Part 3

Confidential Filing

Allegations Concerning War Criminals
Simon Wiesenthal Centre
War crimes Inquiry

FOREIGN POLICY

Pt 1: Oct 1986

Pt 3: Jan 1990

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
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P.1/6

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

1 May 1991

Dear Sir Robert,

WAR CRIMES BILL

... Further to our earlier telephone conversations, I attach a copy of the form of words used this afternoon by Mr Speaker and the Lord President's brief statement following on from that.

... As background, I also attach copies of some notes for supplementaries and media interviews that we have prepared and a separate note on the previous use of the Parliament Acts.

I am copying this letter and the attachments to Andrew Turnbull (No 10), Gillian Kirton (Lord Privy Seal's office), Colin Walters (Home Office) and Sonia Phippard (Cabinet Office).

Yours sincerely,

T J SUTTON
Principal Private Secretary

The Rt Hon Sir Robert Fellowes KCB KCVO
Private Secretary to HM The Queen
Buckingham Palace
London SW1

MR SPEAKER'S STATEMENT

It might be helpful if I reminded the House of the provisions of the Parliament Acts. The rejection of the War Crimes Bill for a second time by another place brings into play the provisions of the Act. The House of Lords will be asked to return the Bill to this House, where it will be prepared for Royal Assent. No further proceedings are required in the House.

LORD PRESIDENT'S FORM OF WORDS ON WAR CRIMES: WEDNESDAY 1 MAY

Further to your statement, Mr Speaker. The whole House will be grateful to you for clarifying the position under the Parliament Acts. In particular, your statement has made clear that the procedures now being followed come into play automatically following the defeat of the Bill last night in another place.

The Parliament Act 1911 makes clear that only if the House were to direct to the contrary would the Bill not be submitted for Royal Assent.

It will be for the convenience of the House if I make clear now on behalf of the Government that we see no need for time to be made available for the House to consider this matter yet again. The House has repeatedly made clear its support for the War Crimes Bill, on free votes, and by very large majorities. The latest occasion was the Second Reading of the Bill this Session on Monday 18 March. There is therefore no case for putting the matter to the House again.

WAR CRIMES STATEMENT: NOTES FOR SUPPLEMENTARIES

VOTES IN PREVIOUS DEBATES?

Vote on principle of Bill:

12 December 1989	348 - 123

Second Reading Session 1990-91:

19 March 1990	273 - 60

Second Reading Session 1991-92:

18 March 1991	254 88

MAIN POINTS MADE BY LORD PRIVY SEAL TO MEDIA

Parliament Act passed to resolve differences which could arise between the two Houses. All that has happened now is that, as always envisaged, the Act comes into play automatically because there is such a difference.

"The Government is using/invoking" the Parliament Acts. Act has never come into play before - except for Parliament Act 1949 - because Lords have always recognised that when Bill introduced a second time, the elected Chamber must in the end get its way.

The possibility of using the Act has always existed since 1911: no new development now. The threat of the Acts was sufficient to ensure the Government of the day prevailed in 1975/76 (TULRA) and 1976/77 (Aircraft and Ship Building Industries).

PRECEDENTS FOR USE/THREAT OF PARLIAMENT ACTS?

See separate note below.

LORD JENKINS: 1911 ACT NOT ENVISAGED FOR CASES LIKE THIS?

If anything the justification for the Parliament Acts is stronger in cases like this: House of Commons has voted for the Bill, on free votes, repeatedly. How could the Government intervene to frustrate the wish of the elected Chamber?

WRONG TO ENACT BILL WITH INADEQUATE SAFEGUARDS FOR DEFENDANTS/OTHER DEFECTS?

If some critics of the Bill are concerned about safeguards, their criticism should be aimed at those in another place who voted down the Bill yesterday. As Lord Bridge made clear, the House of Lords had the chance to give the Bill a Second Reading and then amend it to deal with any such concerns. They chose not to avail themselves of that opportunity.

Government have made clear its hope that the Bill could be passed in a form acceptable to both Houses. But the final decision was for the Lords last night.

RECENT STATEMENTS OF GOVERNMENT'S VIEW?

See separate note below (quotes from Lord President 12 March 1991 and Home Secretary 18 March 1991).

NOTE 2

THE USE MADE OF THE PARLIAMENT ACTS

1. The Parliament Acts have been invoked on only three occasions:-

i. The Government of Ireland Act 1914

ii. The Welsh Church Act 1914.

iii. The Parliament Act 1949 (amending the 1911 Act). (Under the 1911 Act a Bill had to be passed by the House of Commons in three successive sessions before it could be given Royal Assent without the consent of the House of Lords, and the 1949 Act reduced the requirement to two sessions.)

2. Two Bills were presented in the 1912-1914 period with a view to passing under the 1911 Act procedure. Of these, one became the Temperance (Scotland) Act 1913, being passed by the Lords in the second session, after Government concessions. The other, the Plural Voting Bill, having been rejected by the Lords twice, was not taken up for a third time because of the outbreak of war.

3. Since the 1949 Act, no Act has been passed under the Parliament Acts procedure, but two Bills have been introduced in a second session with a view to it:-

i. The Trades Union and Labour Relations (Amendment) Bill (Session 1975-76).

ii. The Aircraft and Shipbuilding Industries Bill (Session 1976-77).

Both were eventually agreed to by the Lords in the second session.

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

30 April 1991

Dear Paul,

WAR CRIMES BILL

I am enclosing a copy of the revised version of Lord Waddington's Second Reading speech for the War Crimes Bill in the House of Lords later today. The speech takes account of the advice provided in Muir Russell's note on the operation of the Parliament Acts attached to my letter to Andrew Turnbull of 29 April, which was copied to Colin Walters.

I am copying the speech to Dominic Morris (Number 10), Jenny Rowe (Lord Chancellor's office), Tim Sutton (Lord President's office), Murdo Maclean (Chief Whips' office, Commons), Douglas Slater (Chief Whips' office, Lords). Martin Narey (Lord Ferrers' office), Sir Henry de Waal (First Parliamentary Counsel) and Sir Robin Butler. I should be grateful for any comments to be telephoned to me by 1.00 pm today at the latest.

Yours ever,
Gillian Kirton

GILLIAN KIRTON
Private Secretary

Paul Pugh Esq

WAR CRIMES BILL
TUESDAY 30 APRIL

My Lords, the Bill before us this afternoon needs little introduction. It is the same Bill as the one which failed to receive a Second Reading in this House on 4 June last year and has been re-introduced, after again completing its passage through another place.

May I say to your Lordships that many of Your Lordships know that I have been concerned with the legislation from an early stage and that it is my personal conviction that the legislation is right. That does not mean for one moment that I do not appreciate fully the strong views that have been expressed in this House against the Bill by many whose judgment I greatly respect, and it now must be for each one of us to make up our own minds as to what is right. All I can do is give the House what help I can on some of the issues raised and then also, as Leader of the House, give the House what guidance I can on some of the procedural matters which arise.

Your Lordships know the origin of the measure. In February 1988 the then Home Secretary set up an inquiry under Sir Thomas Hetherington formerly Director of Public Prosecutions for England and Wales and Mr William Chalmers the former Crown Agent for Scotland to consider allegations that some people who had committed war crimes during the Second World War had come to this Country after the War and were still resident here. The Inquiry's terms of reference were to consider what substance there was in these allegations, to assess the strength of evidence that might be brought before our Courts, and to advise as to whether United Kingdom law should be changed so

/as to confer

as to confer on our Courts' jurisdiction to prosecute for War Crimes persons who are now British Citizens or resident here in the same way as they would have been triable here had they been British Citizens at the time.

The Inquiry reported in June 1989 and it concluded that there were some people living in this Country against whom there was sufficient evidence to support Criminal proceedings for murder and that further investigations might disclose the necessary evidence against others. The cases they had investigated, said Sir Thomas and Mr Chalmers, disclosed horrific instances of mass-murders; and they did not consider that the lapse of time since the offences were committed, or the age of the offender provided sufficient reason for taking no action [9.50].

Rather, they recommended, legislation should be introduced on the lines of this Bill. I suppose I am one of the few who has read the second unpublished part of the Report [1.7], and I think I can and should say to your Lordships that histories are related, and crimes against civilian populations of appalling barbarity are described. I think it is necessary to make this point lest anyone outside this place still thinks that we are talking of excesses committed in the heat of battle rather than cold-blooded mass murder of defenceless civilians.

We are also of course, My Lords talking of acts which were crimes according to the laws of all civilised nations at the time they were committed and crimes which were war crimes according to international law as it stood at that time. Hetherington and Chalmers therefore stress the point that legislation on the lines of the Bill is not retrospective legislation in the sense of legislation which creates new criminal offences, making actions criminal which were not criminal at the time they were committed. The Bill deals with jurisdiction, not the creation of offences and it puts those who could be brought to trial in no worse position than they would have been had they been British Citizens at the time rather than becoming British Citizens later.

My Lords, it has also been argued by the Noble Lord Lord Mayhew and the Noble Lord Lord Shawcross in particular, that the legislation is unjustified because a decision was made after the War that no more war crimes should take place. I treat with the greatest respect the views expressed by the Noble Lords who speak from their wealth of experience as Ministers at the time; but the Inquiry which studied the records and spoke to the principal surviving participants, concluded that it could not be argued that the British Government took a positive decision not to prosecute war crimes in this Country, not least because no one thought there were any here. The decision to bring to an end war crime trials in the British Zone of Germany is another matter.

There is also the point made by my Noble Friend Lord Ferrers in answering a Starred Question the other day that even if a decision had been made after the War not to have War Crime trials in Britain it would still be for us to decide today whether evidence now put before us, which was not available to the post-war Government, requires now a different course of action:- and some might think it odd indeed if, when we in this Country have never thought in terms of murderers escaping justice because of the operation of some sort of Statute of Limitations, we were to decide now that a particular category of murderer, a mass murderer should be exempt from prosecution just because of the efluxion of time.

I do doubt whether if it were revealed tomorrow that somebody born British [i.e someone over whom the British courts undoubtedly do have jurisdiction] had committed war crimes such as mass murder, it would seriously be argued that no prosecution should be brought against him.

My Lords, I do understand those who are concerned that after so much time has elapsed there may not be sufficient protection for an accused person in any trial which might take place. We are however used in this Country to relying on the good sense of the prosecuting authorities when they have to decide whether to bring a prosecution or not and of British juries when examining evidence. Furthermore and most importantly it has certainly always been the intention that the Bill should preserve intact the Court's inherent jurisdiction over the fairness of proceedings and the right of a Court to terminate a trial if unfairness to the accused might result.

But having said that, this may be an appropriate moment to emphasise that the Bill being presented to Your Lordships unchanged does not of course mean an unwillingness on the Government's part to consider any amendments to improve it which this House may wish to make. Naturally of course any such amendments would have to be considered by the Other Place where there has been and no doubt will continue to be a free vote.

There is then, My Lords, the question of whether the Bill should have been wide enough to cover Japanese war crimes or indeed any other war crimes not covered by the Bill, but Your Lordships may think that the point to be borne in mind here is that the Bill is only before us at all because of the work done by the Hetherington and Chalmers Committee, the evidence they have revealed and the recommendations they have made; and it certainly would have been unusual if the Bill had covered crimes committed in Japanese-occupied territory without having any recommendation from a committee charged with investigating such crimes and charged with examining the question of whether there were any such war criminals in this Country. The

/position is that it

position is that it has never been suggested that any Japanese War Criminals did come here to settle after the War and I think this House has almost always taken the view that one should not legislate unless there is a clear mischief to be addressed.

As to more recent war crimes including for instance war crimes committed in Iraq, the position as I understand is that ever since the passing of the Geneva Conventions Act in 1957, our Courts have had jurisdiction to try grave breaches of the Convention, including killing and torture, wherever in the world they have been committed and whatever the nationality of the suspect. So there is no need for us to legislate to cover events in Iraq. Of course whether Iraqi war crimes trials will be held is another matter entirely and not for our Government alone.

My Lords I said at the outset that at the end of the day we all have to make up our minds as to what is right and I doubt whether it will help greatly for me to explain how I came to decide on the matter. Can I just say this? I understand those who argue that there is nothing to be gained by reviving public interest in these matters after all these years and ventilating them in the full glare of publicity: but the difficulty I have is seeing how, now all the evidence has been laid bare by Hetherington/ /Chalmers, we can somehow re-bury it. The evidence is with us, and there is no way in which we can close our eyes to it.

Of course no one would have chosen to address these issues so long after the event. It is so long since the War and the instinctive wish of most of us is to get on with our lives in peace and not rake over the past, let alone the pasts of men who have lived peacefully in this country since before some members of this House were even born. But sometimes one is brought face to face with facts that cannot be buried, with deeds so terrible (even now I think some of us cannot comprehend the scale of them) that they cannot be forgotten: and as long as one of those responsible survives the World will cry out for justice. I just feel that we must do our duty to the memory of those who have suffered - and this is just one way in which we can carry out that duty.

Finally, my Lords, I think I must now shed my hat as advocate of this Bill and put on my hat as Leader of the House; advising the House as best I can of the procedure we should follow when the Debate ends.

We will start with the vote on the motion tabled in the name of the noble Lord, Lord Houghton of Sowerby. The companion to standing Orders says that the carrying of a motion in this form, which is intended to deny the Bill a Second Reading during the current session, is treated as a rejection of the Bill. It follows from this that if Your Lordships were to agree to the Noble Lord, Lord Houghton's amendment the effect would be to stop further proceedings in this House and the way would be clear for the Speaker to certify that the provisions of Section 2 of the Parliament Act applied so that the Bill could be presented to Her Majesty for Royal Assent to be signified. [See S2 1 Page 19. It would however be open to the Other Place under S2 to direct that the Bill should not be presented to Her Majesty]

If the motion is not carried, the motion for the Second Reading will be put and if carried will proceed to the Instruction in the name of My Noble Friend, The Lord Campbell of Alloway. I know the enormous interest my Noble Friend has taken in the Bill and nobody can doubt his qualifications for speaking in the debate:- but as Leader of the House I have to advise that it would be most unwise for the House to approve the Motion in my Noble Friend's name.

The last occasion when an Instruction was tabled to extend the scope of a Public Bill before this House was in 1906. The last time such an instruction was passed was in 1899. Clearly therefore the procedure has fallen in to desuetude. It cannot be said to be out of order since it has not been ruled out of order by the Procedure Committee: but I have been advised that an instruction is clearly not part of the current procedures of this House.

The use of instructions to extend the scope of a bill would have significant implications for the legislative work of the House: the procedure should surely not be revived without prior consideration by the Procedure Committee.

My Lords, there is no more I can say. I have explained why I think the Bill is right. I ask you to give it a Second Reading.

I beg to move.

TJS/AH

~~1. DM~~
2 Feb

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

30 April 1991

Dear Andrew,

WAR CRIMES BILL

You wanted us to check specifically that the Clerk of the House, Sir Clifford Boulton, was content with the proposed statement that the Lord Privy Seal would make in the light of an adverse vote tonight (text as in paragraph 8 of the note submitted to you last night with Gillian Kirton's letter of 29 April).

I have spoken to Sir Clifford. He thinks that as drafted it wrongly implies that the Speaker has a discretion to decide, whereas in reality the process following rejection in the Lords is automatic. He has redrafted the first sentence of the draft line for the Lord Privy Seal to reflect this. I attach for convenience a clean version.

I am copying this letter to Gillian Kirton, Colin Walters, Murdo Maclean, Douglas Slater and to Sir Clifford Boulton.

Yours ever,

T. Sutton

T J Sutton
Principal Private Secretary

Andrew Turnbull Esq
10 Downing Street
LONDON SW1

"After the vote your Lordships have taken the way is now clear for the Speaker of the House of Commons to certify that the conditions have been satisfied for the operation of the Parliament Acts so that the Bill can be presented with his certificate for Royal Assent without your Lordships' concurrence. The Government have made clear, both here and in the other place, that use of the Parliament Acts would result if the Bill were rejected by the House of Lords. While the Government regret the fact that this should be necessary, they envisage that matters will now take their course in accordance with the Parliament Acts and that, subject to the Speaker's certificate, the Bill should shortly receive Royal Assent."

CONFIDENTIAL

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

30 April 1991

Dear Gillian.

WAR CRIMES BILL

The Prime Minister was grateful for the note attached to your letter of 29 April and was content to proceed in the way suggested.

He could be questioned on this today at Prime Minister's Questions. I attach a suggested line to take on which I would be grateful for comments by 1.00 pm today. This reflects Douglas Slater's advice that for the Prime Minister to anticipate proceedings in the Lords could cause problems.

I am copying this letter to Colin Walters (Home Office), Tim Sutton (Lord President's Office), Murdo Maclean (Chief Whip's Office, Commons), Douglas Slater (Chief Whip's Office, Lords) and to Sir Clifford Boulton.

Yours sincerely
Andrew Turnbull

(ANDREW TURNBULL)

Miss Gillian Kirton,
Lord Privy Seal's Office.

CONFIDENTIAL

WAR CRIMES BILL

Q. What if the Lords throw out the bill?

A. Government policy remains to place the Bill on the Statute Book this Session. Not right to comment hypothetically on proceedings in Another Place.

Q. Will there be a further opportunity for the House to decide whether the Bill should be presented for Royal Assent?

A. The House has already voted three times on the principle of this Bill but that question only arises on a hypothesis about the outcome in Another Place.

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CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

29 April 1991

Dear Andrew,

All need a 1 sal @ PMQ's: we shd. check it with Mr. Boulton. [illegible]

WAR CRIMES BILL

Thank you for your letter of today's date. The Lord Privy Seal has asked me to forward a copy of the note on the operation of the Parliament Acts which the Prime Minister requested during the Business Managers' meeting this morning. The Lord President has also seen the note and he fully agrees with its line. I regret that there are no precedents since this procedure was last used in 1949 when the second Parliament Act was passed.

I am copying this letter to Colin Walters (Home Office), Tim Sutton (Lord President's Office), Murdo Maclean (Chief Whips' Office).

Prime Minister
This is the note you requested. There is provision in the Parliament Act for the Commons to interrupt the otherwise automatic procedures (para 6) but this would require a debate and vote. Since the Bill has a majority of 150+, it is unlikely that there would be a majority for withholding Royal Assent. The best course seems to be to allow the Bill to pass onto the Statute Book as quietly as possible and thence into oblivion.
Content to procedures as LP & LPS recommend?

AT
29/4

Yours sincerely,

Gillian Kirton

GILLIAN KIRTON
Private Secretary

Andrew Turnbull Esq

WAR CRIMES BILL: OPERATION OF THE PARLIAMENT ACTS

1. The operation of the Parliament Acts would be triggered by the rejection of the Bill by the House of Lords this Session.

2. Rejection means refusal to pass the Bill at all, or insistence on amendments unacceptable to the House of Commons.

3. The question when a Bill is considered to have been rejected may not always be entirely straightforward. Outright refusal to give it a Second Reading would probably be clear enough, but at the other extreme, where amendments went to and fro, invocation of the Parliament Acts might not be possible until the very end of the Session. Rejection of the War Crimes Bill could come about in two ways on its Second Reading in the House of Lords on Tuesday 30 April:-

3.1 A simple vote against the Second Reading.

3.2 Acceptance of the motion by Lord Houghton that the Bill should have its Second Reading 'this day 6 months'.

The advice which the Lord Privy Seal has from the Clerk of the Parliaments, quoting the House of Lords Companion to the Standing Orders is that such an amendment is intended to deny the Bill a Second Reading during the current Session and should be treated as a rejection of the Bill. He will be making that clear in the course of his speech.

4. The final decision on whether the provisions of the Parliament Acts have been complied with and a Bill may be presented for Royal Assent notwithstanding that it has not been passed by the House of Lords, rests with the Speaker, who must give a certificate that the requirements have been met before the Bill can received Royal Assent. Neither the Lord Privy Seal in his Second Reading speech nor any Minister commenting on an

adverse vote, if one occurs, should take the Speaker's ruling for granted. The Lord Privy Seal has, however, been advised that he can say that it is probable that Lord Houghton's amendment would be taken by the Speaker to mean that the Bill had been rejected within the meaning of the Parliament Acts.

5. No firm timetable is set out in the Parliament Acts for the procedures subsequent to rejection by the Lords. It is understood that the Clerk of the House would enquire of the Clerk of the Parliaments whether the Lords have rejected the Bill and that the latter would return it to the Clerk of the House. The Speaker's certificate would then be given and the Bill presented for Royal Assent. All of this might take a few days but need not be a protracted procedure (and can plainly be accomplished in a very short time at the end of a Session).

6. The procedure following rejection by the Lords is automatic in that it requires no further positive action or approval from either House. Provision is made in the Parliament Acts for the House of Commons, if they wish, to direct that a Bill shall not be presented for Royal Assent. This would require a motion to be approved by the House. The Lord Privy Seal, the Lord President and the Home Secretary are agreed that there is no case for providing a further opportunity for debate. The Government's intentions were made clear by the Home Secretary in the debate on the Second Reading of the War Crimes Bill. On 18 March 1991 (Hansard col 26) he said:

> "The House will be aware that the provisions of the Parliament Acts exist to ensure that the views of the elected Chamber ultimately prevail over the other House, in cases where no accommodation can be found."

7. It is possible that private Member might put down a motion proposing that the Bill should not be presented for Royal Assent. Unless the Government chose to find time for this, such a motion

could not be debated, and it is clearly the view of the Lord Privy Seal, the Lord President and the Home Secretary that this should not be allowed to happen.

Handling if the Bill is rejected at Second Reading

8. There may be pressure for the Lord Privy Seal to make an immediate statement following an adverse vote. He might respond on the following lines:-

> "After the vote your Lordships have taken it will be for the Speaker of the House of Commons to decide whether the Bill has been rejected within the meaning of the Parliament Acts, so that it can be presented with his Certificate for Royal Assent without your Lordships' concurrence. The Government have made clear, both here and in the other place, that use of the Parliament Acts would result if the Bill were rejected by the House of Lords. While the Government regret the fact that this should be necessary, they envisage that matters will now take their course in accordance with the Parliament Acts and that, subject to the Speaker's certificate, the Bill should shortly receive Royal Assent."

9. The question arises whether either in the Lords or the Commons the Government should take the initiative in making a statement. The Lord Privy Seal feels that he should not volunteer a statement and the Lord President also does not consider that it would be appropriate to take the initiative in interrupting business in the Commons. He would, however, be ready to intervene on points of order if necessary on Tuesday evening, and would otherwise wait until the matter was raised with him, most probably on Business Questions on Thursday 2 May. It might also come up at Prime Minister's Questions that day.

CONFIDENTIAL FILE

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

29 April 1991

Dear Gillian,

WAR CRIMES BILL

The Lord Privy Seal, Lord President and Chief Whip discussed the handling of the War Crimes Bill with the Prime Minister this morning. The Lord Privy Seal said that the advice from the Parliamentary authorities was that if the House of Lords defeated the Bill on Tuesday, the Speaker would certify that it had been defeated and the Parliament Act would come into effect. The Bill would be presented for Royal Assent immediately without any further Commons procedure. The outcome would be the same if the Lords adopted an amendment postponing consideration of the Bill for six months.

The Prime Minister expressed surprise that the Parliament Act would be activated automatically without the House of Commons being able to consider for one last time whether to go down this course. He wondered also whether this was a good precedent to set. He asked the Lord Privy Seal to prepare a note to reach here by close of play this evening, on the workings of the Parliament Act, on the precedents, and on what Government spokesmen would say in both Houses once the result of the Lords vote was known.

I am copying this letter to Colin Walters (Home Office), Tim Sutton (Lord President's Office) and Murdo Maclean (Chief Whip's Office).

Yours sincerely

Andrew Turnbull

(ANDREW TURNBULL)

Miss Gillian Kirton,
Lord Privy Seal's Office.

CONFIDENTIAL

File

LORD PRIVY SEAL

WAR CRIMES BILL

I believe it right to set out for you the problems which may arise following the debate on Second Reading on Tuesday next, 30 April. This might form a basis for your meeting with the Home Secretary and Lord President next Monday.

There are two motions before the House which will be taken on free vote in connection with the Second Reading. That means that there are three possible outcomes to the debate next Tuesday.

a. The House declines to give the Bill a Second Reading on the "six month" motion in the name of Lord Houghton of Sowerby.

A "six month" motion is the standard procedure for refusing Second Reading. Unfortunately, its effect for the purposes of the Parliaments Act is not certain. Therefore, if the House of Lords agrees to the motion we may thereafter be in the position of not knowing when the Bill would be enacted. The reason for this is that it is unprecedented for a Bill to be rejected by the House of Lords in the second session on a six month motion, and that it is up to Mr Speaker to decide when to certify the Bill. The principal options are: that it is dead from the date of the Lords' vote, or that it is dead on prorogation.

You suggested this morning that, subject to anything the Home Secretary says, neither of these options would embarrass the Government. There is no doubt that the War Crimes Bill will proceed to Royal Assent this session.

We are therefore taking steps to attempt to obtain authoritative advice as to what Mr Speaker's decision would be. I would however point out that that decision will only become concrete when Mr Speaker has actually made it. It would be embarrassing to proceed on advice that he would do one thing, and he were then to decide to do another.

I have put the point to the Clerk of the Parliaments, who has undertaken to try to clear up the point with the Clerk of the House. This would allow you to make the point clear in your speech on Second Reading.

A difficulty may arise if the uncertainty about the effect of the motion remains. In those circumstances it will be right to say simply that it is for Mr Speaker to decide at what point to certify that the Bill has been rejected by the Lords, but that the Bill will at the latest be presented for Royal Assent at the end of the session.

The disadvantage of this is that there will be an uncomfortable period, between the Lords' decision and Mr Speaker's certification, when the fate of the Bill will be uncertain. This period could be days; it could be until the end of the session.

b. The House gives the Bill a Second Reading but passes the instruction in the name of Lord Campbell of Alloway which would allow the Committee of the whole House to extend the provisions of the Bill to cover both war crimes in Japan and war crimes in Iraq.

You will have argued strongly against this instruction both on grounds of policy and on the grounds of its procedural undesirability. The difficulty with the instruction is that it may present the opponents of the Bill with a way of signalling their severe displeasure without actually opposing Second Reading. It may also open the way to a very substantial filibuster on the Bill in the Lords, with unfortunate consequences for the rest of the programme.

When the Bill is considered in Committee you would presumably have to take the same line as in Second Reading: that is, that many if not all amendments moved under the instruction would in fact be undesirable or unnecessary - though clearly the Government would make a bow towards considering each amendment on its merits.

The Government would nevertheless have to give ample time for consideration of the Bill in Committee in the House of Lords. I need hardly say that ample time could not however be unlimited time if a serious filibuster were to be mounted.

This will call for careful judgement. If we decline to give more time for the Bill after a certain point and just leave it fallow, at the end of the session the Bill will fall to be enacted under the Parliament Acts. This would however only be politically feasible, granted the nature of the legislation, if the House as a whole, and public opinion, then clearly perceived that a filibuster had been mounted to that end.

In fact, I do not believe that the opponents of the Bill will be able to mount a filibuster which would succeed in that object, though it might still be embarrassing to the Government's programme in terms of time.

c. The House gives the Bill a Second Reading.

This is the most attractive option for, even though a filibuster would be conceivable, it would necessarily be limited in scope to amendments which could properly be moved to the Bill, and would moreover take place against a background of the House having decisively rejected an instruction to extend the scope of the Bill.

I set out these options in extenso to draw your attention to the fact that there are no easy business management options for either House. Coming at this stage in the session, that is embarrassing. The important thing will be for us to show clearly that we have the business management aspects firmly under control - even though the actual outcome of the decisions on the Bill will be the result of free votes in both Houses.

As Leader of the House of Lords you are under the burden of your dual role in both leading for the Government on the Bill, and in having a responsibility to the House to make clear the constitutional consequences of their actions at any point. Therefore, you may be called upon to indicate the Government's position on the basis of decisions which the House has taken which are the opposite of what the Government would want. The management of the rest of the programme in the House however requires that this is not done at the expense of your procedural authority. I believe that the options which I have set out above will protect that to the best possible extent.

D F S
24 April 1991

10 DOWNING STREET

Prime Minister

Andrew + I were a little worried that the line to be taken on the War Crimes Bill (introduced today) would be inconsistent with your answer to Merlyn Rees on 4 December. The attached is fairly reassuring.

There is a payroll vote on the War Crimes Procedural motion on Tuesday at 10.00 p.m.

NO Do you wish to vote?

(You have a Private Supper with the Hurd at 8.00 pm and a moderate one not too heavy day on Wednesday)

Dominic

CONFIDENTIAL

SEPU
TPM

FROM THE PRIVATE SECRETARY TO THE LEADER OF THE HOUSE
AND THE CHIEF WHIP

7 March 1991

Dear Dominic,

WAR CRIMES BILL

The Lord Privy Seal has seen your letter of 6 March, and has discussed it with the Lord Chancellor.

They believe that a perfectly reasonable explanation for the Prime Minister voting for the War Crimes Bill when he voted against last time round would be that there was an overwhelming vote in favour of the Bill in the House of Commons which led the Government to put the Bill into the programme this year, and because of that overwhelming majority the Commons was entitled to and should give the Lords the opportunity to think again.

Assuming the Lords pass the Bill on Second Reading this session, it will go into Committee. At that point suggested amendments could, and no doubt will, be made. Those amendments will fall to be examined by the House of Commons on the Bill's return from the Lords, in the changed circumstances of the Lords' agreement in principle to the Bill. In that way the Government's hope of having an act which commanded the support of a majority of both Houses would have the best chance of being realised.

If the Prime Minister is questioned on his reply to Mr Rees, he should say that the suggested amendments procedure was considered by the Government but that in the event it was decided to leave any amendments to the House of Lords in the first instance. The House of Commons will after all still be able to examine these amendments on the Bill's return.

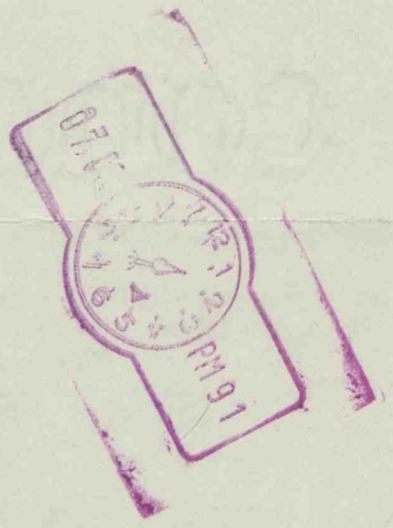
I am copying this letter to Tim Sutton (Lord President's Office) and to all the other recipients of yours.

Yours ever
Douglas

D F SLATER

Dominic Morris Esq

For Pol: War Crimes
Pt 2



CONFIDENTIAL

File
DAS

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

6 March 1991

Dear Tim

WAR CRIMES BILL

We have seen the minutes of LG(91)5th meeting on the handling of the Bill. We are concerned that the proposed handling should not expose the Prime Minister to the charge of inconsistency when compared with the reply which he gave to Merlyn Rees in the House on 4 December (Hansard extract attached).

He (and others who did not vote on the Bill last Session) will need to have a position which enables them to sustain promoting and voting for the Bill this session. The Government has, of course, gone for straight reintroduction rather than the suggested amendments procedure but I think it will be important to bring out, both in discussions with the lobby and in presentation in the House, that the approach is purely a procedural one to keep open the possibility of use of the Parliament Act. The Government's hope is that, at the end of the process, we would have a Bill which was in the form that commanded the support of a majority of both Houses. The Government's aim is to have an Act which implements the recommendations of the War Crimes Inquiry, which ensures that any prosecutions under it were well founded and well prepared and that any defendants have proper and effective safeguards. While, as the LG conclusions note, the Home Secretary could not give the indication of the Government's attitude to possible Lords amendments, it will be important in both Houses to make clear that the Government has given careful thought to the points and concerns that were raised when the Bill was in both Houses of Parliament last Session.

I am copying this letter to Jennie Rowe (Lord Chancellor's Office), Colin Walters (Home Office), Gillian Kirton (Lord Privy Seal's Office), Richard Gozney (Foreign and Commonwealth Office), Jim Gallagher (Scottish Office), Neville Trout (Office of the Minister for State, HM Treasury), Douglas Slater (Lords' Chief Whip's Office), Murdo Maclean (Chief Whip's Office) and to Sonia Phippard (Cabinet Office).

Yours ever
Dominic

DOMINIC MORRIS

Tim Sutton, Esq.
Lord President's Office

CONFIDENTIAL

Henley-on-Thames

Q3. **Mr. Skinner:** To ask the Prime Minister if he will pay an official visit to Henley-on-Thames.

The Prime Minister: I have no present plans to do so.

Mr. Skinner: When the Prime Minister finally gets round to going to Henley and perhaps having a rubber chicken dinner with his right hon. Friend the Secretary of State for the Environment, will he tell the voters of Henley why he has managed to offend the Welsh, the blacks and others—*[Interruption.]* including women, in his first seven days in office? Is that how he intends to start building his classless society?

The Prime Minister: I think that the hon. Member for Bradford, South (Mr. Cryer) was writing down the question that he intended his hon. Friend to ask and not the one that his hon. Friend did ask. In so far as the question presumably relates to Mr. Taylor, the prospective Conservative candidate in Cheltenham, the reported remarks—which I understand have been denied—are not sentiments that have any place in our party.

Mr. Adley: Is my right hon. Friend aware that the branch line to Henley-on-Thames remains intact? Does he recognise that if more decisions of that nature had been taken by British Rail in the past few years, and fewer decisions of the kind taken following the disastrous Beeching report, many more of our fellow citizens would today have the opportunity to travel by train which has been denied them by the closures of recent years?

The Prime Minister: I was aware of the excellent service from Henley. My right hon. Friend the Secretary of State for the Environment reports to me regularly on it.

Q4. **Mr. Illsley:** To ask the Prime Minister if he will list his official engagements for Tuesday 4 December.

The Prime Minister: I refer the hon. Gentleman to the reply that I gave some moments ago.

Mr. Illsley: Is the Prime Minister aware that in some areas, particularly Sheffield, general practitioners have been prevented from prescribing certain drugs to patients, in particular young children? Without rattling out the old figures about how many patients are being treated under the NHS, will the Prime Minister tell the House whether under his Government patients, and in particular young children, will be denied the medication and treatment that they need?

The Prime Minister: I will tell the hon. Gentleman that the district health authority in his area has substantially more cash than in previous years, that the treatment of in-patients and out-patients has risen and that the quantum and quality of health treatment rises yearly.

Mr. John Browne: Does my right hon. Friend accept that one group of our citizens who should not be subjected to the community charge are British hostages in the Gulf? Will he agree to issue an advice to that effect, or even a directive under primary legislation, so that uncertainty, anxiety and anger can be removed?

The Prime Minister: I think that my hon. Friend will find that we have already sent such advice to local authorities.

Q6. **Mr. Vaz:** To ask the Prime Minister if he will list his official engagements for Tuesday 4 December.

The Prime Minister: I refer the hon. Gentleman to the reply that I gave some moments ago.

Mr. Vaz: Will the Prime Minister reflect on the case of my constituent, John Hall, who is dying of leukaemia, a disease that he contracted while working on Christmas Island? Will the right hon. Gentleman, as one of the first acts of his new Administration, reverse the Government's policy and in compassion, humanity and justice, provide John Hall and the other nuclear test veterans with the compensation that the House and the country believe that they so richly deserve?

The Prime Minister: I will examine the particular case to which the hon. Gentleman refers. I am not familiar with the details of his constituent. I will discuss it and examine it.

Mrs. Edwina Currie: Does my right hon. Friend the Prime Minister agree that today's performance has demonstrated that the two main parties have both the leaders and the policies for the next general election—for us to win, and for them to lose?

The Prime Minister: I am grateful to my hon. Friend It is not for me to reply for the right hon. Member for Islwyn (Mr. Kinnock), but if he ever needs a campaign team, I will lend him mine.

Mr. Rees: The Prime Minister will recall that the Queen's Speech promised that a Bill would be introduced to give our courts jurisdiction to try alleged war criminals. Does that promise still stand?

The Prime Minister: That Bill is in the Government's programme and it will be presented to the House. There will be suggested amendments that the House will want to examine.

Mr. Rhodes James: Those of us of a particular generation well remember when the Russian and British people were together, when Mrs. Churchill led the campaign to support the Russian people. In the present circumstances, will not only the British Government but the British people respond as they did during the last war?

The Prime Minister: There is considerable concern in this country about the difficulties faced by the Russian people and by President Gorbachev. There is also great warmth in this country for the changes brought about in the Soviet Union under Mr. Gorbachev's presidency. That feeling exists not only in the House but throughout the European Community, and I have no doubt that the situation in Russia will be one of many matters discussed at forthcoming Community meetings.

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

6 March 1991

Dear Sir Henry de Waal

WAR CRIMES BILL

As you know, the Bill was considered by the Legislation Committee on 5 March. The Committee approved introduction in the House of Commons. I should be grateful if you would arrange for notice of presentation to be Tabled **today** in readiness for the Bill's introduction and publication tomorrow, Thursday 7 March. Introduction of the Bill tomorrow will, of course, have to wait until proceedings on the Business Question have been completed.

The Bill should be presented by Mr Secretary Baker, supported by:

The Prime Minister
Mr Secretary Hurd
Mr Secretary King
Mr Secretary Brooke
Mr Secretary Hunt
Mr Secretary Lang
Mr John Patten

I understand that although there will not be a Lobby Conference or a press briefing at the time of publication, a press notice will be issued. I should be grateful if you would arrange for 150 copies of the Bill, addressed to the Home Secretary, to be delivered to the Vote Office tomorrow morning, Thursday 7 March, ready for collection, if possible, at 8.30 am.

I am sending copies of this letter to ~~Dominic Morris~~ (Prime Minister's Office), Joan Bailey (Cabinet Office), Tim Sutton (Lord President's Office), Murdo MacLean (Chief Whips Office, Commons) and Ralph Hulme (Chief Whips Office, Lords).

Yours faithfully

B E KINNEY
Parliamentary Clerk

Sir Henry de Waal KCB QC
First Parliamentary Counsel

PM 9 1
06 08

CONFIDENTIAL

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

21 February 1991

Dear Gillian

WAR CRIMES BILL: LIVE TV EVIDENCE IN SCOTLAND

The Prime Minister was most grateful for Lord Waddington's report of the HS Committee meeting of 19 February, the minutes of which he has also seen. The Prime Minister has noted that colleagues had a range of views on the issue of live television evidence in Scotland. He is firmly of the view that the Lord Chancellor should not suggest, still less press, the case for an amendment in his negotiations with Lord Bridge. If the latter raises the matter, the Lord Chancellor could simply remind him that any amendments will ultimately be decided on free votes in both Houses.

The Prime Minister understands that, subject to the resolution of the particular point of live TV evidence in Scotland, the Lord Chancellor is now ready to open the negotiations with Lord Bridge. The Prime Minister hopes that these can now begin forthwith.

I am copying this letter to the Private Secretaries to those present at the HS meeting on 19 February and to Sonia Phippard (Cabinet Office).

Yours ever
Dominic

DOMINIC MORRIS

Miss Gillian Kirton
Lord Privy Seal's Office

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PRIME MINISTER

WAR CRIMES BILL: LIVE TELEVISION EVIDENCE IN SCOTLAND

On Tuesday 19 February I chaired a meeting of HS Committee to consider the outstanding policy questions on the War Crimes Bill. I attach a copy of the minute of the meeting, which sets out the position reached.

The main outstanding issue is the question of handling the legislative provisions which will be necessary to allow evidence to be taken by live television link in Scottish cases. As you will see, there is no real doubt that this would be required to enable a successful prosecution to be brought, though it does not guarantee that prosecution would be either possible or successful. Our colleagues were divided on the approach to take. The Home Secretary and the Lord President argued that we should try and procure an amendment to the Bill giving the power and that such a power should be acceptable if accompanied by an undertaking by the Government to legislate for all cases at the first opportunity and assuming the passage of a further amendment rendering inadmissible identification evidence by live television links. The Lord Advocate and the Scottish Secretary felt that it was undesirable to abandon the position we have so far taken that special provision would not be made for taking evidence in war crimes trials. The Secretary of State for the Environment and the Secretary of State for Trade and Industry went further, arguing that insofar as the absence of provision for live television evidence in Scotland delayed or prevented trials there, it would be all to the good. The Lord Chancellor, who will be negotiating with Lord Bridge, made the point that, as with the other matters where he has been authorised to indicate that amendments would be acceptable to the Government, things will ultimately be decided on free votes in both Houses and that the Government need not take a firm position.

My own view is that, by reintroducing the Bill in its original form, the Government is doing precisely what it said it would, and is giving Parliament the chance to decide on whether and in what form this measure should reach the Statute Book. I do not think that we could reasonably be criticised either for failing to bring forward amendments about live television evidence in Scotland ourselves or for failing to encourage Lord Bridge to do so. I think that we have a quite defensible

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response to criticism in the argument which Douglas Hurd and I used at an earlier stage that it would be wrong to set up a novel evidential or procedural regime specifically for war crimes, backed up by a firm assurance that we will seek an early opportunity to introduce a general provision on live television evidence in Scotland. I should be glad to know whether you agree. The way will then be clear for the Lord Chancellor to carry forward his negotiations with Lord Bridge on a package of possible amendments.

I am copying this minute to Sir Robin Butler.

WADDINGTON

20 February 1991

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HS (91) 3rd Meeting COPY NO 79

CABINET

HOME AND SOCIAL AFFAIRS COMMITTEE

MINUTES of a Meeting held in
Conference Room A, Cabinet Office
on TUESDAY 19 FEBRUARY 1991 at 9.00am

PRESENT

The Rt Hon Lord Waddington QC
Lord Privy Seal (In the Chair)

The Rt Hon Lord Mackay of Clashfern
Lord Chancellor

The Rt Hon Kenneth Baker MP
Secretary of State for the
Home Department

The Rt Hon Michael Heseltine MP
Secretary of State for the
Environment

The Rt Hon Kenneth Clarke QC MP
Secretary of State for
Education and Science

The Rt Hon John MacGregor MP
Lord President of the Council

The Rt Hon Malcolm Rifkind QC MP
Secretary of State for Transport

The Rt Hon John Wakeham MP
Secretary of State for Energy

The Rt Hon Christopher Patten MP
Chancellor of the Duchy of
Lancaster

The Rt Hon David Hunt MP
Secretary of State for Wales

The Rt Hon Peter Lilley MP
Secretary of State for Trade
and Industry

The Rt Hon William Waldegrave MP
Secretary of State for Health

The Rt Hon Ian Lang MP
Secretary of State for Scotland

The Rt Hon David Mellor QC MP
Chief Secretary, Treasury

The Rt Hon Richard Ryder MP
Parliamentary Secretary
Treasury

The Rt Hon Lord Denham
Captain of the Gentlemen-at-Arms

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THE FOLLOWING WERE ALSO PRESENT

The Rt Hon Sir Patrick Mayhew QC MP
Attorney General

The Rt Hon Lord Fraser of Carmyllie QC
Lord Advocate

Mr Tristan Garel-Jones MP
Minister of State
Foreign and Commonwealth Office

The Hon Archibald Hamilton MP
Minister of State for the Armed Forces, Ministry of Defence

The Rt Hon Nicholas Scott MP
Minister of State
Department of Social Security

SECRETARIAT

Mr A M Russell
Mrs J M Bailey
Ms R McCool

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The Committee considered the Lord Privy Seal's letter of 14 February to the Home Secretary and the correspondence referred to in it.

THE LORD PRIVY SEAL said that it had been agreed that the War Crimes Bill should be reintroduced in its original form, providing a basis which would enable the Parliament Acts to be invoked if the Lords once again refused to pass it. The Government would not propose amendments to the Bill. Instead the Lord Chancellor would discuss with Lord Bridge a number of possible amendments which the latter might table, aimed at meeting the main points of concern expressed by the House of Lords and which might be acceptable to the Government, but to which the Government would not be committed. Eventual approval of such amendments would remain subject to a free vote in the Commons when the Bill returned there. The Committee had agreed in correspondence two amendments which would be acceptable: provisions expressly preserving the existing power of courts to stay proceedings where a lapse of time made it impossible to secure a fair trial; and provisions establishing the non-admissibility of a dock identification in war crimes trials by television link. It had also been agreed that assurances should be given that prosecution was not envisaged in circumstances where extradition of the alleged offender to the country where the offence is alleged to have been committed is possible;and that the Bill should not be widened in terms of geography and timescale.

The Committee -

Took note.

THE HOME SECRETARY said that the main outstanding issue on which agreement was required was the way in which provision should be made for live television evidence in Scotland. In his view it was essential that this should be available, since the war crimes case which seemed most likely to lead to the first prosecution would arise in Scotland. There seemed little doubt that the witnesses involved would be unwilling or unable to travel, and

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that live television evidence would be essential if prosecution was to be effective. In his view the Government should be prepared to contemplate a provision in the War Crimes Bill allowing live television evidence in war crimes trials in Scotland, with the important safeguard about dock identification already agreed, and subject to firm assurances that it was the Government's intention to legislate at the first suitable opportunity to introduce provisions for live television evidence of general applicability in Scotland. He had doubts about the alternative proposal of taking no action until a general provision could be introduced, on the grounds that this would introduce delay and possibly uncertainty. He therefore invited the Committee to agree that the Government's position should be that it would be acceptable for the package of proposals brought forward by Lord Bridge to include provisions for live television evidence in war crimes trials in Scotland.

In discussion the following main points were made:-

a. The Government had so far taken the high ground of principle that the provisions for taking evidence in war crimes trials should be the same as in all other trials in the United Kingdom. Repeated assurances to this effect had been given by the Home Secretary's predecessors. It would be highly undesirable to abandon that principle now. There could be particular criticism on the grounds that this was directed at securing the conviction of a single individual. On the other hand, it was argued that there need be no embarrassment for the Government since, on the approach envisaged, the amendment would be moved by Lord Bridge in association with other amendments, another of which would also touch on television evidence. It would be quite reasonable for the Government to respond by giving assurances of its intention to bring in a general provision for live television evidence in Scotland at the earliest opportunity, while leaving it to both Houses to decide, on free votes, whether the Bill should include a special provision for war crimes in the meantime.

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b. To take no action until a suitable vehicle was available for a general Scottish provision, most probably in 1991-92, would not necessarily mean loss of time. It was now some two and a half years since the witnesses likely to be relevant to the first Scottish case had been interviewed. Recent libel cases in Scotland had cast doubt on the willingness of the witnesses to give evidence. Once jurisdiction had been conferred on Scottish courts by the War Crimes Bill, the next stage would be to investigate whether those witnesses remained able and willing to give evidence, and on what basis. Funds to enable such investigation to proceed in advance of enactment of the Bill had not been available. Until such investigation had been undertaken it was impossible to say whether a prosecution would be possible, and the availability of live television evidence would not guarantee that it would.

c. It might be technically possible to arrange for the case in question to be prosecuted in England rather than in Scotland, so that live television evidence could be used without a delay. Such a procedure would, however, be exceptional and highly undesirable.

d. If provision for live television evidence in war crimes trials in Scotland were included in the proposals put forward by Lord Bridge, it would be important to guard against the possibility of the House of Commons accepting only those amendments which tended in the direction of making prosecution easier, and knocking out those which provided safeguards. The House of Lords could not be forced to accept such a position, since they were not required to agree to the Bill as further amended by the Commons. If they did not, recourse could be had to the Parliament Acts to achieve the enactment of the Bill in its original form.

e. It was arguable that the Government should not go out of its way to make prosecution in Scotland more likely or to accelerate the process. On this view it would be preferable for Lord Bridge's package to contain no provision for live television evidence in Scotland and for the Government to

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maintain the position that it had to await a legislative opportunity to introduce a general provision. On the other hand, there was a strong lobby in favour of the Bill in the House of Commons which would be seriously critical of anything which might be seen as a Government attempt to frustrate the objectives of the Bill.

THE LORD PRIVY SEAL, summing up this part of the discussion, said that the Committee had identified two choices: to encourage Lord Bridge to include in his package of amendments a provision introducing live television evidence in war crimes trials in Scotland, to which the Government would respond by indicating its intention to make a provision of more general applicability when there was a legislative opportunity; and to take no action at present, while making it clear as appropriate that the earliest available legislative opportunity would be taken to introduce a general provision in Scotland. If the former course were adopted, it would be on the understanding that there would be free votes in both Houses. Opinion in the Committee was divided on which of these courses should be followed, and he would report accordingly to the Prime Minister.

The Committee -

Took note, with approval, of the Lord Privy Seal's summing up of this part of their discussion.

THE HOME SECRETARY said that he had proposed an additional safeguard for war crimes defendants through a provision restricting the reporting of an application to the Crown Court by the defence to have the charges dismissed. The introduction of these reporting restrictions would bring the Bill into line with the precedent set for serious fraud cases in the Criminal Justice Act 1987 and with the provisions for child victims of sexual and violent offences in the Criminal Justice Bill at present before Parliament. He recognised that there had been criticism on the grounds that reporting restrictions under the 1987 Act went too wide, preventing reporting not only of the substance of cases but of the charges faced and the outcome. In his view it would be desirable to wait until there was more experience of the

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operation of the 1987 Act procedures and then, if appropriate, to modify them rather than introducing a variant of the 1987 Act procedures specifically for war crimes.

In discussion the following main points were made:-

f. It was generally accepted that the 1987 Act restrictions were a mistake, and to repeat them would be wrong. They had drawn strong criticism from the media and adopting them in this case was likely to add to hostility to the War Crimes Bill.

g. It was not necessary for the Government to adopt a firm position on the principle, since on the approach envisaged it would be a matter for Lord Bridge to decide whether or not to include reporting restrictions on these lines in his amendments, which would be subject to free votes.

h. The matter was not relevant to Scotland, which did not have a similar provision for applications for dismissal of charges. It would, however, be necessary to find an appropriate procedure in Scotland to enable judges to consider whether a case should go to trial, giving effect to the agreement on the power of courts to stay proceedings where it seemed impossible to secure a fair trial.

THE LORD PRIVY SEAL, summing up this part of the discussion, said that the Committee had agreed that the Government need not take a firm view on the acceptability of modifying reporting restrictions in the circumstances envisaged, and that it should be left to Lord Bridge to decide whether and on what basis to include proposals in his package of amendments.

The Committee -

Took note, with approval, of the Lord Privy Seal's summing up of this part of their discussion.

THE HOME SECRETARY said that he was now advised that one technical amendment would be required to the Bill. As a

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consequence of enabling the committal stage to be bypassed, the amendment was required to ensure that the Bill of indictment may be preferred without there having been committal proceedings. He was advised that it was highly desirable that this amendment should be made, though it was not essential, since a special application could be made in each case. This was not a matter to be included in the possible amendments for discussion with Lord Bridge, and would be appropriate for a Government amendment at a late stage.

THE LORD PRIVY SEAL, summing up a brief discussion, said that the Committee were very concerned to learn of a possible technical deficiency in the Bill, since the whole strategy of relying ultimately on the Parliament Acts would be vitiated if the Bill was not workable in its original unamended form. It was highly desirable on grounds of cost and timing that committal proceedings should be avoided, as originally envisaged. The Home Secretary should therefore circulate to the Committee further detailed advice on what the proposed technical amendment would involve, how it would be handled during the progress of the Bill and the implications of failure to make it if reliance on the Parliament Acts made that necessary.

The Committee -

Took note, with approval, of the Lord Privy Seal's summing up of this part of their discussion and invited the Home Secretary to proceed accordingly.

Cabinet Office
20 February 1991

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PRIME MINISTER

Yes. Very sensible

WAR CRIMES BILL: LIVE TV EVIDENCE IN SCOTLAND

Lord Waddington's minute to you reports the conclusions of the HS Committee he chaired on Tuesday on this issue.

You will see that the Home Secretary and Lord President are in favour of getting an amendment to allow live TV evidence in Scotland for War Crimes trials. Most of the rest of HS Committee are against. Lord Waddington and James Mackie take the sensible view that the Government does not need to take a firm position for or against. If Lord Bridge raises it in the negotiations with the Lord Chancellor, the latter can remind him simply that that would be one of the issues to be decided on a free vote in both Houses.

Content for me to minute out endorsing Lord Waddington's approach?

DOMINIC MORRIS
20 February 1991

c:\parly\war.eam

FROM THE PRIVATE SECRETARY

1. DM
2 Fls.

HOUSE OF LORDS,
LONDON SW1A 0PW

18 February 1991

Andrew Turnbull
Principal Private Secretary
10 Downing Street
LONDON
SW1A 2AA

Dear Andrew,

WAR CRIMES BILL

You copied to me your letter of 4 February to Colin Walters in which you referred to the intention that the Lord Chancellor should speak to Lord Bridge to discuss amendments which would satisfy the concerns raised in the Lords.

The Lord Chancellor is anxious to speak to Lord Bridge as soon as possible, but has been advised by officials here and in the Home Office that he should wait until the outstanding question of live television links for Scotland has been resolved.

I am copying this letter to Colin Walters (Home Office), Gillian Kirton (Lord Privy Seal's Office), Tim Sutton (Lord President's Office) and Murdo Maclean (Chief Whips Office).

Yours sincerely
Jenny Rowe

Miss J Rowe

FOREIGN POL: War Crimes pt 3

CONFIDENTIAL

CCPC

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

15 February 1991

Dear Lord Privy Seal,

WAR CRIMES BILL

I am grateful for your letter yesterday suggesting that we should discuss outstanding issues about the War Crimes Bill on Tuesday, 19 February. I agree that the outstanding issues are the three items listed on the second page of your letter.

On item 1, live television evidence in Scotland, my exchange of correspondence with the Lord Advocate will form the basis for discussion.

On item 2, reporting restrictions, I was grateful for colleagues' agreement in principle to including reporting restrictions on an application for dismissal of charges. I understand, and do not necessarily disagree with, the argument for reducing the scope of the offence at its margins. But I think it would be very awkward to abandon the 1987 precedent here without doing anything about the root of the complaint, or about its offshoot in Schedule 5 to the Criminal Justice Bill. There are a number of reforms of the law on reporting restrictions being pressed on us (not least those from the Calcutt Committee). They go in both directions and I would prefer to bring forward a balanced package than to give away a useful bargaining counter now. I hope colleagues could agree to follow the 1987 precedent again for war crimes. We can acknowledge the criticism, perhaps using Paddy's point about limited experience of section 11 as our reason for deferring a decision on the wider reform.

On item 3, technical amendments, you asked for a note on precisely what these were. One is a consequence of enabling committal stage to be bypassed: we need a technical amendment to ensure that the Bill of indictment may be preferred without there having been committal proceedings. The second was a Scottish point which I now understand the Lord Advocate does not wish to pursue.

I am copying this letter to the Prime Minister, Douglas Hurd, Tom King, members of LG and HS Committees and to Sir Robin Butler, First Parliamentary Counsel and First Scottish Parliamentary Counsel.

Yours sincerely,

Approved by the Secretary of State
and signed in his absence

The Rt Hon The Lord Waddington, QC
Lord Privy Seal
House of Lords
London SW1A 0PW

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FOR POL: WA Crimes.

Pt 3

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cc PM

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

14 February 1991

Dear Kenneth

WAR CRIMES BILL

In his minute of 20 December 1990 to the Prime Minister, John MacGregor proposed that details of the amendments to the War Crimes Bill which the Government would regard as acceptable should be handled in HS Committee and expressed the hope that it would be possible to settle the outstanding issues in correspondence. Subsequent correspondence comprises your letters of 31 December to me and of 6 February to Peter Fraser; Patrick Mayhew's letter of 17 January to you and James Mackay's letter of 29 January to you; and Peter Fraser's reply of 12 February to you. In that letter Peter Fraser indicates that he does not think the outstanding question on live television evidence in Scotland can be resolved in correspondence and proposes that the matter should be discussed in HS Committee. Arrangements have now been made for us to use the meeting already arranged on Tuesday 19 February for this purpose.

It may be helpful for me to summarise the position reached in correspondence and to list the outstanding issues which I suggest we should discuss next week.

We have agreed that it would be acceptable to have provisions expressly preserving the existing power of courts to stay proceedings where a lapse of time makes it impossible to secure a fair trial and establishing the non-admissibility of a dock identification in war crimes trials by television link. We have also agreed that we should adopt a policy of not prosecuting in circumstances where extradition of the alleged offender to the country where the offence is alleged to have been committed is possible, though we may need to reflect on how realistic such a policy is in current circumstances. We have decided not to support a concession which would widen the scope of the Bill in terms of geography and timescale.

The Rt Hon Kenneth Baker, MP

This leaves the following outstanding issues:-

1. Live television links in Scotland

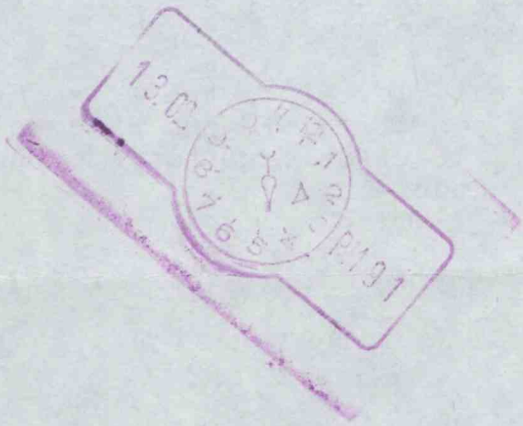
2. The extent to which there should be reporting restrictions on an application for dismissal of charges.

3. The technical amendments mentioned in your letter of 31 December. (It would be helpful to have a further note on precisely what these are and how they would be handled.)

Once these issues are settled, the way will be clear for James Mackay to discuss the matter in detail with Lord Bridge, and, subject to the progress of those discussions, the Bill would come to Legislation Committee early in March where handling details would be settled.

I am copying this letter to the Prime Minister, Douglas Hurd, Tom King, the members of LG and HS committees and to Sir Robin Butler, First Parliamentary Counsel and First Scottish Parliamentary Counsel.

WADDINGTON



PRIME MINISTER

Leave to HS

WAR CRIMES BILL:
LIVE TELEVISION EVIDENCE IN SCOTTISH WAR CRIMES TRIALS

You will see from the attached that the Home Secretary and the Lord Advocate are still at odds about how to handle this. The Lord Advocate takes the view either that it needs to be introduced generally in Scotland (and that would be outside the scope of the War Crimes Bill and would have to await a Scottish Parole Bill which has a tentative slot in next session's programme) or it should not be introduced at all, even though this might scupper one of the important potential war crimes trial cases. The Home Secretary's view is that there is a package of improvements to last year's Bill which James Mackay is discussing with Lord Bridge which strengthen the position of the defendants. Live television evidence, subject to safeguards, would be the quid pro quo for the other concessions. If Lord Bridge agreed the package and could sell it to the other Lords who objected to the original Bill, so be it. There would be a commitment to introduce live television evidence for all trials in Scotland (as exists in England) in due course.

Given their continuing disagreements, the matter is going to HS Committee next Tuesday.

Do you want to intervene in advance on either side of the argument, or leave it to colleagues on HS Committee to try to reach agreement on the way forward?

DOMINIC MORRIS
13 February 1991
c\warcrimes (kw)

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

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Switchboard 071-276 3000
Fax 071-276 6834

CONFIDENTIAL

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

12 February 1991

Dear Kenneth,

WAR CRIMES PROVISION FOR LIVE TELEVISION EVIDENCE FROM ABROAD IN SCOTTISH TRIALS

file with DM

Thank you for your letter of 6 February in reply to mine of 13 December. You ask for a reaction by 13 February.

When Douglas Hurd first made a statement on the Hetherington/Chalmers Report in July 1989 in answer to a question from Roy Hattersley as evidence in Scotland he stated that he accepted "the general principle that the Rt Hon Member suggested about not providing special procedures for the particular crimes described in the Report" (Commons Hansard 24 July 1989 Column 739). That line he set was followed by David Waddington when he opened the Second Reading debate on the War Crimes Bill (Commons Hansard 19 March 1990 Column 888 and 889). Then when I moved the New Clause in the Law Reform (Miscellaneous Provisions) (Scotland) Bill dealing with evidence from abroad through television links and video recordings I stated "Neither of these changes can, I consider, reasonably be regarded as representing the setting up of a novel evidential or procedural regime with possible war crimes in mind. It would indeed be wrong to set up a regime specifically for war crimes" (Lords Hansard 1 May 1990 Column 931). The Prime Minister - letter of 4 January from Mr Morris at No 10 - has said that he believes it is important to avoid any amendment introducing video evidence in Scotland which is tailored specifically to war crimes trials. I agree entirely and, as the Minister responsible in Scotland both for prosecution policy and the law of evidence, I consider that this must be the correct approach in principle for us to adopt. To legislate in the War Crimes Bill for procedures specifically designed to facilitate war crimes trials would I believe open us to severe and justifiable criticism. The suggestion I made to John Patten seems to me the only way out of the impasse although I understand why it leaves you uneasy.

I do not think we can usefully discuss this matter further in correspondence and I would suggest that arrangements should now be made for an early meeting of HS Committee so that

this and other issues arising in connection with war crimes can be settled.

I am copying this letter to the Prime Minister, James Mackay, Douglas Hurd, John MacGregor, David Waddington, Ian Lang, Patrick Mayhew, Archie Hamilton and Sir Robin Butler.

Yours ever,

Peter.

FRASER OF CARMYLLIE

FOR POL:
War Crimes
Pt 3

CONFIDENTIAL

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

6 February 1991

WAR CRIMES: LIVE TELEVISION EVIDENCE IN SCOTTISH WAR CRIMES TRIALS

I understand that John Patten spoke to you recently on the question of live television evidence in Scottish War Crimes trials.

I gather that you reiterated your anxiety about providing for live television evidence in Scottish war crimes trials, before the facility was generally available to the Scottish courts. That prompted the question whether a vehicle could be found for providing generally for live television evidence in the Scottish courts, so that war crimes trials did not stand alone, but you each concluded that scope and other considerations ruled out using either the War Crimes Bill or our current Criminal Justice Bill for this purpose. I understand that your suggestion was to do nothing on television evidence in the War Crimes Bill, but to put a general television evidence provision in the Scottish Parole Bill, planned for 1991/92. You pointed out to John Patten that this would not impede progress on the leading Scottish war crimes case, since the facility would be available to the court before the trial stage was reached.

I was naturally interested in this suggestion, though I have to say that I remain uneasy about it, even if we had a firm guarantee of your Bill's place in the programme. The Scots case is obviously the most prominent of those uncovered by the War Crimes Inquiry, and there is a widespread recognition that the availability of live television evidence will be crucial in bringing it to trial. It was clear from my recent meeting with the All Party Parliamentary War Crimes Group that they will watch our intentions closely in this respect. My primary concern must therefore be to find the strategy that stands the best chance of ensuring that the facility is available to you. I do not think, whatever we do, that it will be easy to persuade the Lords to accept television evidence in

The Rt Hon The Lord Fraser of Carmyllie QC
The Lord Advocate's Department
Fielden House
10 Great College Street
London SW1P 3SL

/2.

CONFIDENTIAL

Scottish war crimes trials - and we have, of course, no means of compelling them to do so. For this reason, it has seemed to me that James Mackay's suggestion of presenting television evidence as a quid pro quo for our other concessions, offers the best prospect of success. I am therefore worried at breaking the link between this issue and the concessions, so that we have effectively no bargaining counter to hand when we present it to Parliament.

I know you have been concerned that to provide television evidence for war crimes trials in Scotland before that facility is more generally available to the Scottish courts, could lead to allegations that we were going back on our earlier commitment not to create a separate evidential regime for War Crimes. But it seems to me that we are in a different situation from when that commitment was originally made. We have made it clear that we are committed to the principle of live television evidence being available in Scotland, just as it is already in England -indeed, I understand that a provision to this effect was inserted in your Scottish Law Reform legislation last Session, and only removed because of the exigencies of the Parliamentary programme. We can reaffirm our commitment to making the necessary general provision as soon as there is a suitable Parliamentary opportunity, and in these circumstances I do not believe it could reasonably be argued that we were changing the rules just to suit the needs of war crimes trials.

I hope, subject to any further thoughts that you or colleagues may have, that you will feel able to agree to the inclusion of a provision on television evidence in the package of amendments that the Lord Chancellor will be discussing with Lord Bridge. Time is moving on, and it would be helpful to include work on the package of amendments in time for James Mackay to approach Lord Bridge as soon as possible. May I therefore ask for any reactions to this letter by 13 February?

Copies of this letter go to the Prime Minister, James Mackay, Douglas Hurd, John MacGregor, David Waddington, Ian Laing, Patrick Mayhew, Archie Hamilton and Sir Robin Butler.

Subject cc master

FILE HK

C/PPS/B.11

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

4 February 1991

Dear Colin,

WAR CRIMES BILL

The Prime Minister discussed with Business Managers the timing of the introduction of this Bill. The Lord President said the earliest it could be sent to the House of Lords was 20 March, the anniversary of the defeat of the Bill in the last session. Concern was expressed that the conduct of Saddam Hussain could be drawn into the debate although this was irrelevant as legislation passed since the war gave sufficient jurisdiction. One possibility would be to delay the Bill as late as possible in the current session. The difficulty with this was that its supporters would start to agitate as soon as the anniversary was past.

Concluding the discussion, the Prime Minister said the Bill should be introduced into the Commons very close to the anniversary and should be got through the Commons before the Easter Recess.

The Lord President said the Lord Chancellor would be speaking to Lord Bridge to discuss an amendment which would satisfy the doubts which had been raised in the Lords. It was hoped that an agreement could be reached which would avoid the need for substantial debate in the Lords.

I am copying this letter to Jennie Rowe (Lord Chancellor's Office), Gillian Kirton (Lord Privy Seal's Office) Tim Sutton (Lord President's Office) and Murdo Maclean (Chief Whip's Office).

Yours sincerely
Andrew Turnbull

(ANDREW TURNBULL)

Colin Walters, Esq.,
Home office.

HK

LORD CHANCELLOR

HOUSE OF LORDS,
SW1A 0PW

CONFIDENTIAL

29 January 1991

CD 29/1

Dear Kenneth,

War Crimes Bill

Thank you for copying to me your letter dated 31st December to David Waddington about the proposed amendments to the War Crimes Bill.

You suggest a new amendment which is to be added to the package to be offered to Lord Bridge, namely a provision restricting the reporting of an application for dismissal. I have received a copy of the letter from Patrick Mayhew and I share his concerns about the restrictive nature of section 11 of the Criminal Justice Act 1987. I support a provision which would restrict the reporting of the details of an application for dismissal but would favour allowing the outcome of the application and a statement of the charges to be reported.

I am copying this letter to recipients of yours.

Yours ever,

James.

The Right Honourable
Kenneth Baker MP
Secretary of State
for the Home Department
Queen Anne's Gate
London SW1

29.01.

ATTORNEY GENERAL

9 BUCKINGHAM GATE

LONDON SW1E 6JP

071-828 1884

The Rt Hon. Kenneth Baker MP
Secretary of State for the Home Department
Queen Anne's Gate
London SW1

17 January 1991

Dear Kenneth:

CONFIDENTIAL

WAR CRIMES

Thank you for copying to me your letter of ~~21st~~ 18th December to David Waddington about the proposed amendments which might form the basis of an approach by James Mackay to Nigel Bridge, with a view to achieving some understanding with those who have hitherto opposed the Bill in the House of Lords.

I am content with the proposed substantive amendments subject to one point arising out of the suggested provision restricting reporting of an application to the Crown Court by the defence to have the charges dismissed.

Such a provision would be consistent with the arrangements in respect of serious fraud cases and I therefore support it in principle. Section 11 of the Criminal Justice Act 1987 has however given rise to substantial practical difficulties and been widely criticised by media interests. The main thrust of the criticism has been directed at the restrictions on reporting preparatory hearings (which have not been replicated in the War Crimes Bill) but there has also been criticism of the inability to report even the outcome of an application for discharge. I enclose a copy of a recent article by Jeremy Warner in the Financial Times, indicating the depth of feeling generated within journalistic circles by these restrictions. It does seem odd that, following an application for discharge, newspapers are unable to report the details of the charges on which the defendent is to be tried, even though they will inevitably become known to the jury.

Although this is a technical amendment, it seems likely that media interests will focus upon it at least to the extent of wishing to ensure that it is not quite as restrictive as section 11 of the Criminal Justice Act 1987. I do have some sympathy with their point of view. Although the press cannot report the substance of contested committal proceedings (in the absence of an order removing the ordinary restrictions), they are entitled to report the decision of the magistrates whether to commit.

ATTORNEY GENERAL

I understand that section 11 of the 1987 Act owes its wide terms to a belief that jurors might be adversely influenced by knowledge that the trial judge has ruled that there was sufficient evidence for a jury properly to convict; for my part, I am not impressed by that argument. I would therefore favour a provision of the nature you suggest but in in a form which meets legitimate criticism.

My officials have already been in touch with yours and their colleagues in the SFO. Although there is broad agreement that section 11 is far from perfect, it would have been preferable to gain some further experience of its operation - there have only been a handful of cases - before taking any decisions about amendment. I do not however see any option but to address the issue at this stage; otherwise, we are likely to be criticised for perpetuating an earlier mistake.

Copies of this letter go to recipients of yours.

Yours ever,

Derek

for POL : War Crimes PT3

CONFIDENTIAL

KIC

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

4 January 1991

WAR CRIMES BILL

The Prime Minister was grateful for the Lord President's minute of 20 December, and he is content with the Lord President's proposals for handling the reintroduction of the Bill.

The Prime Minister has noted the difficulties identified by the Lord Advocate about amendments introducing video evidence in Scotland. He believes it is important to avoid any amendment which is tailored specifically to War Crimes trials. If there is to be an amendment it would need to be of more general potential application. The Prime Minister agrees with the Lord President that HS Committee should consider carefully the details of any such amendments.

I am copying this letter to the Private Secretaries to the Lord Chancellor, the Foreign Secretary, the Lord Privy Seal, the Secretary of State for Defence, the Secretary of State for Scotland, the Attorney General, the Lord Advocate, Members of LG and HS Committees and to Sir Robin Butler.

DOMINIC MORRIS

Tim Sutton, Esq.,
Lord President's Office.

CONFIDENTIAL

10 DOWNING STREET

CF

A hold pending replies from other colleagues.

JR

CONFIDENTIAL

Prime Minister 2

QUEEN ANNE'S GATE LONDON SWIH 9AT

The Home Secretary's suggestion at X seems a sensible way forward.

31 December 1990

WAR CRIMES

Will request if required.

You have received a copy of John MacGregor's minute to the Prime Minister of 20 December, reporting the conclusions of the meeting of Ministers on 13 December. This recorded our view that the Bill should be modified by amendments in the Lords, rather than using the device of suggested amendments, and proposed that the final details of such amendments should be settled with HS colleagues under your chairmanship.

As John's minute indicated, we have now reached agreement on amendments in respect of a provision expressly preserving the existing power of courts to stay proceedings where lapse of time makes it impossible to secure a fair trial, and, secondly, a provision establishing the non-admissibility of dock identification in war crimes trials by live television link.

We had proposed to couple the latter with a provision introducing the availability of live television evidence in Scottish war crimes trials. John MacGregor noted the difficulties which Peter Fraser had raised about that in his letter to me of 13 December. But I hope on reflection that Peter can agree that we may be able to get round them. We have always been clear that the Government must not in this Bill expose itself to the criticism of willing the end - war crimes trials - without willing the means. The crucial role which live television evidence would play in the Gecas case is I think well known. And there is, as I understand it, an existing commitment, following the loss of the relevant provision from the Law Reform (Miscellaneous Provisions) Scotland Act 1990, to reintroduce a general provision for live television evidence in Scotland; this simply awaits a suitable legislative vehicle. I see an argument for presenting a provision in the War Crimes Bill as taking an early opportunity to implement that commitment so far as the scope of this Bill allows, with extension to other areas as quickly as possible. If Peter and other colleagues are persuaded that this line allows us to find a way around possible political awkwardness in such a provision, I see considerable value in recommending this to Lord Bridge as part and parcel of the dock identification concession.

The Rt Hon The Lord Waddington QC
Lord Privy Seal
Privy Council Office
Whitehall
London SW1

/2.

CONFIDENTIAL

You may recall that we had also had in mind a possible provision extending the scope of the Bill to meet the criticism that its restriction to Germany and German-occupied territories was over particular. Douglas Hurd and Archie Hamilton have difficulties with this, although Douglas kindly agreed to look at the point again. This he has now done, as reported in his minute to me of 19 December, and I have also had Archie Hamilton's letter of 17 December. In the light of their combined views, I shall obviously not press the point at this stage. If we come under pressure on the issue in the Lords, we may need to look at it again.

We have in addition a new amendment which, if you and colleagues agree, we might add to the package to be offered to Lord Bridge. Although it is to some extent technical, it would add further to the protection of war crimes defendants and could be presented as a concession. This is a provision restricting the reporting of an application to the Crown Court by the defence to have the charges dismissed. This is a valuable protection because of the by-passing of the committal stage in war crimes trials and the consequent loss of opportunity to argue against committal for trial. The introduction of reporting restrictions would bring the Bill into line with the precedent set for serious fraud cases in the Criminal Justice Act 1987 and with the provisions for child victims of sexual and violent offences in the Criminal Justice Bill.

If you and colleagues agree, I suggest that James Mackay be invited to approach Nigel Bridge with suggestions along these lines.

In addition to these substantive amendments, I believe there may be a need for a few minor technical changes to tidy up the Bill. My instinct is to treat these as separate from the package which we shall suggest to Lord Bridge, and move them as Government amendments in the Lords.

Copies of this letter go to the Prime Minister, James Mackay, Douglas Hurd, Patrick Mayhew, Ian Lang, Peter Fraser, Archie Hamilton, David Waddington and Sir Robin Butler, and other members of LG and HS Committees.

010

cc PM ?

JS/AG

Content But would
at suggested opposite about
Video evidence. f. 26/12

Prime Minister
Content with the Lord President's handling proposals?
Most of it looks very sensible. The only obvious difficulty is video evidence in Scotland. The Lords rejected this during the Courts + Legal Services Bill (excluding War Crimes from the provision of general application). It is counter to the spirit of the War Crimes Bill - which is not to change the law ad hominem - & maintenance amendments tailored to War Crimes trials now. Agree HS Committee be asked to consider very carefully before any amendment on video evidence were put forward? DM

PRIME MINISTER

WAR CRIMES BILL

I chaired a meeting of colleagues on Thursday 13 December to discuss the handling of the re-introduction of the War Crimes Bill, to which we made a commitment in the Queen's Speech.

To meet the requirements of the Parliament Acts, the Bill should not be passed by the Commons until a clear year after its Second Reading last Session. This means that it should not have its Third Reading in the Commons until 21 March 1991 at the earliest. Obviously we would wish to get it forward to the Lords as soon as possible thereafter. This timetable means that we are not under immediate pressure to re-introduce the Bill and, depending on how we handle it, it need not take up a good deal of Commons time before it goes to the Lords. But there is growing pressure for us to clarify our intentions and this minute discusses the key points.

As you know, the Bill should go forward to the Lords in an identical form to last Session. We have the option of asking the Commons to agree 'suggested amendments' which would not be part of the Bill but which the Lords would have to consider as a package in addition to any other amendments they might wish to make. The clear view of colleagues with whom I discussed this last week is that there would be advantage in the Government making no proposals for suggested amendments in the Commons or in the Lords, and leaving it to Lord Bridge, who has taken a leading role in discussions of the Bill with the Lord Chancellor, to

propose amendments. He would be given drafting assistance with any amendments which the Government agree would be acceptable, but the Government would not be committed to them and their eventual approval would remain subject to a free vote in the Commons when the Bill returned there. The advantages which the Lord Chancellor and the Lord Privy Seal in particular see in this procedure are that it would avoid any implication that the Government thought there were deficiencies in the Bill, that it would avoid presenting the Lords with a 'take it or leave it' choice, and that it would leave the final decision with the Commons. I find these arguments persuasive, and propose that we should proceed in this way.

I acknowledge, of course, that to some extent the expectation has been raised that there will be suggested amendments but I do not think that need be a cause of significant embarrassment. What supporters of the Bill want is to see it re-introduced in good time, and on a basis which will allow the Commons to decide in due course, on a free vote, to invoke the Parliament Acts, if that should prove necessary. In introducing the Bill in the Commons the Home Secretary would say that there might very well be amendments in the Lords without giving a firm view on what might be acceptable to the Government, and would argue that the Commons would have a full opportunity to consider, on a free vote, any amendments which the Lords might suggest.

The Home Secretary's letter of 6 December to me summarised the position on matters which had been under consideration as possible suggested amendments, and you were content with them. (Your Private Secretary's letter of 10 December refers.) Since then, the Lord Advocate has drawn attention to particular difficulties about amendments introducing video evidence in Scotland, without which there would be at best a slim chance of a successful prosecution there. A final decision on the possibility of such amendments being incorporated within the Bill

in the Lords has not yet been taken. I propose that any further correspondence or discussion necessary to settle the details of the amendments we would regard as acceptable should be handled in HS Committee, under the chairmanship of the Lord Privy Seal, who will aim to settle the matter in correspondence shortly.

I am copying this minute to the Lord Chancellor, the Foreign Secretary, the Lord Privy Seal, the Secretary of State for Defence, the Secretary of State for Scotland, the Attorney General, the Lord Advocate, other members of LG and HS Committees and to Sir Robin Butler.

JM

20 December 1990

21.12.
PM 90

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

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CONFIDENTIAL

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

13 December 1990

Dear Kenneth,

WAR CRIMES BILL

In my letter of 27 November, I indicated that without the facility for adducing evidence by live television link in proceedings in Scotland, the prospects of being able to pursue a prosecution of Gecas were so slim as not to warrant further expenditure or effort. I explained that there is, in Scotland, no provision enabling the adducing of evidence by video link. Our attempt to introduce it last year by way of the Law Reform (Miscellaneous Provisions) (Scotland) Bill was abandoned.

I have considered with the Scottish draftsmen the kind of suggested amendments to the War Crimes Bill which might be necessary first to permit the use of video link evidence in Scottish proceedings and then to restrict it in the way proposed to meet Lord Bridge's suggestion that evidence of identification take place in the court itself. This proposal involves a principal amendment introducing a general reform of Scottish criminal evidence and procedure. That amendment would relate to war crimes only by way of the subsidiary amendment creating an exception to it for identification evidence in war crimes cases. It has rapidly emerged that a principal amendment of this kind would by reason of its generality be so remote from, and tenuously connected with, the scope and purpose of the Bill that severe and (so far as these amendments are concerned) probably fatal parliamentary difficulties can readily be predicted.

For completeness, I should confirm that I adhere to the view already taken by colleagues that politically it is simply not feasible to promote, as a suggested amendment, a Scottish provision enabling television evidence only in relation to war crimes, which would then of course be subject to the restriction designed to meet Lord Bridge's concerns.

Copies of this letter go to the Prime Minister, James Mackay, Douglas Hurd, John McGregor, Tom King, Patrick Mayhew, Ian Lang, David Waddington and Sir Robin Butler, and other members of LG and HS Committees.

Yours ever,

Peter.

FRASER OF CARMYLLIE

FOR POL: War Crimes, PT 3

CONFIDENTIAL

FILE SPW

cc PU.

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

10 December 1990

Dear Peter.

WAR CRIMES BILL

The Prime Minister has seen a copy of the Home Secretary's letter of 6 December to the Lord President. He has confirmed his agreement that the Government should go ahead with the Bill and to the idea of an amendment preserving courts' existing powers to dismiss a case where it had doubts about the fairness of proceedings, particularly because of the lapse of time. He also agrees that we should not pursue an amendment on extradition. He shares the Home Secretary's unease about the Lord Chancellor's idea of introducing the proposed amendments in the Lords rather than by the suggested amendments procedure in the Commons.

I am copying this letter to the Tim Sutton (Lord President's Office), Jenny Rowe (Lord Chancellor's Department), Stephen Wall (Foreign and Commonwealth Office), Simon Webb (Ministry of Defence), Juliet Wheldon (Law Officers' Department), Jim Gallagher (Scottish Office), Alan Maxwell (Lord Advocate's Department), Gillian Kirton (Lord Privy Seal's Office), Sonia Phippard (Cabinet Office) and to the Private Secretaries to other members of L and H Committees.

Yours ever,

(C. D. POWELL)

Peter Storr, Esq.,
Home Office.

CONFIDENTIAL

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

CONFIDENTIAL

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

7 December 1990

Dear Home Secretary

WAR CRIMES BILL

David Waddington sent Malcolm Rifkind a copy of his letter of 7 November to John MacGregor about concessions which might be offered by way of the "suggested amendments" procedure in order to improve the Bill's prospects of passage through the House of Lords.

I recognise the very real difficulties and share David's doubts as to whether the concessions which have been identified will be sufficient to sway opinion in the House of Lords. His first option might, I fear, be used by the courts as a pretext to dismiss any war crimes case brought before them; and may set an undesirable precedent for overly explicit Parliamentary drafting. The second concession will certainly have the advantage of deflecting the selectivity objection directed against the original Bill, notably by Quintin Hailsham, but I recognise the force of the concern expressed by Douglas Hurd and Archie Hamilton that the effect of such an amendment is uncertain. My preference in respect of the third concession would be for an announcement to be made on reintroduction about recourse to extradition whenever possible instead of a suggested amendment to the Bill.

I have no difficulty with the proposal to continue to resist any moves to restore committal proceedings for war crimes trials in England and Wales. The retention of provisions for live television evidence in England and Wales does however create a substantial problem to the extent that similar provisions may not be available in any Scottish war crimes trial. This problem has been discussed in James Mackay's letter of 15 November and the response of 27 November from Peter Fraser (who has policy responsibility for the law of evidence in Scotland, as well as his independent functions in respect of prosecutions).

RECEIVED BY
10 DEC 1990
PRIVATE SECRETARY

When the way forward is clearer, we shall again have to address the question of the significant costs which war crimes prosecutions will generate for a number of criminal justice agencies.

I am sending copies of this letter to John MacGregor, Douglas Hurd, Tom King, James Mackay, Peter Fraser, Patrick Mayhew and Sir Robin Butler.

Yours Sincerely

J A Callaghan

for **IAN LANG**

(Approved by The Minister & signed in his absence)

EML01207.120

(2) cif/c

CONFIDENTIAL

Prime Minister

You will want to keep abreast of this.

CDP 7/Ai

Thank you. f.

QUEEN ANNE'S GATE LONDON SW1H 9AT

6 December 1990

Dear Lord President,

WAR CRIMES BILL

David Waddington wrote to you on 7 November about possible "suggested amendments" to smooth the passage of the War Crimes Bill. I am grateful for colleagues' helpful reactions to David's proposals.

Yes

Before seeking agreement to the final form of our concessions, I thought it right to confirm that colleagues remain committed to the principle of going ahead with the Bill. Although I have always recognised the strength of the arguments against legislating on this subject, my personal view, expressed by my support of the Bill at Second Reading, is that we were right to go ahead. Even had that not been my view, however, I believe that a change of mind by the Government at this stage would be very difficult to defend. The decision to reintroduce the Bill, announced by Geoffrey Howe back in the summer, was confirmed in The Queen's Speech only a few weeks ago. In making that decision we took account of the overwhelming support that had been shown in the Commons, both when the principle of legislating was first debated and during the passage of the Bill last session. Withdrawing now would, I think, be difficult to defend, and would be certain to occasion considerable criticism both in the Commons and outside. I noticed that the Prime Minister confirmed our re-introduction of the Bill at Question Time on Thursday.

A material consideration in deciding on the Bill's future is the question of how far we can ensure its satisfactory passage through the House of Lords. I should like, therefore, to summarise where I believe we now stand on the issue of possible concessions.

Yes.

Colleagues gave broad support to the idea of an amendment explicitly preserving courts' existing powers to dismiss a case where it had doubts about the fairness of proceedings, particularly because of the lapse of time. I welcome this, since I believe that it will be an important sign that the Government has taken seriously some of the objections which were voiced last time.

The Attorney General's comments on how we might signal the point that extradition remains the preferred route for bringing alleged war criminals to justice must also, I think, be conclusive on the handling of the issue of extradition during the Bill's passage. We shall not, therefore, pursue an amendment on extradition, but I would

The Rt Hon John MacGregor, OBE., MP.
Lord President of the Council
Privy Council Office
WHITEHALL, S.W.1.

CONFIDENTIAL

/cont...

welcome the Attorney's further thoughts on how a statement in response to a question might best be tailored to contribute to our objective of appearing to recognise the concerns of the Bill's critics.

Douglas Hurd and Archie Hamilton have difficulties with the proposal for a suggested amendment on extending the scope of the Bill. This was one of our small range of possible concessions. In practice, the chances of Japanese war criminals having holed up here do seem remote. I am, however, impressed by Douglas's argument that opening the way to proceedings in this country over international conflicts in which the United Kingdom had no concern does seem to go too wide. Given that colleagues principally concerned do feel that a concession here could create problems for them, and that I could not argue that this particular concession is likely to be crucial to opinion in the Lords, I am prepared to let this one drop, though it might get quite a strong amount of support in the Commons.

It is easier to sacrifice the possible concession on scope because James Mackay, in his letter of 15 November, has suggested a concession on televised identification evidence which is more central to the concerns expressed in the House of Lords and is fully acceptable on its merits. I am very glad to add the Lord Chancellor's proposition to our proposals. While some of those objecting to live television evidence in war crimes trials will not be satisfied by the exclusion of dock identification evidence, the concession proposed meets the legitimate criticisms. It may also enable us to achieve consistent use of television evidence in Scotland as well as in England and Wales.

I am more uneasy, however, about James Mackay's idea of introducing our amendments in the Lords rather than by the suggested amendments procedure in the Commons. I think it would put Ministers in a very awkward position in the Commons if we did not give the Bill's supporters in that House the chance to satisfy themselves that our proposals do not affect the underlying objectives of the measure. As I see it, we are committed to considering the suggested amendments procedure, at least as a first option, by the terms of Geoffrey Howe's announcement of the Bill's reintroduction on 21 June. Subject to colleagues' views, I hope we can agree to use the suggested amendments arrangement which is precedented for this kind of inter-House problem. Without it, Committee and Report Stages of the Bill in the Commons would be very circumscribed.

The Bill is due for consideration at L Committee on 18 December. The paper which I shall circulate for that occasion will propose re-introduction of the Bill as soon as possible, coupled with the publication of a series of suggested amendments dealing with the courts' discretion to ensure fair trials, the admissibility of live television evidence (and video recorded evidence) in Scottish war crimes trials, and the non-admissibility of dock identification by live television link in any war crimes trials, keeping an extension of scope in play in the Commons handling.

/cont.....

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Copies of this letter go to the Prime Minister, James Mackay, Douglas Hurd, Tom King, Patrick Mayhew, Ian Lang, Peter Fraser, David Waddington and Sir Robin Butler, and other members of L and H Committees.

Yours sincerely,

Peter Imm

APPROVED BY THE HOME SECRETARY
AND SIGNED IN HIS ABSENCE

6 December 1990

CONFIDENTIAL

07.12. Kl 1130

ATTORNEY GENERAL

9 BUCKINGHAM GATE
LONDON SW1E 6JP

071-828 1884

The Rt Hon David Waddington QC MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
London SW1

27 November 1990

Dear David:

Thank you for copying to me your letter of 7th November 1990 outlining the manner in which the "suggested amendments" procedure might be invoked to improve the prospect of securing the agreement of the House of Lords to the War Crimes Bill.

I have seen James Mackay's response, with which I agree. The strength of feeling displayed by the legal profession, the judges and others in the House of Lords has impressed me. I therefore share your judgment that some concessions are necessary.

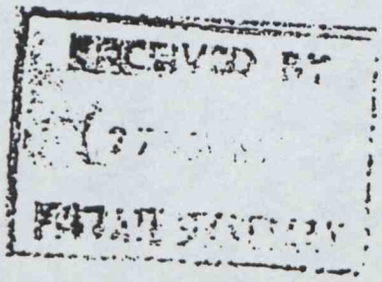
I think your proposals represent the best which can be devised in the circumstances. I deal with them according to the lettering adopted in paragraph 2 of your letter to John MacGregor.

(a) **A provision in the Bill dealing with the fairness of the trial procedures**

I am content, and have no further comment.

(b) **Extending the scope of the Bill to war crimes committed anywhere in the world up to 1957**

I am content, and have no further comment.



(c) **Adopting a policy of no prosecution where extradition is available**

I believe your reasoning is sound, and that it would be right to decline to prosecute in circumstances where extradition of the alleged offender to the country where the offence is alleged to have been committed is possible. My comment is as follows:

(i) The availability of extradition arrangements is a consideration which I could and should take into account when deciding whether to consent.

(ii) I would not be inclined to volunteer any commitment to take that one particular consideration into account.

(iii) If there is to be such an indication, it would come much better as a response to an inquiry as to whether that would be one of the factors that the Attorney General would take into account.

(iv) So far as the statutory provision is concerned, while Parliament is entitled when conferring a discretion on the Attorney General also to qualify it, I would not wish to do so.

Two concluding points. I agree that we should not espouse the suggested amendments which would restore committal proceedings for war crimes and abandon the proposal for live television. I agree that we should carefully consider the proposal by Lord Bridge to prohibit dock identifications other than by witnesses attending court in person; he views this as a possible quid pro quo to secure acceptance of live television links in Scotland.

ATTORNEY GENERAL

I am consulting the Director of Public Prosecutions as to the likely practical consequences.

Copies of this letter go to Douglas Hurd, Tom King, Malcolm Rifkind, John MacGregor, James Mackay, Peter Fraser and Robin Butler.

A1f

17

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL
Telephone: Direct Line 071-276 6810
Switchboard 071-276 3000
Fax 071-276 6834

CONFIDENTIAL

The Right Honourable David Waddington QC MP
Secretary of State for the Home Department
50 Queen Anne's Gate
LONDON
SW1H 9AT

27 November 1990

Dear David,

WAR CRIMES BILL

I thank you for sending me a copy of your letter of 7 November to the Lord President seeking comments and suggestions on the amendments you are proposing to improve the passage of the War Crimes Bill through the House of Lords. I have also seen a copy of James Mackay's letter of 15 November.

I can confirm that without the facility for adducing evidence of witnesses from abroad by live television links I consider the prospects of being able to bring proceedings in Scotland in the Gecas case so slim that I doubt if any significant further expenditure or effort would be warranted. If the Bill is passed in its present form I would instruct an immediate preliminary inquiry to ascertain what witnesses might be prepared to travel to Scotland. However, on the basis of what is contained in Part 2 of the Hetherington/Chalmers Report, the majority of the eye witnesses would appear to be either unable or unwilling to attend personally in this country to give evidence at Court.

As you will recall, it was decided last year during the passage of the War Crimes Bill that a provision similar to Section 32 of the Criminal Justice Act 1988 extending live television links to Scotland would require to be promoted separately in the Law Reform (Miscellaneous provisions) (Scotland) Bill. While this proposal was accepted by the House of Lords, it was amended by their Lordships specifically to exclude the procedure in relation to War Crimes trials. Subsequently, this amended provision was lost when the Bill ran into time-tabling difficulties and there is no vehicle in the current session in which to re-introduce such a provision in Scotland. If this provision were to be one of the 'Shadow' amendments to the War Crimes Bill itself, I trust it is appreciated that even as a single new clause it would necessarily be a lengthy one.

James Mackay's suggestion of accepting Lord Bridge's proposal which would render visual identification evidence inadmissible unless given by a witness present in court as a *quid pro quo* for allowing a suggested amendment to go forward allowing the use of live television

/

links in War Crimes trials in Scotland might be attractive so long as it was clear that the restriction on identification applied only to War Crimes trials. Such a limitation more generally applied would in a Scottish context cause very considerable problems. Subject to that I agree it would be worthwhile pursuing an arrangement on the lines suggested by James Mackay.

I am copying this letter to John McGregor, James Mackay, Douglas Hurd, Tom King, Malcolm Rifkind, Patrick Mayhew, John Belstead and Sir Robin Butler.

Yours ever,

Peter.

FRASER OF CARMYLLIE

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1A 2HB

Telephone 071 21 82216 (Direct Dialling)
071 21 89000 (Switchboard)

MINISTER OF STATE FOR
THE ARMED FORCES

D/MIN(AF)/AH/1/5/1

23rd November 1990

Dear David

You sent Tom King a copy of your letter of 7 November to John MacGregor concerning possible amendments to the War Crimes Bill. I have been asked to reply.

While generally content with the suggested concessions, we remain unhappy over the possible consequences of offering to widen the scope of the Bill in terms of geography and timescale. The amendment would, as you say, remove the charge that the Bill was 'ad hominem'. However, widening its scope to make a more general statement over war crimes could call into question the Government's motives, if the only action to be taken was against those men the Bill was originally intended to cover.

We cannot know what accusations such a broadened bill might encourage. Even if none turns out to be of substance or to be covered by the Bill, much work will ensue and feelings will be stirred that we may not be able to satisfy. This amendment will almost certainly increase pressure on the Government to pursue Japanese war criminals and to take this further with the Japanese Government. It will also increase the pressure on us to investigate and perhaps bring to trial British Servicemen who are accused of committing war crimes not only during the Second World War but since then.

While such a concession removes problems over the definition of 'German occupied territory', it could lead to pressure in the Commons to widen the Bill to cover crimes against humanity. It could, in this context, (unless the restriction before 1939 remains) lead to our being drawn into the complexities of pre-war Nazi crimes and thus into further charges of retrospectivity, dealing with a period not covered by the codification of Nuremberg.

RECEIVED BY
27 NOV 1990
PRIVATE SECRETARY

I am therefore particularly concerned that this concession contains real dangers and has considerable potential to store up difficulties for the future, while still failing to meet the Lords' concern for fair trials. I doubt therefore that they will be pursuaded by this concession and I strongly recommend that it should not be offered.

I am copying this letter to John MacGregor, Douglas Hurd, Malcolm Rifkind, Patrick Mayhew, James MaKay, Peter Fraser and Robin Butler.

Yours ever

Archie

ARCHIE HAMILTON

The Rt Hon David Waddington QC MP
The Home Office

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

19 November 1990

WAR CRIMES BILL

I have seen James Mackay's letter to you of 15 November.

In this instance I believe he is clearly the person best placed to assess the specific legal objections to the Bill made in the Lords last session, since these largely came from the Law Lords. I therefore strongly endorse what he says about possible amendments to the Bill which would ease its passage in this House. I would only add that I believe that feelings throughout many parts of the House still run strongly against the Bill; but that there is a real chance that, if the Law Lords were to give a lead, the rest of the House would accept an amended Bill.

I therefore wonder whether you would feel able to ask James to pursue matters with the Law Lords along the lines he proposes, based on the approach which Lord Bridge of Harwich has already made to him. If he would agree to do so, I think problems in the Lords might be solved, and we should secure a better Bill by agreement. This must be preferable to pushing this controversial measure through under the Parliament Acts.

Apart from that, I believe we must address the problem of video evidence and television links in Scotland. Not to do so would be a glaring omission, and would be given considerable publicity by the debate in this House, I am sure.

On handling, I feel there is much in what James suggests, though the uncertainty of the operation of the Parliament Acts means that we must give careful thought to tactics. Once we have agreed the policy of what amendments will be supported by the Government when the Bill is re-introduced, I should be grateful for an early meeting, to include the Business Managers and First Parliamentary Counsel, to consider how best to secure passage of the Bill.

I am copying this to recipients of James' letter.

Yours sincerely

BELSTEAD

The Rt Hon David Waddington, QC, MP

FROM THE RIGHT HONOURABLE ~~THE~~ LORD MACKAY OF CLASHFERN

LORD CHANCELLOR

HOUSE OF LORDS.
LONDON SW1A 0PW

15 November 1990

CONFIDENTIAL
The Right Honourable
David Waddington QC MP
Secretary of State for the
Home Department
50 Queen Anne's Gate
LONDON
SW1H 9AT

Our Ref: LE70/92/2

Dear David,

WAR CRIMES BILL

Thank you for sending me a copy of your letter of 7 November to the Lord President seeking comments and suggestions on the modifications you are proposing to make to the War Crimes Bill.

As you have make clear it is indeed difficult to make concessions which would significantly affect opinion in the Lords without endangering the Bill's objective. The three proposals outlined in your letter go some considerable way to meet the deeply held feelings expressed in the Lords. We shall, however, need to pay particular attention to the detailed working-up of these proposals.

I have a particular departmental interest in the suggestion that the Bill should contain a specific provision making plain that it leaves unaffected the existing discretion of a trial judge to dismiss a case if the interests of justice so require. I believe such a provision would be of value to the judiciary. Without it a judge might well be unfairly criticised for overriding the fairly implied will of Parliament if he dismissed a case in which he considered lapse of time made a fair trial impossible. However, not only will we need to pay close attention to the drafting so as to ensure that it remains neutral in its effect but we will need to consider how the judge is to gain a comprehensive picture of the whole case without the benefit of committal proceedings.

I am content with your proposals on extradition and scope. But I remain concerned about the lack of consistency between Scotland and England in respect of the provisions for live television evidence and

video recorded evidence taken on commission abroad. I do not believe we can leave the position in Scotland as it is at the moment. It seems clear that without such evidence being possible in Scotland there is little prospect of bringing proceedings in the Gecas case. And it would clearly be inappropriate for such cases to be heard in England rather than Scotland to take the benefit of a power that Parliament had denied to Scotland.

My concern is heightened by Nigel Bridge's letter to me of 7 September. I believe that the key to securing Lords approval for the Bill may lie in satisfying Nigel Bridge that the provisions of the Bill do not impede the possibility of a fair trial in such cases. You will have seen that Nigel Bridge's proposals would not allow visual identification to be made on the basis of evidence taken by live video link or by video recorded evidence. His amendments would require visual identification to be admissible only if given by a witness present in court before the jury. I believe that we should consider accepting this amendment as a quid pro quo for securing extension of the provisions for the taking of live television evidence to Scotland.

I do not think we should underestimate the strength of feeling in the Lords on this subject. I believe that a further concession along the lines I have suggested above, taken with the three concessions you have already proposed, would go a significant way towards easing the Bill's passage through the Lords.

The question of handling of the Bill is obviously one for the business managers rather than me. However, it strikes me that rather than use the suggested amendments procedure something along the following lines might have tactical advantages. The Bill could be presented to the House of Commons on 19 March in its original state. Assuming it was then agreed with very little discussion in the Commons it would be sent to the Lords where, hopefully, it would receive a Second Reading. At that stage amendments giving effect to your proposals, and mine on evidence, provided prior agreement had been reached on the latter with Nigel Bridge, could be tabled and debated. If these proved acceptable to the Lords the Bill would then be returned to the Commons where they would have the choice of either passing the original Bill or accepting the Lords amendments. This would have the dual benefits of leaving the ultimate political decision until the end of the process and making the Scottish position more acceptable to the Commons.

I should be grateful for colleagues comments. I am copying this letter to John MacGregor, Douglas Hurd, Tom King, Malcolm Rifkind, Patrick Mayhew, Peter Fraser, Robin Butler and also to John Belstead so that he can consider my thoughts on how the matter should be handled in the Lords.

Yours ever,

James.

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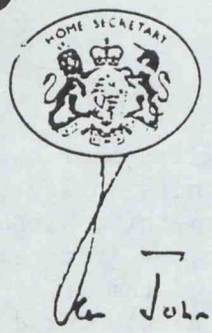

QUEEN ANNE'S GATE LONDON SWIH 9AT

7 November 1990

Dear John,

WAR CRIMES BILL

The Prime Minister's discussion with colleagues on 21 June, on the handling of the War Crimes Bill following its defeat in the Lords, concluded that the Bill should be reintroduced in the new Session. The meeting also concluded that we should seek means - whether by the "suggested amendments" procedure or otherwise - to improve the prospects of passage through the House of Lords. Your predecessor announced the decision on reintroduction the same day, together with our intention to look for modifications to the Bill's provisions.

2. Officials have explored this unpromising territory. It is very difficult to find concessions which would significantly affect opinion in the Lords without also undermining the effectiveness of the Bill's provisions to a degree which would cast doubt on the Government's seriousness of purpose in reintroducing it. Nevertheless, three realistic possibilities have emerged:

(a) a specific provision making plain that the Bill leaves unaffected the existing discretion of a trial judge to throw out a case if the interests of justice so require. This would be understood to include the courts' normal discretion to decide that the lapse of time made a fair trial impossible in the circumstances of a particular case. War crimes trials inherently involve a substantial lapse of time, however, and there was some concern in the Lords, particularly among the Law Lords, that courts might view the Bill as an express indication of Parliament's opinion on the fairness of possible trials, overriding their normal discretion. Clarification of this point is likely to be welcomed by many of the Bill's opponents (and its supporters); it is significant that this issue was the main one on which Lord Bridge focused in the set of his own "suggested amendments" which he sent recently to the Lord Chancellor. I recognise the difficulty of ensuring that such a provision remains neutral in its effect, especially given the recent propensity of the courts to focus on lapse of time in deciding to throw out proceedings. Nevertheless, I believe that this is a worthwhile option, and that we should now seek to draft a suitable provision;

The Rt Hon John MacGregor OBE MP
Lord President of the Council
Privy Council Office
Whitehall
London SW1

/over

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Nevertheless, I should like to signal that the provisions of the Bill will in practice only be used where extradition is wholly out of the question. If it proved possible to draft something without running into difficulties over purporting to fetter the Attorney's discretion, I would prefer a provision on the face of the Bill. If drafting problems prove insuperable we may have to settle for a commitment at the time of reintroduction. I see advantage in underlining that our legislation is not so much a novel criminal regime as specially favourable treatment arising from our reluctance to extradite to countries in whose system of justice we cannot feel confident.

3. Among the options I have reluctantly set aside are two which would undoubtedly have found favour with a large proportion of the Bill's opponents - the restoration of committal proceedings for war crimes trials in England and Wales and abandoning the provisions in England and Wales for live television evidence and video-recorded evidence taken on commission abroad. Further reflection has confirmed our original view that committal proceedings are wholly unsuitable for war crimes cases (as indeed they are for serious fraud) and I am convinced they could not be introduced without major anomaly and substantial jeopardy to the prospect of any successful prosecution. Rather similar considerations apply in respect of live television evidence and video-recorded evidence. Although it is impossible to say what attitude the courts may take to the admissibility of such evidence, the loss of these facilities could make a substantial difference to the outcome of trials. There would also be an anomaly in having live television evidence available in the generality of murder trials (as we shall shortly) but not in the case of war crimes trials. I recognise that there is now little chance of providing live television evidence in any Scottish war crimes trials, with all the implications that has for the likely success of any prosecutions there. But I do not believe we should compound those problems by depriving English prosecutors of the facility, if they find they need it. We must not expose ourselves to the criticism of introducing a Bill to achieve ends without providing reasonable means. I am therefore, with some regret, unable to recommend further consideration of these options.

4. I recognise that the three concessions suggested may not prove sufficient to achieve a decisive change in opinion in the House of Lords. A concession on committals or television evidence would be more attractive. But legislation to allow trials which omits arrangements necessary for any realistic prospect of prosecutions being brought would be open to criticism from all quarters. Such inconsistency would be exposed in debates in the Commons.

5. I should be grateful for colleagues' comments and suggestions. I am copying this letter to Douglas Hurd, Tom King, Malcolm Rifkind, Patrick Mayhew, James McKay, Peter Fraser and Robin Butler.

(b) opening the scope of the Bill to war crimes committed anywhere in the world, up to the coming into force of the Geneva Conventions Act 1957. This could take the sting out of the criticism of the Bill as discriminatory and 'ad hominem' and should be attractive to both opponents and supporters. It would also be an answer to the otherwise difficult question of what we should do if war criminals from other conflicts prior to the 1957 Act did unexpectedly turn up in this country, and it might have an impact on other more explicit formulations of opposition to the Bill. There are at least theoretical dangers in the unpredictability of the practical effect of such a broadening of scope. I understand that First Parliamentary Counsel is concerned about possible Parliamentary implications as regards scope. I would, however, like to offer up a concession on these lines if at all possible;

(c) signalling at the reintroduction of the Bill, that in deciding whether to authorise a prosecution in this country, the Attorney General or the Lord Advocate would have regard to the possibility of extradition to the territories in question. The normal arrangement for dealing with a serious crime allegedly committed abroad by someone now resident here is extradition. We contemplated legislation for trial in the UK only because we believed extradition to the Soviet Union out of the question. But circumstances in Eastern Europe have changed very rapidly since Hetherington and Chalmers prepared their report and, indeed, since the Bill was first introduced. By the time Royal Assent is secured and the provisions come into operation they could well have changed further. For example, it is conceivable that the Baltic States may acquire independence, be accepted as members of the Council of Europe, and thereby entitled to accede to the European Convention on extradition which would put them on the same basis as regards extradition from this country as France or Germany. In such circumstances prosecution in the UK would be inappropriate, even if the authorities in the States concerned were not in practice disposed to apply for extradition: we would not have contemplated legislation to give ourselves powers to try French or German war criminals here because the authorities in France or Germany were not disposed to apply for extradition.

The significance of the above argument is limited by our uncertainty about what will happen in the Soviet Union. Many of the cases identified by Hetherington and Chalmers are outside the Baltic States and the prospects of viable extradition arrangements with, say, the Ukraine, either as a new sovereign State or part of a Soviet Union in whose judicial standards we could have confidence, seem at best some way off.

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CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

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

16 July 1990

Dear Peter

WAR CRIMES

Thank you for your letter of 18 June seeking my authorisation for some limited expenditure on investigation work connected with the case of Mr Gecas.

2. I have some sympathy with your request. It would, as you say, be helpful to be in a position to assess whether a case could be mounted against Gecas and whether this could be done without the benefit of live TV links. But I do not think it would be right, as a matter of propriety, to authorise such expenditure.

3. You are aware from my letter of 27 February to David Waddington of the difficulty of my position. The considerations here are the same. And since I wrote it is arguable that the matter has become more rather than less contentious. The Bill has been lost decisively in the Lords. It is to be introduced again next Session, but its precise form remains uncertain. There must be considerable doubts about Parliament's willingness to approve the expenditure. These will remain until decisions are taken on the form and manner of the Bill's re-introduction to Parliament, and we have seen the reaction of both Houses to the Bill.

4. In the circumstances I do not think it would be proper to draw on existing voted provision for this purpose, either from your non-cash limited Vote (whose Ambit seems to make it particularly inappropriate) or from your cash limited Vote that is intended to cover your administrative costs. Nor would it be proper to use the Contingencies Fund.

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5. I trust you and other colleagues will accept that it would not be appropriate to authorise any expenditure on this matter until we are able to rely on new specific Parliamentary authority. I am sorry not to be able to more helpful on this.

6. I am copying this letter to the Prime Minister, Geoffrey Howe, James Mackay, Douglas Hurd, David Waddington, Patrick Mayhew, Tom King, John Wakeham, Kenneth Baker, John Belstead, Malcolm Rifkind, Tim Renton and Sir Robin Butler.

NORMAN LAMONT

FOREIGN POLICY: Iran Crisis Pt 3

TJS / sh

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

22 June 1990

Dear Colin,

22/6

WAR CRIMES BILL

I enclose for the record the final version of the announcement of the Government's decision. As you know, the Lord President drew on this in Business Questions yesterday to make known the Government's decision.

I am copying this letter to Charles Powell (No 10), Paul Stockton (Lord Chancellor's Office), Stephen Wall (Foreign and Commonwealth Office), Gillian Kirton (Lord Privy Seal's Office), Simon Webb (Ministry of Defence), Jim Gallagher (Scottish Office), Stephen Williams (Welsh Office), John Neilson (Department of Energy), Robert Canniff (Chancellor of the Duchy of Lancaster's Office), Juliet Wheldon (Law Officers' Department), Alan Maxwell (Lord Advocate's Department), Murdo Maclean (No 12), Douglas Slater (House of Lords), and Sonia Phippard and Muir Russell (Cabinet Office).

T J SUTTON
Principal Private Secretary

Colin Walters Esq
PPS / Home Secretary

TJS / sh

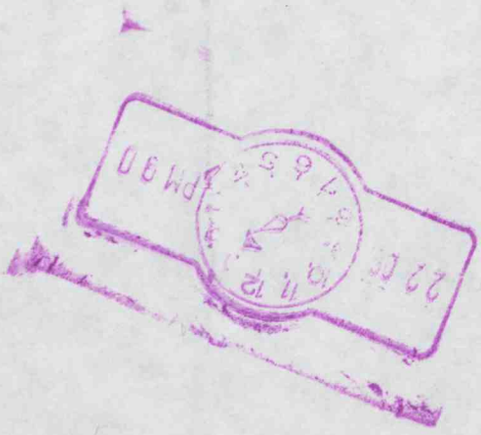
WAR CRIMES - LINE TO TAKE

Having considered all the implications of the debates and votes on this subject in both Houses including the Lords vote on 4 June, the Government has decided that the War Crimes Bill should be reintroduced in the next Session.

The Government will be seeking, whether by way of "suggested amendments" or otherwise, to ensure that the Bill next Session may secure the support of both Houses.

The view of the House of Commons has been clearly expressed already.

Not clear that a further debate in this Session would add anything.



CONFIDENTIAL

SUBJECT cc MASTER

julie

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

21 June 1990

Dear Colin,

WAR CRIMES BILL

The Prime Minister held a meeting with colleagues this morning to discuss how to proceed on the War Crimes Bill. Those present were the Lord President, the Lord Chancellor, the Home Secretary, the Foreign Secretary, the Lord Privy Seal, the Secretaries of State for Defence, Scotland, Wales and Energy, the Chancellor of the Duchy of Lancaster, the Attorney General, the Lord Advocate, the Chief Whip (Commons), the Chief Whip (Lords) and Sir Robin Butler.

The Home Secretary said there was no reason to revise the Government's view of the merits of the War Crimes Bill. The arguments for it remained as they were before the defeat in the House of Lords. It was the Government's duty to make it possible to bring people who were alleged to have committed crimes of the utmost barbarity to justice. He therefore believed that the Government should announce its intention to reintroduce the Bill in the next session of Parliament. If the Government failed to act, someone else would do so and the Government would be mocked for lack of resolution. He did not understand the argument that, by reintroducing the Bill, the Government would be creating an opportunity for the Opposition to attack the House of Lords. That opportunity already existed: and the Opposition would see any backing away from the Bill by the Government as strengthening their case against the Lords. In any case, he did not see what possible reason the Government could give for not reintroducing the Bill. The Home Secretary continued that he did not see any advantage in a further debate in the House of Commons before reaching a decision on this matter. The Opposition would simply treat a debate as an opportunity for a party political broadcast to argue for abolition of the House of Lords. In conclusion, he believed the Government would be discredited if it just sat back and did nothing.

The Lord President said that powerful arguments against the Bill had been adduced in the House of Lords. The Lords were entitled to ask the Commons to think again. He was anxious at the prospect of a Conservative Government appearing to set aside the views of the second chamber. His preference, therefore, would be not to go ahead. If the decision was, nevertheless, to reintroduce the Bill, he believed the right course would be to attach to it a set of "suggested amendments" which might make it

possible for the Lords to give the Bill their support. He also thought there was a case for a debate in the Commons before a decision to reintroduce the Bill, in order to give members a chance to reconsider the matter in the light of the Lords vote, as well as to identify the scope for compromise.

A number of issues were addressed in the subsequent discussion:

- on the question whether to reintroduce the Bill, it was noted that a substantial number of the Government's own supporters in the House of Commons were opposed to this. It would add to the impression that the party were divided. Some powerful arguments against the Bill had been made in the Lords: and the Government had also to take account of the quality of the opposition there, in particular the almost unanimous rejection of the Bill by the Law Lords. It was suggested that, on a non-manifesto issue, there was an obligation to proceed only if there was very wide measure of support. Against this, the great majority of those present felt that the Government could not be seen to back down, both on the merits of the issue and on the principle that it would be wrong to allow the Lords to override the clearly expressed will of the Commons in this matter. It was noted that such indications as there were of public opinion suggested strong support for the Bill. It was also a significant issue in a number of marginal constituencies.

- as to the likely reaction of the House of Lords, it was noted that not all the points made in the debate there had been well directed. Matters such as the likelihood of a fair trial were for the prosecuting authorities and the courts: the only purpose of the Bill was to provide jurisdiction. It was probable that, if the Bill was reintroduced unchanged, the House of Lords would seek to amend it sparingly but fundamentally. On the other hand, if the Government was prepared to follow the procedure of putting forward "suggested amendments" there was a chance that a compromise could be found. The prospects for this would be improved if the advice of the Law Lords could be sought in advance. Amendments might need to cover, for instance, the question of live TV or video evidence. At the same time, it had to be recognised that amendments of this sort could in practice make any successful prosecution impossible.

- on the question of a further debate in the House of Commons, it was suggested that this would legitimise a decision by the Government to reintroduce the Bill and minimise disunity in the Party. Against this it was argued that a further debate would simply expose differences in the Government's ranks: and the whole exercise would have to be repeated when the Bill itself was given a second reading.

- on the subject of whipping arrangements, there was agreement that there should again be a free vote on the same basis as for the previous second reading.

The Prime Minister concluded that the Government should announce shortly its intention to reintroduce the War Crimes Bill in the next session of Parliament. The "suggested amendments" procedure should be used to improve the prospects of passage through the House of Lords, and the advice of the Law Lords on possible amendments should be sought discreetly. There was no need for a separate debate in the House of Commons before announcement of the decision to reintroduce the Bill. There would be a free vote on the Bill on the same basis as before.

I am copying this letter to Tim Sutton (Lord President's Office), Paul Stockton (Lord Chancellor's Office), Stephen Wall (Foreign and Commonwealth Office), Gillian Kirton (Lord Privy Seal's Office), Simon Webb (Ministry of Defence), Jim Gallagher (Scottish Office), Stephen Williams (Welsh Office), John Neilson (Department of Energy), Robert Canniff (Chancellor of the Duchy of Lancaster's Office), Juliet Wheldon (Law Officers' Department), Alan Maxwell (Lord Advocate's Department), Greg Shepherd (Government Whips, Commons), Douglas Slater (Government Whips, Lords) and Sonia Phippard (Cabinet Office).

Yours ever,

Charles

(CHARLES POWELL)

Colin Walters, Esq.,
Home Office.

SUBJECT cc MASTER CONFIDENTIAL

Cile MJ

cc PC

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

21 June 1990

Dear Colin,

WAR CRIMES BILL

The Prime Minister held a meeting with colleagues this morning to discuss how to proceed on the War Crimes Bill. Those present were the Lord President, the Lord Chancellor, the Home Secretary, the Foreign Secretary, the Lord Privy Seal, the Secretaries of State for Defence, Scotland, Wales and Energy, the Chancellor of the Duchy of Lancaster, the Attorney General, the Lord Advocate, the Chief Whip (Commons), the Chief Whip (Lords) and Sir Robin Butler.

Following discussion, the Prime Minister concluded that the Government should announce shortly its intention to reintroduce the War Crimes Bill in the next session of Parliament. The 'suggested amendments' procedure should be used to improve the prospects of passage through the House of Lords. There was no need for a separate debate in the House of Commons before announcement of the decision. There would be a free vote on the Bill on the same basis as before.

The Prime Minister subsequently reported these conclusions to Cabinet.

A fuller report of the discussion will follow.

I am copying this letter to Tim Sutton (Lord President's Office), Paul Stockton (Lord Chancellor's Office), Stephen Wall (Foreign and Commonwealth Office), Gillian Kirton (Lord Privy Seal's Office), Simon Webb (Ministry of Defence), Jim Gallagher (Scottish Office), Stephen Williams (Welsh Office), John Neilson (Department of Energy), Robert Canniff (Chancellor of the Duchy of Lancaster's Office), Juliet Wheldon (Law Officers' Department), Alan Maxwell (Lord Advocate's Department), Greg Shepherd (Government Whips, Commons), Douglas Slater (Government Whips, Lords) and Sonia Phippard (Cabinet Office).

Yours sincerely,

Charles Powell

Colin Walters Esq
Home Office

CONFIDENTIAL

PRIME MINISTER

WAR CRIMES BILL

You have a meeting before Cabinet tomorrow to discuss how to proceed on the War Crimes Bill.

We have had three contributions in advance of the meeting:

- the Home Secretary's paper. (You have already seen this). The Home Secretary argues that we should re-introduce the Bill next session and, if necessary, use the Parliament Act procedure to ensure its passage. This would signal the Government's acceptance that the will of the democratically-elected House should take priority on matters of conscience no less than on manifesto commitments. He points to the virtual certainty that, if the Government does not act in this way, there will be a Private Member's Bill. He opposes a further debate and free vote on whether to proceed with the Bill, on the grounds that the debate would not be about the Bill but about the position of the House of Lords.

- the Lord President's paper. The Lord President's preference would be to drop the Bill. He thinks it will lead to a major clash with the House of Lords and that it is wrong for the Conservative Party to precipitate such a clash. If it is nonetheless decided to go ahead, he thinks we should consider a package of suggested amendments to make it more attractive to the House of Lords. In particular, the compromise might focus on the admissibility of video-recorded or live TV evidence (or both). (This is a particular concern to the Lords: but without it, the prospects of a successful prosecution are virtually nil.) He supports a free-standing debate in the Commons on the future of the Bill, to give MPs a chance to say whether they have

changed their minds as a result of the debate and vote in the Lords.

- the Chief Whip. The Chief Whip has told us orally that he favours a free-standing debate. His calculations are that the anti-vote on Government side has risen from 111 to 125: not a very significant change. But it would underline that the Government side's support for the Bill is markedly less than the Opposition's.

The points to be resolved are therefore:

- is there really any alternative to re-introducing the Bill, given that there will inevitably be a Private Member's Bill if the Government does not act?

- are there tactical advantages in having a free-standing debate first? Or will this just emphasise differences on the Government side and focus discussion on the position of the Lords?

- is there scope for amending the Bill to make it more palatable to the Lords? Would it get through even with amendments? Would the amendments so emasculate the Bill as to make it worthless?

CDP

C. D. POWELL

20 June 1990

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(slh)

LORD PRESIDENT OF THE COUNCIL

PRIME MINISTER

No motion appended.

Labour party would put down amendment in Cons Hofs

WAR CRIMES

1. I have seen David Waddington's paper prepared for your meeting on Thursday. There are a number of procedural, business management and policy points we need to bear in mind in considering how to proceed. It may help if I set them out, drawing on discussions since the Lords' vote on 4 June with David Waddington, the business managers and others.

2. Procedurally and constitutionally, of course, there is nothing improper about reintroduction of the War Crimes Bill in the next session and in using the Parliament Acts procedure to ensure its passage into law:

- the Bill could be introduced by the Government or by a Private Member;

- it would have to be in exactly the same form as that rejected by the Lords this session;

- the Parliament Acts lay down that one year must elapse between Second Reading in the Commons this session and its passing in the Commons next session;

- this means that Third Reading in the Commons could not be earlier than 19 March 1991.

3. If the Commons want to propose amendments not in this session's Bill, they can append them as "suggested amendments". If the Lords give the Bill a Second Reading, then in so far as they endorse those amendments, they become part of the Act; but if the Lords again reject the Bill it passes into law without the "suggested amendments".

4. A key factor is how the Lords will respond if the Bill is reintroduced. John Belstead's present belief is that they might well give the Bill a Second Reading but seek to amend it selectively. This could mean a lengthy and contentious Committee Stage from April to June or July next year with final Commons stages thereafter, possibly including the invocation of the Parliament Acts. It might be possible to make this process a little less contentious by the identification of a package of "suggested amendments" calculated to appeal to the Lords. But having said that, it is not easy to see the shape of such a package, which by definition would need to be acceptable to both Houses.

5. One possible major element of a package would be a compromise on the admissibility of video-recorded and live TV evidence. If we were not able to find a compromise on this matter we might need a further one-clause Bill itself to be enacted through the Parliament Acts which could, at worst, keep the whole controversy in the public eye until the session after next. This important point is set out in detail in the Annex to this minute.

6. There may be other possibilities which might, for example, take account of some of the points made by the Law Lords who were united in their opposition to the present Bill because of perceived flaws in the judicial processes it would allow as well as the principles it raised.

7. But in short, unless we are able to square the circle in some such way as this and make the Bill more acceptable to the Lords, we are destined for the year ahead to face a drawn out and at times acrimonious dispute on a subject where, as the Commons votes this session have shown, both the Government and the Party are deeply divided.

8. This leads me to my penultimate point, and perhaps the most difficult of the issues we need to face: the wisdom - I emphasise not the constitutional propriety, for that is not in doubt - of a Conservative Government's being seen to precipitate a clash between the Upper and Lower Houses of Parliament. The very fact of re-introducing the War Crimes Bill - whether by the Government or by a backbencher - will open the way for the Labour Party to mount a probably prolonged attack on the position of the House of Lords. No legislation has been passed under the Parliament Acts since 1949, and to many of our own supporters this will not seem the obvious place for a Conservative Government to create a precedent which, as David's paper says, would demonstrate that the will of the Commons should prevail on matters of conscience no less than manifesto commitments. If a future Labour Government were minded to abolish the House of Lords they might have cause to be grateful for such a precedent.

9. Our readiness to contemplate this prospect might be hard to explain given that we have hitherto taken care to provide for free votes at all stages on War Crimes, acknowledging that the Bill raises difficult issues of conscience, on which prima facie a majority of both Houses would need to be convinced. This certainly underlines the importance, as you have already noted (your Private Secretary's letter of 21 May) of decisions on thefuture of the War Crimes Bill continuing to be taken on a completely free vote.

10. Against this background, my own inclination would be to drop the Bill from the Government's programme. If colleagues decide that reintroduction should be considered, despite the difficulties this will entail, I think it will be important to find a way forward which enables us to seek a sensible compromise position perhaps reflecting the possibilities I have reviewed in this minute.

11. This brings me to the possibility of a free-standing debate in the Commons on the future of the Bill. For the reasons David's paper sets out this is not an easy prospect. The point, though, of a debate would be to give MPs a chance to say whether they had changed their minds as a result of the debate and vote of the Lords. I know that the Chief Whip thinks this important. If the vote was in favour of going ahead with the Bill, that would reinforce the decision to send it back to the House of Lords. The debate itself might also provide a first opportunity to explore the scope for possible later compromises with the Lords.

12. I am copying this minute to Douglas Hurd, David Waddington, James Mackay, Paddy Mayhew, Tom King, John Wakeham, Kenneth Baker, John Belstead, Malcolm Rifkind and Tim Renton, and to Sir Robin Butler.

GH

20 June 1990

ANNEX

VIDEO-RECORDED AND LIVE TV EVIDENCE

1. The present state of the law in England and Wales is as follows (the position in Scotland is different):

- the admissibility of live TV evidence from abroad is provided for in Section 32 of the Criminal Justice Act 1988;

- the admissibility of video-recorded evidence taken abroad is provided for by Section 3 of the Criminal Justice (International Cooperation) Act 1990.

2. Neither provision applies in Scotland. The Criminal Justice (Miscellaneous Provisions) (Scotland) Bill set out to include them in Scottish law for all serious crimes. The Lords have so amended that Bill as to disapply both provisions from any subsequent war crimes trials in Scotland.

3. When we considered the effect this should have on our handling of the Scottish Bill in the Commons, we concluded (my minute of 16 May) that we should not seek to reverse the Lords' amendment now because of the danger this would pose for the Scottish Bill as a whole. So on the present state of the law - in Scotland although not in England and Wales - no arrangements exist for the admissibility in war crimes cases of either video-recorded or live TV evidence. Since the Hetherington/Chalmers Report made clear that the availability of these sorts of evidence was likely to play a crucial role in many of the potential war crimes trials. We should in logic address this point. It is, of course, the very one on which the Lords are most likely to stand firm.

4. Unless we are ready to live with an anomalous difference between procedures in Scotland and the rest of the Kingdom (which would be hard to justify), there seem to be two ways of trying to tackle this particular problem.

5. If it is decided to proceed with the War Crimes Bill and to make every effort to ensure that prosecutions can be mounted as promptly as possible, then we could introduce a separate one-clause Bill in this current session designed to bring the position on video-recorded and live TV evidence in Scotland into line with that in England and Wales. Such a Bill would certainly be rejected by the Lords, but it too could then be reintroduced in the next session and its passage secured by use of the Parliament Acts. Or if for business management or other reasons it was decided not to rush a Bill in in what remains of this session, the necessary amendment could be brought forward next session either as a free-standing Bill or as a "suggested amendment". If the Lords accepted it, then it would pass into law next session; but if not then we would need to wait until the session after that to be sure of getting Scotland brought into line with England and Wales by using the Parliament Acts. That would mean a further year before prosecutions relying on TV/Video evidence could be mounted in Scotland with any reasonable prospect of success, and through which the whole controversy would remain very much in the public eye.

6. Alternatively, we could go some way to recognise the strength of feelings in the Lords on this specific issue by looking at modifications to the provisions of the law in England and Wales as well as Scotland, as they apply to war crimes trials. Amendments, for example, to secure that one or both of these types of evidence were not admissible on either side of the border either could perhaps form part of a package of "suggested amendments". It might be easier to justify doing this for live TV evidence than for video-recorded evidence.

7. We could argue that the giving of evidence by live television link from overseas (on which you expressed your reservations before - your Private Secretary's letter of 1 March) is more of a departure from traditional court procedures in this country than the admissibility as evidence of a video recording. We would, of course, need to consider carefully whether a change of this sort was justified by the effect it would have on the Bill's reception in the Lords the second time. And we should need to face squarely the fact that if we did proceed in this way, the chances of a successful prosecution in a number of the possible cases might be seriously limited.

CCPC

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

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CONFIDENTIAL

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

CSD 19/6.

18 June 1990

Dear Norman,

WAR CRIMES

I refer to your letter of 27 February sent to David Waddington concerning the propriety of expenditure on war crimes pending the approval of legislation by both Houses of Parliament.

Notwithstanding the defeat of the War Crimes Bill in the House of Lords at Second Reading and the amendment to the Law Reform (Miscellaneous Provisions) (Scotland) Bill specifically excluding the use of live television links from abroad in "any trial involving alleged war crimes committed in German held territory during the Second World War" I would be grateful if some limited expenditure on investigation could be authorised.

As you know, among the various cases investigated by the War Crimes Inquiry most prominent were the allegations involving a Mr Antanas Gecevicius alias Antony Gecas who lives in Edinburgh. The majority of the witnesses seen by the War Crimes Inquiry in this case indicated that they were either unwilling or unable to travel to Scotland to give evidence at any future proceedings. Most of the interviews by Mr Chalmers were in September 1988 or earlier and there has been no contact with any of them since then. There has, however, been a civil action for defamation in the Court of Session pursued by Mr Gecas against Times Newspapers and settled in a curious fashion without any evidence being led and apparently without the principal allegations being withdrawn. Solicitors acting for the Times sought to take statements from these witnesses some of whom had previously been identified in an STV documentary and it is my understanding they discovered at least one of the prospective witnesses has died since 1988.

In the unpublished Part II of the War Crimes Report an indication is given that some of the witnesses in Lithuania were complaining that they were the subject of public opprobrium after interviews of them were shown on television. I am concerned they may now be even more reluctant to give evidence than they were two years ago.

THE LORD ADVOCATE

Against this background while I do not wish to embark in any sense on full blown preparation of a trial I would like to send two of my officials to Lithuania and North America in the next few weeks to re-interview the various witnesses and provide an assessment of whether a case could be mounted against Gecas and whether this could be done without the facility of taking evidence through live television links. Such an exercise would involve expenditure in the region of £20,000 which in the ordinary course would fall to be met from my Department's non-cash limited vote.

I believe such inquiries could be carried out relatively quickly and the report back to me could be available before any final decision is taken to re-introduce the War Crimes Bill next session.

I should be pleased to learn if you are agreeable to the course of action which I propose to take by instructing these limited enquiries.

I am copying this letter to the Prime Minister, Geoffrey Howe, James MacKay, Douglas Hurd, David Waddington, Patrick Mayhew, Tom King, John Wakeham, Kenneth Baker, John Belstead, Malcolm Rifkind, Tim Renton and Sir Robin Butler.

Yours ever,

Peter.

FRASER OF CARMYLLIE

From: THE PRIVATE SECRETARY

(7)

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

Covering CONFIDENTIAL

Prime Minister

18 June 1990

Dear Charles

You may like to see the Home Secretary's paper for the meeting on Monday. It's admirable.

CDP 18/6

WAR CRIMES BILL

Thank you for your letter of 14 June about the Prime Minister's proposed meeting on the War Crimes Bill. As the Prime Minister suggested, the Home Secretary has prepared a short paper setting out his views on the issue, and a copy of this is attached.

Copies of the letter and the paper are being sent to recipients of yours.

Yours ever

C J WALTERS

C Powell Esq
10 Downing Street
LONDON SW1

CONFIDENTIAL

WAR CRIMES

NOTE BY THE HOME SECRETARY

This note sets out the options available to the Government in considering the way forward on the war crimes issue. It concludes that there are strong arguments for reaching and announcing a decision this side of the Summer Recess. Otherwise speculation will mount, and the Government will be accused of indecision.

One option is to decide to take no further action and accept that the Lords' decision signals the absence of general Parliamentary support for prosecutions. In favour of this line it can be argued that the subject is not the sort for which the Parliament Acts were originally contemplated; and that the inevitability of further delay before investigations and prosecutions can begin weakens the chances that any case will ever come to court.

These arguments do not appear persuasive. The Commons votes were decisive, and to allow them to be over-ruled would send uncertain signals as to the Government's view of the relative position of the two Houses. So far as the Parliament Acts are concerned, as was said in Cabinet on 5 June, the implication of the Salisbury doctrine is that it is only in respect of non-manifesto issues of this kind that the question of using the Parliament Acts should ever arise. Nor would it be easy to defend the view that delay of a year or less would be so significant in its impact on trials as to make it not worthwhile proceeding with the principle of legislation.

The absence of strong arguments in favour of taking no further action therefore points towards reintroducing the Bill next session and, if necessary, using the Parliament Acts procedure to ensure its passage. The merits of the Bill remain as strong now as when it was first decided to legislate. Reintroduction

of the Bill would signal the Government's acceptance that the will of the democratically-elected House should take priority on matters of conscience, no less than over manifesto commitments. These arguments of principle for persisting with the Bill are strong. But the conclusive factor appears to be the risk that if the Government does not reintroduce the Bill it could be seriously embarrassed by the introduction of a Private Member's Bill in identical terms. Such a Bill would be just as capable of triggering the operation of the Parliament Acts as a Government measure. The chances of this happening must be rated very highly indeed: it is difficult to believe that any Labour member in the first half-dozen places in the ballot would pass over the chance of embarrassing the Government in this way.

It is of course possible that the Lords would not reject the Bill outright again on Second Reading next year but seek to delay its passage as much as possible by introducing unacceptable amendments. Obviously this would be undesirable, but the risk of what would at most be a further six months delay is not a decisive argument. Indeed, there must be a chance that the Lords would not in the end push matters to such an extreme in the face of clear and repeated confirmation by the Commons that it wished the Bill to proceed.

One other way forward that has been mentioned is to invite the Commons, on a further free vote, to decide whether the Bill should be introduced. There are clear attractions in this: should such a vote result (unexpectedly) in a decision not to proceed with the Bill, the prospects of being embarrassed by a Private Member's Bill would be greatly reduced. A decision in favour of legislation would also clearly establish the Bill as reflecting the will of the Commons as a whole. There are dangers in this approach, however, since the focus of any such debate could shift from the merits of the Bill to the constitutional arguments surrounding the legitimacy of the Lords' action. There is a danger that the Opposition might make use of the debate to mount a pre-election attack on the Lords, and it would not be helpful for the constitutional position of the Lords to come under this kind of scrutiny.

Given the risk, I think the best option is an announcement that the Government intends to reintroduce the Bill next session. The Second Reading debate on the reintroduced Bill would then provide an opportunity for the Commons to decide in principle whether actions should continue. Such an announcement should take place before the Summer Recess.

Home Office
June 1990

FOR POL: WAR CRIMES PTS

RESTRICTED

file to
c: W2

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

14 June 1990

Dear Colin,

WAR CRIMES BILL

The Prime Minister wishes to hold a meeting to discuss the next steps over the War Crimes Bill. It is likely to be before Cabinet next Thursday. Meanwhile, the Prime Minister suggests that the Home Secretary might like to provide a short paper for the meeting setting out the options. I understand that the Lord President may also be circulating some thoughts.

I am sending copies of this letter to the Private Secretaries to the Lord President, the Foreign Secretary, the Lord Chancellor, the Attorney General, the Defence Secretary, the Energy Secretary, the Chancellor of the Duchy of Lancaster, the Lord Privy Seal, the Scottish Secretary, the Chief Whip, and to Sir Robin Butler.

Yours sincerely,

C.D. POWELL

Colin Walters, Esq.,
Home Office.

RESTRICTED

PERSONAL

THURSDAY 21 JUNE
09.45

PRIME MINISTER

WAR CRIMES BILL

I think you ought to convene a meeting fairly soon to reach a decision on how to proceed over the War Crimes Bill. If you don't summon one, there is a risk that the Lord President will.

If you agree, we will invite: the Home Secretary, the Lord President, the Foreign Secretary, the Defence Secretary, Lord Chancellor, the Attorney, the Energy Secretary, the Chairman, the Lord Privy Seal and the Chief Whip. I think the balance is just about all right.

The purpose would be to get agreement either to reintroduce the Bill directly into the Commons or to put down a motion for debate as a preliminary to reintroducing the Bill. Either way there are some dangers: that the vote for proceeding may be much lower than last time: or that the motion/Bill will be passed with a substantial Opposition vote but a very much smaller Government side vote than last time.

You might want the Home Secretary to do a note as a basis for discussion at a meeting: or at least have a word with him in advance.

Agree to a meeting next week? Yes

Agree composition? Yes.

Agree a note from the Home Secretary?

C.D.P.

C. D. POWELL
13 June 1990
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(slh)

What about Scottish Secretary instead Welsh Secretary? I don't know how they voted.

PERSONAL

TJS / sh

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

11 June 1990

Dear Colin,

WAR CRIMES

The Lord President held a meeting on 6 June at 5.30 pm to discuss the implications of last Monday's rejection by the House of Lords of the War Crimes Bill for the Law Reform (Miscellaneous Provisions) (Scotland) Bill, scheduled to have its second reading in the House of Commons on Tuesday 12 June. Those present were the Lord Chancellor, the Home Secretary, the Lord Privy Seal, the Solicitor General, the Lord Advocate, Lord James Douglas-Hamilton, the Deputy Chief Whip and First Parliamentary Counsel.

The Lord President said that, on the basis of the Lord Privy Seal's clear advice that the Lords would not accept a reversal of their amendment to clause 56 of the Law Reform (Miscellaneous Provisions) (Scotland) Bill to remove the prohibition of the use of live TV links in the case of Scottish war crimes trials, he believed that no action should be taken to delete the provision from the Bill. This would be necessary only if the War Crimes Bill was re-introduced in the following Session, in which case the matter could be dealt with as a "suggested amendment" under the Parliament Acts procedure, if their Lordships were content.

In discussion the following points were made:

1. The Lord Privy Seal confirmed his view that the Lords would resist any attempts to reverse their amendment to the Scottish Bill.

2. There could be no guarantee that the Lords would agree to adopt a suggested amendment to a re-introduced War Crimes Bill to accommodate a provision on TV evidence on Scottish trials. They would be under no illusion that the absence of such a provision would effectively undermine the chances of a successful prosecution in Scotland, where a number of the suspected war criminals, referred to in the Hetherington/Chalmers report as most likely to be subject to prosecution, resided. It would be possible, however, to include a clause having the desired effect in the Criminal Evidence and Procedure (Scotland) Bill which had a place in the provisional legislative programme for the 1990/91 Session; or to bring forward a one-clause Bill dealing with the point, which could be got through using the Parliament Acts if necessary. A short single purpose Bill was the surer way of

getting the Scottish evidential provisions enacted, but it would need to be introduced at the very beginning of the Session so that, if the Lords resistance to the War Crimes Bill was maintained and they continued to seek to block any procedural changes, the delay following on the use of the Parliament Acts on this second Bill could be kept as short as possible. This would still mean, however, that prosecutions in Scotland could not realistically be set in train before the end of 1991.

3. The main risk of not attempting to reverse the amendment made to the Scottish Bill was that those Commons Members in favour of the War Crimes Bill might seek themselves to remove the offending provisions. The Government would need to oppose such a move in order to avoid endangering the passage of the Scottish Law Reform Bill. If necessary, the party should be whipped to vote against such an amendment, on the grounds that the issue of television links for war crimes trials in Scotland was one that must be considered with the wider jurisdiction question in the War Crimes Bill itself. A free vote on the issue would not be appropriate.

The Lord President, summing up the discussion, said that it was agreed that no attempt should be made to reverse the Lords amendment to the Law Reform (Miscellaneous Provisions) (Scotland) Bill, on the basis that special evidential procedures in Scotland would be considered further in the context of the Government's decision on the future of the War Crimes Bill itself. The Scottish Secretary should indicate the Government's position in his second reading speech on 12 June. It would also be helpful if the Scottish Office could formulate lines to take on supplementary issues and circulate them to colleagues by Monday lunchtime at the latest.

I am copying this letter to the Private Secretaries of those Ministers present at the meeting, to Charles Powell (No 10) and Jim Gallagher (Mr Rifkind's Office), and to Sonia Phippard, Muir Russell and Joan Bailey (Cabinet Office).

T J SUTTON
Principal Private Secretary

Colin Walters Esq
PPS / Home Secretary

12.0L. AM 90

CONFIDENTIAL

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL. LONDON SW1A 2AU

T J Sutton Esq
Principal Private Secretary
Privy Council Office
Whitehall
LONDON
SW1A 2AT

8 June 1990

WAR CRIMES BILL

I understand that at the meeting of Ministers on 6 June, convened by your letter of 5 June, there was general agreement that the Government should not table an amendment to the video evidence provisions in the Law Reform (Miscellaneous Provisions)(Scotland) Bill to remove the reference to War Crimes. (This was inserted in the Bill during the Lords Committee Stage, and would have the effect of preventing, in particular, evidence given through live television links in trials of alleged war crimes, as contemplated in the War Crimes Bill, in Scotland.) It was further agreed that the Government's intention should be announced during the Commons Second Reading of the Bill on Tuesday 12 June, during the opening speech by my Secretary of State. I now circulate a draft form of words which my Secretary of State intends to use for this purpose, together with notes for use by Lord James Douglas-Hamilton in winding-up the debate (if need be). These drafts are intended to discourage back-bench amendments as well as explaining why Government amendments are not in prospect.

I should be grateful if you would let me know immediately, by telephone, if the Lord President has any comment upon the draft, as we shall have little time to incorporate any amendments in the briefs for Ministers' use on 12 June. I would also be grateful for any comments, as near as possible by return, from the other recipients of this letter; silence will be construed as consent.

I am sending copies of this letter to the recipients of your letter of 5 June, namely to the Private Secretaries to the Lord Chancellor, the Home Secretary, the Lord Privy Seal, the Attorney General, the Lord Advocate and the Solicitor General for Scotland, and Lord Denham, and to Charles Powell (No 10), Murdo Maclean (No 12), First Parliamentary Counsel, Legal Secretary LAD, Sonia Phippard and Muir Russell (Cabinet Office).

J D GALLAGHER
Private Secretary

EML159P3

LAW REFORM (MISCELLANEOUS PROVISIONS) (SCOTLAND) BILL:
SECOND READING: DRAFT OPENING SPEECH (MR RIFKIND)
PASSAGE ON CLAUSE 56

The Bill's provision relating to evidence in criminal proceedings (Clause 56) introduces 2 new provisions into the Criminal Justice (Scotland) Act 1980. The first of these extends the existing statutory provisions on letters of request or on commission.

The second makes it possible, in certain circumstances, for the High Court or the sheriff court in Scotland to receive evidence from abroad by means of live television link.

My noble and learned Friend the Lord Advocate stated in Committee in another place that he would intend to bring the provision into operation on the same basis as England and Wales that is, - for serious and complex fraud, murder and culpable homicide.

As a result of an amendment passed in another place, these procedures will not be available in any trial involving alleged war crimes committed in German-held territory during the Second World War, which, as Scots law stands at present, the Scottish criminal courts do not have jurisdiction to try. We do not intend, however, to table an amendment to this Bill which would remove the limitation in Clause 56(3) on their availability.

Following the defeat of the War Crimes Bill on Second Reading in another place, we have under review the whole question whether our courts should have jurisdiction over such war crimes. It is in that context that we shall also consider whether the House should be asked to remove the restrictions set out in Clause 56(3). I would commend that approach to hon Members who are concerned about Clause 56(3): I would suggest to them that questions about the availability of the procedures set out in Clause 56 are subordinate to the larger and prior question whether there should be jurisdiction.

LAW REFORM (MISCELLANEOUS PROVISIONS) (SCOTLAND) BILL
2ND READING - EXTRACT FROM NOTES FOR WIND-UP

ISN'T CLAUSE 56 USELESS AS IT STANDS SINCE IT ISN'T AVAILABLE FOR WAR CRIMES?

Not at all. We have made clear that the provision about the obtaining of evidence from abroad through television links in solemn criminal proceedings was intended to be available for use in all such proceedings which the Scottish courts have jurisdiction to try. In particular the Lord Advocate proposes to bring the new procedure into operation, in the first instance, in respect of murder trials and serious fraud trials.

HJS158P2

WOULD WAR CRIMES PROSECUTIONS IN SCOTLAND BE FAIR IF THE FOREIGN VIDEO LINKS PROCEDURE WAS UNAVAILABLE?

In general, we would want all relevant and competent evidence to be available in any trial in Scotland. The Lord Advocate would not want to discuss the possible conduct of Scottish war crimes trials unless our courts have the necessary jurisdiction. Whether or not Parliament should confer that jurisdiction is a question better debated in the context of a general measure on war crimes, not the limited context of this Bill. Accordingly we do not intend to ask the House to consider an amendment to remove the restriction in Clause 56(3), which we would advise the House to leave for further consideration, pending the Government's conclusions on action following the defeat of the War Crimes Bill in another place.

ARE NOT LIVE VIDEO LINKS TO PROVIDE EVIDENCE FROM ABROAD ESSENTIAL FOR ANY SCOTTISH WAR CRIMES PROSECUTIONS?

As noted in the War Crimes Inquiry Report (Cm 744; paragraph 9.34) live television links could be a useful means of receiving live evidence from witnesses who are abroad and who cannot reasonably be expected to attend in person in Scotland. But the question whether they should be available for war crimes is academic so long as our courts lack jurisdiction. We would recommend to the House that Clause 56(3) be not amended until the overall and prior question whether such jurisdiction should be conferred has been resolved.

FOR POL: War Crimes
Pt 3

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

5 June 1990

Dear Colin,

WAR CRIMES BILL

Following the vote against Second Reading in the House of Lords on 4 June and the discussion in Cabinet this morning, the Lord President is convening an urgent meeting of his ad hoc Group on War Crimes.

The immediate issue for discussion, which has been touched on at the meeting of the Group of Ministers on 15 May (see para 7 of the Lord President's minute of 16 May to the Prime Minister), is what line the Government spokesman should take at Second Reading on Tuesday 12 June of the Law Reform (Miscellaneous Provisions) (Scotland) Bill (Lords). As you recall, this Bill provides for the use of evidence by live TV link and video-recorded evidence in serious criminal trials in Scotland, in terms analogous with those in the 1988 Criminal Justice Act which governs England and Wales. But the relevant clause in the Scottish Bill was amended in the House of Lords specifically to disapply those evidential provisions in the case of War Crimes trials.

The Lord President has discussed with the Lord Privy Seal and the Chief Whip (Commons) the implications for the Scottish Bill of the Commons reversing that Lords' amendment. In view of the Lord Privy Seal's firm advice that the House of Lords would then reject the Scottish Bill, so amended, in its entirety, and the wider importance of not losing the Scottish Bill in this way, the Lord President's provisional view is that it might be preferable for the Government to make clear that the issue of the use of video-recorded and live TV evidence for War Crimes trials in Scotland would be addressed in the context of the War Crimes Bill itself, should the Government in due course decide to reintroduce that Bill, and so seek to avoid the carrying of any amendment that might be tabled by a backbencher in the Commons to reverse the effect of the Lords amendment to the Scottish Bill.

Contd 2/ . . .

CONFIDENTIAL

As I understand the position under the Parliament Acts, this would mean that, if the Government did decide to reintroduce the War Crimes Bill it could send it forward to the House of Lords with a "suggested amendment" dealing with the point about the rules of evidence in Scotland but otherwise exactly as discussed in the current session; if under threat of the use of the Parliament Acts the Lords then decided not to maintain their objections to the Bill, it could be passed as amended; but if the Lords maintained their opposition to the Bill, the Commons could pass the Bill under the terms of the Parliament Acts only in the precise form in which it was rejected by the Lords in the present session - ie, without the suggested amendment to deal with the point about laws of evidence in Scotland. In other words, there is a possibility that the end product of this way of proceeding would be a War Crimes Bill minus the ability to use TV and video-recorded evidence in Scotland. But this outcome may be regarded as sufficiently unlikely for it to be preferable to proceed in this way rather than face the very strong likelihood that the Scottish Bill in its entirety would be lost.

The purpose of the Lord President's meeting will, therefore, be to discuss with colleagues the best way forward on the Scottish Bill; and to agree in what terms this should be explained to the House by the Government spokesman at Second Reading on 12 June. The Lord President hopes that this letter will help colleagues to identify where the balance of advantage lies.

I am copying this letter to the private secretaries to those who attended the meeting on 15 May (the Lord Chancellor, the Lord Privy Seal, the Attorney General, the Solicitor General for Scotland, Lord Denham and Lord James Douglas-Hamilton); and to Charles Powell (No 10), Murdo Maclean (No 12), Jim Gallagher (Mr Rifkind's Office), First Parliamentary Counsel and Sonia Phippard and Muir Russell (Cabinet office).

T J SUTTON
Principal Private Secretary

Colin Walters Esq
PPS/Home Secretary

For Pol: War Crimes
Pt 3

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

21 May 1990

Dear Tim.

WAR CRIMES

The Prime Minister has considered carefully the Lord President's minute of 16 May about the possibility that the War Crimes Bill will fail to get a Second Reading in the House of Lords and what our response should be. She has commented that the suggestion in paragraph 4 of simply allowing the Bill to be defeated and distancing the Government from this would be tantamount to declaring a new doctrine, viz that the non-elected House can defeat the democratically-elected House in respect of any free vote of the latter. She believes this would be wrong in principle. She has added that any future decision on how to proceed should be made on a free vote of the House of Commons.

I am copying this letter to the Private Secretaries to members of Cabinet, the Attorney General, the Solicitor General for Scotland, Lord Denham, Lord James Douglas-Hamilton, the Lord Advocate and Sir Robin Butler.

Yours ever,

(C. D. POWELL)

Tim Sutton, Esq.,
Lord President's Office

TJS / sh

CONFIDENTIAL

PRIME MINISTER

WAR CRIMES

1. This minute reports on a meeting I held yesterday with colleagues most closely concerned to agree how we should respond to the very real possibility that the War Crimes Bill will fail to get a second reading on a free vote in the House of Lords. Second reading is at present scheduled for 4 June.

2. The judgement of the Lords Business Managers is that defeat for the Bill is a virtual certainty. They point to the substantial majority on a free vote on the Law Reform (Miscellaneous Provisions) (Scotland) Bill preventing the use of evidence by video link in any war crimes trial. They reckon that, on the War Crimes Bill itself, the majority against could be even more substantial. A large body of opinion in the Lords appears to be encapsulated in the reasoned amendment to second reading tabled by Alan Campbell which states :-

> "That this House declines to give the Bill a second reading because the Bill would afford retrospective legislation under which criminal charges could be brought in respect of war crimes committed over 40 years ago outside the United Kingdom by persons who owed no allegiance to the Crown; there being no reasonable assumption of a fair trial and no appropriate punishment on conviction."

A substantial number of influential Peers are understood to oppose the Bill on broadly these grounds, including Alec Douglas Home, Willie Whitelaw and Peter Carrington.

3. At our meeting we felt that it was important to ensure that any difference between the Commons and the Lords on this issue did not become in any sense a "constitutional" matter. There are established arrangements, in the Parliament Acts, for dealing with such issues. We were also clear that this was not, and should not be allowed to become, a matter where the "Salisbury doctrine" was relevant. This is because the War Crimes Bill in no way represents a manifesto commitment by the Government of the day which, in terms of that doctrine, the Lords should not overturn - indeed, it was the subject of free votes in the Commons. It is clearly important that in all future deliberations on this matter, whether in the Lords or the Commons, it should continue to be subject to free votes.

CONFIDENTIAL

4. Against this background we considered the option of simply allowing the Bill to be defeated and distancing the Government from this on the basis that it was not a manifesto commitment and had been carried in the Commons on a free vote. We saw some risk that this would nevertheless be presented by commentators as a clash between the Houses and indeed a defeat for the Government. Whilst we felt we could counter these arguments to a reasonable extent, we thought that some further attempt should be made to defuse the situation.

5. We decided that the best tactic would be to draw to the attention of the Lords, by appropriate means, the practical disadvantages of throwing the Bill out at second reading. If, in a future Session, the Parliament Acts were invoked (either at our initiative or because a Bill in identical terms was presented and taken through by a private Member relying on the substantial majority shown on a free vote in the Commons) the Lords would have lost the opportunity to make a constructive and rational contribution to improving the legislation. It might be tactically better for the Lords to seek their objective of preventing war crimes prosecutions by ruling out the use of video links for evidence in England and Wales, as they have already done for Scotland. This would make the chances of successful prosecution very remote. There would, of course, be no guarantee that, if the Lords went down this route, the Commons would accept the position: since we are committed to free votes such a guarantee would not be in the Government's gift. It would therefore be very important to avoid charges of bad faith arising from any informal proposition on these lines, and for anything formal which might be said by the Minister responsible for the Bill at second reading to offer no such guarantee.

6. In practice, we thought there was some possibility that, if this course of action were followed in the Lords, the Commons might settle for not reinstating the Lords' amendment, on the basis that most of those involved would be satisfied that some positive response had been made to the Hetherington/Chalmers Report. If the Commons did insist on restoring the Bill to its original form, the Lords might refuse to accept that, and the Bill would then be lost for this Session, an outcome not significantly worse than losing it at second reading (apart from the expenditure of House of Lords' time).

7. Proceeding in this way would have the additional Business Management advantage that it would enable the question of video link evidence in Scotland to be taken on board by the Commons when considering the War Crimes Bill, rather than using the Law Reform (Miscellaneous Provisions) (Scotland) Bill, the passage of which could be threatened if a free vote in the Commons re-introduced provisions on video links which have proved unacceptable to the Lords.

No - it is a DEFEAT for the ELECTED HOUSE of COMMONS. Any future decision about what to do should be made on a free vote.

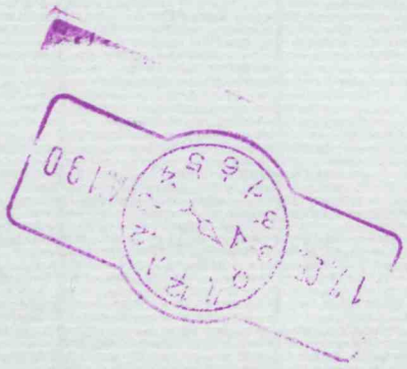
8. In deciding to adopt these tactics, colleagues were well aware that the most likely outcome remains loss of the Bill on second reading. We agreed that, if that should happen, we would make it clear that this is not a defeat for the Government nor a major constitutional issue. We also agreed that we should not pre-empt the position either way on the possible use of the Parliament Acts to re-introduce an identical Bill next Session (which would again be subject to free votes). We would not wish to pre-empt the Queen's Speech in giving commitments about Bills to be presented next Session and would, in any case, wish to have time to reflect on the most appropriate action to take.

9. I am copying this minute to the colleagues who attended yesterday's meeting: the Lord Chancellor, the Home Secretary, the Lord Privy Seal, the Attorney General, the Solicitor General for Scotland, Lord Denham and Lord James Douglas-Hamilton; to other Cabinet colleagues, the Lord Advocate and Sir Robin Butler.

capr GqA. so

G H

16 May 1990



TPM

CONFIDENTIAL

ECPC

(2)

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

7 March 1990

[Raised in Cabinet: no need for PM to see] ~~Prime Minister~~ 8/3

Dear Charles,

WAR CRIMES

The Lord President chaired a meeting on 6 March to consider the issues raised by the Attorney General's minute of 2 March to the Prime Minister. Those present were the Lord Chancellor, the Home Secretary, the Chief Secretary to the Treasury, the Lord Privy Seal, the Attorney General, the Chief Whip (Commons), the Minister of State, Foreign and Commonwealth Office (Mr Maude), the Minister of State, Home Office (Mr Patten), the Minister of State for the Armed Forces, the Economic Secretary to the Treasury, the Chief Whip (Lords), the Solicitor General for Scotland and the Parliamentary Under-Secretary of State, Scottish Office (Lord James Douglas-Hamilton); First Parliamentary Counsel; and Mr Mawer, Mrs Bailey and Miss McCool (Cabinet Office).

In addition to the Attorney General's minute, the meeting had before it minutes to the Prime Minister from the Lord President, dated 29 January, and from the Chief Secretary, dated 27 February; and Peter Storr's letter of 28 February to Steven Wooler.

The Lord President began by noting that the outstanding difference between the Home Secretary and the Chief Secretary about the mechanism for funding police costs incurred in investigating war crimes was being discussed bilaterally, with a view to an agreement being reached before introduction of the War Crimes Bill. The issue of resources for the Courts and the Crown Prosecution Service (CPS) raised in the Attorney's minute of 2 March had already been satisfactorily resolved in discussion between the Attorney General and the Chief Secretary. This left the issue of television links.

The Home Secretary said that, in order to enable evidence to be taken by live television link in war crimes trials, it was necessary in England and Wales to use the powers in Section 32 of the Criminal Justice Act 1988; in Scotland, it was intended to provide corresponding powers in an amendment to the Law Reform

Contd 2/ . . .

Miscellaneous Provisions) (Scotland) Bill which was currently proceeding through the House of Lords. While he recognised the policy arguments for making this facility available in fraud trials, he would not seek to argue that it was essential to the passage of war crimes legislation to provide for this. Arguably, there was little to be gained presentationally in extending live television evidence to fraud trials, since the general public would anyway deduce that the commencement of Section 32 at this stage had been timed to coincide with the War Crimes Bill.

The Chief Secretary said that while he did not object in principle to the extension of the live television evidence facility to fraud cases, the key issue, in the context of the War Crimes Bill, seemed to be whether this was necessary to get the Bill enacted. If not, there was a case for deferring a decision on the issue so that the precise scope of the application of TV evidence to trials other than homicide could be carefully considered. The question of any additional funds for this purpose could be addressed in the usual way to the Public Expenditure Survey.

The Attorney General said that in his view the availability of evidence by live television link would be an important strengthening of the prosecution agencies' ability to deal effectively with international fraud. It would seem very odd for the Government to provide for live television evidence in respect of homicide cases, an area in which the absence of such a facility had never in reality posed any difficulty, but to fail to do so in the case of serious and complex frauds, where it was readily foreseeable that the Serious Fraud Office (SFO) might lose an important case because it could not get crucial foreign witnesses to come to give evidence. Not to apply Section 32 to serious and complex fraud cases would undermine the Government's commitment to tackle serious fraud, particularly bearing in mind that the stated justification for enacting Section 32 at the time had been to provide for live television evidence in such cases. To decline to make this valuable aid available on the grounds of shortage of resources while making it available in war crimes cases would attract serious criticism. Moreover, it was at least conceivable that savings in travel and other costs of witnesses, together with the proceeds of confiscation of assets, would exceed the cost of introducing the live television evidence facility in fraud cases. A study by Ernst and Whinney in 1985 had established that serious fraud cost the country around £3 billion per annum. If colleagues agreed that an extension of the facility to serious fraud cases was desirable, he was prepared to accept a cash limit on the use of live television evidence in fraud cases of, say, £1 million in the financial year 1990/91.

Contd 3/ . . .

The Lord Chancellor said that Section 32 of the 1988 Act was of general application and it was important to avoid creating the impression that a special evidential regime was being created for war crimes trials. To limit the facility to homicide cases, excluding serious and complex fraud offences for which the legislation had originally been enacted following the recommendations of Lord Roskill, would transparently do this. Quite apart from the criticism such a proposal would inevitably attract in Parliament, he agreed with the Attorney that this would provide valuable ammunition to those wishing to cast doubt on the strength of the Government's commitment to tackle serious and complex fraud. He saw no difficulty in defining the nature of the offences to be covered: the same definition of "serious and complex" fraud cases was used to determine those investigated by the SFO.

In discussion the following main points were made:

a) Although in general the desirability of introducing live television evidence in criminal proceedings was questionable, the principle had been accepted by Parliament when they had passed the Criminal Justice Act 1988. Taking evidence by live television link would be vital to the success of any prosecution under war crimes legislation. It was essential therefore to commence Section 32 of the 1988 Act in relation to homicide offences, and to introduce provisions parallel to Section 32 in the Law Reform (Miscellaneous Provisions) (Scotland) Bill.

b) A failure to extend the provision also to serious fraud cases - the original focus of the 1988 legislation - would, in the light of increasing public pressure for the Government to improve its record in this area, be difficult to justify.

c) The proposal to implement Section 32 would have to be foreshadowed in a Parliamentary statement announcing the Government's decision to bring forward a War Crimes Bill. It would therefore be impossible to deny the connection between the war crimes provisions and the decision to implement Section 32. The decision whether to extend the facility for live television evidence to serious fraud offences turned on whether the Parliamentary passage of the War Crimes Bill would be eased if the live television evidence facility were extended beyond what was strictly required to provide a satisfactory framework for war crimes trials.

Contd 4/ . . .

d) Some Members who had voted in favour of legislation were opposed to the introduction of special evidential procedures for war crimes trials, notably the Shadow Home Secretary. A proposal to broaden the availability of the live television facility was therefore likely to be helpful in presentational terms. It might be particularly significant in the House of Lords. More generally, some Members might be more inclined to vote in favour of the War Crimes Bill if the package surrounding the Bill included improvements in the procedures for dealing with serious fraud.

e) A cash limit on the use of television links in fraud cases would be a novel approach in the criminal justice field, and might be presented as a potential constraint on successful prosecutions. The work of the Crown Prosecution Service was however already effectively constrained by the availability of staff resources. The cash limit would, in any event, relate to the use of a particular technique and not to the number of prosecutions that might be instituted.

Having heard the arguments advanced in discussion, the Chief Secretary indicated that he was willing to make up to £1 million available as an addition to the Serious Fraud Office's PES provisions in the present financial year to enable the provision of the live television evidence facility in serious and complex fraud cases.

The Lord President summing up the discussion, said that the issue of the mechanism for funding police costs incurred in investigating war crimes was being discussed separately by the Home Secretary and the Chief Secretary. They were confident that the matter could be resolved before the Bill's introduction, which was likely to be later that week. The outstanding issues relating to Court and CPS costs had already been satisfactorily settled.

On the question of live television links, while it was debatable whether the facility should be available in any trial, Parliament had already approved the principle and the facility would be essential to the successful prosecution of war crimes cases. It was clear that the implementation of Section 32 of the 1988 Act need not strictly, for the purposes of war crimes legislation, extend to serious and complex fraud. Nevertheless, the fact that Section 32 had been enacted specifically for that purpose, following the recommendation of the Roskill Report, made it politically very difficult to commence the Section in relation to homicide offences only. Moreover, the increase in public pressure for further Government action to secure prosecutions in serious fraud cases of itself justified making live television links available.

Contd 5/ . . .

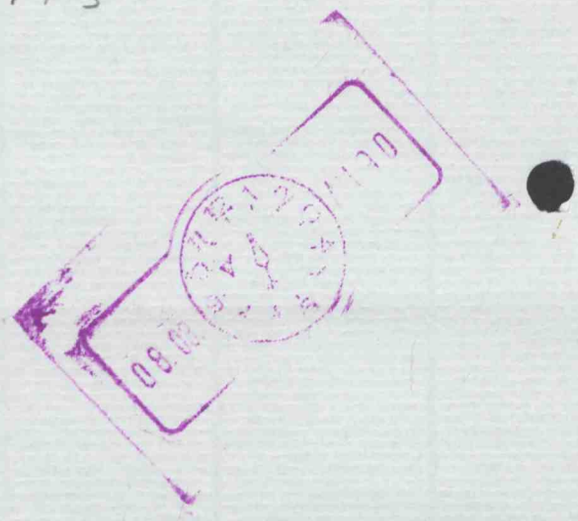
An important objective in steering the War Crimes Bill through Parliament would be to avoid giving the impression that special evidential arrangements were being made for war crimes trials. On this basis, to provide for the use of live television links in war crimes cases but not in serious fraud trials would be difficult to defend. The Chief Secretary's concern to avoid introducing potentially costly new procedures without good reason was recognised, but, given that there appeared to be no difficulty in limiting the arrangements to serious and complex fraud offences administered by the SFO, and bearing in mind the Attorney General's willingness to accept a cash limit on his expenditure, the balance of advantage lay in permitting the extension. In that context the meeting was grateful for the Chief Secretary's willingness to add up to £1 million to the SFO's PES provision in the present financial year for that purpose.

I am copying this letter to the private secretaries to the Ministers at the meeting, and to those others present.

T J SUTTON
Principal Private Secretary

C D Powell Esq
PS/Prime Minister

FOR POL: WAR CRIMES, PT 3



PM seen in Cabinet Folder

10 DOWNING STREET

Prime Minister

WAR CRIMES BILL

We have not yet had the report which the Lord President owes you. But since War Crimes feature on the Business Note for Monday week you should see 'L's' conclusions

Para 5(d) covers televising of evidence.

The Chief Secretary has settled with the Home Secretary the mechanism for funding police investigations

DM

7/3.

cst.ps/lets/10nl6.3

CONFIDENTIAL

CCPC.

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

6 March 1990

Dear David

WAR CRIMES: FUNDING OF POLICE INVESTIGATIONS

Thank you for your letter of 5 March concerning the proposed funding arrangements for police investigations in England and Wales, on which I promised you an early response.

2. You argue that common police service funding would create a number of difficulties. While I am not convinced they would be insuperable, I do accept the desirability of ensuring as smooth a passage as possible for the Bill and the work needed to put the legislation into effect. In view of the unique nature of this issue I am therefore content for the investigations to be funded entirely by central government, and that the additional amount for 1990-91 should represent a call on the Reserve. We shall need to consider the costs for future years in the coming Survey.

3. This should however be seen as an exceptional response to an exceptional issue. I understand your officials are satisfied that the nature of war crimes is such as to allow them, and the funding mechanism, to be clearly distinguished from any other policing task of a national nature likely to arise. It is with that clear understanding in mind - namely that this will not be regarded as a precedent and used to justify further calls for exceptional treatment - that I am prepared to accept this unprecedented route.

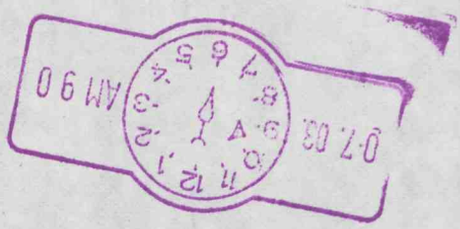
4. I am copying this letter to the Prime Minister, Geoffrey Howe, James Mackay, Douglas Hurd, Tom King, Malcolm Rifkind John Belstead, Patrick Mayhew and Peter Fraser, and to Sir Robin Butler

Yours

Norman

NORMAN LAMONT

FOR PL. War Criminals
P3



HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

5 March 1990

Dear Geoffrey,

I understand that the War Crimes Bill is on the agenda for next Tuesday's meeting of L Committee. I have already circulated a memorandum on the Bill, but I thought it might be helpful if I were to set out my present thinking on the next steps. It might help if I recall the stage we have reached.

We now have the Chief Secretary's broad agreement to the funding arrangements for the costs arising in the coming financial year, and I take it that colleagues are content with his proposed approach. My outstanding concern over the mechanism for funding police investigations was signalled in the L Committee memorandum, and I am writing separately to Norman Lamont on that point. Following Tuesday's discussion I trust we shall have colleagues' agreement to introduce the Bill. This will create the necessary jurisdiction for British courts to try war crimes; will enable the bypassing of committal proceedings in England and Wales; and will provide the funding arrangements for investigations in England and Wales (according, as indicted, to the mechanism finally agreed). We shall in due course provide for live television evidence in England and Wales through the commencement order provisions of the Criminal Justice Act 1988. My intention is to provide for live television evidence in homicide trials, and my Private Secretary's earlier correspondence with the Chief Secretary's Private Secretary indicated my view that this was all that it was essential to do in connection with the war crimes legislation - though colleagues will be aware of the continuing anxiety which Patrick Mayhew and James MacKay have expressed on this point. I understand that the Scots will in due course be tabling amendments to the Law Reform (Miscellaneous Provisions) (Scotland) Bill to introduce an equivalent provision to ours on live television evidence, and to provide for the admissibility in Scottish proceedings

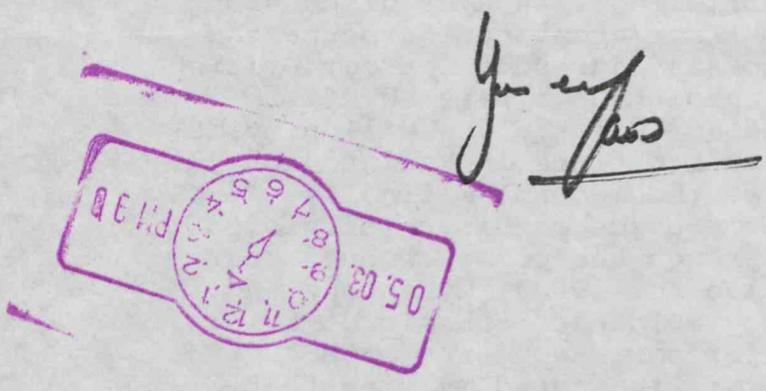
/of video

The Rt Hon Sir Geoffrey Howe, QC, MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON SW1

of video recorded evidence. Those three elements - the Bill, the commencement order and the Scottish provisions - represent the sum total of what we are proposing to do in respect to the Hetherington/Chalmers Inquiry.

Your January meeting agreed handling arrangements for the Bill, so far as introduction in the Commons, the whipping of the payroll vote and so on are concerned. All that I believe remains is to determine the arrangements to accompany the publication of the Bill. We shall clearly need an announcement of some kind, and I have been considering whether this should be by oral statement. There have now, however, been two opportunities for Parliament to express views on the issue (at the publication of the Report last summer, and in last December's debates) so I think that it will be quite sufficient if we set out our intentions in a written answer to a Parliamentary Question.

I am copying this letter to other Cabinet colleagues, Patrick Mayhew, Peter Fraser, Alan Roger, Tim Renton, Bertie Denham, Robin Butler and First Parliamentary Counsel.



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HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

5 March 1990

Dear Norman,

CRM 5/3

WAR CRIMES: PROPRIETY OF EXPENDITURE

at Frap

Thank you for your letter of 27 February on the question of when it would be proper to commence expenditure on the investigation and prosecution of war crimes.

I was naturally disappointed that you felt unable, following discussions with the Treasury Officer of Accounts, to agree to work beginning once the Commons have given a Second Reading to the Bill. As you recognise, we are likely to come under pressure in some quarters to make progress as early as possible, given the peculiar circumstances surrounding these cases. Nevertheless, I would not wish to understate the Parliamentary difficulties which we may well face with the legislation, and I understand the reasons why you have come to the view you have. Regretfully, therefore, I accept that we shall have to wait for Royal Assent before fresh expenditure is incurred.

I have also seen your minute to the Prime Minister of 27 February on the general public expenditure implications of the war crimes initiative. As you will be aware, I remain very concerned over the decision you have reached about the funding arrangements for investigations in England and Wales, and believe that the arguments originally advanced by my officials for central funding remain valid. In my view the alternative you have proposed, common police services (CPS) funding, would encounter a number of difficulties, the most notable of which would come from police authorities. Police authority representatives, aware of the high costs of war crimes investigations, would argue strongly against a CPS funding arrangement on the grounds that the crimes to be investigated occurred in other countries many years ago; that only 26 forces in England and Wales appear to have a war criminal living in their area; and, most importantly, that there is no obvious benefit to local communities from this form of police activity. Those opposed to CPS funding would also turn to the fact that in Scotland it has been decided that the bulk of investigation costs will be met by central Government through the Crown Agent. For those reasons we must expect police authority representatives to argue that the investigations did indeed merit a different treatment from others carried out by the police.

If central Government continue to press the case for CPS funding, I think we must be prepared for police authorities to unite against the proposal. The cost to local authorities for common police services is, as you

The Rt Hon Norman Lamont, MP.
Chief Secretary
Treasury Chambers
PARLIAMENT STREET, S.W.1.

CONFIDENTIAL

/over...

CONFIDENTIAL

for Rod: war crimes
PT 3

know, based on a per capita charge applied by reference to the number of officers in each force. The costs of the services in 1990-91 when all reasonable steps to achieve economy have been taken require me to set the per capita charge 13% higher than its level in the current year. In meetings with officials the local authority associations have indicated that they find such an increase unacceptable at a time of constant Government pressure upon them to keep their own costs down. They have asked to see Ministers on the issue and I have felt bound to ask Robin Ferrers to meet them. The additional cost of the police war crimes investigation would not raise the per capita charge very much in percentage terms (around a further £2.80 on a charge of £364). Nevertheless, even so small an additional burden will be deeply resented by the local authorities. Consultation with them on the issue would undoubtedly be difficult and delay the date on which we could introduce the legislation. Moreover, the proposal would be likely to exacerbate the difficulties the Bill will face in the House.

Lastly, we should not underestimate the power which the local authorities might be tempted to exercise if they wished to frustrate the establishment of the police investigation. In setting up the police unit we would be obliged to rely on the co-operation of Chief Constables to provide officers to staff it. I think we must accept that they would be most unlikely to provide these officers unless they could be held supernumerary and the gaps left in the home force "back-filled". This would undoubtedly give police authorities the edge since their agreement to supernumerary arrangements and back-filling would be required before it could proceed.

I remain of the view, therefore, that the arguments against CPS funding considerably outweigh those in favour. While I accept that the creation of a centrally funded unit of this nature does not have a clear precedent, I believe it can be justified given the exceptional nature both of the type of investigation required and the offences themselves. I hope you will be able to look at this point again quickly, since I do not see how we can introduce the Bill until it has been resolved.

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

Yours ever,

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bcc PC

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

3 March 1990

Dear Tim,

WAR CRIMES

The Prime Minister has seen the Attorney General's minute of 2 March dealing with the specific offences in respect of which it is intended to provide for evidence by television link, and the question of whether an assurance can be given that the Crown Prosecution Service will receive the additional resources it needs. The Prime Minister would be grateful if the Lord President would chair a meeting of Ministers to resolve these issues before 'L' Committee meets, reporting the outcome to her.

I am copying this letter to the Legal Secretary to the Attorney General and to the Private Secretaries to the Lord Chancellor, the Home Secretary, the Chief Secretary, the Lord Advocate and Sir Robin Butler.

Yours ever,

CHARLES POWELL

Tim Sutton Esq
Lord President's Office

CONFIDENTIAL

LORD ADVOCATE'S CHAMBERS
REGENT ROAD
EDINBURGH EH7 5BL
Telephone: 031-557 3800
Fax (GP3): 031-556 0154

CONFIDENTIAL

2 March 1990

The Rt Hon Norman Lamont MP
Chief Secretary to the Treasury
Her Majesty's Treasury
Parliament Street
LONDON
SW1P 3AG

Dear Norman,

WAR CRIMES

I have seen a copy of your minute dated 27 February to the Prime Minister.

I note that you are prepared to make available additional resources in 1990-91 to enable investigations into these cases to proceed.

The Crown Agent has been in contact with your officials and I understand that the Crown Office staff costs, accommodation costs and travel subsistence and expert fees etc in any investigation which were set out in Mr Store's letter to your Private Secretary of 8 February are to be met in full are contained in the sum of £1,336,000 to which you refer in paragraph 5 of the minute. I understand that the balance of this figure is made up by the Home Office bid of £700,000 to cover police investigations and a figure of £136,000 to cover Crown Prosecution Service costs in relation to investigations into cases arising in England and Wales.

I am copying this letter to the Prime Minister, Geoffrey Howe, James Mackay, Douglas Hurd, Tom King, Malcolm Rifkind, John Belstead, Patrick Mayhew, David Waddington, Tim Renton, Bertie Denholm, Sir Robin Butler and First Parliamentary Counsel.

Yours ever,

Peter.

FRASER OF CARMYLLIE

FOREIGN POL:

War Crimes Pt 3.

(1)

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-936 6201

Rt Minister

Oh dear! Rare problems.
Agree that the Lord President should chair a meeting to resolve them, reporting to you before a conclusion is reached?

CBP
2/3

WAR CRIMES

PRIME MINISTER

The Chief Secretary copied to me his minute of 27 February about War Crimes legislation, and I have also seen the response on your behalf dated 1 March.

Authority from L Committee for the introduction of the War Crimes Bill will be premature, in my opinion, before policy is agreed on two important matters - namely, the specific offences in respect of which we intend to provide for evidence by television link (in England and Wales by implementing Section 32 of the Criminal Justice Act 1988), and whether an assurance can be given to the Director of Public Prosecutions that the CPS will receive the additional resources it needs if it is to guide the preliminary police investigations, as well as prepare and carry through any prosecutions thereafter.

You will recall that the Lord Advocate has stated that without evidence by television link any prosecution of Gecas would be impossible. The same seems likely to be true of any proceedings that would take place in England.

The Home Secretary has said that he proposes only to implement Section 32 of the Criminal Justice Act for homicide cases. The Chief Secretary maintains his position that implementation of Section 32 should be for war crimes trials only. Since everyone agrees that the absence of such provision has not caused difficulty in homicide cases generally, it will in practise be apparent in either event that we are creating a special evidential regime for war criminals. There is a great deal to be said against this, and it has already been said effectively.

Contrastingly, there is pressing need for evidence by television link to be available in cases of serious and complex fraud: see the Roskill report. We had this in mind in introducing Section 32. Serious fraud costs the country hundreds of millions a year. To decline to avail ourselves of this valuable aid to the administration of justice, on grounds of shortage of resources, as the Home Secretary proposes to explain, while adopting it for the purpose of prosecuting crimes committed two generations ago will attract further criticism.

I appreciate that no provision needs to be made in the Bill itself: but introduction will follow hard upon authorisation by L, and our policy will be explored. I believe we should, on each of the grounds I have mentioned, decide to implement Section 32 both for serious and complex fraud and homicide, and in any event decide our policy before authority for introducing the Bill is given.

We shall be subjected to similar scrutiny regarding the resources we are making available to the CPS. I have consistently thought it right to warn over the past months that no work on current crime can be held up so as to permit work to be done relating to war crimes. CPS staff are already overstretched, and I must ask that, before authorisation for the introduction of the Bill is given, the necessary additional resources will be assured to the CPS.

The Chief Secretary proposes provision for investigation costs in 1990/91 of £1,336,000 on the basis that they would be a common police service. Although expressed in those terms, I understand that sum includes the costs which would inevitably fall on the Crown Prosecution Service during the

CONFIDENTIAL

investigative stage. These amount to £136,000 for the investigation costs to the Service of two cases during 1990/91. The provision does not however include any funding for the additional staff which the CPS would need to begin recruiting as soon as the legislation has been enacted. The cost of additional staff during a full year of investigatory, preparatory and court work on all the war crimes cases of which we are aware is estimated at £420,000 per annum; the requirement for the year 1990/91 would be in the region of £210,000. Detailed costings (including full cost of trials) have been provided to the Treasury.

I understand the Lord President is willing to convene a meeting before L Committee meets, in order to resolve these issues.

The Lord Chancellor, who has similar concerns for the Court Service, authorises me to say that he concurs with this minute.

I am copying this minute to the Lord President, the Lord Chancellor, the Home Secretary, the Chief Secretary, the Lord Advocate and Sir Robin Butler.

A.M.

2 March 1990

CONFIDENTIAL

FOREIGN POLICY
WAR CRIMES
Pt 3

CONFIDENTIAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

1 March 1990

Dear Carys,

WAR CRIMES

The Prime Minister has seen the Chief Secretary's minute of 27 February on the public expenditure aspects of the War Crimes legislation. Subject to the views of colleagues, she is content with the Chief Secretary's proposals.

Incidentally, the Prime Minister has commented that she is very much against using TV evidence for any trial.

I am copying this letter to the Private Secretaries of members of the Cabinet, the Private Secretaries to the Attorney General, the Lord Advocate, Solicitor General for Scotland, the Chief Whip, Government Whip, House of Commons, to the Secretary to the Cabinet and to the first Parliamentary Counsel.

Yours ever,

Charles Powell

Miss Carys Evans
Chief Secretary's Office

CONFIDENTIAL

CONFIDENTIAL

FROM: CHIEF SECRETARY
DATE: 27 February 1990

PRIME MINISTER

WAR CRIMES

I have seen Geoffrey Howe's minute to you of 29 January recording the outcome of his meeting on 24 January to discuss the content, timing and handling of the proposed Bill. I note your endorsement of the balance struck by Geoffrey's conclusions, and your agreement that we should proceed with legislation in this session. I have also seen Patrick Mayhew's recent views on TV coverage for cases of serious and complex fraud.

2. Geoffrey suggested I should write to you on the public expenditure aspects of the legislation. I am now in a position to do so, following work by officials on the timing and likely size of the costs.

3. I think we need to distinguish between the immediate costs, namely those which could be incurred in 1990-91 once the Bill is passed, and those which would fall in 1991-92 and beyond. On the latter, I have already made my position clear in my letter to David Waddington of 22 December last. I would be willing to give any bids for 1991-92 and thereafter sympathetic consideration during the forthcoming public expenditure Survey. I am sure you and colleagues will understand that I cannot commit myself further at this stage, particularly given the many uncertainties surrounding this issue.

4. For 1990-91 the position is somewhat different. Assuming the legislation is passed, there will, as David Waddington points out, be pressure to move quickly in the further investigation of suspects. We will need, therefore, to have teams in place to start the work, for which no provision exists at present.

5. Colleagues have made strong representations that resources must be made available if the work is to proceed. In the highly exceptional circumstances of war crimes I am content to accept the case for additional resources to be made available in 1990-91 for investigations to proceed. However, I do not consider these investigations merit different treatment from others carried out by the police and I can only agree to fund them on the basis they would be a common police service. I understand that the full cost would be some £1, 336,000 for England, Scotland and Wales.

6. That said, I do not feel it would be right to offer additional provision in 1990-91 which might become necessary if investigations were successful and one or more crimes were brought to trial. There is as yet far too much uncertainty to do so. I think we should wait to see how the investigations proceed and until we are in a better position to judge the likelihood and timing of any trial. When the position is clearer I will consider any necessary bids. I will do so sympathetically, although I must of course reserve my right to explore the scope for any offsetting savings at that stage.

7. David Waddington has also raised the question of the propriety of incurring expenditure during the passage of the Bill. This is a difficult matter given the doubts which John Belstead and Patrick Mayhew, in particular, have expressed about our ability to get the legislation through the Lords. I will be writing separately to David Waddington about that aspect.

8. In examining the estimated costings of trials for war crimes I am struck by the expense of providing for live TV evidence from witnesses. I accept this would be necessary in the case of war

crimes and that costs would be high. I also understand the desire of colleagues not to limit such provision to war crimes only, to avoid setting up procedures which do not have a more general application, hence the proposal to include homicide trials and Patrick Mayhew's desire to include serious and complex fraud. I understand that for other crimes of homicide TV evidence would be little used and would have a minimal impact on costs. I maintain my position that no additional provision can be made for such trials. If serious and complex fraud were included then I would similarly expect the costs to be absorbed within existing provision.

9. In setting out my position I have sought to balance the exceptional nature of this issue with the concern which we all share, for the control of public spending. I trust this will allow us to proceed with our agreed course of action. If you are content, I suggest our officials sort out the detailed implications.

10. I am copying this minute to other Cabinet colleagues, Patrick Mayhew, Peter Fraser, Alan Rodger, Tim Renton, Bertie Denham, Robin Butler and First Parliamentary Counsel.

NORMAN LAMONT

For Pol: War
Crimes Pt 3

27.02.
10 11 12
PM 9 0

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CONFIDENTIAL

CHIEF SECRETARY TO THE TREASURY

CST 28/2

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

27 February 1990

Dear David

WAR CRIMES: PROPRIETY OF EXPENDITURE

Your Private Secretary's letter will request if required of 8th February, on page 5, asked me to consider with the Treasury Officer of Accounts whether it would be consistent with parliamentary propriety to start substantive investigative and prosecutorial work once the War Crimes Bill has received a Second Reading in the Commons. As you indicated, this would involve an advance from the Contingencies Fund. I have looked into this carefully and have discussed it with the Accounting Officer.

2. I recognise that there will be pressure from some quarters to get on with the substantive work. On the other hand, there will still be those who have serious misgivings about some aspects of the Bill. It would certainly be in order for the Home Office or other departments to present Supplementary Estimates once the Bill has received a Second Reading in the Commons. This would enable them to spend money as soon as the Bill has been enacted and the Appropriation Act has been passed.

3. It would not however be proper, in the circumstances of this case, to anticipate Parliamentary approval by starting to incur substantive expenditure after Commons Second Reading. The Parliamentary convention is that this may only be done where the expenditure is clearly urgent and where there is no reasonable ground for doubt of Parliament's willingness to approve it. John Belstead and Patrick Mayhew have both indicated that the willingness of the Lords to approve this legislation cannot be taken for granted, and Geoffrey Howe has observed that the Commons might be faced with a decision whether to invoke the Parliament Act. In these unusual circumstances an advance from the Contingencies Fund could only properly be made after it is clear

that the Bill will be endorsed by the Lords as well as the Commons, and that there is no possibility of it failing to pass during this session. As a matter of propriety therefore any commitment to substantive expenditure should await Parliamentary approval of the legislation by both Houses.

4. I am copying this letter to the Prime Minister, Geoffrey Howe, James Mackay, Douglas Hurd, Tom King, Malcolm Rifkind, John Belstead, Patrick Mayhew and Peter Fraser, and to Sir Robin Butler.

NORMAN LAMONT

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

CCJC

MO 10/7/4D

12th February 1990

CBD 17/2

Dear Tim,

WAR CRIMES

PLAP

My Secretary of State has seen Charles Powell's letter to you of 30th January commenting on the Lord President's minute of 29th January about the content, timing and handling of legislation of war crimes.

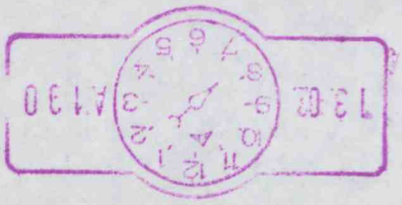
Mr King's view is that there is little alternative but to proceed with legislation given the vote in the House of Commons; he is content with the arrangements proposed by the Lord President.

I am copying this letter to Private Secretaries to members of the Cabinet and to those of the Attorney General, the Lord Advocate, the Solicitor General for Scotland, Parliamentary Secretary (Treasury), the Captain of the Gentlemen at Arms, Sir Robin Butler and to the First Parliamentary Counsel.

Yours ever

(S J AMBLER-EDWARDS)(MISS)
Private Secretary

Tim Sutton Esq
Lord President's Office



FOREIGN POL
War Criminals Pt 3.

CONFIDENTIAL AND PERSONAL

(2)

Prime Minister

It may be no great disaster if it falls in the Lords — in the light of all the technical difficulties.
CDP 1/2

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A2AT

31 January 1990

Dear Tim,

WAR CRIMES

The Lord Privy Seal has seen a copy of Charles Powell's letter to you of 30 January and he has made the following comments.

The Lord President's minute to the Prime Minister of 29 January very clearly records the danger that the War Crimes Bill could founder in the House of Lords (paragraphs 3 and 17 of the minute refer) and warns of probable House of Lords opposition to changes in rules of evidence (paragraphs 5 and 6). In his minute, the Lord President also rehearses the need to avoid committal proceedings in War Crimes trials since he considers that Roy Hattersley and perhaps other Labour MPs may be troublesome on this issue (paragraph 7). The Lord Privy Seal has pointed out that this is again an area of probable opposition in the House of Lords.

Paragraph 10 of the Lord President's minute leaves open the final decision on whether to proceed this session or next. The Lord Privy Seal wishes to add that if the Government proceeds during this session it is bound to have an effect on the length of this session.

I am copying this to Charles Powell, to the Private Secretaries to members of the Cabinet, and to those of the Attorney General, the Lord Advocate, the Solicitor General for Scotland, Parliamentary Secretary (Treasury), the Captain of the Gentlemen at Arms, Sir Robin Butler and to the First Parliamentary Counsel.

Yours ever,
Gillian

GILLIAN KIRTON
Private Secretary

Tim Sutton, Esq

FILE LPO.

CONFIDENTIAL AND PERSONAL

bc PC

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

30 January 1990

Dear Tim,

WAR CRIMES

The Prime Minister has considered the Lord President's minute of 29 January about the content, timing and handling of legislation of war crimes. She is most grateful for the painstaking work which has gone into this. The Prime Minister agrees very much with the balance struck by the Lord President in his own conclusions: despite the difficulties, we have to go ahead and should introduce legislation in the present session. If most colleagues agree with the Prime Minister in endorsing the Lord President's conclusions, she would not have thought it necessary to have a discussion in Cabinet. But colleagues may like to raise any further points of detail with the Lord President in correspondence.

I am copying this letter to the Private Secretaries to members of the Cabinet, and to those of the Attorney General, the Lord Advocate, the Solicitor General for Scotland, Parliamentary Secretary (Treasury), the Captain of the Gentlemen at Arms, Sir Robin Butler and to the First Parliamentary Counsel.

Yours sincerely

CHARLES POWELL

Tim Sutton, Esq.,
Lord President's Office.

KK

(1)

Prime Minister

Re Lord President asks for more issues to be discussed once more in full Cabinet. Agree? CDP 29/1

PRIME MINISTER

WAR CRIMES

I chaired a meeting with colleagues on 24 January at which we discussed the issues about the content, timing and handling of legislation on war crimes set out in the paper attached to the Home Secretary's letter to me of 19 January. In addition to the Home Secretary, the Lord Chancellor, Lord Privy Seal, Scottish Secretary, Attorney General, Solicitor General for Scotland, the Chief Whip (Lords), Deputy Chief Whip (Commons), and Francis Maude were present.

2. I should be grateful if colleagues will ensure that this minute is seen only by those officials necessarily involved in the handling of these matters.

3. The meeting recognised that a Bill on war crimes will add considerably to the burdens and complexities of the legislative programme. John Belstead believes that there is a strong possibility that it will either be rejected or seriously emasculated in the Lords. Paddy Mayhew pointed out that prosecutions would be both difficult and hugely expensive (see below). There can be no guarantee that the courts will not throw them out because of difficulties caused by the long delay between the events in question and the trial. Nevertheless, colleagues were reluctantly agreed that in the face of the vote in the Commons last December, there was little alternative but to proceed with a Bill. I return to this point at the conclusion of this minute.

CONTENTS OF THE BILL

4. The Hetherington inquiry made a number of recommendations for changes in evidential (and, in one important respect, procedural) arrangements. We agreed that it would be desirable to limit as far as possible the number of these changes made in a War Crimes Bill. We do not want to provide ammunition to those who will argue that it would be wrong to make changes in evidential procedures which are not of general application. I recall that Roy Hattersley made clear in the Commons debate that he would be opposed to legislation if it involved changing for this category of offence the way in which our courts behave.

5. The chief change required is to amend Scottish law so as to enable evidence to be taken from abroad by live television link (in England and Wales there is already an enabling power in Section 32 of the Criminal Justice Act 1988). Malcolm Rifkind is content for the necessary provisions to be introduced in his Law Reform (Miscellaneous Provisions)(Scotland) Bill, which is to have its second reading in the Lords tomorrow. Peter Fraser will announce his intention to consult about the proposed change in his speech on second reading of the Bill, with a view to the necessary amendments being introduced at a later stage. The amendments in question could, if necessary, be introduced in the Commons.

6. This Bill will also be amended to allow the admissibility in evidence of video recording of evidence taken on commission. (Alan Rodger advised that we do not need to amend Scottish law to allow the admissibility in evidence of statements by persons now dead.) Although these evidential changes will be of general application, it is possible that they will be opposed in the Lords. Nevertheless it will be difficult for anyone to argue against them as there are already precedents for them in English law.

7. Of the three other changes recommended by the Hetherington inquiry, the Criminal Justice (International Co-operation) Bill currently in the Lords will enable courts throughout the United Kingdom to request the taking of evidence on commission. Colleagues saw no need to legislate to allow the admissibility of sworn statements by archivists. They accepted, however, that there is one procedural change (with evidential consequences) which we shall have to make in the War Crimes Bill - namely to avoid the need for committal proceedings in war crimes trials. There is precedent for this in respect of serious fraud cases. If we do not make similar provision for war crimes cases, we could well render virtually impossible the task of the prosecution. This is because the provisions on taking evidence by live television link (which would be vital to any chance of success) do not extend to committal proceedings. We thus face the choice, in such cases, of providing specially for the admissibility in committal proceedings of televised evidence or of avoiding altogether the need for such committal proceedings. The latter is the least difficult (and also the least expensive) choice. We shall therefore have to go ahead with this change. If we do not do so, we shall be criticised by the proponents of the Bill for denying the means necessary to mount a successful prosecution. There is no doubt that we shall be criticised by opponents of the legislation for doing so. Roy Hattersley indeed may well argue that such a change would go so far as to destroy his support and perhaps that of many Labour Members for the legislation.

8. The net effect of these decisions would be a Bill of no more than 10 clauses in length, and probably less. Draft instructions to counsel have already been prepared and can be sent to Parliamentary Counsel as soon as final decisions have been taken on the principle of legislation. Parliamentary Counsel should be able to produce a first draft of a Bill within a fortnight of receipt of drafting instructions.

TIMING OF THE LEGISLATION

9. The meeting also considered the timing of a Bill. On the one hand it was argued that it would be better to postpone it to next session, when it could be taken as part of a planned programme. It would not be easy to accommodate the Bill this session on top of that on Hong Kong. Nor would it be sensible to risk another argument with prominent members of the legal profession in the House of Lords on the evidential issues in the Bill in the immediate aftermath of the passage of the Courts and Legal Services Bill.

10. On the other hand it was strongly argued that the Bill should be introduced this session. The Hetherington inquiry recommended legislating as quickly as possible, the potential defendants are not getting any younger, and if the Bill is going to create Parliamentary difficulties, it would be better to get these over sooner rather than later. Delay would be criticised by those whose support we had won by our actions so far on the issue. It would also dissipate the advantage we had gained by having put the issue to the Commons and got its clear view. The meeting concluded that the Cabinet as a whole should be invited to consider the balance of these arguments.

HANDLING OF THE LEGISLATION

11. The meeting agreed that if Cabinet endorses legislation, collective responsibility will apply and the payroll should be formally whipped in its support. Backbench supporters of the Government should be allowed a free vote at all stages. (In the Commons vote on 12 December, the payroll split 27 for and 24 against; PPSs 24 for and 12 against. In these circumstances the Whips will seek to accommodate any colleague who has serious difficulties of conscience over the measure.) The same whipping arrangements should apply in both Houses.

12. In view of the likely difficulties in the Lords, the Bill should begin its progress in the Commons. This could mean a good deal of nugatory effort if the Lords subsequently rejects the Bill. Nevertheless the Government would not be open to criticism for inaction. If the Lords reject the Bill we should have to decide whether to invoke the Parliament Act to ensure its passage. One option might be to postpone a further attempt at legislation until the next Parliament.

RESOURCES

13. The resource implications of the proposed legislation are very considerable, as paragraph 19 of David Waddington's paper indicates. The cost of live television evidence (which will be crucial to both prosecution and defence in any trial) is estimated to be in the range of £400,0000-900,000 per case (without having to make any provision for committal proceedings., and the costs to the Crown Prosecution Service at £700,000 per case (including any appeal). Substantial costs would also fall on the prosecuting agencies in Scotland and on the police, the courts and legal aid (the provision of which will be a crucial requirement in the eyes of many in the House of Lords). I understand indeed that the estimates given in the Home Secretary's paper are themselves incomplete, and have urged colleagues to ensure that a comprehensive estimate of the likely costs is given to the Chief Secretary as soon as possible. The Chief Secretary will no doubt wish to minute you once this has been received.

14. No provision has been made in estimates for these sums. Colleagues were agreed that the necessary financial resources must be made available if the Bill is to proceed. The prosecuting authorities cannot authorise work on war crimes prosecutions at the expense of the prosecution of more recent offences. Nor can we will the end (probably at the expense of considerable Parliamentary turmoil) without also willing the means.

CONCLUSION

15. Interested colleagues are agreed on the content and handling of a Bill on war crimes. The Bill will be relatively short, its contents limited to those provisions necessary to extend courts' jurisdiction over war crimes and to avoid the need for committal proceedings in war crimes trials. We propose that it should be introduced in the Commons and that the payroll should be whipped in its support. Government backbenchers would enjoy a free vote.

16. The provision of adequate resources is essential if legislation is to proceed. I hope that the Chief Secretary will minute you sympathetically about this immediately he has received comprehensive cost estimates from colleagues.

17. Before we finally press the button on the Bill, colleagues will wish to confirm the decision to proceed. The costs in Parliamentary effort, as well as in resources, will be very substantial, and the difficulties of prosecution immense. The Bill may be rejected by the Lords: prosecutions may be rejected in the courts. Following the Commons debate, however, we have indicated our commitment to the principle of legislation, while still considering its form. On this basis, there remains only the question: do we proceed in this session or the next? Despite the obvious difficulties, my own tentative preference is for legislation, if at all, in the present session.

18. I should be glad if arrangements could be made for these issues to be discussed in Cabinet once we have the Chief Secretary's views on the resources question. If colleagues confirm our intention to proceed with the Bill, I should be grateful if they would also endorse the conclusions on the contents and handling of the Bill recorded in this minute.

19. I am copying this minute to other members of Cabinet, Paddy Mayhew, Peter Fraser, Alan Rodger, Tim Renton, Bertie Denham, Sir Robin Butler and First Parliamentary Counsel.

GH

29 January 1990

FOL POC: War Crimes PT3

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

19 January 1990

Dear Lord President

EDR 19/1

WAR CRIMES

Your letter of 22 December to end indicated your intention of calling a meeting of colleagues to consider the principal issues raised by the Commons vote on the principle of war crimes legislation. I gather that no date for this has yet been fixed.

In preparation for the meeting I thought it might be helpful to circulate a paper by officials addressing the points identified in your letter as in need of resolution. This is attached. I am grateful for the assistance which my officials have received from other departments in putting it together. The paper includes my preliminary views on how the Bill might be handled in Parliament, though this is clearly subject to the judgement of the Business Managers.

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.

Yours sincerely
Sara Dent

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

The Rt Hon Sir Geoffrey Howe, QC, MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON, SW1

CONFIDENTIAL

5

CONFIDENTIAL

WAR CRIMES

1. This paper considers the current outstanding issues, following the Commons debate on 12 December. It addresses:-

- The Scope of the Legislation (paragraphs 2-9)
- The Timing of Legislation (paragraph 10)
- Legislative Vehicles (paragraphs 11-12)
- The Size of the Bill and its Readiness for Introduction (paragraphs 13-14)
- Retrospectivity (paragraphs 15-16)
- Parliamentary Handling (paragraph 17)
- Resource Aspects (paragraphs 18-22)

SCOPE OF THE LEGISLATION

2. As a basic minimum the Bill will need to extend the jurisdiction of the British courts, to enable them to try 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 resident in the United Kingdom. The Bill may also, depending upon the funding mechanism chosen, need a provision on the financing of war crimes investigations in England and Wales.

3. Additionally, the Inquiry recommended certain changes to the procedures which would govern war crimes trials. These proposals were quoted by some of the opponents of war crimes legislation as though a wholly novel regime was envisaged for such trials. Lord MacCaulay, for example, talked of "twisting our normal standards of prosecution to achieve a result"; Mr Hattersley suggested that "changes in the rules of evidence in such circumstances constitute a negation of our basic freedoms".

4. The Inquiry's procedural proposals are in fact less novel and less extensive than those comments might suggest. They are as follows:

(a) Evidence from Abroad by Live Television

This is not a novel proposal, so far as England and Wales are concerned, in that the necessary legislative provision (although not yet implemented) is available in Section 32(1)(a) of the Criminal Justice Act 1988. The current proposal is that, as the general implementation of this provision is ruled out by resource considerations, the way forward should be by selective implementation - possibly just for trials of murder, manslaughter, genocide and serious and complex frauds. Separate legislative provision would, however, be necessary to make the facility available in Scotland.

(b) Committal Proceedings

So far as proceedings in England and Wales are concerned, the Inquiry proposed extending to war crimes trials the facility introduced for serious fraud cases by the Criminal Justice Act 1987 for transfer of proceedings to the Crown Court without any prior committal stage. (There is no equivalent to committal in Scotland, so that any Scottish case would go straight to substantive trial.) The argument for retaining committal proceedings for war crimes trials is that these will be cases where assessing the quality of the evidence to establish whether there is a case to answer (which is the purpose of committals) is particularly important. In favour of the Hetherington recommendation it can be argued that the principle of bypassing committal has already been established in respect of serious fraud cases, and that war crimes trials (like fraud) are likely

to be so complex that it would not be reasonable to expect the prosecution (or its witnesses) to present the case more than once. The provisions on live television evidence in the 1988 Act do not extend to committal proceedings, so that without this change infirm witnesses would still be required to travel to this country. This would remove much of the advantage to be gained from having live television links during the trial itself.

(c) Statements by Persons now Dead

Section 23 of the Criminal Justice Act 1988 provided in England and Wales that statements by persons now dead, or by persons outside the United Kingdom who could not reasonably attend proceedings here, should be admissible in evidence, subject to the safeguards on the fairness of so doing, contained in Sections 25 and 26 of that Act. The provision does not extend to Scotland, and although such statements may be admissible under Scottish common law, the Lord Advocate has supported the Inquiry's proposal that the position should be put beyond doubt. There is obvious concern in these cases that important witnesses may die before the completion of proceedings.

(d) Evidence on Commission

The Inquiry recommended provisions to enable courts in England and Wales and in Scotland to request the taking of evidence on commission. The Criminal Justice (International Cooperation) Bill (which applies throughout the United Kingdom) will establish the necessary authority for courts in this country to seek evidence in the way proposed by the Inquiry, and no further legislative change would be needed.

(e) Video Recording of Evidence taken on Commission

The Inquiry concluded that it would add to the force of evidence taken on commission if the taking of such evidence were video recorded. Such evidence is already admissible in England and Wales, and would be governed by the safeguards on admissibility contained in Section 25 of the 1988 Act. It is possible that legislation would be needed in Scotland to render such evidence admissible.

(f) Sworn Statements by Archivists

The Inquiry concluded that foreign archivists would by now be unlikely to have first-hand knowledge of the origins of their archival collection, and would generally be able to give evidence only to the effect that particular documents were in their archives. In such circumstances the Inquiry saw no need for the archivist to give oral evidence, and recommended legislation, applicable both in England and Wales and in Scotland, to render admissible written evidence as to the archival source in which particular documents were located.

5. Limiting implementation of the Inquiry's procedural recommendations, or excluding them altogether, may ease the passage of the legislation, particularly in the Lords - though it should be said that no one who spoke in either debate took quite the position of Mr Hattersley, of supporting the principle of legislation, provided no special evidential arrangements were made. Against the possible advantages of abandoning the procedural recommendations has to be set the danger of accusations that the Government was meeting the form but not the spirit of the Commons vote, by providing for war crimes trials in a manner that made it unlikely that any successful prosecutions would be mounted. The Attorney General and the Lord Advocate have argued, respectively, that the prospects of successful

prosecution would either be seriously diminished or made impossible, if evidential changes were not made. Selective implementation of the Inquiry's proposals appears the best means of easing criticism of the measure, while ensuring that it remains effective.

6. Of the Inquiry's six procedural proposals, those in respect of live television evidence and committals are the most significant. Neither would be an innovation, given the existing provisions in the 1988 and 1987 Criminal Justice Acts. Parliament has already accepted the general principle of live television evidence, so far as England and Wales are concerned, subject only to the availability of resources. The Lord Advocate has indicated that live television evidence would be an essential element in prosecuting the leading Scottish case. In order to avoid accusations that a unique regime was being introduced for war crimes trials, the facility should be provided in Scotland for a general category of cases (as it is proposed to do in England).

7. Bypassing committal proceedings in England and Wales is the development next in order of desirability. As noted, the precedent for this already exists - although there may be arguments in Parliament over how close the parallels really are between fraud and war crimes trials. The non-availability of live television evidence in committal proceedings argues for legislating on this point also.

8. Providing in Scottish law for the admissibility both of evidence from witnesses who have since died and of videoed statements might, like television evidence, be defended on the grounds that the principle has already been accepted as acceptable adjuncts to criminal trials in England and Wales. The former could be particularly useful in the case of war crimes. But they are less important than the changes previously discussed, and the presentational advantage of abandoning a proportion of the procedural recommendations suggests they should both be dropped. The proposal

on archivists is the least significant and the one most open to criticism on grounds of novelty. It too should be omitted.

9. It is recommended that steps be taken to ensure the availability of live television evidence in war crimes trials, both in England and Wales and in Scotland, and to enable the bypassing of committal proceedings in such trials in England and Wales. None of the other procedural proposals need be implemented.

TIMING OF THE LEGISLATION

10. The Inquiry made a specific recommendation (paragraph 9.56) that legislation to implement their proposals should be brought forward as quickly as possible. A major argument of those opposed to legislation is that the suspects are old men, and that witnesses' memories will have dimmed with age. Those arguments will increase with every year that passes. It will be difficult to defend accepting the decision of Parliament on the principle of legislation, but delaying acting on that decision into the next session. The danger, as with a decision to reject all of the procedural recommendations, is that the Government would be accused (possibly by those against, as well as those in favour of legislation) of acting in a way which reduced the possibility of fair trials ever being held. Despite the problems of the legislative programme, all the arguments appear to point in favour of action this session.

LEGISLATIVE VEHICLES

11. Given the selective use which it is believed could be made of the commencement order provisions of the Criminal Justice Act 1988, no fresh legislative provision is necessary in respect of television evidence in English cases. Fresh legislation is necessary, however,

to replicate for Scotland the provisions on live television evidence in England and Wales. If this is to apply to all categories of case (albeit with the intention of selective implementation as in England) it would not be appropriate for inclusion in the War Crimes Bill. The Law Reform (Miscellaneous Provisions) (Scotland) Bill appears the only possible means of making the change this session. Ensuring the admissibility in Scotland of evidence given by witnesses who have since died and of videoed evidence (if it were decided to implement either or both of these recommendations) would similarly have to be of general application, and would thus be inappropriate for the War Crimes Bill. Again, the Law Reform (Miscellaneous Provisions) (Scotland) Bill appear the only vehicle.

12. A War Crimes Bill is the natural vehicle for a provisions to bypass committal proceedings in England and Wales, since the change would relate explicitly to war crimes trials. There is no obvious vehicle for the proposal on archivists, unless the change were made solely in respect of war crimes trials, which would be undesirable.

THE SIZE OF THE BILL AND ITS READINESS FOR INTRODUCTION

13. The current estimate is that the provisions to extend the jurisdiction of the British courts would require five to six clauses. Three clauses would be needed to provide for the bypassing of committal proceedings in England and Wales; a further clause may be needed in respect of the funding mechanism in England and Wales. (Providing for live television evidence in Scotland would require a single clause in the Scottish Miscellaneous Provisions Bill; providing in addition for the admissibility of video recorded evidence and of statements by persons now dead would entail a further one or two clauses.)

14. Drafting instructions have already been prepared, and can be sent to Parliamentary Counsel as soon as final decisions have been taken on the principle of legislation and the scope of the Bill. Home Office officials estimate that, other commitments permitting, Parliamentary Counsel should be able to produce a first draft of the Bill within a fortnight of receipt of drafting instructions.

RETROSPECTIVITY

15. Much was made in the debates by those opposed to legislation, of the argument that giving the British courts jurisdiction as proposed by the Inquiry would amount to retrospective legislation. It is difficult to see what more might be said on this point, beyond the arguments advanced by the Inquiry and quoted during the debates. These are:

- that the Acts alleged were crimes under the laws of this country at the time they were committed;

- that the accused would now be subject to the jurisdiction of British courts, had they been British citizens at the time, and that they escape from that jurisdiction only because they were not then subjects of the Crown; and

- that the actions in question were offences under international law at the time they were committed.

(It will be noted that the Inquiry was careful to restrict its recommendation to actions which constituted war crimes (violations of the laws and customs of war), which were part of the agreed corpus of international law prior to 1939 - rather than the broader definition of crimes against humanity, which had to wait until Nuremberg for international articulation.)

16. Retrospectivity does not appear to have been an issue during the passage of the Australian legislation. In Canada (which has recently started its first war crimes trial) there were concerns over the extent to which the fairness of the evidence could be guaranteed, and it was believed that there would be general public opposition to proceeding by way of extradition. Retrospectivity seems to have caused less concern, though the Canadian Minister of Justice felt it necessary to deal with the point in his Second Reading speech on the legislation. He did so in terms very similar to those which have been employed here:

> ".... there will be no new offences created and applied retroactively to past acts or omissions, something which would be rightly viewed by Canadians and courts alike as repugnant to our concept of justice ...."

He also quoted words from the Canadian equivalent of the Hetherington report:

> ".... we are not aiming to make acts which were deemed innocent when committed criminal now; such would be unacceptable retroactivity. But extermination of a civilian population, for instance, was already as much criminal in 1940 as it would be today, under the laws of all so-called civilised nations. We are only trying to establish now in Canada a forum where those suspected of having committed such offences may be tried, if found in Canada."

PARLIAMENTARY HANDLING

17. The Bill will be Government legislation and the support of the payroll vote should be required - although individual Ministers who

see the measure as a matter of conscience should be accommodated by the Whips if this proves necessary. Subject to the views of the Business Managers, backbenchers should be allowed a free vote at each stage. If parliamentary time permits, there may be advantage in taking Commons Committee on the floor of the House. Similar arrangements for whipping should apply in the House of Lords.

RESOURCE ASPECTS

18. The resource implications of the legislation will depend upon its scope (ie whether the key procedural proposals are implemented) and on how many cases are investigated each year. The Departments concerned have prepared the following estimates based on assessments of the number of cases which it would be feasible to tackle at any one time, and the capacity of the Soviet authorities to handle requests for evidence and assistance. Underlying the figures (which are the subject of continuing discussions with Treasury officials) are the following assumptions:

- Earliest possible date for first prosecution:	end of calendar year 1990 (England and Wales) start of financial year 1991/92 (Scotland)
- Average length of trials:	4 months (England and Wales) $2\frac{1}{2}$ - 3 months (Scotland)
- Average length of appeals:	1 month (both jurisdictions)
- Number of cases which might be brought to trial each year in England and Wales:	3

19. The estimates are as follows:

Home Office

Police investigations: £700,000 per annum

Magistrates' courts - the cost to Magistrates' courts of holding committal hearings, if it is decided not to bypass committals, and assuming that four cases a year come to trial: £32,000 per annum

Crown Prosecution Service

Lawyers, support staff, historians, translators and witness costs: £650,000 per case

Appeal costs: £50,000 per case

Lord Chancellor's Department

Court costs (per case): £165,500

Legal aid costs (per case): £648,000 - £734,000* (depending on whether or not there is to be a committal stage)

Appeal costs: £132,000

Scotland

Investigation and prosecution: £0.3m per annum

Cost of Counsel, witnesses, travel and subsistence etc: £0.4m per case

* This figure could rise significantly in the event of a successful defence bid for exceptional expenditure (for example, for overseas travel to interview witnesses).

Other court costs:	£0.2m per case
Legal aid:	£1.0m per case

20. Additionally there is the cost of live television evidence. Current estimates of the cost of this facility for war crimes trials are in the range of £400,000 to £900,000 per case. (The range reflects uncertainties over the proportion of witnesses who could be persuaded to attend in person.) Making the facility potentially available in all homicide cases is not thought likely to add significantly to the cost; extending it further to complex and serious frauds would have a significant resource implication, though this is as yet uncosted.

21. It will be important politically to begin work following up the Inquiry's recommendations, as early as possible after the Government has announced its intention of doing so. Given the age of the accused and their accusers,it would be difficult to defend delaying action on resource grounds. But that will raise questions both of practicality and propriety. The Attorney General has already bid for additional resources in 1990/91, in order for the CPS to fulfil the obligations which the legislation will place upon it. The Home Office has also made clear that there is no present prospect of meeting the additional costs within existing provisions, and that a bid against the reserve therefore seems likely.

22. Normal rules of propriety ordinarily require that no expenditure is incurred on a new area of activity until after the Bill in question has received a Second Reading in the Commons. There are, however, certain exceptional features in this case. On the one hand it could be argued that the debate on the principle of legislation on 12 December has removed the need for further Commons endorsement. On the other, the prospect of a difficult passage for the legislation in the Lords, and the possibility that the Lords may delay the coming

into effect of the provisions, may suggest waiting until the Lords too have blessed the principle of action.

CONCLUSIONS

23. This paper proposes:

(i) legislation should be introduced this session to provide jurisdiction for the British courts as recommended by the War Crimes Inquiry (paragraph 10);

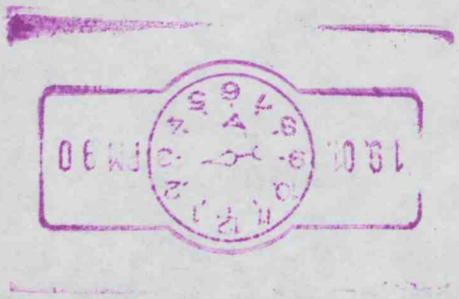
(ii) the Law Reform (Miscellaneous Provisions) (Scotland) Bill should contain provisions, analogous to those in Section 32(1)(a) of the Criminal Justice Act 1988, to enable evidence by live television link to be available in Scottish proceedings - to be implemented, along with the 1988 Act provisions, at an appropriate time prior to the first war crimes trial (paragraphs 6 and 11);

(iii) the War Crimes Bill should contain provisions enabling the bypassing of committal proceedings in war crimes cases in England and Wales (paragraphs 7 and 12);

(iv) no other steps should be taken to implement the procedural recommendations of the Inquiry, and

(v) the support of the payroll vote should be required throughout the passage of the Bill, but backbenchers should be allowed a free vote at each stage (paragraph 17).

Home Office
January 1990



FOR POL

War crimes

P12

Grey Scale #13
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