that of war crimes, but there is a broader link with waging war than that given in the Hague Conventions. The Nuremberg definition of crimes against humanity allows

prosecution for acts committed by a state against its own citizens and against citizens of territory annexed without being militarily opposed as long as there is a link with the waging of an aggressive war. It does however talk of acts against civilian populations, which implies that only large scale crimes are crimes against humanity, not isolated acts against an individual. The legal justification for giving jurisdiction to the Tribunal over crimes against humanity which were not war crimes is not entirely clear although it was said that at the time of their commission the various crimes against humanity existed in the penal code of every civilised country, even though not codified in an inter-State penal code. This would imply that similar considerations apply to abuses by authoritarian regimes which would also be prosecutable by any country. It has also been said that crimes against humanity were included in the Nuremberg Charter to act as a marker for the future, rather than with the intent of retribution for the crimes committed during the Second World War. Because, however, the Nuremberg Charter was drafted to deal with a specific evil, that of Hitler's Germany, the link with the waging of an aggressive war effectively limits the scope of crimes against humanity (Paragraphs 5.19-5.28).

6.40. The crime of genocide was not defined by 1939, or by the Nuremberg Charter. It is mentioned in the Nuremberg indictment, but not in the judgement, only as a descriptive word in part of the indictment concerned with murder and ill-treatment of civilian populations of or in occupied territory (Paragraphs 5.29).

6.41. Speaking to the House of Lords on 7 October 1942, Lord Simon, the Lord Chancellor, said:

> "I take it to be perfectly well-established International Law that the laws of war permit a belligerent commander to punish by means of his Military Courts any hostile offender against the laws and customs of war who may fall into his hands wherever be the place where the crime was committed". (Official Report: Cols 578-579).

This seems to be a statement of the generally accepted position under customary international law. After the First World War it had also been accepted that the surrender of war criminals could be demanded in the terms of the armistice or in the peace treaty. Jointly and severally the Allies pursued this course after the Second World War, holding not only the

International Military Tribunal, but also national military courts in the occupied territories.

6.42. The Lord Chancellor continued

> "National courts, in my view, are equally entitled to exercise whatever criminal jurisdiction would be conceded to them by International Law ... The real question ... is not so much whether the domestic law of a particular nation has already conferred upon the particular national Courts concerned a particular jurisdiction. It may not have gone to the full length which International Law would recognise and permit. The important question is this: what is the ambit of the jurisdiction which might by International Law be conferred upon them, as for example, in the present case, by Parliament here actually legislating to enlarge, within permissible limits, the jurisdiction of our Courts to deal with crimes committed abroad?" (Official Report: Col 579).

Legal opinion at the time seems to have been that jurisdiction over violations of the laws and customs of war existed, and that there was a need to legislate only to empower the domestic courts to utilise the jurisdiction which was already available under international law.

6.43. In stating the principle nullem crimen sine lege above, it was noted that it is included in a number of international conventions. Some of these, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights contain provisos, allowing legislation with a retrospective effect to deal with

> "any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations".

The papers and debates concerned with the adoption of both the Covenant and Convention make it clear that these provisions were included because of the acts committed during the Second World War, and would not be of broad application. It should be said that such provisos are not a breach of the principle: they allow legislation to introduce jurisdiction retrospectively only over crimes which were already regarded as criminal by the international standard at the time of their commission.

6.44. To summarise, by 1939, before the offences which this Inquiry is required to investigate were allegedly committed, violations of the customs and uses of war, or war crimes as they were later called, were internationally recognised as crimes, both Britain and Germany being among the signatories of the Hague Conventions which confirmed them as such. The Nuremberg judgement also held that such acts were also recognised as crimes under customary international law, which bound even those nations which had not become party to the Conventions. Genocide was not so recognised until 1948 and we find the position of what were subsequently called crimes against humanity to be unclear. Under customary law belligerents had the right to try before military courts war criminals who fell into their hands, and also to provide for the surrender of others in the terms of the armistice or the peace treaty. Legal opinion then held that jurisdiction existed over such crimes and that a state had the right to legislate to incorporate that jurisdiction into its national domestic law. Therefore it can be argued that enactment of legislation in this country to allow the prosecution of "war crimes" in British courts would not be retrospective: it would merely empower British courts to utilise a jurisdiction already available to them under international law since before 1939, over crimes which had been internationally recognised as such since before 1939 by nations including both the United Kingdom and Germany. We are less certain that a similar stance can be adopted with regard to crimes against humanity. To legislate now for offences of genocide committed during the Second World War would, in our view, constitute retrospective legislation. It is also apparent that the crimes committed by Germany during the Second World War are regarded as so unique and so abhorrent by the international community, that special provisions have been made, with those crimes in mind, in human rights conventions to allow the prosecution of acts which were criminal "according to the general principles of law recognised by the community of nations", but which were not prosecutable in national law except under legislation passed after the commission of the acts.

CHAPTER SEVEN

OTHER COUNTRIES

7.1. This chapter considers the different approaches adopted in the domestic legislation of a number of countries. The Soviet Union, the Federal Republic of Germany, the German Democratic Republic, Poland, the Netherlands, France and Belgium all suffered from German atrocities committed on their own soil. Of these, the Soviet Union, the German Democratic Republic and Poland have maintained powers to prosecute a wide range of war crimes and collaborationist offences and have continued to bring prosecutions. Those countries would claim that the relatively small number of prosecutions in recent years is simply due to the fact that most war criminals in those countries have already been tried, and only a few have recently come to light. The Federal Republic, the Netherlands and France have each extended their statutes of limitations, but the offences that can be prosecuted have become greatly circumscribed. Nonetheless, the Germans have held some major trials. Belgium, after a 10 year extension, let its statute of limitations take effect in 1974, since when prosecutions have not been possible.

7.2. Although not occupied by the Germans - indeed Israel was not in existence until after the fall of the Third Reich - Israel has taken very wide powers to prosecute those concerned with Nazi war crimes. Relatively few prosecutions have been brought.

7.3. The United States of America, Canada and Australia were in a similar position to the United Kingdom. Although involved in war crimes trials before military courts immediately after the war, trials were not thereafter held in civilian criminal courts, and the problem was regarded as an overseas one which had been solved. It was not perceived as a domestic one. Little was done for 30 years. Allegations that Nazi war criminals had entered those countries persuaded the United States to amend its deportation laws and Canada and Australia to introduce legislation allowing prosecution for war crimes before the domestic courts. By contrast, recent allegations that war criminals had entered Sweden were dismissed as irrelevant by the committee of lawyers considering the problem, which held that no exceptions should be made to Sweden's 25 year statute of limitations, and that therefore no action could be taken.

Soviet Union

7.4. The territory now comprising de facto the Soviet Union experienced the full blast of Nazi atrocities. Apart from the mass killing of the Soviet Jewish population in the areas occupied by Germany, village after village was destroyed and their inhabitants slaughtered in anti-partisan 'reprisals'; prisoners of war were treated abominably, some shot, some starved to death; and an arbitrary power over life and death was given to German collaborators and official personnel in the occupation zone. The Soviet Union is said to have lost 20 million people in the war alone. This is something which the Soviet authorities do not allow to be forgotten, although, since virtually every family in its western republics had a member who was a victim of the Nazis, it is in any case unlikely to fade from the popular consciousness for a long period.

7.5. Because the atrocities were committed on their own soil, the Soviet Union became aware of them, and the full horror of them, earlier in the war than did the west, although Foreign Minister Molotov's notes, which were published by the British Government and others, gave some understanding to the other Allies of what was happening. As a consequence, the Soviet Union soon adopted policies which foreshadowed the Moscow Declaration of 1943 and the London Agreement of 1945. These were that the major war criminals should be tried before an international tribunal, and that other war criminals should be returned to the sites of their crimes to be tried before the peoples that they had outraged. These principles were followed by the Soviet Union immediately after the war and are still followed today.

7.6. After the war the Soviet Union participated in the IMT at Nuremberg, which dealt with the major German war criminals. In addition it has prosecuted probably hundreds of thousands of people under its domestic legislation, and, although the numbers concerned have gradually declined, it continues such prosecutions today. The Soviet Union still invokes the Moscow Declaration and requests the return of alleged war criminals from the west to stand trial in the USSR, the site of their crimes. In recent years some people have been returned from the USA as a result of that country's policy of denaturalisation and deportation. The Soviet authorities appear, however, to have accepted the Canadian and Australian position that extradition or

deportation are unlikely, and that prosecution in those countries is the next best thing.

7.7. The Soviet Union and its constituent republics are a huge repository of captured German documents and home to many eye-witnesses. Many war crimes were committed by local people who were from territories which are now part of the Soviet Union and who joined German police units in the areas where they had grown up. Frequently, therefore, they, their membership of such units and the atrocities the units committed are vividly remembered by the people with whom they grew up.

7.8. Soviet domestic law includes the three offences defined in the Nuremberg Charter: war crimes, crimes against humanity and crimes against the peace. In addition, Soviet domestic law is invoked, particularly for the crimes of treason, deportation and misuse of state property. Much of the Ukraine and Byelorussia, and other occupied territories, were under Soviet partisan control even during the time of the German occupation. Soviet law regards such partisans as part of the regular military who should have been treated in accordance with the Hague Rules concerning prisoners of war, not as spies or infiltrators. Soviet law does not accept superior orders in defence or in mitigation of war crimes. In addition the Soviet Union considers Soviet law to have been the only valid law even during the occupation. Offences against Soviet law, which were not offences against the German occupation laws, are triable as Soviet domestic crimes, even if outwith the scope of international law.

7.9. The Soviet Union has also extradited people to other countries, but, except for the immediate post-war years, only to eastern bloc countries, notably Poland.

7.10. In 1942 an Extraordinary Commission was formed to investigate Nazi war crimes, to document them and to record as many details as possible of the perpetrators. These materials were used in war crimes trials after the war, and, although those whose testimonies were then collected may since have died, they now form an investigative base for the prosecutors both of the Soviet republics (each of which is responsible for its own prosecutions) and of foreign countries.

Federal Republic of Germany

7.11. The Federal Republic of Germany (FRG) continues to prosecute perpetrators of war crimes, referred to as National Socialist crimes. Nonetheless, legislative change and the interpretations of the courts have greatly restricted the types of prosecutions that may be brought, which are limited to cases where the suspect has directly murdered the victim or has, as an accessory, participated in murder from "base motives".

7.12. Immediately after the war prosecutions of war criminals in Germany were carried out by the Allies. Increasingly, and entirely after the formation of the FRG, responsibility for prosecutions was passed to the Germans themselves. However, prosecutions by the German State, unlike those brought by the Allies, could only be brought under the German Penal Code, which has no war crimes provisions. Interest in war crimes dwindled, fewer prosecutions were brought and prosecutors were transferred to the prosecution of peacetime crimes. In German law, only murder and manslaughter have maximum sentences of more than 10 years imprisonment. The statute of limitations provides a 15 year limit for prosecutions of manslaughter and 20 years for murder. By 1955, under the terms of the statute of limitations, only crimes with maximum sentences of more than 10 years - murder and manslaughter - remained punishable. In 1956 there was a revival of interest due to the Ulm war crimes trial which revealed that prosecutions had not been brought against people responsible for planned mass murders. In 1958 the resulting change in the climate of public opinion caused the Federal Republic of Germany to create the Central Office for the Investigation of National Socialist Crimes at Ludwigsburg. This office has a large investigative and research capacity, but no prosecutorial role. Responsibility for bringing prosecutions remains with the individual German states. As a consequence the number of trials relating to crimes committed during the war increased in the period 1958-1963, at which point the Ludwigsburg operation prepared to go out of business as the twenty year limit on prosecutions for murder under the statute of limitations approached in 1965.

7.13. The rise in interest in National Socialist crimes was also fuelled by the capture of Adolf Eichmann and his trial in Israel in 1960. This, combined with pressure from abroad, caused an extension of the limit on prosecutions for murder. It was first extended until 1969, twenty years

after the Federal Republic of Germany began prosecuting war criminals rather than twenty years after the end of the war. The limit was later extended to 30 years (i.e. 1979) and finally abolished with respect to murder as a National Socialist crime.

7.14. The number of crimes which have remained punishable has further decreased since 1955. Although 'superior orders' is not allowed as a defence under German military law, it is allowed as a defence under German criminal law, under which National Socialist crimes are now tried. If a plea of 'superior orders' is accepted, the charge is reduced to manslaughter, which is now unprosecutable due to the effect of the statute of limitations. In addition, legislative change and interpretations of the courts have meant that a murder charge may be brought only where the suspect directly murders the victim or where it can be shown that an accessory to murder acting under orders had participated from "base motives" or that he was aware of the cruel nature of the crime at the time it was committed. Without demonstrating such motives the act would amount to only a lesser charge which is unprosecutable under the statute of limitations.

7.15. That said, prosecutions have continued into the 1970s and 1980s, including some major trials, such as those of Majdanek concentration camp personnel and of members of the Arajs Commando. The office at Ludwigsburg is an important research source for prosecutors from other countries.

German Democratic Republic

7.16. The German Democratic Republic (GDR) has brought prosecutions for war crimes, crimes against peace and crimes against humanity. Nazis and their collaborators were also removed from their positions, although some ex-Nazis have gained important posts in the German Democratic Republic.

7.17. Altogether nearly 17,000 persons have been charged with war crimes in East Germany since 1945 of whom nearly 13,000 have been convicted (This includes trials in the Soviet Occupation Zone of Germany). Trials are now few, not, the German Democratic Republic would claim, because of a change in policy - provision for the prosecution of war criminals remains in the criminal code - but because the campaign of prosecutions after the war means that there are few undiscovered and unprosecuted war criminals left in the

country. Where such persons are found, and evidence permits, prosecutions are brought. There is no statute of limitations.

7.18. The main thrust of present-day policy is to expose war criminals in other countries, particularly West Germany. It is thought that the German Democratic Republic still has a large stock of captured documents. These are released from time to time to the west.

Poland

7.19. In August 1944 the Main Commission for the Investigation of Hitlerite Crimes in Poland was set up. It functions under the auspices of the Ministry of Justice. Prosecutions took place under a Supreme National Tribunal from 1946 until 1948, and thereafter under the Ministry of Justice. Some 40,000 persons were tried for war crimes. Unlike the Soviet Union, Poland participated in the United Nations War Crimes Commission and some of those it identified to the Commission were returned by the Allies to Poland for trial. No further extraditions took place after the creation of the Federal Republic of Germany.

7.20. Polish law adopted the definitions of the IMT at Nuremberg. There is no statute of limitations.

7.21. Prosecution activity in Poland is now limited since further war criminals are rarely discovered on Polish soil. Those that are uncovered are prosecuted if evidence permits.

7.22. Poland has a great number of eyewitnesses and documents which are of use to prosecutors of other countries. Poland was the site of many of the extermination camps and witnessed many other atrocities. After a cold war break, Poland has cooperated with the Federal Republic of Germany since 1959, and a great deal of information has been passed to the Federal Republic of Germany investigating office at Ludwigsburg. The Commission has been of assistance to a number of countries and more recently, the Americans have received documents from Poland, and been allowed access to witnesses. It appears that Canada and Australia are receiving similar assistance. We were also able to interview a witness there.

The Netherlands

7.23. After the Second World War the Netherlands enacted a special penal code which was concerned with war criminals. This was based on the Nuremberg definitions of war crimes and crimes against humanity. The death penalty, which is not permissible in Dutch criminal law, was made available for serious war crimes offences. This position remains unchanged, although under the statute of limitations less serious offences are no longer triable. Immediately after the war only offences on Dutch soil were prosecutable.

7.24. Altogether some 400 collaborators and German nationals have been tried since the war. The number of prosecutions is now small but certain recent cases have revealed the depth of emotion and determination that this issue can still cause.

France

7.25. After the war France participated in the Nuremberg Tribunal and also conducted war crimes trials in occupied Germany, in which over 2000 people were convicted. Under the Ordinance of 28 August 1944 the prosecution of war criminals in France and French Territories became the responsibility of military tribunals under which another 2000 convictions were obtained. Further convictions, including nearly 1000 in absentia, were obtained for criminal offences in the French courts. Most of these proceedings were completed by 1950.

7.26. The effect of France's statute of limitations would have made the prosecution of such offences impossible after 1965. In 1964 the French National Assembly abolished the statute of limitations, but only for one class of crime: crimes against humanity, including mass murder and genocide.

7.27. This had an interesting effect in the Barbie case. Barbie had been convicted for murder in absentia but by the time of his return to France those convictions were no longer valid and he could not, due to the statute of limitations, be tried for the murder of specified individuals, like the Resistance leader Jean Moulin, but only for crimes against humanity, which necessitated proving multiple murder.

7.28. After the immediate post-war period there were few trials in the following years. In the 1970s there was a revival of interest centring on the case of Barbie.

Belgium

7.29. After the Second World War Belgium set up a War Crimes Commission to investigate war crimes, to trace and arrest war criminals and to make arrangements for their trial. Legislation was necessary to allow the prosecution of German citizens, but otherwise trials took place under existing Belgian law. Belgium also assisted in the preparation of cases for the Nuremberg trials, particularly those involving incidents on Belgian soil or having Belgian victims. The Commission completed its work in 1948.

7.30. As a result of the Commission's work nearly 6000 persons were identified as being suspected of committing war crimes in Belgium and Germany. Of those whose cases the Belgian Government submitted to the UNWCC, only 500 could be located, of whom 300 were prosecutable in Belgium. By 1950 the Belgians had convicted 75 Germans of war crimes: others were tried by Allied or West German courts.

7.31. Since then war crimes have become unprosecutable in Belgium, although the statute of limitations was amended to allow prosecutions for murder as a war crime until 1974, rather than 1964. Belgium still assists other states with investigations into war crimes cases, even though there is no longer power to try them in Belgium.

Israel

7.32. In 1950 Israel enacted the Nazis and Nazi Collaborators (Punishment) Law which allows the death penalty for crimes against the Jewish people, crimes against humanity and war crimes. The last two of these are defined following the Nuremberg definition, but without the link with crimes against peace that so restricts the Nuremberg definition of crimes against humanity. Crimes against the Jewish people are defined very much in line with the 1948 Genocide Convention, but limiting its applicability to Jews, rather than to any other national, ethnical, racial or religious group.

7.33. The law allows the prosecution of any person for such crimes committed during the period of the Nazi regime or during the period of the Second World War. Charges have been made under this law since enactment and convictions secured, of which the Eichmann case is the classic example and more recently the Demjanjuk case. But this law has been frequently criticised on the basis that Israel has enacted and applied law retrospectively not simply in the sense that the law provides punishment for a crime committed before the law came into force, but that it purports to punish crimes committed before the State of Israel itself came into existence. The argument adduced by the Jerusalem Supreme Court relied in part on the view that in prosecuting Eichmann, a German national, who committed gross crimes of genocide in large parts of Europe occupied by the Nazi State, Israel was acting on behalf of the nations of the world by enforcing the law of those nations applicable to warfare. To that extent the element of retroactivity was not in point and the absence of the State of Israel at the time of these crimes was irrelevant. This argument has not found favour among some jurists but it is an argument not easy to destroy. During the extradition proceedings against Demjanjuk the US Court of Appeal examined the status of war crimes and crimes against humanity as defined at Nuremberg under international law and found them to belong to that class of crimes in respect of which any State may apprehend and punish the perpetrator. Israel was competent to exercise jurisdiction in this respect on behalf of the community of nations even if it did not come into existence until after the crimes were committed.

7.34. There have been relatively few cases heard under this law. Nazi war criminals are unlikely to have settled in Israel, and nations which could extradite war criminals to Israel might prefer prosecution to extradition.

7.35. The 1950 Law also contains other provisions, including one concerning membership of illegal organisations.

7.36. The Demjanjuk case has been taken to appeal and the hearing is likely to be in November. The judgement of the Appeal Court will be of interest to those concerned with this subject.

Sweden

7.37. During and after the war a large number of people from the Baltic States fled to Sweden where they found refuge.

7.38. In November 1986 a list of alleged war criminals who might be living in Sweden was presented to the Swedish Embassy in Washington. The Swedish Government appointed a panel of three lawyers to examine the allegations. In February 1987 the Swedish Government decided not to take any legal action against the alleged suspects because since 1926 the longest period of limitation in Swedish law has been twenty five years which had been far exceeded in the case of alleged war criminals from the Second World War. The Swedish Government considered it inappropriate retrospectively to change this position.

United States of America

7.39. Like the other Allies the United States took part in the Nuremberg trial and also prosecuted people in American military tribunals and courts. Over two thousand individuals were prosecuted, and most cases resulted in conviction. In 1949 responsibility for such prosecutions was handed to the Germans and since then the USA has taken part in no criminal prosecutions of war criminals. Nonetheless the United States has taken the lead in western countries in recent years in searching out alleged war criminals. Civil proceedings are brought to deprive the person concerned of his American citizenship and to deport him.

7.40. Between 1950 and the mid-1970s, there was little public, governmental or prosecutorial interest in the presence of Nazi war criminals in the United States. Under the Displaced Persons Act aliens were forbidden entry to the United States if they had belonged to certain organisations, amongst them the SS and the Nazi Party. Any alien who entered the USA and concealed membership of such organisations was an illegal entrant. Equally should naturalisation have been gained without his background being fully made known, that too would be invalid. The detection of such persons and the initiation of proceedings against them, was the responsibility of the United States Immigration and Naturalisation Service (USINS). Less than 20 deportation cases were brought.

7.41. In the 1970s there was a resurgence of interest in the possibility that war criminals were living in the United States. It is difficult to pinpoint the exact reason for this, but public awareness and interest in the German extermination camps appears to have been raised by television programmes and other research efforts. In addition, survivors of those atrocities realised that soon both they and the perpetrators of the atrocities would be dead, and it would be too late to testify to the horrors that had occurred or to bring those responsible to justice. It was seen as necessary to remind the young of what had happened as much as to bring retribution to the guilty. Whatever the reasons, the changed climate of public opinion led to the creation of both public and private bodies with interests in this field and to changes in the law. The resultant increase in activity led to demands for action in Canada, Australia and now the United Kingdom.

7.42. Under pressure from Congress USINS first set up a special unit, the Project Control Unit in New York, and later the Special Litigation Unit in Washington. Both of these measures were regarded as too little too late by Congress, and although the latter had some successes they were insufficient to mollify Congress.

7.43. In 1978 Congress passed the Nazi Deportation Statute, called the Holtzman Act, after Congresswoman Elizabeth Holtzman. Whilst previous legislation (Immigration and Nationality Act, Displaced Persons Act) was designed to prevent the entry of illegal immigrants, the Holtzmann Act is designed to facilitate the removal of Nazi war criminals already resident in the United States. They are declared persona non grata and if found within the United States they are subject to deportation.

7.44. In 1979 the responsibility of USINS in this field was ended and a special unit, the Office of Special Investigations (OSI), was set up in the Criminal Division of the Department of Justice. OSI, by virtue of its recent track record, is the most advanced of the agencies in the west in the investigation of war crimes and has specialised legal staff and historical researchers. It has negotiated access to witnesses and documentary evidence from the USSR and from other east European States. Soviet witnesses are examined by both prosecution and defence counsel in the USSR. The

proceedings are videotaped and may be admitted in an American court. No Soviet witness has testified in person in an American court.

7.45. The level of proof required in immigration hearings is "clear, convincing and unequivocal evidence which does not leave the issue in doubt". This has been held by US courts to be virtually identical to the standard for criminal trials, which is "beyond reasonable doubt". In practice the OSI attempt to demonstrate the accused's involvement in war crimes rather than simply showing him to have been a member of an organisation which would have made his entry to the United States illegal.

7.46. No legislation to enable trials of war crimes in the United States has been enacted. This is said to be because of the difficulties caused by Article I, section 9 of the United States Constitution which provides that:

"no Bill of Attainder or ex post facto Law shall be passed"

It is considered that a war crimes law would be ex post facto legislation. A Bill of Attainder, defined as a "legislative act which inflicts punishment without a judicial trial" has been judged not to be applicable to the statute requiring deportation, as deportation is not punishment. Similarly the Constitutional prohibition against ex post facto law has been held not to apply to deportation statutes.

7.47. Despite its expertise and its comparatively generous funding the number of cases brought to a successful conclusion by the OSI in its 10 years of operation is small: probably less than 30 people have left the USA as a result of OSI efforts, including some who left voluntarily before proceedings were complete.

Canada

7.48. After the Second World War Canada enacted the War Crimes Act 1946. It applied only to war crimes, defined as violations of the laws and usages of war committed during any war in which Canada has been or may be engaged at any time after 9 September 1939, and did not cover crimes against humanity or genocide. It provided for trials to be held by military courts. One hundred and seventy one crimes against members of the Canadian Armed Forces were investigated and in four trials held in Germany between 1946 and 1948 seven individuals were found guilty. Canada then ceased prosecutions in Europe.

Little public attention was given to the matter until the 1970s. The case of Rauca, whose extradition was requested by the Federal Republic of Germany, and later allegations that war criminals, including Dr Joseph Mengele, had entered Canada, increased public interest and on 7 February 1985 the Hon Jules Deschenes, formerly Chief Justice of Quebec, was appointed Commissioner to inquire into the matter of alleged war criminals in Canada.

7.49. In his report Judge Deschenes found that no prosecution for Nazi war crimes could successfully be launched under the War Crimes Act 1946 as it then stood. He considered that as the legislation was designed for military trials in time of war it would be inconceivable to use it in times of peace to arrest and bring a Canadian citizen or resident before a military court in Canada, forty years after the alleged crime, and to try him for an offence committed abroad, on the basis of ad hoc rules of evidence and under threat of the death penalty. He considered that it would contravene the intent of both the Canadian Bill of Rights and the Canadian Charter of Freedoms.

7.50. Noting however, that the Canada Act 1982 contained in section 11(g) provisions similar to those in the international conventions on human rights which allow an exception for war crimes to the principle that retrospective laws should not be introduced, viz.,

> "Any person charged with an offence has the right ... not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognised by the community of nations"

Judge Deschenes recommended, inter alia, changes to the Criminal Code, the Citizenship Act and the Extradition Act to allow the prosecution of war crimes in Canada and to facilitate the extradition of alleged war criminals to other countries.

7.51. In consequence, Canada enacted such amending legislation in 1987. By virtue of that legislation the Canadian Criminal Code now provides jurisdiction for war crimes and crimes against humanity, both of which are defined in very general terms. A war crime is defined as an act or omission that is committed during an international armed conflict, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission, and that, at that time and in that place, constitutes a

contravention of the customary international law or conventional international law applicable in international armed conflicts. A crime against humanity means murder, extermination, enslavement, deportation, persecution or other inhumane act or omission that is committed against any civilian population or any identifiable group of persons, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission, and that, at that time and in that place, constitutes a contravention of customary international law or conventional international law or is criminal according to the general principles of law recognised by the community of nations. Acts or omissions include attempting or conspiring to commit, or counselling, aiding or abetting any person in the commission of, or being an accessory after the fact in relation to, an act or omission. Conventional international law is defined as any convention, treaty or other international agreement that is in force and to which Canada is a party or the provisions of which Canada has agreed to accept and apply in an armed conflict in which it is involved. The Act covers such offences committed at any time and in any place and, because international customary and conventional law has changed over time, the Act is unable to provide a precise definition of the offences: it will be for the court to decide in each case what the state of customary or conventional law was at the time the alleged offence was committed, and thus whether the alleged act or omission was in fact in contravention of international law. The Act provides jurisdiction over such crimes where the alleged offender is present in Canada, and Canada, in conformity with international law, can exercise jurisdiction. This again will presumably have to be decided on a case by case basis. Prosecutions may only be brought with the written permission of the Attorney General or his deputy. The Act also amends the Immigration and Citizenship Acts to facilitate the deprivation of citizenship and extradition of alleged war criminals. As yet no cases have been heard, although proceedings have begun in one case of prosecution and one of extradition to the Netherlands.

Australia

7.52. In 1945 Australia enacted the War Crimes Act. This provided for the trial before military courts for war crimes committed against any person who had been at any time resident in Australia, against British subjects or against citizens of any Power allied or associated with His Majesty in any

war. A war crime was defined as any violation of the laws and usages of war or any of the thirty two offences listed as such violations by the Commission of Inquiry set up by the Preliminary Paris Peace Conference 1919, (Paragraph 5.9) committed anywhere, during any war. The legislation was applied mainly against the Japanese in military courts outside Australia. After 1950, as in Canada, there followed a period of little interest in the question of war criminals. It was believed that there had been a thorough screening of post-war immigrants and that the chapter of war crimes prosecutions had been closed.

7.53. In April and May 1986 allegations were made, most notably on Australian Broadcasting Corporation (ABC) radio and television programmes, that alleged war criminals were living in Australia. On 25 June 1986 Mr Andrew Menzies QC was appointed by the Australian Government to conduct a review concerning the alleged entry of suspected war criminals into Australia. In reviewing the legal options open, he, like Judge Deschenes in Canada, considered that the use of military courts to try civilians forty years after the cessation of hostilities was unthinkable.

7.54. In response to the Menzies report, the War Crimes Amendment Act 1989 was passed, which amends and virtually rewrites the 1945 War Crimes Act. The law allows the prosecution in Australia of any person who is now a citizen of, or resident in, Australia, no matter what his nationality at the time of the alleged offence, for war crimes committed in Europe between 1 September 1939 and 8 May 1945. First, the Act defines a "serious crime" which may be:

(a) any one of a number of specified acts or omissions (including murder, manslaughter, wounding and rape) which would have been an offence in part of Australia if, at the time of its commission, it had been committed in that part of Australia; or

(b) deportation of a person to, or internment of a person in, a death camp or slave labour camp.

Attempting or conspiring to commit, or aiding, abetting, counselling or procuring one of the above crimes is also a "serious crime". The fact that a serious crime so defined did not constitute an offence when and where it was committed does not prevent it being a serious crime under the terms of the Act. A serious crime becomes a "war crime", and thus prosecutable under the Act, if committed in the course of, or in pursuing a policy associated with

the conduct of, hostilities in a war or an occupation; or on behalf of a power conducting a war or engaged in an occupation. The Acts and omissions thereby prosecutable as "war crimes" approximate to violations of the laws and customs of war, or war crimes as defined by the Nuremberg Charter (Paragraph 5.15). Under the Australian legislation a serious crime is also a "war crime" if it was committed in the course of political, racial or religious persecution; or with intent to destroy in whole or in part a national, ethnic, racial or religious group; provided it was committed in the territory of a country when the country was involved in a war or when territory of the country was subject to occupation. The definition of this further class of "war crimes" is similar to the definition of crimes against humanity in the Nuremberg Charter (Paragraph 5.19). A link is also retained between such offences and the waging of war or an occupation, similar to, but not exactly the same as, the link between crimes against humanity and crimes against peace at Nuremberg (Paragraph 5.26). It may thus be said that the definition of "war crimes" in the Act is such that it largely embraces the concepts of war crimes and crimes against humanity as defined in the Nuremberg Charter, without using the terms of, or referring to, the Charter itself. A prosecution may only be brought by the Attorney-General or the Director of Public Prosecutions. No charges have yet been laid under the new legislation.

CHAPTER EIGHT

METHODOLOGY OF THE INQUIRY

8.1. Upon our appointment we received from the Home Office the names of 51 alleged war criminals, 17 from the Simon Wiesenthal Centre (SWC) in Los Angeles and 34 on the Scottish Television (STV) list (Paragraph 1.1). We also received the results of preliminary investigations undertaken by the Home Office to locate the 51 people concerned and the materials supplied in support of the allegations, which were few, and not always relevant to the allegations. There is no recent British experience of investigation and prosecution of war crimes. It was considered necessary to consult those who had been active in the field in recent years and a series of preliminary meetings was arranged. In addition a number of interested groups were invited to meet the members of the Inquiry. Visits were also made to archives which it was thought might provide useful documentary material to assess the value of their holdings to our work. The archives, and the material they contain, are described below (Paragraphs 8.36-8.54). A list of people and organisations met by the members and secretariat of the Inquiry is attached at Annex A.

8.2. We considered it desirable that the Inquiry should be as complete as possible, and thus a press conference was held and advertisements placed in the press so that further allegations might be received. As well as those from members of the public, allegations were received from a number of other sources and details of these are contained in paragraphs 8.14-8.23. Before compiling evidence relating to an allegation it was essential to locate the subject of it and ascertain that he was still alive and resident in, or a citizen of, the United Kingdom (Paragraphs 8.24-8.33). Thereafter a small number of cases were considered in greater detail and evidence was sought both in archives (Paragraphs 8.36-8.54) and from witnesses. The cooperation of agencies in this country and abroad was essential to locate witnesses and to arrange interviews with them (Paragraphs 8.55-8.67). Some of the difficulties which we encountered are briefly discussed here (Paragraphs 8.68-8.74), others are considered in Chapter Nine.

8.3. One of the early visits was to the Simon Wiesenthal Centre in Los Angeles. There, Rabbi Hier, the Centre's Dean, was disarmingly frank. He admitted that the Centre had no evidence to support its allegations. He considered that investigation was the function of Governments and their agencies, which would have greater access to records and to witnesses, and not for an independent organisation such as his own. That Governments had begun investigations (similar lists had been supplied to the Canadian and Australian Governments) was sufficient justification for the Centre's activities.

8.4. The members of the Inquiry met Mr Bob Tomlinson, reporter; Mr Paul Murricane, producer; and Mr David Scott, Controller, News and Current Affairs, of Scottish Television plc, who gave details of the provenance of the STV list. They were also able to talk of the visits that they had made to the Soviet Union to gather evidence and to interview witnesses. A considerable amount of material that they had collected was made available to the Inquiry.

8.5. The American Government is the most active of the western governments in the search for Nazi war criminals and collaborators. In 1979 the Office of Special Investigations (OSI) of the United States Department of Justice was set up. Prosecution is not permissible under American law and OSI therefore brings proceedings against alleged war criminals in immigration tribunals in order to deprive them of their American citizenship, where appropriate, and to deport them. This has been considered in greater detail above (Paragraphs 7.43-7.47). Because of the length of time they have been in the field, they were able to offer the Inquiry considerable advice about how investigations should be approached, and the names of useful contacts in a number of countries.

8.6. In recent years both Canada and Australia have enacted legislation to allow the prosecution of war criminals, Canada in 1987 and Australia in 1989. In each country the legislation had been preceded by an inquiry. (Paragraphs 7.48-7.51 and 7.53-7.54)

8.7. In Canada a Commission of Inquiry on War Criminals was headed by the Hon Jules Deschenes, formerly Chief Justice of Quebec. This came into being partly because claims had been made that Joseph Mengele had entered Canada. In total, the Commission examined 774 cases. In his report Judge Deschenes recommended that legislation be introduced to allow the prosecution in Canada of a person now in Canada who committed war crimes or crimes against humanity outside Canada even if, at the time of the alleged offence, the person was neither a Canadian citizen nor present in Canada. Consequent to the legislation special sections of the Royal Canadian Mounted Police (RCMP) and the Department of Justice were established respectively to investigate and to prosecute such crimes. The members of this Inquiry were able to meet Judge Deschenes, M. Yvan Roy, head of the Department of Justice team, and Superintendent Keith Deevy, head of the RCMP unit.

8.8. The Australian review was led by Mr A C C Menzies QC, and its emphasis was on the entry of suspected war criminals into Australia. Public concern had been aroused by an Australian Broadcasting Corporation (ABC) radio programme, and a subsequent ABC television programme. A change in law was made as a consequence to Mr Menzies' report. An investigating unit, the Special Investigations Unit (SIU), was set up, which is headed by a lawyer, Mr Robert Greenwood QC. The SIU has police officers seconded to it, as well as administrators and researchers. The SIU is charged with investigating allegations of war crimes and preparing a brief. The decision to prosecute is then taken by the Federal Director of Public Prosecutions. The Inquiry team were able to meet Mr Menzies, Mr Greenwood and representatives of the Attorney-General's Department and the Office of the Director of Public Prosecutions.

8.9. A visit was also made to Mr Simon Wiesenthal at his document centre in Vienna. Now semi-retired, Mr Wiesenthal is famous for having been, for a long period, almost alone in tracing war criminals and encouraging Governments to prosecute them. Mr Wiesenthal was able to check the Inquiry's names against material in his centre, and to provide some material.

8.10. The Nazis and Nazi Collaborators (Punishment) Law in Israel is drawn very wide (Paragraphs 7.32-7.36). Meetings were held with the appropriate officials in the Ministry of Justice including those who had been concerned with the then recent trial of John Demjamjuk. Colonel Menachem Russek, head

of the Israel Police war crimes section, said that records of crimes, alleged criminals and witnesses were held in his section and that witnesses in Israel to specific events could be traced through his office.

8.11. Meetings were held in London with representatives of the community associations: the Association of Ukrainians in Great Britain, the Baltic Council, the Latvian Welfare Fund, the Lithuanian Association in Great Britain and the Ukrainian Central Information Service. Whilst they did not oppose the appointment of the Inquiry, they expressed the concern felt by their communities that press coverage of the Wiesenthal and STV lists had given the impression that all post-war immigrants from Eastern Europe were war criminals. This they rightly resented. Chapter Four details the large number of such immigrants, which is in stark contrast to the relatively small number of allegations which have been made and which have in some cases been found to be groundless or not worth pursuing (Paragraphs 9.10-9.15).

8.12. Representatives of the Board of Deputies of British Jews expressed their support for the Inquiry's work.

8.13. Although no prosecution for war crimes have taken place in the United Kingdom, British prosecutors did take part in the Nuremberg trials and in other trials in the British zone of occupied Germany. The Inquiry was able to speak to three such prosecutors, Lord Shawcross, then Attorney-General; Lord Elwyn-Jones, later Attorney-General and Lord Chancellor; and Colonel Professor Gerald Draper. Two American Nuremberg prosecutors, Mr Telford Taylor and Mr Benjamin Ferencz were also seen.

FURTHER ALLEGATIONS

8.14. It was considered appropriate that the work of the Inquiry be widely publicised in order that as many allegations as possible within the terms of reference be received. To this end a press conference was held on 8 March 1988 at which members of the public were invited to come forward with allegations. This attracted relatively little media coverage and later in March an advertisement was placed in the national press, the text of which read:

WAR CRIMINALS

EVIDENCE WANTED

"It is alleged that some war criminals responsible for genocide, murder or manslaughter in Germany or German occupied territories during the Second World War are in the UK. Others with British nationality may be living elsewhere in the world. The names of some suspects have already been sent to the Home Office.

The Home Secretary has set up an independent inquiry to investigate these serious allegations, to interview people who have information to offer and to advise whether there is sufficient evidence to justify the prosecution of the alleged offenders. The Inquiry is being carried out by Sir Thomas Hetherington, former Director of Public Prosecutions in England and Wales, and Mr William Chalmers, former Crown Agent in Scotland.

If you have any information that you think may be relevant - or if you know of anyone in the UK or overseas who you think may have such information - please contact the Inquiry.

Please write to:

The Secretary, War Crimes Inquiry, 50 Queen Anne's Gate, London SW1H 9AT".

It was placed once in each of the Times, the Guardian, the Daily Telegraph, the Daily Mail, the Daily Express, the Daily Mirror, the Sun, the Scotsman, the Glasgow Herald, the Scottish Daily Express, the Daily Record, the News of the World, the Sunday Express, the Jewish Chronicle and the Universe in the period 25-27 March. It was also carried by Ukrainian Thought, the newspaper of the Association of Ukrainians in Great Britain.

8.15. Approximately 300 responses were obtained from members of the public. Many of these contained general discussion of the question of war criminals and the Inquiry's terms of reference, or concerned crimes committed outside the period and places that the Inquiry was required to investigate. Some of the letters with relevant allegations contained insufficient information to allow further investigation. Where possible the correspondent was asked for further information: this was, of course, not possible with anonymous correspondents, whose letters regrettably constituted a significant

proportion of the responses we received. In all about 70 allegations from members of the public were considered in depth.

8.16. Towards the end of 1986 an all-party group of Members of Parliament, the All-Party Parliamentary War Crimes Group (APPWCG) had been set up. In the months prior to the appointment of the Inquiry the APPWCG had received allegations from members of the public. The group presented copies of about 35 such letters to the Inquiry, together with a detailed dossier pertaining to one particular allegation. During the course of the Inquiry further allegations from various sources have been passed to the Inquiry by the group.

8.17. In February 1988 the Simon Wiesenthal Centre supplied two more names to the Home Secretary and in June 1988 one more. In June 1988 a list from the Public Record Office of thirteen persons whose extradition had been requested by the Soviet Union in 1947 was presented to the Inquiry by the Centre.

8.18. The Inquiry also enquired of the Home Office for records of extradition requests for war crimes made since the Second World War. Ten names were supplied. The relevant case files, which might have supplied more details of the allegations and of the suspects, had unfortunately been destroyed.

8.19. A similar request was made of the Foreign and Commonwealth Office. Unfortunately the way in which Foreign Office files had been registered prior to 1955 precluded identification of such files without searching the file indexes for all Foreign Office files of the period. It was thought that some extradition requests from the Soviet Union might have been refused by the Foreign Office without reference to the Home Office on the grounds that no extradition treaty existed between the two countries.

8.20. Research work in the Public Record Office uncovered more extradition requests. It is unlikely, however, that all such requests were identified. Those found included requests for extradition from the British zone in occupied Germany. These have not been pursued except where there was an indication that the subject of the request might have come to the United Kingdom.

8.21. During a preliminary meeting with the Office of Special Investigations (OSI) of the United States Department of Justice, further information was presented to the Inquiry about seven of the names on the Simon Wiesenthal Centre and STV lists, as were the names of a further seven suspects. The Inquiry later received further names from OSI, together with a number of lists of suspects who might be in the United Kingdom.

8.22. On 9 June 1988 the Embassy of the Soviet Union in London in a diplomatic note to the British Government named 96 persons whom it alleged to be war criminals who had fled to the United Kingdom. Some of these names had featured on the Scottish Television list. In most cases no details were given of the allegations or of the supporting evidence. These were supplied only after it had been verified that the person concerned was still alive and had been traced in the United Kingdom. With the list 15 dossiers were supplied, some relevant to those on the list and others to those on the Wiesenthal and STV lists.

8.23. Altogether the Inquiry considered 301 cases. This does not include those cases where the information provided was insufficient to allow investigation (Paragraph 8.15) or those where the allegation patently fell outside the Inquiry's terms of reference. It does include cases where it only became clear after investigation that cases were outside the terms of reference. Some names were received from more than one source.

TRACING SUSPECTS

8.24. The Inquiry's terms of reference require it to consider:

"allegations [concerning] persons who are now British citizens or resident in the United Kingdom"

and to consider:

"whether the law of the United Kingdom should be amended to make it possible to prosecute for war crimes [such persons]".

8.25. It was apparent, therefore, that the first stage in the investigation of a case should be to ascertain whether the subject of the allegation was alive and in the United Kingdom. Once a suspect had been traced it became worthwhile to look for evidence to support the allegation that had been made against him.

8.26. Most of those named came from Eastern Europe: from the territory now comprising the Ukraine, Byelorussia and the Baltic Republics. Ukrainian and Byelorussian are written in the Cyrillic alphabet. Many other suspects, even if they were from regions that did not normally use the Cyrillic script, had had their names transliterated at some stage into Cyrillic. In many cases the Inquiry received names which had been transliterated into English from the Cyrillic script. These were, however, not necessarily the names under which the suspects were living in this country. An immigration officer concerned with the civilianisation of Ukrainian prisoners of war commented, in a Home Office file in 1948:

> "It is possible that different versions of the spelling of names may occur. The Ukrainians use a form of the Cyrillic alphabet, so that translations must be phonetic. When the Germans enlisted these men their names were translated into Latin characters by Germans or by Ukrainians acquainted with Polish: this version of the names was entered on their German military identity documents and was copied by our military authorities when our P.O.W. records and identity documents were made out, so that the outlandish names now given are the result of translations from the Cyrillic into a mixture of German and Polish spelling conventions - with the results one would expect. Some of the Cyrillic characters are quite untranslatable into English sounds, but it would be possible to produce forms of the names much more comprehensible in this country; however, since the men have been known under these weird Germanic versions for four or five years and many of them have become familiar with their names in this form, it was decided that it would be less confusing to retain them as they appeared in the military records, and this was done except where the men declared them definitely phonetically incorrect. With the names of places the Polish form has been used wherever known, this being the version appearing in most of our modern atlases; where the Polish form was not known it was necessary to use an interpreter's or phonetic rendering."

The same applied to Byelorussian names. There is evidence to show that even Baltic names, written in the Roman script, were also given a Germanic or Polish form. The allegations in such cases, if derived from sources in the Soviet Union, may have been transliterated into Cyrillic script, and then

back again. In addition, the conventions of transliteration into English, German and Polish have varied over the years.

8.27. As a consequence, the Inquiry has frequently been searching for a person by an anglicised transliteration of his name, when in fact he has been living here under a German or Polish version of his name, or a mixture of both. Officials, unfortunately, have a tendency to simplify foreign names which are difficult to pronounce, or write, in their (the officials') own language. As a consequence the number of possible spellings is vast.

8.28. The assistance of a linguist was sought to consider those cases in which no trace of the suspect could be found even after intensive searches. He supplied a number of variants of each name (as many as twenty for each suspect) in Russian, Polish, German and English transliterations. These variants were all searched and a number of useful leads emerged. Contrary to popular belief we found little evidence that suspects had deliberately changed their names in order to conceal their identity: such difficulties as were encountered were due to the problem of finding the spelling of the name under which a suspect was living in this country. Some suspects (46) remain untraced and it may be that they came, and have lived, here under assumed names, although further research is necessary before it can be definitely established that there is no trace of them in this country under any of the possible versions of their name. It is equally possible, however, that they never came to this country or that they stayed such a short time that there is no trace of them in British records.

8.29. The above discussion of transliteration may seem unduly lengthy. It has to be said, however, that overcoming these difficulties was vital in identifying and locating suspects. Our use of the linguist's expertise was belated, and we have been wary of circulating all possible variants to all the agencies who have assisted us simply because of the vast number of searches involved. We consider that further searches for the relatively few persons who remain untraced may well identify and locate many of them.

8.30. In general, the first records searched were those of the Immigration and Nationality Department (IND) of the Home Office. All immigrants from Europe were interviewed in the period 1950 to 1952 under the Operation Post scheme (Paragraph 4.38). For the majority of those against whom allegations

have been made an Operation Post Report (OPR) is held centrally by IND. Only those who had already left for other countries before 1950, or who first arrived in the United Kingdom after 1952 would not have been interviewed. If a file was created one copy of the OPR was placed on the file. If, as regrettably has happened in a number of cases, the file was later destroyed, the OPR was returned to the central holding. Locating an immigration record was vital: not only did it give details which could be compared with those in the allegation, it also gave the form of the name under which the suspect was known in this country. Although some later simplified or anglicised their names, and a few changed their names, most other records contained both the original and the changed form of the name. The original form, from IND records, thus enabled the suspects to be located in other records as well. Because the OPRs have proved to be such a valuable investigative tool, we would suggest that they be not destroyed in the foreseeable future.

8.31. IND has a policy of keeping nationality files of all people naturalised after 1948. Where a suspect had been naturalised a great deal of information could be obtained from the nationality file, particularly from the police report of the interview in which a candidate for naturalisation is required to give details of his birth and family and of his personal history. We would suggest that nationality files which are likely to be relevant to this type of investigation be retained for at least another ten years. By contrast, immigration files are not held for such long periods, and in some of the cases in which we were interested the immigration files had already been destroyed. During the course of the Inquiry destruction of the immigration files of people of possibly relevant ages and nationalities ceased. Again we suggest that the IND might wish to review its policy in this area.

8.32. The Inquiry employed a team of five investigators, all retired police officers, whose primary task was to locate the suspects. This they did by interviewing those members of the public who had made allegations, by liaising with police forces throughout the country and by searching the various records that were made available to them, often using as a basis for their work the information supplied by IND.

8.33. Although some persons against whom allegations have been made remain untraced, the number outstanding (46) is small when compared to the total number of cases considered.

EVIDENCE

8.34. It was thought appropriate to proceed on two fronts. Given the requirement to

> "consider, in the light of the likely probative value in court proceedings in the UK of the relevant documentary material and of the evidence of potential witnesses, whether the law of the United Kingdom should be amended in order to make it possible to prosecute for war crimes persons who are now British citizens or resident in the United Kingdom,"

it was necessary to investigate some cases in detail to determine whether there was a realistic prospect of a conviction on the evidence available. Nonetheless it was not necessary to investigate fully all the cases to answer this question, nor indeed would it have been possible in the time available to us. As more than 40 years have elapsed since the alleged crimes were committed, both eye witness testimony and documentary evidence have proved difficult to obtain. It was decided therefore to concentrate on those serious cases where evidence appeared relatively easy to obtain. It may yet prove that these are not the most heinous of the allegations, but some selection was necessary in order that our report be completed in a reasonable time. To hasten the production of our report, we each separately investigated a number of such cases.

8.35. At the same time it was attempted to consider all the cases on a more superficial level. It was hoped that each suspect could be traced and that the value of each allegation weighed. Many cases have thus been eliminated from further consideration because the subject of the allegation is neither resident in the United Kingdom nor a British citizen, or is no longer alive. Other allegations have proved to fall outwith the terms of reference, to be completely unsubstantiated or to be grounded on personal animosity rather than on fact. Many other cases require further investigation (Paragraphs 9.10-9.15).

Archival material

8.36. There is a large number of sources from which documentary evidence may be gathered. Some of these have been used extensively, others, because the number of cases considered in detail has been small, have remained largely untapped. The various archives are considered in the following paragraphs (8.37-8.54). The Inquiry has attempted to search for all the subjects of allegations made to it but the large number of cases and the limited time available has precluded detailed searches being made in every archive with respect to every case. Should the law be changed to permit prosecution, the prosecuting authorities would presumably wish to undertake a more thorough search in each of these archives on a case by case basis. Although the following paragraphs summarise the likelihood of success, nuggets of information have been found where least expected.

8.37. There are three major archives in Berlin: the Berlin Document Centre (BDC), the Wehrmachtauskunftstelle (WASt) and the Krankenbuchlager. All the names received by July 1988 were searched for in all three archives by Mr Dixon of the Foreign and Commonwealth Office Research Department. Names received after that date, together with corrected versions of earlier names and the dates of birth that had subsequently been discovered, were rechecked with the archives in March 1989.

8.38. The Berlin Document Centre contains captured German records and is administered by the Government of the United States of America on behalf of the allies. It contains Nazi party membership records including application forms, copy membership cards and photographs. Service records of SS officers are also held, some of which are very detailed. The records seem to be more comprehensive for Germans than for non-Germans, which is unfortunate since the Inquiry's interest lies more with the latter. For example, of the 124 Ukrainian officers of the SS Galicia Division whose extradition was requested by the Soviet Union in 1947 only 12 were found to have a record in the Centre. The lack of records may be because few non-Germans were active party members, or since the Waffen SS units of non-Germans were formed late in the war, it may be that the records did not have time to reach Berlin before the end of the war. It is also possible that Berlin had less interest in non-Aryan officers. Some traces which were of interest to the Inquiry were found and although few, they contain more detailed information about the

individual than is available elsewhere. A computerised nominal list is available.

8.39. Literally translated Wehrmachtsauskunftstelle means Army Information Centre. Situated in a large warehouse complex, it contains several different collections of Army records. The sections which proved most useful have been the prisoner of war records maintained by the Allies. The British records in one section were open to the Inquiry to conduct its own searches and it is here that most good traces have been found, since the majority of immigrants to Britain were either held as prisoners of war by the British or came as EVW's from the British zone. The holdings of particular interest include a section of non-Germans, as well as records of those men taken prisoner in the Mediterranean area (Italy and France) and also those men released from prisoner of war status by the British authorities in Germany. There are also extensive records of German prisoners of war which generally only proved fruitful for German cases. With accurate names and dates of birth from British sources, the chances are good of finding a trace in WASt, which is useful to confirm the known information and provide some knowledge of the man's war record, although the information on the cards is limited and mainly concerns time spent as a prisoner of war. Those men transferred to the Polish forces are indicated as such. Most Ukrainians were found in the Mediterranean theatre collection, while many Balts were released from PoW status in Germany. Searches were also made in the American and French PoW sections by the archivists, although far fewer traces have been made. Other sections include details of members of the Wehrmacht who died in the war and more personnel records of the German Army. However, so far access has not been gained to these sources. It has been argued that they would probably not provide much information, as only a small amount of the records for non-German forces is reputed to have survived.

8.40. The Krankenbuchlager contains army medical records. The most important information for searches in the medical records is an accurate date of birth, as these records are organised by date of birth rather than name. The information is useful as it gives the units in which people served and any time spent in hospital away from the front. In the absence of comprehensive records of war service in the German Army, this provides the opportunity of reconstructing the service history of some men on the basis of western archival sources. If a serviceman was not hospitalised at some stage

in his career he will not have a record in this archive. The information provided by all of these personal archives can only give information on the unit in which a man served to help in the process of identification, providing supporting evidence to the main allegations, or alternatively indicating that the Inquiry's trace is incorrect.

8.41. The Institute for Contemporary History in Munich contains considerable material from the Alexandria collection of captured German documents in Washington. In addition copy records from the central war crimes judicial archive in Ludwigsburg have been assembled in Munich. Much of the material has been carefully indexed, although the subject index is not in fact comprehensive. Another advantage is that the Institute has an excellent reference library on the same site as its archival holdings. It is a good point from which to gain an overview of the material available, although the documents are mostly on microfilm, as the originals are in the archives at Koblenz and Freiburg. The Alexandria catalogue of some 80 volumes provides the best guide to the microfilms available in Washington and the Munich copy indicates which are available for consultation there with their own reference numbers. (A copy of the catalogue is available for consultation in London at the Institute for Historical Research). It is possible that there is other material in Freiburg and Koblenz which has not been microfilmed by the Americans. An important series of documents are the situation reports from the occupied Eastern territories prepared by the Security Police, which are all available in Munich. These provide a general picture of the date, place and scale of most of the mass shootings early in the war, but no further details other than the unit responsible. The reports also give an impression of the political situation. Another large collection now held in Freiburg, but also available at Munich, are the reports of the military rear area commanders. A map of the command numbers is essential to locate from where the reports emanate, as the catalogue only cites the numbers and date on each file. After examining several rolls, it must be said that only a general view of the partisan war and occupation policies can be gained from these documents, although there is a small chance that some personal details may crop up. For instance in 1941 the names of the local mayors and some police chiefs are mentioned when they are first appointed. The reports also take standard form so it is to be expected that similar information is available for the whole front, if the records are still intact.

8.42. The Federal German central records office for war crimes trials (Zentrale Stelle der Landesjustizverwaltungen) in Ludwigsburg is a useful source of material. War crimes cases are prosecuted in the separate states of the Federal German Republic and Ludwigsburg contains some record of all of them. Prosecuted cases of relevance to the Inquiry's investigations could be found using the indexes at Ludwigsburg, which cover names, places and units. For full investigation of a relevant case it is then necessary to consult the trial records in the prosecutors office of the appropriate state. For example the Inquiry was able to use trial records in Hamburg to locate witnesses for one case living in different parts of the world.

8.43. In the Bundesarchiv, Koblenz, are stored the civil records referring to administration in the Eastern territories, such as those returned from Washington concerning the RSHA (Reichsicherhauptsamt). Some records of non-military units such as police units may be found here, as may communications between the military and the civil authorities.

8.44. Other archives were visited but not used in our investigations. They may however prove useful in investigating future cases. These include German Military Archive (Militararchiv) in Freiburg, the Yad Vashem archives in Jerusalem and the archives of the German Foreign Office in Bonn.

8.45. The military archive of the Federal Republic of Germany in Freiburg holds material returned from Washington concerned with the German Army and material returned from other sources since the war. It is also the site of the Republic's research office for military history. This should be the first place to make inquiries about military events, especially when more details are required about the history of a particular unit. The archival records consist mainly of war diaries from units of Division size and above, as many records were lost or destroyed in the war. It is thought however, that as the material is limited to the German Army it thus may not contain details of foreign units subordinated to the Germans (although these may be mentioned in the reports) or of non-Army units such as the SS. The Zentralnachweisstelle des Bundesarchivs in Aachen-Kornelimunster contains a great part of the personal documents from the Army personnel office. All three services are represented with service records and records of the award of decorations. Further service records can be found at WASt in Berlin, including registration numbers.

8.46. The Yad Vashem archives in Jerusalem hold materials relating to the Holocaust. Many of the materials do not contain the names of specific war criminals, but do have details of place names and of army formations. In addition there are numerous "memorials" written by survivors who were unlikely to have known the names of the individuals concerned in criminal activities. Some of the survivors are still alive and, if a useful memorial is found, it is sometimes possible to trace and interview the author. Although the archive contains many documents copied from other sources, these are not completely catalogued, and it may therefore be better to use the documents in the source archive, if they have been catalogued there.

8.47. During the war the German occupied territories in the East fell partly under the control of the German Foreign Office. Records there may thus be of assistance in particular cases, although in general the material held is of too high a level. Although it may give an overall picture of the situation in the occupied territories, it contains little detail of smaller units or of individuals.

8.48. A great deal of information is held by Government departments in this country, and we have found this of great help. The Foreign and Commonwealth Office holds those records of the Control Commission, Germany, that were brought back to this country, and the Ministry of Defence the files of the Polish Resettlement Corps. Information from the files of the Ministry of Labour and National Service, now held by the Department of Employment, was useful in researching the European Volunteer Worker scheme. Those departments, together with the Cabinet Office, the Home Office and the Public Record Office, hold materials relevant to the policy decisions in this field, and the effects of those decisions. Access to such records has been particularly helpful since many of those involved in the decisions are now dead. We also received the assistance of a number of other Government departments.

8.49. Other archives of possible interest, which were not visited by the Inquiry, are in Potsdam and Vienna. The central archive in Potsdam is said to contain some military records returned from the Soviet Union as well as the main police records for the Third Reich, which would be immensely useful if they were well-ordered and intact. The question of access is of course more difficult, as few Western researchers have been granted access to

material of any sensitivity. Nevertheless, the East German Government is committed to the punishment of war criminals and it would be worth making an approach in view of the much improved state of co-operation with the Soviet Union. According to the guide to the Freiburg archives there are some military records of the Waffen SS intact in Czechoslovakia. The Kriegsarchiv in Vienna possesses an excellent library as well as some archival material relating to military operations in Eastern Europe during the Second World War.

8.50. It was not possible to visit Soviet archives. Such material as was obtained was requested on the Inquiry's behalf by representatives of the Office of the Procurator General of the USSR, Moscow. Representatives of the Australian, Canadian and United States Governments, together with the Secretary of the Inquiry, discussed access to Soviet archives at a meeting in Washington in February 1989 with officials of the Office of the Procurator-General. The latter indicated that they would consider whether it would be more appropriate for Western agencies to be given direct access. In this context it should be noted that the US Holocaust Memorial Council has concluded an agreement with the Main Archival Administration of the USSR Council of Ministers to cooperate in the area of exchange of archival records.

8.51. It has been made clear to us that documents from Soviet archives would be available to the British courts so that their authenticity could be tested by experts. Judging by practice in other countries, this might be done by the document being produced in court by a representative of the Soviet Embassy or by allowing experts access to the documents in the Embassy. In 1987 the Federal Minister of Justice of the Federal Republic of Germany, Herr Hans Engelhard commented that:

> "There is no known case [in West Germany] in which judicial authorities or experts have ever cast doubt on the copies of any captured German document conveyed by Soviet offices".

The view of the OSI concurs with this. Neal Sher, the present Director, considers that the Soviet Union has so many captured original documents that it has no need to attempt to manufacture them. He believes that the Soviet authorities recognise that war crimes proceedings would end in the west if even a single document emanating from the Soviet Union were shown to be forged.

8.52. The Main Commission for the Investigation of Hitlerite Crimes in Poland and Institute for National Memory in Warsaw is believed to have considerable archive collections. In addition it has access to other collections, including church, military and old comrades association records.

8.53. Archive material was also available indirectly. Other agencies; notably the OSI, were able to supply copies of archive material that they had used in investigations, and also copies of depositions taken in the USA and abroad. This was made easier by the decision of the representatives of the Soviet Government at the meeting mentioned above (Paragraph 8.50) to allow the agencies of the four English speaking Governments (United Kingdom, USA, Canada, Australia) to share with one another information from the Soviet Union without specific prior permission.

8.54. After the Second World War the International Tracing Service (ITS) was formed under the auspices of the International Committee of the Red Cross (ICRC). Its purpose was to allow the many millions of displaced persons in Europe to trace those relatives with whom they had lost touch. The Simon Wiesenthal Centre used an unofficial copy of ITS records held in the Yad Vashem archives in Israel to locate persons having the same names as alleged war criminals. Their letter to the Prime Minister (Paragraph 1.1) was partly based on the possible traces they thereby found. It had been hoped that we would be able to use the ITS records in order to further our investigations but this was denied in October 1988 and again in February 1989. In April 1989 the ICRC reconsidered the matter and concluded that the constitution of the ITS permitted access by the British Government, and hence by the Inquiry. This was, unfortunately, communicated to us too late to allow us to take advantage of such access. It may prove a useful investigative tool in locating those who are, as yet, untraced.

Investigations: Cooperation with other agencies.

8.55. The Office of Special Investigations (OSI) of the United States Department of Justice was the first in the field of investigating war crimes in the west in recent years. (Paragraphs 7.44-7.47 above). The OSI has considerable expertise in this field and the Inquiry, like the Canadian and Australian agencies before them, have been able to benefit from OSI's

expertise, records, depositions and contacts. In two cases the OSI was able to supply a considerable amount of information of value to the Inquiry

8.56. Both Canada and Australia have recently changed their laws to allow prosecution of war criminals (Paragraphs 7.48-7.51 and 7.53-7.54) and it has also been possible to exchange information with the Special Investigations Unit (SIU) in Sydney, and the Royal Canadian Mounted Police (RCMP) and the Crimes against Humanity and War Crimes Section of the Department of Justice in Ottawa. The OSI, SIU and RCMP have all been able to assist the Inquiry in tracing suspects who used the United Kingdom as a staging post before travelling on to the United States, Australia or Canada.

8.57. Most of the alleged crimes reported to, and falling within the terms of reference of, the Inquiry were committed on what is now the territory of the Soviet Union. As the Germans retreated the USSR captured vast numbers of German documents, now held in the archives of the various Soviet republics, from which some useful information was obtained, albeit without direct access (Paragraph 8.50).

8.58. In addition many witnesses remain on Soviet soil. Some were themselves collaborators or war criminals who have been imprisoned for their part in the acts that the Inquiry has investigated; others were bystanders, often themselves lucky to have escaped destruction.

8.59. Although many of the cases that have been investigated involved the killing of Jews, not all did. In the Ukraine and in Byelorussia the Germans and their hirelings destroyed whole villages, exterminating all the villagers whom they could find. The Soviet Union is said to have lost 20 million people during the war: one Byelorussian in four was exterminated. There are few families which suffered no losses during that period. As a consequence the atrocities committed under the Nazis, and the punishment of those responsible for them are still living issues in the Soviet Union today. The Soviet Union has continued to prosecute those found on its territory and is keen that its former allies should do so too.

8.60. We were afforded the utmost cooperation by those representatives of the Office of the Procurator-General of the USSR and of the Procuracies of the Soviet Republics that we met. Apart from visits to Moscow, we visited

the Republics of the Ukraine, Byelorussia, Lithuania and Latvia and in each interviewed witnesses and visited the sites of the atrocities. Apart from producing its own witnesses and documents, Soviet officials were diligent in trying to locate potential witnesses in the Soviet Union whose names had been given to us by survivors and others in other countries.

8.61. As the cases we investigated in the Soviet Union are cases in which the Soviet authorities have themselves opened files, and which are theoretically prosecutable there, they were able to compel witnesses to appear before us in semi-judicial proceedings. These were formally opened by a Soviet procurator, who sometimes examined the witness himself. Thereafter we were given complete freedom to examine the witnesses ourselves. It was our impression that the witnesses we examined had not been coached: they told their stories in their own way and from their own points of view. As in any investigation, some appeared more reliable than others. Soviet witnesses have played an important part in denaturalisation and deportation proceedings in the United States. Translators were provided by the Soviet authorities, but we travelled with a Russian speaker who considered that the translations were accurate. In Lithuania witnesses chose to speak in Lithuanian, which was then translated into English. In Latvia the official language was Russian and since witnesses preferred to speak Latvian, it was necessary for a double translation to take place into Russian and into English. We understand that Latvian has since become an official language so that translation into Russian is no longer necessary. In the Ukraine and Byelorussia witnesses chose to speak Russian, but some in fact also interspersed Ukrainian, Byelorussian and Polish words in their testimony.

8.62. The Soviet authorities appeared to have insufficient resources to cope with the renewed interest in war criminals in the West. Besides ourselves, there was a continuing interest from the American OSI, and the new units in Canada and Australia were both actively seeking witnesses and materials concerned alleged war criminals located in their countries. Each country is now pressing to complete cases as quickly as possible before witnesses and suspects become unfit or die. As a result, we were not always able to travel to the Soviet Union when we wished, nor did we receive promised materials as quickly as we might have liked.

8.63. The Simon Wiesenthal Centre also produced a long list of potential witnesses in one case.

8.64. As well as the Soviet Union the Inquiry also interviewed witnesses in Israel, the United States, Canada and Poland. Their names had been suggested by the Simon Wiesenthal Centre, the OSI, the RCMP and the Israel Police. This last made preliminary contact with a large number of witnesses on our behalf to ensure that what they had to say was relevant to the Inquiry's investigations. Most of these witnesses were Jewish survivors. Because of the sickening efficiency of the mass killings we found few Jewish eyewitnesses of the actual crimes: those who had witnessed the atrocities were usually themselves killed. Many, however, were able to help with circumstantial and hearsay evidence, and some were able to identify suspects from photographs.

8.65. We have videotaped interviews with witnesses, except in those few cases where the witness has asked not to be videotaped. We consider that the videotapes will be helpful to those who may pursue these cases further, as they show the demeanour of the witness and give an indication of his state of health as well as containing a record of the evidence collected. They also show the circumstances in which the interview took place and demonstrate that witnesses were not intimidated. They also allow the translations of the Soviet interpreters to be checked. A summary of the evidence has been prepared by the Secretary to the Inquiry or his assistant from contemporaneous notes and audiotape recordings. Where interviews took place in the Soviet Union (Paragraph 8.60), an official record of the proceedings, or protocol, was produced, and these have also been translated. Interviews in Israel were conducted in the presence of a member of the Israel Police, who acted as a translator but otherwise took no part in the proceedings.

8.66. Once cases had been selected for detailed investigation, the cooperation of the World Jewish Congress was sought in tracing survivor witnesses from specific places. An advertisement was placed in the Jewish Chronicle and an announcement carried in Ukrainian Thought, the journal of the Association of Ukrainians in Great Britain, in order to locate witnesses in the United Kingdom.

8.67. From some areas Jewish survivor groups exist in the West. Lists of their members and those who attend their memorial days can also be a source of potential witnesses.

Difficulties

8.68. The investigation of crimes well over forty years after the event is fraught with difficulty. The problems encountered in simply tracing the accused have been noted above (Paragraphs 8.24-8.33), and while we recommend that certain cases be further investigated, it must be said that it is only with such further investigation that the correctness of the identification that we have made will be ascertained.

8.69. The greatest difficulty we encountered was simply the age of the suspects and of the witnesses. Many of the cases presented by the Soviet Union are based on the work of the Extraordinary Commission set up after the Second World War (Paragraph 7.10). Statements were taken from witnesses at that time, and at the time of subsequent prosecutions in the following thirty years. Inevitably many of those who made statements are now dead. In addition, in each of the cases that we investigated in depth some of the witnesses identified from recent depositions taken in other proceedings had either died or become too ill to see us. Others could be seen, but could not travel and we were forced to visit their home towns or villages to see them.

8.70. It has been our practice not to approach a person against whom an allegation has been made until details of the evidence have become available. We have, however, attempted to ascertain that the suspect appears reasonably fit before commencing a detailed investigation and in some cases we recommend that no further action be taken as the advanced years or poor state of health of the suspect make it extremely unlikely that he could ever be brought to trial. In one case over forty witnesses were interviewed, in the Ukraine, Canada, the United States and Poland. On the evidence available it appeared that there would be a realistic prospect of conviction for murder were the jurisdiction of the British courts to be extended. The person concerned has subsequently died.

8.71. An example of the dangers of assuming that a trace is the correct one without thorough investigation concerns one of the 17 names featured on the original list supplied by the Simon Wiesenthal Centre. The name given was a surname and a initial. The allegation was that the person named had served with the 15th Latvian SS Division and a cold war Soviet publication entitled "Daugavas Vanagi: who are they?" was cited as evidence. An extract from that publication reads:

> "Let [name] take the stand, for instance. He used to be a Latvian stormtrooper (SS) of the 15th Division, and now is Chairman of the Latvian Welfare Fund, "Daugavas Vanagi" in Great Britain".

This is the sum total of the allegation. The person who was Chairman of the Latvian Welfare Fund is a retired dentist. Despite a court injunction preventing publication of his name, newspapers have continued to refer to a dentist from Latvia as an alleged war criminal. Further details of the allegation were first supplied to the Inquiry by employees of Thames Television, who visited Latvia. The original documents and witness statements supplied refer to a person of the same surname and initial, but with a different forename, who, as far as we can ascertain, never came to the United Kingdom. Our investigations lead us to believe that the trace in this country studied dentistry until 1943 and then served in the equivalent of the Army Medical Corps as a dentist, with the rank of Assistant Medical Officer until captured in May 1945. This is plainly a case of mistaken identity.

8.72. It will be noted that the accusation mentioned above is limited to the allegation that he was an SS stormtrooper. This has not prevented one British newspaper claiming that the "wealthy dentist" who is on the "list of suspected Nazi war criminals" is "accused of performing horrifying operations on Jewish death-camp victims". We have seen no such allegation, except in the newspaper concerned, nor any evidence that supports it.

8.73. Where we consider that an allegation falls outside the Inquiry's terms of reference, or where the person concerned has died, we have not attempted to evaluate it, since that would not serve to answer the questions asked of us. It is therefore possible that other allegations which have received publicity are also based on mistaken identity or on false information: one other has been withdrawn by the Simon Wiesenthal Centre. It is, in any case, difficult to prove a negative, and it is unfortunate that unsubstantiated allegations have received so much publicity.

8.74. Our terms of reference did not allow us to consider all the allegations made to us. Some, such as those which merely alleged service in the German forces, could not be regarded as war crimes. Others, such as the deportation of people for labour or other purposes, are violations of the laws and customs of war, and are war crimes as defined by the Nuremberg Charter (Paragraph 5.15). If such acts were committed against a particular ethnic group they might amount to genocide and fall within our purview. If they were committed against people without regard to their national or racial origin they did not fall within our terms of reference.

CHAPTER NINE

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

9.1. This chapter briefly reviews the contents of the earlier chapters of this report and then summarises the results of our investigations into the individual cases. There then follows a discussion of the possible courses of action and a summary of our recommendations.

REVIEW

9.2. The vast majority of the allegations we have received concern people from the Baltic countries, Byelorussia and the Ukraine. During the Second World War a number of people from those countries fought for the Germans. Like many people taken from those same countries for slave labour, many of them remained in the western zones of occupied Europe after the war. Some of these were brought to the United Kingdom as European Volunteer Workers. Members of the Polish Armed Forces, some of whom had previously fought for the Axis, were also brought to this country, or remained here, after the war. Some German and Italian prisoners of war were allowed to remain here after the war and other surrendered enemy personnel were brought here when it seemed likely that otherwise they would have to be forcibly sent to the Soviet Union where their fate was uncertain. There are many routes, therefore, by which people who fought for or supported the Axis during the war may have reached this country. Many of those would nominally have been members of the SS, having belonged to the Waffen SS which, by and large, was purely a fighting force. Many of the peoples of the Eastern territories were recruited to the Waffen SS rather than the Wehrmacht and, as yet, we have received no substantiated allegations concerning the behaviour of members of the Waffen SS whilst they were members of the Waffen SS. Some of those who joined the Waffen SS were conscripts, others were volunteers. It appears that many had previously volunteered to join auxiliary police or militia units in the occupied territories under German control, or had chosen to join such units rather than be sent to Germany for forced labour. When the Germans retreated their collaborators were transformed from police and militia into members of the Waffen SS. The allegations made largely refer to the time when they were in the auxiliary units before they joined, if they did join, the Waffen SS.

9.3. Before coming to this country European Volunteer Workers were required to fill in a questionnaire, were screened against lists of wanted war criminals and were interviewed. Prisoners of war and surrendered enemy personnel appear to have been screened in a similar way, but after arrival here. Members of the Polish Armed Forces who had fought on the Allied side throughout the war required no screening and those who had previously fought on the Axis side were screened by the Poles themselves. Despite the effort devoted to it the screening process was ineffectual: at its core were lists of wanted criminals which were defective. They did not contain the names of alleged war criminals from the territories in which we are interested because of lack of cooperation between East and West.

9.4. Altogether something in excess of 200,000 people came to this country after the Second World War by the routes outlined above. Some of these would have fought for the Germans against the Russians, mostly in what were nominally SS units. They had good reason to do so: the Soviet Union had annexed their countries and imposed a brutal regime. In addition the Germans had been a catalyst in the formation of independent states in the Baltic, Byelorussia and the Ukraine after the First World War (although the latter two states existed for only a brief period). Of those who fought in German military units, some would previously have been members of auxiliary units which were responsible for mass killings of Jews, partisans and whole villages of peasants, as well as other categories of people the Germans disliked. There is no doubt that the screening methods employed were ineffective at identifying such people.

9.5. It is impossible from the records now available to determine how many of those who gained entry to this country once fought for the Germans. Still less is it possible to determine how many had previously belonged to auxiliary units and might thus have committed war crimes. It should be remembered however that many of those who came here had been deported to Germany for forced labour or had fought for the Allies in the Polish Armed Forces throughout the war. Others joined to fight the invading Russians or were conscripted to the Western front and surrendered to the Allies at an early opportunity. It would be wrong to taint whole communities with the stain of war criminality. We have received only three hundred allegations, many of them ill-founded; the number of allegations is small compared with the number of immigrants.

9.6. After the war the British Government was theoretically committed to rapid retribution for war crimes. In practice the end of the war found it completely unprepared, and when investigating and prosecuting teams were set up they were always under-resourced. Justice delayed has the appearance of revenge, and public support for continued war crimes trials was soon lost. Responsibility for war crimes trials in the British zone of occupied Europe was soon handed to the German authorities. The problem was, however, perceived as one of occupied Europe. Despite the obvious deficiencies in the screening system little or no consideration was given to the question of what might be done with war criminals in this country: it was simply thought that there were none here. It cannot be argued, therefore, that the British Government took a positive decision not to prosecute war criminals in this country, or that it was intended that war criminals should find shelter here. War criminals were not given an assurance that they would not be prosecuted here, and we see nothing in the policy or practice of successive British Governments that would prevent the present Government taking whatever action it considers suitable.

9.7. In Chapter Five we considered the development of war crimes and related concepts in international law. By 1939 there is little doubt that the 1899 and 1907 Hague Conventions were accepted by the major protagonists in the Second World War as part of the international law governing the laws and customs of warfare. Although the war crimes trials after the First World War proved abortive, all the participants in the peace negotiations accepted the applicability of the Hague Conventions and that the victorious belligerent had the right to apply them in trying war criminals. The Hague Rules, which are annexed to the Conventions, provide that in occupied territory "individual life ... must be respected" and that "no collective penalty ... shall be inflicted upon the population on account of the acts of individuals for which it cannot be regarded as collectively responsible". Killings of civilians in occupied territory, including "reprisal" raids against villages where partisans are alleged to be sheltered, are thus violations of the laws and customs of war, as laid down in the Rules. Such 'violations of the laws and customs of war' were termed 'war crimes' in the Nuremberg Charter. Jurisdiction was also taken at Nuremberg over crimes against humanity, which are similar to war crimes but include acts committed outside war time against civilian populations, including those of a state against its own citizens. Some argue that this procedure did not introduce

an element of retrospectivity since such offences existed in the criminal code of every civilised country. It was thus asserted that the international community had the right to override the national sovereignty and municipal law of a state whose nationals were committing crimes which exceeded in magnitude the bounds of what was tolerable. Others would argue, however, that crimes against humanity were introduced at Nuremberg not for purposes of retribution, but to set a standard for the future, and that thus any legislative change to provide for the prosecution of crimes against humanity committed prior to 1945 would be retrospective in effect. While there is little doubt that the 'Final Solution' decided by the Germans is the clearest example in history of genocide, the crime of genocide was not defined by international convention until 1948, and therefore legislation to permit the prosecution of that offence if committed before that year would be retrospective.

9.8. Both the European Convention on Human Rights (1950) and the International Covenant on Civil and Political Rights (1966) contain Articles to prevent the introduction of retrospective legislation. Both, however, contain provisos to allow the trial and punishment of persons for acts or omissions which were, at the time they were committed, already regarded as criminal by the international standard. These provisos were introduced specifically to deal with the crimes committed during the Second World War. Two international conventions therefore provide that no time limits shall be applied to war crimes.

9.9. At present no prosecutions can be brought in the United Kingdom with respect to war crimes allegedly committed during the Second World War by persons who are now citizens of, or resident in, the United Kingdom if they were not British citizens at the time the offences were committed. One proviso must be made with regard to the above statement: prosecutions may be possible under the Royal Warrant of 1945, although this is uncertain (Paragraphs 6.3-6.5). Other possible alternatives now available are the use of the powers of deprivation of citizenship and deportation (Paragraphs 6.11-6.21); and extradition (Paragraphs 6.8-6.10).

9.10. All in all the Inquiry considered 301 allegations, some of which concerned more than one person. In seven cases we were able to undertake detailed investigations and we consider that in four of these there would be a realistic prospect of a conviction for murder on the evidence available were the jurisdiction of the British courts to be widened. Since concluding our investigations one of the people concerned has died. We invited the three surviving people to be interviewed, but one produced only written comments about the allegations and also supplied medical evidence which suggests that he may not be fit to stand trial. In the three cases where there is as yet insufficient evidence to give a realistic prospect of conviction, we recommend further investigation, although in one of these we foresee little chance of sufficient evidence becoming available. One of these three has also been interviewed.

9.11. In 75 other cases we also recommend that further investigations be carried out. As noted above (Paragraph 8.68), without further investigation the traces made in these cases cannot always be confirmed. In some cases the traces appear so uncertain, that they are considered below (Paragraph 9.12) together with cases where no trace of the suspect has been made. In a few of these cases dossiers of witness statements have been supplied by the Soviet authorities. These witnesses have not been interviewed by us. The dossiers contain insufficient material to give a realistic prospect of a conviction for murder or manslaughter: with one exception either they contain only circumstantial and hearsay evidence of homicide, or they concern crimes less serious than those in our terms of reference. The Soviet authorities should be asked to confirm that no further evidence is available so that such cases may be closed. Our relatively recent use of a linguist (Paragraph 8.78) has helped us to locate a further 14 living suspects. We have as yet not requested material on these from the Soviet Union and have only partly researched the archives under the correct spellings of the names that we have recently discovered. However, since our earlier demands have apparently already exceeded the resources available to the Soviet authorities it seems in any case unlikely that the relevant material would have arrived in time for inclusion in this report (Paragraph 8.62). The Soviet authorities have been preparing dossiers of witness statements and documents in 14 cases where we have confirmed the subject of

the allegation to be alive in the United Kingdom. Although expected by mid-April, these have still not been received. Other cases which we consider need further investigation include allegations received recently, where the person making the allegation has yet to be interviewed, and those where the subject of the allegation was not named, or named incorrectly, and has only recently been identified.

9.12. We have found no trace of 46 subjects who are alleged to have come to this country. This includes, however, some recent cases from members of the public, where we have not had time to interview the correspondents. The subjects of such allegations should be easily identifiable. This category also includes cases where a tenuous trace has been made or a number of possible traces have been made, but we consider the identification insufficiently certain to justify their inclusion in the category above (Paragraph 9.11). Since the number of people yet to be located is now much reduced, we recommend that a further effort be made to trace them. In one such case a dossier has been supplied by the Soviet authorities who have also provided a recent photograph, and who may be able to provide his address from Soviet sources. The dossier contains eyewitness evidence of acts of murder.

9.13. We recommend that no further action be taken in 166 cases. Of these, 56 subjects are dead, 13 have left the United Kingdom, and 25 have not been traced in the United Kingdom and there is no evidence or suggestion that they ever came here. In 49 cases the allegation falls outside our terms of reference. Most of these simply allege membership of the German forces, which is not a war crime and was, in most cases, known when the person entered this country. We consider that in 5 cases there is insufficient material to allow further investigation and in 18 other cases we consider that the allegations are unsubstantiated, grounded on malice, or contradicted in whole or in part by the facts that we have been able to ascertain. Like our American, Canadian and Australian counterparts we have found that anyone with a foreign accent is vulnerable to such allegations and regrettably many of the unfounded allegations were made anonymously. Some of those accused arrived here before the Second World War, some as refugees, and others fought on the Allied side throughout the war. Few of the allegations received from members of the public have stood up to scrutiny. In addition, 7 cases have been passed to the Director of Public

Prosecutions for his consideration and possible further investigation. These were cases which could already be tried in England should sufficient evidence be available to support the allegations.

9.14. Thus we have found two cases in which we consider that there is already evidence sufficient to give a realistic prospect of conviction and one further case where sufficient evidence exists but the subject of the allegation is in ill-health. In none of these cases has the full allegation been admitted at interview and if proceedings were made possible the verdict would depend on the jury's determination of credibility. In another case the Soviet authorities have supplied a dossier containing sufficient evidence and a recent photograph, and may be able to help in locating the suspect in the United Kingdom. Other cases require more investigation before they can be fully assessed.

9.15. In the preceding paragraphs the phrase 'evidence sufficient to give a realistic prospect of conviction' has been used as a label: it could equally be evidence sufficient to justify extradition. Should the Government decide to take action in these cases four alternative paths present themselves: these are considered in the following paragraphs.

POSSIBLE COURSES OF ACTION

9.16. We have been able to consider only a very small number of cases in great detail. In some of those cases we have found sufficient evidence of murder on a large-scale to meet the requirements of the prosecuting authorities, that is, there is evidence sufficient to give a realistic prospect of conviction. In those cases, the evidential requirements of the 1988 Criminal Justice Act (Section 6(8)(a)) relating to extradition are also met, that is:

> "the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court".

9.17. Despite the evidence that we have found, arguments can be advanced in favour of taking no action with respect to war crimes. It has been said that there is little point in attempting to punish old men, who have lived peacefully in this country for over forty years, particularly as it is

claimed that this country made a decision at that time not to continue with prosecutions. It is undoubtedly true that the passage of legislation and the investigation and trial of such cases, should it be decided to follow this course, would require additional manpower and resources which would be costly and it could be argued that such money would be better used for other purposes. As we indicate below (Paragraphs 9.44), there would be considerable problems in bringing evidence before the courts, the solutions to which would be expensive and possibly only partly effective. Some of the subjects of the allegations whom we have interviewed have protested their innocence and have maintained that the whole issue is a Soviet plot to blacken the emigre community. Superior orders may be cited as a defence.

9.18. Although we recognise the substance of some of these arguments when weighed in the balance against the atrocities of which we have heard, we find them lacking. The crimes committed are so monstrous that they cannot be condoned: their prosecution could act as a deterrent to others in future wars. To take no action would taint the United Kingdom with the slur of being a haven for war criminals. As we have noted above (Paragraph 9.6) British Governments have never taken a decision not to prosecute war criminals. In neither the German nor the British military code are superior orders accepted as a defence against war crimes. We refer elsewhere (Paragraphs 8.51 and 8.61) to Soviet documentary evidence and witnesses: we, like our counterparts in West Germany and the United States, consider the documents authentic and the witnesses credible. We believe the authenticity of documents as material evidence can best be judged by the British courts hearing experts whether in a trial or in extradition proceedings. Financial constraints should not be allowed to obstruct the course of justice in relation to such serious charges. We are firmly of the view therefore, that some action should be taken in respect of alleged war criminals, and so recommend. The United States of America, Canada and Australia have all acted in recent years and there has been considerable interest in our work in the Soviet Union. Both the Soviet authorities and Soviet public opinion consider it important that the United Kingdom, one of their Allies in the 'Great Patriotic War', should be seen at last to be bringing war criminals to justice.

9.19. Some would claim that too long has passed for these offences to be tried. There is no time limit on the trial of murder and manslaughter by

British courts and police and prosecutors do investigate and prosecute homicide committed in this country however long ago it was committed. A recent example is an alleged domestic murder committed 27 years ago. It is not therefore inconsistent with this policy to attempt to bring persons allegedly involved with mass-murder to justice. We have considered the imposition of a time limit, for example 50 years from the cessation of hostilities in Europe, but have decided against that, because it would be inconsistent with our normal policy. In any event prosecutorial discretion would enable the prosecuting authorities to take no action if they considered the lapse of time too long to obtain reliable evidence or the accused too old or infirm to stand trial

9.20. There appear to be four possible routes by which action could be taken against such people

(i) deprivation of citizenship, where applicable, and deportation using the Home Secretary's powers to deport a person whose presence is not conducive to the public good (Paragraphs 6.11-6.21);

(ii) extradition (Paragraphs 6.8-6.10);

(iii) prosecution in Military Courts under the Royal Warrant of 1945 (although the legality of such prosecutions in this country is uncertain) (Paragraphs 6.3-6.5); and

(iv) legislation to allow prosecution in the ordinary criminal courts of this country.

We consider that two of these alternatives are unsatisfactory. Deprivation of citizenship, where applicable, and deportation proceedings are likely to be lengthy and hold no guarantee of success. Furthermore, even if successful they do not result in punishment. Prosecutions under the Royal Warrant, if legally permissible, would be held in Military Courts and in the absence of a jury. We do not find this proposition acceptable, in peace time, forty or more years after the alleged crimes have taken place. The following paragraphs therefore consider the two remaining options: legislation to allow prosecution in this country and extradition.

9.21. This section is concerned with the changes in English and Scots law which will be necessary, or desirable, if the alleged war criminals whose cases we have been considering are to be brought to trial before the appropriate courts in the United Kingdom. Firstly, legislation will be necessary to give the British courts jurisdiction over the alleged offences that we have been considering. In addition we recommend certain procedural changes which we consider would facilitate the prosecution of such offences.

Jurisdiction

9.22. Our terms of reference require us to consider

> "crimes of murder, manslaughter and genocide committed in Germany or in territories occupied by German forces during the Second World War".

Under the present law, British courts have no jurisdiction to try an offence of murder or manslaughter or genocide committed abroad by any person who was not a British subject at the time of the alleged offence. It will thus be necessary to legislate for those persons who are now British citizens or resident in the United Kingdom but were not British subjects at the time when any of these crimes were allegedly committed in Germany, or in German occupied territory, during World War Two. It would not be wholly exceptional to provide the courts with extraterritorial jurisdiction over people who are not British nationals: other examples are considered in paragraphs 6.29-6.32. Of particular interest is the fact that by enacting the Geneva Conventions Act 1957 Parliament demonstrated a belief that war crimes were offences over which it was suitable for the British courts to exercise jurisdiction, regardless of the nationalities of the perpetrator and the victim, and of the country where the alleged offence took place.

9.23. Genocide was not defined as an offence in international law until 1948. Any attempt to legislate to provide for prosecutions with respect to acts of genocide allegedly committed during the Second World War would be retrospective. For this reason we recommend that genocide be not included in any legislation that may be presented to Parliament.

9.24. Other countries have included a very wide list of offences in their war crimes legislation. For example, in its recent legislation (Paragraph 7.51), Canada gave its criminal courts jurisdiction over war crimes defined as acts or omissions committed during an international armed conflict which, at the time of commission, constituted a contravention of the international customary or conventional law applicable to international armed conflicts. For the Second World War this would include all breaches of the 1899 and 1907 Hague Conventions including, for example, robbery. Jurisdiction was also taken over crimes against humanity which are defined as murder, extermination, enslavement, deportation, persecution or other inhumane act or omission committed against any civilian populations or any identifiable group of persons which at the time of commission constituted a contravention of customary or conventional international law or was criminal according to the general principles of law recognised by the community of nations. In Australia the recent legislation (Paragraph 7.54) makes prosecutable a wide variety of war crimes including not only murder and manslaughter, but also, for example, indecent assault and procuring for immoral purposes. Both these recent Acts, but particularly the Canadian legislation, are drawn very widely. We note, however, that in both English and Scots law there is no extraterritorial jurisdiction over many of the offences included within the scope of the Australian and Canadian Acts, although there is over murder and manslaughter. It does not appear sensible to us to take extraterritorial powers over acts such as robbery or indecent assault when committed as war crimes, when there are no such powers relating to the same offences committed as 'ordinary' crimes. In addition, it will be difficult to prove any act allegedly committed over forty years ago in a foreign country and we consider that such efforts as are made should be limited to homicide. We therefore recommend that any extraterritorial jurisdiction that is taken should be only in respect of the acts of murder and manslaughter.

9.25. The Canadian Act applies to war crimes and crimes against humanity committed at any time. In contrast, the Australian Act is limited to the Second World War. We favour the latter approach. We consider it necessary only that legislation cover the period of the Second World War since it was during this period that the alleged crimes we have considered were allegedly committed, and because later war crimes, those committed anywhere in the world after the enactment of the Geneva Conventions Act 1957, are already prosecutable in this country. (Paragraph 6.6)

9.26. We recommend, therefore, that the British courts be given extraterritorial jurisdiction over murder and manslaughter allegedly committed during the Second World War by persons who are now British citizens or resident in the United Kingdom. This leaves two related issues: the geographical scope of, and the exact nature of, the offences to be included in any future legislation. The offence could be defined in one of three ways:

(i) murder and manslaughter committed as violations of the laws and customs of war (later called war crimes);

(ii) murder and manslaughter committed either as violations of the laws and customs of war or as crimes against humanity; and

(iii) murder and manslaughter.

These options can be considered from two viewpoints, the theoretical and the practical.

9.27. In our view, to enact legislation in this country to give the British courts jurisdiction over murder and manslaughter committed as violations of the laws and customs of war would not be to create an offence retrospectively. It would be making an offence triable in British courts to an extent which international law had recognised and permitted at a time before the alleged offences in question had been committed. The only element of retrospectivity would be that jurisdiction would be made available to the British courts by Parliament after the commission of the acts in question. All of the allegations that we have investigated in detail, and the vast majority of all the allegations made to us, concern events on territory occupied by Germany by force, and thus would, if proved, be violations of the laws and customs of war. (Paragraphs 5.14-5.18)

9.28. Like those who drafted the Nuremberg Charter, we consider it invidious that acts of mass murder when committed in territory forcibly occupied by the Germans are punishable as violations of the laws and customs of war, but that similar acts committed in Germany or in territory annexed peacefully are not. This latter group of acts falls to be considered as crimes against humanity, and although there is little doubt that such acts committed during the Second World War were at that time judged criminal by

the international standard, it is, in our view, unclear whether legislation to take jurisdiction over such crimes would be retrospective.

9.29. The third option would simply be to take extraterritorial jurisdiction over murder and manslaughter committed during the period of the Second World War. It has been said that the governments of foreign countries might object to the United Kingdom taking jurisdiction over acts committed on the territory of their countries. In practice, we believe that the government most concerned, that of the Soviet Union, would welcome any action taken by this country to bring war criminals to justice. While it would be difficult to argue that new offences were being created retrospectively, there is little justification in international law for taking such jurisdiction. It might also be said that the creation of jurisdiction was retrospective. Further, it could be argued that this would be setting the trap too wide, and that domestic and other murders would also be caught.

9.30. We consider the first of these options to be preferable. The third is drawn too widely, and the second, by including a reference to crimes against humanity, is vulnerable to attack as retrospective legislation. Most of the cases that we have considered, and all those we have considered in detail, allegedly took place in German occupied territory, and thus we believe that the exclusion of crimes against humanity from the legislation would have little practical effect. Our terms of reference refer to offences allegedly committed in Germany or German occupied territory, and these are the only offences that we have considered. We see no reason to extend the geographical limits of the legislation beyond those given in the terms of reference. We therefore recommend that the British courts be given jurisdiction over murder and manslaughter committed as war crimes (violations of the laws and customs of war) in Germany or German occupied territory during the Second World War by persons who are now British citizens or resident in the United Kingdom.

Evidence

9.31. There are considerable differences between the English and Scots law of evidence. The effects of the Criminal Justice Act 1988 when fully introduced will give greater flexibility to the procedures in England.

References to England in the following discussion include Wales. Changes to the same extent have not taken place in Scotland but at present the law in Scotland relating to evidence in criminal cases is under review by the Scottish Law Commission who have issued a discussion paper (No 77). The Commission's report is awaited.

9.32. In considering the procedural points discussed in the following paragraphs, it is necessary to keep in mind some of the provisions of the European Convention on Human Rights (ECHR). Article 6(1) states that, in the determination of any criminal charge against him, everyone is entitled to a fair hearing by a tribunal, and Article 6(3) states that everyone charged with a criminal offence has the right to examine, or have examined, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. The leading case is Unterpertinger, which was decided in 1986. We would normally expect procedures in British courts not to fall foul of the ECHR in this respect.

Oral evidence

9.33. The principal witnesses to the offences we have been considering live abroad and many of them within the jurisdiction of the Soviet Union. For the most part they are elderly. In accordance with the normal principles applicable to proceedings in the criminal courts in this country, it is clearly desirable that witnesses of substance should appear in person before the trial court, so that their evidence could be challenged before a judge and jury and the credibility of their evidence assessed. The Soviet authorities indicated to us during the course of our discussions with them that they would raise no objection to witnesses travelling from the Soviet Union to the United Kingdom for the purpose of giving evidence, providing that the witnesses were willing, and were physically able, to do so. Some of the potential witnesses whom we have interviewed in the Soviet Union, and elsewhere, have said that they are willing to come, and undoubtedly that would provide the best evidence. Some, on the other hand, are unwilling to come, and some clearly are not fit enough to do so. There is of course no means of compelling their attendance from abroad. Consideration must therefore be given to other means of making their evidence available to the court.

Live television link

9.34. In England, section 32(1)(a) of the Criminal Justice Act, 1988, makes provision for a witness who is outside the United Kingdom to give evidence through a live television link, with the leave of the court. This provision has not yet been brought into effect, and consequently we have, as yet, no judicial guidance on the circumstances in which the court would grant the necessary leave. The major advantage of this procedure is that the accused and the jury may see the witnesses giving evidence, and the witnesses may see the accused in the dock of the British court. We appreciate that it would be necessary to accept that the use of this provision could prove expensive, and would require close cooperation with the overseas authorities in order to be effective. However, if it proves practicable to do so, this could be a useful means of receiving live evidence from witnesses in war crimes trials who are abroad and who, in the opinion of the court, could not reasonably be expected to attend in person. This would not require any further legislation in England. However, this provision of the 1988 Act does not apply to Scotland. We recommend the necessary legislation so to apply it.

Letters of request

9.35. In England, section 29 of the 1988 Act provides for the issue of letters of request directed to an authority exercising jurisdiction outside the United Kingdom. Such letters can ask for evidence to be taken in that jurisdiction for the purpose of criminal proceedings in this country. Their issue requires the authority of a magistrate or of a judge, but evidence resulting from them does not require the leave of the court before it can be introduced at a trial. The trial judge could however rule that a statement taken in pursuance of letters of request should be excluded from evidence, if he is of the opinion that the interests of justice so require. In exercising this discretion, the court is required by section 29(6) to have regard:

> "(a) to whether it was possible to challenge the statement by questioning the person who made it; and

(b) to whether the local law allowed the parties to the criminal proceedings to be legally represented when the evidence was being taken."

This method of taking and receiving evidence is clearly a possibility in the context of any war crimes trials in this country. It thus seems desirable that arrangements should be made with the authorities in the countries in question, and in particular the Soviet Union, where potential witnesses are available so that evidence could be taken in pursuance of a letter of request. The arrangements would have to require that the defendant had the opportunity of being represented when the evidence was being taken and that he, or his representatives, should have the opportunity of challenging the statement of the potential witness. The application of this procedure to war crimes trials would not require further legislation.

9.36. Section 29 of the 1988 Act, does not apply to Scotland where the law on this subject is to be found in section 32(1)(a) of the Criminal Justice (Scotland) Act 1980, which enables the prosecution or accused to apply for "the issue of a letter of request to a court, or tribunal, exercising jurisdiction in a country or territory outside the United Kingdom ... for the examination of a witness resident in the same country or territory." Under subsection (2) such an application may be granted only if the judge is satisfied that

"(a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and

(b) there would be no unfairness to either party were such evidence to be recorded in the form of the record of an examination conducted by virtue of subsection (1)."

In terms of subsection (3) any such record shall without being sworn to by witnesses be received in evidence in so far as it either accords with the averment mentioned in subsection (2)(a) or can be so received without unfairness to either party. In the Act of Adjournal (Consolidation) 1988 rule 52 provides for the use of interrogatories and cross-interrogatories in such requests. It would therefore be possible to have evidence from a witness in the Soviet Union taken in this way but in the case of Muirhead v H M Advocate 1983 SCCR 133 Lord Cameron observed at page 142 that "it would be difficult to be satisfied in the case of a witness, whose evidence is

other than formal, that there could be no unfairness to the opposite party, be he prosecutor or accused, if he were deprived of the opportunity of oral cross-examination before the jury or the judge, and particularly so in a case in which examination and cross-examination were to be conducted not viva voce before a commissioner but in the much less satisfactory form of the adminstration of interrogatories and cross-interrogatories". It would appear therefore that this procedure in Scotland should be confined to formal evidence only. There is also a fear that the presiding foreign magistrate might disallow cross-examination, a decision which a court here would find to have prejudiced the accused.

9.37. As regards both jurisdictions, it has been suggested that evidence taken in this way by letters of request will be more likely to be admissible if the proceedings in the foreign jurisdiction were recorded on video. By this means, the trial court would be able to see and hear the proceedings, as well as reading the statement. Video recording has been adopted in the Soviet Union when the authorities of the USA have requested evidence for the purpose of their war crimes proceedings, described in chapter 7. We have ourselves experienced the video recording of the examination of witnesses when we interviewed such witnesses in the Soviet Union (see paragraph 8.61). Under the procedure there adopted, the Soviet authorities arranged for the attendance of witnesses, provided accommodation, and the attendance of interpreters and shorthand writers. The written record, in Russian, was then provided to us so that we could arrange the necessary translations. Members of our team were responsible for recording the proceedings, both on video and on audio equipment. The proceedings were conducted under the authority of a procurator of the appropriate region, who opened the questioning of the witness. We were then provided with a full opportunity to examine the witness, without any interference or interjection from the Soviet representatives. We have no doubt that the Soviet authorities would agree to a similar procedure, whereby the representatives both of the prosecution and of the defence could ask questions of the witness. If it is thought necessary to introduce new legislation to ensure the admissibility of such recordings, we so recommend.

Evidence on commission

9.38. It has been suggested that evidence could be taken on commission in the country where witnesses are residing. Examination and cross-examination could then be conducted by prosecuting and defending counsel before the Commissioner. Again video taping could be used. However, it seems inevitable that such evidence would have to be given in the absence of the accused. In England it is doubtful, therefore, whether evidence taken in this way would be regarded as any more acceptable than evidence taken by letter of request, as described in paragraphs 9.35 and 9.37. However, the converse applies in Scotland as the judicial precedents have severely limited the use of letters of request. Furthermore it avoids the problem of the foreign magistrate (Paragraph 9.36) as the Commissioner would be the British judge or his representative. While there is less need for the use of such a procedure in England because of the provisions described in paragraph 9.35, this provision also deserves consideration for application there. We therefore recommend such a provision for Scotland, and the consideration of its adoption in England, for the obtaining of material evidence.

Witness now dead

9.39. It is not surprising that after the lapse of years many of the eye-witnesses have died. However, as described in paragraph 8.69, statements were taken from such witnesses by the Soviet authorities soon after the end of the Second World War, and at the time of subsequent prosecutions. Statements have also been taken by the OSI for the purpose of American proceedings. It would undoubtedly be helpful if such statements, taken from witnesses who have subsequently died, could be admissible in the British courts.

9.40. Section 23 of the Criminal Justice Act 1988 provides that a statement made by a person in a document shall be admissible as evidence of any fact of which direct oral evidence would be admissible if, inter alia, the person is dead. The statement is however not to be admitted in evidence if the court is of the opinion that in the interests of justice it ought not to be. In reaching a decision on admissibility the court is required, by section 25(2) to have regard, inter alia:

"to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic".

and

"to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them".

If such criteria are applied in cases of murder or manslaughter such as we have been investigating, it seems to us very questionable whether a court would rule the statement of a dead witness of substance to be admissible. We do not, however, make any recommendation for amending legislation in England on this point.

9.41. In Scotland if a witness is proved to be now dead and his statement has been recorded, it may be possible to introduce the evidence contained in the statement on the ground that it is now the 'best evidence'. In that jurisdiction what is admissible must truly be a statement as opposed to a precognition, which is an account of what the witness has said to a precognoscer who is preparing for court - see Irving v H M Advocate 1978 SLT 58 and Low v H M Advocate 1988 SLT 97 and the earlier cases referred to in these judgements. As such statements will have been taken before any accused has been arrested there is not likely to be any problem in this respect but for the avoidance of doubt we recommend that any legislation should contain a provision that recorded statements of persons now dead should be admissible. It would be for the trial judge to comment on the weight to be attached to such evidence where the accused has not had the opportunity to cross-examine the witness. In the Lauderdale Peerage Case in 1885 Lord Watson said "... the statement of a deceased person, whether oral or written, is not admissible as evidence, when its own terms, or the circumstances in which it was made, are such as to beget a reasonable suspicion, either that the statement was not in accordance with the truth, or that it was a coloured or one-sided version of the truth". These were civil proceedings and in the later case of Irving v H M Advocate 1978 J C 28 Lord Cameron distinguished the issue in the Lauderdale case from that in the

criminal proceedings in Irving. He pointed out that the function of the police in pursuing their inquiries was not a search for support of a partisan view of an issue to be litigated between adversaries in a private litigation, but is the vindication of public justice. Questions might be raised regarding the impartiality of the Soviet investigators.

Other documentary evidence

9.42. In addition to a statement by a dead person, a statement by a witness who is unable to travel to the United Kingdom could in England be admissible in documentary form under section 23 of the 1988 Act, or, if it related to the certain types of records, under section 24. Subject to the new provision concerning letters of request described in paragraph 9.35, such evidence is only admissible with the leave of the court applying the criteria described in paragraph 9.40. It could, however, enable the production of certain official lists and records. Important wartime records are stored in archives abroad. Often the present day archivist can give little help rather than to state that the document is in his archive. There is little point in having such a person testify orally and we recommend that such documents should be admitted in evidence, if authenticated by the archivist. We recommend that, if necessary, amending legislation should be introduced both in England and in Scotland, to permit this.

Venue

9.43. The difficulty of securing the attendance of witnesses from abroad in relation to these cases would be magnified if it was necessary for them to attend twice, that is, for the committal proceedings and then for the trial. This would be particularly burdensome for frail elderly witnesses from abroad, who would in any event be unfamiliar with the procedures of the courts. There therefore seems to us to be a strong case for applying to war crimes cases in England the procedure of transfer to the Crown Court, without any committal proceedings, which was introduced for serious fraud cases by sections 4-6 of the Criminal Justice Act, 1987. This would require legislation, which we recommend. Under Scots law this problem does not arise.

Difficulties of prosecution

9.44. We would not wish the difficulties of prosecution in this country to be underestimated. It is undoubtedly true that when trying a case of murder, a British jury will be most impressed by material witnesses whom they have seen in the flesh and whom they have seen cross-examined. Because of their age and ill-health, it is likely that many witnesses will be unable to travel to the United Kingdom. Some have indicated that they do not wish to do so, and they are not compellable. As noted in the preceding paragraphs, other methods are available, or might be made available, to bring their testimony before the court. In each such case, the trial judge would have to rule on the admissibility of the evidence and to advise the jury how much weight to put on it if admitted. The members of the jury themselves would presumably also make their own evaluation. How impressed a jury would be with evidence received via a satellite link, which would also be extremely expensive, when cross-examination is through an interpreter, is difficult to predict. Similarly it is not easy to foresee a court's reaction to evidence received using letters of request, with or without the use of video taping, evidence taken on commission, or heavy reliance on the evidence of witnesses now dead. We nonetheless recommend that such methods are made available to the courts, where they are not already available.

EXTRADITION

9.45. The cases which we have considered all concern crimes which were allegedly committed on what is now the territory of the Soviet Union, by persons who originally came from territory that is now part of the Soviet Union. Should extradition take place it would therefore be to the Soviet Union. In the years after 1950 extradition requests from the Soviet Union to the British Government foundered because of the lack of an extradition treaty between the two countries. When announcing our appointment to the House of Commons the Home Secretary noted the lack of an extradition treaty, but is also on record as saying that the Government would not in any case consider sending people back to the Soviet Union. As a result, our terms of reference require us to advise only on possible changes in the law of the United Kingdom. The lack of an extradition treaty will no longer be a barrier to extradition when the provisions of the Criminal Justice Act 1988 concerning special extradition arrangements are

brought into force. As noted in the previous paragraph there will be considerable difficulties in staging trials in this country due to the age of the witnesses and other problems. In the light of those difficulties the Government may wish to reconsider its position with regard to requests for extradition for murder and manslaughter given the apparent progress towards greater democracy and openness in the Soviet Union. It may be thought that although some progress has occurred it is insufficient to allow the return of alleged war criminals for trial in the Soviet Union. For completeness, however, we offer these few brief comments on extradition. Factors that the Government may wish to consider are briefly reviewed in the following paragraphs.

British recognition of Soviet held territory

9.46. The allegations before the Inquiry on the whole concern acts committed on territory now included in the Soviet Republics of Estonia, Lithuania, Latvia, Byelorussia and the Ukraine. The three Baltic republics, and the territories of the western Ukraine and western Byelorussia were annexed in 1940 by the Soviet Union in consequence of the Ribbentrop-Molotov pact. We understand from the Foreign and Commonwealth Office that in 1946 the United Kingdom officially recognised the boundary defined in the Agreement of 16 August 1945 between Poland and the USSR and thus the incorporation of the former eastern Polish territory (western Byelorussia and the western Ukraine) into the Soviet Union. No formal act of recognition was necessary as the territory was ceded under a treaty recognised by the British Government as valid. As far as the Baltic states are concerned the British Government has never recognised de jure their forcible incorporation into the Soviet Union. In these circumstances the British Government might not wish to extradite someone to the Soviet Union were it apparent that he was to be brought to trial in one of the Baltic republics. If that were so, it might be judged inappropriate to extradite in similar cases to other parts of the Soviet Union. In any case, the Home Secretary would no doubt wish to consider whether it would be just to extradite someone to a country to stand trial for crimes committed in territory which was not at that time part of that country.

Rule of law

9.47. The experience of the Federal Republic of Germany and the United States of America is that in war crimes proceedings no document from the Soviet Union has been proved to be forged and that there is nothing to show that witnesses have been coached in their evidence (Paragraphs 8.51 and 8.61). Further, in recent years there have been a number of indications that the Soviet Union is moving closer to the rule of law. President Gorbachev has spoken of the "creation of a socialist law-governed state". It is our understanding that this goal has yet to be reached. Judges rely for their appointments on the approval of the local party machine and, while interference in cases is no longer overt, judges naturally remain mindful of how they were appointed, and that they could be dismissed in similar manner. The individual in the Soviet Union still has very limited scope to seek legal protection of his rights or to resort to the courts to restrain any action by the State which he may consider to be unlawful. Equally the notional presumption of innocence is often not respected in practice. The Second World War is still a very emotive issue in the Soviet Union and there would be great pressure - public and political - for the courts to secure convictions. While some of the recent changes are in the right direction, they certainly have not established the sort of standards which exist in the United Kingdom.

Mass killings in the Soviet Union

9.48. The mass killings perpetrated by the Germans in Eastern Europe are not the only ones to have occurred on Soviet soil. In the 1930s Stalin appears to have been responsible for the deliberate starvation of the Ukraine, resulting in millions of deaths. Recently the existence of mass graves near a number of cities, including Minsk and Kiev, has been publicly acknowledged by the Soviet authorities. Some people in the Soviet Union attribute these to the mass executions carried out by the NKVD in the late 1930s. We understand that the Soviet Government has yet to form an opinion with regard to these deaths. It might be argued that a country that has apparently sponsored mass killings and has yet to bring the perpetrators to trial is not best placed to try alleged war criminals for similar offences.

Public opinion

9.49. Whilst public opinion might support the trial of alleged war criminals found in this country, it seems less certain that it would support their extradition to the Soviet Union. Justice must be seen to be done, and there is a danger that an alleged war criminal who is extradited to the Soviet Union, even if he is a mass murderer, may be perceived as an innocent martyr.

SUMMARY

9.50. In our opinion, there is sufficient evidence to support criminal proceedings for murder against some persons living in the United Kingdom (Paragraph 9.10), and further investigations may disclose the necessary evidence against other such persons (Paragraph 9.11). The cases we have investigated disclose horrific instances of mass-murders, and we do not consider that the lapse of time since the offences were committed, or the age of the offenders, provide sufficient reason for taking no action in such cases. We therefore recommend that some action should be taken in each case in which the evidence is adequate.

9.51. In paragraph 9.18 we described possible courses of action. We do not recommend deprivation of citizenship and deportation. The remaining possibilities are prosecution and extradition.

9.52. If a decision to prosecute is taken, the trial should in our opinion be conducted in the existing criminal courts. We do not recommend reliance on the Royal Warrant (Paragraph 9.20). The assembly of evidence will not be easy. We have already mentioned some of the difficulties (Paragraph 9.44). In particular, although the Soviet authorities have assured us that they will not hinder the availability of witnesses coming from the Soviet Union, there will undoubtedly be problems over the arrangements for such witnesses as are prepared to give oral evidence. Further, the witnesses we have interviewed are for the most part elderly, and some are frail. The transmission of evidence by live television link (Paragraph 9.34) may in practice present considerable technical problems, particularly if the witnesses are not fit enough to travel from their sometimes remote villages to one of the major centres in USSR. It is not easy to assess the

admissibility or value of evidence taken by letter of request (or a commission), in the absence of the accused, or of statements made by persons now dead (Paragraph 9.35-9.41).

9.53. There are therefore attractions in proceeding by way of extradition. This would accord with the principle that wherever possible a person should be punished by the courts of the country in which the offence was committed. Most of the witnesses in the cases we have investigated are resident in the Soviet Union, and therefore many of the difficulties described in the preceding paragraph would be minimised, provided that the less stringent evidential requirements for extradition proceedings in this country can be satisfied (Paragraph 9.16). As described in paragraphs 6.6-6.10, there do not now appear to be any insuperable obstacles to following this course, and it deserves consideration.

9.54. However, we consider that, despite all the difficulties, prosecution in this country would be preferable to extradition. Despite recent welcome advances towards a "rule of law", we are advised that the Soviet Union is still a long way short of having a system of justice comparable to that in this country (Paragraph 9.47). We could not be confident that a person extradited to the Soviet Union would necessarily receive the fair trial to which we consider he is entitled, and we consider that this view would be shared by the great majority of the British public.

9.55. Accordingly, we recommend prosecution in this country of those persons against whom there is adequate evidence. The decision to prosecute, and the conduct of the proceedings, will be the responsibility of the appropriate prosecuting authorities in England and Scotland. Undoubtedly, there remains the need for a considerable amount of work in the collection of evidence, much of it in the Soviet Union, and in the preparation of cases for trial. We do not envisage the setting up of a special unit, on the American and Australian pattern (Paragraphs 8.5 and 8.7), but we do recognise that this will place a considerable burden on the existing authorities. Adequate resources should be made available in England and in Scotland to the respective investigating and prosecuting authorities and to the courts, to allow war crimes to be fully investigated, and, where appropriate, prosecutions to take place. The accused in such cases should be entitled to legal aid to ensure that they are adequately defended.

Should the decision to legislate be taken we recommend that cases be passed to the appropriate authorities for investigation and preparation at the earliest possible opportunity. This will enable cases to be brought to court with a minimum of delay after enactment of the legislation. There is also a large number of cases which need considerable further investigation before they are ready to be brought to court. Should it be decided to legislate it is important in the interests of justice that such investigations commence as soon as possible after the decision to legislate has been taken. We make no recommendation as to who should perform this function, but we hope that the Home Office, which will, in the first instance, receive our case files, will make appropriate arrangements.

9.56. Given the ages of the suspects and witnesses we consider that any proposed legislation should be introduced and brought into force as quickly as possible.

CHAPTER TEN

SUMMARY OF RECOMMENDATIONS

10.1. Some action should be taken in respect of alleged war criminals who are now British citizens or are resident in this country where the evidence is sufficient to justify such action (Paragraph 9.18).

10.2. Legislation to allow prosecution in this country is preferable to extradition. Other courses, such as deprivation of citizenship and deportation, and prosecution under the terms of the Royal Warrant of 1945, would not be satisfactory (Paragraphs 9.20 and 9.54).

10.3. Legislation should be introduced to give British courts jurisdiction over acts of murder and manslaughter committed as war crimes (violations of the laws and customs of war) in Germany or German occupied territory during the period of the Second World War by persons who are now British citizens or resident in the United Kingdom (Paragraphs 9.22-9.30). Such legislation should be brought into force as quickly as possible (Paragraph 9.56).

10.4. Certain procedural changes will also be desirable. There are considerable differences between English and Scots law in this respect.
In England and Wales we recommend that the procedure of transfer to the Crown Court without any committal proceedings, which was introduced for serious fraud cases by sections 4-6 of the Criminal Justice Act 1987, also be applicable to war crimes trials (Paragraph 9.43).

In Scotland we recommend that provision be made to allow a witness outside the United Kingdom to give evidence through a live television link, with the leave of the court, as section 32(1)(a) of the Criminal Justice Act 1988 provides for English courts (Paragraph 9.34) and that recorded statements of persons now dead should be admissible as evidence (Paragraph 9.41).

In both jurisdictions we recommend that such provision as seems necessary be made to make admissible (i) video recordings of evidence taken abroad by letters of request (Paragraph 9.37), (ii) documents held in archives, if authenticated by the archivist, without his having to testify orally (Paragraph 9.42).

We also recommend such provision as seems necessary be made to allow the taking of evidence on commission in Scotland and the consideration of making similar provision in England and Wales (Paragraph 9.38).

10.5. Consideration should be given by the prosecuting authorities to prosecuting in three cases in which there appears to us to be a realistic prospect of conviction on the evidence already available (Paragraph 9.14). This action should be taken at the earliest opportunity as some preparations for prosecution could precede the enactment of any legislation (Paragraph 9.55).

10.6. Further investigations should be undertaken in three cases in which we have carried out detailed investigations, but are not yet satisfied with the available evidence (Paragraph 9.10). Investigation should also be carried out into 75 cases of allegations which were not been investigated in detail (Paragraphs 9.11 and 9.14). Investigations should continue to attempt to trace the 46 suspects remaining untraced in this country (Paragraph 9.12). All these investigations should commence as soon as possible (Paragraphs 9.55).

10.7. No further action should be taken in 94 cases where the suspect is dead, has left the United Kingdom, or has not been traced and there is no evidence that he ever came to this country. No further action should be taken in 72 cases where the allegation falls outside our terms of reference, where there is insufficient material to allow further investigation, or where we have found the allegations to be unsubstantiated, grounded solely on malice, or contradicted by facts we have ascertained (Paragraph 9.13).

10.8. Appropriate arrangements should be made with the authorities of countries where potential witnesses are available, particularly the Soviet Union, so that they can be interviewed and, where appropriate, permitted to travel to give evidence in British courts (Paragraph 9.33). Arrangements should also be made for evidence to be taken in pursuance of a letter of request and videotaped; or by the use of a live television link (Paragraphs 9.34-9.37).

10.9. Adequate resources should be made available in England and Scotland to the respective investigating and prosecuting authorities and to the courts to allow war crimes to be fully investigated and, where appropriate, prosecutions to take place. The accused in such cases should be entitled to legal aid in order to ensure that they are adequately defended (Paragraph 9.55).

PEOPLE AND ORGANISATIONS MET BY THE MEMBERS AND SECRETARIAT OF THE INQUIRY

Organisations

Anti-Defamation League of B'nai B'rith, New York

All Party Parliamentary War Crimes Group

Association of Ukrainians in Great Britain

Attorney-General's Department, Canberra

Baltic Council

Berlin Document Centre

Board of Deputies of British Jews

Bundesarchiv, Koblenz

Department for Justice, War Crimes Section, Ottawa

Federal Bureau of Investigations, London

Foreign and Commonwealth Office: Legal Advisers Branch
Research Department
Soviet Department
Western European Department

Foreign Office, Federal Republic of Germany

Home Office: Legal Advisers Branch
C5 Division

Institute of Jewish Affairs, London

Institute for Contemporary History, Munich

Israel Police

Krankenbuchlager, Berlin

Latvian Welfare Fund

Lithuanian Association in Great Britain

Main Commission for the Investigation of Hitlerite Crimes in Poland and Institute for National Memory, Warsaw

Militararchiv, Freiburg

Ministry of Defence, Army Historical Branch, London

Ministry of Justice, Jerusalem

Office of the Procurator-General of the Soviet Union, Moscow

Offices of the Republican Procurators in Byelorussia, Latvia, Lithuania and the Ukraine

Office of Special Investigations, United States Department of Justice, Washington

Polish Institute and Sikorski Museum, London

Polish Press Agency, London

Royal Canadian Mounted Police, War Crimes Investigations Section, Ottawa

Scottish Television plc

Searchlight Information Services Ltd

Simon Wiesenthal Centre, Los Angeles, New York, Jerusalem

Special Investigations Unit, Sydney

Ukrainian Central Information Service, London

United Kingdom Mission to the United Nations, New York

United Nations War Crimes Commission, New York

United States Department of Justice, Washington

United States State Department, Washington

Wehrmachtauskunftstelle, Berlin

Wiener Library, London

World Jewish Congress, New York

Yad Vashem Archives, Jerusalem

Yivo Institute, New York

Zentrale Stelle des Landesjustizverwaltungen, Ludwigsburg

Individuals

Professor Irwin Cotler

The Crown Agent

Professor Norman Davies

Sir Patrick Dean

His Honour Judge Jules Deschenes

The Director of Army Legal Services

The Director of Public Prosecutions

Colonel Professor Gerald Draper

Dr Gerald Fleming

Lord Elwyn Jones

Professor Andrew Ezergailis

Mr Benjamin Ferencz

Dr Martin Gilbert

Professor Raoul Hilberg

Mrs Elizabeth Holtzman

Lord Mayhew

Mr Andrew Menzies QC
Mr Kenneth M Narvey
Ms Deborah AS Rausch
Sir Frank Roberts
Ms Alti Rodal
Colonel Menachem Russek
Mr Allan R Ryan Jr
Lord Shawcross
Dr Gerald Stone
Mr Telford Taylor
Mr Simon Wiesenthal
Mr Michael Wolf

SECRET AND PERSONAL

000384

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

14 July 1989

Dear Colin

WAR CRIMES INQUIRY

The Lord President chaired a meeting yesterday morning to discuss the Home Secretary's minute of 29 June covering the report of the War Crimes Inquiry. In addition to the Home Secretary, the Foreign Secretary, Lord Chancellor, Secretary of State for Scotland, Attorney-General, Lord Advocate, Parliamentary Under Secretary of State for Defence Procurement, Mr John Tester (Law Officers' Department) and Mr Philip Mawer (Cabinet Office) were also present. The meeting had before it the Home Secretary's minute of 29 June and letters of 3 July from the Private Secretary to the Prime Minister and 11 July from the Lord Advocate.

2. The Home Secretary said that receipt of the report of the Inquiry presented Ministers with two difficult decisions. The first, and more minor, was whether the report should be published and when: he favoured publication of Volume 1 of the report before the summer recess, accompanied by a statement giving the Government's preliminary views. The second, more substantial

Colin Walters Esq
Principal Private Secretary
to the Home Secretary

SECRET AND PERSONAL

question was what should be done in response to the recommendations of the Inquiry. He had, frankly, been surprised by the strength of the evidence produced by the Inquiry and the consequent firmness of its recommendation for legislation which would permit prosecution of alleged war criminals in the British courts. Although many (some of them supporters of the Government) would argue that action now would be unseemly, given the passage of time since the events occurred and the age of those concerned, it would be very difficult to take no action in the face of the Inquiry report. Faced with similar situations, other countries, such as Australia and Canada, had taken action: if the United Kingdom failed to do so, it would be virtually alone among the civilised world. Of the various options for action set out in the report, none of the alternatives to legislation was satisfactory: in particular, extradition of the accused to the Soviet Union would be technically and procedurally very difficult, as well as extremely controversial. Subject to consideration by Cabinet, he therefore favoured publishing Part 1 of the report before the summer recess and announcing at the same time the Government's preliminary conclusion that legislation should be brought forward at an early opportunity as recommended by the Inquiry. Thereafter it would seem desirable for the issues to be debated in both Houses before legislation was introduced. It was for consideration whether the issue should be debated on a free vote. He was aware that a Bill - which might consist of some 6-7 clauses and would have to embrace the procedural as well as the jurisdictional issues mentioned in the report - would pose additional pressures on the provisional programme for next session, which was already tight. Nevertheless it was difficult in the face of the report to see any reputable argument for delay.

3. In discussion, the following points were made:

a. There was general agreement that the strength of the evidence uncovered by the Inquiry was surprising. Particularly powerful was the evidence of witnesses who had themselves been punished for complicity in the events. The evidence and the consequent recommendations of the Inquiry could not be ignored, even though the chances of securing successful prosecutions at the end of the day might well be slim.

b. The practical difficulties in the way of evidence gathering and prosecution would be very considerable indeed. For example, many of the potential prosecution witnesses (a majority in at least one case) were resident in the Soviet Union and had made clear their unwillingness or inability to travel to the United Kingdom for any trial. It would be possible, as the report suggested, for evidence to be taken by live television link but this would be a novel procedure and legislation would be needed before it could be allowed in any Scottish proceedings. Moreover the age and, in some cases, ill health of the accused would present the prosecuting authorities with some very difficult decisions about whether it was in the public interest to proceed in individual cases.

c. The report recommended that a considerable investigatory effort should be mounted ahead of the necessary legislation to give jurisdiction to the British courts. It would not be right to begin such investigations, however, until Parliament had had an opportunity to consider the questions of principle raised by the legislation. Moreover, it was arguable that there was no authority to incur expenditure on such investigations ahead of the passage of the necessary legislation.

d. The costs of investigation, prosecution and trial could be very substantial and no provision had been made for them

in estimates. In addition, the taking of evidence by live television link had not so far been introduced in England and Wales, although it had been provided for by the Criminal Justice Act 1988, because of the costs involved. It would, however, be wrong to allow for the use of this technique in war crimes trials but not in other criminal proceedings. The cost implications of this aspect would need to be considered.

e. The judiciary were likely to have considerable reservations about the implications for the courts of any decision to legislate as recommended by the Inquiry. It would be helpful if the Lord Chief Justice and the Lord Justice General were informed in advance of publication of the report about how it was intended to proceed.

f. However, none of the alternatives to legislation identified in the Inquiry report were satisfactory. In particular, extradition of the accused to the Soviet Union would be even more controversial than a decision to legislate to take jurisdiction in the UK.

g. A decision to legislate would focus attention on those individuals currently within the jurisdiction who it was alleged had also committed war crimes. This could lead to increased pressure on the prosecuting authorities to take action in such cases. On the other hand, this was not an argument against legislating to extend jurisdiction to those cases covered by the Inquiry.

h. There would be no advantage in delaying legislation although the implications of the Bill for the rest of the Government's legislative programme would need to be addressed, not least because Cabinet had decided that there should be no additions to the programme provisionally agreed without offsetting savings. The precise scope of the

legislation would need to be addressed nearer the time of its introduction: it was for consideration whether the offences to be included in any future legislation should be defined as murder and manslaughter committed as violations of the laws and customs of war (war crimes) or as murder and manslaughter simpliciter. The potential international law implications of the legislation would need to be carefully considered: factors involved included precisely how extra-territoriality was claimed, the need to avoid prejudicing any provisions in European conventions designed to safeguard fair trial, and the extent to which, in international law, it was possible for a state to claim jurisdiction over war crimes. It would be helpful if the Foreign Office Legal Adviser could get in touch with the Home Office Legal Adviser about these points.

i. Before Volume 1 of the report could be published, the reservations about the wording of some parts of it expressed by the Lord Advocate in his letter of 11 July should be put to the report's authors. It was desirable for the Home Secretary to give the Government's preliminary view on legislation when Volume 1 of the report was published. His statement should make clear that the Government would wish to take account of the views expressed in the debates which would be arranged in both Houses before any Bill was brought forward. The statement would need to be carefully drafted to reflect the diplomatic as well as other considerations involved. Regard would need to be had in handling the issue to the position of people falsely accused of war crimes, the case of at least one of whom was dealt with in the report.

4. The Lord President, summing up the discussion, said that the meeting noted the very considerable difficulties which prosecution of those concerned would involve, but agreed that there was no alternative but to legislate as the Inquiry had recommended. No action should, however, be taken in advance of

legislation to mount preliminary investigations into various cases as recommended by the Inquiry. The Home Secretary should circulate a memorandum for consideration at Cabinet on 20 July seeking endorsement of these conclusions and attaching the text of a statement which he might make in the House later that day. In advance of the discussion at Cabinet, the Home Secretary should write to the Chief Secretary alerting him to the resource implications of the proposals, including those in relation to the use of live television links in criminal proceedings. He should also inform the Lord Chief Justice of the contents of Volume 1 of the report and of how it was proposed to proceed: the Secretary of State for Scotland should take similar action in relation to the Lord Justice General. The doubts expressed by the Lord Advocate about the wording of certain aspects of Part 1 of the report should be put to its authors. Assuming that Cabinet endorsed the decision to legislate, the Home Secretary's statement should make clear that the Government's preliminary view was that legislation should be brought forward broadly on the lines recommended by the Inquiry. The Government would, however, wish to listen to the views of Parliament before bringing forward precise proposals, and debates would be arranged in both Houses for this purpose. Following those debates, the Home Secretary would need to put precise proposals for legislation to colleagues. In formulating those proposals, it would be helpful if the Foreign Office Legal Adviser could speak to his Home Office counterpart about the points about international law which had been raised in discussion. The implications of the proposed legislation for the rest of the Government's Parliamentary programme would also need to be considered.

5. I am copying this letter to the Private Secretaries to the Prime Minister, Foreign Secretary, Lord Chancellor, Secretary of State for Scotland, Chief Secretary, Attorney-General, Lord Advocate, Parliamentary Under Secretary of State for Defence

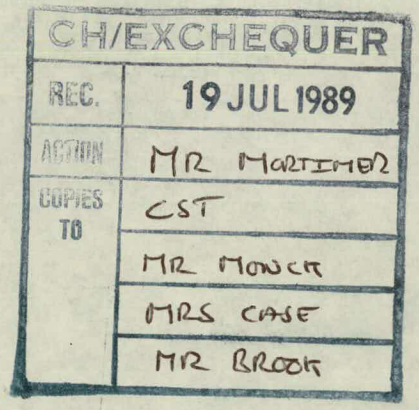
Procurement, Chief Whip and Sir Robin Butler, and to Philip Mawer (Cabinet Office).

Yours

Steve Catling

STEVE CATLING
Private Secretary

CONFIDENTIAL



19/7

LORD PRESIDENT

WAR CRIMES INQUIRY

Thank you for your minute of 13 July summarising the views expressed at the meeting held that morning.

There is an error in paragraph 3 which should be corrected. In line 3 of that paragraph Peter Fraser and I are said to have confirmed that the process of prosecution will be extremely difficult. The word will should be changed to would. It is important that there should be no suggestion, however inadvertently, of a premature or otherwise inappropriately taken decision as to a prosecution.

I am copying this minute to the Prime Minister, Geoffrey Howe, James Mackay, Douglas Hurd, Malcolm Rifkind, Peter Fraser, Tim Sainsbury, John Major, Sir Robin Butler and Philip Mawer (Cabinet Office).

AM

17 July 1989

CONFIDENTIAL

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

CHIEF SECRETARY

jmp

19 July 1989

CH/EXCHEQUER 19/7

REC.	19 JUL 1989
ACTION	Mr. Mortimer
COPIES TO	CST
	Mr Monck
	Mrs Case
	Mr Brook

Dear John,

WAR CRIMES

As you know, the report of the War Crimes Inquiry is on the agenda for discussion at Cabinet on Thursday. My memorandum argues that, in the face of the serious allegations uncovered by the Inquiry, it would not be acceptable for the Government to decide to take no action; the statement which I propose to make to the House on Monday afternoon will indicate the Government's provisional decision to accept the Inquiry's recommendations. My memorandum deals in general terms with the costs and implications of accepting the Inquiry's recommendations, but I am writing now to give as much further detail as is possible at this stage.

The Inquiry looked in detail at seven cases, in respect of four of which it concluded that sufficient evidence is already to hand to sustain a criminal prosecution. One of these has since died. As regards the other three, the Inquiry recommended that further investigations should take place. There were then another 75 cases not investigated in any detail, to which the Inquiry recommended that further attention should be given, plus another 46 cases concerning people who may or may not have come to this country, but which the Inquiry also proposed for further investigation to determine whether they are within our jurisdiction.

Given the age of the potential witnesses and of any potential accused, the Inquiry argued for these further investigations to be set in hand quickly. I am suggesting to Cabinet colleagues, however, that with the exception of the six cases looked at in detail by the Inquiry, we should not pursue or encourage further enquiries about the other cases until the will of Parliament is clear. Even then these six cases would rate first priority. But public and Parliamentary opinion will expect the other cases to be followed up with speed recognising the age of those involved.

The cost will be of three types: the investigation of the outstanding allegations, the trial of cases and the general implementation of the procedural changes which I believe we will need to make to accommodate those trials. None of these areas of expenditure is easy to estimate with any precision, and I must emphasise that the estimates which follow are

The Rt Hon John Major MP

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of the crudest kind. We have not been able to undertake detailed costings and there are major imponderables which could affect the overall figure several times over. Nor would I wish to pre-empt the views of colleagues on whom, in the main, such costs will fall.

So far as the investigative aspect is concerned, we shall need to decide the level of effort to commit to this further work. In my Cabinet memorandum, I said that we should determine a defensible period of time in which to bring the exercise to conclusion: there is clearly no point in an investigative process that lasts so long that the potential witnesses and accused are dead before it is concluded. Five years might be the politically acceptable maximum, and we should need an investigative effort that stood a reasonable chance of accomplishing the task in that time.

The precise arrangements for conducting enquiries and providing early guidance to police on evidential issues will require careful thought. I am not, however, envisaging a team of the 50 or more that the Americans and the Canadians have devoted to the task, but we may need a dozen or more individuals committed full-time to the work. The Inquiry employed five ex-police officers, as well as a full-time researcher, other advisers and its secretariat, and cost nearly £0.5 million over the 15 months of its life. The investigative effort which will be needed is likely to cost at least £1 million a year. We do not know, for example, how many fresh allegations will be called forth by the publicity attending the passage of the legislation. But £5-£10 million might be the bill for investigations.

Estimating trial costs is, if anything, more difficult still, not least because it is impossible to predict how many cases will come to trial. It is quite possible that none will. There is no power to stop suspects leaving the country before the Bill receives Royal assent. Cases could collapse for evidential reasons or because of the health - or death - of the accused. At the other extreme, we could discover 15 to 20 prospective trials.

The cases will be long and complex: the court will almost certainly hear detailed evidence about the historical context in which the alleged offences occurred (the defence are likely, for example, to want to show how the individuals found themselves in the German forces to begin with); special arrangements will be needed for the production and care of those witnesses who are able to travel from abroad; there will be difficult technical arrangements to provide television links with those overseas witnesses not able to travel; and there may well be public order type issues to be addressed also. Even without committal proceedings - removing the need for which is one of the procedural changes for which I propose we should legislate - these cases could each run for months.

/cont.....

Cautious early estimates within the Crown Prosecution Service - to which they would not wish to be held and which I quote merely for illustrative purposes - were that their own costs in preparing and mounting these cases might be at least £1 million a year. That does not include any element of court or judicial costs, witness expenses, policing or legal aid. These latter together might, I suppose, be another £1 million a year.

Assuming, again, that these cases run over five years, we could be talking of combined investigation and trial costs of £15-£20 million at current prices. But I emphasise again that these are little more than guesses. If potential suspects leave the country after reading the report and assessing the debates on the Bill the costs could be much less.

These are the direct costs of implementing the Inquiry's recommendations. I indicated in my Cabinet memorandum, however, that my preliminary view in regard to one of the Inquiry's procedural recommendations - for the implementation and extension to other parts of the United Kingdom of the 1988 Criminal Justice Act provisions for live television evidence to be taken from witnesses abroad - should not be confined to the trial of these cases.

As I said in my memorandum, I am concerned to avoid any impression that special circumstances are being created to enhance the likelihood of convictions in these cases. This would mean that the Criminal Justice Act provisions should be implemented generally or at least for certain categories of criminal proceedings, if we can find a satisfactory definition of what these might be. I quoted in my memorandum the current estimates that general implementation of the provisions would lead to prosecution costs in England and Wales of £2.5 million, plus costs to the Legal Aid Fund of between £9 million and £21 million. Extension to Scotland and Northern Ireland would extend that figure further.

These calculations were, of course, made before it was anticipated that these provisions would be needed for war crimes trials. It is again difficult to estimate how much use might be made of the facility in war crime cases. The earlier calculations assumed in fraud cases (for example) that some 20 hours of TV evidence might be needed per case. Given the age of all those who would be giving direct evidence of these events, it is likely that TV links would be needed in a significant proportion of cases. If 50 hours of TV evidence were needed per case - and if, say, 80% of these required the more expensive medium of satellite links (because of the remoteness of the regions from which the witnesses come) - this might add another £200,000 to the prosecution costs in each case - perhaps, overall, another £1m to the direct cost of implementing the Inquiry recommendations. I suspect the defence is less likely to make use of the facility, though the possibility should not be ruled out.

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I thought it right to let you see our current thinking on the resource implications of implementing the War Crimes Inquiry proposals. As I said in my memorandum, no provision has been made in respect of any of these costs. I must emphasise again the uncertainty of these figures, and that colleagues more directly affected have not yet had an opportunity to attempt to refine their costs.

I shall, of course, be discussing the resource implications more fully with colleagues, in the light of decisions at Thursday's Cabinet. It is likely that some investigative activity will begin in the latter part of this year - though additional expenditure this financial year should not be great. In 1990/91 (and thereafter) additional expenditure might be significant, even though trials themselves might not start till the following year. I envisage that the main PES bid will be made in PES 1990, but I will have to look with Patrick Mayhew and James Mackay at what costs might arise in 1990/91. We may need to come forward with a late PES bid in this year's round.

I am copying this letter to the Prime Minister, James Mackay, Geoffrey Howe, Malcolm Rifkind, Tom King, Patrick Mayhew and Sir Robin Butler.

he1.ma/jamie/1.19.7.89

CONFIDENTIAL

FROM: J E MORTIMER HE1
DATE: 19 JULY 1989
X4810

CHANCELLOR ←

cc Chief Secretary
Financial Secretary
Economic Secretary
Paymaster General
Sir P Middleton
Mr Anson
Mr Monck
Mrs Case
Mr Brook

CABINET, 20 JULY: WAR CRIMES INQUIRY

The Home Secretary has circulated a paper to Cabinet (C(89)11, Flag A) inviting colleagues to agree that:

- he should make an oral statement to the House tomorrow afternoon indicating that the Government is in favour of introducing legislation to enable the prosecution of war criminals living in the UK;

- but that, before bringing forward specific proposals, the matter should be debated, so that Parliament's views can be taken into account.

Line to take

2. You may well have views on the substance of the matter. In addition, however, you will want to draw attention to the resource implications, as follows:

- have to say that resource implications of the proposals are very considerable indeed. The Home Secretary estimates that investigating and prosecuting war criminals could cost £15-20 million over 5 years, while the costs of introducing live television links could be an extra £12-23 million per year. This is a significant amount for which no provision has been made. What offsetting savings can the Home Secretary offer?

- need to consider in particular what can be done to keep the whole operation, if it goes ahead, within manageable bounds otherwise this is the sort of thing that could grow and grow without limit. Can we announce, for example, firm intention to limit the number of staff involved in investigations and preparation of prosecutions, and to restrict the time period for the whole exercise to, say, 5 years?

- the easiest way of cutting the likely cost of this exercise would be by restricting television links to war crimes cases, and not have them for other cases. Cost of the links might then be £200,000 a year rather than £12-23 million.

Background

3. Partly as a result of investigations in other countries - including the US, Australia and Canada - a certain amount of evidence came to light that war criminals - mainly from the Baltic States and the Ukraine - were living in the UK.

4. At the beginning of 1988, it was agreed that there should be an inquiry, to be carried out by Sir Thomas Hetherington and Mr William Chalmers, to examine whether there was sufficient evidence to warrant the introduction of legislation to enable the prosecution of war criminals living in the UK.

5. Hetherington and Chalmers have now reported. Part one of their report is attached (Flag B). There is a summary of recommendations in chapter 10 (page 170). They recommend that legislation should be introduced to give British courts jurisdiction over acts of murder and manslaughter committed as war crimes in Germany or German occupied territory during the last war by persons who are now British citizens or resident in the United Kingdom. The report suggests that sufficient evidence already exists to prosecute 3 individuals, and that almost enough evidence is available to prosecute 3 others. Further investigation should be carried out into another 75 cases, and an attempt made to trace 46 other suspects thought to be resident in this country.

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6. The Home Secretary's Cabinet paper says that, given the weight of evidence produced by Hetherington and Chalmers, it would be difficult for the Government not take any action. It recommends the introduction of legislation to enable prosecutions in the UK, and rejects other options, including extradition to the USSR. It recommends two procedural changes to facilitate prosecutions: not having any committal proceedings, and the introduction of live television links. The Home Secretary's memorandum goes on to discuss the costs of the exercise, and then outlines the main elements of a possible statement to Parliament.

7. The Home Secretary has also written to the Chief Secretary (letter at Flag C) discussing costs in more detail. He points out that the cost estimates are extremely uncertain, but could be as follows:

- investigations: £1 million a year;
- court costs: £1 million a year;
- preparation of cases by CPS: £1 million a year;
- introduction of live television links: £12-23 million a year (and more if the facility is extended to Scotland and Northern Ireland).

Very roughly, this gives a total cost of £80-120 million over 5 years. Some costs will be incurred in 1990/91, but most will be incurred in later years. No allowance is made for this expenditure in existing plans, nor in any Survey bids. The expenditure is likely to be incurred by the Police, the CPS, the Courts, Legal Aid and the Home Office.

8. Other recent papers are at Flags D and E.

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Comment

9. The Home Office have kept very quiet about the resource implications of this exercise (and indeed abut the exercise itself). It is not mentioned in their Survey bidding letter. I had heard nothing till yesterday.

10. It is difficult to judge how accurate the costings are. They could be substantially less - for example, if those under investigation fled the country before the proposed legislation was enacted, or if the first cases to come to court were unsuccessful - or they could be substantially more. As a very rough guide, for example, I am told that the investigation and prosecution of the Birmingham pub bombers (involving a 3 months trial) was about £3 million, but that did not involve live-television links, foreign travel and interpretation etc.

11. There has recently been some Ministerial correspondence on whether Section 32 of the Criminal Justice Act 1988 - dealing with live television links - should be implemented. It was agreed in 1986 that it would not be sensible to implement this Section unless the cost of the links could be found from within departments' existing provision by reordering priorities. Since the cost of implementation are now thought to be very large - £12-23 million a year - no Minister is prepared to make the necessary offsetting savings, and it was therefore agreed a week or two back that Section 32 should not be implemented.

12. I have asked Home Office whether it would be possible to carry out this exercise without the live television links. They think not. They say that some of the key witnesses are old and would be reluctant to leave the Soviet Union. Some were fellow members of death squads and have already served long terms of imprisonment for war crimes.

13. The easiest way of cutting substantially the cost of the live television links would be to restrict their use to war crimes cases, rather than introduce them for other cases. This could cut the cost, from around £12-23 million a year to perhaps £200,000 a year.

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The Home Secretary is reluctant to agree to this because he thinks the conduct of the war crimes cases should be as similar as possible to other cases. But the savings would be so very large, we think it would be worth doing nevertheless.

14. If a decision is taken to go ahead with the investigation and prosecution of war criminals, it would in our view be sensible to place some sort of limit on the amount of resources to be devoted to it - preferably by limiting the number of people involved in the investigation and prosecution of cases, and by restricting the time period - though not necessarily in a formal way - over which the exercise should last.

15. On the substance of the issue - whether to undertake this exercise or not - I think the Government has no real option, for the reasons set out in the Home Secretary's Cabinet paper.

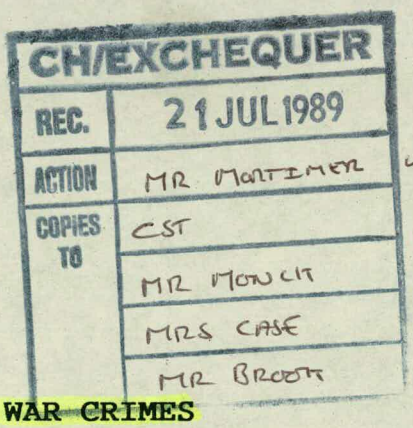
J E MORTIMER

From: THE PRIVATE SECRETARY

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

21 July 1989



WAR CRIMES

Dear Andrew

At yesterday's Cabinet, it was agreed that the Home Secretary would consider a revised form of words in the part of his proposed statement which gives the Government's views on legislation.

The Home Secretary now proposes to replace the final sentence of the penultimate paragraph and the final paragraph in its entirety with the following paragraph:

> "We are impressed by the force of argument which led the Inquiry to their clear conclusion that legislation was required. But we want to hear the views of Parliament before taking a final view on the principle of legislation. This is a matter on which the views of Parliament must be paramount. The Government will, therefore, provide an opportunity for each House to debate the implications of the report and the action which should be taken in response to it. This will take place in the autumn once there has been a proper opportunity to study the report and reflect upon it. In the light of the views expressed in that debate, the Government will take a final decision on whether to bring forward a Bill on the lines proposed by the Inquiry."

He will make the statement to the House on Monday afternoon.

I am copying this to the Private Secretaries to other Cabinet Ministers and Sir Robin Butler.

Yours ever,

Peter Storr.

P R C STORR

Andrew Turnbull, Esq
Private Secretary
10 Downing Street

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LORD ADVOCATE'S CHAMBERS
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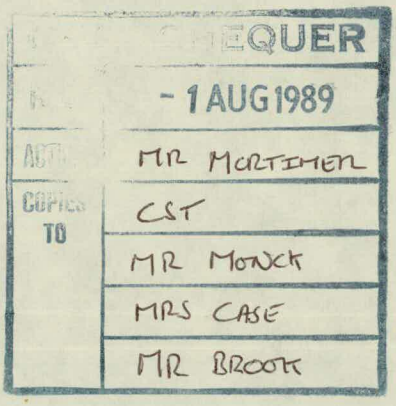
31 July 1989

The Rt Hon Norman Lamont MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AG



Dear Chief Secretary

WAR CRIMES

Douglas Hurd wrote to you on 19 July 1989 setting out his current thinking on the resource implications of implementing the war crimes inquiry proposals. He made only passing reference to Scotland. As you may know, however, one of the main cases in respect of which the inquiry concluded that sufficient evidence is already to hand is a Scottish case. It was the case most exhaustively investigated by Sir Thomas Hetherington and Mr William Chalmers. I therefore think it right to let you have an early indication of my thinking on the resource implications for my Department of investigating and prosecuting the case in question.

As Douglas Hurd has explained it is not easy to estimate likely costs with any degree of precision, but the following rough outline will at least provide an early advice of the possible order of costs involved. I will adopt Douglas Hurd's categories of types of cost.

Regarding the investigation of outstanding allegations his letter (at page 2) assumes the primary involvement of the police in conducting further inquiries - early guidance to the police on evidential issues being a matter which will require careful thought. The arrangements for the investigation of serious crime in Scotland are different from those in England and involve a primary role for my Procurators Fiscal, not just in advising the police but in directing police inquiries and themselves undertaking aspects of the investigation including interview of principal witnesses. I would intend to use a team of experienced Crown Office and Procurator Fiscal Service staff in the investigation of the Scottish case. Some limited police assistance is likely to be required. I cannot at present place a figure on that assistance or its cost - which would anyhow be a matter for Malcolm Rifkind.

The Crown Office/Procurator Fiscal Service Team used in the investigation of the case would also be used in its preparation for trial - supplemented by Crown Counsel - if the investigation produced sufficient evidence and proceedings were considered appropriate in the public interest.

The/

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The estimated cost of the staff required for the investigation and case preparation process would be in the order of £300,000 per annum - at present rates. To this would require to be added the cost of accommodation, travel and subsistence and of employing experts, historians, translators etc. I would expect the investigation and any trial taken to its conclusion to take up to 2 years.

As for the trial itself, I am concerned Douglas Hurd's estimate of 50 hours of tv evidence per case would be a very serious underestimate of what would be required so far as the Scottish case is concerned - having regard to the likely length and complexity of the trial and our understanding of the position regarding the availability of essential witnesses. This, I should say, is set out in some detail in the unpublished Part II of the Report. It appears that we would not be able to produce in person any of the witnesses who make the major allegations. If the evidence of these main witnesses is to be obtained it would seem that this will require to be by video link. There are at least 4 such witnesses. Further investigation of the evidence may produce several more in this category as other possible key witnesses have been identified but have not yet been interviewed and their ability to come to the UK has not been determined. The translation process will substantially extend the duration of each witness's evidence and lengthy cross examination has to be anticipated since credibility and reliability (in particular) after the passage of time in question will certainly be very closely tested. I would hestitate to make an estimate myself of the likely length of the tv links which will be necessary in our case, but I would judge that it is likely to be at least twice the figure suggested by Douglas Hurd.

The overall cost to the Crown of investigating and prosecuting the Scottish case, including the cost of satellite tv links could well be as much as £1.5 million in total. That does not, of course, include police costs, court costs or legal aid costs - these being matters for Malcolm Rifkind.

As you will be aware, no provision has been made in respect of any of these costs. Proper investigation, preparation and prosecution of the Scottish case will be out of the question without additional provision. The main costs will arise in 1990/91 and 1991/92. However, if Parliament approves the necessary legislation I would wish to set up the Crown Office/Procurator Fiscal Service Team as quickly as possible and its investigation would be likely to commence during the current financial year, which could make a supplementary bid necessary.

I am copying this to the Private Secretaries to other Cabinet Ministers and Sir Robin Butler.

Yours sincerely,

Carol M G McNicoll

for FRASER OF CARMYLLIE

Dictated and signed in
the Lord Advocate's absence

he.dc/brook/11.8.89

CONFIDENTIAL

FROM: P H BROOK (HE1)
DATE: 14 AUGUST 1989
EXTN:

1. MRS CASE
2. CHIEF SECRETARY

cc: Chancellor
Sir P Middleton
Mr Anson
Mr Monck
Mr Mortimer or
Mr Russell
Mr Tyrie

WAR CRIMES

1. The Lord Advocate's letter of 31 July concerns the resource implications of pursuing the one case in Scotland on which the War Crimes Inquiry concluded that sufficient evidence already exists to prosecute. He estimates the cost of investigating and prosecuting that case (excluding the cost of police, legal aid and the courts which are matters for Mr Rifkind) could be as much as £1.5 million. No specific provision has been made for these costs and although the bulk would arise in 1990-91 and 1991-92 he would wish to begin the investigation as quickly as possible (assuming a decision is taken to proceed). This could lead to additional expenditure in the current financial year for which the Lord Advocate might wish to make a claim on the Reserve.

Background

2. Sir Thomas Hetherington and Mr William Chalmers' report on war crimes recommended that legislation should be introduced to give British courts jurisdiction over war crimes committed in Germany or German occupied territories during the last war by persons who now live in the United Kingdom. The inquiry looked in detail at 7 cases, in respect of 4 of which it concluded that sufficient evidence existed to sustain a prosecution. One of these has since died. The inquiry recommended that further investigation should take place on the other three together with 75 other cases not investigated in detail by the Inquiry. An attempt should also be made to trace 46 other suspects thought to be resident in the United Kingdom.

3. Cabinet discussed on 20 July a Memorandum by the Home Secretary (C(89)11) about handling the report. Mr Mortimer's note to the Chancellor of 19 July (copy attached) provided briefing on that and the resource implications, estimates of which were provided in a letter of 19 July from the Home Secretary to your predecessor.

4. Cabinet agreed that the Home Secretary should publish the report on 24 July and give the Government's initial reactions to the report. Both Houses of Parliament are to be consulted before a final view is taken on legislating as recommended by the Inquiry. Debates are to take place in the Autumn.

Resource Implications

5. It is extremely difficult to estimate the costs of accepting the Inquiry's recommendations. The possible trial costs are very uncertain not least because it is impossible to predict how many cases would come to trial. It is quite possible that none would (2 years work of 50 plus investigative staff in Australia has yet to produce a prosecution). There is no power to stop suspects leaving the country before a Bill received Royal Assent. Cases could also collapse for evidential reasons or due to the death of the accused. At the outside there may be 15-20 trials. The investigative costs are also difficult to quantify as little detailed planning has yet to take place on the possible size or make up of the investigative team. However, the following is the best estimates that the Home Office have been able to provide.

6. The whole exercise might last 5 years. Investigations might cost £5-10 million over that period, falling to be met by a combination of the Crown Prosecution Service, police and the Home Office. The trials costs might be of the order of £10 million covering the costs to the Crown Prosecution Service, courts, legal aid and the police. Taken together the costs of investigating and prosecuting cases might be £15-20 million or £3-4 million a year for 5 years.

7. In addition there could be substantial resource implications in regard to one of the Inquiry's procedural recommendations - the implementation of the 1988 Criminal Justice Act provisions for live television evidence to be taken from witnesses abroad. The Home Secretary is concerned to avoid any impression that special circumstances would be created to enhance the likelihood of convictions in these cases. His preliminary view therefore is that the provisions should be implemented generally, or for certain categories of proceedings if a satisfactory definition can be found. The current estimate of general implementation of television links is £12-24 million a year (more if extended to Scotland and Northern Ireland) mainly for legal aid.

8. The Home Secretary estimates that the costs of television links for war crimes trials only might be of the order of £200,000 in each case. The Lord Advocate thinks that this is an underestimate and suggests the cost would be at least twice as high.

Comment

9. No decisions have been taken on the funding of this initiative - assuming it goes ahead - and it would be helpful to let other Ministers know how you think it should be dealt with.

10. The major costs of implementing the recommendations of the inquiry would come from the general implementation of live television links (at least £12-24 million a year). The Home Secretary's opposition to making special provision for war crimes is understandable, but however television links are handled war crimes trials would be regarded publicly as very special cases.

11. Lord Roskill's report on serious fraud recommended that the rules of criminal evidence be changed to allow the possibility of taking evidence from witnesses abroad by television link. Home Office Ministers put forward proposals to do so in 1986. At the time the costs were estimated at £0.5 million a year. The then Chief Secretary made clear that additional provision would not be made available for this measure and either the Home Secretary or the Lord Chancellor would need to make the necessary funds available.

12. On 2 June 1989 the Home Secretary wrote to colleagues recommending that live television links were not implemented. The estimated costs of implementation had increased to £12-24 million a year for which no departments were willing to make offsetting savings. The Lord Chancellor reluctantly agreed to this but the Attorney General pressed for implementation at the earliest opportunity in his letter of 25 July. Your predecessor in his letter of 4 July reaffirmed the policy that television links should only be implemented if provision could be found from within existing resources.

13. The possible advent of war crimes trials does not present a compelling argument for general implementation of television links and we suggest that you maintain your predecessor's stance.

14. The other costs of pursuing suspected war criminals are estimated by the Home Office at £3-4 million a year over 5 years which would fall mainly to be met by the Lord Chancellor's Department (1989-90 provision £860 million), the Crown Prosecution Service (£175 million) and the police (£4,000 million). Mr Hurd thinks that additional expenditure in the current year will not be great with the major costs falling in 1990-91 and beyond. He suggests that Ministers may need to put forward late bids in the Survey for 1990-91.

15. It would be premature to agree provision before the policy has been approved and the cost estimates are too uncertain to support Survey bids at this stage. In any case although the costs per case are likely to be high, the number of cases will be small and it might reasonably be expected that modest overall costs of £3-4 million a year could be absorbed within the substantial existing provision of the relevant bodies. The exception might be the Crown Office/Procurator Fiscal Service in Scotland where the Lord Advocate considers the cost of the one case so far identified as being perhaps £1.5 million. There must be considerable doubt about that estimate however as it compares with his current budget for investigating and prosecuting all crime in Scotland of around £25 million.

Recommendations

16. You will no doubt wish to consider the merits of the issues given the political dimension. Subject to your views we recommend that:

- you maintain the line that the costs of general implementation of live television links must be met by the departments concerned; and

- you rule out bids in this year's Survey due to the current uncertainty about both the policy and the costs.

17. You might feel that given the sensitivity of the subject you should offer to review the position in next year's Survey. The attached letter is drafted on that basis. It would be bound to generate some expectancy that bids for war crimes would receive sympathetic hearing next year. This implication would be avoided by deleting the final sentence of the penultimate paragraph.

P. Brook

P H BROOK

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DRAFT LETTER FROM CHIEF SECRETARY TO THE HOME SECRETARY

WAR CRIMES

Thank you for your letter of 19 July setting out your current thinking on the resource implications of implementing the recommendations of the War Crimes Inquiry. I am also grateful to Lord Fraser for his letter of 31 July about the possible implications in Scotland.

The major resource implications, estimated at £12-24 million a year in England and Wales alone, would stem from the general implementation of the 1988 Criminal Justice Act provisions for live television evidence to be taken from witnesses abroad. I understand why you would prefer to avoid the impression of making special provision to enhance the likelihood of convictions in war crimes cases. However, most of the costs involved would be entirely unconnected with war crimes trials (where you estimate the direct costs of television links to be only perhaps £200,000 per case - although I note that Lord Fraser thinks this is too low) and I entirely endorse my predecessor's view that additional resources should not be made available to implement that measure. The necessary provision would have to be found by the departments concerned from within existing resources.

Your estimate of other costs is more modest, perhaps £3-4 million a year over 5 years falling in a number of areas notably the courts, legal aid, Crown Prosecution Service and the police. I must say that I would expect costs of this size to be absorbed within the considerable budgets of the bodies concerned. In any case the resource estimates so far produced are not robust enough to support bids in the current Survey and it would also be

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premature to discuss provision in advance of a decision being taken on the policy. However, assuming the recommendations of the Inquiry are implemented and more reliable cost estimates are available, I would be prepared to review the position in next year's Survey.

I am copying this letter to the Prime Minister, James Mackay, Geoffrey Howe, Malcolm Rifkind, Tom King, Patrick Mayhew, Lord Fraser and Sir Robin Butler.

NORMAN LAMONT

cst.ps/docs/(ip)Home S

cc- Cx. Sir P Middleton
Mr Anson, Mr Monck
Mr Mortimer, Mrs Case
Mr Brook, Mr Russell
Mr Frie

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Douglas Hurd QC MP
Home Secretary
Home Office
Queen Anne's Gate
LONDON SW1H 9AT

18 August 1989

Dear Douglas

WAR CRIMES

Thank you for your letter of 19 July setting out your current thinking on the resources implications of implementing the recommendations of the War Crime Inquiry. I am also grateful to Lord Fraser for his letter of 31 July about the possible implications in Scotland.

The major resource implications, estimated at £12-24 million a year in England and Wales alone, would stem from the general implementation of the 1988 Criminal Justice Act provisions for live television evidence to be taken from witnesses abroad. I understand why you would prefer to avoid the impression of making special provision to enhance the likelihood of convictions in the war crimes cases. However, most of the costs involved would be entirely unconnected with war crimes trials (where you estimate the direct costs of television links to be only perhaps £200,000 per case - although I note that Lord Fraser thinks this is too low) and I entirely endorse my predecessor's view that additional resources should not be made available to implement that measure. The necessary provision would have to be found by the departments concerned from within existing resources.

Your estimate of other costs is more modest, perhaps £3-4 million a year over 5 years falling in a number of areas notably the course, legal aid, Crown Prosecution Service and the policy. I must say that I would expect costs of this size to be absorbed within the considerable budgets of the bodies concerned. In any case the resource estimates so far produced are not robust enough to support bids in the current Survey and it would also be premature to discuss provision in advance of a decision being taken on the policy. However, assuming the recommendations of the

Inquiry are implemented and more reliable cost estimates are available, I would be prepared to review the position in next year's Survey.

I am copying this letter to the Prime Minister, James Mackay, Geoffrey Howe, Malcolm Rifkind, Tom King, Patrick Mayhew, Lord Fraser and Sir Robin Butler.

NORMAN LAMONT

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CONFIDENTIAL

7 September 1989

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

Dear Douglas,

WAR CRIMES

Since your statement to the House of Commons on 24 July and the publication of the War Crimes Inquiry Report there have been a number of developments in Scotland of which I feel you should be aware in the lead up to the debates to be held when Parliament resumes.

Following the statements to Parliament on 24 July Mr Antony Gecas (formerly known as Antanas Gecevicius) obtained an interim interdict in the Court of Session in Edinburgh against Scottish Television Limited to prevent them from re-showing a documentary programme entitled "Crimes of War" which had been broadcast previously in July 1987. The interdict was obtained during the evening of 24 July and transmission of the programme was stopped before the last section of the programme was broadcast. Scottish Television Limited have lodged answers to the Petition and a date has yet to be fixed by the Court for a hearing to take place.

More importantly Mr Gecas is suing Times Newspapers Limited for defamation and damages of £150,000 in respect of articles which appeared in August 1987. This action is at an advanced stage and a proof has been fixed for 12 days in Court of Session commencing on 7 November.

Solicitors acting for Times Newspapers wrote to the Crown Agent asking what the Crown's position was in the matter. I enclose a copy of Messrs Bird Semple Fyfe Ireland WS' letter dated 18 August and a copy of the Crown Agent's reply dated 29 August.

Mr Gecas raised a further Court of Session action for defamation against the author Ephriam Zuroff last year but this has effectively been sisted upon the basis of an interdict preventing any further alleged slanders.

In relation to the action involving Times Newspapers Limited the defenders have pled veritas and arrangements are in hand, apparently, to interview witnesses in the Soviet Union with a view to leading them in evidence against Gecas/

CONFIDENTIAL

THE LORD ADVOCATE

Gecas at the proof. Since I have no jurisdiction at the moment I cannot appear in the proceedings and ask the Court to sist (stay) the action. As you will see from the penultimate paragraph of Messrs Bird Semple's letter it is clear that Gecas intends to proceed with the action notwithstanding publication of the Inquiry Report. It is not obvious whether he seeks to do this to clear his name at the earliest opportunity or whether he is trying to lay the foundation for a defence in the event of criminal proceedings against him that reports of the civil proceedings make a fair trial impossible.

Even if the Government is in a position to make an announcement as to its intentions in relation to War Crimes before 7 November I could not say to the Court for example that criminal proceedings are pending or imminent for the purposes of obtaining an order under Section 4(2) of the Contempt of Court Act 1981 to restrict publication of the proceedings.

It may be that Times Newspapers Limited will be unable to proceed with the proof on 7 November because of difficulties in obtaining the evidence from the Soviet Union that they seek or they may request a postponement in the light of the debates but one cannot count on this nor in the latter instance can one be certain the Court will grant the request if Mr Gecas remains anxious to proceed.

Should there be any further developments bearing on the debates I shall keep you advised.

I am copying this to the Private Secretaries to other Cabinet Ministers and Sir Robin Butler.

Yours ever,

Peter.

FRASER OF CARMYLLIE

Your Ref: DGC/RMcA

Derek G Currie Esq
Messrs. Bird Semple Fyfe Ireland
Solicitors
249 West George Street
GLASGOW, G2 4RB

29 August 1989

Dear Sir

TIMES NEWSPAPERS LIMITED
ANTONY GECAS

Thank you for your letters of 18 and 25 August.

As you know the Lord Advocate has, at the present time, no jurisdiction in relation to allegations of crimes committed abroad during World War II. The Government's position following the publication of the War Crimes Inquiry Report was stated by the Home Secretary on 24 July 1989 (Hansard Column 732):-

"We are impressed by the force of argument that led the Inquiry to its clear conclusion that legislation was required, but we want to hear the views of Parliament before taking a final view on the principal of legislation. This is a matter, after all, on which the views of Parliament will be decisive. The Government will provide an opportunity for each House to debate the implications of the report and the action that should be taken in response to it. The debates will take place in the Autumn once there has been a proper opportunity to study the report and reflect upon it. In the light of the views expressed in those debates, the Government will take a final decision on whether to bring forward a bill on the lines proposed by the Inquiry."

Further at Column 736 the Home Secretary stated that the Report "recommends a series of investigations, but I am not prepared to authorise further work on them until it is clear in what way Parliament will wish to proceed."

The likelihood is that the Inquiry findings will be debated when Parliament resumes during the second half of October and it may be some time after that before the Government takes a final decision whether to promote legislation affording jurisdiction in relation to alleged war criminals. Consequently the Lord Advocate is unlikely to be in a position to say prior to 7 November, when I understand the proof is set down to commence, whether he will have to consider war crimes allegations against Mr Gecas or anyone else.

I/

I would be grateful if you would keep me advised if for any reason the proof does not proceed in early November.

Yours faithfully

I DEAN
Crown Agent

5200

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Date 18th August, 1989

BIRD
SEMPLE
FYFE
IRELAND
WS

I. Dean, Esq.,
Crown Agent,
Crown Office,
5/7 Regent Road,
Edinburgh,
EH7 5BL

Our Ref: DGC/RMcA Your Ref:

Dear Mr. Dean,

Times Newspapers Limited
Antony Gecas

I act for Times Newspapers Limited who publish inter alia The Times newspaper.

In August 1987, The Times published two articles which related to various aspects of war crimes and the existence in Britain of alleged Nazi war criminals.

Some time thereafter, Antony Gecas formerly known as Antanas Gecevicius, raised an action in the Court of Session against Times Newspapers Limited seeking damages for alleged defamation. Mr. Gecas based his claim on the fact of various references to him in the said articles.

The action has been defended and is set-down for a three week Proof in November of this year.

In preparation for the forthcoming Proof, I am about to travel to Lithuania to take precognitions from certain witnesses. In addition, I already possess a substantial number of documents which I believe will be used in Court to support my clients' position.

However you will be aware that the Government has recently received a report from a War Crimes Inquiry chaired by Sir Thomas Hetherington and William Chalmers, Esq. The report is presently before Parliament. If Parliament decides to amend the law to allow the prosecution in this country of persons alleged to have committed relevant war crimes, all the evidence ingathered by the War Crimes Inquiry will no doubt be passed to the Lord Advocate for his consideration as to whether or not to initiate criminal proceedings against any persons resident in this country.

If that happens, the evidence which the Lord Advocate will be perusing, will I believe, be identical to the evidence which I will be producing to the Court of Session in November of this year. As I have said, this will include not only a substantial number of documents but the leading of evidence from a number of witnesses presently resident in the Soviet Union.

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Mr. Gecas and his legal advisers have not sought, to date, any discharge of the forthcoming Proof as a result of the terms of the said War Crimes Inquiry Report.

It seems to me and Senior Counsel that it is not unlikely that Mr. Gecas will allow the evidence to be led at the Proof in November, so that if and when a criminal prosecution is initiated against him, he can found a plea in bar of trial.

In these circumstances, I shall be grateful if you would consider the above information and let me know the Crown's position as a matter of some urgency.

Yours sincerely,

Derek G. Currie.

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-936 6201

CHIEF SECRETARY
REC. - 3 OCT 1989
ACTION Mr Brook,
COPIES TO Ex Sir P Middleton
Mr Avan, Mr Monck,
Mrs Case, Mr Mortimer
Mr Russell, Mr Tyrie.

The Rt Hon Norman Lamont MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
London SW1P 3AG

29 September 1989

Dear Norman:

WAR CRIMES

Thank you for copying to me your letter of 18 August 1989. Although work by officials to produce more reliable cost estimates is continuing, it is right to set out the difficulties peculiar to the war crimes proposals which will make it quite impossible to uncouple the policy decision from the question of resources in the manner suggested in the penultimate paragraph of your letter.

It is important that the implications of a decision to bring forward legislation to permit alleged war criminals now resident in this country to be prosecuted are fully appreciated. Once the process of investigation and prosecution has been initiated, we are likely for all practical purposes to be committed to a major exercise. Whereas the War Crime Inquiry was able, perfectly properly, to concentrate on a limited number of cases, there will be an expectation that all of the many serious allegations will be the subject of proper investigation and careful consideration as to whether proceedings should be instituted.

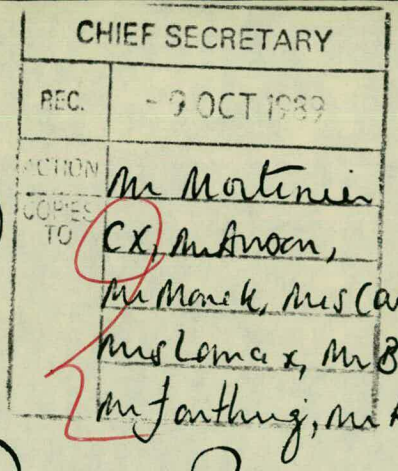
It would be politically unrealistic to believe that, once we have embarked upon such an investigation, it would be possible to do anything but see it through to its natural conclusion.

The financial costs could be very high indeed. The reports which I am receiving from my own officials and the Crown Prosecution Service suggest that it will be

extremely difficult further to refine the CPS component of the estimates set out by Douglas Hurd - and acknowledged by him to be somewhat crude - in his letter of 19 July. There are so many variables that it may be necessary to resort simply to a "best possible" and "worst possible" scenario approach. The effect is that if we are now prepared to espouse the principle of legislating to facilitate war crimes prosecutions, it can only be on the basis that we are prepared to accept that the price of doing the job properly may be very high.

A factor peculiar to the Crown Prosecution Service is that it is a "one product Service", and accordingly cannot look to savings on another programme so as to be able to absorb within existing provision the expenditure arising from war crimes cases. I cannot agree to any trimming of the resources presently devoted to the prosecution of current crime. This in any event would have seriously adverse political consequences - especially given the present climate of opinion towards the CPS. Any agreement on my part to the proposed legislation for the prosecution of war crimes must accordingly depend on assurances as to full provision of the necessary resources, the lack of which would inevitably affect any assessment of where the public interest lay.

Copies of this letter go to the Prime Minister, James Mackay, Geoffrey Howe, Douglas Hurd, Malcolm Rifkind, Tom King, Lord Fraser and Sir Robin Butler.



QUEEN ANNE'S GATE LONDON SW1H 9AT

9 October 1989

Dear Patrick

I have been thinking about the giving of evidence from outside the United Kingdom by live television link in the light of your letter of 25 July and of the report of the War Crimes Inquiry.

I would propose, subject to your views and those of other colleagues, to include in the forthcoming Criminal Justice (International Co-operation) Bill a provision enabling live television links to be brought into force for such offences as I may prescribe by Order made by statutory instrument. Malcolm Rifkind would have the same power in relation to Scotland if live television links were to be available there, and Peter Brooke will wish to consider whether a corresponding provision might be made for Northern Ireland. My intention would be to prescribe initially the offences of murder, manslaughter, genocide and serious and complex frauds defined by reference to the use of the 1987 Criminal Justice Act procedures. This would have the advantage of excluding the customs cases about which we are concerned and including those cases in which the prosecution agencies are particularly keen to have live television links available. The only difficulty appears to be that serious frauds can be unambiguously identified only as those which are made the subject of transfer proceedings or a preparatory hearing under the Criminal Justice Act 1987. The 1987 Act does not distinguish between the seriousness and the complexity of an offence; and there is no logical connection between the complexity of an offence and the utility of admitting evidence from abroad by live television link.

Under the scheme I describe, additional legal aid costs should be small. There would still be costs to the prosecution agencies, estimated at £1.8 million a year for the frauds and upwards of £200,000 a case for war crimes if these ever matured. These costs would have to be met by the prosecution agencies themselves from present and future PES provision. I fear that we could not make a PES transfer from the Home Office.

I should be grateful for colleagues' agreement to this course, and for an indication of when they would wish to see links made available - bearing in mind costs and operational considerations. It would be helpful to have replies within two weeks.

Copies of this letter go to James Mackay, Norman Lamont, Malcolm Rifkind, Peter Brooke and other members of H Committee.

Yours,

Douglas

The Rt Hon Sir Patrick Mayhew, QC., MP.