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CABINET

WAR CRIMES

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

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

BACKGROUND

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

INDEPENDENT INQUIRY

3. It is proposed that we should appoint two independent advisers who would examine the material that has been submitted to us and advise whether the public interest would be served by our taking jurisdiction. In undertaking this inquiry, the advisers would assess the strength of the case for any potential prosecutions, including interviewing witnesses in the Soviet Union and assessing the probative value of any evidence they might give and of Soviet documents in court in this country. Such an investigation would assist us in judging the likelihood that a prosecution could get off the ground if the law were changed. We do not propose that the inquiry should be set up on a statutory basis, but the lack of powers to compel the giving of evidence should not be a serious hindrance.

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LIKELY REACTION TO AN INQUIRY

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

TERMS OF REFERENCE

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

PUBLICATION OF REPORT

6. The inquiry is likely to take about a year to report. The question of publication could be awkward, since the material which the inquiry will review will focus very much on allegations against named individuals, and it will be essential to avoid prejudicing any prosecution that might conceivably ensue. If the report recommended legislation which would enable individuals to be prosecuted in due course, we envisage that it might be confined to summarising the extent of the inquiry; presenting the conclusion that the likely probative value of the evidence obtained justified that assumption of jurisdiction and the consequent recommendation in favour of amending the law; and recording that the evidence obtained had been deposited with the prosecuting authorities. If, however, it recommended against legislation, then it probably ought to indicate in broad terms the content of the evidence available and the reasons why it did not appear sufficient to found prosecutions. In either case there would be no obstacle to publication of the report as such.

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

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prosecution in any particular case. That, however, would seem unavoidable in an inquiry of this nature.

CHOICE OF ADVISERS

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

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

RESOURCES

10. If we decide to set up an inquiry along the lines proposed, various costs would be incurred. The advisers would need support staff, at the minimum an administrative secretary at Grade 7 level and a personal secretary or typist. They might also need the services of a retired police officer to support the investigative side of their work. They will also need accommodation. In addition we shall have to pay the advisers, presumably on the basis of a daily fee. They will also incur subsistence and travelling costs, and there may also be considerable costs in obtaining documents and in procuring translations and interpreting. No provision is available from within existing departmental resources to cover such expenditure, and it is too late to bid for the necessary funds in the next PES round since the inquiry could well be over before the start of 1989-90. It would seem necessary that the costs of the inquiry, which could be of the order of £0.5 million, should be a charge on the Contingency Reserve.

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CONCLUSION

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

D H
M R

Home Office
Scottish Office

19 January 1988

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ANNEX A

INQUIRY INTO WAR CRIMES:

SUGGESTED TERMS OF REFERENCE

- (1) To obtain and examine relevant material, including material held by Government Departments and documents which have been or may be submitted by the Simon Wiesenthal Center and others, relating to allegations that persons who are now British citizens or resident in the United Kingdom committed war crimes* during the Second World War;
- (2) To interview persons who appear to possess relevant information relating to such allegations;
- (3) To consider, in the light of the likely probative value in court proceedings in the UK of the relevant documentary material and of the evidence of potential witnesses, whether the law of the United Kingdom should be amended in order to make it possible to prosecute for war crimes persons who are now British citizens or resident in the United Kingdom;
- (4) And to advise Her Majesty's Government accordingly.

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

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