

S
3004

PREM 19/2680

PART ONE

SECRET

CONFIDENTIAL FILING

Allegations concerning war criminals,
Simon Weisenthal Centre.

FOREIGN

POLICY

[IN ATTACHED FOLDER: INITIAL REPORT INTO REPUTATION OF
ENEMY PERSONNEL TO THE SOVIET UNION AND YUGOSLAVIA
AND THE ALLEGED 'KLAMENFELT CONSPIRACY' - OCT 1986]

OCTOBER 1986

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
3.2.87		14.3.88					
10.2.87		30.6.89					
11.2.87		\					
13.2.87		PTI					
25.2.87		ENOS					
5.3.87		/					
10.3.87		—					
11.3.87							
13.3.87							
24.3.87							
22.7.87							
27.7.87							
30.7.87							
7.8.87							
24.9.87							
16.11.87							
23.11.87							
25.11.87							
27.11.87							
30.11.87							
14.1.88							
26.1.88							
29.1.88							
3.2.88							
8.2.88							

PREM 19/2680

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

Interim Report on an enquiry into the Repatriation of Surrendered Enemy Personnel to the Soviet Union and Yugoslavia from Austria in May 1945 and the alleged 'Klagenfurt Conspiracy'

Published by Anthony Cowgill, 1988

ISBN 0 9514029 0 0

Signed _____

J. Gray

Date _____

4/8/2016

PREM Records Team

PART 1 ends:-

CDP to Pu. 30.6.89

PART 2 begins:-

CDP to Ho 3.7.89.



1(A-C)

SECRET AND PERSONAL

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

D

SECRET AND PERSONAL

2.

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

SECRET AND PERSONAL

c

SECRET AND PERSONAL

3.

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

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).

CASEWORK

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.

LEGISLATION

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 Adjournment (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 SOCR 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 administration 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).



WAR CRIMES INQUIRY
HOME OFFICE

Queen Anne's Gate London SW1H 9AT

Direct line 01-213 2362
Switchboard 01-213 1000

Pl. circulate
to M&A
PAB
Cordell Jones

Charles Powell Esq
Private Office
10 Downing Street
London
SW1

Your reference

~~Correspondence~~
Sub.

Our reference

Date WCI/4/10

14 March 1988

COP 1573

Dear Mr. Powell

I am writing to draw to your attention the terms of reference (attached) of the War Crimes Inquiry which the Home Secretary has recently asked Sir Thomas Hetherington and Mr William Chalmers to undertake. You will see that the Inquiry is required to investigate allegations that crimes of murder, manslaughter and genocide were committed in Germany or on German occupied territory during the Second World War by people who are now British citizens or resident in the United Kingdom. The Inquiry has recently appealed for witnesses to such alleged crimes to come forward and will shortly be advertising to the same effect.

Whilst the Inquiry has a clear understanding of what is and what is not within its remit, I fear that the same may not apply to members of the public who may write variously to the Prime Minister, and to the Home, Foreign and Defence Secretaries about war crimes in general, about particular alleged war crimes and about President Waldheim. It would be unfortunate were the Inquiry to report and then face claims that it has not considered all the allegations and evidence submitted by members of the public or interested organisations.

It would be helpful therefore if you would circulate the Inquiry's terms of reference to the appropriate members of your Department in order to ensure that letters containing allegations of war crimes that fall within the Inquiry's remit are forwarded to us. (c/o the Home Office, 50 Queen Anne's Gate). I am copying this letter to Robert Culshaw (FCO) and to Brian Hawtin (MOD).

Yours sincerely
David Ackland
D M ACKLAND
Secretary to the Inquiry

cc. Robert Culshaw (FCO)

Brian Hawtin (MOD)

INQUIRY INTO WAR CRIMES:

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 Center 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.

STATEMENT BY HOME SECRETARY
ON WAR CRIMES

TO BE CHECKED
AGAINST DELIVERY

With permission, Mr Speaker, I should like to make a statement about war crimes committed during the Second World War.

The House will be aware of recent allegations that suspected war criminals have found haven in this country. Lists of names have been sent to us by the Simon Wiesenthal Center and others. Inquiries conducted by my Department suggested that some of the people named are still living in this country and we undertook to consider what action, if any, should be taken.

The legal position is as follows. We would normally deal with alleged crimes in foreign countries by way of extradition. However, all the cases in question relate to crimes committed in territories now controlled by the Soviet Union, with whom we have no extradition treaty. Nor do the courts in the United Kingdom at present have Jurisdiction to try offences of murder and manslaughter committed abroad when the accused was not a British citizen at the time of the offence. If we were to prosecute in these cases we should need to legislate to extend the Jurisdiction of our courts.

/The passage of time

The passage of time does not lessen the horror with which we now read about wartime atrocities, but it does inevitably complicate the investigation of any allegations which might be made.

I decided that it was impossible to take this issue forward without a better idea of what evidence existed. I therefore asked the Simon Wiesenthal Center to provide evidence to substantiate the allegations. In July of last year the Center provided us with a large quantity of documentary material. This material contained serious allegations against a number of people. The material was carefully considered within Government. Our conclusion was that as it stood the material would not be sufficient to support a criminal prosecution, even if there were Jurisdiction.

In the circumstances it is clear that further work has to be done. I have therefore decided to appoint an independent inquiry to examine material relating to the allegations, to conduct interviews - possibly including interviews in the Soviet Union - and to consider the likely value of the evidence which could become available to United Kingdom court proceedings. In the light of its assessment, the inquiry team will advise whether the law should be amended in order to take Jurisdiction over crimes allegedly committed overseas by persons now resident in this country.

/In the event of

In the event of such a change it would be for the prosecuting authorities to decide, after such investigations as they may think necessary, whether any action should be taken in individual cases. I have placed the inquiry's full terms of reference in the library. I am very grateful that Sir Thomas Hetherington, the former Director of Public Prosecutions, and Mr William Chalmers, the former Crown Agent in Scotland, have agreed to undertake the inquiry.

Mr Speaker, all of us who have considered these matters recognise that they are intensely difficult. The allegations are very serious and must be pursued. However, I do not believe that the material now before us would justify me in proposing to Parliament a change in the law. The inquiry which I have announced will enable us to form a clearer view of the weight to be given to the allegations, and will enable us to determine whether it would be right to propose a change in the law to extend the Jurisdiction of the courts.



QUEEN ANNE'S GATE LONDON SW1H 9AT

8 February 1988

Dear Chief Secretary,

CDP
9/2

WAR CRIMES

Thank you for your letter of 20 January about the proposed inquiry into war crimes. We touched on this in discussion at Cabinet on 21 January when you reserved your position on whether the cost of the inquiry should be a call on the Reserve.

As you know, our decision to institute an inquiry was made after taking into account various considerations, including Parliamentary handling of the Criminal Justice Bill. I naturally accept that the likely cost of £0.5 million for the inquiry is not large as a proportion of total Home Office expenditure, but that total is already more than fully committed. My officials have therefore proposed that the necessary provision should be included in the Parliamentary Estimates which are being discussed with your officials and I hope that it will be possible for them to reach a mutually satisfactory conclusion. I appreciate the difficulty about making any announcement with regard to additional provision at the present time but I hope that we can at least agree to keep the matter under review in the light of developments in the coming financial year.

Yours sincerely
A. J. Santorum
(Approved by the Home
Secretary and signed
in his absence)

The Rt Hon John Major, MP.

For. Pol. War Criminals Oct 86



From: THE PRIVATE SECRETARY
CONFIDENTIAL



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

3 February 1988

Dear Alison,

CDP4/2

WAR CRIMES

at flat.
The Home Secretary was grateful for the comments which his colleagues made on his draft statement circulated under cover of his letter of 26 January. All of these have been incorporated in the revised statement which I attach, and which the Home Secretary will make in the House on Monday 8 February.

I am copying this to Private Secretaries to the Prime Minister, other members of H Committee, the Foreign Secretary, the Secretary of State for Defence, the Attorney General, the Lord Advocate, the Lord Privy Seal and Sir Robin Butler.

Yours sincerely
Nick

N C SANDERSON

Ms Alison Smith

CONFIDENTIAL

STATEMENT BY HOME SECRETARY
ON WAR CRIMES

With permission, Mr Speaker, I should like to make a statement about war crimes committed during the Second World War.

2. The House will be aware of recent allegations that suspected war criminals have found haven in this country. Lists of names have been sent to us by the Simon Wiesenthal Center and others. Inquiries conducted by my Department suggested that some of the people named are still living in this country and we undertook to consider what action, if any, should be taken.

3. The legal position is as follows. We would normally deal with alleged crimes in foreign countries by way of extradition. However, all the cases in question relate to crimes committed in territories now controlled by the Soviet Union, with whom we have no extradition treaty. Nor do the courts in the United Kingdom at present have Jurisdiction to try offences of murder and manslaughter committed abroad when the accused was not a British citizen at the time of the offence. If we were to prosecute in these cases we should need to legislate to extend the Jurisdiction of our courts.

/The passage of time

4. The passage of time does not lessen the horror with which we now read about wartime atrocities, but it does inevitably complicate the investigation of any allegations which might be made.

5. I decided that it was impossible to take this issue forward without a better idea of what evidence existed. I therefore asked the Simon Wiesenthal Center to provide evidence to substantiate the allegations. In July of last year the Center provided us with a large quantity of documentary material. This material contained serious allegations against a number of people. The material was carefully considered within Government. Our conclusion was that as it stood the material would not be sufficient to support a criminal prosecution, even if there were Jurisdiction.

6. In the circumstances it is clear that further work has to be done. I have therefore decided to appoint an independent inquiry to examine material relating to the allegations, to conduct interviews - possibly including interviews in the Soviet Union - and to consider the likely value of the evidence which could become available to United Kingdom court proceedings. In the light of its assessment, the inquiry team will advise whether the law should be amended in order to take Jurisdiction over crimes allegedly committed overseas by persons now resident in this country.

/In the event of

In the event of such a change it would be for the prosecuting authorities to decide, after such investigations as they may think necessary, whether any action should be taken in individual cases. I have placed the inquiry's full terms of reference in the library. I am very grateful that Sir Thomas Hetherington, the former Director of Public Prosecutions, and Mr William Chalmers, the former Crown Agent in Scotland, have agreed to undertake the inquiry.

7. Mr Speaker, all of us who have considered these matters recognise that they are intensely difficult. The allegations are very serious and must be pursued. However, I do not believe that the material now before us would justify me in proposing to Parliament a change in the law. The inquiry which I have announced will enable us to form a clearer view of the weight to be given to the allegations, and will enable us to determine whether it would be right to propose a change in the law to extend the jurisdiction of the courts.

FOREIGN POLICY : allegations against Warburton

6/16



CONFIDENTIAL

cc/c



SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

CDP 21

29 January 1988

Dear Secretary of State,

FILE WITH COP.

I am grateful for the opportunity to comment on the draft statement attached to your letter to John Wakeham dated 26 January regarding our response to the war crimes issue.

I note your intention to deal with this by way of an oral statement next week before the Criminal Justice Bill begins its Committee Stage and I would be entirely content that you should handle the matter in that way.

However, I feel that the statement as presently drafted could be read as indicating that we were already reasonably satisfied that the allegations made by the Simon Wiesenthal Center and others were true and accurate, and that the only problem is how effectively to mount a successful prosecution. Secondly, it could be inferred from the last 2 paragraphs that the findings of the inquiry may constrain the Law Officers to prosecute. Neither inference is, of course, valid but I feel that such possible misconstruction could be avoided by fairly minor amendments in the drafting. I attach a note of my suggested amendments.

Copies of this letter go to the recipients of yours.

Yours sincerely,

lynn Shankland

pp MALCOLM RIFKIND

(Approved by the Secretary of State and signed in his absence).

ENC

CONFIDENTIAL

WAR CRIMES

Suggested Amendments to Home Secretary's Draft Statement

- Paragraph 2, first line: before the words, "war criminals", insert, "suspected".
- Paragraph 2, last line: delete the words, "against them".
- Paragraph 4, last 2 lines: delete the words, "possibilities of bringing those responsible to justice", and substitute, "investigation of any allegations which may be made".
- Paragraph 5, 4th last line: delete the word, "possibly", and substitute, "inevitably".
- Paragraph 6, 8th and 9th lines: delete the words, "make it possible for war crimes prosecutions to take place", and substitute "take jurisdiction over crimes allegedly committed overseas by persons now resident".
- Paragraph 7, last line: delete the words, "enable prosecutions to be mounted", and substitute "extend the jurisdiction of the courts".

Foreign Pol: War Crimes Oct 86



CONFIDENTIAL

ca/PC



HOUSE OF LORDS,
LONDON SW1A 0PW

29 January 1988

CDF
29/1

Dear Douglas,

War Crimes

at Flyp

Thank you for sending me a copy of your letter of 26 January to John Wakeham enclosing a draft of your proposed statement on war crimes.

I agree that you should make such a statement. I have two comments on the draft. The word "triable" in line 12 of paragraph 5 on page 2 should be replaced with the words "the basis of prosecution". Secondly, the second sentence of paragraph 7 may give the wrong impression. I would replace it (and the beginning of the third sentence) by:-

"But the allegations are very serious and must be pursued. However, I do not believe that the material ...".

I am sending copies of this letter to the Prime Minister, other members of H Committee, Geoffrey Howe, George Younger, Patrick Mayhew, John Belstead, Kenny Cameron and Sir Robin Butler.

Yours ever,

Jan.

The Right Honourable
Douglas Hurd CBE MP
Secretary of State
for the Home Department

FOR POLICY: War Criminals OCT 86



C. B. G.



NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

23 January 1988

COP
H2

Dear Secretary of State

WAR CRIMES

You wrote to the Lord President on 26 ^{at 11.00} January seeking the views of colleagues on the draft of a statement you propose to make next week on the setting up of an independent enquiry into allegations that there are war criminals living in the United Kingdom.

Your statement makes it quite clear that the enquiry will be on a United Kingdom basis, thus allowing all jurisdictional problems in Northern Ireland also to be fully addressed, and I am content for you to proceed as you suggest.

I am copying this letter to the recipients of yours.

Yours sincerely

Martin Donnelly

DD TK
(Approved by the Secretary of State
and signed in his absence)



Foreign Patent:

was crimes at 86

u/107



ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

00KACB 276437EMM

01 936 6602

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Annes Gate
London
SW1H 9AT

CRP
2/2

28 January 1988

Douglas:

WAR CRIMES

You copied to me your letter of 26th January to John Wakeham and the draft statement enclosed.

at flap

I am content with your proposal to make a statement on the lines you suggest. However, an amendment to the third sentence of the third paragraph of the draft would be desirable. As it stands, it might imply to those unfamiliar with the law that British Courts can try all offences committed abroad by those who are British subjects at the time. This is not so. The reference should be to crimes of the category with which we are here concerned.

Lans,
As witness

FOREIGN PAID: WA CRIMES

OCT 8





With the Compliments
of
PRIVATE SECRETARY

28 JANUARY

..... 19 88

LORD ADVOCATE'S CHAMBERS
FIELDEN HOUSE
10 GREAT COLLEGE STREET
LONDON SW1P 3SL

Telephone: Direct Line 01-212 0100
Switchboard 01-212 7676
Fax 01-212 6057

CONFIDENTIAL



Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone Direct Line 01-212 0515
Switchboard 01-212 7676

The Rt Hon Douglas Hurd MP
Home Secretary
Queen Anne's Gate
LONDON SW1H 9AT

28 January 1988

Dear Douglas,

WAR CRIMES

at last
You asked, in your letter of 26 January to John Wakeham, for comments on the draft oral statement which you proposed to make in relation to war crimes. I am generally content with what is said in the draft but have a number of changes to propose.

In paragraph 5, you refer to allegations against "three people, although the bulk of the material was concerned with only one man". This is no doubt factually correct. I am concerned however that, in any subsequent legal proceedings against Gecas, those acting for him might argue that this indicated a bias against him even before any enquiry commenced. I suggest it would be preferable to state things in a wholly neutral way; and I therefore propose that for all the quoted words there be substituted the phrase "a number of persons".

The latter part of that paragraph seems to cover very much the same material as is set out in paragraph 6. Would we lose a great deal I wonder, were we to delete the words from "the allegations could be triable" to the end of the page? (The reference to interviews in the Soviet Union might be included, in parenthesis, after "interviews" at page 3, line 4.)

The matter which concerns me most however is that it should be made clear in the statement that even if a change in the law is ultimately proceeded with it will still be for the prosecuting authorities to consider whether any particular case is proceeded with; and that such consideration might indeed involve further investigation of that case by them. The change I have in mind is to substitute for the closing words of paragraph 7 ("to enable prosecutions to be mounted") the following--

"In the event of such a change it would then be for the prosecuting authorities to decide, after such investigation as they may think necessary, whether any action should be taken in individual cases."

CONFIDENTIAL



2

I am copying this letter to the Prime Minister, other members of H Committee, Geoffrey Howe, George Younger, Patrick Mayhew, John Belstead and Sir Robin Butler.

Yours ever

Cameron

CAMERON OF LOCHBROOM

FOREIGN POL: War Crimes
OCT '60

5-1-60
107

GCPE

SP

QUEEN ANNE'S GATE LONDON SW1H 9AT



26 January 1988

~~ME~~ to see

26/1

Dear John,

WAR CRIMES

Last week's Cabinet endorsed my proposal to set up an independent enquiry into the allegations that there are war criminals living in the United Kingdom. Since then we have heard informally that both Sir Thomas Hetherington and Mr William Chalmers would be willing to serve on such an enquiry. Malcolm Rifkind and I are now writing formally to invite them to participate.

My inclination is to announce this decision in an oral statement next week and I understand that the Business Managers share my view. It would clearly be helpful to have made this announcement before the Criminal Justice Bill begins its Committee Stage. I enclose the draft of such a statement and would be grateful for any observations from colleagues by Friday, 29 January.

I am copying this letter and its enclosure to the Prime Minister, other members of H Committee, Geoffrey Howe, George Younger, Patrick Mayhew, John Belstead, Kenny Cameron and Sir Robin Butler.

Yours,
Douglas

STATEMENT BY HOME SECRETARY
ON WAR CRIMES

With permission, Mr Speaker, I should like to make a statement about war crimes committed during the Second World War.

2. The House will be aware of recent allegations that war criminals have found haven in this country. Lists of names have been sent to us by the Simon Wiesenthal Center and others. Enquiries conducted by my Department suggested that some of the people named are still living in this country and we undertook to consider what action, if any, should be taken against them.

3. The legal position is as follows. We would normally deal with alleged crimes in foreign countries by way of extradition. However, all the cases in question relate to crimes committed in territories now controlled by the Soviet Union, with whom we have no extradition treaty. Nor do the courts in the United Kingdom at present have Jurisdiction to try offences committed abroad when the accused was not a British citizen at the time of the offence. If we were to prosecute in these cases we should need to legislate to extend the Jurisdiction of our courts.

4. The passage of time does not lessen the horror with which we now read about wartime atrocities, but it inevitably complicates the possibilities of bringing those responsible to Justice.

5. I decided that it was impossible to take this issue forward without a better idea of what evidence existed. I therefore asked the Simon Wiesenthal Center to provide evidence to substantiate the allegations. In July of last year the Center provided us with a large quantity of documentary material. This material contained serious allegations against three people, although the bulk of the material was concerned with only one man. This material was carefully considered within Government. Our conclusion was that as it stood the material would not be sufficient to support a criminal prosecution, even if there were Jurisdiction: the allegations could be triable in the United Kingdom only if further investigations were able to provide firm evidence that would be admissible in our courts. Such investigations would need to be extensive - possibly including interviews with witnesses in the Soviet Union - and it is by no means certain that at the end of the day a prosecution could be justified.

6. In the circumstances it is clear that further work has to be done. I have therefore decided to appoint an independent enquiry to examine material relating to the allegations, to conduct interviews, and to consider the likely value of the evidence which could become available to United Kingdom court proceedings. In the light of its assessment, the enquiry will advise whether the law should be amended in order to make it possible for war crimes prosecutions to take place in this country. I have placed the full terms of reference in the library. I am very grateful that Sir Thomas Hetherington, the former Director of Public Prosecutions, and Mr William Chalmers, the former Crown Agent in Scotland, have agreed to undertake the enquiry.

7. Mr Speaker, all of us who have considered these matters recognise that they are intensely difficult. I do not believe that we can just let the whole matter drop: the allegations are too serious for that. But neither do I believe that the material now before us would justify me in proposing to Parliament a change in the law. The enquiry which I have announced will enable us to form a clearer view of the weight to be given to the allegations, and will enable us to determine whether it would be right to put propose a change in the law to enable prosecutions to be mounted.

Foreign Pol: War Criminals 10/86

21

6. In the circumstances it is clear that further work has to be done. I have therefore decided to appoint an independent enquiry to examine material relating to the allegations, to conduct interviews, and to consider the likely value of the evidence which could become available to United Kingdom court proceedings. In the light of its assessment, the enquiry will advise whether the law should be amended in order to make it possible for war crimes prosecutions to take place in this country. I have placed the full terms of reference in the library. I am very grateful that Sir Thomas Hetherington, the former Director of Public Prosecutions, and Mr William Chalmers, the former Crown Agent in Scotland, have agreed to undertake the enquiry.

7. Mr Speaker, all of us who have considered these matters recognise that they are intensely difficult. I do not believe that we can just let the whole matter drop: the allegations are too serious for that. But neither do I believe that the material now before us would justify me in proposing to Parliament a change in the law. The enquiry which I have announced will enable us to form a clearer view of the weight to be given to the allegations, and will enable us to determine whether it would be right to put propose a change in the law to enable prosecutions to be mounted.



FOREIGN POLICY
WAR CRIMES OCT





Ref. A088/218

PRIME MINISTER

Cabinet: War Crimes

C(88)1

DECISIONS

You will wish the Cabinet to take a clear decision whether to authorise the Home Secretary to make an early announcement that a non-statutory inquiry will be established to consider the evidence against various alleged war criminals resident in the UK and to advise whether legislation to extend the jurisdiction of UK courts would make their prosecution practicable.

2. You may particularly wish to confirm that the Cabinet accepts that it will be necessary to give a virtual undertaking to legislate in a future session if the inquiry makes a well-based recommendation to that effect.

3. You may also wish to invite the Home Secretary to clear the text of his proposed announcement with you and other colleagues most concerned.

BACKGROUND

4. During the last year the Simon Wiesenthal Center has sent the Government lists of alleged war criminals believed to be living in this country, and these names have been added to by Scottish Television. The Home Office now believe that at least 16 of those on the two lists may be living in the United Kingdom. The alleged offences, including mass executions and other atrocities, were committed in Lithuania and other areas under German control in the Second World War. Much of the material is directed at the case of Antanas Gecas, who is now living in Edinburgh.

5. The United Kingdom does not have extradition arrangements with the USSR or any other of the countries in which these alleged atrocities took place and the Home Secretary does not consider that the extradition route would be feasible. He believes that the only practicable way to enable these individuals to be brought to justice, if the case against them is made out, would be retrospectively to extend the jurisdiction of United Kingdom courts to cover offences committed abroad by individuals before they took British citizenship or became resident here. (At present, United Kingdom courts have jurisdiction against offences of homicide committed by British citizens anywhere in the world, but they do not have any such extra-territorial jurisdiction against United Kingdom residents who are not British citizens.) Some of the 16 named individuals, including Gecas, have become British citizens since the Second World War.

6. During the course of last year the Home Secretary obtained, with your agreement, the views of the prosecuting authorities on the material that had been submitted, in particular against Gecas. The Crown Office in Edinburgh concluded that, even if one disregarded the question of jurisdiction, the material was not sufficient to justify a prosecution, and the Lord Advocate was clear that, in the absence of jurisdiction, he could take the matter no further. The Home Secretary, who was coming under some pressure from the Parliamentary All Party War Crimes Group, under the Chairmanship of Mr Merlyn Rees, therefore brought the question to H Committee, proposing that retrospective jurisdiction should be taken in the Criminal Justice Bill, and that special investigative units should be set up by the prosecuting authorities both in Scotland and England.

7. The meeting of H Committee on 1 December (H(87)18th) was deeply divided. Although it is clear that retrospection of the kind proposed would raise no European Convention on Human Rights problems, most of the Committee saw the proposal as a fairly

major change in our law. The Scottish Secretary, the Lord Advocate and the Solicitor General were all uneasy that it should be made on the basis of something that was far less than a properly substantiated case. The Chief Secretary and the Transport Secretary were worried about the politics of how to contain the pressure if jurisdiction were extended and no prosecutions were then instituted. The then Lord Privy Seal thought that the Law Officers' inability to take the matter further without first extending jurisdiction presented the Government with an impossible 'chicken and egg' situation; and the Foreign and Commonwealth Secretary made it clear that his support for the Home Secretary was but hesitant. Lord Whitelaw therefore asked the Home Secretary to work up the details of an extended jurisdiction, in order to gain time for reflection.

8. Lord Whitelaw and the other business managers were very concerned that highly controversial amendments to the Criminal Justice Bill on this topic - or the right of silence - would consume an inordinate amount of time in the House of Lords and would prejudice the rest of the programme, which was about to come under increased pressure from the introduction of a Steel Privatisation Bill. The present proposal to proceed, in the first place, through a non-statutory inquiry to probe the evidence, was originally floated at a meeting between Lord Whitelaw, the present Lord President and the Home Secretary on 9 December, and it was subsequently worked up at meetings involving the Lord Chancellor, the Scottish Secretary and the Law Officers. All these Ministers believe that this approach is right, not just on business management grounds, but also on merits. The Home Secretary has circulated his memorandum in draft to H Committee and their agreement can be assumed (though they would probably still be unable to agree the earlier proposal for immediate legislation, even if Parliamentary time allowed).



MAIN ISSUES

i. General

9. The basic question is whether the proposed procedure is sufficiently robust to contain the political pressure. You have indicated, through Mr Powell's letter of 14 January, that you are generally content, subject to the views of colleagues.

ii. International perceptions

10. The problem with the material that has been provided by the Weisenthal Center is that much of it is hearsay, and hence legally inadmissible, and that there is no assurance that credible witnesses would come forward to give evidence in person. The main task for the inquiry would be to establish whether any such witnesses are, in fact, available and it would need to form a view on that against the background of media speculation that the russians may have fabricated evidence for their own purposes. As paragraph 4 of the paper points out, the russians could well react adversely if the inquiry discounted evidence they had made available. But that risk has to be set against the offence that would be caused to international Jewry if this country took no action. The Foreign and Commonwealth Secretary's minute of 19 January records that he is content with the present proposal.

iii. A commitment to future legislation

11. The Home Secretary believes that the proposed inquiry would only be politically sustainable if he makes it clear from the outset that the Government ^{would} will be ready to introduce legislation if the inquiry so recommends. Although it is highly unusual to put the introduction of legislation into commission in this way, the Lord President fully accepts the thrust of the Home Secretary's argument. The Lord President has pointed out to the Home Secretary, however, that the form of words he uses in making the announcement will have to leave the ultimate decision in the Government's hands. (It would not be right in principle simply to delegate one of the key functions of

Government to two outsiders, and various things might happen to make it inappropriate to act on the inquiry's recommendations to legislate. For example, the likeliest subject of a prosecution might die before legislation could be introduced.)

iv. The spectacle of a trial

12. Although the pressure has been on the Government to take action, there is the other point of view that, no matter what offences may have been committed, it would be unjust and oppressive to bring a 75 year old man to a show-trial in respect of events that are 45 years in the past and on the basis of evidence that was blurred at best. You may remember that Lord Hailsham made remarks to this effect when the matter came up in Cabinet last year. While no Minister seems likely to take such a line on the present occasion, you may think it worth checking with the Attorney-General that he does consider the matter to be still justiciable, and that he would authorise a prosecution if the evidence were sufficiently persuasive.

v. The nature of the jurisdiction

13. There is an unresolved difference of view between the Scottish and English Law Officers on the precise way in which the offences attracting retrospective jurisdiction might be framed. But this is a highly technical matter that need not be settled until the inquiry's report is available. You will not wish to let discussion get bogged down in it at this stage, and if it is suggested that the proposed terms of reference pre-empt the question you may wish to ask the Home Secretary and the Scottish Secretary to sort out the point with the Law Officers and the Foreign and Commonwealth Secretary.

vi. Membership of the inquiry

14. It is common ground between all the Ministers who have worked up these proposals that the inquiry should be handled by two advisers who would inspire confidence, but be something less than household names. The Home Secretary, the Scottish

Secretary and the Lord Chancellor are attracted to the idea of the recently retired Director of Public Prosecutions and his Scottish counterpart, but the English Law Officers see objections to this on grounds of principle. Again, you may not wish the Cabinet to get drawn into this kind of detail, though you may wish to indicate that the general profile being proposed seems about right.

vii. Finance

15. The cost of the inquiry will be about £0.5 million. Taking jurisdiction straightaway would have involved the prosecuting authorities in at least as much expenditure. The Chief Secretary may wish to object to sums of this small size being scored against the reserve.

HANDLING

16. You will wish to invite the Home Secretary to introduce the paper, and you may then wish to ask if the Scottish Secretary has anything to add.

17. You may then wish to ask the Lord President if he wishes to comment, as Chairman of H and QL-Committees. The Lord President might comment in particular on the degree of advance commitment that should be offered to legislation if the inquiry recommends it.

18. The Attorney General will wish to comment on any specific legal questions that emerge; the Chief Secretary may have comments on the finance point; and other members of the Cabinet may have general points to make. In particular, you may wish to bear in mind that at an earlier stage the Trade and Industry Secretary registered his support for the Home Secretary's then proposal to proceed to legislation immediately.

R.B.

ROBIN BUTLER

20 January 1988

PRIME MINISTER

NAZI WAR CRIMINALS

The Home Secretary and the Scottish Secretary are bringing to Cabinet the issue of how we deal with allegations that ex-Nazi war criminals are living in the United Kingdom.

The Home Secretary originally proposed that an amendment should be introduced to the Criminal Justice Bill giving United Kingdom courts jurisdiction over war crimes committed during the Second World War by persons who subsequently became British citizens or settled in the UK. This was not agreed in H Committee; it was judged that it would cause difficulties for the already tight parliamentary timetable.

The new proposal before Cabinet is that two independent advisers should be appointed to examine the material submitted to us about the activities of former Nazis and advise whether the public interest would be served by our taking jurisdiction. They would assess the strength of the case and the probative value of any evidence presented. It is envisaged that the inquiry should be carried out by a senior counsel with experience of major prosecutions and the former Crown Agent for Scotland. It would take about a year.

This seems a sensible course and you have already endorsed it. The Law Officers are content. There are inevitably some potential drawbacks.

- it will be criticised by some in Parliament as procrastination;
- backbenchers may still table amendments to the Criminal Justice Bill to provide jurisdiction (although the Government could make a strong case against this);
- there must be a possibility that the inquiry would

recommend that we should assume jurisdiction but the prosecuting authorities might subsequently decide that the evidence did not warrant prosecution. But that risk is inherent in an inquiry;

- there could be some damage to our relations with the Soviet Union if the inquiry recommended against our taking jurisdiction.

I would not think any of these possibilities sufficiently serious to prevent us going ahead on the basis recommended by the Home Secretary. I also imagine that the business managers will be very firm in the view that the alternative of amending the Criminal Justice Bill is not feasible.

C.D.P.

CHARLES POWELL

20 January 1988

VC3AUX

CBE



ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01 936 6602

01 936 6602

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Annes Gate
London
SW1H 9AT

*CAD
207i*

18 January 1988

Dear Douglas,

You have copied to Patrick Mayhew your letter of 12th January addressed to the Lord Chancellor and the memorandum which it enclosed. He has asked me to reply.

at flap

We both agree with you and with Malcolm Rifkind that the inquiry you propose represents the best way forward in present circumstances.

In relation to choice of advisers our principal concern is that to choose the former DPP might be seen as pre-empting the decision by the present Director if and when any ultimate decision to prosecute has to be taken. In other respects Sir Thomas Hetherington would be an excellent choice. The decision will no doubt be influenced by the existence or otherwise of other suitable candidates.

I am copying this letter to the recipients of your own.

Yours ever

Nick.

FOREIGN POL: WAR CRIMES

OCT 1945



K01878

VP

MR WOOLLEY

c Mr Wicks

WAR CRIMES

At Sir Robin Butler's business meeting last Thursday it was agreed that this topic, which the Home Secretary wanted to bring to Cabinet this week, should be given a specific item on the agenda. The same day Mr Powell wrote to the Home Secretary's private office to record that the Prime Minister was content, subject to the views of colleagues, with the Home Secretary's proposal to proceed by way of setting up a non-statutory inquiry. I have checked with the Home Secretary's office that he does wish to confirm that he has his Cabinet colleagues alongside him on this, and would therefore still like a short discussion in Cabinet this week.

The paper that the Home Secretary wishes to circulate on this was attached, in draft, to his letter to the Lord Chancellor of 12 January. It will need to be slightly edited, and it should be circulated tomorrow evening.

AJL

A J LANGDON

18 January 1988

CONFIDENTIAL



SPURRY

ccc

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

14 January 1988

See Nick.

WAR CRIMES

I have consulted the Prime Minister about the Home Secretary's letter of 12 January to the Lord Chancellor dealing with the proposal to set up an independent inquiry to examine the allegations that former Nazi war criminals are living in the United Kingdom and advise whether the likely probative value of the evidence would justify the introduction of legislation. Subject to the views of colleagues, the Prime Minister is content for us to follow this course on the basis set out in the Home Secretary's letter.

I am copying this letter to Paul Stockton (Lord Chancellor's Department), the Private Secretaries to members of H Committee, Tony Galsworthy (Foreign and Commonwealth Office), Brian Hawtin (Ministry of Defence), Michael Saunders (Attorney General's Office), Alan Maxwell (Lord Advocate's Department), Brian Shillito (Office of the First Parliamentary Counsel) and Sir Robin Butler.

Yes diary,

(C. D. POWELL)

Nick Sanderson, Esq.,
Home Office.

CONFIDENTIAL

(1)

CONFIDENTIAL

PRIME MINISTER

NAZI WAR CRIMES

You will want to be aware of recent developments.

- H Committee would not agree to an amendment to the Criminal Justice Bill which would give our courts jurisdiction;
- an alternative course is being considered of setting up an independent inquiry to examine the material and advise whether the probative value of the evidence would justify legislation;
- to avoid charges of procrastination, we would make clear that we would introduce early legislation if the inquiry so recommended;
- it is envisaged that the inquiry would take about a year to report.

Content subject to views of colleagues?

C.P.P.

Yes not

CHARLES POWELL

13 January 1988



QUEEN ANNE'S GATE LONDON SW1H 9AT

12 January 1988

Dear Lord Chancellor,

WAR CRIMES

At its meeting on 1 December, H Committee discussed my proposals for the future handling of allegations that ex-Nazi war criminals are living in the United Kingdom. The Committee was unable to agree that we should introduce an amendment to the Criminal Justice Bill which would give our courts jurisdiction. I was invited to consult interested colleagues about the precise definition of the proposed jurisdiction and report the outcome to the Committee in January. Following further discussions with colleagues most closely concerned, including the Government's business managers, it has become clear that an amendment to the Criminal Justice Bill would cause controversy as well as difficulties for the tight Parliamentary timetable. We have therefore considered an alternative course which would involve the setting up of an independent inquiry to examine the material and advise whether the likely probative value of the evidence would justify the introduction of legislation.

At a meeting which John Wakeham held on 16 December, Malcolm Rifkind and I were invited, in consultation with you, the Law Officers and the Foreign and Commonwealth Secretary, to work up the details of the inquiry and bring it back to colleagues for collective endorsement. I now enclose a joint memorandum which has been cleared in draft with officials in those Departments most concerned. The paper concludes that, given the pressures on the Parliamentary timetable, a non-statutory inquiry offers the best way forward. Such a decision is likely to be criticised as procrastination, and I shall need to make it clear that if the inquiry so recommends, we shall be ready to introduce early legislation.

There are still some outstanding points to resolve regarding practical aspects of the inquiry, including the choice of its members and the financial implications. But I need to be in a position to announce our decision soon. I should therefore welcome any comments from colleagues by close of play on 19 January, so that I can report the outcome to Cabinet later that week.

I am copying this letter to the Prime Minister, all members of H Committee, Geoffrey Howe, George Younger, Patrick Mayhew, Kenny Cameron, Sir Robin Butler and First Parliamentary Counsel.

Yours sincerely
M. Sunders

(Approved by Mr. Howe
Secretary and signed
in his absence)

The Rt Hon Lord Mackay of Clashfern

WAR CRIMES

Memorandum by the Secretary of State for the Home Department
and the Secretary of State for Scotland

This paper sets out our proposals for the future handling of allegations that ex-Nazi war criminals are living in the United Kingdom.

Background

2. When we discussed the subject at H(87)18th meeting, the Committee was unable at that time to agree to the Home Secretary's proposal to introduce an amendment to the Criminal Justice Bill which would give the United Kingdom courts jurisdiction over war crimes committed during the Second World War by persons who subsequently became British citizens or settled in the United Kingdom. He was invited to consult interested colleagues about the precise definition of the proposed jurisdiction and to report the outcome to the Committee in January. In the course of our further meetings with the Lord Chancellor, Law Officers and business managers, it has become clear that any proposal to extend jurisdiction through the Criminal Justice Bill would cause difficulties for the tight Parliamentary timetable. In reviewing the options we have, however, agreed that we should take further action regarding the very serious allegations which have been made.

Independent Inquiry

3. It is proposed that we should appoint two independent advisers who would examine the material that has been submitted to us and advise whether the public interest would be served by our taking jurisdiction. In

undertaking this inquiry, the advisers would assess the strength of the case for any potential prosecution, including interviewing witnesses in the Soviet Union and assessing the probative value of any evidence they might give and of Soviet documents in court in this country. Such an investigation would assist us in judging the likelihood that a prosecution could get off the ground if the law were changed. We do not propose that the inquiry should be set up on a statutory basis, but the lack of powers to compel the giving of evidence should not be a serious hindrance.

Likely Reaction to an Inquiry

4. The setting up of an inquiry would prevent us from legislating in the Criminal Justice Bill, and may well be criticised as procrastination. We may also have some difficulty in convincing Parliament to reject amendments to the Bill which backbenchers seem likely to table. We should have to defend our decision on the basis that we need a better assessment of the facts before legislating on this controversial issue, and that legislation to take jurisdiction when no prosecution is likely to result would be a waste of Parliamentary time. The Soviet authorities are thought likely to co-operate in an inquiry, by permitting its members to interview possible witnesses and by providing additional documentation. But they may not readily appreciate that the function of the inquiry is to advise on changes to United Kingdom law rather than to prepare a case for prosecution. There is a considerable risk of an adverse Soviet reaction if the inquiry recommends against legislation or comments unfavourably upon the validity of material provided by Soviet witnesses or documents.

Terms of Reference

5. The purpose of the inquiry would be to advise us, on an assessment of the strength of the evidence available for use in proceedings in this country, whether the law should be changed so as to extend the jurisdiction of our courts. We think it desirable to draw the terms of reference fairly widely, so that the precise extent of any jurisdiction that might eventually be taken could be determined in the light of the inquiry's report. Suggested terms of reference for the inquiry are attached at Annex A: they have been agreed between interested Departments at official level.

Publication of Report

6. The inquiry is likely to take about a year to report. The question of publication could be awkward, since the material which the inquiry will review will focus very much on allegations against named individuals, and it will be essential to avoid prejudicing any prosecution that might conceivably ensue. If the report recommended legislation which would enable individuals to be prosecuted in due course, we envisage that it might be confined to summarising the extent of the inquiry; presenting the conclusion that the likely probative value of the evidence obtained justified that assumption of jurisdiction and the consequent recommendation in favour of amending the law; and recording that the evidence obtained had been deposited with the prosecuting authorities. If, however, it recommended against legislation, then it probably ought to indicate in broad terms the content of the evidence

4.

available and the reasons why it did not appear sufficient to found prosecutions. In either case there would be no obstacle to publication of the report as such.

7. Irrespective of whether or not a detailed report is published, there is some potential embarrassment in the possibility that following the assumption of jurisdiction - if the inquiry should so recommend - the prosecuting authority, who cannot be bound by the inquiry's findings, may conclude that the evidence, for whatever reason, did not justify prosecution in any particular case. That, however, would seem unavoidable in an inquiry of this nature.

Choice of Advisers

8. We believe that the inquiry should not be carried out at a high profile. Clearly the advisers should command confidence, but we do not want household names. The Lord Chancellor has suggested that the recently retired Director of Public Prosecutions (Sir Thomas Hetherington) and the former Crown Agent for Scotland (Mr William Chalmers) would be suitable for the assignment. The Solicitors General is doubtful, however, about the participation of a former Director, on the basis that he has had no investigation function (in contrast to the Crown Agent) and that an inquiry conducted by a former Director might appear to pre-judge any eventual decision of the Crown Prosecution Service.

9. We do not think these considerations should necessarily rule out the appointment of a former DPP. The task of the inquiry is not limited to investigation: its principal remit would be to assess whether the law should be changed in the light of the likely probative value of the evidence in proceedings if the necessary jurisdiction existed. This function lies clearly in the realm of prosecutorial experience. It is also clear that, even if the inquiry concluded in favour of legislation on the basis of its assessment of the evidence, the prosecuting authorities would not be obliged to follow any recommendation as to prosecution. Subject to any views expressed by colleagues, we shall consider this aspect further with the Law Officers, including the possibility of appointing a former senior Treasury Counsel or Queen's Counsel with similar experience of major prosecutions. It has also been suggested that a recently retired civil servant from one of the Home Departments might be appointed, since the issue may not be entirely forensic, and this is also a matter to which we would wish to give further consideration.

Resources

10. If we decide to set up an inquiry along the lines proposed, various costs would be incurred. The advisers would need support staff, at the minimum an administrative secretary at Grade 7 level and a personal secretary or typist. They might also need the services of a retired police officer to support the investigative side of their work. They will also need accommodation. In addition we shall have to pay the advisers, presumably on the basis of a daily fee. They will also incur subsistence and travelling

costs, and there may also be considerable costs in obtaining documents and in procuring translations and interpreting. No provision is available from within existing Departmental resources to cover such expenditure, and it is too late to bid for the necessary funds in the next PES round since the inquiry could well be over before the start of 1989-90. It would seem necessary that the costs of the inquiry, which would be of the order of £0.5 million, should be a charge on the Contingency Reserve.

Conclusion

11. Given the pressures on the Parliamentary timetable, an inquiry on the above lines probably offers the best way forward. But a decision to go for an inquiry rather than take jurisdiction in the Criminal Justice Bill is likely to be criticised. We need therefore to be able to announce that, if the advisers so recommend, we shall take early steps to introduce legislation. Subject to resolution of the practical points discussed in paragraphs 9 and 10 above, the Home Secretary would hope to be in a position to make an early announcement. We invite colleagues' agreement that we should proceed accordingly and that the Home Secretary should report to Cabinet the outcome of our consideration.

D.H.

M.R.

January 1988

INQUIRY INTO WAR CRIME:

SUGGESTED 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 Center 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 United Kingdom 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" means crimes of murder, manslaughter or genocide committed in Germany and in territories occupied by German forces during the Second World War.

FOR POL: WAR COMING

OLD 86



CONFIDENTIAL

CCP



NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon The Viscount Whitelaw CH MC
The Lord President of the Council
Privy Council Office
Whitehall
LONDON

ESP
1/11

5c November 1987

D. Hurd

WAR CRIMES

Douglas Hurd wrote to you on 12 November seeking colleagues' agreement to his proposals to give United Kingdom courts retrospective jurisdiction over war criminals guilty of grave crimes committed during 1939-45 War. ^{P100}

I fully support Douglas' proposals in principle and agree that a closely focused provision on the lines suggested is the most sensible approach. However I would be seriously concerned about the general implications for Northern Ireland should a suspect's place of residence dictate the jurisdiction which would be responsible for investigation and subsequent prosecution. Although we have no reason to believe that any persons suspected of war crimes are currently resident in the Province, the consequences for us of one subsequently being discovered or indeed one moving after investigations in Scotland or England have commenced needs to be addressed. Obviously the additional burden of a major investigation of the nature envisaged would have a greater impact on our limited resources even ignoring our ongoing problem with terrorism.

In light of these concerns I am inclined to favour a centralised unit (albeit with joint jurisdictional representation, if appropriate) which would be tasked with the investigatory function no matter where the suspect was resident within the United

/...

CONFIDENTIAL

Kingdom. As the offences concerned have been committed outside the United Kingdom there may also be practical advantages if such trials were held centrally. In support of the latter one would envisage that the use of courtrooms equipped with CCTV facilities for evidence from abroad are likely to be required as witnesses become increasingly elderly. Similarly the requirements for services of translators and interpreters are likely to pose problems should trials be dispersed throughout the country.

Copies of this letter go to the Prime Minister, other members of 'H' Committee, Sir Geoffrey Howe, George Younger and Sir Patrick Mayhew and to Sir Robert Armstrong and First Parliamentary Counsel.

TK

FOREIGN POL - War Commission
Oct 80



CCPC



MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000

DIRECT DIALLING 01-218

27th November 1987

MO 23/2E

CDP
27/11

Dear Willie,

WAR CRIMES

I have seen Douglas Hurd's letter to you of 12th November ^{at flap} proposing retrospective legislative change, and the supporting administrative machinery, to allow the investigation and prosecution of certain categories of war crimes, allegedly committed by people now living in this country. I have also seen the reply from the Private Secretary to the Prime Minister, and those from Geoffrey Howe, Nicholas Ridley and James MacKay.

I agree with Douglas Hurd's proposals in principle, and welcome their being limited to offences committed during World War II. I note Geoffrey Howe's reservations, however, and I too would welcome further advice on the points he raises. From my own point of view, I would add only two points. First, although the Home Office focus has naturally enough been concentrated on alleged offences by Nazi war criminals, my Department has had considerable involvement in allegations of biological warfare experiments carried out in a prisoner of war camp in Japan. Thus far, there has been insufficient evidence to support the claims of the British survivors, but the developments proposed are likely to lead to renewed pressure for full investigation, even though there is as yet nothing to suggest that any of the perpetrators are now domiciled in this country, or indeed that the case is strictly comparable.

The Rt Hon The Viscount Whitelaw CH MC



Secondly, although I accept the appropriateness of establishing investigative units in the Crown Office and the Crown Prosecution Service, I suggest that there will be a need for close consultation with the Ministry of Defence, both because my Department holds a number of records to which access will necessarily remain restricted, and because of the degree of specialist expertise in war crimes which has been built up in several branches here.

I am sending copies of this letter to the Prime Minister, other members of H Committee, Geoffrey Howe and Patrick Mayhew, and to Sir Robert Armstrong and First Parliamentary Counsel.

Yours truly,

A handwritten signature in cursive script, appearing to read "George Younger".

George Younger

FOR POLICE: War Criminal OJ 86



CCBG ✓



DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7477

Secretary of State for Trade and Industry

25 November 1987

Rt Hon Viscount Whitelaw CH
Lord President of the Council
House of Lords
London SW1A 0PW

CD 2574i

John Willie

WAR CRIMES

I have seen Douglas Hurd's letter of 12 November proposing that a tightly-drawn amendment should be made to the Criminal Justice Bill to give UK courts powers to try war criminals who are now UK citizens or who are residents in the UK. He also proposes the creation of a special office to investigate and bring war criminals to trial.

I wholly support both these proposals.

I am copying this letter to the Prime Minister, other members of H Committee, Geoffrey Howe, George Younger and Patrick Mayhew and to Sir Robert Armstrong and First Parliamentary Council.

*Y. er
J. er*

LORD YOUNG OF GRAFFHAM

JG2BXQ

foreign Pd : also chemicals
Oct 86



cells



ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01X936X6289

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Annes Gate
London
SW1H 9AT

*Prime Minister
A rather lukewarm
endorsement
CDD*

23 November 1987 *26/11*

Dear Douglas,

WAR CRIMES

I refer to your letter to Willie Whitelaw of 12 November. You also copied to Patrick Mayhew your minute of 6 August to the Prime Minister. I have seen her comments recorded in her Private Secretary's letter of 7 August; Kenny Cameron's letter to you of 3 September and George Younger's of 24 September; and I am aware of the further discussions that have been taking place at official level.

The question whether to reform the law of the United Kingdom to permit the prosecution in this country of war criminals who currently escape prosecution because they were neither residents nor nationals of Britain at the material time is fundamentally a question of policy rather than law.

As you say, the principal legal objection is the cautious approach always taken towards legislation which is retrospective. This approach is also reflected in Article 7 of the European Convention on Human Rights which prima facie excludes from criminal prosecution "any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed". Nevertheless the Article goes on expressly to exclude from such protection "any act or omission which at the time when



it was committed was criminal according to the general principles of law recognised by civilised nations".

There can be no doubt that murder, manslaughter, genocide and "war crimes" generally all fall fair and square within the ambit of what is regarded as criminal according to the "general principles of law recognised by civilised nations". Torture, should it be necessary to add it, would likewise fall within the same general principles.

It is also relevant to note that your proposals would work retrospectively in relation only to jurisdiction. They would not create criminal offences which did not exist in 1941. Furthermore the allegations against Gecas insofar as they relate to murder or manslaughter would have amounted in 1941 to allegations of criminal offences for which he would then have been liable to prosecution had he been a British subject at the time albeit that they were committed overseas.

In relation to the proposal for a special team of prosecutors within the CPS, the establishment of such a team in principle is perfectly feasible, but I must confirm that the additional costs could not be absorbed within the present budget and that as yet no bids for additional funds for this purpose have been made. Moreover, the CPS at present is, as you know, still without a full complement of staff to discharge its present responsibilities. For it to establish such a team, the recruiting of additional staff would be an absolute prerequisite. The number of additional staff required, and the cost to the CPS, would however be affected by the participation of the police, who would have an important role to play, at least in English and Welsh cases, in the process of investigation which you contemplate. A joint team of police investigators, prosecuting lawyers,

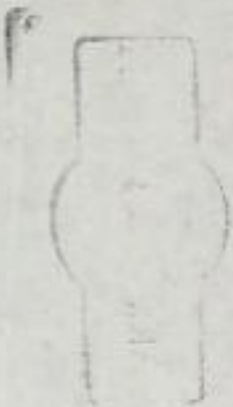


translators, and perhaps representatives of other relevant disciplines, would seem to me essential to the success of any such investigation, on the lines of the joint teams established by the Director of Public Prosecutions for the investigation and prosecution of serious fraud.

I have copied this letter to the recipients of yours.

Yours em

Nick.



FOLDING

POLICY

WAK CUMINTAS

10/16

cc/c
②



Right Honourable
The Lord Chancellor has
a pair. We may end
up going through an
expensive clawde. But
even so, it is probably right.

HOUSE OF LORDS.
LONDON SW1A 0PW

23 November 1987

Dear Douglas,

War Crimes

CSD 24/ki

Thank you for sending me a copy of your letter to Willie Whitelaw of 12 November seeking agreement to an amendment to the Criminal Justice Bill providing for prosecution of war criminals.

I entirely agree that everything possible should be done to ensure punishment of war criminals. But I note that the costs of investigation and prosecution are very high. I should say, parochially, that to this sum must be added the costs of one or more lengthy trials and legal aid for the defendants. If we are going to legislate to provide an offence we must be sure in advance that we are indeed proposing to investigate and if the results of the investigation justify it to prosecute. I think it quite likely that a very prolonged investigation will be necessary and that ultimately there may not be enough evidence of a kind acceptable in a British Court to justify prosecution. I had experience of this when Lord Advocate in relation to allegations about alleged murders by British troops in Aden.

I am sending copies of this letter to the recipients of yours. (Lord President, Sir Robert Armstrong)

Yours ever,

James.

MB

The Right Honourable
Douglas Hurd CBE MP
Secretary of State for the Home Office
Queen Anne's Gate
London
SW1H 9AT

FORZ POL: WAR CRIMES OCT '86





FCS/87/245

CONFIDENTIAL

CF
|| Await Law Officers
CDD view.
23/11

Lord President

Alleged Nazi War Crimes

- for*
1. I have seen the Home Secretary's letter of 12 November proposing an amendment to the Criminal Justice Bill to pave the way for investigating and, where appropriate, prosecuting, alleged Nazi War criminals now living in this country.
 2. Douglas Hurd's proposals, if enacted, would bring our position closer to those of Canada and Australia and should give us a stronger hand in dealing with public pressure for action. I favour them on these grounds.
 3. It seems to me right to limit the proposed amendments as closely as we can to offences committed during the Second World War.
 4. I am, however, still concerned at some of the possible implications. It would be a most unattractive outcome if, having taken jurisdiction, we had to defend a decision not to prosecute for lack of evidence, or if, after charges had been brought, the prosecutions failed because of insufficient evidence or because the accused was able credibly to claim that it was impossible for him in practice to receive a fair trial on the normal standards of criminal justice. There may be a human rights element of which we should take account. On all

CONFIDENTIAL

/these



CONFIDENTIAL

these matters I would feel on safer ground if we had the considered advice of the English and Scottish Law Officers.

5. More generally I would want to be sure that nothing we did would be held to justify other states taking extravagantly wide criminal jurisdiction over our citizens, eg over 'the crime of apartheid'. I am also hesitant for similar reasons to contemplate retrospective extension of the coverage of existing international Conventions. These are also issues on which I should be interested to have the Law Officers' views.

6. One of the practical implications we need to consider is that any investigation and prosecution would rely on the cooperation of the Soviet authorities. As the Crown Agent has pointed out, it would be necessary to have access to Soviet documentation; for our investigators as well as the Prosecution and Defence in any trial to be able to interview in advance witnesses in the Soviet Union and subsequently for these witnesses to travel to this country to give evidence. It is impossible to tell at this stage how far we should be able to do all these things satisfactorily. The Russians will probably wish to be seen to be cooperative. They have already said so to the Australians, and the Soviet Embassy here have taken the same line. But there might still be difficulties in practice, eg over free access to witnesses without Soviet supervision. We could expect the defence at any trial to make play with any limitations imposed by the Soviet authorities, and to

CONFIDENTIAL

/question



CONFIDENTIAL

question the reliability of Soviet witnesses and documentation. I do not see this as an objection to Douglas Hurd's proposals, but as a factor to be borne in mind.

7. I think we all recognise the importance of public presentation. I understand that Douglas Hurd met the All Party Group on 17 November and gave them an indication of progress. It seems to me desirable to reach and announce a substantive decision as soon as possible. We shall need to consider carefully the terms in which that is done.

8. I am sending copies of this minute to recipients of Douglas Hurd's.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
20 November 1987

CONFIDENTIAL

FOREIGN POL: War Criminals center

23.11.1945



Prime Minister

Agree the Home Secretary,
 recommendation that the Government
 should table an amendment to

the Criminal Justice Bill to give
 United Kingdom courts jurisdiction

12 November 1987

Dear (as President,

order murder, manslaughter & genocide
 committed during
 the last war?

Yes - I entirely agree with WAR CRIMES
 the Home Secretary's conclusions

C.D.P. 12/Ki
 J. Hap

In my minutes of 22 July and 6 August to the Prime Minister, I set out my thoughts on the various options which had arisen following the submission of material from the Simon Wiesenthal Center in support of their allegations about the presence of ex-Nazi war criminals in the United Kingdom.

Background

2. Last November the Center sent us a list of 17 alleged war criminals believed to be living in this country, while earlier this year Scottish Television passed on another list containing a further 34 names. Our enquiries have indicated that 16 of those on the two lists may be living in the United Kingdom.

3. Our review of the law has led us to conclude that we cannot at present take action against war criminals living in this country. War crimes are extradictable, but the alleged offences were committed in territory which is now under the control of the Soviet Union, with whom we have no extradition arrangement. Extradition elsewhere (e.g. to West Germany or Israel) would not be practical. Nor do our courts have jurisdiction over offences, however heinous, committed abroad by those who were not at the time British citizens. Some of

The Rt Hon The Viscount Whitelaw, CH., MC.

those on the lists are naturalised British citizens, but to take action to strip them of their citizenship would be largely an empty gesture; deportation as a disguised form of extradition is not permissible. In his letter of 24 September George Younger mentioned the existence of a Royal Warrant of 1945 which provides for the trial for war crimes in military courts. I would regard this as an unsafe basis for instituting proceedings in this country at the present time: the mode of trial, rules of evidence and punishments available (including the death sentence) all show the exceptional nature of the jurisdiction available under the Royal Warrant.

Evidence

4. It is thus clear that even if substantial evidence became available confirming the involvement in war crimes by those on the list, our law does not at present permit us to take any effective action. When I met representatives of the Wiesenthal Center earlier this year, I asked them to provide the evidence on which they based their allegations. In July they delivered a bundle of material, principally concerned with the case of Antanas Gecas, one of the people on their list. Their view is that Gecas is guilty of crimes far graver than those of Klaus Barbie. The material includes sworn statements from soldiers who served under Gecas, describing him as ordering the shooting of thousands of Jewish civilians in Lithuania and personally shooting those who were not killed in the mass executions. The documents indicate that Gecas was a member of the SS and received from them a medal for bravery.

5. These are more serious allegations than we expected. We arranged for the Wiesenthal Center material to be examined by the Crown Office in Edinburgh, on the grounds that if any legal action were taken against Gecas it would be more likely to take place in Scotland, where he resides. The Crown Agent has now analysed the Wiesenthal dossier on Gecas and concludes that:

- (i) the material in itself is inadequate and could not support a prosecution even if there was legislation to establish jurisdiction;
- (ii) if the Scottish courts were given jurisdiction, further investigations would be necessary; but
- (iii) subject to the necessary legislation, full preparation of the case and the availability of witnesses, there was no insuperable legal obstacle to a prosecution in Scotland; and
- (iv) the ability to mount such a prosecution would depend on assembling a special team to prosecute and investigate.

6. The task of bringing a case to court would be formidable. Not least of the difficulties would be the need to take statements in private from witnesses in the USSR and ensure their presence at any trial. I believe, however, that we have no choice but to take matters further. We are coming under increasing Parliamentary and public pressure to take action. The Wisenthal Center have said they will be providing more material and more names. There is a mass Parliamentary lobby planned for later this month to protest against the Government's apparent lack of action in bringing war criminals to trial. Our position is being unfavourably compared with the United States, Canada and Australia, all of whom have introduced special measures to investigate war criminals and bring them to trial. The Parliamentary All-Party War Crimes Group is growing increasingly concerned at our lack of action, and I understand that members of the Group are likely to table an amendment to the Criminal Justice Bill (which will shortly have its Report Stage in the Lords) to give the United Kingdom courts jurisdiction over offences of homicide committed by people before they acquired British citizenship.

Proposed Change in UK Law

7. Against this background, I am persuaded that we should be prepared to change our law. Without legislative change there is no point in undertaking further inquiries into war criminals. I recognise that even if we change our law, there is a risk that no prosecutions might ever take place. Nevertheless, I believe it would be right to close an obvious gap in our law which could enable major war criminals to go free. I think it better to grasp the nettle and pre-empt our critics by introducing a provision when the Criminal Justice Bill reaches the Commons.

8. At an earlier stage I had thought the most effective course might be to introduce the sort of change which the All-Party Group is contemplating. This could be done by extending the jurisdiction conferred by the Offences Against the Person Act 1861 and its Scottish counterpart to cover offences of murder and manslaughter committed by those who subsequently acquired British nationality. Such a provision would go far wider than just war crimes, and I am persuaded by the Lord Advocate's view that a more closely focussed provision would be preferable. What I have in mind is a provision which would give the United Kingdom courts jurisdiction over a limited category of offences committed during the last war. The offences would be confined to murder, manslaughter and genocide: we could consider adding torture if there were Parliamentary pressure to do so. By restricting the new provision to offences committed during the Second World War, we would avoid being drawn into all kinds of contentious issues such as offences which might have been committed in Vietnam or other areas of conflict since the 1945. There would, of course, be a retrospective element to such a provision, but this is inevitable with any legislation to deal with war criminals living in the United Kingdom. The normal objections to retrospective legislation would be reduced by the fact that we would not be creating new offences but merely permitting our courts to try people for conduct which was at the time "criminal according to the general principles of law recognised by civilised nations". (This wording is used in Article 7 of the European Convention on Human Rights as a basis for dispensing with the normal prohibition on retroactive criminal legislation).

9. A provision of this kind would call for the addition of one or two clauses to the Criminal Justice Bill. Our Legal Advisers are in touch with Parliamentary Counsel about the drafting of such a provision and its accommodation within the Bill. In the time available it will not be feasible to introduce the proposed amendment in the Lords, but it might be helpful to be in a position to announce our intentions during Third Reading (scheduled for 1 December).

Machinery for Conducting Investigations

10. The creation of jurisdiction will not in itself resolve the substantial practical difficulties to which war crimes investigations would give rise. Such investigations cost a lot and could not readily be undertaken by staff now available within the UK prosecution services. (I understand that the Crown Agent considers that it might take a dedicated team of investigators as long as two years to bring the Gecas case to trial). I do not propose that we should set up a special organisation in the UK on the lines of the United States Office of Special Investigations. But I should welcome the views of colleagues on the possibility of creating within the Crown Prosecution Service and the Crown Office special teams who would be dedicated to the investigation and prosecution of war crimes. (This would be similar to the Canadian approach). Their function would be to seek out evidence and assemble the prosecution case in respect of those who are alleged to be war criminals. Because of the Scottish dimension in the Gecas case, it would not be feasible to set up a single unit within the CPS covering the whole of the United Kingdom: instead we should have to create either separate units for Scotland and England or else a Joint CPS/Crown Office unit to take on board all the cases that are identified.

11. It is difficult to quantify the costs of setting up such units since the volume of cases is so uncertain. Overseas experience suggests that not many cases would be processed at the same time and that the units need not be large. Tentative estimates indicate that in broad terms the cost of setting up

two units, each with four professional and four support staff, and of bringing cases to trial, might be of the order of £1.5 million a year. The Crown Office and Crown Prosecution Service have indicated that they could not absorb additional costs of this order and that no bids for additional funds have yet been sought.

Conclusion

12. We shall need to act quickly if we are to regain the initiative on this subject. I hope that colleagues will feel able to agree to the proposed amendment to the Criminal Justice Bill on the lines described above. The question of special investigative machinery is hardly less pressing, since we shall no doubt be pressed to indicate what action we propose to take to investigate the allegations against Gecas and others. I would therefore welcome the views of colleagues on the case for creating special units to investigate war crimes. I recognise that the issues are difficult and that it may not be possible to arrive at decisions before the Bill leaves the Lords, but I hope that colleagues may be able to respond before the end of the month.

I am copying this letter to the Prime Minister, other members of H Committee, Geoffrey Howe, George Younger and Patrick Mayhew and to Sir Robert Armstrong and First Parliamentary Counsel.

Yours sincerely
A. Sanderson

(approved by the Home Secretary and signed in his absence)

FDR. POLICY: Allegations concerning
war criminals Oct 86

/





MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 8000
DIRECT DIALING 01-218 2111

MO 23/2E

24th September 1987

Dear Douglas,

WAR CRIMES

You kindly copied to me your minute of 6th August to the Prime Minister about the options open to the Government for further action on the material supplied by the Simon Weisenthal Center. I have also seen a copy of the Prime Minister's reply reported in her Private Secretary's letter of 7th August.

As I believe may have been mentioned to some of your officials during discussion within the last few weeks, there may be a further option for prosecution, which has not been brought out in the Home Office papers that I have so far seen: that is, for the trial of alleged war crimes by Military Court.

I have to preface what follows by saying that even if there proved to be no legal or technical bars (such as those I touch on below) that would preclude such a course, this is not an option for which I or indeed my senior Army colleagues would have any great enthusiasm. They would view with understandable distaste the requirement to direct serving officers to sit on the court, to try a 74-year old man for offences allegedly committed before they themselves joined the Army. There could also, of course, be appreciable wider presentational disadvantages, both as regards

The Rt Hon Douglas Hurd CBE MP

CGG

None.

Await Com with

em

at 21st.



Parliament and the electorate. Nevertheless I believe you would wish to be aware of the possibility, so that you may obtain a view from the Law Officers if you feel that it would be helpful to do so.

As I understand the position, the Royal Warrant for the trial of war criminals - Army Order 81/1945 given on 14th June 1945 - is still valid, by virtue of the fact that it has not formally been revoked. The Warrant provides for the trial by Military Court of 'war crimes', which are defined as 'the violation of the laws and usages of war committed during any war in which His Majesty has been or may be engaged since 2nd September 1939'. My officials have, however, pointed out that the Warrant refers to procedures under the Army Act 1881 and the Rules of Procedure of 1926 (rather than those prescribed by their current counterpart), and that Section 161 of the Army Act 1881 provided a time bar for offences committed more than three years before the date a trial begins. I have no doubt that the Law Officers would be able to offer an opinion on whether these factors would constitute any absolute impediment.

A Military Court is similar to a Court Martial and 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'. This latter provision means that a Military Court trying a defendant on such a charge would have jurisdiction unfettered by the territorial limitations on courts trying criminal offences. The place in which the alleged offence took place, the nationality of the defendant, and the location of witnesses would thus not present the same difficulties as in some other means of proceeding. I understand that Counsel may appear on behalf of the prosecution and the defendant; that - as with routine trial by Courts Martial - a Military Court provides




for pre-trial investigation in the form of an abstract of summary of evidence; and that such a Court is mobile and may adjourn to receive evidence at other locations.

I am sending copies of this letter to the Prime Minister, the Lord President, the Lord Chancellor, Geoffrey Howe, Malcolm Rifkind, Patrick Mayhew, Neil Cameron, and to Sir Robert Armstrong and First Parliamentary Counsel.

Yours truly,

George

George Younger



FOR POL: was crimes Oct 86

CONFIDENTIAL *Kie* *✓*
cc/c



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

7 August 1987

Dear Philip,

WAR CRIMES

The Prime Minister has noted the Home Secretary's minute of 6 August about the recent material supplied by the Simon Wiesenthal Center and on the various options for further action.

The Prime Minister agrees that there should be a review of the material by the Crown Office in Edinburgh to decide whether further information should be sought or whether a prosecution is likely to be impracticable.

On the wider proposal to extend the jurisdiction conferred by the Offences Against The Person Act 1861 and the Criminal Procedure (Scotland) Act 1975 to make it possible to prosecute people for crimes of murder committed abroad if they have subsequently obtained British nationality and reside in this country, the Prime Minister has commented that this would be a major change with unknown consequences. She would like to see further advice from the Law Officers and others before any meeting is held on this.

I am copying this letter to the Private Secretaries to the Lord President, Lord Chancellor, Foreign Secretary, Secretaries of State for Defence and Scotland, Attorney General, Lord Advocate, Sir Robert Armstrong and First Parliamentary Counsel.

Yours sincerely,
Charles Powell

C.D. POWELL

Philip Mawer, Esq.,
Home Office.

CONFIDENTIAL *QTA*

CCPA 1



Prime Minister

The only decision required now is whether to get the Crown Office in Edinburgh to ask the evidence against Gecas & advise whether a prosecution is likely to succeed. Agree?

Prime Minister

WAR CRIMES

Following my minute of 22 July, I thought you might find it helpful to know my present view on the most recent material supplied by the Simon Wiesenthal Center and on the various options for further action.

For the longer term, the Home Secretary proposes

changing the Criminal Justice Bill, to make it possible to prosecute people who subsequently acquired British nationality for crimes of murder committed abroad.

Review of material

2. As I indicated in my earlier minute, on 17 July the Center passed to us a large bundle of material concerning the case of Antanas Gecas. My officials have examined this material and believe that it contains grounds for reaching a prima facie view that Gecas may be guilty of mass murder or genocide. The material includes sworn statements by soldiers who served under Gecas in Lithuania, describing him as ordering the shooting of thousands of Jews and personally shooting those who had not been killed in the mass executions. The material also discloses that he was listed as a member of the SS, from whom he received a medal for bravery.

COJ Y/P

3. In the light of this material, I believe we have no choice but to take matters further. I therefore propose that we should obtain a legal opinion on the documentary material relating to Gecas in order to assess its likely admissibility and value as a basis for a potential prosecution. I suggest that this review of the material should be undertaken by the Crown Office in Edinburgh, on the grounds that any prosecution of Gecas would be more likely to take place in Scotland, where he resides, and be subject to Scottish law. I understand that Malcolm Rifkind and

For further

discussion

This would be a MAJOR

change with

unknown consequences.

How the hard character can?

I should need the very best further /Neil Cameron advice

we could obtain before holding a meeting to discuss this

Neil Cameron are content with this course. A review of this kind would enable the Scottish prosecuting authorities to report on whether (leaving aside the question of jurisdiction, to which I refer below) in their professional view further information should be sought or whether the obstacles are so great that a prosecution would be unlikely to get off the ground. It would also put us in a better position to assess the options for changing the law. The Wiesenthal Center are continuing their search for documents, and if material of comparable weight becomes available in respect of other names, I would envisage processing it in the same way, through the Crown Office in Scotland or the Crown Prosecution Service in England or Wales as appropriate.

Future options

4. If further action becomes necessary extradition would in many ways be the most natural course for dealing with war criminals. But there are major difficulties in the present circumstances. The alleged offences occurred in territory which we recognise de facto (but not de jure) as being under the control of the Soviet Union. Although the Russians were reported in the recent Scottish Television programme as likely to request the extradition of the war criminals living in the UK, we have no extradition treaty with the Soviet Union. Once the Criminal Justice Bill becomes law, it would be possible to extradite on an ad hoc basis without a treaty, but I do not believe such a course would be acceptable or tolerable. Within the last week or so I have seen reports that Israel may be prepared to seek the extradition of war criminals from the UK if the UK does not try them: the Prime Minister, Mr Shamir, is reported as saying that Israel would investigate the latest evidence against Gecas with a view to seeking his extradition. While extradition to Israel would be a possibility, it would almost certainly require amendments to the Criminal Justice Bill and then to our bilateral treaty in order to recognise Israeli extra-territorial jurisdiction. It is doubtful whether extradition to West Germany is a realistic option, as

/the Germans

the Germans have shown no interest in the matter and the legal basis for their possible jurisdiction over territory occupied by the Third Reich is unclear.

5. In view of these problems, and the difficulties in the way of deportation, which I set out in my previous minute, I am increasingly coming to the view that if further action is necessary, we should be prepared to extend UK jurisdiction to enable our courts to deal with the most serious war crimes. Any such change would have to involve an element of retrospection, with all the difficulties to which that gives rise, but I believe that the peculiar horror which attaches to Nazi war crimes would justify such a move.

6. One possibility would be to amend the Genocide Act 1969 and give our courts jurisdiction over this crime wherever committed. But it might be difficult to satisfy a UK court that an accused person had the necessary intent to destroy a particular national, ethnic, racial or religious group. I would therefore tend to favour extending the jurisdiction conferred by the Offences Against the Person Act 1861 and the Criminal Procedure (Scotland) Act 1975. These provisions already enable UK Courts to try offences of murder and manslaughter committed abroad by those who are British nationals at the time of the offence. The proposal would be to extend those provisions to those who obtain British nationality after the offence is committed and to those who are permanently resident in this country. Since the UK already takes responsibility for crimes of homicide committed by its nationals abroad, it is not a great step to our accepting similar responsibility for those who later receive UK nationality or are allowed to settle here. This option would enable us to try war criminals living in the UK who are accused of murder or manslaughter (or associated inchoate offences such as conspiracy to murder). It would not cover all war crimes (eg torture) or apply to those who are only temporarily in the country, but these would not be major defects. I agree with the Foreign and

/Commonwealth

Commonwealth Secretary that we should not contemplate initiating action against people who do not live in the UK, much less embark on an international campaign to bring Nazi war criminals to justice. The proposal would not be confined to war crimes, but would cover any past offence of murder or manslaughter committed outside the UK by one who had become a British national or was settled here; but in such cases the option of extradition would remain.

Handling

7. Until we have had the Crown Office's assessment of the Gecas material (which I hope will not take more than a few weeks) we do not need to reach a view on whether to change the law. But we may well need to reach a decision in early autumn, including the choice of a suitable legislative vehicle. An extension of extra-territorial jurisdiction on the lines suggested above would probably require no more than two clauses, which I would be ready in principle to accommodate within the Criminal Justice Bill. But if we wished to give our proposals a higher profile and implement them more quickly than the Criminal Justice Bill is likely to permit, we might consider a very short self-contained Bill which could be presented as a specific response to the problem of war criminals. In neither case could we be certain that a prosecution would in fact ensue, and we should have to avoid giving the impression that any change in the law was intended only as a specific response to the case of Gecas.

8. I shall be having another meeting with the All-Party War Crimes Group (chaired by Merlyn Rees) early in the autumn. Meanwhile if we are asked what action the Government is taking following the recent meeting with the Wiesenthal Center, I suggest that we should say that the new material contains serious allegations which are being examined within Government. In the light of our assessment we will consider whether there is a case for changing the law.

/Conclusion

Conclusion

9. At this stage I invite you and other colleagues to note that we may be faced with the need to take quick decisions once we have received the results of the Crown Office's assessment. I would therefore particularly welcome any reaction from colleagues to the possibilities for changing the law on the basis suggested above.

10. I am copying this minute to Willie Whitelaw, Michael Havers, Geoffrey Howe, George Younger, Malcolm Rifkind, Patrick Mayhew, Neil Cameron, and to Sir Robert Armstrong and First Parliamentary Counsel.

Douglas Hurd

6 August 1987

FOREIGN POL
WAR CRIMINALS
10/V6



PM/87/046

PRIME MINISTERWar Crimes

1. I have seen Douglas Hurd's minute of 22 July. This is indeed a difficult matter which touches on our relations with a number of countries. It will, I believe, require careful public presentation.
2. I agree that extradition to the Soviet Union of war crimes suspects living here is not an option. And I note that, in practice, we can at present take no effective legal action against them in the United Kingdom. On the question of possible extradition to the Federal Republic of Germany, Douglas Hurd quite rightly points out that the West Germans have shown no interest. I believe they would find such a course of action politically unattractive. We also have doubts that the Federal Republic would accept jurisdiction. In the case of Israel, the Foreign and Justice Ministers are reported as saying that if we do not take action against Antanas Gecas, Israel would wish to do so if sufficient evidence were available. The Demjanjuk trial indicates that Israel does claim extra-territorial jurisdiction for war criminals.
3. I would, as Douglas Hurd suggests, be against an approach to the Russians to ask for evidence, as this could give rise to expectations we cannot meet if we are unable to take action against those concerned. The Russians know where we are if they wish to provide evidence to us rather

Foreign Pol: war crimes Oct. '86





than TV companies, and there have been indications recently that they may be preparing to do this. At the same time we should avoid giving the impression that the Government is ignoring available evidence. Soviet officials have been told that we should welcome further information from any quarter. If necessary, we can say so publicly.

4. If it is decided that the balance of advantages lies in favour of a change in United Kingdom law to allow for jurisdiction over war crimes committed elsewhere, I believe it important that any new legislation should be framed carefully to ensure that it provides only for prosecution of war crimes suspects resident in the UK; and that this be made clear publicly. We need to bear in mind that the present interest in war crimes extends beyond the individuals named by the Simon Wiesenthal Center. I believe we should avoid any suggestion that we propose to embark on an international campaign to bring Nazi war criminals to justice.

5. I am sending copies of this minute to Douglas Hurd, Willie Whitelaw, Michael Havers, Patrick Mayhew and Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
30 July 1987



ROYAL COURTS OF JUSTICE
LONDON WC2A 2LL

CCPC

01 936 6407

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Annes Gate
London
SW1H 9AT

CDP
27A

27th July 1987

Dear Douglas,

WAR CRIMES

I am responding to your minute of ~~22~~ ^{at time} July to the Prime Minister, copied to Patrick Mayhew, in which you said that you would find it helpful to have colleagues' views as you decide how to handle this difficult issue.

I note from the penultimate paragraph of your minute that you are not at this stage asking colleagues to choose between the possible options, pending your assessment of the new material. However, unless something wholly unforeseen emerges therefrom, the legal position will remain the same and the decision then to be taken will be one of policy.

I am copying this letter to the Prime Minister and to Willie Whitelaw, Michael Havers, Geoffrey Howe and Sir Robert Armstrong.

Yours ever

Nick.

FOREIGN PBL: War Criminals Oct 86



I have told the
office
the off.



was

10 DOWNING STREET

Prime Minister

The Home Secretary
has asked
whether he should
refer to this at
about tomorrow.

Agree he should
refer, but in very
broad terms without
going into details or
names?

Yes Mr

N. L. W.
22-7



Prime Minister

No call for decisions at this stage. The first step is to examine the evidence which the Center have now submitted. But it may arise in questions.

CDP
22/7

PRIME MINISTER

WAR CRIMES

I thought it might be helpful if I were to write setting out the latest developments on this tricky issue. There is a Channel 4 television programme tonight which, together with the recent visit of representatives from the Simon Wiesenthal Center, may ensure it hits tomorrow's headlines. The issue is one on which I would find it helpful to have colleagues' views as I formulate a way of handling it.

HISTORY

2. In November last year we received from the Los Angeles-based Simon Wisenthal Center a list of 17 alleged war criminals believed to be living in this country. The list included no evidence against any of the individuals named but did make a general allegation that they were guilty of war crimes committed in Lithuania and Latvia during the German occupation of those countries in 1941. Research into the names on the list indicates that nine of the 17 are still living in this country. Earlier this year Scottish Television passed on another list - obtained apparently from the Soviet Embassy in London - this time of 34 names. Our investigation into this list suggests that seven may still be living here.

LEGAL POSITION

3. My review of the law on this question led to the uncomfortable conclusion that there was at present no scope for meaningful action against any of the people on the lists.

War crimes (e.g. genocide, murder, etc) are extraditable, but the alleged offences were committed in Baltic states which are now under the control of the Soviet Union. We have no extradition treaty with the Soviet Union. It appears likely that the West German courts have jurisdiction over offences committed in that area at that time but the Germans have shown no interest in the matter and there would in any event appear to be severe evidential difficulties in the way of extradition to their country. We understand that Israel is likely to have extra-territorial jurisdiction over the offences in question. It might be possible to amend the Criminal Justice Bill to enable us to recognise Israeli jurisdiction but it is far from certain that the Israelis (who have not been approached) would welcome being saddled with this problem.

4. I have made it clear that I would not contemplate extradition to the Soviet Union, either by way of a special arrangement with that country or by using the new ad hoc extradition powers which will become available on the enactment of the Criminal Justice Bill.

5. Five of the nine survivors on the Simon Wiesenthal Center's list are naturalised British citizens. If they turned out to be war criminals then it might be possible for me to strip them of their citizenship, provided it was also possible for me to conclude that their continued enjoyment of that citizenship would not be conducive to the public good. If I were to take this step (and it could be appealed against), then technically speaking the people concerned would become deportable. However, it is not possible for me to use my deportation powers as a form of disguised extradition and I have no doubt that the people concerned would argue strongly that this was the primary purpose of the whole exercise. On its own, the removal of citizenship would, in my view, be an empty gesture.

6. United Kingdom courts have no jurisdiction over these offences. There is extra-territorial jurisdiction over homicide committed abroad but only where the accused person was at the time of the offence a British citizen.

EVIDENCE

7. I explained this legal background both to the All-Party War crimes Group (chaired by Merlyn Rees) and to representatives of the Simon Wiesenthal Center when they came to London on 2 March. I said that the question of whether any special legal arrangements to deal with this issue were called for had to turn on the nature of the evidence against those on the lists. I invited the Center to provide the evidence on which they based their allegations.

8. Last Friday, 17 July, the Center delivered a large bundle of evidence, principally concerned with the case of Antonas Gecas, one of the people on their list. My officials have not yet completed their review of this material, but it appears to contain evidence that Gecas was directly involved in the slaughter of thousands of Jews in Lithuania and Latvia in 1941. The Center's own view is that Gecas is guilty of far more extensive crimes than Klaus Barbie. They urged that the evidence was sufficient to justify an immediate investigation into the Gecas case by the Government. This would entail our sending investigators to the Soviet Union to interview the eye witnesses whose depositions were included in the evidence.

9. In response, officials explained the work which had been done to identify the extent to which those named on the list were alive in this country. Statements made by the nine survivors following their entry to this country and when making any applications for citizenship have also been examined and compared with various items of source material cited by the Simon Wiesenthal Center in its original list.

Nothing useful emerged from this comparison. The Simon Wiesenthal Center urged on officials the importance of seeking evidence from the Soviet authorities, which they went out of their way to say was generally accepted as reliable. But I know that the Foreign & Commonwealth Office has reservations as to the wisdom of approaching the Soviets on this matter.

OTHER COUNTRIES

10. The United States has a well established Office of Special Investigations which is charged with the task of Nazi hunting. It relies on US citizenship and immigration law to expose and deport alleged Nazis. Recently the Americans deported a man to the Soviet Union who had been sentenced to death in his absence (he subsequently died - apparently of natural causes - in a Soviet prison). Both Canada and Australia have appointed commissions of enquiry into the problem. Both countries also received lists from the Simon Wiesenthal Center. In both cases the commissions recommended, and the Governments accepted, that legislative action would be necessary to deal with the problem, even to the extent of the establishment of extra-territorial jurisdiction where other methods of bringing people to justice proved not to be available. The Australians are setting up an organisation similar to the US Office of Special Investigations, but the Canadians decided against this. Sweden also received a list from the Simon Wiesenthal Center but that country has decided that its statute of limitations rules out action and that there was no reason to change the law in that respect.

CONCLUSION

11. The possible options fall under three main headings:

- (a) to change the law to give us jurisdiction retrospectively over war crimes committed elsewhere;

CONFIDENTIAL

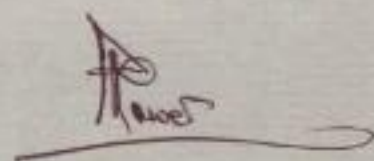
5.

- (b) to deport or extradite, with all the difficulties about destination outlined above;
- (c) to do little or nothing.

Simon Wiesenthal
Evidence of work on person

I do not elaborate these choices now or ask colleagues to choose between them. The first thing is to assess the new material which we have just received. But it is likely that we shall be faced before long with the need for a highly charged political decision.

12. I am copying this minute to Willie Whitelaw, Michael Havers, Geoffrey Howe, Patrick Mayhew and Sir Robert Armstrong.



22 July 1987

Approved by the Home Secretary
and signed in his absence

CONFIDENTIAL



File

PS/Prime Minister

cc PS/ Secretary of State
HMA
Mr Ingham

WAR CRIMINALS IN BRITAIN

1. Izvestia of 27 March has a short article written by a Mr P Shafeta, the editor of a local newspaper in the Ukraine, about the alleged war criminals Zvarich and Getsevichius.

2. The article states that the people of the locality in the Ukraine where these two, and particularly Zvarich, committed their crimes - the area covered by the local newspaper - wrote to Mrs Thatcher to ask her to send Zvarich back to the scene of his crimes. They had not had a reply by the time Mrs Thatcher went to Israel, where she said how moved she had been by the museum to the Holocaust. "Everyone should come and see this so that they never forget it. I am not sure that the new generation really knows what it was we were fighting against". This was a quite correct and responsible attitude. Mrs Thatcher had been moved by a photograph of Nazis shooting a woman and a child. However, in the Summer of 1942 in Volyn that was exactly what Zvarich had done. In a neighbouring village on 11 February 1944 he had thrown a grenade into a house where a wedding was going on, killing 27 people. Shafeta states that he wrote to Mrs Thatcher about this but received no answer except the insulting behaviour of the British authorities to the memory of the victims of Nazism. Reference to the Statute of Limitations and the allegedly late application for the extradition of war criminals had no foundation. The then People's Commissar for Foreign Affairs of the Ukraine Manuilsky first brought this question up in 1947 in the United Nations. There could be no Statute of Limitations for war criminals, there should be no place for them except the dock.

S N P Hemans



016
C

② EJP

Prime Minister

CD

25/3

no

PRIME MINISTER

WAR CRIMINALS

I gave a brief oral report to Cabinet following my meeting on 2 March with representatives from the Simon Wiesenthal Center (SWC). The purpose of this minute is to give you and our colleagues with a more direct interest in the subject a fuller account of the meeting and of the present position.

The meeting with Rabbi Hier and his colleagues passed off in a courteous and friendly manner. The SWC representatives explained that the background to the present burst of activity was the accidental release of Red Cross immigration files from the 1940s. About 10% of the research work had now been completed and on the basis of this the Center had sent 242 names to eight different countries (I was given a complete set of these names). The main object of the SWC was to press me to establish some form of special investigation machinery along the lines of the United States Office of Special Investigations. The Australians have recently decided to adopt such a course, and the Canadians have now announced that they will take similar steps.

In response, I said that the horror of these crimes was not diminished by the passage of time. There was no statute of limitations in the United Kingdom, but it was clear that the United Kingdom courts had no jurisdiction over the alleged offences and we had no effective extradition arrangements with the Soviet Union. (I made it clear that we would not in any event contemplate extraditing persons to the Soviet Union). Of the six people we had identified as being alive, five were British citizens. The naturalisation papers were being checked, although it was unclear whether this work would yield anything useful. The present legal position gave us little room for manoeuvre but there was a statutory procedure for deprivation of citizenship, and beyond that changes in the law were in theory possible, for example recognising Israeli extra-territorial jurisdiction for extradition purposes. It was, however, too early to decide what, if any,

legislative or organisational changes were required. We should need to see the evidence against the individuals first, and it would help greatly if the Center were able to supplement the material they had supplied with copies of the documents in their possession. Rabbi Hier indicated that the Center would be happy to supply these documents, but it did not wish to be seen as having an investigatory role.

There was a brief discussion of the naming of suspects in the press. Rabbi Hier and his colleagues stressed that it was the policy of the Center not to publicise names. I welcomed these assurances, emphasising that we for our part had no intention of releasing any names. To assist in obtaining documentary material, I agreed to supply the Center privately with the names of those from the list who are still alive in the United Kingdom.

I believe the outcome of this meeting has been helpful in that the pressure on us to take quick action has subsided. Good relations have been secured with the British Board of Deputies who, while publicly supportive of the Wiesenthal Center, have made it clear to us in private that they do not want to see a witch hunt. The message of the very limited scope afforded by our legal provisions has been put across effectively, and appears to have been accepted by all sides. The Center now have the opportunity to provide the evidence which will enable us to judge whether any more far-reaching action is required. In addition my Department is seeking to obtain the documents cited by the Center and is reviewing the naturalisation files on those who obtained British citizenship. Work is also in hand to establish more clearly whether any more of those on the list are still alive and in the United Kingdom.

It remains my view that we are not yet in a position to decide whether there may be a case for introducing changes to our law or for setting up some kind of special investigative machinery.

I am sending copies of this minute to Quintin Hailsham, Geoffrey Howe and Patrick Mayhew.

Douglas Hurd.

24 March 1987



L. DB
cto

10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

13 March 1987

Dear Mr. Kopelowitz,

Thank you for your letter of 5 March following the Home Secretary's recent meeting with representatives of the Simon Wiesenthal Center and of the Board of Deputies. You will by now have seen a letter which the Home Secretary sent you on 10 March. Like him, I am sure that it is important that the Board and the Government should remain in close touch in this sensitive and most important matter.

Thank you for your kind wishes for my visit to the Soviet Union.

Yours sincerely
Margaret Thatcher

Dr Lionel Kopelowitz, J.P.

4



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

11 March 1987

Dear Charles

Thank you for your letter of 10 March enclosing one from Dr Lionel Kopelowitz. Dr Kopelowitz' letter has in fact crossed with one which the Home Secretary sent him on 10 March (copy attached) following up the recent meeting with members of the Wiesenthal Center.

In the circumstances I think that it would suffice for the Prime Minister to reply briefly along the lines of the attached draft.

Yours ever

W R FITTALL

Draft letter for signature by the Prime Minister to:

Dr Lionel Kopelowitz
The Board of Deputies of British Jews
Woburn House
Tavistock Square
LONDON
WC1H OEP

DISAEN

Thank you for your letter of 5 March following the Home Secretary's recent meeting with representatives of the Simon Wiesenthal Center and of the Board of Deputies. You will by now have seen a letter which the Home Secretary sent you on 10 March. Like him, I am sure that it is important that the Board and the Government should remain in close touch on this sensitive and most important matter.

Thank you for your kind wishes for my visit to the Soviet Union.

CR



QUEEN ANNE'S GATE LONDON SW1H 9AT

10 March 1987

Dear Dr. Kopelowitz

I was very pleased that the Board of Deputies was able to be represented at the meeting which I had last week with members of the Simon Wiesenthal Center.

Your colleagues will have reported to you on the meeting. I explained that there are no statutory limitations under British law which would enable those accused of war crimes to enjoy immunity although in practice the gathering of evidence becomes more difficult with the passage of time. The fact that names are included in a particular list is not of course itself an indication of guilt. The difficulties in the way of prosecution or extradition under our existing law are explained in the letter of 13 February from the Prime Minister. There are, however, other possible courses of action open to the Government, for example the statutory procedures for depriving a person of his citizenship. There are also procedures for deportation, although these may not be used as a disguised form of extradition. Beyond that it would be possible to contemplate changes in the law, although the case for any such change would depend substantially on the weight of evidence brought forward against those alleged to have committed war crimes. Before the Government could contemplate recommending to Parliament a change in the law it would be necessary to have much more evidence to support the allegations which have so far been made against particular individuals.

I emphasised, at the meeting, the importance of obtaining evidence as to the guilt of those accused of war crimes. I indicated that the Government would be continuing its own enquiries to establish how many of those named in the Center's list were still alive and where they are living. We are also examining the statements which those concerned made when interviewed on their arrival in this country and when applying for British citizenship or travel documents. In addition we are trying to track down the documentary material which the Center has identified to support the allegations made against those named on the present list. The Center helpfully confirmed at the meeting that it would be happy to provide us with copies of the documentary material available to it.

I said at the meeting that we had no intention of releasing the names of those on the list who were still living in this country and your representatives and those from the Center readily agreed that they too would not wish to disclose any names.

I hope that we can keep in close touch on this important and difficult matter.

Yours sincerely
Douglas Hurd

Dr Lionel Kopelowitz

FORREIGN POLICE



WRISANTHALL
CENTRE

10/11/6



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

del-101
10 March, 1987.

I attach a copy of a letter to the
Prime Minister from Dr. Lionel Kopelowitz.

BF // I should be grateful if you could
provide a draft reply for the Prime Minister's
signature, to reach me by 24 March please.

(C.D. Powell)

William Fittall, Esq.,
Home Office.

✓

The Board of Deputies of British Jews

CF pps

WOBURN HOUSE, TAVISTOCK SQUARE, LONDON, WC1H 0EP.

Telex: 262666 BOD G Telegrams: DEPUTIES, LONDON, WC1 Telephone: 01-387 3952 or 388 7651

FROM THE PRESIDENT

5th March, 1987

The Rt. Hon. Mrs. Margaret Thatcher MP
Prime Minister
10 Downing Street
LONDON SW1

R10

Dear Prime Minister

pps

Thank you for your letter of February 13. I delayed replying until after the meeting between the Home Secretary and representatives of the Simon Wiesenthal Center in Los Angeles, and of the Board of Deputies. This has now taken place and I am sure that you have received a full report.

My colleagues were encouraged by the Home Secretary's promise - and indeed your own - that the investigations are continuing and that these will include a study of how countries with similar legal systems to our own have approached the problem. In this regard, we would recommend contact with the governments of the United States, Canada and Australia.

There are also the immigration records to be checked. It may well be that the people concerned, six of whom have now been identified, made false statements in order to obtain entry to the U.K. or subsequently when they applied for British nationality.

Obviously the question of extradition may also arise at a later stage.

The Nazi atrocities remain highly emotive as indeed you recall, and the Jewish community is greatly concerned that those who committed them should be brought to justice. Obviously, proper evidence must be produced and the matter thoroughly investigated. This is all we are asking for.

May I take this opportunity, on behalf of the Board, of wishing you a safe and successful visit to the Soviet Union.

*Yours sincerely,
Lionel Kopelowitz*

(Dr.) Lionel Kopelowitz JP

FOLLOW
POLICY

WIKI AT THE CENTER
10/16

GRS 900

UNCLASSIFIED
FM CANBERRA
TO PRIORITY FCO
TELNO 139
OF 050300Z MARCH 87
INFO ROUTINE OTTAWA, STOCKHOLM, TEL AVIV, WASHINGTON

YOUR TELNO 37 TO TEL AVIV: NAZI WAR CRIMINALS.

1. BACKGROUND. THE MENZIES REVIEW OF MATERIAL RELATING TO THE ENTRY OF SUSPECTED WAR CRIMINALS INTO AUSTRALIA WAS TABLED IN PARLIAMENT LAST DECEMBER (SEE LINDSAY'S LETTER OF 15 DECEMBER TO THOM SPD). IT CONCLUDED THAT IT WAS LIKELY THAT PEOPLE WHO HAD COMMITTED SERIOUS WAR CRIMES HAD ENTERED AUSTRALIA AND RECOMMENDED THAT (I) THE GOVERNMENT SHOULD TAKE APPROPRIATE ACTION UNDER THE LAW TO BRING TO JUSTICE PERSONS FOUND IN AUSTRALIA WHO HAD COMMITTED SERIOUS WAR CRIMES; AND (II) A UNIT BE ESTABLISHED WITHIN THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP) BOTH TO MAKE PRELIMINARY INVESTIGATIONS OF THE 70 NAMED (IN A CONFIDENTIAL PART OF THE REPORT) AND TO DEAL WITH REQUESTS FOR EXTRADITION OF ALLEGED WAR CRIMINALS.

2. THE GOVERNMENT HAS BEEN CONSIDERING THE RECOMMENDATIONS, AND LAST WEEK THE ATTORNEY-GENERAL, MR BOWEN, ANNOUNCED ITS RESPONSE.

DETAIL

3. MR BOWEN SAID THAT THE GOVERNMENT ACCEPTED THE REVIEW'S MAIN CONCLUSION AND RECOMMENDATIONS (OUTLINED ABOVE). IT DID NOT REGARD THE CHAPTER AS CLOSED ON SERIOUS WAR CRIMES. IT PREFERRED TO PROSECUTE IN AUSTRALIA, AND WOULD BE CONCERNED AT THE PROSPECT OF MAKING SPECIAL ARRANGEMENTS TO EXTRADITE PERSONS TO COUNTRIES WITH MARKEDLY DIFFERENT JUDICIAL SYSTEMS (IN OTHER WORDS THE SOVIET UNION AND EASTERN EUROPE). HOWEVER SHOULD THERE BE A REQUEST FOR EXTRADITION OF AN ALLEGED WAR CRIMINAL WITHIN THE CONTEXT OF AUSTRALIA'S NORMAL EXTRADITION ARRANGEMENTS, IT WOULD BE DEALT WITH BY THE ATTORNEY-GENERAL IN THE USUAL WAY.

/4

4. MR BOWEN ANNOUNCED THE FOLLOWING MEASURES:

A. A SPECIAL INVESTIGATIONS UNIT WOULD BE SET UP IN THE ATTORNEY-GENERAL'S DEPARTMENT, REPORTING DIRECTLY TO HIM, TO INVESTIGATE THOSE NAMED IN THE REVIEW AND ANY OTHER PERSONS RESIDENT IN AUSTRALIA ALLEGED TO HAVE COMMITTED WAR CRIMES (SUCH AS THOSE NAMES PASSED ON BY THE SIMON WIESENTHAL CENTRE TO MR HAWKE, THE PRIME MINISTER). IT WOULD BE HEADED BY FORMER NATIONAL CRIME AUTHORITY COMMISSIONER, MR ROBERT GREENWOOD QC. IT WOULD BE UP TO THE OFFICE OF THE DPP TO DECIDE WHETHER EVIDENCE GATHERED BY THE UNIT WARRANTS CHARGES AGAINST SUSPECTS. PROSECUTION WOULD ONLY PROCEED WHERE THE CHARGES WERE SERIOUS AND FULLY SUPPORTED BY EVIDENCE. SERIOUS CHARGES MEANT, FOR EXAMPLE: PARTICIPATION IN POLICE OR SECURITY UNITS INVOLVED IN DEPORTING, ILL-TREATING OR MURDERING PEOPLE ON RACIAL OR POLITICAL GROUNDS; WORKING AS GUARDS OR ADMINISTRATORS IN GERMAN-ESTABLISHED CONCENTRATION CAMPS OR PRISONS AT WHICH PEOPLE WERE ILL-TREATED OR MURDERED; AND PARTICIPATION AT EXECUTIVE LEVEL IN NATIONAL OR LOCAL PUPPET GOVERNMENTS UNDER GERMAN DIRECTION INVOLVING DIRECT RESPONSIBILITY FOR DEPORTATION, ILL-TREATMENT OR MURDER ON RACIAL OR POLITICAL GROUNDS. LESSER ACTIONS SUCH AS MEMBERSHIP IN OR DEMONSTRATED SYMPATHY FOR FASCIST MOVEMENTS WOULD NOT WARRANT ATTENTION.

B. TO ENABLE PROSECUTIONS IN AUSTRALIA, THE GOVERNMENT WOULD AMEND THE WAR CRIMES ACT 1945 AS SOON AS POSSIBLE. PRINCIPAL AMENDMENTS WOULD: PROVIDE FOR TRIALS BEFORE STATE AND TERRITORY COURTS EXERCISING FEDERAL CRIMINAL JURISDICTION, INSTEAD OF MILITARY TRIBUNALS AS AT PRESENT; AND PROVIDE FOR COVERAGE OF CRIMES COMMITTED IN EASTERN EUROPE DURING THE SECOND WORLD WAR BY PERSONS RESIDENT IN AUSTRALIA, NOW OR IN THE FUTURE.

4. THE GOVERNMENT ARE STILL CONSIDERING A RECOMMENDATION BY MR MENZIES THAT WHERE EXTRADITION IS INAPPROPRIATE, CONSIDERATION BE GIVEN TO REVOCATION OF CITIZENSHIP AND DEPORTATION IN APPROPRIATE CASES.

5. THE GOVERNMENT'S ACCEPTANCE OF THE MENZIES REVIEW'S MAIN RECOMMENDATIONS WAS NOT SURPRISING. THE COMMON VIEW AMONG POLITICIANS OF ALL PARTIES IS THAT THE NATURE AND THE IMMENSITY OF WAR CRIMES COMMITTED BY THE NAZIS AND THEIR SUPPORTERS ARE SUCH THAT THOSE RESPONSIBLE MUST BE BROUGHT TO BOOK, HOWEVER LATE IN THE DAY. THE ANNOUNCED PREFERENCE FOR PROSECUTION IN AUSTRALIA WILL ALLAY FEARS ABOUT THE FAIRNESS OF TRIALS IN THE SOVIET BLOC, PARTICULARLY AMONGST THE EMIGRE GROUPS (SUCH AS THE CROATIAN, ESTONIAN, LATVIAN, LITHUANIAN, AND UKRANIAN COMMUNITIES). HOWEVER, THE DIFFICULT QUESTION OF WHETHER TO ACCEPT EVIDENCE FROM EASTERN EUROPEAN AUTHORITIES AT FACE VALUE HAS YET TO BE FACED. ALREADY EMIGRE LEADERS ARE WARNING AGAINST SUCH A COURSE, AND THE LIBERAL OPPOSITION ALSO HAVE EXPRESSED CONCERN.

LEAHY

YYYY

CEHPAN 8541

LIMITED
WED
SOV D
NENAD
NEWS D
INFO B
PLANNING STAFF
EED
UND
PRU
SPD
NAD
MVD
PS
PS/LADY YOUNG
PS/MR EGGAR
PS/PUS
MR THOMAS
MR MUNRO
MR GILLMORE
SIR J FREELAND
MR RATFORD
MR BARRINGTON
MR SLATER
SIR D MIERS
MR FEARN

COPIES TO:
MR HENDRY LEGAL ADVS
MR DIXON RES D
~~PS/NO 10 DOWNING ST~~
PS/HOME SECRETARY
PS/LORD CHANCELLOR
PS/ATTORNEY GENERAL
PS/MR MELLOR HOME OFFICE
MR NAGLER C5 DIV. HOME OFFICE
MR WRIGHT C5 DIV HOME OFFICE
MR DOLPHIN IMMIG DIV HOME OFFICE

GRS 170

Restricted

RESTRICTED

FM STOCKHOLM

TO PRIORITY FCO

TELNO 64

OF 041500Z MARCH 87

INFO ROUTINE TEL AVIV, UKMIS NEW YORK, WASHINGTON, CANBERRA, OTTAWA

YOUR TELNO 37 TO TEL AVIV: ALLEGED NAZI WAR CRIMINALS IN THE UK

1. THE SWEDISH GOVERNMENT WAS GIVEN A LIST OF 12 INDIVIDUALS OF BALTIC ORIGIN WHO WERE ALLEGED TO BE NAZI WAR CRIMINALS BY THE WIESENTHAL CENTRE IN NOVEMBER LAST YEAR. THE CENTRE CLAIMED THAT THESE PEOPLE WERE ALL IN SWEDEN, AND WERE NOW SWEDISH CITIZENS.

2. AN ENQUIRY BY A COMMISSION OF JURISTS ESTABLISHED THAT ONLY 4 OF THE 12 WERE STILL ALIVE, AND THAT ALL OF THESE WERE ELDERLY. ON 12 FEBRUARY THE GOVERNMENT ANNOUNCED ITS DECISION NOT TO TAKE ANY ACTION. THE PRINCIPAL JUSTIFICATION WAS THAT SWEDISH LEGISLATION DOES NOT ALLOW PROSECUTION OF SERIOUS OFFENCES MORE THAN 25 YEARS AFTER AN OFFENCE HAS BEEN COMMITTED. THE POSSIBILITY OF EXTRADITION WAS NOT REFERRED TO PUBLICLY, BUT SWEDISH LAW FORBIDS EXTRADITION OF SWEDISH CITIZENS.

3. THE WIESENTHAL CENTRE WAS CRITICAL OF THIS DECISION BUT THERE HAS NOT BEEN ANY REAL REACTION FROM THE SWEDISH PUBLIC.

STREAMS

YYYY

SSLNAN 3788

LIMITED

WED
 SOVIET-D.
 NEWAD
 NEWS-D.
 INFO-D.
 PLANNING ST.
 EGD
 UND
 PRU.
 NAD.
 SPD.

MR. THOMAS
 MR. MUNRO
 MR. GILLMORE
 SIR. J. FREELAND
 MR. RATFORD
 MR. BARTINGTON
 MR. SLATER
 SIR. D. MILES
 MR. FERRIS

COPIES TO
 MR HENDRY, LEGAL ADVISOR
 MR DIXON, RES D.
 No 10 DOWNING ST.
 PS | HOME SECRETARY.
 PS | LORD CHANCELLOR
 PS | ATTORNEY GENERAL
 PS | MR MELLOR
 MR. NAULOR, CS DIV H.C.
 MR WRIGHT, CS DIV H.C.
 MR DOLPHIN, IMMIG DIV H.C.

MUD
 PS
 PS | PUS.
 PS | LADY YOUNG.
 PS | MR EGGAR

Restricted

cc Blue

Ref. A087/515

PRIME MINISTER

Cabinet: Home Affairs

The Home Secretary intends to report under Home Affairs how we currently stand on dealing with the Simon Wiesenthal Centre's allegations about war criminals from the former Baltic republics now living in the United Kingdom. At your meeting on 3 February you said that discreet enquiries should be made to establish how many of the 17 names on the Centre's list were still alive and resident in the United Kingdom, and that an assessment should be prepared by officials of the evidence cited by the Centre against them. You also decided that it was too early for Ministers to reach any definite conclusions on how the matter should be handled, and that the Home Secretary should not raise false hopes. You noted the passage of time, the lack of evidence, the various legal obstacles and the difficulty of retrospective legislation as all restricting our capacity to help.

2. The Home Secretary met on Tuesday the all-party group that has interested itself in this matter. He took the line decided on at your meeting, and informed the group of the numbers (though not the names) of the alleged war criminals who were known to be still alive and living here, those known to be dead, and those who could not be traced. Representatives of the Simon Wiesenthal Centre will be seeing the Home Secretary next week.

3. At this stage, the Home Secretary simply wishes to report that his assessment is that the pressure for action will be even higher than he had predicted, and that the Government may have to reach a decision in the reasonably near future. He is not

proposing any particular course through the minefield of legal difficulties, though I understand that he believes that the acceptance of Israeli extra-territorial jurisdiction for war crimes against Jews might - despite its manifold problems - be the most fruitful line to explore.

4. The Solicitor General will be present to comment if you wish, though it will be sufficient simply to take note of the Home Secretary's report at this stage.

RTA

ROBERT ARMSTRONG

25 February 1987

GF
Do you wish
to keep in
your
Wiesenthal
file?



file

VC

cc HD
LAD
FIO
LEO

10 DOWNING STREET

LONDON SW1A 2AA

THE PRIME MINISTER

13 February 1987

Jean D. Kopelowitz

Thank you for your letter of 31 October about the list of seventeen people alleged to be war criminals living in the United Kingdom, drawn up by the Simon Wiesenthal Center. You ask for these allegations to be investigated. I know that you also wrote to the Home Secretary on 28 November with the text of a unanimous resolution made at the November meeting of the Board of Deputies, calling for the Government to make a full and swift investigation; and to ensure that the guilty are brought to justice. I am very sorry that you have had to wait until now for a reply. But the legal questions raised by the Center were far from straightforward and it was necessary to give them careful consideration.

Like anyone who has visited Jerusalem I shall never forget what I saw at Yad Vashem. Its stark message brought home to me forcibly what the Jewish community must feel about those dark days of the Nazi era. I therefore fully accept the grave concern expressed in your letters.

It may be helpful if I describe the present legal position in the United Kingdom regarding the prosecution of alleged war crimes. The jurisdiction of United Kingdom courts is generally confined to crimes committed within the national territory, and there is little scope to bring proceedings for offences committed abroad, particularly where the accused were not British citizens at the time the offences took place. An extraterritorial prosecution is seldom a practical proposition, given the nature of our legal system and our laws of evidence.

GF

It is for this reason that it has been our longstanding practice to seek to deal with crimes alleged to have occurred overseas by means of extradition. Thus the United Kingdom extradition law does not prevent the extradition of British citizens. In this connection, it is relevant that the United Kingdom has ratified the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The law thus establishes the offence of genocide, which is also made extraditable. It is not possible for a person accused or convicted of that crime to avoid extradition by claiming that his offence was political. Nor is there any time-bar to limit the institution of the proceedings for the offence of genocide. The general position is therefore that war crimes are extraditable in United Kingdom law. However, extradition may only take place where there is an extradition treaty with the requesting state, and subject to the terms and conditions of that treaty. As you will know, it has recently been alleged that documents issued in 1948 show that the United Kingdom operated a secret policy to prevent war crimes trials and to refuse the extradition of war criminals. In fact these papers related only to the United Kingdom zone in Germany. There has been no such policy in operation in respect of extradition requests made to the United Kingdom.

The material supplied by the Simon Wiesenthal Center contains general allegations but it includes no evidence and cannot itself provide the basis for legal action. It is also likely that, in view of the legal considerations I have described, the scope for action in respect of these particular alleged offences would in any event be severely limited. Our review of these matters is however continuing and we will also be studying how countries with similar legal arrangements have approached the problem.

Yours sincerely
Nargant Dabhi

Dr. Lionel Kopelowitz, J.P.



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

12 February 1987

I am sorry that you have had to wait until now for a reply to your letter of 22 October to the Prime Minister with which you enclosed a list of seventeen names of men alleged to be war criminals living in the United Kingdom. The Prime Minister has asked me to say that we are very grateful for the way you have brought this grave matter to our attention. Mrs Thatcher wishes me to make clear her deep revulsion at the atrocities committed during the Nazi era - brought freshly to her mind when she visited Yad Vashem again last year - and her understanding of what Jewish communities throughout the world must feel about those dark days. She has therefore considered most carefully the matters raised in your letter.

As you know the Prime Minister has asked the Home Secretary to receive you on her behalf and discuss this matter with you. But it may be helpful if, in advance of your discussion with Mr. Hurd, I describe the present legal position in the United Kingdom regarding the prosecution of alleged war crimes. The jurisdiction of United Kingdom courts is generally confined to crimes committed within the national territory, and there is little scope to bring proceedings for offences committed abroad, particularly where the accused were not British citizens at the time the offences took place. An extraterritorial prosecution is seldom a practical proposition, given the nature of our legal system and our laws of evidence.

It is for this reason that it has been our longstanding practice to seek to deal with crimes alleged to have occurred overseas by means of extradition. Thus the United Kingdom extradition law does not prevent the extradition of British citizens. In this connection, it is relevant that the United Kingdom has ratified the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The law thus establishes the offence of genocide, which is also made extraditable. It is not possible for a person accused or convicted of that crime to avoid extradition by claiming that his offence was political. Nor is there any time-bar to limit the institution of the proceedings for the offence of genocide. The general position is therefore that war crimes are extraditable in United Kingdom law. However, extradition

JK VCZADL
C HO
FLO
LOD
ECO

may only take place where there is an extradition treaty with the requesting state, and subject to the terms and conditions of that treaty. You may be aware of recent allegations that documents issued in 1948 show that the United Kingdom operated a secret policy to prevent war crimes trials and to refuse the extradition of war criminals. In fact these papers - which were publicly available - related only to the United Kingdom zone in Germany. There has been no such policy in operation in respect of extradition requests made to the United Kingdom.

The Prime Minister is sure that you will recognise that the material supplied with your letter of 22 October, although it contains a general allegation against the people whose names are listed, does not itself provide the basis for legal action. It also follows from our consideration of the issues raised by your letter that the scope for action in respect of these particular alleged offences is likely to be severely limited by the legal considerations I have outlined above. However, we are continuing our review, and in particular will be studying how other countries with similar legal arrangements have approached the problem.

I am sending a copy of this letter to Mr. Greville Janner, MP.

CHARLES POWELL

Rabbi Marvin Hier

CCFQ



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

12 February 1987

Dear Charles

I promised in my letter of 9 February to send you a draft reply for you to send the Simon Wiesenthal Center. The attached draft reflects the line agreed at the Prime Minister's 3 February meeting. Dr Kopelowitz of the Board of Deputies is also owed a letter and I attach a draft letter which the Prime Minister may wish to send herself.

I am sending copies of this to Richard Stoate, Lyn Parker and Chris Newall (LOD).

Yours ever

W R FITTALL

C D Powell, Esq

Left letter for signature by the Prime Minister to:

Dr Kionel Kopelowitz JP
President
Board of Deputies of
British Jews
Woburn House
Tavistock Square
LONDON, WC1H OEP

To [unclear]
(2 letters)

NCZAJOK

Ch

Copies to be sent to:

PS to the Home Secretary
PS to the Foreign Secretary
PS to the Solicitor General
PS to the Lord Chancellor

Thank you for your letter of 31 October about the list of seventeen people alleged to be war criminals living in the United Kingdom, drawn up by the Simon Wiesenthal Center. You ask for these allegations to be investigated. I know that you also wrote to the Home Secretary on 28 November with the text of a unanimous resolution made at the November meeting of the Board of Deputies, calling for the Government to make a full and swift investigation; and to ensure that the guilty are brought to justice. I am very sorry that you have had to wait until now for a reply. But the legal questions raised by the Center were far from straightforward and it was necessary to give them careful consideration.

Like anyone who has visited Jerusalem I shall never forget what I saw at Yad Vashem. Its stark message brought home to me forcibly what the Jewish community must feel about those dark days of the Nazi era. I therefore fully accept the grave concern expressed in your letters.

/It may be

It may be helpful if I describe the present legal position in the United Kingdom regarding the prosecution of alleged war crimes. The jurisdiction of United Kingdom courts is generally confined to crimes committed within the national territory, and there is little scope to bring proceedings for offences committed abroad, particularly where the accused were not British citizens at the time the offences took place. An extraterritorial prosecution is seldom a practical proposition, given the nature of our legal system and our laws of evidence.

It is for this reason that it has been our longstanding practice to seek to deal with crimes alleged to have occurred overseas by means of extradition. Thus the United Kingdom extradition law does not prevent the extradition of British citizens. In this connection, it is relevant that the United Kingdom has ratified the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The law thus establishes the offence of genocide, which is also made extraditable. It is not possible for a person accused or convicted of that crime to avoid extradition by claiming that his offence was political. Nor is there any time-bar to limit the institution of the proceedings for the offence of genocide. The general position is therefore that war crimes are extraditable in United Kingdom law. However, extradition may only take place where there is an extradition treaty with the requesting state, and subject to the terms and conditions of that treaty. As you will know, it has recently been alleged that documents issued in 1948 show that the United Kingdom

operated a secret policy to prevent war crimes trials and to refuse the extradition of war criminals. In fact these papers related only to the United Kingdom zone in Germany. There has been no such policy in operation in respect of extradition requests made to the United Kingdom.

The material supplied by the Simon Wiesenthal Center contains general allegations but it includes no evidence and cannot itself provide the basis for legal action. It is also likely that, in view of the legal considerations I have described, the scope for action in respect of these particular alleged offences would in any event be severely limited. Our review of these matters is however continuing and we will also be studying how countries with similar legal arrangements have approached the problem.

Draft letter for signature by the PS to the PM to:

Rabbi Marvin Hier
Dean
Simon Wiesenthal Center
9760 West Pico Blvd
Los Angeles
CA 90035 4790
United States of America

WZATOL

Copies to be sent to:

PS to the Lord Chancellor
PS to the Home Secretary
PS to the Foreign Secretary
The Solicitor General
HM Consul, Los Angeles, USA.

I am sorry that you have had to wait until now for a reply to your letter of 22 October to the Prime Minister with which you enclosed a list of seventeen names of men alleged to be war criminals living in the United Kingdom. The Prime Minister has asked me to say that we are very grateful for the way you have brought this grave matter to our attention. Mrs Thatcher wishes me to make clear her ^{deep} personal revulsion at the atrocities committed during the Nazi era and, particularly following her recent visit to Jerusalem, her deep understanding of what Jewish communities throughout the world must feel about those dark days. She has therefore considered most carefully the matters raised in your letter.

(- brought freshly to her mind when she visited Yad Vashem again last year -

As you know the Prime Minister has asked the Home Secretary to receive you on her behalf and discuss this matter with you. But it may be helpful if, in advance of your discussion with Mr Hurd, I describe the present legal position in the United

/Kingdom

Kingdom regarding the prosecution of alleged war crimes. The jurisdiction of United Kingdom courts is generally confined to crimes committed within the national territory, and there is little scope to bring proceedings for offences committed abroad, particularly where the accused were not British citizens at the time the offences took place. An extra-territorial prosecution is seldom a practical proposition, given the nature of our legal system and our laws of evidence.

It is for this reason that it has been our longstanding practice to seek to deal with crimes alleged to have occurred overseas by means of extradition. Thus the United Kingdom extradition law does not prevent the extradition of British citizens. In this connection, it is relevant that the United Kingdom has ratified the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The law thus establishes the offence of genocide, which is also made extraditable. It is not possible for a person accused or convicted of that crime to avoid extradition by claiming that his offence was political. Nor is there any time-bar to limit the institution of the proceedings for the offence of genocide. The general position is therefore that war crimes are extraditable in United Kingdom law. However, extradition may only take place where there is an extradition treaty with the requesting state, and subject to the terms and conditions of that treaty. You may be aware of recent allegations that documents issued in 1948 show that the United Kingdom operated a secret policy to prevent war crimes trials and to refuse the

extradition of war criminals. In fact these papers - which were publicly available - related only to the United Kingdom zone in Germany. There has been no such policy in operation in respect of extradition requests made to the United Kingdom.

The Prime Minister is sure that you will recognise that the material supplied with your letter of 22 October, although it contains a general allegation against the people whose names are listed, does not itself provide the basis for legal action. It also follows from our consideration of the issues raised by your letter that the scope for action in respect of these particular alleged offences is likely to be severely limited by the legal considerations I have outlined above. However, we are continuing our review, and in particular will be studying how other countries with similar legal arrangements have approached the problem.

I am sending copies of this to Mr Greville Janner MP.

FOR POLICY: Simon Weisenthal Centre: Oct. 1986

CF

hlc

SACW



cc FCO
LCD
HO
Sol. Gen.
Greville Janner
MA

10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

11 February 1987

Dear Mr. Kus,

In my letter of 28 January I promised to give you and Greville Janner a response on the questions raised by the list of names of war criminals compiled by the Simon Wiesenthal Center. The Government naturally treat the allegations which have been made seriously. But, as I have indicated, the letter we have received from the Center raises difficult questions of law. In view of this, Douglas Hurd will be getting in touch and will suggest meeting you to discuss the general legal position and United Kingdom policy.

The legal position is, in brief, that there does not appear to be any scope for the prosecution in the United Kingdom courts of people accused of war crimes committed abroad during the last war where the people concerned were not at the time British citizens. As you will know, it has been longstanding policy to rely on extradition as the means by which people accused or convicted of offences committed in foreign countries may be brought before the courts. War crimes in this respect fall to be treated in the same way as other serious offences: they are extraditable and the United Kingdom would be able to extradite any person to face such a charge provided the requirements of our law are met. I know that it has been argued that documents issued in 1948 show that the United Kingdom was then opposed to war crime trials and that a secret policy has ever since prevented extradition

ECW

taking place. However the documents in question related only to the United Kingdom zone in West Germany, and not to extradition from the United Kingdom itself. Indeed, I understand that a review of extradition requests made to the United Kingdom has shown that no such policy has operated and that requests for alleged war criminals were treated in the same way as other extradition requests. There are, however, major difficulties in the way of extradition in these particular cases, and that is part of the ground which Douglas Hurd wants to cover with you.

I hope that this brief explanation is helpful, and that it will be possible for you to meet Douglas Hurd for a full discussion in the near future.

I am sending a copy of this letter to Greville Janner.

Yours sincerely
Raymond Shalton

The Right Honourable Merlyn Rees, M.P.

Prime Minister 10 Feb 1987
COP 10/2.

The Austrian Foreign Ministry issued the following statement to the Austrian Press Agency in response to a report in the 'Jerusalem Post' :

"The Foreign Minister, Dr. Alois Mock, stated that the statements made by the 'Jerusalem Post' were completely untrue (the 'Jerusalem Post' claims that Mock wrote to British Prime Minister Margaret Thatcher in December 1986 foreseeing the resignation of Waldheim in mid-1987 as a means of improving Austria's image). The Foreign Minister stated that he had never written any such letter to Prime Minister Thatcher. In this context, he repeated his previous statement that Austria - like every democracy - has the right to freely elect its own president. Austria and Israel must now begin working to restore the hitherto good relations between the two countries. It was therefore important to refrain from publicising such slanders."

mb

apa eur099 10-feb-1987 09:23

apa - selektion

EDU 85 87 53

eur099 eur000

100010 ipm-waldheim

newspaper says austrian minister suggests waldheim must quit
jerusalem, feb 10, reuter - the jerusalem post newspaper
today published a letter it said austrian foreign minister alois
mock had written suggesting president kurt waldheim resign for
ostensible health reasons because allegations over his nazi past
had hurt austria.

the newspaper said mock, head of waldheim's conservative
people's party (oevp), made the suggestion in a letter to
british prime minister margaret thatcher on december 15.

the post said it obtained a draft of the letter mock sent to
thatcher, a fellow conservative leader. the letter did not make
clear whether mock was making the proposal or accepting a
suggestion from thatcher.

'i found your proposal in connection with president waldheim
reasonable,' the letter published in the post said.

'i share your opinion, that in the field of foreign policy
the person of mr waldheim exerts a detrimental effect on the
international conservative movement and isolates austria from
our western friends,' the letter added.

'therefore i regard resolving of the issue opportune. in
this way, it seems advisable to persuade president waldheim to
resign in the course of 1987 citing health reasons,' it said.

allegations that waldheim, a former united nations secretary
general, had hidden a past as a nazi officer in the balkans
during world war two dominated his election campaign last year.
waldheim denied the allegations.

the letter in the post said waldheim's resignation before
this year would have harmed the conservatives in austria.

according to the newspaper, a thatcher aide confirmed the
british prime minister received a letter from mock dated
december 15. he would not divulge its contents.

in london last night, a spokeswoman for thatcher declined
immediate comment on the report. in vienna an austrian foreign
ministry official also had no comment.

reuter

Prime Minister 10 Feb. 1987
COF 10/2.

The Austrian Foreign Ministry issued the following statement to the Austrian Press Agency in response to a report in the 'Jerusalem Post' :

"The Foreign Minister, Dr. Alois Mock, stated that the statements made by the 'Jerusalem Post' were completely untrue (the 'Jerusalem Post' claims that Mock wrote to British Prime Minister Margaret Thatcher in December 1986 foreseeing the resignation of Waldheim in mid-1987 as a means of improving Austria's image). The Foreign Minister stated that he had never written any such letter to Prime Minister Thatcher. / In this context, he repeated his previous statement that Austria - like every democracy - has the right to freely elect its own President. Austria and Israel must now begin working to restore the hitherto good relations between the two countries. It was therefore important to refrain from publicising such slanders."

mb

APR099 10-feb-1937 09:23

apa - selektion

EDU 85 87 53

eur099 eur000

100010 ipm-waldheim

newspaper says austrian minister suggests waldheim must quit
jerusalem, feb 10, reuter - the jerusalem post newspaper
today published a letter it said austrian foreign minister alois
mock had written suggesting president kurt waldheim resign for
ostensible health reasons because allegations over his nazi past
had hurt austria.

the newspaper said mock, head of waldheim's conservative
people's party (oevp), made the suggestion in a letter to
british prime minister margaret thatcher on december 15.

the post said it obtained a draft of the letter mock sent to
thatcher, a fellow conservative leader. the letter did not make
clear whether mock was making the proposal or accepting a
suggestion from thatcher.

'i found your proposal in connection with president waldheim
reasonable,' the letter published in the post said.

'i share your opinion, that in the field of foreign policy
the person of mr waldheim exerts a detrimental effect on the
international conservative movement and isolates austria from
our western friends,' the letter added.

'therefore i regard resolving of the issue opportune. in
this way, it seems advisable to persuade president waldheim to
resign in the course of 1937 citing health reasons,' it said.

allegations that waldheim, a former united nations secretary
general, had hidden a past as a nazi officer in the balkans
during world war two dominated his election campaign last year.
waldheim denied the allegations.

the letter in the post said waldheim's resignation before
this year would have harmed the conservatives in austria.

according to the newspaper, a thatcher aide confirmed the
british prime minister received a letter from mock dated
december 15. he would not divulge its contents.

in london last night, a spokeswoman for thatcher declined
immediate comment on the report. in vienna an austrian foreign
ministry official also had no comment.

reuter

The families that owe £10,000 rent

by Dick Murray

COUNCIL tenants in Lambeth—where two families each owe more than £10,000—are being allowed to run up huge rent debts virtually unchecked.

One town hall employee said: "The bad debtors are put into bed and breakfast accommodation and then forgotten about."

"They are never visited by rent officers and the debt goes sky-high."

I am not prepared to name the source because of fears that the informant would be sacked.

One tenant, Uriah Campbell, 46, who earns about £280 a week as a maintenance engineer with the Department of Environment, had already had his £10,000 debt written off by the Left-wing council.

A confidential report reveals that the family were first housed by the council in 1975. They were evicted in 1983 because they owed more than £8,000.

They have been moved to

various places since then—always refusing to pay.

The family is now in bed and breakfast accommodation but the council refused to say where.

A Lambeth council housing spokeswoman, while refusing to mention Campbell by name, said: "We are having some success with this particular tenant."

"The family is now paying rent on a regular basis and is also paying off an additional £8.75p a week from the arrears."

But, she confirmed, a "large amount" had been written off the arrears by the council.

The theory in dealing with persistent bad payers is that it is sometimes best to write off a large debt and then to begin again with the tenant paying rent with a "clean slate."

The Kwong Liu family were placed in temporary accommodation by the council in November 1985.

Last month confidential figures compiled by the housing department showed they owed £10,079.10p.

The Liu's lived at the Edward House Hotel, St George's Drive, Pimlico, from November, 1985, to August, 1986.

Mrs Mui Liu was shocked today when told how much the council alleges her family owes.

said their rent at the flat fully paid up. Her husband now works as a waiter.

Other families also in employment have run up bed and breakfast debts of the last year or so.

The Yvette Cole family five were placed in temporary accommodation in January last year at a rent of £180.10 a week. They now owe £8,055.80p.

The Carol West family four were found temporary accommodation last March at £186.85p a week. They now owe £7279.35p.

Lambeth's housing chairman, Ron Taggart, also chairman of the rent arrears sub-committee, said "The reason why some arrears are so high is that tenants carry the debt with them from eviction to eviction."

"I admit it is not satisfactory—but what can you do?"

A total of 28,373 tenants are in arrears with total debts of £12,237,900—although 10,000 of those owe less than £100.

Denied

"We have never had any letters or anyone from the council telling us we owe them any money at all," said 39-year-old Mrs Liu.

"As far as I know, the council paid for our board and lodgings directly to the owners of the hotel. Certainly, no one ever told us that we had to pay ourselves."

The family were eventually rehoused in a council flat in Flaxman Road, Camberwell, where they still live. Mrs Liu

Euro blitz on butter

COMMON MARKET leaders agreed in Brussels today to sell off more than 1,000,000 tonnes of the EEC's giant butter mountain at almost giveaway prices to cut storage costs.

But the move will still cost EEC taxpayers £2900 million and only around 130,000 tonnes will be sold cheaply to EEC housewives, with the rest being sold abroad or put to other uses.

Waldheim forgery plot letter named Maggie

Standard Foreign News Desk

A PLOT to embroil Mrs Thatcher in an international anti-Nazi scandal involving Austrian President Kurt Waldheim was uncovered today.

It was revealed in today's Jerusalem Post which published the draft of a letter purported to have been sent to Mrs Thatcher suggesting Waldheim resign for "health reasons" because allegations over his Nazi past had damaged Austria.

The letter, allegedly sent by Waldheim's Foreign Minister Alois Mock, was condemned by Austria's Conservative People's Party as "false and untrue."

As well as leading the People's Party, Mock is chairman of the European Democratic Union, which groups Europe's Conservative parties, including Mrs Thatcher's.

'Nazi' past

The letter published by the Post said: "I found your proposal in connection with President Waldheim reasonable."

"I share your opinion, that in the field of foreign policy the person of Mr Waldheim exerts a detrimental effect on the international Conservative movement and isolates Austria from our western friends."



WALDHEIM... "His enemies know no bounds."

"Therefore I regard the resolving of the issue opportune. In this way, it seems advisable to persuade President Waldheim to resign in the course of 1987 citing health reasons."

Allegations that Waldheim, a former United Nations Secretary General, had a hidden past as a Nazi officer in the Balkans during the Second World War dominated his election campaign last year. Waldheim denied the allegations.

The letter said Waldheim's resignation before this year would have harmed the Conservatives in Austria.

The newspaper said a Thatcher aide had confirmed that the Prime Minister received a letter from Mock

dated December 15, but the aide would not divulge its contents.

Today, a Downing Street spokesman said: "We have received no letter of December 15. We received a letter dated December 18 which had no reference whatsoever to Mr Waldheim."

Investigations by the Evening Standard suggest the document obtained by the Jerusalem Post was a photocopy of an alleged letter from Mr Mock to Mrs Thatcher. The photocopy reached the Jerusalem Post from a source in London.

The general secretary of the People's Party, Michael Graff, today condemned what he called a campaign of defamation against Waldheim which he implied senior Israeli officials had failed to prevent.

"The baseness of Waldheim's enemies in the World Jewish Congress (WJC) and in Israel knows no bounds," he said in a statement.

Unjust attack

"It is only sad that top figures in states which were always our friends, because of lack of courage and laziness, encourage the campaign of defamation (against Waldheim) by keeping out of it instead of showing fairness and solidarity with the unjustly attacked president," he said.

Take the animals away, says Shultz

Secretary of State George Shultz has denounced people holding American hostages in Lebanon and said Washington must find a way to get kidnappers pay.

Shultz made the comments in a veterans organisation speech at a deadline to kill three American professors and an American held hostage ran out of time. The White House let the deadline pass by asking Israel to free 1,000 prisoners as a Palestinian group threatening to kill four hostages, all of whom were due to be killed at Beirut.

Vice-Premier Shimon Peres said "Nobody has asked Israel on this matter."

"TORTURED": Terry Gault moved overnight to Beirut to the Valley and was brutally raped and tortured in fanaticism, according to an unconfirmed report by the Free Lebanon, a radio station.

I will not make any of its own. Israel would not let kidnappers' demand did not know prisoners from the thousand being held kidnappers wanted re-

r, a slightly different came from Dester Yitzhak Rabin, stated that Israel willing to negotiate guerrillas for the Israeli servicemen never, if there is no them by military

confirmed report, said that consultations been going on Washington and over the hostage conclusion being made today by many firstly, there is now—to enable

Two-way poll squeeze

WEA

WIND ← 10
MAX TEMP C 15

FROM THE

THIS afternoon and evening will be the temperature near 9C (48F) down slowly. Tonight will stay mostly clear with likely in many places by morning to freezing.

Outlook: Likely to be rather more most places will stay dry and afternoon temperature will be an

WORLD WEATHER

cc. PC



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

9 February 1987

Dear Charles

Thank you for your letter of 3 February about the meeting the Prime Minister held to consider the allegations by the Simon Wiesenthal Center that war criminals are living in the United Kingdom. We shall send you a draft reply to the Center shortly, but I now attach a draft letter for the Prime Minister to send to Mr Rees and Mr Janner which explains very briefly the general legal position. The Home Secretary is writing separately to arrange a meeting.

I am sending copies of this to Richard Stoate, Lyn Parker and Stephen Wooller.

Yours ever

W R FITTALL

To the

Draft letter for signature by the Prime Minister to:

The Rt Hon Merlyn Rees, MP
House of Commons

Copies to be sent to:
Mr G Janner, QC, MP

PS/Lord Chancellor
Foreign Secretary
Home Secretary
Solicitor General

SRWAQU

In my letter of 28 January I promised to give you and Greville Janner a response on the questions raised by the list of names of war criminals compiled by the Simon Wiesenthal Center. As I have indicated, the letter we have received from the Center raises difficult questions of law. In view of this Douglas Hurd will be getting in touch and will suggest meeting you to discuss the general legal position and United Kingdom policy.

The Government naturally react to allegations which have been made seriously. But

the legal position is, in brief,
Having considered this issue carefully we have concluded

that there does not appear to be any scope for the prosecution in the United Kingdom courts of people accused of war crimes committed abroad during the last war where the people concerned were not at the time British citizens. As you will know, it has been longstanding policy to rely on extradition as the means by which people accused or convicted of offences committed in foreign countries may be brought before the courts. War crimes in this respect fall to be treated in the same way as other serious offences: they are extraditable and the United Kingdom

/would be able

would be able to extradite any person to face such a charge provided the requirements of our law are met. I know that it has been argued that documents issued in 1948 show that the United Kingdom was then opposed to war crime trials and that a secret policy has ever since prevented extradition taking place. However the documents in question related only to the United Kingdom zone in West Germany, and not to extradition from the United Kingdom itself. Indeed, I understand that a review of extradition requests made to the United Kingdom has shown that no such policy has operated and that requests for alleged war criminals were treated in the same way as other extradition ^{rights} ~~was~~. There are, ^{however,} of course major difficulties in the way of extradition in these particular cases, and that is part of the ground which Douglas Hurd wants to cover with you.

I hope that this brief explanation is helpful, and that it will be possible for you to meet Douglas Hurd for a full discussion in the near future.

I am sending a copy of this letter to Greville Janner.

Ch.

FOREIGN POL: War Communism Oct 26

SUBJECT
cc Master

RESTRICTED



fe r
ck

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

3 February 1987

Dear Stephen,

SIMON WIESENTHAL CENTER

The Prime Minister held a meeting in her room at the House of Commons this evening to consider the allegations by the Simon Wiesenthal Center that war criminals from the former Baltic Republics are living in the United Kingdom. The Lord Chancellor, the Foreign Secretary, the Home Secretary, the Attorney General and Mr. Mellor were present.

In discussion it was recognised that the difficulties, spelled out in the Home Office's note, in the way of taking legal action against those on the Center's list were well-founded. It was suggested that the Center's requests were misdirected since the United Kingdom had no locus. They should properly have been addressed to a state which had grounds and a legal basis to mount a prosecution. The evidence provided by the Center against those on the list was nugatory.

On the other hand, hideous crimes were involved which could not be obliterated by the passage of time. The Jewish community in this country naturally felt very strongly about them. The Government had a duty to treat the allegations seriously. The Home Secretary would be meeting representatives of the Center later this month. While he would have to point out to them the legal obstacles to prosecution or extradition, he must also be able to show that the information provided by the Center was being followed up.

Summing up the discussion, the Prime Minister said that it was too early for Ministers to reach any definitive conclusions. Discreet enquiries should be made to establish how many of the 17 names on the Center's list were still alive and resident in the United Kingdom (indeed this should already have been done). The evidence cited by the Center against them, mostly in the form of page references in published works, should be analysed by officials and an assessment prepared for Ministers. Meanwhile, when the Home Secretary saw the representatives of the Center, he should make clear that the United Kingdom had every reason historically to want to help and that the Government were making enquiries on the

RESTRICTED

✓

basis of the Center's letter. But he should also point out that the passage of time, the lack of evidence, the various legal obstacles and the difficulty of retrospective legislation all restricted our capacity to help and he would not wish to raise false hopes. We would need more time, and information on how other countries facing similar legal and practical difficulties were dealing with them, before we could reach a final judgement. This line should also be followed in replies to Members of Parliament and others who had written in support of the Wiesenthal Center.

I am copying this letter to Richard Stoate (Lord Chancellor's Office), Lyn Parker (Foreign and Commonwealth Office) and Stephen Wooller (Law Officers' Department).

yours sincerely
Charles Powell

C.D. POWELL

Stephen Boys-Smith, Esq.,
Home Office.

PRIME MINISTER

MEETING OF MINISTERS: ALLEGED NAZI WAR CRIMINALS

The meeting needs to decide how we should reply to the letter (in folder) from the Simon Wiesenthal Center about alleged Nazi war criminals living in the United Kingdom. You read the papers over the weekend. The Lord Chancellor, Foreign Secretary, Home Secretary and Attorney General will attend.

The points which need to be dealt with are:

- (i) the original letter from the Wiesenthal Center supplied no evidence, so we do not at present have anything to sustain the allegations. On the other hand, if we ask for evidence, it will imply that the Government are ready to consider taking action. The preliminary view is that there is no action we can take. Should we ask to see the evidence? Or is it better to keep the evidence at arms length?
- (ii) Do colleagues agree that the legal options available to us are as limited as the Home Office note suggests?
- (iii) Is it the case that extradition to the Soviet Union would, in the case of alleged war crimes, arouse great public revulsion?
- (iv) Is there any support for the two available options for legal action:
 - retrospective legislation creating extra-territorial jurisdiction; and
 - special extradition legislation to recognise Israeli extra-territorial jurisdiction? (But the Israelis have not yet shown any interest.)?

C. D. P.
CHARLES POWELL

cc 8/10/48
m

PRIME MINISTER

ALLEGED WAR CRIMINALS

The Simon Wiesenthal Center wrote to you last October enclosing a list of seventeen alleged Nazi war criminals now resident in this country. No evidence was provided against those on the list. But the letter asks for the accusations to be investigated, the availability of witnesses to be assessed and, if necessary, a special legal apparatus to be established to deal with the suspects. The Center's Director also sought a meeting with you. Several MPs have written on the same subject.

Home Office Ministers have been agonising how to deal with the problem which raises difficult legal issues, and have now asked for a meeting with you to discuss it. I have fixed this for 3 February. The Lord Chancellor, Foreign Secretary, Home Secretary and Attorney General will attend.

The attached paper sets out the factual background. It notes that the Home Office have information on ten of those on the list. It reaches the conclusion that there is nothing that we can do about them.

The essential points are:

- we have no jurisdiction in this country over the alleged crimes, which were committed in the Baltic Republics;
- deprivation of citizenship would be hard to justify and of little practical effect;
- extradition would have to be to the Soviet Union (we cannot extradite to Israel because the alleged crimes were not committed on their territory). This would be technically feasible once the Criminal Justice Bill became law. But sending people back to face Soviet justice is regarded as unpalatable.

- retrospective legislation creating extra-territorial jurisdiction, to enable them to be prosecuted in the country, is technically feasible, as is legislation to permit extradition to Israel. But in both cases it would be politically controversial given that the alleged crimes were committed over 40 years ago.

Hanging over all these considerations is the absence of any evidence. Our first step must surely be to ask for this.

I have suggested that it would be more appropriate for the Home Secretary to see the representatives of the Simon Wiesenthal Center in the first place.

C.D.P

Charles Powell

30 January 1987

Merlyn REES MP

11/2



DSG

file

cc FCO

H.O.

10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

28 January 1987

Dear Mr. Rees,

Thank you for your letters of 8 December and 22 January.

I am sorry I have not yet been able to reply to Greville Janner's letter about the list of names of war criminals compiled by the Simon Wiesenthal Centre. The letter we have received from the Centre raises important issues and difficult questions of law. I can, however, assure you that we are looking at the matter urgently and carefully, and I hope to be able to give you a response in the near future.

Sincerely
Margaret Thatcher

The Rt. Hon. Merlyn Rees, M.P.

OTS

MS200L

GF
Head 4 or better
keep
JL 2/11



10 DOWNING STREET
LONDON SW1A 2AA

28 January 1987

From the Private Secretary

SIMON WIESENTHAL CENTER

Thank you for your letter of 28 January about the list of alleged war criminals sent to the Prime Minister by the Simon Wiesenthal Center in Los Angeles.

I agree that replies to the Center and the various MPs and others who have written are very much overdue. We shall arrange a meeting under the Prime Minister's chairmanship as soon as possible, probably early next week. Meanwhile I agree that it would be best for the Home Secretary to see Rabbi Hier, with Foreign Office representation. Would you please telephone him in Los Angeles - 213 553-9036 - before the end of this week to explain that the Prime Minister has asked the Home Secretary to see him on her behalf and to offer a time.

I am copying this letter to Richard Stoate (Lord Chancellor's Office), Lyn Parker (Foreign and Commonwealth Office) and Stephen Wooller (Law Officers' Department).

Charles Powell

William Pittall Esq
Home Office.

ECU

CXC'S



HOME OFFICE
 QUEEN ANNE'S GATE
 LONDON SW1H 9AT

28 January 1987

Dear Charles

CDP
B/p.SIMON WIESENTHAL CENTER

As you know, Home Office Ministers have been considering the letter and list of alleged war criminals sent to the Prime Minister by the Simon Wiesenthal Center in Los Angeles. The approach made by the Center raises some very difficult issues of political sensitivity and as I indicated when we spoke, the Home Secretary has suggested that it may be helpful if the Prime Minister could hold a small ad hoc meeting at which the Government's line could be agreed. If this suggestion commends itself to the Prime Minister, it may be useful for Ministers to consider the brief factual paper on the subject enclosed with this letter.

A response needs to go to the Center and replied are owed to Members of all parties who have taken an interest in this matter. It would obviously be helpful if Ministers were able to meet in the very near future in time to decide on the response to be made to Rabbi Hier's request for a meeting with the Prime Minister during his visit to London next month. For his part, the Home Secretary endorses the view expressed in your letter of 19 January to Lyn Parker that it would be better for either the Foreign Secretary or him to see Rabbi Hier. Perhaps the most convenient arrangement would be for the Home Secretary to hold the meeting, with Foreign Office representation.

A copy of this letter goes to Richard Stoate, Lyn Parker and Stephen Wooller.

Yours sincerely

W R FITTALL

WAR CRIMINALS: SIMON WIESENTHAL CENTER

NOTE BY THE HOME OFFICE

This note describes the legal framework within which the Simon Wiesenthal Center's allegation that war criminals are living in the United Kingdom has to be considered.

THE SIMON WIESENTHAL CENTER'S LIST

2. The letter of 22 October to the Prime Minister encloses a "preliminary list" of 17 names of people living in the United Kingdom who are said to have committed atrocities in Lithuania and Latvia during the German occupation. (The two countries were later annexed by the Soviet Union, the present position being accepted de facto but not de jure by HMG). The letter explains that during the German occupation almost the entire Jewish population of those countries (numbering over 300,000 people) perished. No evidence is given of the involvement of the 17 suspects in war crimes, but the letter asserts that they were variously involved in crimes against humanity, mass murder, torture, collaboration, membership of the SS and aiding the Nazi cause. In only three cases are addresses given, but in some cases the dates of departure for the United Kingdom are given. Dates of birth are given for six suspects: if they are still alive, their ages would range from 63 to 90 years. Various sources of information are cited: these include Western published works, (Israeli archive material) and Soviet publications. The Home Office has information on ten of the people. The letter asks for the accusations to be investigated, their truth determined, the availability of witnesses assessed and, if necessary, special legal apparatus established to deal with the suspects. It also asks for an early meeting with the Prime Minister.

PROSECUTION IN THE UNITED KINGDOM

3. For the reasons set out in Annex A it would not be possible to prosecute in the United Kingdom the people named in the list, even if there was evidence against them. In the absence of effective jurisdiction or of an extradition request from another country there would be no point in inviting the police to make enquiries.

DEPRIVATION OF CITIZENSHIP

4. On present information we have identified six of the 17 as having acquired British citizenship (all between 1956 and 1967). It would not be possible to deport those who are British citizens. (It would still not be possible to deport those who are not if this was used as a form of disguised extradition). There are powers under section 40 of the British Nationality Act 1981 to deprive people of citizenship. But, in the case of those now accused, the Home Secretary would need to be satisfied that the person had acquired British citizenship by fraud, false representation or the concealment of any material fact and that it would not be conducive to the public good for him to remain British. The grounds for deprivation must be given in writing and the person has a right to take his case to a specially constituted committee of inquiry. The effect of deprivation may be to render him stateless and technically he would be deportable. But it is difficult to see what we would then do with such a person. It must be assumed that he would be in a position to claim that his deportation was a form of disguised extradition. He could in any event appeal against destination. Thus to strip people on the list of their British citizenship, if grounds for doing so could be established, would have little practical effect.

EXTRADITION

5. United Kingdom extradition procedure is described briefly in Annex B. The conduct of which the alleged war criminals are accused is clearly extraditable under our law although we have received no request for their extradition. Extradition to the countries where the alleged offences were committed would be in accordance with the Moscow Declaration (to which the United Kingdom and the United States of America were parties) of November 1943. We know from earlier exchanges that the Soviet Union regards this Declaration as still binding. However, extradition to the Soviet Union (which annexed Latvia and Lithuania in 1940) is precluded as things stand because we have no extradition treaty. That obstacle will in principle be removed when the provision in the Criminal Justice Bill for ad hoc extradition in the absence of a treaty is in force. Ad hoc extradition would be subject to safeguards similar to those which currently apply in the case of our bilateral and multilateral arrangements, including the requirement to prove a prima facie case. If, after the Bill comes into

effect, we were to receive a request from the Soviet Union for the extradition of the alleged war criminals, it would be open to the Home Secretary to initiate extradition proceedings. However, in practice the United Kingdom could hardly surrender a person to face Soviet justice.

6. We could not extradite the alleged war criminals to Israel, because our extradition treaty with that country applies only to offences committed within their territory. In any event Israel has not - so far as we are aware - shown any interest in the people on the list. The Canadian courts recognised in a 1983 case the present jurisdiction of the West German courts over war crimes committed in the Baltic states during the German occupation. We do not know how United Kingdom courts would view such a claim to jurisdiction, but no request has been made by the West Germans and this would not be firm ground for any publically announced policy.

EXPERIENCE IN OTHER COUNTRIES

7. See Annex C to this note.

CONCLUSION

8. The limitations of the legal framework described above and in Annex A place the United Kingdom in a difficult position. It is longstanding policy for the United Kingdom to rely on extradition to bring to justice people accused of crimes committed abroad. But in the present case extradition is not a practical proposition because we have no treaty with the Soviet Union. The Criminal Justice Bill (at present in Commons Committee) provides for extradition in the absence of a treaty, but it would be wrong to give the impression that this power would lead to people being extradited to the Soviet Union.

9. Retrospective legislation creating extra-territorial jurisdiction would be necessary if we were to penalise in the United Kingdom the kind of acts alleged against the people on the Center's list. Although it should not fall foul of the European Convention on Human Rights, a proposal to legislate to enable to be put on trial for acts alleged to have been committed 40 years ago in another country would be controversial. Delimiting the scope and content of such legislation would not be easy. It is doubtful whether evidence would be forthcoming in a form which, in the

absence of exceptional ad hoc provisions, our courts would accept. Special extradition legislation which would recognise Israeli extra-territorial jurisdiction would also be possible but controversial.

10. In view of these considerations Home Office Ministers have taken the view that it would be premature, in the response to be made to the Simon Wiesenthal Center, to take any view on the possibility either of setting up some special investigatory machinery or of contemplating changes in the law. Reticence in respect of new legislation is especially justified given the absence of any evidence against the people on the list. It is recognised, however, that such a response risks renewed pressure for legislation to establish some special legal framework and investigative machinery, particularly if the difficulties surrounding extradition are also made clear.

WAR CRIMINALS: PROSECUTION IN THE UNITED KINGDOM?

It would not be possible to prosecute in the United Kingdom any of the people on the list supplied by the Simon Wiesenthal Center, even if we had evidence against them. The Genocide Act 1969 established the offence of genocide and made it extraditable. But it did not extend extra-territorial jurisdiction over such offences, so that the offence of genocide committed outside the United Kingdom cannot be prosecuted. Our courts do have extra-territorial jurisdiction over homicide committed abroad by a British person, but this does not extend to offences committed abroad before a person acquired British citizenship. It is perhaps surprising that the International Military Tribunal at Nuremburg was not underpinned by any United Kingdom legislation. Instead the allied powers appear to have relied entirely on the authority of the United Nations and their own rights as occupying powers. A United Nations initiative to codify war crimes defined in the Nuremburg charter and implement the Nuremburg principles came to nothing; no international legal tribunal was ever established. There is still in force a 1945 Royal Warrant enabling military courts to be convened for trial of alleged war crimes. But no trials under this warrant have ever taken place, and it would provide a shaky basis for any action in peacetime.

POLICE INQUIRIES

2. The police could be asked to make enquiries about the people on the list. The men who were found would be invited to make voluntary statements (they could not be compelled). However, each statement could be put to no use in view of the absence of any effective jurisdiction, and it would be difficult to justify this approach. We have, for example, received no request for judicial assistance from a foreign court.

EXTRADITION PROCEDURE

1. In respect of foreign countries (that is, excluding the Commonwealth, the dependencies and the Republic of Ireland) extradition takes place in accordance with bilateral treaties. Our treaties must conform to the terms of our domestic law, principally the Extradition Act 1870. We have 44 such treaties, many of which are moribund. In Eastern Europe we have treaties with Poland, Czechoslovakia, Hungary and Yugoslavia, but not with the Soviet Union. Most foreign extradition traffic takes place with Western European countries and the United States. There are separate arrangements for the Commonwealth and the Republic of Ireland.

2. For an extradition to take place the United Kingdom must be sent, through the diplomatic channel, a formal request supported by a warrant and prima facie evidence. There are safeguards which include provision that only serious crimes are extraditable, and which prevent extradition for political offences. The process involves both the executive and the judiciary. The Bow Street magistrate considers the case only after he receives an order to proceed from the Home Secretary. If the magistrate commits the fugitive to await surrender to the requesting state, the Home Secretary has discretion not to surrender the fugitive.

3. The Criminal Justice Bill contains proposals for the reform of these arrangements. The most significant change will be power to dispense with the prima facie evidence requirement, which has been a major impediment to extradition to other European countries.

EXPERIENCE IN OTHER COUNTRIES

UNITED STATES

In the United States the Office of Special Investigations in the Justice Department is tasked with investigating such allegations. The focus of its work appears to be on the questions of citizenship and extradition involved. We understand for example that the United States was recently able to recognise Israel's extra-territorial jurisdiction over such offences and extradite an East European accused of a war crime to that country. The Office works closely with the Simon Wiesenthal Center.

SWEDEN

Sweden, too, has been sent a list of names by the Simon Wiesenthal Center. A small Commission of Inquiry has been established to review the legal position and to make a report. The problem facing the Swedish authorities is not the absence of jurisdiction over offences but the statute of limitations, and the view of senior Swedish officials (with whom we have discussed this matter) is that the Commission is likely to report that nothing can be done.

CANADA

The legal position in Canada seems much the same as our own, although the Attorney General's Office also told us that they were able to recognise West Germany's extra-territorial jurisdiction over war crimes committed in Lithuania during the German occupation of that country. In that case the elderly fugitive died in custody before coming to trial. We understand that the incoming Conservative administration in Canada in 1984 was determined to get to grips with allegations about war criminals and a special Commission of Inquiry was set up. The Commission's report is due to be published soon (this may of itself increase pressure on us); no-one outside the Commission knows what the report will say.



file

DG2BRD

cc FCO

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

ack / 26 January 1987

We had a word on the telephone today about the letter from Merlyn Rees of 22 January. I attach a copy of this, together with a suggested draft reply for the Prime Minister to send. Subject to advice from you and Colin Budd, I think we could take this reply to deal also with Mr. Rees' letter of 8 December (copy attached in case you have not yet seen it).

I should be grateful if you, in consultation with Colin, would let me know as soon as possible whether you are content with the draft reply. A telephone call will suffice.

CR

WF (HO) & LP (Fro) agree to draft, and ... that
no further reply needed to Mr Rees' letter of 8/12.
But we should keep up the pressure on HO for a
full reply asap. MCA 27/1

Mark Addison

William Fittall, Esq.,
Home Office.

817

Rt Hon Merlyn Rees PC MP



HOUSE OF COMMONS
LONDON SW1A 0AA

PLS att.

22 January 1987

C231

Dear Prime Minister

You will recall that I notified you recently about the formation of a new All-Party War Crimes Group.

As I wrote at the time, one of the group's main concerns is with the list of seventeen alleged war criminals compiled by the Simon Wiesenthal Centre in Los Angeles.

In your letter of 17 November, 1986, to Greville Janner you said the matter was receiving urgent attention. It would be appreciated if you could inform the group, of which I am chairman, of the latest position.

Yours sincerely

M. Rees

Rt Hon Mrs M Thatcher MP

Rabbi HIER

2/2



file

8hw
47

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

19 January 1987

Rabbi Hier, Dean of the Simon Wiesenthal Center in Los Angeles, telephoned me today, to say that he and the Chairman of the Center would be visiting Europe from 23 February to 7 March and would very much like to meet the Prime Minister to hear the British Government's reply to their letter of 22 October 1986 about suspected Nazi war criminals living in the United Kingdom. They would also be visiting France and the Federal Republic and would have a meeting with Chancellor Kohl. At a meeting with the Prime Minister, they would probably be accompanied by two or three leading members of the Jewish community in the United Kingdom, including Mr. Greville Janner.

I simply told Rabbi Hier that I would be in touch with him.

My own view is that it would be more appropriate for the Foreign Secretary or the Home Secretary (or both) to meet Rabbi Hier. I should be grateful for advice by Monday 2 February. We are, of course, still waiting for recommendations on how to deal with the material on Nazi war criminals sent with his original letter.

copy file in Room

I am copying this letter to Stephen Boys Smith (Home Office).

(C. D. POWELL)

Lyn Parker, Esq.,
Foreign and Commonwealth Office.

da

Merlyn Rees MP



✓

cont

571
1) 6/1/87
2. 12. 1.77
3. 20.1

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

BA

16 December 1986

I attach a copy of a letter the Prime Minister has received from Merlyn Rees, MP.

I should be grateful if you could provide a draft reply for the Prime Minister's signature. It would be helpful if this could reach me by Monday 5 January 1987.

(MARK ADDISON)

C.R. Budd, Esq.,
Foreign and Commonwealth Office.

BA

From: Rt. Hon. Merlyn Rees MP



HOUSE OF COMMONS
LONDON SW1A 0AA

8 December, 1986

The Prime Minister
Rt. Hon. Mrs Margaret Thatcher M.P.
10 Downing Street
SW1

Ch/12

Dear Prime Minister

I write to inform you officially of the formation of the All Party War Crimes Group, and of my election as its Chairman. The Group is in the process of drawing up its terms of reference but these will undoubtedly include primary concern with the allegations made by the Simon Wiesenthal Centre that 17 war criminals are living in the United Kingdom. We understand that your office is dealing with this matter, and we will do all we can to help.

Sincerely

Merlyn Rees

① 25/11
2) 2/12
~~3) 1/12~~

HO 8ks
1) 9/12
2) 16/12
3) 6/1/87
4. 13.1.87

19 November 1986
5. 27.1.87

⑥ 3/2
⑦ 10.2

I am replying on behalf of the Prime Minister to thank you for your letter of 18 November conveying the resolution adopted by the Board of Deputies of British Jews.

The Prime Minister will be replying to Dr. Kopelowitz's earlier letter as soon as possible.

*Chaptes
Was this ever in
an the*

(C. D. POWELL)

Hayim Pinner, Esq.

BM

The Board of Deputies of British Jews

WOBURN HOUSE, TAVISTOCK SQUARE, LONDON, WC1H 0EP.

Telegrams: DEPUTIES, LONDON, WC1

Telephone: 01-387 3952 or 388 7651

18th November, 1986

Rt. Hon. Margaret Thatcher MP
The Prime Minister
10 Downing Street
LONDON SW1

R19/11
ppo

Dear Prime Minister,

I refer to the letter of 31st October sent to you by our President, Dr. Lionel Kopelowitz JP and would like to inform you that the Board of Deputies, at its November Plenary Session on Sunday, adopted the following resolution, unanimously:-

"The Board of Deputies of British Jews calls on her Majesty's Government fully and swiftly to investigate allegations that persons believed to be resident in the United Kingdom committed war-crimes, and to ensure that the guilty are brought to justice."

Your early reply to our representations in this matter would be greatly appreciated.

With kindest regards,

Yours sincerely,

Hayim Pinner

Hayim Pinner
Secretary General



10 DOWNING STREET

*celto
file*

THE PRIME MINISTER

17 November 1986

Dear Greville

Thank you for your letter of 6 November about the list of names of alleged war criminals compiled by the Simon Wiesenthal Centre. I can confirm that we have received the list together with a letter from the Centre. We are considering this matter urgently, and I shall let you know our conclusions as soon as I can.

*Yours sincerely
Margaret*

Greville Janner, Esq., Q.C., M.P.

GH



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

13 November 1986

Dear Charles

Thank you for your letter of 10 November enclosing one from Mr Greville Janner MP about the Simon Wiesenthal Centre list of alleged war criminals. I hope soon to be able to write with draft replies to the Centre's letter to the Prime Minister and other correspondents on the subject. For the time being, however, I enclose a draft interim reply for the Prime Minister to send to Mr Janner which simply confirms that we have the list and are considering the matter.

If the Prime Minister thought it helpful, there is no reason why she should not respond to Mr Janner's request for a quiet word. At this stage, however, the Prime Minister would hardly be able to give any indication of what action it might be possible to take. The Wiesenthal list raises entirely novel issues: as far as we can judge, previous Governments have never had to consider the position of alleged war criminals living in the United Kingdom but over whose activities we have no jurisdiction since their alleged offences took place abroad and they were not United Kingdom citizens at the time. Nor is there any prospect of extradition in the absence of an extradition treaty with the Soviet Union.

I am copying this letter to Robert Culshaw (FCO).

Yours ever

W R FITTALL

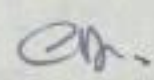
DRAFT LETTER

ADDRESSEE'S REFERENCE

TO	ENCLOSURES	COPIES TO BE SENT TO
Greville Janner Esq QC MP House of Commons LONDON SW1A 0AA		PS/Home Secretary PS/Foreign Secretary
(FULL POSTAL ADDRESS)		(FULL ADDRESSES, IF NECESSARY)

LETTER DRAFTED FOR SIGNATURE BY The Prime Minister
 (NAME OF SIGNATORY)

Thank you for your letter of 6 November about the list of names of alleged war criminals compiled by the Simon Wiesenthal Centre. I can confirm that we have received the list together with a letter from the Centre. We are considering this matter urgently, and I shall let you know our conclusions as soon as I can.



Greville JANNER MP (COP)

17/11



File DA

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

ack/10 November 1986

I enclose a copy of a letter to the Prime Minister from Greville Janner MP about the list of names of suspected Nazi war criminals sent by the Simon Wiesenthal Centre. I should be grateful for a **very early draft reply** to the first two questions in his letter.

I am copying this letter and enclosure to Robert Culshaw (Foreign and Commonwealth Office).

(Charles Powell)

Stephen Boys Smith, Esq.,
Home Office.

DA

From: GREVILLE JANNER, Q.C., M.P.



6th November, 1986.

The Prime Minister,
Rt. Hon. Margaret Thatcher MP
10 Downing St.
SW1

R8

CCMA ✓

Dear Prime Minister,

I have received a letter from the Simon Wiesenthal Centre, saying that they have handed over a complete list of 17 names to our Consul General in Los Angeles, for transmission to you. Has this been received? What is to be done about it? I wonder whether we might, please, have a quiet word in the lobby or elsewhere about it? I received a telephone call from the Head of the Centre, saying that they would like to fly over from Los Angeles, if you would receive them. But at this stage, it might be better to deal with the matter quietly.

I should also tell you that a very heavyweight all party War Crimes Group is being set up in the House to deal with this and related matters.

Revised *Yours sincerely*
Greville Janner

HOUSE OF COMMONS, LONDON, SW1A 0AA

Dr. KOPELOWITZ

File

CAJ

18/11



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

cut / 4 November 1986

SIMON WIESENTHAL CENTER

see Rabbi HIRSH

I enclose a copy of a further letter to the Prime Minister, this time from Dr. Kopelowitz, President of the Board of Deputies of British Jews, about the list of suspected Nazi war criminals believed to be in the United Kingdom forwarded to us by the Wiesenthal Center.

I should be grateful for a draft reply.

I am copying this letter and enclosure to Stephen Boys Smith (Home Office) and to Michael Saunders (Law Officers' Department).

C. D. POWELL

C. R. Budd, Esq.,
Foreign and Commonwealth Office

Transferred to Ho.

SR

CCB/1111

The Board of Deputies of British Jews

WOBURN HOUSE, TAVISTOCK SQUARE, LONDON, WC1H 0EP.

Telex: 262666 BOD G Telegrams: DEPUTIES, LONDON, WCI Telephone: 01-387 3952 or 388 7651

FROM THE PRESIDENT

31st October, 1986

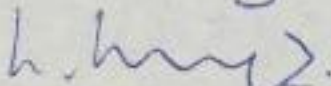
The Rt. Hon. Mrs. Margaret Thatcher MP
Prime Minister
10 Downing Street
LONDON SW1

Dear Prime Minister

I know that you have been made aware during the last few days by the Wiesenthal Centre in Los Angeles of most serious allegations that 17 war criminals may be living in this country who were responsible for the murder of Lithuanian, Latvian and Estonian Jews.

I recall that when you were in Israel in May of this year, you visited Yad Vashem and were emotionally moved by the visual description of the Nazi Holocaust.

As you can well understand, the British Jewish community, represented by the Board of Deputies of British Jews is seriously concerned that these allegations are promptly and fully investigated.

Yours sincerely,


(Dr.) Lionel Kopelowitz JP

Foreign Pol. War Criminals Oct. 1946



EXL
3074

10/1/46

Rabbi HIER
13/11

Rabbi HIER
CF

SRWALQ
alc



① 19/11
② 23/11

Two weeks more 123/9

10 DOWNING STREET
LONDON SW1A 2AA

3) 21/12

4) 9/12

From the Private Secretary

30 October 1986

5) 16/12
6) 6/1/87
7) 13/1/87
8) 27/1/87

SIMON WIESENTHAL CENTER

As you know, we have now received a letter from Rabbi Marvin Hier, Dean of the Simon Wiesenthal Center, enclosing a list of suspected Nazi war criminals believed to be in the United Kingdom. There has already been a good deal of publicity in the press about this. The letter describes the 17 listed persons as suspected of having committed crimes against Jews and non-Jews in Lithuania and Latvia during the Nazi occupation. It does not provide any evidence for these suspicions. But Rabbi Hier asks for an early opportunity to come to London to brief the Government on the full dimensions of the issue.

You will wish to consider carefully with the Home Office and the Law Officers what action it would now be appropriate to take, and let me have a draft reply. Meanwhile I shall simply acknowledge receipt of the letter. I suggest that, in dealing with any questions in the House, the Prime Minister should confirm that she has received a letter and a list of names but no details of allegations against them, and decline to comment further.

I am copying this letter and enclosure to Stephen Boys Smith (Home Office) and Michael Saunders (Law Officers).

Transferred to Ho 5/11

(C. D. POWELL)

Colin Budd, Esq.,
Foreign and Commonwealth Office.

HO. 5/11

SRW

8/21

30 October 1986

I am writing on behalf of the Prime Minister to thank you for your letter of 22 October which has been received today. I shall draw it to the Prime Minister's attention and ensure that you receive a reply as soon as possible.

(C. D. POWELL)

Rabbi Marvin Hier



Foreign and Commonwealth Office

London SW1A 2AH

29 October 1986

Dear Charles,

Simon Wiesenthal Center

I enclose a letter to the Prime Minister from the Simon Wiesenthal Center, which we received today from the Consulate General in Los Angeles.

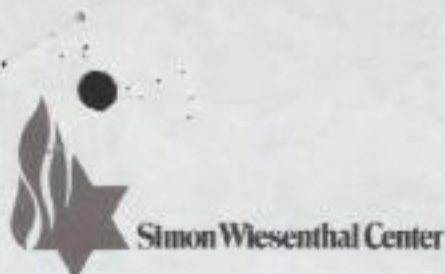
Yours ever,

Colin Budd

(C R Budd)

Private Secretary

C D Powell Esq
No 10 Downing St



9760 West Pico Blvd.
Los Angeles, CA 90035-4792
(213) 553-9036
Telex 910-490-2667
Facs (213) 553-8007

October 22, 1986

Rabbi Marvin Hier
Dean
Rabbi Abraham Cooper
Associate Dean
Dr. Gerald Margolis
Director
Rabbi Meyer May
Director for Development
Susan Burden
Director of Administration
Marlene F. Hier
Director
Membership Development
Lydia C. Triantopoulou
Director
Public Relations
Rabbi Daniel Landes
Director
National Education Projects
Richard Frank
Director
Media Projects

Right Hon. Mrs. Margaret Thatcher, M.P.
10 Downing Street
London SW1
England

Dear Prime Minister:

The Simon Wiesenthal Center has intensified its worldwide hunt for suspected Nazi war criminals. As a result of our investigations, our Jerusalem office headed by Efraim Zuroff, a Holocaust historian and formerly with the Office of Special Investigations U.S. Justice Dept., has found material which has enabled us to put together a list of suspected Nazi war criminals, murderers and collaborators who, based on our research, are believed to be living in England.

Martin Mendelsohn
Legal Counsel
Washington, D.C.

Regional Offices

New York
Rhonda Barad
Director
East Coast Region
Chicago
Carol Wallace
Director
Community Relations
Toronto
Sol Littman
Canadian Representative

Enclosed is a preliminary list of seventeen persons who, based on archives drawn from various places of the world, are suspected of having committed crimes against Jews and non-Jews in Lithuania and Latvia during the Nazi occupation. This list of suspects contains varying degrees of culpability ranging from crimes against humanity, mass murder and torture, to those accused of being collaborators, members of the SS and aiding the Nazi cause. For some suspects on the list, we have supplied important immigration data which shows the exact date of the individual's departure for England.

During the period in question, of a population of 225,000 Lithuanian Jews only 2,000-3,000 managed to survive, and out of a population of 95,000 Latvian Jews, only a few hundred survived the brutal genocide carried out by Lithuanian and Latvian collaborators supervised by the Germans.

cont'd...

Rabbi Marvin Hier Dean	Alan I. Casden Co-Chairman Beverly Hills, CA	William Sulzberg Beverly Hills, CA	Herbert M. Goffand Beverly Hills, CA	Frank Horny Los Angeles, CA	Jack Nash New York, NY	Daniel Schwartz Palm Springs, CA	Irving I. Stone Cleveland, OH	Maurice Weiss Beverly Hills, CA
Board of Trustees	Ivan F. Boesky New York, NY	Alan Greenberg New York, NY	Alan Greenberg New York, NY	Robert Ivas Beverly Hills, CA	Nelson Peltz New Brunswick, NJ	David Shapiro Beverly Hills, CA	Erwin Susman Beverly Hills, CA	Paul Wilensky New York, NY
Samuel Beitzberg Chairman Vancouver, B.C.	Stovin Arbib Los Angeles, CA	Norman Brodsky New York, NY	Henk Greenspan Las Vegas, NV	Ira A. Lipman Memphis, TN	Ronald O. Perleman New York, NY	Frank Srinke Palm Springs, CA	Elizabeth Taylor Beverly Hills, CA	Gary Winnick Los Angeles, CA
Roland E. Amall Co-Chairman Los Angeles, CA	Newton Becker Los Angeles, CA	Mrs. Marvin Cohen Beverly Hills, CA	Frank Hammer Beverly Hills, CA	Marcus Lowy Los Angeles, CA	Ace Pollin Washington, D.C.	Arnold Smith Phoenix, AZ	William Weinberg Beverly Hills, CA	Morris J. Wood Vancouver, B.C.
	Hyman Beitzberg Calgary, AB	Arthur Fouks, Q.C. Vancouver, B.C.	Uri Hankham Los Angeles, CA	Larry A. Mizer Denver, CO	Martin Rosen New York, NY	Don Soler Miami, FL	Jerry Weinraub Beverly Hills, CA	Russell Zabo Los Angeles, CA

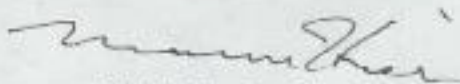
Right Hon. Mrs. Margaret Thatcher
October 22, 1986
Page -2

I trust that your Government will investigate carefully the charges against these suspected war criminals, determine the truth of the accusations, the availability of witnesses and, if necessary, create the required legal apparatus to deal with them. We would welcome an early opportunity to meet with you in London to brief you further on the full dimensions of this issue.

The biological clock is running out on Nazi war criminals and the record of history should not read that those who committed unspeakable crimes against humanity had the final victory by depriving justice of its due course. Future generations must learn that the crime of genocide has no time limit and that even forty-five years after the event, governments will overcome any impediment in exercising their responsibility to bring those who committed such crimes before the bar of justice.

I look forward to hearing from you on the contents of this letter at your earliest convenience.

Cordially,




Rabbi Marvin Hier
Dean

RMH/cf

Enclosure



A The National Archives

DEPARTMENT/SERIES <i>PRM 19</i> PIECE/ITEM <i>2680</i> (one piece/item number)	Date and sign
Extract details: <i>Attachment to letter Hieir to PM dated 22 October 1986</i>	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	
TEMPORARILY RETAINED	<i>4/8/2016 G. Gray</i>
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	

Instructions for completion of Dummy Card

Use black or blue pen to complete form.

Use the card for one piece or for each extract removed from a different place within a piece.

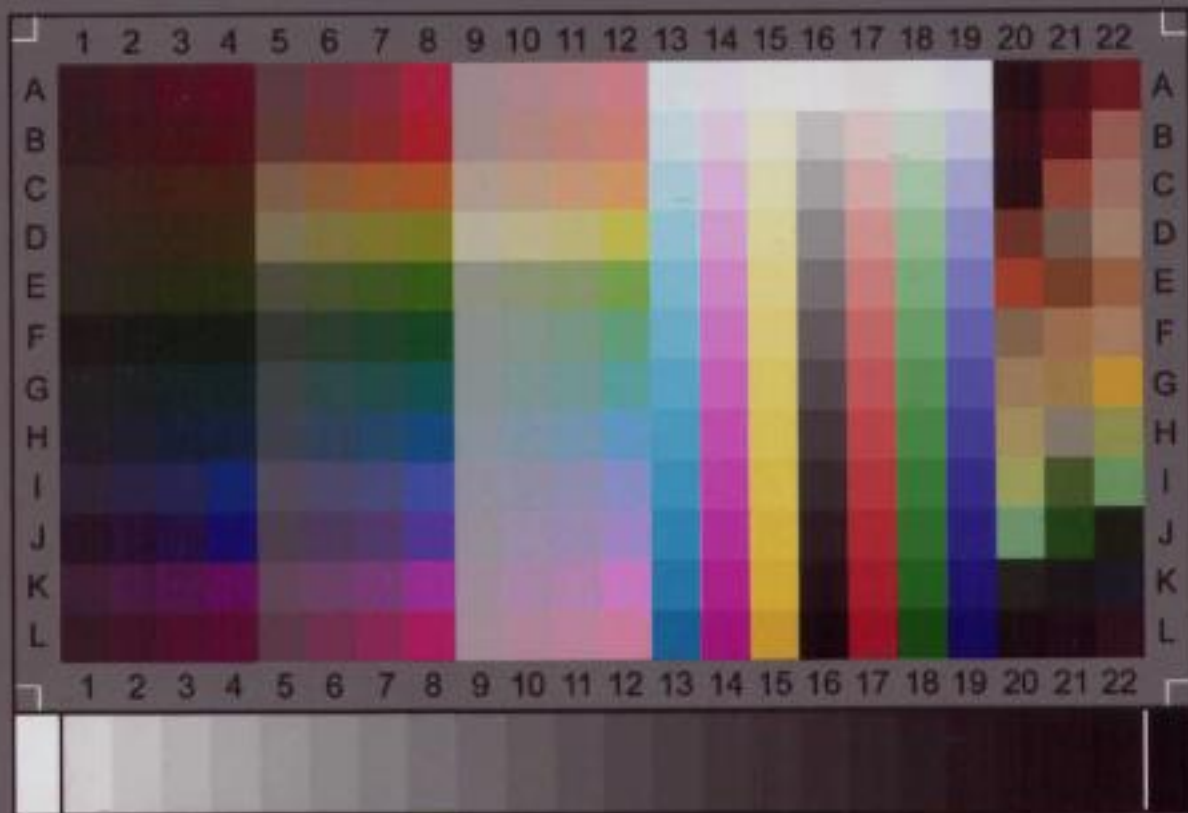
Enter the department and series,
eg. HO 405, J 82.

Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

Enter extract details if it is an extract rather than a whole piece.
This should be an indication of what the extract is,
eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.
Do not enter details of why the extract is sensitive.

If closed under the FOI Act, enter the FOI exemption numbers applying to the closure, eg. 27(1), 40(2).

Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer or Number not used.



IT8.7/2-1993
2009-02

Image
Access

IT-8 Target

Printed on Kodak Professional Paper
Charge: R090212