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PREM 19/2681

PART 2

MT

SECRET

CONFIDENTIAL FILING

Allegations concerning War Criminals

Simon Wiesenthal Centre

War Crimes Inquiry

FOREIGN POLICY

PT1: October 1986

PT2: July 1989

Attached Folder "War Crimes Inquiry".

Referred to	Date	^{F. WALDMAN REPORT} Referred to	Date	Referred to	Date	Referred to	Date
3-7-89							
11/7/87							
6/89							
17/8/89							
7-9-89							
15/9/87							
29-9-89							
11-10-87							
19-10-89							
15-12-89							
22-12-89							

PREM 19/2681

Waldman

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.

Ministry of Defence: Review of the results of investigations carried out by the Ministry of Defence in 1986 into the fate of British servicemen in Greece and the Greek Islands between October 1943 and October 1944 and the involvement, if any, of the then Lieutenant Waldheim.

Published by HMSO – ISBN 0 11 772664 8

CM 744 - War Crimes: Report of the War Crimes Inquiry
Published by HMSO – ISBN 0 10 107442 5

Signed _____

J. Gray

Date _____

4/8/2016

PREM Records Team

Home Office documents

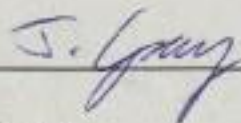
Reference: War Crimes Inquiry
Description: Report to the Home Secretary
Date: 16 June 1989

Reference: War Crimes Inquiry – Casework
Description: Report to the Home Secretary
Date: June 1989

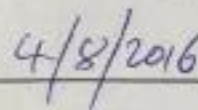
The above documents, which were enclosed on this file have been removed and destroyed.

Such documents are the responsibility of the Home Office. When released they will be available in the appropriate home office Classes.

Signed



Date



PREM Records Team

PART 2 ends:-

LPC to Home Sec 22.12.89

PART 3 begins:-

Home Sec to LPC 19.1.90

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C.P. 2



PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

22 December 1989

Prime Minister
 mt C.A.P. 20/12/89

Dear Home Secretary,

WAR CRIMES

Aras

In your minute of ~~13~~ December to the Prime Minister you proposed, in the wake of last Tuesday's debate in the House of Commons, introduction as soon as possible of legislation to implement the main recommendations of the War Crimes Inquiry Report without, however, legislating on the ancillary evidential recommendations in the report. Her Private Secretary's letter of 14 December conveyed the Prime Minister's endorsement of the desirability of early legislation and her suggestion that the scope of the legislation and its resource implications should be discussed in the appropriate committee. Since then John Belstead and Paddy Mayhew have commented on your proposals, and I have also had a preliminary discussion with the business managers.

There is no doubt that legislation on war crimes will be difficult and time consuming, not least because of the opposition to it from among our own supporters in the House. (On the Government benches, the votes were 153 for, 111 against; the payroll split 27 for and 24 against and PPSs 24 for and 12 against). Handling in the Lords will be particularly difficult: John Belstead is uncertain whether a majority will be forthcoming there in favour of any Bill. Legislation will also put a further strain on already very full legislative programme. In these circumstances, the Commons may eventually be faced with a decision whether it wishes to invoke the Parliament Act in order to get the Bill through.

The issues raised by the inquiry report touch on interests not normally represented on H Committee, and have previously been discussed among a small group of colleagues directly concerned, viz the Lord Chancellor, Foreign Secretary, Secretaries of State for Defence and Scotland, the Law Officers, the Chief Secretary, the business managers and ourselves. I propose to reconvene this group as soon as possible after the recess to consider the points identified by the Prime Minister and some other important related issues. I suggest that the points the group needs to consider are:-

Contd 2/ . . .

- i. The scope of legislation - you have suggested that we should not legislate on the ancillary evidential recommendations contained in the War Crimes Inquiry Report. In his recent minute, Paddy Mayhew suggested that without the special procedures identified by the report as being necessary, any prosecution might face the worst of all worlds: protracted enquiries into well publicised allegations, with nothing to show at the end.

In this context we also need to consider the point of retrospection identified by John Belstead. This is the point which troubled a number of peers. It would be helpful in considering it if, in preparation for the meeting, you could let us know what Australia and Canada have done to cope with this problem.

- ii. The size of the Bill - subject to our decisions on scope, I know that you will be doing what you can to keep down the size of any Bill and to reduce the room for amendments to a minimum.
- iii. Resource aspects - your minute mentions the resource implications which legislation will have for the Home Office, the prosecuting authorities both north and south of the Border, and for the courts. We will need Norman Lamont's assistance on this.
- iv. The timing of a Bill - I entirely see the arguments for legislating rapidly if we are to do so at all. There is no doubt, however, that a Bill this session will impose very considerable extra burdens on the Government's Parliamentary programme. You will recall that doubts were expressed at Cabinet on 5 October about giving priority to a Bill on war crimes as against other contenders for inclusion in this session's programme. As I have noted, there is significant opposition in the Lords, and among our own supporters in the Commons, to a Bill. We ought therefore, I suggest, at least to consider what would be the disadvantage of delaying the Bill's introduction to next session when we could at least fit it into a properly structured programme. If we nevertheless decide to proceed this session, it would be helpful to have your estimate of when the Bill can be ready for introduction.

Contd 3/ . . .

- v. Arrangements for introduction of the Bill and for whipping - if there is a strong possibility that the Lords will reject the Bill, it could be argued that it should start its progress in that House. Having discussed this with the business managers, my initial view, however, is that there would be strong objections if we do not introduce the Bill in the Commons. I am also inclined to think that the Bill should be taken through all its stages on a free vote. But the judgement here is not an easy one.

If any other points occur to colleagues, no doubt they will let us know before the meeting. My office will be in touch with the offices of those concerned to arrange it. I will of course report the outcome of our discussion to the Prime Minister and to other Cabinet colleagues.

I am copying this letter to the Prime Minister, other members of Cabinet, the Law Officers, the Chief Whips (Commons and Lords), Sir Robin Butler and First Parliamentary Counsel.

your minis,
W. Butler

pp. GEOFFREY HOWE

Approved by the Lord President and signed in his absence.

The Rt Hon David Waddington QC MP

For For: War Crimes 112



CONFIDENTIAL

ccjc



Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon David Waddington QC MP
Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

*CDD
22/ki*

22 December 1989

Dear Home Secretary

WAR CRIMES

flap

I am grateful to you for copying to me your minute of 13 December to the Prime Minister and also to Patrick Mayhew for his letter of 14 December.

2 Your inclination not to legislate on the ancillary evidential recommendations contained in the War Crimes Inquiry report would remove the pressure for general implementation of the 1988 Criminal Justice Act provisions for live television evidence to be taken from witnesses abroad. This represented by far the major element of the estimation of the resource implications of accepting the Inquiry's recommendations made by Douglas Hurd in July.

3 I agreed that if we proceeded with legislation I would be prepared to look at provision for 1991-92 and beyond in the context of next year's public expenditure survey. I note however that both you and Patrick are concerned also about the resource implications next year and possibly this. I am entirely content with the Prime Minister's suggestion that the question of resources should be considered further in Committee. This will need to be based on clearer plans of how investigations would be pursued, together with an assessment of the likely costs for the various agencies concerned. I would be grateful if my officials could be fully involved in the necessary resource assessment exercise.

4 I am copying this letter to Cabinet colleagues, the Law Officers and Sir Robin Butler.

Yours sincerely

Aileen Campbell

NORMAN LAMONT

Approved by the Chief Secretary and signed in his absence

Foto pol: wa criminal pt 2



*me low
cell*

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

16 December 1989

Dear Juliet,

WAR CRIMES

The Prime Minister has seen the Attorney General's undated minute on this subject, setting out his views on the scope of any legislation to deal with war crimes and the resource implications. She assumes that his points will be discussed in the appropriate Committee.

I am copying this letter to the Private Secretaries to the Foreign Secretary, the Chancellor of the Exchequer, the Home Secretary, the Lord President, the Lord Privy Seal and Sir Robin Butler.

*yours sincerely,
C. D. Powell*

C. D. POWELL

Miss Juliet Wheldon,
Law Officers' Department.

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all (2)

Prime Minister

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You will want to note the Attorney's views, which will be discussed further in

WAR CRIMES

the appropriate Committee.

PRIME MINISTER

I have seen the Home Secretary's minute to you dated 13 December and the letter from your Private Secretary setting out your views as to the future handling of this issue.

CBD
16/11

The question whether to introduce legislation, in the light of the large majority in favour of the resolution in Tuesday's debate, is of course one of policy for my colleagues to determine. Having listened to much of the Lords' debate I should be surprised if we secured acceptance of the principle of war crimes legislation in the House of Lords.

I welcome your proposal that the scope of any legislation and the resource implications should be discussed in the appropriate Committee. Both are matters in which I have a substantial interest, and my concern on the resources issue is already well known to colleagues. The Chief Secretary has declined to give any assurance as to funding, but indicated willingness to look again at the situation in next year's PES round. In the light of Tuesday's vote I have now had to bid for an additional £2.7 million in 1990/91, in order that the CPS could fulfil the obligations that the legislation is likely to place upon it. The Crown Prosecution Service is peculiar in that it is a "one product service", and accordingly cannot look to savings on another programme to absorb within existing provision the expenditure arising from war crimes cases. The CPS cannot therefore devote resources, whether of professional manpower or of money, to the investigation and prosecution of war crimes without subordinating the prosecution of contemporary crime. That would not be in the public interest; moreover knowledge that the Government were considering such a diversion of resources would be extremely damaging politically.



I am very anxious about the Home Secretary's present intention not to legislate on the ancillary evidential recommendations of the Hetherington/Chalmers Report. Whilst one cannot predict with complete assurance what would be the effect of the Home Secretary's proposal on any particular prosecution, there must be a strong presumption that the prospects of conviction would be seriously diminished. The difficulties presented by cases with an international dimension are already well known to colleagues, and without the special procedures identified by the report as being necessary we would face the worst of all worlds: protracted inquiries into well publicised allegations, with nothing to show at the end.

To summarise, the Crown Prosecution Service cannot be expected to deliver if it is denied both the resources and the tools for the job.

Copies of this minute go to members of the Cabinet and Sir Robin Butler.

[Signature]

Agreed by the Attorney General
and signed in his absence.

[As you will see, the Lord Privy Seal disagrees on this point. He thinks the only way legislation will get through the Lords is without provisions in respect of evidence.]
C.D.D.

For. Po. War Criminals Part 2



GOVERNMENT

1945





PRIME MINISTER

WAR CRIMES

I have seen a copy of David Waddington's minute to you of 13 December on the outcome of the debate on War Crimes in the House of Commons on 12 December and your views on it, contained in Charles Powell's letter of 14 December to Colin Walters.

I recognise that the majority of MPs in favour of the motion in the Commons provides a clear indication that it is right to proceed in the way David is proposing. Because of the views expressed by Peers during the debate in our House on 4 December however, I think that it is only fair of me to say that unless careful consideration is given to the content of the legislation on War Crimes, there is a real danger that the Bill could be lost in the House of Lords.

I recognise that David proposes that the Bill should do only what is necessary to give the courts jurisdiction to try alleged war criminals without any provisions in respect of evidence. This will go some way to meet doubts expressed by Peers during the debate in our House. I should be grateful, however, if David could also look at the point of retrospectation which emerged as another genuine concern. This is a difficult area, I know, and as a non-lawyer, I cannot see a way round the charge that to legislate against supposed war criminals almost fifty years after the acts were committed will constitute retrospective legislation but I think that David's officials should seek to counter these charges in any legislation that is brought forward. Even if this is done, however, we should not ignore the difficulty presented by the three to one majority of speakers in our House who spoke against the introduction of legislation.

I am copying this letter to David Waddington, Sir Geoffrey Howe, other members of Cabinet, the Law Officers and to Sir Robin Butler.

Edwin Keenan

BELSTEAD
(Approved by the Lord
Privy Seal and signed in
his absence)

15 December 1989

CONFIDENTIAL



c:/foreign war. DAS

bc: PC

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

14 December 1989

See also.

WAR CRIMES

The Prime Minister has seen the Home Secretary's minute of 13 December about the outcome of the House of Commons debate on 12 December on War Crimes. She agrees that the Government should introduce a Bill as quickly as possible in the current Session to implement the main recommendation of the War Crimes Inquiry Report. She suggests that the scope of the legislation and the source implications be discussed in the appropriate Committee.

The Prime Minister is content with the line to take should the question of legislation be raised in the meantime.

I am copying this letter to the Private Secretaries to Members of Cabinet, the Legal Secretary to the Law Officers and to Sir Robin Butler.

John Smith
C. D. Powell

C. D. POWELL

Colin Walters, Esq.
Home Office

CONFIDENTIAL

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Prime Minister

call

The Home Secretary has no option but to legislate & favours a fairly early announcement. But the terms of the

Prime Minister

I have been reflecting on the outcome of yesterday's debate on war crimes.

legislation & the question of resources need to be settled first.

In view of the size of the majority in favour of taking action to allow trials of suspected war criminals to take place, and despite the difficulties any legislation would face in the House of Lords, I have concluded that we have no option but to introduce a Bill as quickly as possible in the current Session to implement the main recommendation of the War Crimes Inquiry report.

Agree in principle to legislate?

However, my impression was that there was a fair measure of support in the debate for the view that we should not legislate on the ancillary evidential recommendations contained in the report. It was argued by several speakers that implementation of these recommendations would create an undesirable distinction between the procedures which apply in war crimes trials and those in the generality of criminal cases. The omission from any Bill of provisions on these aspects would certainly shorten it, and, on balance, would I think render its passage somewhat easier. At present, therefore, I am inclined to propose that the Bill should do only what is necessary to give the courts jurisdiction to try alleged war criminals, without any provisions in respect of evidence.

Agree to refer discussion of details to H Committee?

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13/12

Y
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not

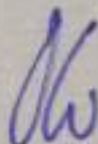
These are difficult issues to be addressed in terms of resources, as the Attorney-General in particular has been careful to signal. These will arise initially in respect of

/the further

the further work necessary to determine whether the three leading cases should be brought to trial and (if so) to prepare those cases for trial. It would not be feasible to mount simultaneous investigations of all the other cases (the three further main cases, plus the 75 and the 46 others proposed for investigation and tracing by the Inquiry), but we shall have to be seen to be doing something to follow up some of those allegations. Thereafter, there will be trial costs to be taken into account, though I understand that these are unlikely to begin before late 1990 at the earliest, even if work is set in hand as soon as it is proper to do so. What all this suggests, however, is that we could face a need for additional expenditure before the end of the current financial year, and certainly in the course of the next. We should not enter this territory without a recognition that the resource implications will be significant (as I acknowledged in my speech in the House) and that we shall have to make the necessary resources available. I cannot speak for the Lord Chancellor or the Attorney General but so far as costs falling to the Home Office are concerned I do not at present see how I could find them within existing provision. I do not, however, believe that any other position would be defensible.

Finally, there is the likelihood that we shall be asked between now and the Christmas recess to give an indication when we will reach a decision in the light of yesterday's ... note. I attach a brief line to take which you or the Lord President may wish to use if the issue is raised tomorrow.

I am copying this minute to Cabinet colleagues, the Law Officers and Sir Robin Butler.



13 December 1989



With the Compliments
of
PRIVATE SECRETARY

10 NOVEMBER

..... 19 89

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

Telephone: Direct Line 01-276
Switchboard 01-276 3000
Fax 01-276 6834

6810

clp

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

Telephone: Direct Line 01-276 6810
 Switchboard 01-276 3000
 Fax 01-276 6834

The Rt Hon Sir Geoffrey Howe QC MP
 Lord President of the Council
 Privy Council Office
 68 Whitehall
 LONDON SW1A 2AT

10 November 1989

*Dear Geoffrey,**clp 13/x*

WAR CRIMES

I note at the meeting which was held on 25 October the Attorney-General drew attention to the resource implications of War Crimes legislation and the reply which he had on 23 October from the Chief Secretary to his letter of 29 September.

at trap
 In view of the fact that I was not present at the meeting I thought it best to set out my position in relation to costs. In particular I would echo Patrick Mayhew's sentiments that being a small Department involved principally in the investigation and prosecution of criminal offences there are no "other projects" which can be shelved to fund the substantial expenses which would be involved in undertaking the investigation and prosecution of war crimes cases.

I appreciate Norman Lamont's concern to avoid premature bids and I do not seek to make one now. However since I wrote to him on 31 July nothing has caused me to revise downwards the preliminary calculations of costs made then. These costs of about £1.5 million are substantial ones compared to my Department's budget which for 1990/91 is £32.1 million.

I am copying this letter to the Prime Minister, James MacKay, Patrick Mayhew, David Waddington, Douglas Hurd, Malcolm Rifkind, Tom King, Norman Lamont and Sir Robin Butler.

*Yours ever,**Fraser*

FRASER OF CARMYLLIE

For Pol: War Crimes
A2



CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT



25 October 1989

COP 26/1.

Her Excellency,

WAR CRIMES

The Home Secretary discussed with the Lord President this morning the handling of the Parliamentary debates on the report of the War Crimes Inquiry. The Secretary of State for Scotland, the Lord Privy Seal, the Attorney General, the Chief Whip, the Minister for the Armed Forces and Mr Mawer (Cabinet Office) were also present.

2. The Home Secretary said that in his statement to the Commons following publication of the report of the Inquiry on 24 July he had said that the Government was impressed by the force of argument that had led the Inquiry to conclude that legislation to extend UK jurisdiction over war crimes was necessary, but wanted to hear the views of Parliament before taking a final view on the principle of legislation. The Government would provide an opportunity for each House to debate the report in the autumn, and in the light of those debates would take a final decision on whether to bring forward a Bill on the lines proposed by the Inquiry. The commitment to a debate in the autumn left some leeway over the precise timing and it would be possible to postpone the debate to the new Parliamentary session if business management or other considerations pointed in that direction. Although he appreciated the reservations which many colleagues had on the matter (to some of which Mr Hamilton later referred in discussion), the issue could not, however, be postponed indefinitely: it was now firmly on the agenda for public discussion. It was desirable that the debate should result in a clear expression of Parliamentary view on the question of legislation, that it should be held on a day other than a Friday, and that adequate time should be allowed for it, although half a day might suffice.

3. The following points were made in discussion:

i. It was certainly desirable that the debate should be on a substantive motion, although the experience of the Shops Bill showed that the fact that Members had voted in favour of a motion endorsing legislation would not necessarily mean that they voted for the subsequent Bill.

Contd 2/ . . .

CONFIDENTIAL

CCP

Papers removed from file

Date: 13.11.88

LD Adv. to LAC 10.11.88

For Pol: War Crimes
P. 2

ii. Difficulties could arise if the motion was tabled in the name of the Government. It would be better if a Private Member (such as Mr John Wheeler) tabled the motion, by analogy with the procedure adopted in debates on capital punishment. This would leave the Home Secretary free to express a personal view on the issues in the debate, without committing the Government as a whole in advance of Parliament expressing its views.

iii. The aim should be to allow all Members, including Ministers, the opportunity to express a genuinely free view on the issue. Neither the Party nor the payroll should therefore be whipped. Once the Government had decided, in the light of the debates, whether or not to legislate, collective responsibility should, of course, apply.

iv. Debates should be held in both Houses, with that in the Commons preceding that in the Lords. The Lords debate should, however, follow closely on the debate in the Commons.

v. The timing of the debates would have to be discussed through the usual channels. Although the Opposition home affairs spokesman had privately indicated a preference for an early debate, the prospects for accommodating this in the present session were uncertain. Given also the decisions about legislation which would need to be taken in the wake of the debates, there might indeed be something to be said for holding the debates in the new session.

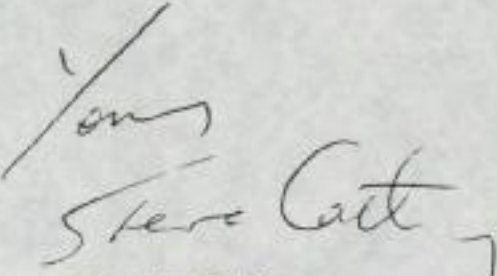
vi. As to the length of the debates, a half day might be insufficient. On the other hand, a full day might be too generous. One option might be to run the debate from 7.00pm to midnight, although a vote at this late hour might be less than fully representative of opinion in the House. Again, the issue would be for the Business Mangers to take forward in discussion through the usual channels.

4. The Attorney-General also drew attention to the resource implications were it decided to proceed with legislation. Very considerable extra costs would arise at the investigation as well as the prosecution stage, as he had pointed out in his letter of 29 September to the Chief Secretary. The Chief Secretary's reply of 23 October had, however, declined to give any assurance at this stage that additional costs would be met. It was essential that no commitment to legislation should be given unless it was clear that the additional resources required would be forthcoming. In discussion it was pointed out that additional costs would fall on a number of other Departments, including the Lord Chancellor's Department, the Lord Advocate's Department, the Home Office and the Ministry of Defence. Although it was unlikely that Members would expect precise answers on questions of cost during the debates, the Government should not find itself in the position of willing the end without willing the means.

Contd 3/ . . .

5. The Lord President, summing up the discussion, said that it had been agreed that a debate should take place in the Commons, closely followed by one in the Lords, during the coming period. The precise timing and the length of the debates were matters to be taken forward by the Business Managers through the usual channels. The debate in the Commons should be on a Private Member's motion initially tabled as an Early Day Motion (EDM): the Home Secretary should consult further with the Chief Whip about the wording of the motion and which Member should be invited to table it. It would be desirable for the EDM to obtain all Party backing. The Home Secretary should also consult further with the Lord Privy Seal on the motion to be debated in the House of Lords. The debates in both Houses should be conducted on the basis of a free vote. On the question of resources, the meeting was agreed that the Government could not commit itself to legislation unless it was known beforehand that the reasonable additional costs which it was clear would fall on several Departments would be met. The Departments concerned should review the position reached in correspondence with the Treasury, and pursue the matter further with the Chief Secretary. He would himself mention Departments' concerns to the Chief Secretary when he saw him later in the day.

6. I am copying this letter to the Private Secretaries to those present at the meeting, Dominic Morris (No 10), Paul Stockton (Lord Chancellor's Department), Carys Evans (Chief Secretary's office), and Philip Mawer (Cabinet Office).


S D CATLING
Principal Private Secretary

Colin Walters Esq
Principal Private Secretary
Home Office
50 Queen Anne's Gate
London SW1

cc/c



Treasury Chambers, Parliament Street SW1P 3AG

The Rt Hon Sir Patrick Mayhew QC MP
Attorney General
Royal Courts of Justice
London
WC2A 2LL

NBLm
File
2/10

23 October 1989

Don Rubin

WAR CRIMES

Har

Thank you for your letter of 29 September.

2. I have no wish to uncouple the resource implications from the policy decision on the war crimes proposals. It is normal practice that an assessment of the full costs of policy proposals and how those costs are to be met should be made before Ministers are invited to consider policy proposals.

3. The costings of the war crimes proposals remain uncertain and our discussions on the subject have understandably not focused on how the proposals might be funded. My view on the funding arrangements remains as set out in my letter of 18 August. It would have been premature to enter bids in the current Survey, and I am grateful that no colleagues have done so, but assuming the recommendations of the Inquiry are implemented I would be prepared to look again at the situation in next year's Survey.

4. As with any other additional burden, I would examine closely the extent to which this could be financed through offsetting reductions elsewhere on the relevant departments programmes. The extent to which any additional provision could be made available would also depend upon overall public expenditure constraints. I can offer no assurance about additional resources now.

5. I am copying this letter to the Prime Minister, James Mackay, Sir Geoffrey Howe, Douglas Hurd, Malcolm Rifkind, Tom King, Lord Fraser and Sir Robin Butler.

[Signature]
NORMAN LAMONT

for Pa: War Comm. PTZ



For Col:
 War Crimes
 PA



file

10 DOWNING STREET
 LONDON SW1A 2AA

etc.

From the Private Secretary

19 October 1989

Dear Richard

WALDHEIM

You copied to me your letter to Margaret Aldred. Since then, I have had a chance to discuss with the party in Kuala Lumpur the Prime Minister's views on the use of the fifth paragraph of the original draft answer to the PQ.

The Prime Minister thinks this should not be used. If another member were to make that point, the best response would simply be for the Minister concerned to say that the member made his own point very well. I have spoken to Brian Hawtin to this effect ahead of this afternoon's defence debate.

I am copying this letter to Brian Hawtin (Ministry of Defence), Peter Storr (Home Office), Stephen Wooller (Law Officers' Department), Stephen Catling (Lord President's Office), Margaret Aldred (Ministry of Defence) and to Trevor Woolley (Cabinet Office).

Yours etc

Dominic

DOMINIC MORRIS

R H T Gozney Esq
 Foreign and Commonwealth Office



Foreign and Commonwealth Office

London SW1A 2AH

18 October 1989

PERSONAL AND CONFIDENTIAL

Jean Margaret,

Walheim Report: Line to Use in Parliament

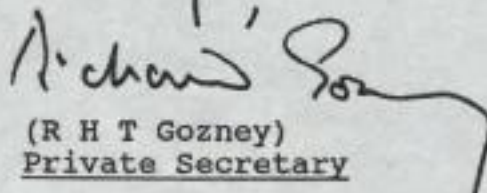
You will have seen the Q & A brief (Sue Ambler-Edwards letter of 17 October to Charles Powell at No. 10). Like the answer given to the Parliamentary question on 17 October, this omits the 5th paragraph of the original draft answer to the PQ:

"In one who has risen to hold such eminent and responsible positions, the lack of openness about his past, which President Waldheim has shown, though not a matter relevant to the report, inevitably helped to engender the suspicions about his conduct in the period in question and is a matter of regret."

Mr Waldegrave talked to your Minister and to Andrew Turnbull and Charles Powell of No. 10 while in Blackpool, about using the language of this 5th paragraph of the original draft PQ answer, if necessary, during the debate on 19 October. Stephen Wall was also present. Both Mr Waldegrave and Stephen Wall recall that the Private Secretaries from No. 10 said that they would be happy for the formula to be used as a supplementary (and by implication during the course of the debate) so long as it was excised from the answer to the PQ.

I am copying this letter to Brian Hawtin (Defence Secretary's Office), Peter Storr (Home Office), Stephen Wooller (Law Offices' Department), Steve Catling (Lord President's Office) and Trevor Woolley (Cabinet Office), as well as to Dominic Morris at No.10.

Yours sincerely


(R H T Gozney)
Private Secretary

Ms Margaret Aldred
PS/Mr Hamilton
Minister of State for the Armed Forces
Ministry of Defence

PERSONAL AND CONFIDENTIAL

If asked + W. being evasive
R.H.G. make his own point.

CONFIDENTIAL



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

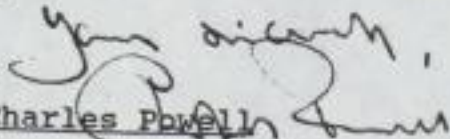
16 October 1989

See me.

THE WALDHEIM REPORT

Thank you for your letter of 16 October with a revised version of the reply which Mr Hamilton will give on 17 October, announcing publication of the Waldheim Report. It has not been possible to consult the Prime Minister before her departure for CHOGM but I am confident she would be content with the revised version.

I am copying this letter to Stephen Wall (Foreign and Commonwealth Office), Peter Storr (Home Office), Stephen Wooler (Law Officers' Department), Steve Catling (Lord President's Office) and to Trevor Woolley (Cabinet Office).

Yours sincerely,

Charles Powell

Miss S.J. Ambler-Edwards
Ministry of Defence

CONFIDENTIAL



MINISTRY OF DEFENCE
 MAIN BUILDING WHITEHALL LONDON SW1A 2HB
 Telephone 01-218 2111/3

MO 6/18/10S

16th October 1989

Dear Charles,

THE WALDHEIM REPORT*at nap*

Thank you for your letter of 11th October to John Colston commenting on the written reply which Mr Hamilton will be giving on 17th October announcing the publication of the Waldheim Report.

I now attach a revised draft of the reply. As you will see, this incorporates in full your suggested redraft of the first paragraph. Paragraph 3 has also been revised while taking care to retain, as we were advised to do, the precise words of the Director of Army Legal Services.

The fifth paragraph of the original draft has been removed in accordance with the Prime Minister's wishes; we have however felt it desirable to retain the assertion that knowledge itself is not a crime in view of some of the recent statements by the anti-Waldheim lobby. This sentence has therefore been incorporated in paragraph 4.

I would be very grateful to know that the Prime Minister is content with the statement as revised.

I am copying this letter to Stephen Wall (FCO), Peter Storr (Home Office), Stephen Wooler (Law Officers' Department), Steve Catling (Lord President's Office) and to Trevor Woolley (Cabinet Office).

Yours ever *SJE*

(S J AMBLER-EDWARDS)(Miss)
 APS/S of S

Charles Powell Esq
 No 10 Downing Street

CONFIDENTIAL

To ask the Secretary of State for Defence, when he will publish the results of the review of the 1986 investigation into the fate of captive British Servicemen and the possible involvement of the then Lieutenant Waldheim.

My rt hon Friend the Prime Minister announced on 16 February 1988 that a review would be undertaken of the results of the investigation carried out in 1986 by the Ministry of Defence into the fate of British Servicemen and the possible involvement of the then Lieutenant Waldheim. This was in the light, of both the report of the Commission set up by the Austrian Government, which had access to a wider range of sources than those available for the 1986 investigation, and of the continued questioning of Lieutenant Waldheim's role. Her Majesty's Government has now conducted most thorough enquiries into the allegations concerning his role in areas of specific British interest. The results of this review have been recorded in a report, which I have placed to-day in the Library of the House, and which is being published by HMSO.

The Review has been solely concerned with areas of British interest and has centred on the cases of British Servicemen, mostly members of the Special Forces, captured between October 1943 and October 1944 in Greece and the Greek Islands under the control of the German Army Group E, in whose Headquarters Lieutenant Waldheim was then serving as a junior staff officer. These cases, covering over 80 British Servicemen, include both those brought to the attention of the Ministry of Defence and

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others identified during the research for this Review. The Review has not looked at other allegations concerning Lieutenant Waldheim's involvement in areas not related to British interests.

The Review has involved long and painstaking research. The historical evidence and the documents gathered have been examined and analysed by the Director of Army Legal Services who is well versed in the Laws of War and who retains a residual responsibility for the prosecution of war crimes. His duty is to examine the evidence that has been put before him and advise whether, on that evidence, there is a case for a potential accused to answer. After very careful consideration his conclusion concerning the then Lieutenant Waldheim is that there is no evidence from which guilt of a war crime might be inferred.

The Report indicates that Lieutenant Waldheim knew of the capture of the British Servicemen and the possible fate of 'Commandos', but no evidence has come to light to indicate that as a junior staff officer he had the power either to order or to prevent that fate or indeed to affect the outcome in any way. Knowledge in such circumstances is not itself a crime. Her Majesty's Government has accepted the findings of the report.

The report also deals with British knowledge of Lieutenant Waldheim's wartime role and the post-war handling of relevant

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records. Allegations that records were altered, destroyed or withheld to protect President Waldheim are shown to be unfounded. He was not wanted by the United Kingdom either as a 'top Nazi' or as a war criminal. In order to clarify these issues virtually all the most relevant papers have been included as annexes to the Report. A very few documents have either not been published or not in full, on the grounds of security or personal sensitivity. All these documents have been examined by Professor Sir Harry Hinsley, lately the Master of John's College, Cambridge, who agreed to scrutinise the results of the review in order to ensure its objectivity and thoroughness. I draw the House's attention to his statement in the Report, in which he vouches for the validity of the conclusions drawn from these documents. On the question of President Waldheim's alleged post-war involvement with foreign intelligence services and his election to the UN, I do not intend to break the practice of successive governments by commenting on such matters but I commend detailed consideration of the Report.

Research has concentrated on the main archives in this country, in Germany and America, but other archives were consulted, as well as individuals whose wartime service was of relevance or who had some other expertise to offer. Although it can never be said that any historical report is definitively the last word, I am satisfied that the investigation has produced, from the thousands of documents examined, what we believe to be the main relevant records. These have established a pattern showing the

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events, and the responsibilities of the German Headquarters' officers involved in those events. We therefore feel justified in bringing this long exercise to a conclusion now, and publishing the results.

A factor in this decision has been the need to consider the feelings of the relatives of the missing Servicemen. I very much regret that it has not been possible to resolve all the outstanding questions about what finally happened to the missing Servicemen, although I should like to assure the House that any further information that may come to light will be passed on to the families.

CONFIDENTIAL

For Pol: War
Criminals Pt 2



From: Miss P M Aldred
Private Secretary to Minister of State for the Armed Forces

copy
letter only



MINISTER OF STATE FOR
THE ARMED FORCES

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1A 2HB

Telephone 01-218 2216 (Direct Dialling)

01-218 9000 (Switchboard)

CDP 11/11

D/MIN(AF)/AH/5/3/64

11 October 1989

Dear Charles,

at flap

Further to John Colston's letter of 9 October, with the draft of the Statement Mr Hamilton proposes to make in laying the Waldheim Report before Parliament, I am now enclosing an advance copy of the printed report.

in attached folder

I am also sending a copy to Stephen Wall, Simon Fraser and Mark Lyall Grant (FCO), Peter Storr (Home Office), Stephen Wooler (Law Officers' Department), Stephen Catling (Lord President's Office) and to Trevor Woolley (Cabinet Office).

Your Sincerely,
Margaret Aldred

Charles Powell Esq
No 10 Downing Street

FOR POL: NO CARDS

P2

File



10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

11 October 1989

See John,

THE WALDHEIM REPORT

Thank you for your letter of 9 October sending me a draft of the statement which Mr Hamilton intends to make in answer to a written Parliamentary Question on 17 October, announcing the publication of the Waldheim report. I have discussed this with the Prime Minister and have a number of comments.

- the first paragraph needs to be reordered and might read as follows:-

"My rt. hon. Friend the Prime Minister announced on 16 February 1988 that a review would be undertaken of the results of the investigation carried out in 1986 by the Ministry of Defence into the fate of British servicemen and the possible involvement of then Lieutenant Waldheim. This was in the light of both the report of the Commission set up by the Austrian Government, which had access to a wider range of sources than those available for the 1986 investigation, and of the continued questioning of Lieutenant Waldheim's role. Her Majesty's Government has now conducted most thorough enquiries into the allegations concerning his role in areas of specific British interest. The results of this review have been recorded in a report, which I have placed today in the Library of the House, and which is being published by HMSO."

- the last sentence of the third paragraph is very awkward. It is obviously important to stick exactly to what the Director of Army Legal Services has said. Does this sentence do that?
- the Prime Minister feels very strongly that the fifth paragraph of the draft should be omitted. This is not a matter for us to judge.

CONFIDENTIAL

-2-

I am copying this letter to Stephen Wall (Foreign and Commonwealth Office), Peter Storr (Home Office), Stephen Wooler (Law Officers' Department), Stephen Catling (Lord President's Office) and to Trevor Woolley (Cabinet Office).

*Yours truly,
Charles Powell*

Charles Powell

John Colston Esq
Ministry of Defence

CONFIDENTIAL

CCP

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

10 October 1989

e 88 1074

Dear Charles,

THE WALDHEIM REPORT

The Lord President has seen Mr Colston's letter of 9 October and has expressed a little surprise at the very direct way in which criticism of President Waldheim is expressed in the proposed draft reply, particularly as the answer specifically points out that this "lack of openness about his past" is not a matter relevant to the Report. He has ventured this comment bearing in mind the fact that he will be standing in for the Prime Minister at Question Time during the week and is a little uneasy about the possibility that this may be raised.

He has also seen the supplementary question and answer brief circulated at official level by MOD and has again expressed some concern at one of the supplementary answers about President Waldheim which states "he has thereby contributed to the treatment he has been accorded by many countries". This comment seems an unusual way to refer to the head of state of a friendly country.

I am copying this letter to John Colston (Defence), Stephen Wall (FCO), Peter Storr (Home Office), Stephen Wooler (Law Officers' Department) and to Trevor Woolley.

Yours sincerely,

Alma Baxter

PP S D CATLING
Principal Private Secretary

Charles Powell Esq

1



MO 6/18/10L

Prime Minister

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1A 2HB
Telephone 01-218 2111/3

Agree this report, with the amendments which I have suggested?

See letter - The fact that not shown in need of amendment in my view. 9th October 1989. Also the paragraph on next page not X.

Dear Charles,

THE WALDHEIM REPORT

Ian Woodman wrote to you on 23rd August with a copy of the final draft of the Waldheim Report. I now attach a draft copy of the statement which Mr Hamilton intends to make in answer to a written Parliamentary question on 17th October, announcing the publication of the report. The draft statement has been cleared by officials in the interested departments. Detailed question and answer material is being prepared.

We propose to ensure that, as a courtesy, the Austrian Government should be given a copy of the report just before it is given to Parliament on 17th October. Arrangements have been made for a copy to be available in Vienna for handing over by our Ambassador there. Arrangements are also in hand to ensure that copies are delivered to other interested Governments at the time the report is given to Parliament.

We are arranging for the relatives of the missing men living in this country to receive copies of the report on the afternoon of the 17th October, and for those living abroad to receive them as soon as possible afterwards.

The press and broadcast media will be given a news release after the question has been answered on 17th October, essentially repeating the text of the answer, and copies of the report will then be made available to journalists in the Press Gallery of the House and the MOD Press Office. HMSO will subsequently be selling the report at a cover price of £19.95. I shall send you a copy of the printed report when it is available.

I should be grateful to know that the Prime Minister is content with the draft statement and these arrangements.

I am copying this letter to Stephen Wall (FCO), Peter Storr (Home Office), Stephen Wooler (Law Officers' Department), Stephen Catling (Lord President's Office), and to Trevor Woolley (Cabinet Office).

Yours sincerely,
John Colston
(J P COLSTON)
Private Secretary

Charles Powell Esq
No 10 Downing Street

QUESTION

To ask the Secretary of State for Defence, when he will publish the results of the review of the 1986 investigation into the fate of captive British Servicemen and the possible involvement of the then Lieutenant Waldheim.

ANSWER

conducted through enquiries into?

is this necessary?

Her Majesty's Government has always taken seriously the allegations concerning the then Lieutenant Waldheim's role in areas of specific British interest.] My rt hon Friend the Prime Minister announced on

16 February 1988 (columns 521 - 522) that a review would be

undertaken of the results of the investigation carried out in 1986 by the Ministry of Defence into the fate of British Servicemen *and the possible involvement of Lt Waldheim*

This was in the light both of the report of the Commission set up by the Austrian Government, which had access to a wider range of

sources than those available for the 1986 investigation, and of the continued *speculation about* [questioning of] Lieutenant Waldheim's role. The results of

this review have been recorded in a report, which I have placed today in the Library of the House, and which is being published by HMSO.

The Review has been solely concerned with areas of British interest and has centred on the cases of British Servicemen, mostly members of the Special Forces, captured between October 1943 and October 1944 in Greece and the Greek Islands under the control of the German Army Group E, in whose Headquarters Lieutenant Waldheim was then serving as a junior staff officer. These cases include both those brought to the attention of the Ministry of Defence and others identified during the research for this Review. The Review has not

would leave the word questioning

looked at other allegations concerning Lieutenant Waldheim's involvement in areas not related to British interests.

The Review has involved long and painstaking research. The historical evidence and the documents gathered have been examined and analysed by the Director of Army Legal Services who is well versed in the Laws of War and who retains a residual responsibility for the prosecution of war crimes. His duty is to examine the evidence that has been put before him and advise whether, on that evidence, there is a case for a potential accused to answer. After very careful consideration his conclusion on the central issue of the Review is that in all the cases of British concern considered -

covering over 80 British Servicemen - there is no evidence ^{to suggest} from which the ^{was} then Lieutenant Waldheim's ^{was} guilt of a war crime ^{to suggest} might be inferred.

The Report indicates that Lieutenant Waldheim knew of the capture of the British Servicemen and the possible fate of 'Commandos' in such circumstances, but no evidence has come to light to indicate that as a junior staff officer he had the power either to order or to prevent that fate or indeed to affect the outcome in any way. Her Majesty's Government has accepted the findings of the report.

Knowledge in such circumstances is not itself a crime. Nevertheless, in one who has risen to hold such eminent and responsible positions, the lack of openness about his past which President Waldheim has shown, though not a matter relevant to the

what does the report say? This is a very

asked and answer we should look to the official side.

Search - we should not use this paragraph? CBR.

This is not for us to judge.

Report, inevitably helped to engender the suspicions about his conduct in the period in question and is a matter of regret.]

The report also deals with British knowledge of Lieutenant Waldheim's wartime role and the post-war handling of relevant records. Allegations that records were altered, destroyed or withheld to protect President Waldheim are shown to be unfounded. He was not wanted by the United Kingdom either as a 'top Nazi' or as a war criminal. In order to clarify these issues virtually all the most relevant papers have been included as annexes to the Report. A very few documents have either not been published or not in full, on the grounds of security or personal sensitivity. All these documents have been examined by Professor Sir Harry Hinsley, lately the Master of St John's College, Cambridge, who agreed to scrutinise the results of the review in order to ensure its objectivity and thoroughness. I draw the House's attention to his statement in the Report, in which he vouches for the validity of the conclusions drawn from these documents. On the question of President Waldheim's alleged post-war involvement with foreign intelligence services and his election to the UN, I do not intend to break the practice of successive Governments by commenting on such matters but I commend detailed consideration of the Report.

Research has concentrated on the main archives in this country, in Germany and in America, but other archives were consulted, as well as individuals whose wartime service was of relevance or who had some other expertise to offer. Although it can never be said that

any historical report is definitively the last word, I am satisfied that the investigation has produced, from the thousands of documents examined, what we believe to be the main relevant records. These have established a pattern showing the events, and the responsibilities of the German Headquarters' officers involved in those events. We therefore feel justified in bringing this long exercise to a conclusion now, and publishing the results.

A factor in this decision has been the need to consider the feelings of the relatives of the missing Servicemen. I very much regret that it has not been possible to resolve all the outstanding questions about what finally happened to the missing Servicemen, although I should like to assure the House that any further information that may come to light will be passed on to the families.

For Pol: Was
Criminals A2



efc



ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-936 6201

*COJ
3/x.*

The Rt Hon Norman Lamont MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
London SW1P 3AG

29 September 1989

Dear Norman:

WAR CRIMES

will request required

Thank you for copying to me your letter of 18 August 1989. Although work by officials to produce more reliable cost estimates is continuing, it is right to set out the difficulties peculiar to the war crimes proposals which will make it quite impossible to uncouple the policy decision from the question of resources in the manner suggested in the penultimate paragraph of your letter.

It is important that the implications of a decision to bring forward legislation to permit alleged war criminals now resident in this country to be prosecuted are fully appreciated. Once the process of investigation and prosecution has been initiated, we are likely for all practical purposes to be committed to a major exercise. Whereas the War Crime Inquiry was able, perfectly properly, to concentrate on a limited number of cases, there will be an expectation that all of the many serious allegations will be the subject of proper investigation and careful consideration as to whether proceedings should be instituted.

It would be politically unrealistic to believe that, once we have embarked upon such an investigation, it would be possible to do anything but see it through to its natural conclusion.

The financial costs could be very high indeed. The reports which I am receiving from my own officials and the Crown Prosecution Service suggest that it will be



extremely difficult further to refine the CPS component of the estimates set out by Douglas Hurd - and acknowledged by him to be somewhat crude - in his letter of 19 July. There are so many variables that it may be necessary to resort simply to a "best possible" and "worst possible" scenario approach. The effect is that if we are now prepared to espouse the principle of legislating to facilitate war crimes prosecutions, it can only be on the basis that we are prepared to accept that the price of doing the job properly may be very high.

A factor peculiar to the Crown Prosecution Service is that it is a "one product Service", and accordingly cannot look to savings on another programme so as to be able to absorb within existing provision the expenditure arising from war crimes cases. I cannot agree to any trimming of the resources presently devoted to the prosecution of current crime. This in any event would have seriously adverse political consequences - especially given the present climate of opinion towards the CPS. Any agreement on my part to the proposed legislation for the prosecution of war crimes must accordingly depend on assurances as to full provision of the necessary resources, the lack of which would inevitably affect any assessment of where the public interest lay.

Copies of this letter go to the Prime Minister, James Mackay, Geoffrey Howe, Douglas Hurd, Malcolm Rifkind, Tom King, Lord Fraser and Sir Robin Butler.

James Mackay

Salmon



C. P. C.

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

15 September 1989

Dear Tony

CO 1579

As I believe you are aware your letter of 23 August ^{*John*} to Charles Powell concerning the Waldheim Report should have been copied to me when it was first sent out, in order to seek the views of the Leader of the House on your proposals for announcing the publication of the Report. I well understand the need to restrict circulation of such sensitive documents (as was indeed the case with the Hetherington Report) and I am grateful to you for arranging for us to receive the material.

The Leader of the House has seen the Report and the associated documents. He has commented that there is a risk that the House will react negatively to the relatively short notice provided between publication and the opportunity for debate on 18 and 19 October. We are therefore giving some thought to alternatives which might provide Members with a little more time between publication and the opportunity for a debate. I will let you know quickly if our deliberations result in any new proposals.

I am copying this letter to Charles Powell (No 10), Stephen Wall (Foreign and Commonwealth Office), Peter Storr (Home Office), Stephen Wooler (Law Officers' Department) and Trevor Woolley.

Yours
S D Catling
S D CATLING
Principal Private Secretary

I M Woodman Esq
Private Secretary to the
Secretary of State for Defence

For POT

war animals

PK2



10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

14 September 1989

Many thanks for your letter of 2 September.

Although I am afraid I am not personally in a position to let you have copies of the War Crimes Inquiry, copies can be obtained from the HMSO Publications Centre, whose address is PO Box 276, London, SW8 5DT. I understand they take telephone orders on 01-873 9090. The full title of the document is "War Crimes Inquiry" (Cm 744), and was published in July this year. Each copy costs £9.60.

I do hope this is helpful to you.

DOMINIC MORRIS

Dr. Jack Porter

KK

ccf

010



LORD ADVOCATE'S CHAMBERS
REGENT ROAD
EDINBURGH EH7 5BL

Telephone: 031-557 3800
Fax (GP3): 031-556 0154

CONFIDENTIAL

7 September 1989

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

11/9
OH

Dear Douglas,

WAR CRIMES

Since your statement to the House of Commons on 24 July and the publication of the War Crimes Inquiry Report there have been a number of developments in Scotland of which I feel you should be aware in the lead up to the debates to be held when Parliament resumes.

Following the statements to Parliament on 24 July Mr Antony Gecas (formerly known as Antanas Gecevicius) obtained an interim interdict in the Court of Session in Edinburgh against Scottish Television Limited to prevent them from re-showing a documentary programme entitled "Crimes of War" which had been broadcast previously in July 1987. The interdict was obtained during the evening of 24 July and transmission of the programme was stopped before the last section of the programme was broadcast. Scottish Television Limited have lodged answers to the Petition and a date has yet to be fixed by the Court for a hearing to take place.

More importantly Mr Gecas is suing Times Newspapers Limited for defamation and damages of £150,000 in respect of articles which appeared in August 1987. This action is at an advanced stage and a proof has been fixed for 12 days in Court of Session commencing on 7 November.

Solicitors acting for Times Newspapers wrote to the Crown Agent asking what the Crown's position was in the matter. I enclose a copy of Messrs Bird Semple Fyfe Ireland WS' letter dated 18 August and a copy of the Crown Agent's reply dated 29 August.

Mr Gecas raised a further Court of Session action for defamation against the author Ephriam Zuroff last year but this has effectively been sisted upon the basis of an interdict preventing any further alleged slanders.

In relation to the action involving Times Newspapers Limited the defenders have pled veritas and arrangements are in hand, apparently, to interview witnesses in the Soviet Union with a view to leading them in evidence against Gecas/

CONFIDENTIAL



Gecas at the proof. Since I have no jurisdiction at the moment I cannot appear in the proceedings and ask the Court to sist (stay) the action. As you will see from the penultimate paragraph of Messrs Bird Semple's letter it is clear that Gecas intends to proceed with the action notwithstanding publication of the Inquiry Report. It is not obvious whether he seeks to do this to clear his name at the earliest opportunity or whether he is trying to lay the foundation for a defence in the event of criminal proceedings against him that reports of the civil proceedings make a fair trial impossible.

Even if the Government is in a position to make an announcement as to its intentions in relation to War Crimes before 7 November I could not say to the Court for example that criminal proceedings are pending or imminent for the purposes of obtaining an order under Section 4(2) of the Contempt of Court Act 1981 to restrict publication of the proceedings.

It may be that Times Newspapers Limited will be unable to proceed with the proof on 7 November because of difficulties in obtaining the evidence from the Soviet Union that they seek or they may request a postponement in the light of the debates but one cannot count on this nor in the latter instance can one be certain the Court will grant the request if Mr Gecas remains anxious to proceed.

Should there be any further developments bearing on the debates I shall keep you advised.

I am copying this to the Private Secretaries to other Cabinet Ministers and Sir Robin Butler.

*Yours ever,
Peter.*

FRASER OF CARMYLLIE

Your Ref: DGC/RMcA

Derek G Currie Esq
Messrs. Bird Semple Fyfe Ireland
Solicitors
249 West George Street
GLASGOW, G2 4RB

29 August 1989

Dear Sir

TIMES NEWSPAPERS LIMITED
ANTHONY GECAS

Thank you for your letters of 18 and 25 August.

As you know the Lord Advocate has, at the present time, no jurisdiction in relation to allegations of crimes committed abroad during World War II. The Government's position following the publication of the War Crimes Inquiry Report was stated by the Home Secretary on 24 July 1989 (Hansard Column 732):-

"We are impressed by the force of argument that led the Inquiry to its clear conclusion that legislation was required, but we want to hear the views of Parliament before taking a final view on the principal of legislation. This is a matter, after all, on which the views of Parliament will be decisive. The Government will provide an opportunity for each House to debate the implications of the report and the action that should be taken in response to it. The debates will take place in the Autumn once there has been a proper opportunity to study the report and reflect upon it. In the light of the views expressed in those debates, the Government will take a final decision on whether to bring forward a bill on the lines proposed by the Inquiry."

Further at Column 736 the Home Secretary stated that the Report "recommends a series of investigations, but I am not prepared to authorise further work on them until it is clear in what way Parliament will wish to proceed."

The likelihood is that the Inquiry findings will be debated when Parliament resumes during the second half of October and it may be some time after that before the Government takes a final decision whether to promote legislation affording jurisdiction in relation to alleged war criminals. Consequently the Lord Advocate is unlikely to be in a position to say prior to 7 November, when I understand the proof is set down to commence, whether he will have to consider war crimes allegations against Mr Gecas or anyone else.

I/

I would be grateful if you would keep me advised if for any reason the proof does not proceed in early November.

Yours faithfully

I DEAN
Crown Agent

SOLICITORS

249 West George Street
Glasgow G2 4RB

041-225 7090

Telex 779437 NOTARY G
Fax (Group 2/3) 041-204 1902
Rural Exchange No GW10

Date 18th August, 1989

I. Dean, Esq.,
Crown Agent,
Crown Office,
5/7 Regent Road,
Edinburgh,
EH7 5BL

5200

BIRD
SEMPL
FYFE
IRELAND
WS



Our Ref: DGC/RMcA

Your Ref:

Dear Mr. Dean,

Times Newspapers Limited
Antony Gecas

I act for Times Newspapers Limited who publish inter alia The Times newspaper.

In August 1987, The Times published two articles which related to various aspects of war crimes and the existence in Britain of alleged Nazi war criminals.

Some time thereafter, Antony Gecas formerly known as Antanas Gecevicius, raised an action in the Court of Session against Times Newspapers Limited seeking damages for alleged defamation. Mr. Gecas based his claim on the fact of various references to him in the said articles.

The action has been defended and is set-down for a three week Proof in November of this year.

In preparation for the forthcoming Proof, I am about to travel to Lithuania to take precognitions from certain witnesses. In addition, I already possess a substantial number of documents which I believe will be used in Court to support my clients' position.

However you will be aware that the Government has recently received a report from a War Crimes Inquiry chaired by Sir Thomas Hetherington and William Chalmers, Esq. The report is presently before Parliament. If Parliament decides to amend the law to allow the prosecution in this country of persons alleged to have committed relevant war crimes, all the evidence ingathered by the War Crimes Inquiry will no doubt be passed to the Lord Advocate for his consideration as to whether or not to initiate criminal proceedings against any persons resident in this country.

If that happens, the evidence which the Lord Advocate will be perusing, will I believe, be identical to the evidence which I will be producing to the Court of Session in November of this year. As I have said, this will include not only a substantial number of documents but the leading of evidence from a number of witnesses presently resident in the Soviet Union.

Edinburgh Office
031-225 4914

Telex 72368 LEGAL G
Fax (Group 2/3) 031-343 1872

Authorised to conduct investment business under
the Financial Services Act 1986 by The Law Society of Scotland.

Norman M. Alexander
Philip T. Anderson
James H. Campbell
Andrew Cubie WS
Derek G. Currie
Keith A. S. Deighton
Brian A. Dennison
Cesidio Di Caccia WS
William C. Ferrie
W. Alexander Finlayson
Frank W. Fletcher
D. Alister Fraser
John Gardiner
Malcolm J. Gillies
Paul S. Hanford WS
George A. Henry WS
Gordon C. Hollerin
J. Stuart A. Jeffrey WS
James H. Kennedy WS
Steven A. Kerr
John Macbratne
Malcolm McIver
Morag L. McKenzie
W. Lawrence Marshall
Linda A. Paterson
David Semple
Walter G. Semple
Peter J. H. Simpson WS
Graeme Sumner
Altmair J. Wilson WS

L. Dean, Esq.,

2

DGC/RMcA

18th August, 1989

Mr. Gecas and his legal advisers have not sought, to date, any discharge of the forthcoming Proof as a result of the terms of the said War Crimes Inquiry Report.

It seems to me and Senior Counsel that it is not unlikely that Mr. Gecas will allow the evidence to be led at the Proof in November, so that if and when a criminal prosecution is initiated against him, he can found a plea in bar of trial.

In these circumstances, I shall be grateful if you would consider the above information and let me know the Crown's position as a matter of some urgency.

Yours sincerely,

Derek G. Currie

Derek G. Currie.

Boston University

College of Basic Studies
871 Commonwealth Avenue
Boston, Massachusetts 02215

R11/9
pps.



1839|1989

BOSTON UNIVERSITY
SESQUICENTENNIAL

File for J N Porter
MARKED OUT - TRY
DM.

9/2/89

Dear Mr. Morris -

Thank you for your
kind + supportive letter. Despite
all kinds of opposition, I'm
sure the killers will be
brought to justice ^{oneday}. The
issue transcends petty
party politics + even "ethnic
politics."

I kindly request - could
you send me one or (two) copies
of the report of the War Crimes
Inquiry? I'd really appreciate it.

I've never seen
the report (over)

Sincerely,
Dr. Jack Porter

P.S. I'm a professor/scholar
as well as a businessman.
It's unusual I know.

All my best,
Jeff



18301080

BOSTON MASS

Foreign P& PE 2
war criminals.



10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

25 August 1989

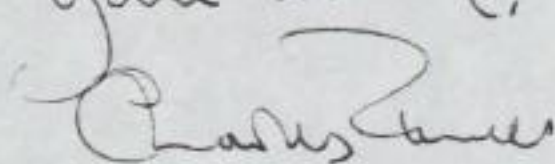
Dear Ian,

WALDHEIM REPORT

Thank you for your letter of 23 August about the Waldheim Report, which the Prime Minister has read with great interest. She is content with the arrangements for handling the announcement of the Report's findings and its publication proposed in your letter, and hopes that the contents will be kept secret until 17 October. She assumes that the Austrian Government will be informed of the findings shortly before publication.

bx // The Prime Minister would like to see a copy of the Historical Section, and I should be grateful if you could let me have one.

I am copying this letter to Stephen Wall (Foreign and Commonwealth Office), Peter Storr (Home Office), Stephen Wooler (Law Officers' Department) and Trevor Woolley (Cabinet Office).

Yours sincerely,


CHARLES POWELL

Ian Woodman, Esq.,
 Ministry of Defence



MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1A 2HB
Telephone 01-218 2111/3

MO 6/18/10L

Prime Minister

23rd August 1989

This will cause a stir because it is in effect a complete exoneration of Waldheim, so far as British prisoners of war are concerned.

Dear Charles,

Agree to proposed method of handling, as at X on page 2?

The Prime Minister will wish to be aware that the final draft of the Waldheim Report has been cleared by officials and submitted to Ministers.

CDD

There are two main conclusions:

Yes - I hope it remains secret until 24/8

- Although Lt Waldheim was clearly aware of the likely fate of captured British servicemen in the Balkans, no evidence has been found that he had the authority either to give orders determining their fate or to countermand orders given by others.
- No evidence has been found to support allegations of criminal activity on his part in relation to British servicemen.

? I assume that

I enclose at Annex A a summary of the Report.

Annex A
not
will be told as have on so before announcement

I also enclose, at Annex B, the statement from Professor Hinsley vouching for the objectivity and thoroughness of the Historical Section of the Report, including the validity of the conclusions drawn from documents which cannot be published. A copy of the Historical Section can be provided if the Prime Minister wishes to see it. It comprises 12 chapters detailing:

- The relevant allegations against Kurt Waldheim.
- The structure of the British and German forces involved and the background to the special forces operations during which the British servicemen were captured.

Do you wish to see this?

I think I need not

Charles Powell Esq
No 10 Downing Street

CDD
24/8



- The organisation of the German Army Headquarters Branch in which Lt Waldheim served, and the duties and powers of its various officers, including Waldheim.
- Hitler's 'Commando Order', to which some of the British servicemen were subject.
- The cases of individual British servicemen, (including a number of details partly for the benefit of the families) and the involvement of Lt Waldheim in each case.
- Allegations concerning destruction or alteration of records.
- Herr Waldheim's alleged involvement with British Intelligence after the War on which the Report follows the standard line (ie that we do not comment on such matters).

The Legal Section of the Report, enclosed at Annex C, concludes that there is no evidence from which guilt of a war crime may be inferred.

The Home Office is concerned to ensure that the summary fully reflects the Legal Section so that those reading the summary alone will not find any basis for allegations of dual standards in the Government's approach to the Waldheim Report and Sir Thomas Hetherington's report on war crimes. This is being pursued by officials. Mr Maude and the Law Officers are content with the Report. To meet the timetable for publication after the Recess, the Report and the detailed Annexes have been forwarded to HMSO for printing. There will be an opportunity to make any final changes at the proof reading stage in early September.

So far as the strategy for handling the announcement of the Report's finding and its publication is concerned, it is believed that to make a formal Ministerial Statement would give the Report an unduly high profile. MPs should, however, be given the opportunity to question Ministers about the Report and its findings. It is proposed, therefore, to make an announcement in response to a written PQ and publish the Report on 17 October. The annual Defence Debate on 18 and 19 October would then provide the opportunity for Members to raise any points of concern. The text of the announcement will, of course, be cleared with the Prime Minister and other interested Ministers and a detailed Q & A brief will need to be prepared for use with Parliament and the media. The arrangements for briefing the press have not yet been finalised.

I should be glad to know that the Prime Minister is content with these arrangements.

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I am copying the letter to Stephen Wall (FCO), Peter Storr (Home Office), Stephen Wooler (Law Officers' Department) and Trevor Woolley (Cabinet Office).

Yours sincerely
I. M. Woodman

(I M WOODMAN)
Private Secretary

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SUMMARY OF THE REPORTScope of the Review.

This Review was established in the light of the 1988 report of the Austrian Commission of Historians on the wartime service of Kurt Waldheim. Its task was to re-examine the results of the investigation carried out by the Ministry of Defence in 1986 into the fate of fourteen British servicemen, thirteen of them Special Forces personnel, who fell into German hands in the Balkans, and the involvement, if any, of the then Lieutenant (Lt.) Waldheim in their fate.

In addition to re-examining the much-discussed cases of the parties of Allied servicemen captured off Alimnia, at Yannina and on Calino which were first looked at in 1986, the Review has addressed those additional cases raised since 1986, notably the party captured off Cephalonia.

It has investigated too the fate of other captured British servicemen who it has been possible to identify personally and who, as members of the Special Forces or the Allied Military Mission, were considered by the Germans to fall within the category of 'commandos'. Throughout the Review the term 'commando' is used to denote members of the Special Forces and special organisations including the RN personnel operating the vessels used to transport these forces. The Special Forces concerned were not strictly speaking 'commandos'; i.e. members of the Army or Royal Marine Commando Units. But as the Germans used the word, it has been adopted as a generic term to

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distinguish the cases and type of operations to which the German applied the terms of a special order defining treatment of prisoners. In contrast with the treatment of prisoners of war from conventional units or those engaged in what the Germans considered to be conventional warfare, an order issued on Hitler's authority on 18 October 1942 said that all Allied troops deemed to be involved in 'so-called 'commando' operations' should be exterminated to the last man in combat or in pursuit and that as a general principle no quarter was to be given. This order is referred to throughout this report as the 'Commando Order'.

In all, the 'commando' cases considered here involved thirty-one British and Commonwealth servicemen. Of these, seven did not survive the war and are believed to have been executed under the 'Commando Order': Capt. Warren of the Cephalonia party, probably executed in late May 1944; Sub/Lt. Tuckey, L/Sgt. Miller, Pte. Evans, Gnr. Jones, Pte. Rice and Telegraphist Carpenter of the Alimnia party. All but the last were probably executed soon after 27 April 1944; while Carpenter was probably executed sometime after 4 June 1944. Of the other twenty-four, all but one survived German imprisonment and either escaped to re-join the Allies or were liberated from prisoner of war camps at the end of the war. The exception was Pte. Fishwick who died soon after being taken prisoner of wounds received in battle before his capture.

Some cases of 'non-commando' prisoners which have been brought to the attention of the Ministry of Defence have also been examined. In addition a number of similar cases of 'non-commandos' were examined during the team's research.

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From the 'non-commando' cases examined a clear pattern emerges of the treatment of almost all such men as standard prisoners of war. Therefore only the cases brought to the attention of the Ministry of Defence where illegal treatment was implied or where it was discovered by the Review team have been included in this Report. Of the twenty two servicemen concerned in these cases, only one (Pte. Turton) was not treated as a prisoner of war proper and is believed to have been executed.

The additional cases have been examined for several reasons. It was necessary to ascertain whether or not they contained any evidence that Lt. Waldheim was involved in them. The records relating to these men and any investigations concerning them might have contained information directly relevant to the main cases under review. Finally it was considered important to try and establish if there was a pattern in the treatment of such prisoners which would throw light on the events and responsibility in the main cases.

Sources.

The Review has made use of a wide range of material. Of especial importance have been the surviving contemporary German military documents held in the Military Division of the Federal German Archives in Freiburg and the microfilm copies of these documents held by the United States National Archives in Washington. This material has been complemented by records in the United Kingdom, both those in the custody of the Public Record Office and others held in Government archives elsewhere. A most important source was the records of the war crimes investigations

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carried out by the United Kingdom at the end of the war. Documents from other relevant archives have also been consulted.

The Review has been given access to and assistance from all relevant British official archives including those of the security and the intelligence services. As far as possible, the most important documents from these sources have been reproduced as annexes to the Report. However an exception has had to be made in the case of a small number of official documents from the records of the security and intelligence services (which for reasons of security are unlikely to be opened in the Public Record Office) and from a few files from other departments (which have not been released to the Public Record Office on account of the need to respect confidentiality in relation to individuals). The Review has had full access to these documents and, where it has not been possible to reproduce them either an extract from them or the gist of their contents is given in the text of the Report. Professor Sir Harry Hinsley has also examined them all and attention is drawn to his statement on p iii: of the historical report

I have studied such documents as cannot be reproduced as annexes either in full or at all, and I am satisfied that when summarising or drawing conclusions from them the authors of the Report have properly represented their contents.

The recent work of other bodies and individuals on this subject - notably that of the Austrian Commission, the World Jewish Congress and Thames Television - has also been studied and has provided valuable assistance. While allowance has to be made for the passage of time since these occurrences and its effects on the clarity of recollection, considerable use has

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been made of the oral testimony of survivors of these events from both the Allied and German sides, especially as a means of supplementing and clarifying points in the contemporary records.

The Allegations.

The main allegations concerning the then Lt. Waldheim and the British servicemen in question were first raised in 1986 and have since been repeated. They are that, as an officer in the Headquarters Staff of Army Group E at Salonika during the year 1944:

a. he was personally involved in the interrogation of, or in the organising and control of matters relating to, a number of British servicemen held as prisoners by the Germans - notably the men captured off the island of Cephalonia, on the island of Alimnia, near Yannina, and on the island of Calino - and, therefore, that he was culpable of any mistreatment of British prisoners which occurred.

b. he was personally involved in the decision and perhaps gave or relayed the orders to transfer British prisoners to the Nazi Party's Sicherheitsdienst (SD) for Sonderbehandlung* under Hitler's 'Commando Order', which

*The term, which in effect means 'special treatment', a euphemism for execution, is used throughout the Report in the German form.

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in some cases resulted in their execution (as is believed to have been the fate of the Alimnia men and Capt. Warren of the Cephalonia party).

c. in a report on Capt. Warren (the leader of the Cephalonia party) he falsely classified him as a 'saboteur' with the consequence that Capt. Warren was considered to fall into the category of individuals liable for Sonderbehandlung and was executed.

d. as the British servicemen in sub-paragraph a.-c. above were subjected to treatment that violated the laws of war, and because Lt. Waldheim was involved in or responsible for such treatment, he is therefore a War Criminal - being in these cases at least an 'accessory' even if not a 'principal'.

e. he was personally involved in some manner in the illegal shooting of a number of Allied prisoners of war from the Laterina Camp in Italy.

In support of these charges, other claims have been made concerning Lt. Waldheim's role and authority within the Headquarters that suggest that:

f. he was an important and powerful staff officer whose authority far out-reached his military rank, whose views and suggestions carried great weight with his superiors even up to the Commander-in-Chief, and who was able to influence their decisions in areas outside his official concern, making him to some extent responsible for the results of such decisions.

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g. because of his position within Army Group E's Headquarters, he was of such value as a potential source of intelligence that he was actively sought by the Allies and was placed on an Allied 'Wanted List' during the war.

It has further been asserted that:

h. Lt. Waldheim's wartime role in the Balkans was known to the British authorities; that he had been accurately identified in British records and that as these included evidence of his culpability in relation to war crimes against British personnel, he was noted as a war crimes suspect; and that these matters were known during the war and the immediate post-war years, as well as in 1970 when he first stood for the post of Secretary General of the United Nations.

i. the above mentioned records were deliberately destroyed or concealed to protect Lt. Waldheim because he had been of assistance to British intelligence.

Conclusions regarding Lt. Waldheim's General Involvement:
his position and duties at Army Group E Headquarters.

In order to assess Lt. Waldheim's possible involvement in war crimes, the Report has examined his position and duties within the Headquarters of Army Group E in the context of the general command structure of the German Armed Forces and, more specifically, of the operations and organisation within the relevant part of the Balkan theatre. The evidence from

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contemporary and more recent documentary sources and from the recent statements of other German staff officers and men, many of whom worked in the same headquarters, has shown that he was a junior staff officer equivalent to a British Army Lieutenant. He was not a member of the German General Staff Corps, which would have carried authority greater than that of his basic Army rank, nor was he a professional intelligence officer.

His position within the Headquarters Intelligence Branch was that of O3. As such, he was not the Deputy to the Lt Col. in charge of the Headquarters Intelligence Group but his Assistant. There is no evidence that his position enabled him to intervene with any authority in matters outside his own duties or to alter the decisions of his superiors. He was responsible to the Head of the Intelligence Branch for the provision of information on the previous, current and probable future activities of the Allied forces. This primarily required him to act as a collator, assessor and presenter of such information as was produced by the other personnel in his sub-section and from subordinate headquarters. The interrogation of prisoners of war was one valuable potential source of such information. There is no evidence that his duties involved him personally in interrogations.

His duties required that he should be well informed about Allied military and political activities, and it is clear that he was well informed on the relationship of these activities to German operations. His knowledge extended to awareness of the decisions that were made as to the eventual disposal of Allied prisoners brought to Salonika for interrogation

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by the Headquarters' staff, including the transfer of Allied 'commando' prisoners to the SD for disposal, usually by execution, under the so-called 'Commando Order' of 18 October 1942. In this respect, however, his position was no different from that of many others at Army Group Headquarters.

This available evidence shows that the existence of the 'Commando Order' and its main requirements were general knowledge among officers in the German Army in the Balkans, and among the staff of Headquarters - this was so even down to NCO level. It also shows that the designation of 'commandos' was generally applied by the Germans as a matter of course to Allied personnel involved in 'raiding operations' or in assisting the indigenous partisans: but it was not regarded by the Germans in the Balkan area as an unusual or unwarranted identification in spite of their apparent awareness of the implications for prisoners taken in such operations, namely that they would be passed to the SD.

Conclusion Regarding Lt. Waldheim's Involvement in the Particular Cases Examined.

In the case of the Cephalonia party, there are no grounds for believing that Lt. Waldheim was criminally responsible for Capt. Warren's presumed execution. A statement linking Capt. Warren with 'sabotage' activities was contained in an intelligence report believed to have been written by Lt. Waldheim. This said: 'Warren believed the Greeks were too unreliable to be entrusted with sabotage operations on their own'. However, the statement is not sufficient to amount to instigation or active encouragement of an offence on the

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part of Lt. Waldheim. The term linking the party with 'sabotage' activities was used as matter of course in the Balkans to describe the demolition activities of Allied Special Forces and the partisans and had already been used, as had reference to Sonderbehandlung, in earlier reports on this party made during Lt. Waldheim's absence on leave. There is no other evidence that associates him with any decision to execute Capt. Warren.

In the matter of the Alimnia party, initial designation of the party as 'commandos' and discussion of Sonderbehandlung took place during Lt. Waldheim's absence on leave. There is no evidence that he initiated or authorised the signal to Army Group F requesting instructions on the disposal of the party which led to their transfer to the SD. There is no evidence here of criminal activity by Lt. Waldheim.

Concerning the Calino party, there is no evidence that Lt. Waldheim personally took the decision concerning the intended disposal of Sgt. Dryden or that he authorised the despatch of the report which he had initialled (and therefore probably drafted) and which included the statement that Sgt. Dryden would be handed over to the SD, an action which was not in fact implemented - Dryden survived the war as a prisoner of war.

In the case of the Yannina party, there is no evidence to implicate Lt. Waldheim in such illegal treatment of the prisoners as occurred.

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Turning to the cases of other 'commandos' examined, all of whom survived the war, it is clear that Lt. Waldheim was aware that these men were in German hands and knew of their interrogation. But there is no evidence that he was personally involved in the interrogation of any of them, or that he organised, supervised, or controlled such interrogations, or that he was responsible for, or had authority over, those who ran the prisons where they were held. Therefore there is no evidence to implicate Waldheim in any illegal treatment that occurred during these men's captivity.

In the four cases involving 'non-commando' prisoners which have been examined, there is no evidence to connect Waldheim with Pte. Turton's fate. Of the other three cases, there is no evidence in two of them (the Levitha and Sirin a parties) of any illegal activity by Lt. Waldheim. In the last case, that of F/Lt. Ogilvie, the actions credited to Lt. Waldheim by F/Lt. Oglivie were apparently intended to aid the prisoner, perhaps saving his life.

Finally there is the Laterina Case in Italy. Here the discrepancies between the recent allegations and the extensive contemporary evidence, and the lack of any corroboration for the claims, provide no grounds for believing that Lt. Waldheim was involved in the Laterina incident.

Waldheim's Listing as a War Crimes Suspect.

The evidence from British wartime and early post-war records indicates that Lt. Waldheim was at that time of no war crimes interest to the British authorities, and that he was not

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personally sought by the United Kingdom for war crimes investigations. His presence in the United Nations War Crimes Commission (UNWCC) list of war crimes suspects arose from a charge by the Yugoslav authorities in 1948, not from any inter-Allied investigations involving the UK. The process by which individuals were added to the UNWCC's lists was heavily reliant on a general assumption that only genuine cases would be submitted, and that the supporting evidence would be genuine and accurate as the UNWCC's machinery was unable to carry out its own detailed and independent examination of the numerous individual cases submitted to it by member states before deciding to add them to its lists.

The inclusion of Lt. Waldheim in the Anglo-American and French administered Central Registry of War Criminals and Security Suspects (CROWCASS) list of war crimes suspects again stemmed not from British, American or French investigation and indictment of him as a war crimes suspect but solely because his inclusion in the UNWCC list (as being sought by Yugoslavia) made his addition to the CROWCASS list a matter of routine. CROWCASS was simply a means of registering individuals sought by various Allied countries with a view to aiding their location; it had no judicial or investigative functions and carried out no independent assessment of charges or requests for the listing of individuals.

The presence of Lt. Waldheim's name on another wartime Allied document has already been explained in Parliament* by the Minister of State for the Armed Forces. The document in question

*Hansard 9 March 1988 Written Answer Col 217.

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is not a 'List of Top Nazis' or an 'Allied Wanted List'. It is a report of the interrogation of a German officer who fell into Allied hands in late 1944 and whose activities in the intelligence field in the Balkans, notably in Salonika and Athens, had naturally brought him into contact with a large number of German Army headquarters officers. During his interrogation he provided the names and a varying amount of detail on these individuals. Lt. Waldheim's name was one of the 238 mentioned by this man.

The details provided about Waldheim and others such as Lt. Poliza, his colleague, indicated to the wartime Allied counter-intelligence staffs that neither of these two was of any particular significance. They were not included in the Allied register of individuals who were judged to be of interest to the counter-intelligence authorities and whose capture should therefore be reported to the appropriate bodies.

Gaps in the Records.

The contemporary documents which have survived in German and British archives have yielded a fairly comprehensive account of the course of events concerning the cases of the Allied servicemen examined in this report. But attention has been drawn to the fact that there are gaps in the records, and these call for an explanation.

In the case of the Alimnia party, some parts of the Foreign Office's file series containing correspondence with the family of one of the servicemen were destroyed some years ago under

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routine departmental procedures. However copies of much of the correspondence which were retained by the family concerned, coupled with surviving War Office papers, have enabled the events of this case (as established by Allied post-war war crimes investigations) to be ascertained. The existence of these contemporary papers demonstrates that, contrary to various recent allegations, there was at no time a policy of systematic destruction of British material relevant to this case with the intention of shielding any individual from being called to account for his actions.

Similarly, an examination and assessment of contemporary German records, and of the microfilm copies made of these whilst they were in American hands from 1945 until the 1960s, shows that the suggestion that any of them have been destroyed or censored in order to protect Kurt Waldheim for whatever reason is wholly without foundation. The papers relevant to the cases under review that survived the war and fell into Allied hands, especially those concerning the Alimnia party, still survive today and are available for consultation. It has been alleged that the masking of parts of one of these documents was intended to protect wrongdoers. A study of the procedures adopted by the American authorities in the early post-war years shows that in fact the masking was done to conceal the identity of Allied special operations personnel whose names or personal details appeared in the document.

As distinct from the above records, which were destroyed or masked, a small number of documents in the British records are still not available for public inspection. The reasons for their non-release were given on p 4 above, as is the

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assurance that their contents have been fully taken into account in this Review.

Allegations concerning post-war events.

It has of course not been the practice of successive Governments to comment on speculation or allegations concerning intelligence matters or to discuss its policy concerning elections to the United Nations.

Legal aspects.

Given that much of the evidence has concerned war crimes, it has been necessary to evaluate this evidence from the legal point of view. Therefore, the Review team's historical work has been considered by officers of the Directorate of Army Legal Services who are well versed in the Laws of Armed Conflict and of War Crimes. They reached the conclusion that the evidence available in connection with the cases which they have examined provided no grounds for suggesting the Kurt Waldheim should have faced charges of war crimes in those cases. In the light of his residual responsibility in war crimes matters, the historical Review and annexes were passed to the present Director of Army Legal Services (DALs) who gave the following advice:

I have considered carefully both the contents of the documents which were submitted and of this Review. At all material times, for the purposes of this Review, the then Lieutenant Waldheim was a mere junior staff officer. There is no evidence here, in my opinion, of relevant

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delegated executive authority or of any causative, overt act or omission from which his guilt of a war crime may be inferred.

The opinion of DAL5 endorses the statement made by The Foreign Secretary in 1986 that:

whatever suspicions the circumstances give rise to concerning the fate of the British servicemen in question, neither the Ministry of Defence's records nor the papers you have provided can be regarded as offering evidence of any criminal activity on the part of Lieutenant Waldheim in relation to those men.

The Fate of the Missing British & Commonwealth Servicemen.

It is very much regretted that, in spite of extensive research during this Review, it has not proved possible to obtain any definite evidence as to the final fate of the missing men. Neither careful study of the surviving German documents nor enquiries among surviving Greeks and German military personnel have produced any significant information additional to what was known at the end of the early post-war investigations.

The execution of such Allied personnel was carried out with as much secrecy as possible. The records of the SD, for example, were most carefully destroyed by their creators before the end of the war and other organisations possibly involved apparently kept no records of such events or again destroyed them. As for personal testimony, the key individuals in the Army Group Headquarters and the SD are dead and those who are still alive have been unable to provide any relevant information.

Master

ANNEX B

The Master Lodge

Professor Sir Harry Hinsley, O.B.E., M.A., F.B.S.

St John's College

Cambridge CB2 1

5 July, 1989

Dear Minister of State,

My brief was to scrutinise the results of the research carried out for this Report in the Ministry of Defence, with the assistance of the Foreign Office, in order to ensure its objectivity and thoroughness.

In carrying it out, my first concern has been to establish that the Report has examined all the records, whether in the possession of H.M. Government or otherwise available for inspection, that might conceivably have a bearing on the subject. To the best of my knowledge and ability, I am satisfied that this is the case; and I am further satisfied that no pertinent evidence in these records has been overlooked in the body of the Report.

This evidence is as far as possible reproduced as documents in annexes. For reasons explained in the Report an exception to this practice has had to be made for a small number of documents in the British archives. The authors of the Report have had access to these documents, however, as to all other British records that might be relevant, and they have provided either an extract from them or the gist of the contents. I have studied such documents as cannot be reproduced as annexes either in full or at all, and I am satisfied that when summarising or drawing conclusions from them the authors of the Report have properly represented their contents.

Turning from the thoroughness of the Report to the matter of its objectivity, I am able to extend to the Report as a whole the above assurance about the interpretation placed on the small number of restricted documents. My enquiries in this direction have addressed two questions: whether the allegations made against Kurt Waldheim in relation to the treatment accorded to British and Commonwealth prisoners of war, and against H.M. Government in the form of suspicions voiced about its earlier concealment of information, have been accurately re-capitulated in the Report; and whether the conclusions it reaches regarding these allegations fairly reflect the evidence, negative and positive, which the authors have assembled in the course of their exhaustive enquiry. In my judgment the answer to each of these questions is in the affirmative.

Yours sincerely,

F. H. Hinsley

The Hon. A. G. Hamilton,
Minister of State for the Armed Forces,
Ministry of Defence,
Main Building,
Whitehall,
London SW1.

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LEGAL BACKGROUND AND ASSESSMENTS

This Section consists of the legal background and assessments of the officers of the Directorate of Army Legal Services, who are well versed in the Laws of Armed Conflict and of War Crimes, and who, with the Director of Army Legal Services (DALs), have examined the historical Review and supporting annexes.

WAR CRIMES ASPECTS OF RELEVANT 'COMMANDO' AND RELATED CASES

The 'Commando Order': Post War Legal Rulings.

The status of the 'Commando Order' in law came under court examination in several post-war war crimes trials: most notably during the proceedings of the International Military Tribunal (IMT) at Nuremberg; during a later trial of a number of senior German officers before an American Military Tribunal at Nuremberg, in the case known as the 'High Command Trial'; and in the trial before a British Military court in 1946 of General Von Falkenhorst, the German military commander of Norway.

The IMT in its ruling on the 'Commando Order' stated that:

This was criminal on its face. It simply directed the slaughter of these sabotage troops.

This ruling endorsed the Allied wartime position as set out in particular by Eisenhower in his March 1945 proclamation. It also implied the rejection of the spurious legal gloss with which Germany sought to argue that Article 23(c) of the Hague Convention for Land Warfare, which stated that it was illegal:

to kill or wound an enemy who, having laid down his arms or no longer having means of defence, has surrendered at discretion

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did not apply to 'commando' operations because this type of covert enemy activity was unknown at the time of the Convention's conclusion and therefore fell outside its provisions.

The transfer of prisoners of war to the SD was similarly ruled to be an illegal act in both the trial of von Falkenhorst, and in the 'German High Command Trial' where the Tribunal ruled:

Orders which provided for the turning over of prisoners of war to the SD, a civilian organization, wherein all accountability for them is shown by the evidence to have been lost, constituted a criminal act, particularly when from the surrounding circumstances and published orders, it must have been suspected or known that the ultimate fate of such prisoners of war was elimination by this murderous organization.

The 'Commando Order' in the Balkans.

The contemporary records and testimony of surviving witnesses leave no doubt that the 'Commando Order', if not in all cases its precise wording, was known both to officers and subordinate personnel in the Army Group E Headquarters and in its subordinate formations (such as the division on Rhodes) and that it was well understood what the subsequent fate of those prisoners classified as 'commandos' might be.

Some individuals will have been directly involved with the treatment of 'commandos' and others will have had a more marginal involvement. Given the agreed illegality of the 'Commando Order', the position of those Germans 'involved' in the cases of British 'commandos' in the Balkans (some of whom are believed to have been unlawfully killed) is of particular significance for an examination of the then Lt. Waldheim's role.

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Together several of those on Rhodes and in the Army Group E Headquarters were in some way involved with the 'commandos' of the Alimnia party, either in their initial interrogation on Rhodes, or their transportation to Salonika, or in their further interrogation there. Others, although playing no direct part in the interrogation or transfer of the 'commandos', made their existence known to higher authority by transmitting signals containing details of the men's capture. According to some German staff officers, once the news that 'commandos' had been captured had reached 'higher' authority there was little, if any, room for manoeuvre by any individual who wished to thwart the implementation of the 'Commando Order', except at grave risk to himself.

The General Treatment of Prisoners of War classified as 'commandos'.

Apart from any illegal executions, the individual cases examined in the historical section of this Report demonstrate clear breaches of the 1929 Geneva Prisoner of War Convention. For example, pressure was clearly applied by a variety of means to persuade prisoners to provide information beyond that required by Article 5 of the Convention, i.e. name, rank and number; while the requirements of Article 8 were not properly observed, namely that a prisoner's capture be notified as soon as possible to his own country through the Protecting Power.

However neither interrogation, nor its organisation were proscribed under international law. Only if illegal methods were used as part of the interrogation process did it become unlawful.

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Culpability of Staff Officers.

Post-war Military Tribunals, in considering the question of the personal liability of staff officers who by their acts or omissions may have been deemed to have been involved in the commission of acts contrary to the laws of war, made a number of important rulings and statements. Of especial relevance are those of the Tribunals in 'The Hostages Trial', and the 'High Command Trial'. In the latter it was held that:

Staff officers, except in limited fields, are not endowed with command authority. Subordinate staff officers normally function through the chiefs of staff. The chief of staff in any command is the closest officer, officially at least, to the commanding officer.

In considering the question of the liability of two senior chiefs of staff during the 'The Hostages Trial', the American Military Tribunal ruled as follows:

The evidence fails to show the result of any action affirmative or passive, on the part of this defendant. His mere knowledge of the happening of unlawful acts does not meet the foregoing requirements of criminal law. He must be one who orders, abets or takes a consenting part in the crime.

It was also held in 'The Hostages Trial', and in the case of 'Harukei Isayama and Others', that a staff officer cannot be held responsible for the outcome of his commander's orders which he approves from the point of view of form and issues on the commander's behalf. It is of interest that Foertsch, who was Chief of Staff of Army Group E when the 'Commando Order' was issued, and von Geitner, who as Chief of Staff

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initialled or signed orders issued by his commander for the shooting of hostages and reprisal prisoners, were acquitted by the American Military Tribunal in 'The Hostages Trial'. On the other hand, Harukei Isayama, who as Chief of Staff played a personal and active part in the organisation of an unlawful trial of American airmen, was convicted by the American Military Tribunal.

While there is no suggestion that any of these cases provide Chiefs of Staff or other staff officers with immunity from prosecution for criminal acts, they established more clearly the level of involvement required for something to be deemed a criminal act. Further they demonstrate the distinction between knowledge of, and criminal involvement in such illegal acts.

Another defendant was found not guilty

not having been shown to have taken any consenting part in illegal acts, 'coupled with the nature and responsibilities of his position and the want of authority on his part to prevent the execution of the unlawful acts charged'

Legal Findings in the Cases Under Review.

a. The Cephalonia Case.

In the case of the presumed execution of Capt. De La Touche Warren in May 1944, there is no evidence that a formal war crimes investigation was instituted. Although there was a suggestion within the local SOE

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organisation that the commander of the prison be sought, there was apparently no approach by SOE to the War Crimes Investigators for the case to be followed up.

The only evidence of a possible order concerning Capt. Warren's disposal comes from the signal of Army Group E of 28 March 1944 (see Chapter 6 of historical section of Report) which mentions Sonderbehandlung'after interrogation for the whole Group of prisoners.

Lt. Waldheim's involvement.

Lt. Waldheim's involvement in this case can only have begun after his return from leave on 16 or 17 April 1944 by which time the above signal had already been passed to the OKW. His personal involvement can be seen in the report of 8 May 1944 believed to have been drafted by Lt. Waldheim which detailed the information gained from the interrogations of members of the party including Capt. Warren. The report said that 'Warren believed that the Greeks were too unreliable to be entrusted with sabotage operations on their own'. This report and the relevance of the use of the term 'sabotage' have been examined. It is considered that there is no evidence of any act by Lt. Waldheim that made him liable for prosecution on war crimes charges in this case.

b. The Alimnia Case.

A formal war crimes investigation was initiated at the end of 1946. The course of this investigation is covered in detail at Chapter 7 of the historical section of this Report. In summary, the investigators were able to locate

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and interrogate a number of German officers and men who had clearly been involved with the 'commandos' on Rhodes, in reporting their capture, in their interrogation and their transfer to Salonika. There is no evidence that any of these individuals was considered because of his actions to be culpable for the presumed later murder of the prisoners concerned. Nor is there evidence that any action was considered against any of these Germans for the lesser infringements, notably of Article 8 of the 1929 Prisoner of War Convention mentioned earlier, which required the notification of prisoners' capture as soon as possible, despite the fact that their failure to comply with this requirement could be said to form an integral part of the procedure for the implementation of the 'Commando Order', rather than their treatment as ordinary prisoners of war.

The war crimes team were apparently concerned to apprehend and bring to trial those individuals within the theatre command structure with executive authority directly implicating them in the assumed illegal disposal of the prisoners.

Within the Army Group E Headquarters, attention focussed on Lt. Col. Warnstorff, and Maj. Hammer. Neither was traced, but they were wanted for questioning; there is no evidence that either was considered as a potential accused. Two suspects however were identified: Lt. Col. von Harling and Capt. Merram both from the Army Group F Headquarters. They were arrested and interrogated but no war crimes trial took place under the Royal Warrant

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prior to the cessation of such trials. The two men were then transferred to Control Commission custody, but although the existence of machinery to prosecute before CCG courts was in place, the surviving documentary evidence indicates that no trial was held under CCG auspices and that both men were soon released. The reason for this was a lack of sufficient evidence to sustain a viable case against them.

Lt. Waldheim's Involvement.

Current research shows that Lt. Waldheim was absent from the Headquarters of Army Group E on leave in Austria from March until 16 or 17 April 1944. He was therefore not involved in the early action in this case during which period the existence of the men was reported up to the highest level - the OKW and possibly even Hitler - and a Wehrmachtbericht had already also been issued indicating that the men were considered to be 'commandos' as defined in the 'Commando Order'

While it is clear that following his return to the Headquarters Lt. Waldheim was aware of the existence of the 'commandos' and their intended fate when this was ordered by Army Group F, it is considered that the evidence indicates only a limited personal involvement by him in the case and reveals nothing to suggest that he committed any criminal acts.

The allegation against Lt. Waldheim is that he was responsible for a signal sent on 26 April 1944 from the staff branch to which he belonged, addressed to HQ Army

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Group F saying: 'Further interrogation of English Alimnia 'commandos' without result. Request decision on whether the prisoners now to be handed over to SD'. It is unlikely that Waldheim's authorship of this signal could be proved and even if it could, the issuing of orders on behalf of the commander does not of itself engage legal responsibility. Indeed the issuing of this signal was one stage further removed from the activity of von Geitner, acquitted in the 'Hostages Trial Case', since it merely enquired about whether prisoners should be handed to the SD and did not pass on an order for execution.

It is considered that this view is consistent with the decisions of the post-war war crimes investigators who examined this case. Lt. Waldheim's limited involvement was less than that of the German officers on Rhodes who were closely involved in the 'commandos' initial identification, interrogation and handling yet were not considered by the war crimes team to be perpetrators of any illegal acts.

c. The Yannina Case.

A formal war crimes investigation was initiated and the evidence from the ex-prisoners identified the NCO Stoffberg from the GFP prison, who it was felt was primarily responsible for the prisoners' ill-treatment. However he did not fall into Allied hands and therefore no further action could be taken.

Lt. Waldheim's ^IInvolvement.

A report on the men's capture was sent to the Ic/AO Branch in Salonika. It was Lt. Waldheim's job to be familiar with these reports and with the results of any interrogations, whether by subordinate units, the GFP or by the Army Group itself. But there is no evidence to link Lt. Waldheim personally with the men's interrogation: some of his former colleagues have testified to conducting at least some of these interrogations while denying any participation by him. There is also no evidence that he was personally involved in deciding interrogation procedures.

With reference to the basic treatment of the prisoners and the general conditions in the GFP prison, there is no evidence that Lt. Waldheim ever visited the GFP prison or had any responsibility for the GFP: this lay with his superior Lt. Col. Warnstorff with the day to day responsibility delegated to the AO Maj. Hammer in conjunction with the GFP's own commander.

It is concluded therefore that there is no evidence of criminal actions by Lt. Waldheim in relation to this case.

d. The Calino Case.

This was initially identified as a possible war crimes case by the American authorities examining captured German records. However it must be presumed that enquiries soon established that Sgt. Dryden had not been executed as a 'commando' but had survived the war, as the case was

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not pursued by the British authorities.

Significantly, when the German report was identified by the US war crimes investigators examining the German Army records they considered that the individuals concerned in this proposed breach of the law were the Commanding Generals of Army Group F & E, and the Chief of Staff of Army Group F.

Lt. Waldheim's involvement.

In this instance it is believed that Lt. Waldheim initialled the report, indicating that the facts and interpretations therein which he had provided and drafted were correct. The report said 'Sgt. John Dryden DOB 25 October 1919 in Newcastle, wounded, flown to Athens on 5 July will be handed over to SD in accordance with [Hitler's] order'. Lt. Waldheim must have been aware of the implications of the proposal regarding Dryden's disposal, but there is no evidence that he authorised the statement regarding the proposed fate of Dryden, or that he had any authority to do so or could officially influence it in any way.

Since Dryden survived the war, any allegation against Lt. Waldheim would be of attempting to commit a war crime. His explanation, no doubt, would be that he had no intention to cause the death of this prisoner and that he was simply recording the facts, including the decision, made elsewhere, that the captive was being passed to the SD. It would be impossible, on the available evidence, to prove anything to the contrary.

e. The Leros Prisoners.

Of these cases only that of Flt Lt. Ogilvie links Lt. Waldheim to allegations of war crimes. In his recent testimony he states that Lt. Waldheim escorted him from the transit camp to the headquarters at Salonika and that during the flight Lt. Waldheim asked for the prisoners' identity discs which were then replaced by some from the corpses of soldiers who had been serving in open combat units. There is no corroboration for this allegation, indeed the surrounding circumstances point against it, but, taken at face value, Ogilvie's evidence indicates a violation of Article 6 of the 1929 Prisoners of War Convention. However, the implication is that by changing the identity discs Lt. Waldheim saved Ogilvie's life. In those circumstances, even if corroborative evidence existed a prosecution would be inappropriate.

f. Pte Turton's Death.

This was carefully investigated and the identities of several suspects established, all of them SD, SS or GFP, but apparently none of them fell into British or Allied hands and no further investigation could therefore take place. There is no evidence of any involvement of Lt. Waldheim in this case.

g. The Laterina Case.

This case was carefully investigated by British, Canadian and American war crimes teams and the case was listed

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by the United Kingdom with the UNWCC. However it appears that none of the accused fell into Allied hands and therefore no trial could take place.

These contemporary investigations reveal no evidence of any involvement by Lt. Waldheim in this case, of his presence at the end of the affair.

In view of the discrepancies in the evidence highlighted in this Review, and of the absence of any evidence to corroborate the one allegation, it is considered that there is insufficient evidence of any participation by Lt. Waldheim in any illegal activity.

h. Other Cases Examined in the Review.

Although there were some infringements of the Geneva Convention concerning the treatment of some of these men, there is no evidence to suggest that Lt. Waldheim was involved personally in the commission or authorisation of any illegal actions in relation to them.

Conclusions.

From the examination of the evidence concerning the cases of British 'commandos' held prisoner in the area under the control of Army Group E, it is clear that Lt. Waldheim must have been aware of the 'Commando Order' and its implications and also of the existence of these British prisoners and of their interrogation.

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However, in the light of the evidence examined during the Review and the test laid down in the 'Hostages Trial Case' that mere knowledge is insufficient and that the accused must 'be the one who orders, abets or takes a consenting part in the crime', it is concluded that there is no evidence that Lt. Waldheim committed criminal acts in these cases.

In conclusion the Director of Army Legal Services (DALs) has stated:

I have considered carefully both the contents of the documents which were submitted and of this Review. At all material times for the purposes of this Review, the then Lieutenant Waldheim was a mere junior staff officer. There is no evidence here, in my opinion, of relevant delegated executive authority or of any causative, overt act or omission from which his guilt of a war crime may be inferred.





LPO

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

17 August 1989

Thank you for your letter of 14 August to my colleague Paul Gray. You are quite right to say that it would be necessary for there to be new legislation in Britain to mount a criminal prosecution in this country of acts of murder and manslaughter committed as war crimes in Germany or German occupied territory during the period of the Second World War by people who are now British citizens or resident in the United Kingdom. As the Home Secretary made clear in Parliament last month, when he announced the report of the War Crimes Inquiry, the Government will be providing an opportunity for each House of Parliament to debate the report in the autumn and in the light of the views expressed in that debate will take a final decision on whether to bring forward legislation on the lines proposed by the Inquiry.

I am grateful to you for your further letter.

DOMINIC MORRIS

Dr. Jack N. Porter.

lv

THE SPENCER MORTGAGE COMPANY

30 Lincoln St., Newton Highlands, MA 02161
(617) 965-8388

Dr. Jack N. Porter, President

August 14, 1989

Dear Mr. Gray:

Thank you for your prompt reply and concern. Enclosed is a Boston Globe article regarding this massacre and other actions, further described in my books noted, plus a letter from Greville Janner of the All-Party Parliamentary War crimes Group.

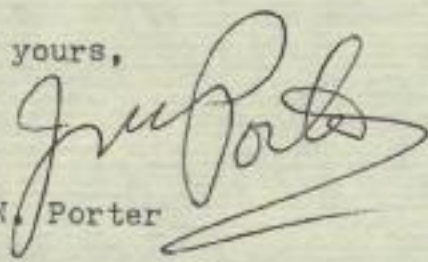
Nov. 14, 1981

The bottom line, as we Yanks say, is that there is a Ukrainian living in England responsible for the Maniewicz massacre and I hope that he can be speedily brought to justice, but I understand that England has to enact new laws to do so. Please do so soon, as time is of the essence.

War criminal

If I can be of further assistance, please contact me.

Sincerely yours,



Dr. Jack N. Porter



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

4 August, 1989.

Dear Dr. Porter,

I am writing on behalf of the Prime Minister to thank you for your letter concerning the tragic death of your two sisters killed in Maniewicz. On the basis of the information in your letter, I can do little more than note your comment.

*Yours sincerely,
Paul Gray*

Paul Gray

Dr. Jack Porter

From
The Boston
Globe
Nov 14
1981

Centerpiece

Jewish resistance during WWII

Little-known story to be told in Brighton sociologist's version of Russian book

By Robert Levey
Globe Staff

"There was Jewish resistance," said sociologist and writer Jack Porter, speaking in his Brighton home crammed with research materials on the Holocaust. "The Jews did not all go to their death like sheep."

For more than a decade, Porter has researched Jewish resistance during World War II. He has become a custodian of this little-known story, pledged to seeing that it gets told in the United States.

Next month, Porter will fulfill his commitment to himself with the publication of an English translation of a book called "Jewish Partisans: A Documentary of Jewish Resistance in the Soviet Union during World War II." The book, originally published in Moscow in 1946 but suppressed under Joseph Stalin, is a compilation of the personal stories of Jews who escaped annihilation and banded together in loose military units to fight back.

The small body of existing writing that documents Jewish resistance is mostly written in Russian, Hebrew or Yiddish. "We seem to think that until it comes out in English, it doesn't exist," Porter said.

For this English translation, to be published in a very modest edition by University Press of America in Washington, Porter acted as editor and also wrote a long introduction that provides a carefully researched overview of the Jewish resistance movement and a valuable bibliography of other sources.

"In Europe and Russia, they didn't think of the Jew as a fighter," Porter said. "But Jews not only resisted the Nazis and their collaborators. They also took revenge."

His father was a partisan leader!

Porter's obsession with this unusual story has intense personal roots. His father, Irving Porter, who died in

THE REALITY



A German army officer executes a partisan soldier on the Russian front.

killed many of the Ukrainian collaborators who had killed their Jewish relatives and friends.

Porter first learned about the Russian document on Jewish partisans eight years ago when he received a Hebrew translation of the book from a cousin in Israel. There, looking out at him among the illustrations in the volume, was a photo of Porter's father dressed in his partisan uniform and standing next to the Ukrainian commander Nikolai Konishchuk, who headed the partisan unit called the Kruk detachment. Konishchuk used the code name "Kruk." After the war, Kruk was murdered by Ukrainian nationalists who had fought with the Nazis.

The suppressed book has languished for 33 years on a shelf in the archives of the Lenin Library in Moscow. The material in the book had been compiled in Moscow by the Jewish Anti-Fascist Committee, which was trying to gather documentary evidence on the valuable role Jews played in World War II in order to counter the tide of anti-Semitism that was building under Stalin. Among the more than 20 authors who contributed the anecdotal tales of war exploits were several non-Jewish Soviet officers who had fought with and led the Jewish partisans' units.

It wasn't until the early 1960s that Israeli author Benjamin West acquired a microfilm copy of the book from the Lenin Library and was able to publish the Hebrew translation that eventually fell into Porter's hands. In 1973, Porter was also permitted to purchase a microfilm copy of the Russian edition from the Lenin Library, and it was used for rechecking the translation from the Hebrew edition.

The life-and-death tone of the partisan effort was embodied in the oath that members swore:

"I, a citizen of the Soviet Union, hereby join the ranks of the Red Partisans, the avengers of the people, in order to liberate the blood of my people from their oppressors and

Fighting under the war-time code name of Zalonka, Porter's father, whose name in Russia was Yisroel Puchtick, served under a Russian commander in the Kruk detachment, which operated from hidden camps in the forests around Volynia in the Western Ukraine during the Nazi occupation.

Porter's mother also fought as a Jewish partisan and both parents survived the war. Porter himself was born in the Ukrainian town of Rovno in 1944, a few months before the war ended. He emigrated to the United States with his parents under the displaced persons program after the war.

But 25 of his relatives, including his grandparents and two sisters, were murdered one ghastly weekend in September 1942. They were victims of the routine Nazi policy as the Germans swept through the towns and villages of the Ukraine.

First, the Jews would be rounded up and placed in a "forced ghetto," which might just be a group of farm buildings. Then, sometimes within just two or three days, would come what the Germans called the "Aktion," the action. The Jews would all be killed by the method of greatest convenience. Usually they were either burned in the wooden buildings, or marched out of town where they were forced to dig their own graves, then they were shot and thrown into the fresh trenches. Porter's mother had escaped by hiding in a barn stall and fleeing into the woods.

His father, who was away from the village the week the Nazis came through, made the painful decision of joining the partisans rather than returning to face certain death with his family. He assumed his wife was dead until they were reunited two months later in the secret partisan camps.

As a child, Porter never knew the story of his family's tragedy during the war. "My parents never talked about it," he said. But in 1973, Porter conducted a set of interviews with his father, reviewing his years with the partisans. His father recalled: "They would kill the Jews, then have a big party while they took the Jewish property. When they finished one job, they'd go on to the next little town. I made up my mind I was not going to go like an animal. I was going to take revenge."

Surviving and fighting in the atmosphere of Nazi terror required harsh methods. The elder Porter led small bands of partisans in dangerous operations involving mining and blowing up railroad lines, fuel depots and bridges.

They also had to protect and find food for hundreds of Jewish women and children living in secret camps in the woods.

"We got food from Gentile farmers, whom we threatened to shoot if they didn't give us potatoes, flour or salt in good faith," the father told the son. "You must be careful



Jack Porter's Jewish partisan father, code-named Zalonka (left), with his Russian partisan commander, Kruk, in 1944. Kruk was murdered after the war by Ukrainian nationalists.

THE CHRONICLE



Sociologist-writer Jack Porter and a facsimile of the title page of the 1948 Russian edition of "Partisan Brotherhood," a book on Jewish partisans.

in war. One is bitter and a little crazy. You do many wrong things in order to survive. During the time of the underground, there is no law. You had to use the gun to get food... We had to use force, even kill a few if they didn't give. Most of them gave. They were so surprised to see Jews with guns. They were scared of us. They gave. This is what we did for over two and a half years. We survived."

Survivors of the partisan units still live in cities around the United States, and Porter has interviewed many of them. From those talks, he has gained chilling testimony that in the weeks and months after the war, partisans, burning with vengeance, tracked down and

exists, and to fight for my homeland and native country against Hitler, the bloodhound, and his henchmen; the blood-thirsty invaders... and if I happen to violate this oath, may the hand of my comrades fall upon me."

Porter had great difficulty finding a publisher for the book, partly, he thinks, because of the heroic communist rhetoric that shows through some of the prose. Though the partisan documents testify to perfect friendship and communist unity among the Jews and Russians who did this courageous fighting, strains of anti-Semitism even followed into the forests.

"It is one of the sad and ironic chronicles of the war," Porter writes, "that even in the midst of battle against a common enemy, there was such division and hatred among the partisans and against the partisans."

And the irony became even greater after the war, when those Jews who returned home or tried to take up a new life elsewhere in the Soviet Union soon faced a new tide of repression under the Stalin regime.

There is a terrifying and murky postscript to Porter's work on Jewish resistance. It is an untold story of Jewish revenge here in the United States years after the war.

It is well known that great numbers of Nazi collaborators were able to hide their pasts and move to the United States under the same displaced persons program used by so many thousands of Jews.

Some murderers were discovered

In his research on Jewish resistance, Porter has uncovered hints that on several occasions since the war, former Jewish partisans in various American cities have discovered some murderers of their families and friends, sought them out and killed them.

"This is a very sensitive matter," Porter said. "And I have no proof. But some of the victims have taken it on themselves to carry out revenge in the United States."

Porter does not condone these alleged acts. In fact, he has done outreach work with children and families of Holocaust survivors and also has sought links of understanding with groups representing the next generations of Ukrainians and Germans.

But with his own family history and with all his years immersed in study of the horrifying details of the Holocaust, Porter, like his Jewish partisan father before him, feels no sympathy for any of the Nazi collaborators who may have become victims of these rumored revenge killings.

And when he tries to gain perspective on "the incomprehensibility and enormity of the crimes" against the Jews and other innocent Polish and Russian citizens during the war, he finds his thoughts returning to the eloquent assessment of Jewish novelist Elie Wiesel: "Those who know do not speak and those who speak do not know."



File
to

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

4 August, 1989.

I am writing on behalf of the Prime Minister to thank you for your letter concerning the tragic death of your two sisters killed in Maniewicz. On the basis of the information in your letter, I can do little more than note your comment.

Paul Gray

Dr. Jack Porter

Porter

30 Lincoln Street
NEWTON, MA.

84/6

02161 USA.

Dear Prime Minister Thatcher,

I've written to Granville
Tanner + to William Chalmers but
to no avail.

I am the brother to
two sisters killed in Maniewicz
Poland (Ukraine) by SS + Ukrainian
policemen. One of these Ukrainians
has been uncovered in England.

When will he be brought
to justice?

Sincerely,

Dr. Jack N. Porter

CONFIDENTIAL



Treasury Chambers, Parliament Street, SW1P 3AG

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

August 1989

Dear Douglas

WAR CRIMES

Thank you for your letter of 19 July setting out your current thinking on the resources implications of implementing the recommendations of the War Crime Inquiry. I am also grateful to Lord Fraser for his letter of 31 July about the possible implications in Scotland.

The major resource implications, estimated at £12-24 million a year in England and Wales alone, would stem from the general implementation of the 1988 Criminal Justice Act provisions for live television evidence to be taken from witnesses abroad. I understand why you would prefer to avoid the impression of making special provision to enhance the likelihood of convictions in the war crimes cases. However, most of the costs involved would be entirely unconnected with war crimes trials (where you estimate the direct costs of television links to be only perhaps £200,000 per case - although I note that Lord Fraser thinks this is too low) and I entirely endorse my predecessor's view that additional resources should not be made available to implement that measure. The necessary provision would have to be found by the departments concerned from within existing resources.

Your estimate of other costs is more modest, perhaps £3-4 million a year over 5 years falling in a number of areas notably the course, legal aid, Crown Prosecution Service and the policy. I must say that I would expect costs of this size to be absorbed within the considerable budgets of the bodies concerned. In any case the resource estimates so far produced are not robust enough to support bids in the current Survey and it would also be premature to discuss provision in advance of a decision being taken on the policy. However, assuming the recommendations of the



Inquiry are implemented and more reliable cost estimates are available, I would be prepared to review the position in next year's Survey.

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

NORMAN LAMONT



For Pol.
Was criminals PC2



LORD ADVOCATE'S CHAMBERS
 REGENT ROAD
 EDINBURGH EH7 5BL

Telephone: 031-557 3800
 Fax (GP3): 031-556 0154

31 July 1989

The Rt Hon Norman Lamont MP
 Chief Secretary to the Treasury
 HM Treasury
 Parliament Street
 LONDON
 SW1P 3AG

edp
1/8

Dear Chief Secretary

WAR CRIMES

at flap

Douglas Hurd wrote to you on 19 July 1989 setting out his current thinking on the resource implications of implementing the war crimes inquiry proposals. He made only passing reference to Scotland. As you may know, however, one of the main cases in respect of which the inquiry concluded that sufficient evidence is already to hand is a Scottish case. It was the case most exhaustively investigated by Sir Thomas Hetherington and Mr William Chalmers. I therefore think it right to let you have an early indication of my thinking on the resource implications for my Department of investigating and prosecuting the case in question.

As Douglas Hurd has explained it is not easy to estimate likely costs with any degree of precision, but the following rough outline will at least provide an early advice of the possible order of costs involved. I will adopt Douglas Hurd's categories of types of cost.

Regarding the investigation of outstanding allegations his letter (at page 2) assumes the primary involvement of the police in conducting further inquiries - early guidance to the police on evidential issues being a matter which will require careful thought. The arrangements for the investigation of serious crime in Scotland are different from those in England and involve a primary role for my Procurators Fiscal, not just in advising the police but in directing police inquiries and themselves undertaking aspects of the investigation including interview of principal witnesses. I would intend to use a team of experienced Crown Office and Procurator Fiscal Service staff in the investigation of the Scottish case. Some limited police assistance is likely to be required. I cannot at present place a figure on that assistance or its cost - which would anyhow be a matter for Malcolm Rifkind.

The Crown Office/Procurator Fiscal Service Team used in the investigation of the case would also be used in its preparation for trial - supplemented by Crown Counsel - if the investigation produced sufficient evidence and proceedings were considered appropriate in the public interest.

The/



The estimated cost of the staff required for the investigation and case preparation process would be in the order of £300,000 per annum - at present rates. To this would require to be added the cost of accommodation, travel and subsistence and of employing experts, historians, translators etc. I would expect the investigation and any trial taken to its conclusion to take up to 2 years.

As for the trial itself, I am concerned Douglas Hurd's estimate of 50 hours of tv evidence per case would be a very serious underestimate of what would be required so far as the Scottish case is concerned - having regard to the likely length and complexity of the trial and our understanding of the position regarding the availability of essential witnesses. This, I should say, is set out in some detail in the unpublished Part II of the Report. It appears that we would not be able to produce in person any of the witnesses who make the major allegations. If the evidence of these main witnesses is to be obtained it would seem that this will require to be by video link. There are at least 4 such witnesses. Further investigation of the evidence may produce several more in this category as other possible key witnesses have been identified but have not yet been interviewed and their ability to come to the UK has not been determined. The translation process will substantially extend the duration of each witness's evidence and lengthy cross examination has to be anticipated since credibility and reliability (in particular) after the passage of time in question will certainly be very closely tested. I would hesitate to make an estimate myself of the likely length of the tv links which will be necessary in our case, but I would judge that it is likely to be at least twice the figure suggested by Douglas Hurd.

The overall cost to the Crown of investigating and prosecuting the Scottish case, including the cost of satellite tv links could well be as much as £1.5 million in total. That does not, of course, include police costs, court costs or legal aid costs - these being matters for Malcolm Rifkind.

As you will be aware, no provision has been made in respect of any of these costs. Proper investigation, preparation and prosecution of the Scottish case will be out of the question without additional provision. The main costs will arise in 1990/91 and 1991/92. However, if Parliament approves the necessary legislation I would wish to set up the Crown Office/Procurator Fiscal Service Team as quickly as possible and its investigation would be likely to commence during the current financial year, which could make a supplementary bid necessary.

I am copying this to the Private Secretaries to other Cabinet Ministers and Sir Robin Butler.

John Smith,

Colin H S Muir

fr FRASER OF CARMILLIE

Dictated and signed in
the Lord Advocate's absence

FOR POL: War Criminals
A 2

War Crimes

3.32 pm

The Secretary of State for the Home Department (Mr. Douglas Hurd): With permission, Mr. Speaker, I should like to make a statement about the report of the war crimes inquiry.

I set up the inquiry in February 1988 to consider allegations that persons who are now British citizens or resident in the United Kingdom committed war crimes during the second world war and to advise whether the law of the United Kingdom should be amended to enable prosecutions for war crimes to take place in this country.

The report as submitted to me was in two parts. The main report contains the inquiry team's analysis and conclusions. The second part contains detailed material on individual cases. The inquiry team intended that the main report should be published. I am today publishing it in full and without amendment. I also accept the expert view of the inquiry team that publishing the material in the second part about individual cases would risk prejudicing any proceedings which might be instituted. I am sure that the House will see the wisdom of that distinction and understand why I cannot comment on individual cases.

I believe that the House will find the main report a full and impressive document. It takes a broad view of the historical context affecting the territories and peoples of eastern Europe, of the conduct of successive British Governments during and after the last war and of the legal and other issues. The team visited the Soviet Union and interviewed a large number of possible witnesses. I am most grateful to Sir Thomas Hetherington, formerly Director of Public Prosecutions, and Mr. William Chalmers, formerly Crown Agent for Scotland, for their authoritative analysis.

The inquiry deals with allegations of horrific killings on a large scale—crimes which would constitute violations of the internationally agreed laws and customs of war. The allegations are not about actions committed in the heat of war. They concern individuals allegedly holding quite senior positions in paramilitary units operating in territories occupied by the German forces, whose task was the systematic murder of civilians.

The inquiry examined in detail seven cases. It concluded in respect of four that there was sufficient evidence to mount a criminal prosecution. One of the individuals concerned has since died. The inquiry went on to recommend that further investigations should take place in respect of the other three cases. In addition, of the nearly 300 further cases drawn to the attention of the inquiry, it recommends further investigation of 75 and that attempts should be made to trace a further 46.

The inquiry recommends that there should be a change in the law to permit the prosecution in this country of acts of murder and manslaughter committed as war crimes in Germany or German-occupied territory during the period of the second world war, by persons who are now British citizens or who are resident in the United Kingdom. Certain procedural changes, including the taking of evidence by live television link from persons outside the United Kingdom, are proposed to facilitate the trial of such cases.

The members of the inquiry were aware of the danger of creating retrospective legislation and have tried to meet that objection. They are addressing actions which they are

satisfied constituted at the time clear breaches of international law, and which would constitute offences triable in British courts now, had the persons concerned been British citizens at that stage.

The inquiry reached its recommendation on legislation and prosecution in this country after examining and rejecting other courses of action. In particular, it discussed but did not recommend extradition of the individuals concerned to stand trial in the Soviet Union. It set out in the report the arguments for and against extradition. The Government find the arguments against extradition to the Soviet Union convincing.

The inquiry's recommendations raise important issues of principle and practicality. It can be argued that it is no service to the memory of the victims of these crimes to resurrect, after so many years, the horror of what they endured. One can question what will be achieved by prosecuting old men so long after the events. The practical difficulties of conducting trials include the age and frailty of witnesses, the problems of assembling the evidence, which is available in the Soviet Union, if at all, in a form in which it can be convincingly presented to a jury in Britain, and the problem of establishing identity and other key elements beyond reasonable doubt when witnesses' memories are more than 40 years old. The report deals with all those matters.

On the other hand it will be argued that, in the words of the report:

"The crimes committed are so monstrous that they cannot be condoned . . . To take no action would taint the United Kingdom with the slur of being a haven for war criminals." Other countries that have uncovered similar evidence have acted to enable the alleged offenders to be brought to trial, sometimes making broader changes in the law than recommended in this report. Despite the practical problems of conducting a trial, the experienced inquiry team consisting of a former Director of Public Prosecutions and a former Crown Agent, reached the view that there would be sufficient evidence in three cases to mount a prosecution if there were jurisdiction. If and when the time comes for assessing the evidence, the prosecuting authorities of the day will need to make their own assessment of particular cases.

We are impressed by the force of argument that led the inquiry to its clear conclusion that legislation was required, but we want to hear the views of Parliament before taking a final view on the principle of legislation. This is a matter, after all, on which the views of Parliament will be decisive. The Government will provide an opportunity for each House to debate the implications of the report and the action that should be taken in response to it. The debates will take place in the autumn once there has been a proper opportunity to study the report and reflect upon it. In the light of the views expressed in those debates, the Government will take a final decision on whether to bring forward a Bill on the lines proposed by the inquiry.

Mr. Roy Hattersley (Birmingham, Sparkbrook): I offer the Home Secretary support for the general position that he has adopted following the inquiry into war crimes. Few will doubt that the crimes considered in the report are too appalling to be passed over, even after half a century has elapsed. The inquiry was right, however, to identify some formidable problems of principle and practice that would

be involved in prosecutions. We therefore welcome the Government's decision to arrange a debate in the House before reaching any definite conclusion on how to proceed.

If there are war criminals in Britain, and if they are brought to trial, it is essential that action against them should be taken by acceptable legal means. I therefore welcome the Government's decision that, if there are to be prosecutions, those prosecutions must take place in Britain. It would be quite wrong to deport, or allow the deportation of, suspected persons to countries where, as the report put it:

"The system of justice is not comparable to that in this country".

The decision to try such people here would require substantial changes in British law. I hope that the Home Secretary will confirm, in terms, that it would require retrospective extension of jurisdiction to persons who are not at present liable to charge or trial.

With that in mind, let me ask the Home Secretary three specific questions. First, if changes in the law were necessary—for example, the introduction of video recordings as evidence in Scotland—would the Government consider changing the law in general and applying the changes to all criminal proceedings, or would they consider simply changing the rules of evidence as they apply to war crimes? There is clearly a great danger in having one rule of evidence for one crime and different rules of evidence for all others.

Secondly, has the Home Secretary considered the full implications of relying on evidence in statements by individuals who are now dead? Few people would be happy were that practice to be extended to legal proceedings in general and, again, there is great danger in applying the principle to one category of charges and trials but not to others.

Thirdly, the Home Secretary will know that some of the individuals who may be prosecuted under the legislation that he is considering have already been named in newspapers. As they are not covered by the sub judice rule, does the Home Secretary propose to take steps to protect them from more prejudicial publicity?

Finally, let me ask the Home Secretary to consider one issue of principle—even before the House debates the subject. Does he agree that there are great problems of principle and practice in introducing legislation to facilitate the prosecution of a very limited number of individuals, who are probably identifiable?

Would it not be better to introduce general legislation—perhaps in terms of the Geneva convention of 1949—to make possible the prosecution of criminals from any war who have taken refuge in Great Britain or acquired British nationality? I understand that that is the approach which has been favoured by other countries that have faced the same problem. To many of us, that seems right—to avoid making retrospective changes in the law to deal with known individuals and to ensure that Britain does not harbour criminals from any war taking place at any time in any part of the world.

Mr. Hurd: I am grateful to the right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley) for his general approach. This is a matter on which there will be strong differences of view that will certainly cut across party lines and on which Parliament as a whole will have to take a view.

I confirm the right hon. Gentleman's understanding that the proposal in the inquiry would not make anything criminal which is not now criminal. Instead, it would bring within the jurisdiction of our courts certain allegations of crimes which are not at the moment within their jurisdiction because those concerned did not live here at the time of the crime although they now live here and in some cases are British citizens. That is the scope of the change.

I accept the general principle that the right hon. Member suggested about not providing special procedures for the particular crimes described in the report. He will know that under section 32 of the Criminal Justice Act 1988 we provided for evidence to be taken by video links in England and Wales. It does not apply in Scotland, which is why the report suggests that it will have to be dealt with. It has not yet been implemented in England and Wales, and we shall have to discuss its implications more thoroughly. The principle is provided in the law for England and Wales.

The right hon. Member rightly said that there has been comment on individual cases in the past. Neither I nor anyone else can prevent such comment in the future. It is worth saying that, even if Parliament decides to amend the law, as the inquiry suggested, three consequent stages will bear on a fair trial. First, the prosecuting authorities will have to decide, by their usual criteria, whether there is scope for a successful prosecution. Secondly, the judge will have to decide the conduct of the trial to ensure that it is fair—the Criminal Justice Act is clear about that. Thirdly, the jury will have to decide whether the trial has been fair.

The right hon. Member mentioned the scope for wider legislation. Other countries have gone wider, but to go wider than the Hetherington inquiry would land us in a range of further problems. I shall study what the right hon. Gentleman said.

Mr. Ivan Lawrence (Burton): Is my right hon. Friend aware that the recommendations of this distinguished inquiry will meet wide support throughout the country, because they will mean that Britain will no longer be a safe haven for the monsters who committed the worst atrocities? Although any decision to legislate will undoubtedly be strengthened by an opportunity for quiet consideration of this emotive subject, one of the recommendations of the inquiry is that legislation should be introduced as quickly as possible, bearing in mind the ages of suspects and witnesses. Will my right hon. Friend bear in mind that although the inquiry was limited to consideration of the second world war, it will be necessary to have such legislation in place to deal with atrocities committed in wars since the second world war?

Mr. Hurd: On the second point, the scope of the recommendations is more limited. If we legislate, that is exactly the sort of point that the House will want to consider.

I note what my hon. and learned Friend says about speed, but I find this such a difficult subject, and all those who have thought about it will share my views. The arguments of principle and practice pile up on either side, and it is not easy to reach a conclusion. I am sure that it is right that we should all consider the report carefully, pause and listen to views, which the Government certainly intend to do before bringing proposals before the House.

Mr. Robert MacLennan (Caithness and Sutherland): Will the Home Secretary accept that Social and Liberal Democratic party Members welcome the measured depth of the analysis of these two distinguished gentlemen? The Home Secretary has taken appropriate action in allowing Parliament to voice its view before he takes a final decision, although perhaps it is fair to say that his statement leans towards accepting the recommendations.

Does he accept that the important finding of the report is that the crimes concerned were not only monstrous but were against international law at the time that they were committed? The limitation of the recommendation to extend the jurisdiction of our courts to deal with these matters is important because it enables us in Britain to give greater effect to the rules of international law for the purposes for which the Nuremberg trials were set up.

Finally, may I add my support to the submission made by the right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley) that in considering legislation it would be appropriate to contemplate wider legislation to seek to bring within the scope of our jurisdiction war criminals who have committed crimes in other situations and at other times, perhaps those covered, as the right hon. Gentleman suggested, by the Geneva convention?

Mr. Hurd: When the hon. Gentleman studies the report, he will see why the inquiry came down in favour of a narrow extension of the law. It was anxious to avoid the accusation of retrospection and, therefore, to confine the scope of any change in the law to allegations of crimes which clearly and beyond any doubt were crimes and were criminal at the time they were committed, and not as a result of any international instruments that may have been entered into since 1945. I am grateful to the hon. Gentleman for his general response.

Mr. Ivor Stanbrook (Orpington): Is my right hon. Friend aware that it would be a tragic mistake now to institute war crimes trials in this country and to stir up the emotions of hatred and revenge which would be evoked by the stories of these war-time atrocities? How would it be possible for those few men to get a fair trial when a law would be passed specially to frame them, when the evidence would be almost 50 years old and when it would be impossible for them to go to the Soviet Union to find witnesses and evidence that might clear them?

Mr. Hurd: My hon. Friend puts a point of view which will certainly be widely shared. However, the emotions that he has talked about are, of course, stirred up by the allegations and would certainly not be put to sleep by an announcement that the Government were going to do nothing. That would not necessarily have the effect that my hon. Friend mentioned. We in this country do not have a statute of limitations. Other countries, such as Sweden and Belgium, do, and it affects their handling of these matters. However, like Australia, Canada and the United States, we do not have statutes of limitations and, therefore, although there is force in my hon. Friend's practical point, it is not a point of principle for our law.

Mr. Merlyn Rees (Morley and Leeds, South): Is the Home Secretary aware that, as chairman of the all-party group on war crimes, I agree with his description of the report as impressive? It contains within its covers a statement about the international law and about what has happened in other countries. Indeed, the impressive nature

of the report is what one would have expected from Sir Tom Hetherington and Mr. Chalmers. In the writings that preceded the report, far too many people have ignored one fact, which is brought out in paragraph 9.50, which states:

"The cases we have investigated disclose horrific instances of mass-murders".

I emphasise that the Hetherington report has been investigating mass murders, not any of the other horrible things that happen in wars on either side. I should like to make it clear to those from the Ukraine, from Latvia and from middle Europe that most of those people who have come into this country have become first-rate citizens, and many of us know them, especially in the cities of the north. The people that we are concerned about are those who have been involved in horrific instances of mass murders, and those who choose to forget that will be asking for equally horrific things to happen in the future.

Will the Home Secretary confirm that the recommended change in the law is approximately this: that if I, as a British citizen, had committed these crimes in any part of the world, I could be brought to trial; so those who acquire British citizenship subsequently are not being treated in any other way than in the way in which British citizens by birth are being treated, and that is the way that it should be?

Mr. Hurd: The right hon. Gentleman's first and last points are correct. The report brings out clearly the turmoil in central and eastern Europe immediately after the war and the way in which people came here for all kinds of reasons and through all kinds of procedures. There was confusion and a lack of clear thinking and administration. As a result of that, many thousands of people of east European origin have been living here for a long time as admirable and loyal citizens. The right hon. Gentleman was right in pointing out that we have all come to know and respect their communities. As the right hon. Gentleman said, and as I tried to say in my statement, we are not talking about actions committed by soldiers in the heat of battle. That is a different proposition. We are talking about allegations—they are only allegations—that crimes of mass slaughter were presided over and participated in by a number of people now living in this country.

Mr. John Gorst (Hendon, North): Does my right hon. Friend agree that to deter such crimes in the future, it is first necessary to ensure that those who commit those evil deeds will be certain that they will have to face justice and that, therefore, there is a gap in our existing law? May I ask my right hon. Friend one detailed question? If Parliament affirms what my right hon. Friend will be putting to it in the autumn, will it be necessary for the British police to carry out investigations, which they cannot at the moment carry out or believe that it will be necessary to carry out in future?

Mr. Hurd: Yes, Sir, certainly, and the report makes that clear. It recommends a series of investigations, but I am not prepared to authorise further work on them until it is clear in what way Parliament will wish to proceed.

Mr. James Molyneux (Lagan Valley): The Home Secretary used the phrases "within the United Kingdom" and "a Bill". If the Government decide, with Parliament's approval, to introduce legislation, will they seek to proceed by way of a single Bill applying simultaneously to all parts of the United Kingdom?

Mr. Hurd: Yes, Sir, I believe that that would be the right way to proceed if—it is an “if”—it were decided to seek legislation.

Mr. John Wheeler (Westminster, North): Does my right hon. Friend agree that there will be widespread admiration for the thoroughness of the excellent report, which requires careful consideration? Does he also agree that the horrific nature of the allegations contained in the report make it not a matter for just a British jury alone, but that the wider issues of justice and principle must also apply?

Mr. Hurd: I very much echo the hope that hon. Members and, indeed, the public will read the report. I know people who have approached the subject with one attitude but who, having read the report, have come to a different one. My hon. Friend is right to make his distinction. It would not be for the House or for Parliament to decide whether individuals were guilty or even whether they should be prosecuted. Now that the report is before us, Parliament is involved with a question of principle—whether there should be legislation to bring such allegations within our jurisdiction. If Parliament so decided, it would be for the prosecuting authorities in different parts of the United Kingdom, under their existing criteria, to decide whether prosecutions should be mounted. If they were mounted, it would be for the judge in each case to decide whether the trial was best conducted under this or that procedure authorised by Parliament, and at the end of the day it would be for the jury.

Mr. Peter Archer (Warley, West): While in no way dissenting from the right hon. Gentleman's proposal for a debate, has it occurred to him that those who hear nemesis approaching may decide to disappear for a second time? If there is a delay in legislating, the Odessa file may be out again. Has he any proposals for dealing with that and, if not, is time not of the essence?

Mr. Hurd: I have no proposals for dealing with that. It would be unacceptable to take powers to constrain the movements or actions of people who are involved in the situation that we are now discussing. I cannot see any basis on which one could do that. The right hon. and learned Gentleman's point is an argument about time, but I do not believe that he would press us to rush into legislation in the fag end or the spillover of this Session. That would not be a sensible way in which to approach such a matter.

Mr. Robert Boscawen (Somerton and Frome): I think that many people will be grateful that my right hon. Friend the Home Secretary has agreed that Parliament should make the decision on whether legislation should go ahead. My right hon. Friend has already answered my question when he said that Parliament would have no further say on whether there would be prosecutions following that legislation and that, naturally, that would be within the hands of the prosecuting authorities. The decision to go ahead with legislation could mean that such war crime trials could take place. After 45 years we in this country should not feel that it is necessary to prove that we are not a safe haven for war criminals. We never have been and we do not need crimes tried after 45 years to prove that.

Mr. Hurd: I understand my hon. Friend's point of view. I hope that he will read what is said in the report about the

people, the crimes and the documents and statements that have been produced as part of the investigation by Sir Thomas Hetherington and Mr. Chalmers.

Mr. Jeff Rooker (Birmingham, Perry Barr): Does the Home Secretary accept that war crimes are not committed by the losing side only, but that the specific and horrific nature of the crimes in this case—no one denies that those crimes were committed—is what makes them different from all other war crimes? Therefore, I do not believe that we should feel apologetic at all in seeking to consider bringing forward legislation. It behoves the combative powers of the second world war, 45 years after its end, to make a common decision and to say, “We will proceed no further at any time with any allegations regarding war crimes” or, “Collectively, we shall amend and adjust our legislation to pursue until the end of time those who have committed those atrocious crimes.” I subscribe to the latter view, but one way or the other, a decision of principle should be made.

Mr. Hurd: The report gives a fascinating account of the efforts to reach precisely that decision of principle immediately after the war and how those efforts fountered. Different countries have gone different ways. The United States, for example, deports and extradites—it has extradited to the Soviet Union and I believe that the person extradited was executed. In our terms I do not believe that that is a satisfactory way in which to proceed. Other countries have statutes of limitations and other countries have held trials. Canada and Australia, faced a very similar situation to ourselves, have passed legislation that goes rather wider than that proposed in the inquiry. Although I see the advantage in what the hon. Member for Birmingham, Perry Barr (Mr. Rooker) has suggested, I am afraid that it is past praying for. We shall not get a co-ordinated and harmonious approach to this matter. We must deal with it as the report deals with it, within the law and within the practice of each country.

Mr. Ian Gow (Eastbourne): Despite the horrific nature and the horrific scale of the allegations will my right hon. Friend remember Churchill's precept: there is no greater danger than retributive persecution, and a policy of retribution is a policy which is pernicious?

Mr. Hurd: It was actually Sir Winston Churchill who, during the war, set in hand the principle that there should be retribution. The report clearly shows how that statement by the Prime Minister set the tone for a great deal that followed. The fact that someone like Sir Winston Churchill had great difficulty, as time passed, in deciding within himself what the right approach should be, illustrates something that anybody thinking about this comes to appreciate—that it is extraordinarily difficult and that the passage of time obviously makes it more difficult in terms of principle, but particularly in terms of practice. I believe that the only recipe—I will not give this advice again—is for right hon. and hon. Members to digest the report and to come back in the autumn and form views upon it.

Mr. Greville Janner (Leicester, West): Will the right hon. Gentleman convey to the distinguished and learned commissioners the appreciation of the House of the way in which they carried out their difficult task? Will he especially convey the appreciation of those of every nationality, race and religion who suffered and whose

[Mr. Greville Janner]

families suffered as a result of the mass murders and barbaric Nazi outrages to which this report refers? Will he also have regard to the final paragraph of the report—that

"Given the ages of the suspects and witnesses" the commissioners considered

"that any proposed legislation should be introduced and brought into force as quickly as possible"?

May we hope that the debate on this matter will be at the end of this Session, although, of course, legislation could be introduced only at the beginning of the next?

Mr. Hurd: I note what the hon. and learned Gentleman says. I think that I covered most of his points in my earlier replies. I would certainly hope that the debates will not be long delayed; I mentioned the autumn, which gives the business managers a certain flexibility.

Mr. Rupert Allason (Torbay): Does my right hon. Friend agree that the report highlights an anomaly in the law—that under present legislation this country does, indeed, provide a safe haven for war criminals, an unpleasant fact which is true of only one other country, Syria? Once legislation is contemplated by the House, will my right hon. Friend seriously consider setting up a specialist police unit to investigate the allegations made not only against the 75 people who have been identified but against the 46 who have yet to be traced?

Mr. Hurd: Certainly, if the House decided to proceed down this path there would need to be further investigations. The matter could not be left on the basis of the cases that the inquiry had the time and resources to explore. That would be far too haphazard. If Parliament took a decision in principle there would be further investigations as a consequence and they would have to take place in the usual way. As I have said, I am not prepared to authorise such further investigations at the moment.

Mr. Harry Ewing (Falkirk, East): Am I right in assuming that the Government have still not made up their mind about the possibility of bringing forward legislation? Is the Home Secretary aware that this is a highly emotive issue which pulls people in all directions? For some time at the beginning of the statement I thought that I might be in a minority of one—until I heard some Conservative Members speak. I have just as much sympathy and feeling for the victims of these atrocious crimes, but, on the principle involved, what is to be achieved by putting on trial people of 80 years of age or more and, assuming that they are found guilty, sending them to prison for the rest of their natural lives? What on earth can be achieved by that sort of approach? Does the right hon. Gentleman accept that the world, north and south, east and west, is at the beginning of a healing process? If we open up all these old sores, how will we ever continue that process?

Mr. Hurd: The hon. Member puts it well; he will certainly not be alone. It would not be this House which put very old men on trial. The decision before the House is a different one, about whether, as a matter of principle, we should follow the example of Australia, Canada and the United States, which were faced with the understanding that there were people within their borders who might have committed these crimes, and which changed their laws to bring those crimes within their jurisdiction; or

whether, again as a matter of principle, we should take the line that although we have no statute of limitations, the matter is too difficult and too long ago, and however horrific the crimes, we intend to forget them.

I hope that the hon. Gentleman will read the report in full. He will find his views recorded there and he will discover what the report has to say about them.

Sir John Stokes (Halesowen and Stourbridge): Is my right hon. Friend aware that I remember only too well the war crimes trials held immediately after the last war, and that some, even then, had doubts about the procedure, although I agreed with it? Are we now to resume war crime trials of these few old men 40 years later? How can we ever obtain proof? Will not the trials be in danger of being show trials? Above all, do the people of England want this? We are not a vengeful nation and I have not heard any demand for it apart from the demand by this small and highly articulate lobby.

Mr. Hurd: My hon. Friend puts a view in which, as I have said, he will not be alone. He will read the report as others will, and he will see how it caters for the objections that he puts forward about the fairness of trials. Of course, the House will be concerned not with individual cases or trials but with the principle of the matter. It will be concerned with the quotation, which I have now found, from a speech by Mr. Churchill to which I referred in answer to my hon. Friend the Member for Eastbourne (Mr. Gow). Mr. Churchill, the Prime Minister, said:

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

Mr. David Winnick (Walsall, North): There are valid arguments on both sides about whether prosecutions should occur and many reasons have been voiced by hon. Members. Is it not more a question of justice and certainly not revenge? Will not many people ask how it was possible for people who have been held responsible for monstrous crimes against humanity to enter the country in the first place? Is it not correct to say that if it had been the determination of the allies to carry out in practice what Sir Winston Churchill, together with other wartime leaders, promised to do from 1941 onwards, and if Nazi war crimes had been properly investigated after the war and certainly after Nuremberg, but before the cold war started, it is likely that some of the difficulties and agonising problems that we are discussing about whether such people should be brought to justice would never have arisen in the first place?

Mr. Hurd: The hon. Gentleman can hark back like that if he wishes, but I am not sure that it is profitable. The first chapters of the report deal with the history in some detail. Great numbers of people came here in the turmoil that followed the war. Some of them were deliberately recruited by the Government for particular jobs, some were here as prisoners of war and, for example, many Poles came because of their connections with the Polish armed forces. The matter has a long and tangled history. There was a good deal of screening. No one could argue that it was particularly clear minded or administratively thorough and no one with a sense of history would expect that it could be. I do not think that the hon. Gentleman would do anyone a great deal of good by spending too much time on history.

Mr. David Sumberg (Bury, South): Will my right hon. Friend accept my congratulations on a sensitive statement on matters which show crimes beyond parallel in the long catalogue of human misery? Will he underline that, as the law stands, it would be possible to prosecute a natural-born British citizen over such matters and that what he now proposes is to put those who acquired British citizenship after birth in the same position as those who acquired it on birth? I accept that there is a need for the House to debate the matter widely and thoroughly. Does he accept that there is a need to get on with it?

Mr. Hurd: My hon. Friend accurately describes a proposal which is not mine but that of the inquiry. The Government make no proposal today. We are impressed by the force of the arguments and the background set out by the inquiry, but propose to pause and listen in the way that I have described.

Mr. Paul Flynn (Newport, West): Does the Home Secretary appreciate that although a Bill may deal only with war crimes, Nazi crimes started many years before the commencement of the war? Does he also appreciate that since the war unfortunately, many other acts of mass murder have been committed in both the East and the West? Would not the Bill be a marvellous opportunity for this country to reassert its leadership of the world on humanitarian issues? We can do that if we sent out a clear signal to all those whose business is mass murder and torture, whether in the distant past, and recent past or now, that never again will they find safe refuge in our country.

Mr. Hurd: That goes very much wider and I think that on examination the hon. Gentleman will find that there might be quite serious problems in terms of retrospection if we went back that far and covered the kind of pre-war offences that he talked about. I hope that he will look at the report. He is obviously in sympathy with its general conclusion and would like it to do more. The report spends a certain amount of time discussing why it thinks that its limited recommendation is right.

Several Hon. Members rose—

Mr. Speaker: Order. The House knows that there is to be a debate on this matter later, but, as hon. Members have been rising, I will call them. However, we must move on at 20 past four because we have another statement.

Mr. Tony Marlow (Northampton, North): Will my right hon. Friend agree with Milton Shulman, who says in today's *Evening Standard* that no emotion "soils the human spirit more than vengeance"? Is it not possible, despite what my hon. and learned Friend the Member for Burton (Mr. Lawrence) said, that the motivation behind this campaign has nothing to do with justice and everything to do with smothering the world with a form of moral blackmail as a means of covering the present behaviour of the state of Israel? The House has got the impression that my right hon. Friend is not happy with this measure, and has not found a respectable way of bringing it forward.

Mr. Hurd: I honestly think that my hon. Friend's description is grotesquely astray in its attempt to describe Sir Thomas Hetherington and Mr. Chalmers, who have taken a great deal of trouble to take the allegations that have been made—for whatever reason—to analyse them

and to look behind them into the facts of these crimes. It was because the Government wanted to get away from the kind of atmosphere that my hon. Friend attempts to describe—in which all kinds of allegations were being tossed to and fro, and nobody knew the motives or what substance there was behind the allegations—that we had this inquiry. I hope that my hon. Friend will read the results of it.

Mr. Spencer Batiste (Elmet): Does my right hon. Friend agree that the important message that should come from the House is not one of revenge or of opening up old wounds, but the simple fact that those who have been guilty of horrendous crimes against humanity must never be able to feel that they are capable of achieving a safe haven in a civilised world? Would not that be the best message of hope that we could give to their potential victims?

Mr. Hurd: I am sure that my hon. Friend is right in that no serious person can be interested in revenge as the basis for justice. Nor could any serious person ignore the difficulties of proceeding as the inquiry suggests after this length of time. Those difficulties are real, and that is what makes the subject so daunting. Nevertheless, the analysis is a clear and strong one.

Mr. Nicholas Bennett (Pembroke): I share the considerable unease that has been expressed by some of my hon. Friends about whether, 45 years after the events, there can be a fair trial and fair rules of evidence, especially when we have to introduce retrospective legislation. Therefore, I welcome my right hon. Friend's statement that Parliament will make a judgment on this.

I have a more specific question concerning the documentary evidence. My right hon. Friend will be aware that most crimes took place in what is now either the Soviet Union or another eastern bloc country. Historians have recently expressed concern that many documents have been forged. Can we be assured that any documents that might be used for trials will be the originals and not photocopies?

Mr. Hurd: That was one of the points in which some of us were particularly interested before the inquiry was set up, and it was something on which the inquiry spent a good deal of time. It reached the conclusion set out in part I, which is that there was a strong case for believing that the documents concerned were authentic and the witnesses credible.

Mr. Toby Jessel (Twickenham): Is not the real point the sheer number of murders? We are not talking of one murder, nor six, nor 60, nor 600, nor 6,000, nor 60,000, nor 600,000 but 6 million murders, including the murder of about 1 million children. What is wrong with the idea of a little bit of justice for that?

Mr. Hurd: In essence, what we are talking about in this inquiry is the slaughter, after the fighting was over, of very large numbers of Jews, simply as a matter of policy. The policy was one of slaughter, and a large number of people participated in that.

Mr. John Marshall (Hendon, South): Should not the fact that the evidence is regarded as sufficient to warrant a prosecution by Sir Thomas Hetherington silence the doubts of those who cast doubts on the quality of the evidence?

Mr. Hurd: I do not expect a report, however expert, to silence doubts on a matter such as this. I should be surprised, and in a way dismayed, if that were to happen. That is not the way that we run our affairs. There is bound to be controversy, and it is bound to cross the ordinary boundaries of party, as we have seen in these exchanges. It is a clear and forceful report, by people whose experience, coolness and caution in such matters it would be hard to rival.

Mr. Hattersley: I have no wish to take serious issue with the Home Secretary this afternoon. I think that we have more in common over this issue than over many, united by our mutual doubts. However, I ask him whether he will consider one answer which he gave, and consider the possibility that it was wrong in fact. He said that were we to proceed on the lines that are now possible we would not be proceeding against individuals. That would certainly be the case were we to amend the law in general as the Geneva convention of 1949 suggested, but were we to proceed as the report suggests, it would be specifically directed towards individuals. If the Home Secretary reads paragraphs 8. 24 onwards of the report under the heading "Tracing suspects", he will see that the report does everything but name the individuals against whom the action is proposed. It is that which concerns some of us. Therefore, will he think again about the more general provision which I have urged upon him?

Mr. Hurd: I have promised to think about the more general provision, but I would not agree with the right hon. Gentleman. Parliament would be asked to extend our jurisdiction over a series of offences—not specified and not specific as to individuals—committed outside the United Kingdom during the war, in Germany or German-occupied territories, by people who were not then British citizens by now are or who live here. That would be compatible with individual decisions by the prosecuting authorities to proceed or not to proceed in particular cases. That is what I mean by saying that Parliament would be involved in deciding the principle. It would then be for the prosecuting authorities, the judge and finally the jury, if there were a prosecution and a trial, to decide in particular cases. This is an important point.

Electricity Privatisation (Nuclear Power)

4.21 pm

The Secretary of State for Energy (Mr. Cecil Parkinson): With permission, Mr. Speaker, I should like to make a statement about electricity privatisation and nuclear power.

As a result of our preparations for privatisation, it has recently become clear that the cost of reprocessing and waste treatment of spent Magnox nuclear fuel will be a great deal higher than has been charged in electricity prices and provided for in the accounts of the Central Electricity Generating Board and the South of Scotland electricity board. The Magnox stations are drawing to the end of their lives. One is already closed, and most of the others are due to close within the next few years. Most of these costs therefore relate to the past, to electricity already generated and paid for. Future customers will be bearing the full cost of the electricity they consume. It would not be right to burden them also with costs arising from the past.

It is important that the energies of the companies should be directed towards ensuring that their existing stations are run efficiently and at lowest cost. National Power will, subject to planning and other consents, also be building new pressurised water reactors. In order to enable the nuclear generating companies to focus their attention on the future, the Government have decided that it would be appropriate to relieve the new companies of dealing with these substantial problems of the past.

The Government have considered carefully how best to implement this decision. It has been decided that both the assets and liabilities relating to the Magnox stations belonging to the CEGB and the SSEB should remain under Government control.

The advanced gas-cooled reactor stations will be assigned to National Power and the Scottish Nuclear Company, and will be privatised. These stations have many years of operation ahead. The operating performance of these stations has shown marked improvement, and this can be expected to continue in the future. Therefore, we have good reason to believe that the AGRs will have a long and successful future in the private sector. National Power will continue to construct Sizewell B and, subject to obtaining the necessary planning approvals and satisfactory contractual arrangements, intends to construct and operate three more PWRs.

No changes to the Electricity Bill are needed to bring the Government's decisions into effect. The Government shall be laying a draft order before Parliament during the autumn to increase the limit on the amounts payable under schedule 12 from the interim level of £1,000 million to £2,500 million.

This order will be subject to affirmative resolution and will give the House a full opportunity to debate our detailed proposals. The order will enable grants to be paid to National Power and to the Scottish Nuclear Company for unforeseen costs, as previously explained to the House. These powers will also be used to ensure that the Magnox stations can continue to be operated and their liabilities to be met.

I am most concerned to ensure that nothing is done to jeopardise the future of the employees concerned. Their pension rights, their ability to benefit from the flotations,

WAR CRIMES INQUIRY

TO BE CHECKED
AGAINST DELIVERY

Q
DC
CBP

With permission, Mr Speaker, I should like to make a statement about the report of the War Crimes Inquiry. I set up the Inquiry in February 1988 to consider allegations that persons who are now British citizens or resident in the United Kingdom committed war crimes during the Second World War; and to advise whether the law of the United Kingdom should be amended in order to enable prosecutions for war crimes to take place in this country.

The report as submitted to me was in two parts. The main report contains the Inquiry team's analysis and conclusions. The second part contains detailed material on individual cases. The Inquiry team intended that the main report should be published. I am today publishing it in full and without amendment. I also accept the expert view of the Inquiry team that publishing the material in the second part

/about individual

about individual cases would risk prejudicing any proceedings which might be instituted. The House will see the wisdom of that distinction and understand why I cannot comment on individual cases.

I believe the House will find the main report a full and impressive document. It takes a broad view of the historical context affecting the territories and people involved in eastern Europe, of the conduct of successive British Governments during and after the last war, and of the legal and other issues. The team visited the Soviet Union and interviewed a large number of possible witnesses.

I am most grateful to Sir Thomas Hetherington, formerly Director of Public Prosecutions, and Mr William Chalmers, formerly Crown Agent, for their authoritative analysis.

/The Inquiry

The Inquiry deals with allegations of horrific killings on a very large scale - crimes which would constitute violations of the internationally agreed laws and customs of war. The allegations are not about actions committed in the heat of war. They concern individuals allegedly holding quite senior positions in paramilitary units operating in territories occupied by the German forces, whose task was the systematic murder of civilians.

The Inquiry examined in detail seven cases. They concluded in respect of four that there was sufficient evidence to mount a criminal prosecution (one of the individuals concerned has since died). The Inquiry went on to recommend that further investigations should take place in respect of the other three cases; in addition, of the nearly 300 further cases drawn to the attention of the Inquiry they recommend further investigation of 75 and that

/attempts

attempts should be made should be made to trace a further 46.

The Inquiry recommends that there should be a change in the law to permit the prosecution in this country of acts of murder and manslaughter committed as war crimes in Germany or German-occupied territory during the period of the Second World War, by persons who are now British citizens or who are resident in the United Kingdom. Additionally, certain procedural changes (including the taking of evidence by live television link from persons outside the United Kingdom) are proposed to facilitate the trial of such cases.

The Inquiry was conscious of the danger of creating retrospective legislation and have sought to meet that objection. They are addressing actions which they are satisfied constituted at the time clear breaches of

/international law,

international law, and which would constitute offences triable in British courts now, had the persons concerned been British citizens at that stage.

The Inquiry reached their recommendation on legislation and prosecution in this country after examining and rejecting other courses of action. In particular, they discussed but did not recommend extradition of the individuals concerned to stand trial in the Soviet Union. They set out the arguments for and against extradition. The Government finds the arguments against extradition to the Soviet Union convincing.

The Inquiry's recommendations raise important issues of principle and practicality. It can be argued that it is no service to the memory of the victims of these crimes to resurrect, after so many years, the horror of what they

/endured.

endured. One can question what will be achieved by prosecuting very old men so long after the events. The practical difficulties of conducting trials include the age and frailty of witnesses; the problems of assembling evidence which is available, if at all, in the Soviet Union in a form in which it can be convincingly presented to a jury in Britain; and the problem of establishing identity and other key elements beyond reasonable doubt when witnesses' memories are more than forty years old. The report deals with all these matters.

On the other hand it will be argued that, in the words of the report:

"The crimes committed are so monstrous that they cannot be condoned ... To take no action would taint the UK with the slur of being a haven for war criminals."

/Other countries

Other countries which have uncovered similar evidence have acted to enable the alleged offenders to be brought to trial, sometimes making broader changes in the law than recommended in this report. Despite the practical problems of conducting a trial the experienced Inquiry team, a former Director of Public Prosecutions and Crown Agent, reached the view that there would be sufficient evidence in three cases to mount a prosecution if there were jurisdiction.

If and when the time comes for assessing the evidence, the prosecuting authorities of the day will need to make their own assessment of particular cases.

We are impressed by the force of argument which led the Inquiry to their clear conclusion that legislation was required. But we want to hear the views of Parliament before taking a final view on the principle of legislation.

/This is a

This is a matter on which the views of Parliament will be decisive. The Government will provide an opportunity for each House to debate the implications of the report and the action which should be taken in response to it. This will take place in the autumn once there has been a proper opportunity to study the report and reflect upon it. In the light of the views expressed in that debate, the Government will take a final decision on whether to bring forward a Bill on the lines proposed by the Inquiry.

WAR CRIMES

NOTES FOR SUPPLEMENTARIES

NB. The statement says that the Government wants to hear the views of Parliament before taking a final view on the principle of legislation. This approach may provide the best answer to some points which are raised, eg arguments that no action should be taken.

1. How soon can the Bill be prepared?

We envisage a short, free standing Bill of some half dozen clauses, which if Parliament supports the principle of legislation, could be introduced next session. The Report signals the importance of moving with due speed, given the increasing age both of witnesses and potential accused.

2. What will the Bill contain?

The Report recommends that British courts should be given jurisdiction over acts of murder and manslaughter committed as war crimes in Germany or German occupied territory during the Second World War by people who are now British citizens or resident in the United Kingdom. It also recommends some procedural changes.

3. What procedural changes are envisaged?

The Report recommends a number of procedural changes to meet some of the problems of bringing these cases to trial: in particular the application of the facility already available in serious fraud cases to dispense with committal proceedings (in order to reduce the strain on elderly witnesses); and the implementation, and extension to Scotland and Northern Ireland, of the provision in the Criminal Justice Act 1988 for taking evidence by live television link from witnesses abroad.

4. Is this not retrospective legislation?

The Report argues that the legislation would not be retrospective because the activities were contrary to the internationally agreed laws and customs of war at the time they were committed.

5. Will prosecutions succeed?

There can be no guarantee that if prosecutions can be mounted, there will be convictions. Even with the procedural changes recommended by the Inquiry, there will be formidable difficulties. All I can say is that two highly experienced prosecutors, Sir Thomas Hetherington and William Chalmers, have concluded that sufficient evidence is available in a number of cases.

6. What about deprivation of citizenship and deportation?

The Report concludes against such action. Deprivation of citizenship and deportation proceedings are likely to be lengthy and hold no guarantee of success. Furthermore, they do not result in punishment.

7. What powers exist to stop suspects leaving the country?

In the absence of legislation, none.

8. Will investigations continue?

The Inquiry recommends that urgent steps be taken to follow up the further cases, but we do not propose acting on that recommendation without the authority of Parliament.

9. What has been the practice of other countries over war crimes?

Practice has varied, as the Report shows. France, for example, abolished its statute of limitations, in regard to crimes against humanity, so that offences of mass murder and genocide can still

be prosecuted; Sweden, on the other hand, decided against such a change. The United States has put significant resources into the investigation of war crimes allegations, but proceeds by way of extradition or deportation, rather than domestic trials. Canada and Australia have also established major investigative units and have legislated (more extensively than proposed in this Report) to enable war crimes to be tried in their countries.

10. What about the Japanese?

Japanese war crimes were outside the Inquiry's terms of reference. There is no evidence to suggest that any Japanese war criminals have entered the United Kingdom.

11. What about alleged atrocities committed by UK forces?

Our courts already have jurisdiction over acts of murder and manslaughter committed by British subjects abroad.

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SB
& Sir PC

10 DOWNING STREET
LONDON SW1A 2AA

23 July 1989

From the Private Secretary

WAR CRIMES

Thank you for your letter of 21 July proposing a revised form of words for the Home Secretary's statement on war crimes. I am sure that the Prime Minister will be content with it.

I am copying this letter to Sir Robin Butler.

CHARLES POWELL

Peter Storr, Esq.,
Home Office.

CONFIDENTIAL

KS

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From: THE PRIVATE SECRETARY

cc PC
①



CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

21 July 1989

Dear Andrew

Y
W
mt
Eric Austin
Agreed this revised
wording?
CDD.

WAR CRIMES

At yesterday's Cabinet, it was agreed that the Home Secretary would consider a revised form of words in the part of his proposed statement which gives the Government's views on legislation.

The Home Secretary now proposes to replace the final sentence of the penultimate paragraph and the final paragraph in its entirety with the following paragraph:

"We are impressed by the force of argument which led the Inquiry to their clear conclusion that legislation was required. But we want to hear the views of Parliament before taking a final view on the principle of legislation. This is a matter on which the views of Parliament must be paramount. The Government will, therefore, provide an opportunity for each House to debate the implications of the report and the action which should be taken in response to it. This will take place in the autumn once there has been a proper opportunity to study the report and reflect upon it. In the light of the views expressed in that debate, the Government will take a final decision on whether to bring forward a Bill on the lines proposed by the Inquiry."

He will make the statement to the House on Monday afternoon.

I am copying this to the Private Secretaries to other Cabinet Ministers and Sir Robin Butler.

mt

Yours ever,
Prin Stor

P R C STORR

Andrew Turnbull, Esq
Private Secretary
10 Downing Street

CONFIDENTIAL



QUEEN ANNE'S GATE LONDON SW1H 9AT

19 July 1989

Dear John,

CR 19/7

WAR CRIMES

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

The Inquiry looked in detail at seven cases, in respect of four of which it concluded that sufficient evidence is already to hand to sustain a criminal prosecution. One of these has since died. As regards the other three, the Inquiry recommended that further investigations should take place.

There were then another 75 cases not investigated in any detail, to which the Inquiry recommended that further attention should be given, plus another 46 cases concerning people who may or may not have come to this country, but which the Inquiry also proposed for further investigation to determine whether they are within our jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

/cont.....

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

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

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

Yours,
D. G. J.

D. G. J.

PRIME MINISTER

CABINET: WAR CRIMES INQUIRY

I attach the Home Secretary's paper on the War Crimes Inquiry which is to be taken at Cabinet tomorrow, together with his proposed Statement to the House. You are already familiar with his recommendations. He thinks we should legislate to give British courts jurisdiction over war crimes committed abroad by people who are now British citizens or resident in this country. But he recommends that there should be a debate in the House - and possibly a free vote - before a final decision is taken. These conclusions have already been endorsed by a meeting of Ministers under the chairmanship of the Lord President.

The only new point comes on page 5, where the Home Secretary gives an estimate of the possible costs of investigations and eventual trials. Although highly speculative, he talks of figures which could rise to tens of millions of pounds. This is disturbing; but it needs to be balanced by his private assessment that it is fairly unlikely that prosecutions - or very many of them - will in practice be mounted.

I imagine that a majority of Cabinet will wish to support the Home Secretary's recommendation: but I do not think you need to give any particular steer at the beginning.

C.P.

Charles Powell

19 July 1989

P.S. Cabinet office brief
now in folder.



R. Austin
CB.

Ref. AO89/1938

PRIME MINISTER

CABINET, 20 JULY 1989WAR CRIMES

DECISIONS

The Home Secretary's memorandum - CC(89)11 - covers the text of a statement which he proposes to make in the House announcing publication of the report of the War Crimes Inquiry. The Home Secretary seeks the agreement of his colleagues that he should announce that, subject to the outcome of Parliamentary debates on the issue to be organised during the spillover, the Government will introduce legislation to enable the prosecution in this country of war crimes committed during the Second World War by people who are now British citizens or resident in this country. The Attorney General and Lord Advocate have been invited to attend for the discussion. Subsidiary issues which it will be desirable for Cabinet to address include:

- i. the scope and timing of legislation;
- ii. whether any further investigation should be conducted into the cases covered by the Inquiry pending legislation;
- iii. the resource implications of legislation;

- iv. the precise terms of the Home Secretary's announcement.

BACKGROUND

2. The War Crimes Inquiry was announced by the Home Secretary in February last year following the receipt by you of lists of a number of war criminals said to be living in the United Kingdom. Under the law as it stands, British courts do not have jurisdiction over people who may now be British citizens or resident in the UK, but who were not British citizens or so resident at the time when they allegedly committed offences of murder or manslaughter. The Inquiry was set up to establish whether evidence sufficient to warrant prosecution existed against any or all of the people on the lists and, in the light of the likely probative value of the evidence, to advise whether the law of the United Kingdom should be amended to make it possible to prosecute for war crimes people who are now British citizens or resident in the United Kingdom who cannot be so prosecuted at present.

3. The Inquiry considered 301 allegations, some of which concerned more than one person. It found evidence sufficient to warrant a prosecution in four cases (one of the people concerned

has since died) with substantial evidence in a further three cases. It recommended further investigation of another 75 cases, and that attempts should be made to trace those involved in a further 46. On the basis of its findings, the Inquiry recommended the introduction of legislation to give the British courts jurisdiction over murder and manslaughter committed as war crimes (violations of the laws and customs of war) in Germany or German-occupied territory during the Second World War by persons who are now British citizens or resident in the United Kingdom. Alternative courses of action - deprivation of citizenship, where applicable, and deportation; extradition; and prosecution in military courts under the Royal Warrant of 1945 - were dismissed by the Inquiry as either inadequate or unsatisfactory.

4. The Home Secretary discussed the report with colleagues most closely concerned at a meeting chaired by the Lord President on 13 July. While recognising the substantial difficulties in the way of successful investigation and prosecution, the potential burden on the courts, the resource costs involved and the likely controversiality of a decision to proceed, the meeting concluded that there was no satisfactory alternative to legislation in the face of the Inquiry's firm findings and recommendations. That conclusion accorded with your own preliminary views, as recorded in your Private Secretary's letter of 3 July. You also favoured publication of the report before the recess with a statement of

the Government's intention to legislate, subject to confirmation by Cabinet of that agreement to this course.

Should legislation be introduced?

5. The difficulties in the way of legislating as recommended by the Home Secretary are readily apparent: they include -

i. the difficulty of successfully bringing any of the cases concerned to prosecution, not least because many (in at least one case, the majority) of prosecution witnesses live in the Soviet Union and have already made clear their unwillingness or inability to travel to the United Kingdom to give evidence;

ii. the sensitive decisions which would face the prosecuting authorities about whether or not to proceed in individual cases if jurisdiction was taken;

iii. the heavy burden which possible trials would impose on the courts, about which the Lord Chief Justice is known to have reservations;

iv. the resource implications for all the agencies involved. No provision has been made to meet the costs, which could be substantial;

v. the fact that a decision to legislate may bring renewed pressure for action to be taken against former members of the British Armed Forces who are themselves alleged to have committed war crimes during the Second World War.

In addition a number of the Government supporters in Parliament (such as Mr Ivor Stanbrook) may well argue that the events in question happened so long ago that it would be unseemly to take action now as the Home Secretary proposes.

6. On the other hand, many will argue, as does the Home Secretary, that some crimes are so grave that the duty to bring criminals to justice cannot be set aside by the passage of time. The meeting chaired by the Lord President concluded that none of the alternatives to legislation discussed in the Inquiry report would be satisfactory. In particular, extradition of the accused to the Soviet Union would be likely to be even more controversial than a decision to legislate to take jurisdiction in this country over the alleged crimes. The resource implications could be very substantial, but these should not stand in the way of legislation. Refusal to legislate would be extremely difficult diplomatically, not least because other civilised countries, such as Canada and Australia, have taken the necessary steps to allow action to be taken against alleged war criminals found within their jurisdictions. In short, there was no alternative but to legislate in the face of the Inquiry's firm findings and recommendations.



7. In establishing whether colleagues agree with this conclusion you will wish to confirm that they endorse the Home Secretary's view that none of the alternatives considered by the Inquiry - in particular extradition of the accused to the Soviet Union - would be acceptable.

What should be the scope and timing of legislation?

8. The Inquiry recommended that the scope of legislation should be restricted to murder and manslaughter committed as violations of the laws and customs of war (later called war crimes), and should not extend also to cover such acts where they are crimes against humanity or committed at large (the legislation would also include certain procedural changes - such as provision in Scotland to take evidence by live television link - designed to improve the prospects of a successful trial). The Lord Advocate has expressed doubts about confining the scope of the proposed jurisdiction to war crimes only: he believes that the task of the prosecuting authorities will be made more difficult if they have to establish that at the material time the actions in question constituted war crimes. He would therefore prefer the scope of the legislation to extend to murder and manslaughter committed during the period of the Second World War, without reference to war crimes. The argument against this is that it would set the trap too wide, so that other murders would also be caught. The Inquiry recommended against this option for that reason. This is not, however, an issue which needs to be resolved in advance of

the Home Secretary's statement. The Home Secretary's memorandum suggests that it and the international law dimension of the legislation are issues which can be swept up after Ministers have formed a view on whether legislation is desirable in principle.

9. The Inquiry report recommended that legislation should be introduced as soon as possible. The Home Secretary's memorandum proposes that a short, freestanding Bill (of some half dozen clauses) should be introduced in the next Parliamentary session.

The provisional programme for that session has already been agreed and is a heavy one. You will recall that Cabinet has confirmed that there should be no additions to it without offsetting savings being identified. You may wish to confirm therefore that Cabinet is agreed that legislation should be introduced next session but that its scope and the implications of its introduction for the rest of the Government's provisional programme should be addressed later by H Committee and QL as appropriate.

No investigations pending legislation

10. The Inquiry identified 124 cases where more investigation is required. It recommended that preliminary action should be put in hand to follow up these cases in advance of legislation. However, the Home Secretary considers that it would be wrong to act on this recommendation at least before the Report has been debated by Parliament. You will wish to ensure that colleagues agree with this approach.

Resources

11. The process of investigation and prosecution will be very costly. The Home Secretary's memorandum notes that the overall cost will depend crucially on how many cases came to trial. Even if only a small proportion of the cases covered by the Inquiry came to trial, however, the cost could still be in the order of tens of millions of pounds.

12. A further complication tending to increase the cost is that the Inquiry recommended the implementation, and extension to Scotland and Northern Ireland, of the provision in the Criminal Justice Act 1988 for taking evidence by live television links from witnesses abroad. This provision has not yet been implemented in England and Wales, on resource grounds. Both the Lord Chancellor and the Home Secretary take the view that it would not be right to implement the provisions solely in respect of war crimes. But general implementation of the provisions would be expensive (anything between £11.5m and £23.5m in England and Wales alone). One possibility would be to limit implementation of the provisions only to offences committed (wholly or partly) abroad.

13. The Home Secretary has written to the Chief Secretary to alert him to the resource implications. You will wish to ensure that the Chief Secretary is content for the announcement to proceed as the Home Secretary proposes.



TERMS OF ANNOUNCEMENT

14. A draft of the Home Secretary's proposed announcement is attached to his memorandum. This makes clear that the Government's provisional view is in favour of legislation, but that the Government will wish to take the views of Parliament on the issues before reaching a final conclusion. It is the Business Managers' intention to arrange debates on the issue in both Houses during the spillover.

15. You will wish to confirm that colleagues are content with the terms of the proposed announcement. The Home Secretary proposes that the statement should be made on Monday, 24 July and the Lord President is content with this.

16. Should Cabinet not endorse the decision to legislate as recommended by the Home Secretary, it will of course be necessary to revise the statement accordingly. In those circumstances, the options would appear to be either

- to publish the report with an indication that the Government intended to take no action on its recommendations; or, more likely

- to publish without any indication of the Government's view, saying that the Government wished to hear the views of Members and interested parties on the report before reaching a view on the Inquiry's recommendations.

HANDLING

17. You will wish to invite the HOME SECRETARY to introduce his memorandum. The LORD CHANCELLOR will have views on the implications for the courts, and the ATTORNEY GENERAL and the LORD ADVOCATE on the difficulties which legislating will pose for the prosecuting authorities. The FOREIGN SECRETARY may have comments on the diplomatic aspects, and the SECRETARY OF STATE FOR DEFENCE will have an eye to the implications for ex-servicemen also accused of war crimes. The CHIEF SECRETARY will be concerned about the financial consequences. You may wish to involve each of these in the discussion and also to take the view of the BUSINESS MANAGERS on the likely reactions within the Parliamentary party to the Home Secretary's proposed statement.

18. Assuming that Cabinet endorses the Home Secretary's proposals on the lines of his statement, you may wish to emphasise to colleagues the desirability of avoiding any leaks of the Cabinet discussion pending the Home Secretary's announcement. There has already been some foreshadowing of the issue in the

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press, and further speculation in advance of the Home Secretary's statement on Monday would not be helpful.

F.R.B.

ROBIN BUTLER

19 July 1989

CONFIDENTIAL

cc ft



QUEEN ANNE'S GATE
LONDON SW1H 9AT

CH vnt

18 July 1989

Dear Peter,

WAR CRIMES INQUIRY

FILE ECDP

Thank you for your letter of 13 July. It was particularly helpful to have your reservations and proposed amendments set out so clearly. They were, with the full text of your letter, put immediately to the Inquiry. As you know, the response, given in terms which indicated that further discussion would not be likely to be fruitful, was that neither member of the Inquiry was disposed to amend the Report. It is disappointing not to be able to meet your reservations.

I am copying this letter to the recipients of yours.

Yours,
Dy h.

The Rt Hon The Lord Fraser of Carmyllie QC.
Lord Advocate
Fielden House
10 Great College Street
LONDON SW1P 3SL

for Policy
Way Criminals
Pt 77

'19 JUL 1989'

(2)



10 DOWNING STREET

King Minister Mr

Her Crimes

The Home Secretary

suggested that you
might glance at
this before Tuesday's

Cabinet.

I have flagged
the Geary case, which
is one of the most
notorious.

CD 1877



CONFIDENTIAL

LORD PRESIDENT

cely
CLM 19/7

WAR CRIMES INQUIRY

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

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

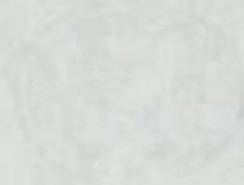
I am copying this minute to the **Prime Minister**, Geoffrey Howe, James Mackay, Douglas Hurd, Malcolm Rifkind, Peter Fraser, Tim Sainsbury, John Major, Sir Robin Butler and Philip Mawer (Cabinet Office).

AM

17 July 1989

CONFIDENTIAL

Foreign Pol: War Criminals Pt 2.





PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

Re Austin

*This given slightly more
background on 14 July 1989
with the Home Secretary
to you yesterday.*

COO. 1577.

Dear Colin

WAR CRIMES INQUIRY

Top of p. 1.

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

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

Colin Walters Esq
Principal Private Secretary
to the Home Secretary

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

3. In discussion, the following points were made:

- a. There was general agreement that the strength of the evidence uncovered by the Inquiry was surprising. Particularly powerful was the evidence of witnesses who had themselves been punished for complicity in the events. The evidence and the consequent recommendations of the Inquiry could not be ignored, even though the chances of securing successful prosecutions at the end of the day might well be slim.
- b. The practical difficulties in the way of evidence gathering and prosecution would be very considerable indeed. For example, many of the potential prosecution witnesses (a majority in at least one case) were resident in the Soviet Union and had made clear their unwillingness or inability to travel to the United Kingdom for any trial. It would be possible, as the report suggested, for evidence to be taken by live television link but this would be a novel procedure and legislation would be needed before it could be allowed in any Scottish proceedings. Moreover the age and, in some cases, ill health of the accused would present the prosecuting authorities with some very difficult decisions about whether it was in the public interest to proceed in individual cases.
- c. The report recommended that a considerable investigatory effort should be mounted ahead of the necessary legislation to give jurisdiction to the British courts. It would not be right to begin such investigations, however, until Parliament had had an opportunity to consider the questions of principle raised by the legislation. Moreover, it was arguable that there was no authority to incur expenditure on such investigations ahead of the passage of the necessary legislation.
- d. The costs of investigation, prosecution and trial could be very substantial and no provision had been made for them

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

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

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

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

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

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

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

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

f

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

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

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

Yours
Steve Catling

STEVE CATLING

Private Secretary

Foreign Pd - War Criminals. Pr 2.

8861 JUL 89

From THE PRIVATE SECRETARY



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

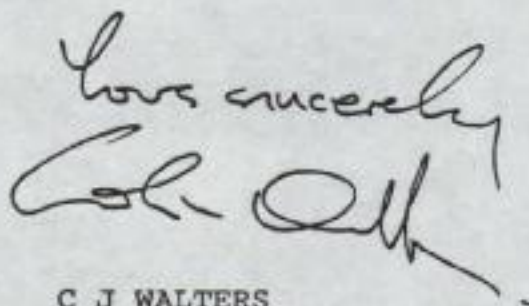
14 July 1989

Dear Alex

WAR CRIMES INQUIRY

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

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

Yours sincerely


C J WALTERS

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

Prime Minister
This is also on the agenda
for the Cabinet with the
Home Sec.
2 BT 15/7



2/11/5

PRIME MINISTER

WAR CRIMES INQUIRY

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

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

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

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

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

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

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



JW

SECRET AND PERSONAL

13 July 1989

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

FOR POL: War Crimes Inquiry PT 2

14 JUL 1989



With the Compliments

PRIVATE ^{of} SECRETARY

..... 13 JULY 19 89

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

Telephone: Direct Line 01-276 6810
Switchboard 01-276 3000
Fax 01-276 6834



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

Telephone: Direct Line 01-276 6810
Switchboard 01-276 3000
Fax 01-276 6834

CONFIDENTIAL

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

13 July 1989

See Douglas,

WAR CRIMES INQUIRY

Para 11

Following on the discussion ~~this~~ morning I have given further consideration to those amendments to Part ~~One~~ of the Report.

1. Para 9.10 line 3 delete "four" and substitute therefor "some".
2. Para 9.10 line 6 delete the sentence beginning "We invited" down to "also" in line 8 and substitute therefor "Another".
3. Para 9.14 line 1 delete "two".
4. Para 10.5 line 2 delete "three" and substitute therefor "those".

You will be aware that my concern really was because I believe that it is possible for a reader to deduce that Mr Gecas is one of the three surviving persons referred to in paragraph 9.10 as being persons against whom there are reasonable prospects of obtaining a conviction for murder. This is because it became publicly known in Scotland in May of this year that Mr Gecas was to be interviewed by the Inquiry. From this a reader can work out that he is being mentioned in paragraph 9.10 and again at paragraph 9.14. It may be that these considerations are unique to Mr Gecas' case.

If Sir Thomas Hetherington and Mr Chalmers would agree to these minor changes, my concern that Mr Gecas could be identified as being one of those referred to would be met.

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

*Yours sincerely,
Fraser*

FRASER OF CARMYLLIE

Hoffe ^{for} ~~for~~ ¹⁰ ~~for~~ : New Crown

PTZ

13 JUL 1989



HOUSE OF COMMONS
LONDON SW1A 0AA

12th July, 1989

Mr. Jack Porter,
8 Burnside Rd.
Boston. Ma. 02161
USA

Dear Mr. Porter,

I very greatly appreciated your letter and enclosures.
You may be sure that we are doing everything in our
power to get the results that you and we want - and
I much appreciated your offer to come to the UK to
help us. I doubt whether that will be necessary but
if it is, we shall let you know.

With best wishes,

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Philip Rubenstein', written in a cursive style.

Chairman: Rt. Hon. Merlyn Rees, PC MP
Vice-Chairmen: Rt. Hon. Peter Archer, QC MP
Alex Carlile, QC MP
John Gorst, MP
Hon. Secretaries: Hon. Greville Janner, QC MP
Neil Thorne, OBE TD MP
Hon. Treasurers: Rt. Hon. The Lord Mason
John Wheeler, JP MP

Secretary to the Group
Philip Rubenstein
Telephone: 01 222 6822
Fax: 01 233 0161



cc/c

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

Telephone: Direct Line 01-276 6819
Switchboard 01-276 3000
Fax 01-276 6834

CONFIDENTIAL

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

11 July 1989

COM 12/7

See Douglas,

WAR CRIMES INQUIRY

top part 1

I refer to your minute of 29 June to the Lord President dealing with the Report submitted to you by Sir Thomas Hetherington and Mr William Chalmers.

I understand that the Attorney General has already perused the Report and that he has indicated that he is content that Part One be published though of course he indicates that publication of Part Two could prejudice any future criminal proceedings.

As you know since these allegations have come to light much publicity has been directed towards a Mr Antanas Gecevicus alias Gecas who lives in Edinburgh. Inevitably the announcement that the Inquiry has reported its findings will lead to renewed media interest in this subject and in Mr Gecas in particular. At paragraph 9.10 of the report details are given of the number of allegations considered and investigated. It is clear that if Part 1 of the report is published in full many people will assume - and will rightly assume - that Mr Gecas is one of the cases which was examined in greater detail. I return to this point below.

If any proceedings for war crimes are eventually instituted against Mr Gecas, it is likely that he will argue that the publicity given to his case would make a fair trial impossible. While I am reasonably confident that any such plea can be successfully resisted, I am anxious to minimise the risk that it may succeed.

At present Mr Gecas cannot seek the protection which the High Court of Justiciary affords to accused persons. This is because Mr Gecas has not been charged with any crime and no proceedings are presently active in terms of the Contempt of Court Act 1981. Even if the legislation on jurisdiction is amended, I anticipate that a considerable period will elapse before any proceedings would become active and before Mr Gecas would be able to claim this protection of the High Court of Justiciary.



CONFIDENTIAL

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None the less Mr Gecas has already taken steps to try to protect himself. In particular he has been granted interim interdict in the Court of Session against at least one newspaper publishing allegations about his involvement in war crimes. He indeed went further and took proceedings, which just failed, for breach of that interdict.

In that situation, where the Court of Session has already acknowledged the potential for prejudice in this special case by granting interdict to Mr Gecas, I consider that it would be imprudent for the Government to publish any unnecessary material which could be thought to be prejudicial to Mr Gecas' receiving a fair trial. I do not yet know what form of publication is intended. If it is not one which involves privilege, then the Government might find itself embroiled. The question of the effect on any trial would remain to be canvassed. If, on the other hand, as seems more likely, the report of the Inquiry is to be published in such a way as to attract privilege under the Parliamentary Papers Act 1840, Mr Gecas would thereby be prevented from obtaining any interdict against publication of any prejudicial material in the report. However, at his trial Mr Gecas would be able to argue, perhaps with some force, that because of the Government's act in publishing the prejudicial material in this way, the Crown should be held directly responsible for any resulting prejudice to the prospects of a fair trial. This might well lead the Court to give full weight to any arguments which Mr Gecas could mount as the effect of any material for whose publication the Government could be held responsible.

It is against this background that I have considered the passages in paragraphs 9.10, 9.14 and 10.5 of Part 1 of the report.

My concern really arises because I believe that it is possible for a reader to deduce that Mr Gecas is one of the three surviving persons referred to in paragraph 9.10 as being persons against whom there are reasonable prospects of obtaining a conviction for murder. This is because it became publicly known in Scotland in May of this year that Mr Gecas was to be interviewed by the Inquiry. From this a reader can work out that he is being mentioned in paragraph 9.10 and again at paragraph 9.14. It may be that these considerations are unique to Mr Gecas' case.

I have not formulated any proposal for amendment. At the meeting on Thursday I should however wish to discuss with colleagues whether it would be possible to make these paragraphs more general. For instance, it seems perhaps unnecessary to state that "in none of these cases has the full allegations been admitted at interview" - prompting an inference that there has been an admission to part of the allegation - when this merely leads to the self-evident conclusion that "the verdict would depend on the jury's determination of credibility". (I would include "and reliability"). I should merely add that it is not clear to me that much would be lost since the Inquiry's terms of reference do not require it to report about the prospects of conviction in particular cases.



CONFIDENTIAL

3

At this stage there are two other points about which I should wish to indicate a view.

The report recommends (10.3) that legislation should confer jurisdiction on "murder and manslaughter committed as war crimes (violations of the laws and customs and war)". At paragraph 9.30 the authors reject an amendment to cover murder and manslaughter *simpliciter*. While I understand the theoretical objections raised in paragraph 9.29, I believe that the need to prove that any murder was committed as a war crime would be likely to complicate the issue at any trial and to prolong the proceedings. I should therefore wish colleagues to consider whether the third option outlined in paragraph 9.29 should be adopted.

Finally, I can say at this stage that, if any prosecution is to be held in Scotland, the procedural changes for Scotland recommended in paragraph 10.4 will require to be implemented. This can be seen most clearly in the case of evidence via a live television link. Since five of the nine witnesses - including the most important - whose testimony in Mr Gecas' case is contained in Part 2 of the report are unable to attend court in the United Kingdom, no prosecution could be held without this kind of procedural change. Accordingly room would have to be found for appropriate legislation either in any War Crimes Bill or in some other convenient legislative vehicle.

I am copying this letter to the Prime Minister, John Wakeham, Geoffrey Howe, James Mackay, Malcolm Rifkind, Patrick Mayhew and Sir Robin Butler in order that they are aware of my concerns in advance of Thursday's meeting.

Yours ever,

Peter.

FRASER OF CARMYLLIE

FOR POL: war criminals

12 JUL 1989

pt 2.

CONFIDENTIAL



LEGAL SECRETARY

THE LEGAL SECRETARIAT TO THE LAW OFFICERS
ATTORNEY GENERAL'S CHAMBERS
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

6 July 1989

CE 27/7.

Andrew Turnbull Esq
Principal Private Secretary
10 Downing Street
LONDON S W 1

Jean Andrew,
WAR CRIMES INQUIRY

I am enclosing a copy of a letter from Stephen Wooler to Colin Walters of 30 June, recording the views of the Attorney General on the publication of the report of Sir Thomas Hetherington and Mr William Chalmers.

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

Yours sincerely,
Michael Saunders.

M L SAUNDERS

CONFIDENTIAL



THE LEGAL SECRETARIAT TO THE LAW OFFICERS
ATTORNEY GENERAL'S CHAMBERS
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

General enquiries 01-938 6602
Direct line 01-936

CONFIDENTIAL

Colin Walters Esq
Private Secretary to the Home Secretary
Home Office
Queen Anne's Gate
London SW1

30 June 1989

Dear Colin,

WAR CRIMES

You wrote to Michael Saunders on 19 June about the Home Secretary's proposals for the handling of the report relating to war crimes. In particular, you sought the agreement of the Attorney General to an announcement that the report had been received and a commitment in very general terms to publication.

The Attorney General has now had an opportunity to study the report. He agrees that Part 1 of the report should be published but that the nature of Part 2 makes it unsuitable for publication. I understand that a meeting of Ministers has now been arranged to discuss the handling of this issue.

Yours sincerely

S J Wooler

S J WOOLER

FILE

1

SECRET AND PERSONAL



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

3 July 1989

Dear Colin,

WAR CRIMES INQUIRY

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

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

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

*Yours sincerely,
C. D. Powell*

C. D. POWELL

Colin Walters, Esq.,
Home Office.

PRIME MINISTER

WAR CRIMES INQUIRY

The Inquiry set up by the Home Secretary in February 1988 to enquire into allegations that a number of war criminals are resident in the United Kingdom and ought to be subject to action - either prosecution (which would involve amending the law), extradition or deportation - for their crimes at that time has now been completed.

It is a very substantial and very interesting piece of work. You will not have time to read it in full: the main report is 175 pages and the accompanying case work a further 400 pages. I have myself read the whole of the main report and find that it is very adequately summarised in Chapters 9 and 10, which I attach. I recommend you read them.

In brief, the Inquiry's extensive researches show that many people who fought with or supported the Axis during the War could quite easily have come to this country after 1945, either as volunteer workers, members of the Polish armed forces or as former prisoners of war. Although some screening was in operation at the time, it was not at all effective and some 200,000 people eventually came here, most of them from the Baltic States, Poland, Byelorussia and the Ukraine. It is prima facie possible that some of these were criminals and evaded detection at the time.

The report recalls that prosecution of war crimes was rather haphazard apart from Nuremberg. Enthusiasm for war crimes trials had petered out by 1950. There were none in the United Kingdom because no-one believed that there were any war criminals here.

The Inquiry confirms that as things stood no prosecutions can be brought in the United Kingdom with respect to war crimes allegedly committed by persons who are now citizens of, or resident in, the United Kingdom although they were not British

citizens at the time the offences were committed. If action is to be taken against them, the powers available are deprivation of citizenship and deportation; extradition; and changing the law to make prosecution in this country possible.

The Inquiry comes down in favour of changing the law in this country, to give British courts a jurisdiction over acts of murder and manslaughter committed as war crimes in Germany or German-occupied territory. At the same time, legislative provision will be needed to make admissible as evidence video recordings and documents authenticated by an archivist and to allow witnesses outside the United Kingdom to give evidence through a live television link.

The Inquiry considered 301 allegations, but were only able to go into detail in seven cases. Of these, they believe that three are sufficiently serious for there to be a realistic prospect of a conviction for murder. In three more, they recommend further investigation, as they do in 75 other cases which they have been able to consider only superficially. The cases which they have investigated disclose horrific instances of mass murders and they do not consider that the lapse of time provides sufficient reason for taking no action.

The report will now be considered by Ministers and the Law Officers. The immediate questions which have to be answered are summarised in the Home Secretary's minute attached. The main one is whether to publish the report without comment, or with a statement of the Government's intentions. The Home Secretary favours publication now and a statement of the Government's intentions in the autumn after we have seen how the debate develops. Some of his colleagues feel that, if we intend to turn down the possibility of legislation, it would be best to say so at once and face a strong but probably short-lived reaction.

✓ The Home Secretary's preliminary view on the substance is that we should accept the Inquiry's advice and legislate to enable prosecutions to take place, even if it seems unlikely that

they would be successful. He feels that we cannot simply let matters lie.

Recommendations will come to you from Ministers in due course. But you may like to express a preliminary view on the question whether we should publish with or without a statement of the Government's intentions.

C.D.P.

I agree with the Home Secretary Publication now. And

I believe we should legislate and accept the Report's recommendations.

C. D. POWELL
30 June 1989

DASAVY

Clearly therefore we do not turn down the possibility of legl. The only question is, how soon do we discuss this in Cabinet and, assuming we accept the recommendations, announce our decision.

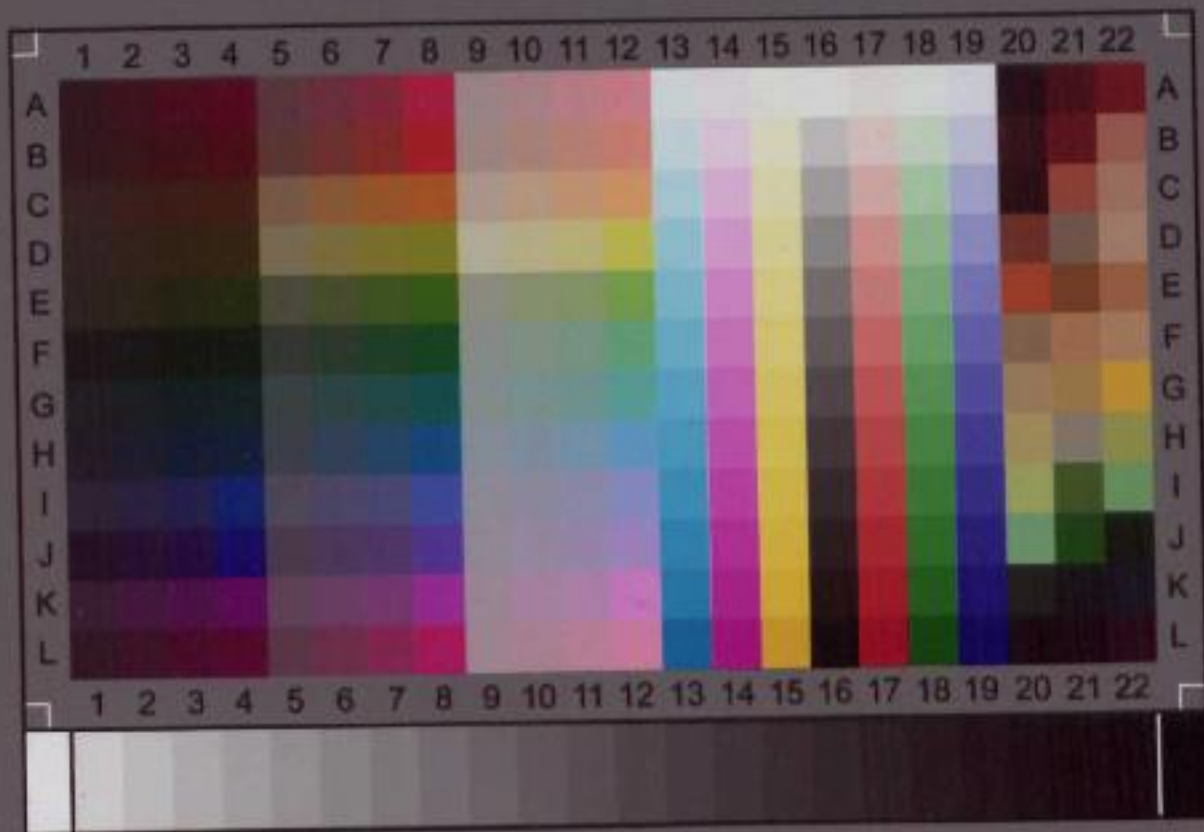
~~not~~
not

PART 1 ends:-

CDP to PM. 30.6.89

PART 2 begins:-

CDP to HO. 3.7.89.



IT8.7/2-1993

2009-02

Image
Access

IT-8 Target

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