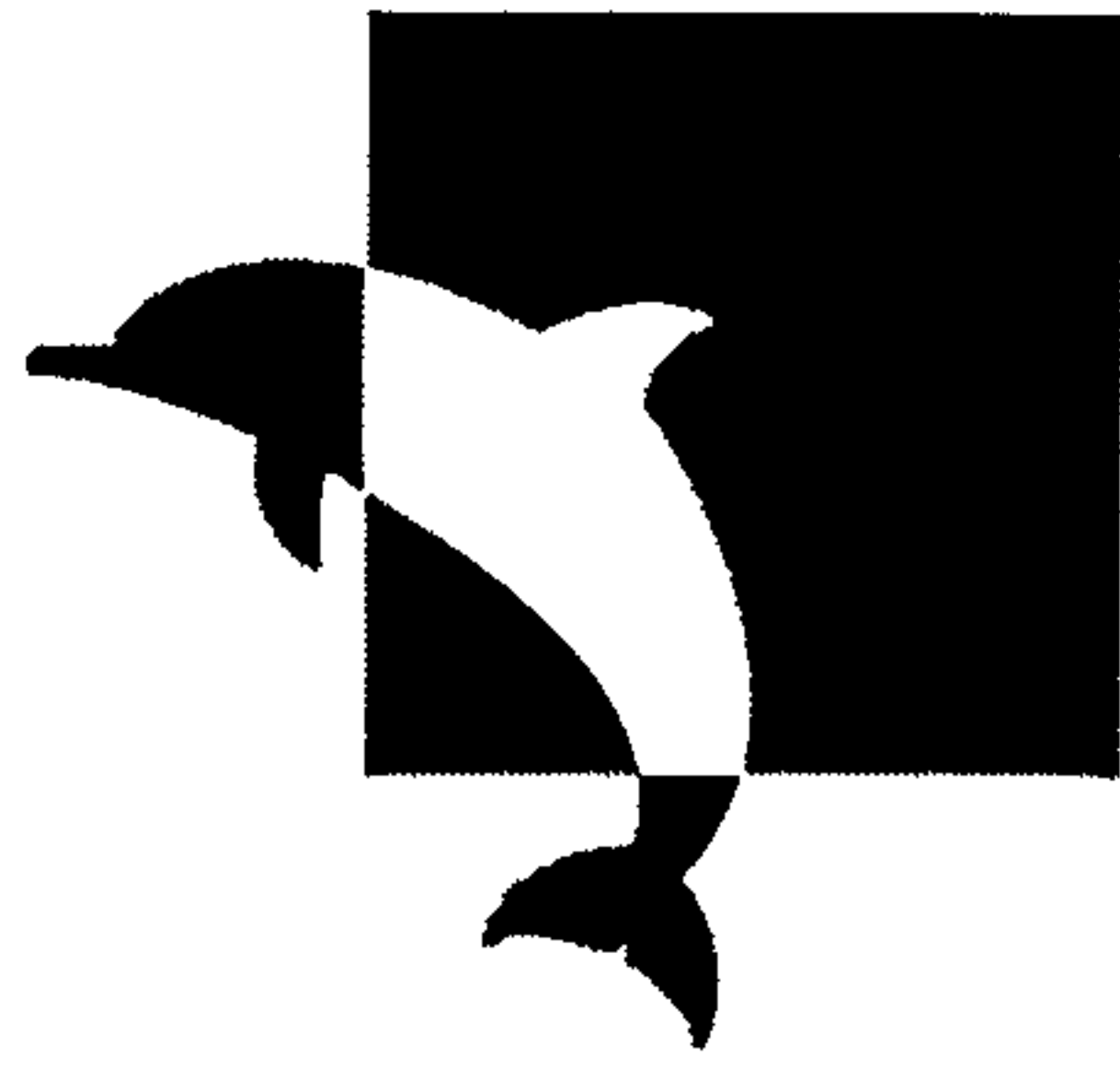




**University
of Southampton**

UNIVERSITY OF SOUTHAMPTON

FACULTY OF LAW, ARTS AND SOCIAL SCIENCES

School of Humanities

**War Crimes Trials between Occupation and Integration: The
Prosecution of Nazi War Criminals in the British Zone of
Germany**

By

Claire Louise Sharman

Thesis for the degree of Doctor of Philosophy

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Errata

UNIVERSITY OF SOUTHAMPTON

ABSTRACT

FACULTY OF LAW, ARTS AND SOCIAL SCIENCES
SCHOOL OF HUMANITIES

Doctor of Philosophy

WAR CRIMES TRIALS BETWEEN OCCUPATION AND INTEGRATION: THE
PROSECUTION OF NAZI WAR CRIMINALS IN THE BRITISH ZONE OF
GERMANY

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Claire Louise Sharman

This research examines the trials of ‘minor criminals’ conducted by the British under the Royal Warrant procedures between 1942 and 1952. Firstly, it is concerned with the mechanics of the trials, i.e., issues of who was to be prosecuted, the structure of the trials, the appeals process. Secondly, it sets the prosecution of war criminals in its wider context, examining the ways in which the Cold War contributed to the desire to ‘wind up’ the trials and how this influenced British perceptions of Nazism. By looking at the responses of key groups (Jewish communities in Britain, for example) it also considers the external pressures placed on the trials and the impact they had on British policy. This work argues that although Jewish groups were one of the few sections of society to remain interested in the British war crimes trial programme, the trials in Germany were little influenced by Anglo-Jewry. Rather, the decision to continue the trials process into the late 1940s was based largely on the desire to bring to justice those accused of crimes against British citizens.

This project also acts as a prism through which several key historiographical areas are addressed: the development of Anglo-German relations within the contest of the emerging Cold War; the contribution of war crimes trials to the nascent cultures of memory in Britain and West Germany; the changing nature of West German public opinion. It argues that the breakdown of the British relationship with the USSR was one of the defining events in war crimes policy. Thereafter war crimes trials were sacrificed as part of a more pragmatic policy of integration with West Germany.

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Declaration of Authorship

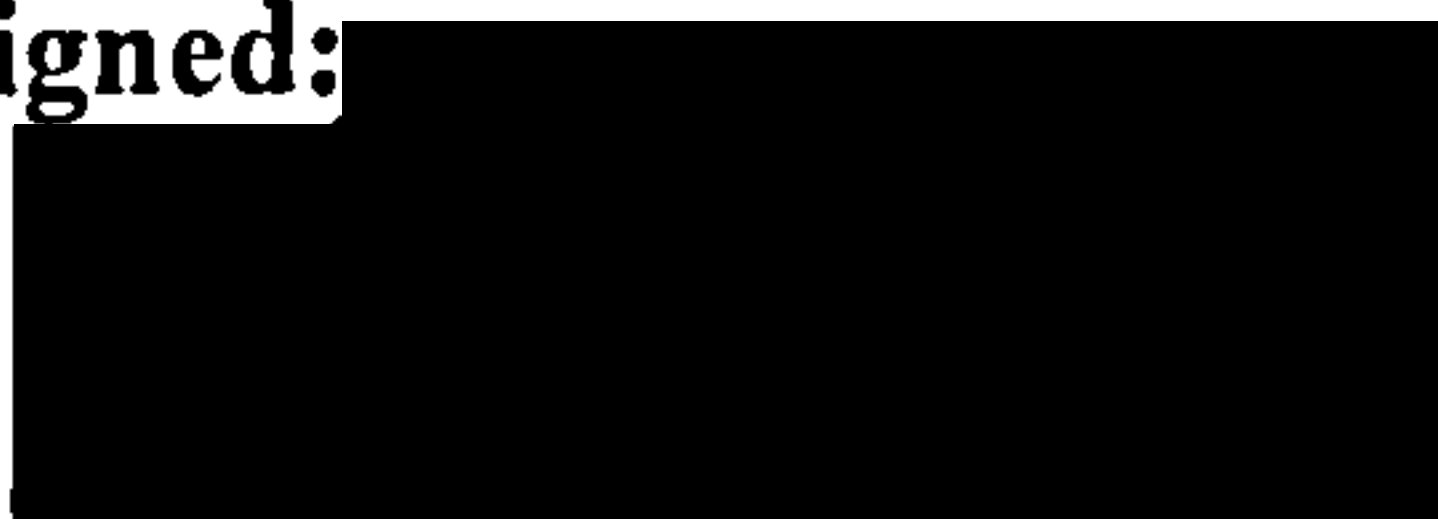
I, Claire Louise Sharman, declare that the thesis entitled,

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- where I have consulted the published work of others, this is always clearly attributed;
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Acronyms and Abbreviations

ABJGB	Association of Baltic Jews in Great Britain
ACA	Allied Control Authority
ACC	Allied Control Council
AGWAR	Adjutant General, War Office
AIR	Royal Air Force Records
AJR	Association of Jewish Refugees
AJRI	Association of Jewish Refugees Information
AMB	Army Medical Board
AO	Army Order
BMO	British Medical Officer
BAOR	British Army of the Rhine
Board	Board of Deputies of British Jews
BRD	<i>Bundesrepublik Deutschland</i>
BWCE	British War Crimes Executive
BZO	British Zonal Ordinance
CAB	Cabinet Papers
CCC	Control Commission Courts
CCG	Control Commission for Germany
CCGBE	Control Commission for Germany, British Element
CCJG	Central Committee for Jews in Germany

CCL10	Control Council Law Number Ten
CDU	Christian Democratic Union
C-in-C	Commander-in Chief
CM	Cabinet Minutes
CMF	Commander Monitoring Force
CO	Cabinet Office
COGA	Control Office for Germany and Austria
CP	Cabinet Papers
CRO	Commonwealth Relations Office
CROWCASS	Central Registry of War Criminals and Security Suspects
DM	Deutschmark
DPs	Displaced Persons
EIPS	Economic and Industrial Planning Staff
EKD	<i>Evangelische Kirche in Deutschland</i>
EXFOR	Experimental Forces
FBI	Federal Bureau of Investigation
FO	Foreign Office
GDP	German Denazification Panel
GHIL	German Historical Institute, London
GPOP	Gallup Public Opinion Poll
GRR	German Reaction Report
HMG	His Majesty's Government
HMSO	His Majesty's Stationery Office
HJ	<i>Hitlerjugend</i>
HO	Home Office

HoC	House of Commons
HoL	House of Lords
HPD	Hansard Parliamentary Debates
IJA	Institute for Jewish Affairs
IJA	Institute for Jewish Refugees
IMT	International Military Tribunal
<i>IMT</i>	Published proceedings of the International Military Tribunal
IRO	International Refugee Organisation
ISC	Information Services Control
IWM	Imperial War Museum
JAG	Judge Advocate General
JCS	Joint Chiefs of Staff
KC	King's Counsel
LCO	Lord Chancellor's Office
LHCMA	Liddell Hart Centre for Military Archives
LMA	London Metropolitan Archive
NA	National Archives
NSDAP	<i>Nationalsozialistische Deutsche Arbeiterpartei</i>
ORC	Overseas Reconstruction Committee
POWs	Prisoners of War
PREM	Prime Minister's Papers
PSSB	Public Safety Special Branch
RAF	Royal Air Force
RSHA	<i>Reichssicherheitshauptamt</i>
RM	<i>Reichsmark</i>

SA	<i>Sturmabteilung</i>
SAS	Special Air Service
SCD	Standing Committee on Denazification
SHAEF	Supreme Headquarters Allied Expeditionary Force
SIB	Special Investigation Branch
SS	<i>Schutzstaffeln</i>
UNO	United Nations Organisation
UNRRA	United Nations Relief and Rehabilitation Administration
UNWCC	United Nations War Crimes Commission
UoS	University of Southampton Archives
VfZ	<i>Vierteljahrshefte für Zeitgeschichte</i>
WCG(NWE)	War Crimes Group (North West Europe)
WCS	War Crimes Section, JAG
WJC	World Jewish Congress
WLB	Wiener Library Bulletin
WLI	Wiener Library Institute
WO	War Office
WRB	War Refugee Board
ZEI	Zonal Executive Instruction
ZPI	Zonal Policy Instruction

Introduction

(I) The Background – Germany in 1945

In 1945 Germany lay in ruins - physically, economically and psychologically. The government and administration of the country had collapsed and territorial integrity had been severed. The population was also in chaos, with the already unsettled population being further disrupted by the massive influx of expellees and displaced persons (DP's) that flooded into the Western Zones after the liberation of the Eastern territories.¹

The British authorities, as well as coping with material deprivation and chaos also had to deal with the legacies of Nazism. That Germany must be purged, both practically and ideologically, of her Nazi elements was a policy that all the Allies agreed upon.²

¹ For more on the position of DPs, refugees and expellees in occupied Germany see Carey, Jane Perry Clark, 'Political Organisation of Refugees and Expellees in West Germany' *Political Science Quarterly* 66, 2 (1951), pp. 191-215; Kochavi, Arie J., British Policy on Non-Repatriable Displaced Persons in Germany and Austria, 1945-7' *European History Quarterly* 21, (1991), pp. 365-382; Connor, Ian, 'The Refugees and the Currency Reform' in *Reconstruction in Post-War Germany: British Occupation Policy and the Western Zones 1945-55*, ed. I Turner (1989), pp. 301-324; Wyman, Mark, *DP: Europe's Displaced Persons 1945-1951* (Philadelphia: Balch Institute Press, 1989).

² Many historians have made this point. See for example, Allen, Diane M., 'Development of Post-war Policy in Germany' *The Western Political Quarterly* Vol. 17, No. 1 (Mar., 1964), pp. 109-116; Chase, John, L., 'The Development of the Morgenthau Plan Through the Quebec Conference' *The Journal of Politics* Vol. 16, No. 2 (May, 1954), pp. 324-359; Gareau, Frederick H., 'Morgenthau's Plan for Industrial Disarmament in Germany' *The Western Political Quarterly* Vol. 14, No. 2 (Jun., 1961), pp. 517-534; King, Frank, 'Allied Negotiations and the Dismemberment of Germany' *Journal of Contemporary History* Vol. 16, No. 3, The Second World War: Part 2 (Jul., 1981), pp. 585-595; Mastny, Vojtech, 'Soviet War Aims at the Moscow and Teheran Conferences of 1943' *Journal of Modern History* Vol. 47, 3 (1975), pp. 481-504; Raack, R.C., 'Stalin Plans his Post-War Germany' *Journal of Contemporary History* Vol. 28, No. 1 (Jan., 1993), pp. 53-73; Sainsbury, Keith, *The Turning*

At Potsdam, it was decided that the long term aims of the occupation should be to achieve the so-called 'Four D's'. These were De-militarisation, Denazification, Democratisation and De-industrialisation.³ Although the USA, the USSR and Britain were unanimous in accepting these general terms, no specific proposals on how to form these concepts into a workable occupation policy were agreed upon. Thus, exactly how these objectives should be realised was left largely in the hands of each individual power. The result was that there was very little uniformity in the way policies were carried out in each Zone.

(II) The Development of Policy

Until relatively late in the war, none of the Allied nations had the punishment of Nazi war criminals very high up on their agendas, being 'more fully occupied in beating the Germans on the field rather than in hanging them afterwards'.⁴ The prospect of post-war action for criminals had first become an issue for the major powers in October 1941 when Roosevelt and Churchill declared that henceforth, 'the punishment of [Nazi] crimes should now be counted among the major goals of the war'.⁵ Despite this, however, tripartite discussions did not lead to any firm decisions.

Point: Roosevelt, Stalin, Churchill, and Chiang-Kai-Shek, 1943: The Moscow, Cairo and Teheran Conferences (Oxford: Oxford University Press, 1985).

³ On Potsdam see Farquharson, J. E., 'Anglo-American Policy on German Reparations from Yalta to Potsdam' *The English Historical Review* Vol. 112, No. 448 (Sep., 1997), pp. 904-926; Feis, Herbert, *Between War and Peace: The Potsdam Conference* (Princeton: Princeton University Press, 1960); Gormly, James L., *From Potsdam to the Cold War: Big Three Diplomacy, 1945-1947* (Wilmington, Del.: Scholarly Resources, 1990); Mee, Charles L., *Meeting at Potsdam* (London: Andre Deutsch, 1975); Robertson, Lord, 'A Miracle? Potsdam 1945-Western Germany 1965' *International Affairs* 41, 3 (1965), pp. 401-410; Cecil, Robert, 'Potsdam and Its Legends' *International Affairs* Vol. 46, No. 3 (Jul., 1970), pp. 455-465.

⁴ Comments of Schuster (FO official), 27 November 1941. National Archives (hereafter NA) LCO 2 2972.

⁵ In Tusa, Anne and Tusa, John, *The Nuremberg Trial* (London: BBC Books, 1995), p. 21

A turning point was the Moscow Declaration of 1943 which stated that: 'German criminals whose offences have no particular geographical location and who will be punished by joint decision of the governments of the Allies.'⁶

There was thus a general understanding that *something* would have to be done with the 'notorious' criminals, but opinions varied greatly as to what form the proceedings should take, who should be tried and for what. When the issues were discussed, it was normally assumed that the guilty would be shot after a brief hearing or show trial.⁷

Stalin came around to the idea of genuine judicial proceedings in late 1944, and Roosevelt in early 1945, though it was not until the death of Roosevelt and the appointment of Truman, that the British government accepted a major international trial as a certainty.⁸

The British government however, had been much more cautious than the other two powers. To many in Britain, it seemed ludicrous that Hitler and his associates should be given any sort of trial to establish their guilt. As the Lord Chancellor put it in 1944, 'Fancy "trying" Hitler!'⁹ Many felt that the best way to deal with war criminals was summary execution. Broadly speaking, sentiments remained the same throughout the war. In April 1945 the War Cabinet – under the direction of Churchill - declared that

⁶ See appendix I for a copy of the Moscow Declaration.

⁷ Memorandum from Lord Simon to Eden, May 1944. NA LCO 2 2976. See also Heydecker, Joe and Leeb, Johannes, *The Nuremberg Trials* (London: Heinemann, 1962), pp.60-61.

⁸ By the time of the Yalta Conference (4-11 February 1945), both Stalin and Roosevelt were committed to a trial. Memorandum discussing the Yalta proceedings, February 1945. NA, FO 371/50977. Minutes of a meeting between Churchill and Truman's representatives (John McCloy, Sam Rosenman, Colonel Cutter and Herbert Wechsler), 16 April 1945. NA LCO 2/2981.

⁹ Memorandum from Lord Simon to Eden, May 1944. NA LCO 2/2974

‘for the principal Nazi leaders a full trial under judicial procedure [is] out of the question.’¹⁰

The British waited until May 1945, by which time Hitler was dead and victory in Europe guaranteed, before reluctantly capitulating. One of their major reservations was the lack of precedent for such a trial. Lord Simon, the head of the judiciary, was especially concerned. In particular, he worried about making retrospective law, and considered an international trial to have an uncertain legitimacy in international law.¹¹ Another major fear was that of giving Hitler a mouthpiece. For most of the negotiations preceding an international trial, it was assumed that he would be the main defendant. Lord Simon was mindful of the fact that Hitler had first come to national attention in Germany while on trial for his role in the Munich putsch of 1923. There was a fear that if Hitler insisted upon once again conducting his own defence, any trial would be hijacked as a vehicle of Nazi propaganda – a claim that the USA vigorously denied. John McCloy, Stimson’s Assistant Secretary at the War Department, insisted in a memorandum to the Lord Chancellor’s Office that ‘the advantages of the trial method over political action are so fundamental that we should not allow the bug-a-boo of possible embarrassment to hinder us.’¹²

In the case of Britain and America, there was little agreement between different government offices, let alone with each other, and most of the wartime discussions were between the British, Russians and Americans only. The French government-in-

¹⁰ In Taylor, Telford, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (London: Bloomsbury, 1993), p. 29.p. 32.

¹¹ Simon’s memorandum to Churchill, July 1942. NA LCO 2/2974; Simon’s speech in the House of Lords, 15 December 1942 NA LCO 2/2974; Cabinet Paper entitled *Treatment of Major War Criminals*, May 1944. NA LCO 2/2976.

¹² Memorandum from McCloy to the Lord Chancellor’s Office, 30 April 1945. NA LCO 2/2980.

exile were only nominally informed of decisions and were only involved in discussions for an international trial once the 'Big Three' had decided that it would take place.¹³

Besides debates about how to deal with the high profile Nazi criminals, there were parallel discussions about what to do with the so-called 'lesser' criminals. These, however, took second place to discussions about how to deal with the Nazi elite. The British were no means alone in setting up war crimes trials in their Zone. All over Germany – indeed all over liberated Europe – courts were established to try those suspected of war crimes, or in some cases, in former occupied territories, of those perceived as 'collaborators' or 'traitors'. The courts set up varied greatly as did the type of the proceedings and the justice handed down – from near show trials in Czechoslovakia to full scale international judicial proceedings at Nuremberg.¹⁴

Europe wide, the number of defendants ran into tens of thousands. We should make a clear distinction, however, between so-called 'collaborator' trials and war crimes trials proper which are of concern here. And, within war crimes trials themselves, there were two distinct categories – (i) those cases which concerned 'major' war

¹³ See, for example, Mastny, Vojtech, 'Soviet War Aims at the Moscow and Teheran Conferences of 1943' *Journal of Modern History* 47, 3 (1975), pp. 481-504; Gormly, James L., *From Potsdam to the Cold War: Big Three Diplomacy, 1945-1947* (Wilmington, Del.: Scholarly Resources, 1990); Hellman, John, 'Monasteries, Miliciens, War Criminals: Vichy France/Quebec, 1940-50' *Journal of Contemporary History* 32, 4 (1997), pp. 539-554. Raack, R. C., 'Stalin Plans His Post-War Germany' *Journal of Contemporary History* 28, 1 (1993), pp. 53-57.

¹⁴ On collaboration and collaborator trials in Central/Eastern Europe see Deak, Istvan and Gross, Jan T., (eds.) *The Politics of Retribution in Europe: World War II and Its Aftermath* (Princeton: Princeton University Press, 2000); Littlejohn, David, *The Patriotic Traitors: A History of Collaboration in German-Occupied Europe, 1940-45* (London: Heinemann, 1972); Rings, Werner, *Kollaboration und Widerstand: Europa im Krieg 1939-1945* (Zurich: Ex Libris, 1979); Henke, Klaus-Dietmar and Woller, Hans, *Politische Säuberung in Europa: die Abrechnung mit Faschismus und Kollaboration nach dem Zweiten Weltkrieg* (Munich: Deutscher Taschenbuch Verlag, 1991); Dieckmann, Christoph, *Kooperation und Verbrechen: Formen der "Kollaboration" im östlichen Europa 1939-1945* (Göttingen: Wallstein, 2003); Armstrong, John A., 'Collaborationism in World War II: The Integral Nationalist Variant in Eastern Europe' *The Journal of Modern History* 40, 3 (1968), pp. 396-410; Abrams, 'The Trial of Jozef Tiso in the Czechoslovak Environment' in *The Politics of Retribution in Europe: World War II and Its Aftermath* ed. István Deák et al (Princeton University Press: Princeton, New Jersey, 2000), pp. 252-290.

criminals and (ii) those concerning 'minor' criminals. These terms, in turn, necessitate some clarification. They do not refer to the seriousness of the crime, but rather to the status of the alleged perpetrators. High status individuals whose offences chiefly related to the issuing of criminal orders had committed crimes of such breadth that they had 'no particular geographical location'. This was distinct from the 'lesser' criminals who had carried out the criminal orders – those who literally had blood on their hands. Because of the nature of their crimes, which could be rooted to a particular time and place, and which lacked the wide scope of the 'major' criminals, the term 'minor' criminals was applied. The British did not try any 'major' war criminals – the Royal Warrant procedures did not allow for it – but not every 'major' criminal held a position in the upper echelons of the Nazi government. The Nuremberg Medical Trial (NMT) carried out by the Americans, for example, tried physicians on the charges of war crimes and crimes against humanity, on the basis of their experiments on concentration camp inmates.¹⁵

¹⁵ For studies on medical war crimes in the Third Reich and medical war crimes trials see Seidelman, William E., 'Medicine and Murder in the Third Reich' *Dimensions* 13, 1 (1999) pp. 9-13; Wuttke-Groneberg, Walter, *Medizin im Nationalsozialismus: ein Arbeitsbuch* (Tübingen: Schwäbische Verlagsgesellschaft, 1980); Klee, Ernst, *Deutsche Medizin im Dritten Reich: Karrieren vor und nach 1945* (Frankfurt am Main: S. Fischer, 2001); Mitscherlich, Alexander and Mielke, Fred, *Doctors of Infamy: The Story of Nazi Medical Crimes* (New York: Henry Schuman, 1949); Aly, Goetz, Chroust, Peter and Pross, Christian, *Cleansing the Fatherland: Nazi Medicine and Racial Hygiene* (Baltimore: John Hopkins University Press, 1994); Michalczyk, John J., (ed.) *Medicine, Ethics and the Third Reich: Historical and Contemporary Issues* (Kansas City: Sheed and Ward, 1994); Wyers, Wolfgang, *Death of Medicine in Nazi Germany* (New York: Ardor Scribendi, 1998). For the Nuremberg Medical Trial see Weindling, Paul, 'Human Guinea Pigs and the Ethics of Experimentation: The BMJ's Correspondent at the Nuremberg Medical Trial' *British Medical Journal* 313, 7070 (1996), pp. 1467-70; Weindling, Paul, 'Eugenics and Medical War crimes after 1945' *Tartu University History Museum Annual Report*, (1998), pp. 86-99; Weindling, Paul, 'From International to Zonal Trials: The Origins of the Nuremberg Medical Trial' *Holocaust and Genocide Studies* 14 (2000), pp. 367-389; Freyhofer, Horst H., *The Nuremberg Medical Trial: The Holocaust and the Origin of the Nuremberg Medical Code* (New York: Peter Lang, 2004); Kater, Michael H., *Doctors under Hitler* (Chapel Hill: University of North Carolina Press, 2000); Lifton, Robert Jay, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (London: Macmillan, 1986); Proctor, Robert, *Racial Hygiene: Medicine under the Nazis* (Cambridge, Massachusetts: Harvard University Press, 1988); Szöllösi-Janze, Margit, 'National Socialism and the Sciences: Reflections, Conclusions and Historical Perspectives' in Margit Szöllösi-Janze (ed.), *Science in the Third Reich* (Oxford: Berg, 2001), pp. 1-35; Schmidt, Ulf, 'German Medical War Crimes, Medical Ethics and Post-War Justice' *German History* 15, 3 (1997), pp. 385-91; Nicosia, Francis R. and Huener, Jonathan *Medicine and Medical Ethics in Nazi Germany: Origins,*

The most famous trial of ‘major’ war criminals was the IMT at Nuremberg. This four power collaboration between Britain, the USA, USSR and France set new precedent in international law by putting twenty two members of the Nazi elite on trial for conspiracy, crimes against peace, war crimes and crimes against humanity. Although plans for a second international trial focusing on German industrialists and economic leaders were eventually abandoned, the Americans, in whose Zone of occupation Nuremberg fell, used the venue to put on a series of trials focusing on ‘major war criminals of the second rank’.¹⁶ Under the auspices of Telford Taylor, twelve trials took place between 1946 and 1949, each focusing on a particular sector of criminal activity in the Third Reich – doctors industry, economy, the military etc. These ‘Nuremberg subsequent proceedings’, or *Nachfolgeprozessen*, were legitimised by Control Council Law Number Ten (CCL10), which was drawn up to try and provide some degree of standardization in the prosecution of war criminals in the four occupied areas. The American subsequent proceedings, however, cannot strictly be considered Zonal trials, given that they had international backing (in the form of CCL10) and put high status individuals on trial, who in many cases were accused of crimes that had no particular geographical location.

Trials of ‘minor’ criminals, which began as early as summer 1945 in the Western Zones of occupied Germany, were often much more limited in scope than either the IMT or the subsequent Nuremberg proceedings as carried out by the Americans in Nuremberg. The USA, however, did have their own separate Zonal trials. The so-

Practices, Legacies (New York: Berghahn, 2001); Benz, Wolfgang, and Distel, Barbara, *Medizin im NS-Staat: Täter, Opfer, Handlanger* (Brussels: Comité International de Dachau, 1988).

¹⁶ See Bloxham, Donald, “‘The Trial That Never Was’: Why there was no Second International Trial of Major War Criminals at Nuremberg’ *History* 87 (2002), pp. 41-60.

called Dachau Series was more conventional than the *Nachfolgeprozessen* in outlook, as the charges were based on violations of the laws and usages of war as set down in the Hague Convention of 1907 and the Geneva Convention of 1929, both of which had been signed and ratified by Germany. The trials were conducted on the site of the former notorious concentration camp between November 1945 and July 1948. During this time a total of 1,672 persons were tried in 489 separate proceedings.¹⁷ Cases can be roughly split into three categories (i) proceedings against former concentration camp guards stationed at Dachau, Buchenwald, Flossenbürg, Mauthausen, Nordhausen, and Mühldorf among others (ii) cases against individuals (mainly civilians) accused of murdering U.S nationals - in most instances the victims were airmen and (iii) proceedings where defendants were accused of killing large groups of POWs. These included the infamous Malmédy Massacre case. The slaughter of 70 surrendered American prisoners by a Waffen-SS division at Malmédy in December 1944 outraged American public opinion and brought home the reality of SS atrocities to U.S citizens. After the story was broken in the American press, the public desire for post-war trials of war criminals became much more pronounced. The trials were conducted under the auspices of the Judge Advocate and Deputy Judge Advocate, with those on the ground given responsibility for policy making.¹⁸

¹⁷ See Greene, Joshua, *Justice at Dachau: The Trials of an American Prosecutor* (Broadway Books: New York, 2003) and Overbey Hilton, Fern, *The Dachau Defendants: Life Stories from Testimony and Documents of the War Crimes Prosecutors* (London: McFarland and Company, 2004).

¹⁸ On the Malmédy Massacre and subsequent trial see, Whiting, Charles, *Massacre at Malmedy: The Story of Jochen Peiper's Battle Group, Ardennes, December 1944* (Pen and Sword, 1987); Bauserman, John M., *Malmedy Massacre* (White Mane, 2002); Whiting, Charles, *Jochen Peiper: Battle Commander* (Pen and Sword, 1999); Reynolds, Michael, *The Devil's Adjutant: Jochen Peiper, Panzer Leader* (Spellmount Publishers, 2002); Weingartner, James, *A Peculiar Crusade: Willis M. Everett and the Malmedy Massacre Trial* (New York University Press: New York, 2000); Weingartner, James J., *Crossroads of Death The Story of the Malmedy Massacre and Trial* (London: University of California Press, 1979).

In the British Zone, the Royal Warrant procedures which legitimised British military courts were hastily drawn up by the War Office in May 1945.¹⁹ Adopted on 14 June and coming into force four days later, the procedures limited the British to the prosecution of ‘conventional war crimes’ alone – that is, ‘a violation of the laws and usages of war committed during any war which His Majesty has been or may be engaged at any time since the 2nd September, 1939.’²⁰ As in the U.S Zone, the Judge Advocate General (JAG) was given responsibility for the trials.²¹

The British were able to avoid many of the complications (mainly related to the conspiracy charge) that would dog the Nuremberg Trial. However, at the same time, the way the Warrant was worded also considerably limited the scope of the trials. For example, the British could not try formulators of policy or those who had committed crimes inside concentration camps prior to 1939. In addition, the British did not seek to expose the full extent of Nazi crimes against the Jews.

(III) War Crimes Trials in the British Zone

British denazification measures can be split into three categories: re-education, administrative purging and war crimes trials. Re-education policies included the restructuring of schools (there was a particular concern about young Germans, who

¹⁹ See War Office correspondence, May 1945. NA WO 309/1

²⁰ See appendix II.

²¹ Besides Zonal trials in Germany, the British were also preparing for trials in occupied Austria. These were also conducted under the Royal Warrant procedures, which limited the courts to the trying of ‘conventional’ war crimes alone. For more on the denazification and occupation of Austria see Stiefel, Dieter, *Entnazifizierung in Österreich* (Europaverlag: Wien, 1981) and Heinemann, Manfred, *Umerziehung und Wiederaufbau. Die Bildungspolitik der Besatzungsmächte in Deutschland und Österreich* (Klett-Cotta: Stuttgart, 1981).

were generally perceived as lacking a moral centre as a result of continual Nazi propaganda during their formative years) and universities, as well as adult education and policies directed towards POWs.²² Denazification was concerned with cleansing German society of her Nazi elements, including administrative purging (mainly of the civil service) and the arrest, internment and punishment of war criminals.²³

In removing Nazis from office, the British trod an uneasy middle line, unwilling to go to the extremes of either the Americans or the Russians. When the war ended, the Soviets immediately began a programme of ideological remodelling and ruthless denazification. Unlike the British and Americans, their denazification programme focused almost exclusively on the removal of influential and powerful National

²² Works on re-education include: Hearnden, A. (ed.), *The British in Germany: Educational Reconstruction after 1945* (London, 1978); Pronay, Nicholas and Wilson, Keith (eds), *The Political Re-education of Germany and Her Allies After World War II* (London, 1985); Remy, Steven P., *The Heidelberg Myth: The Nazification and Denazification of a German University* (Harvard University Press: Cambridge, Massachusetts and London, England, 2002); Chamberlin, Brewster S., 'Todesmühlen: Ein früher Versuch zur Massen "Umerziehung" in besetzten Deutschland 1945-1946' *Vierteljahreshefte für Zeitgeschichte* 29, (1981), pp. 420-36; Jurgensen, Kurt, 'British Occupation Policy after 1945 and the Problem of 'Re-educating Germany'' *History* 68, 222 (1983), pp. 225-244; Tscharnke, Denise, *Re-educating German Women: The Work of the Women's Affairs Section of British Military Government 1946-1951* (Peter Lang: London, 2003); Lockenour, Jay, *Soldiers as Citizens: Former Wehrmacht Officers in the Federal Republic of Germany, 1945-1955* (University of Nebraska Press: Lincoln and London, 2001); Pakschies, Günter, *Umerziehung in der Britischen Zone 1945-1949: Untersuchungen zur britischen Re-education-Politik* (Cologne: Böhlau, 1984).

²³ On denazification see, for example, Reusch, Ulrich, *Deutsches Berufsbeamtentum und britische Besatzung: Planung und Politik 1943-1947* (Stuttgart: Klett-Cotta, 1985), Fitzgibbon, Constantine, *Denazification* (London, 1969); Remy, Steven P., *The Heidelberg Myth: The Nazification and Denazification of a German University* (Harvard University Press: Cambridge, Massachusetts and London, England, 2002); Ericksen, Robert P., 'The Göttingen University Theology Faculty: A Test Case in Gleichschaltung and Denazification' *Central European History* 17, 4 (1984), pp. 355-383; Turner, Ian D., 'Denazification in the British Zone' in *Reconstruction in Post-War Germany: British Occupation Policy and the Western Zones*, ed. I. Turner (Berg: Oxford, 1989), pp. 239-270; Thacker, Toby, *The End of the Third Reich: Defeat, Denazification and Nuremberg January 1944-November 1946* (Gloucestershire: NPI Media Group, 2006); Padover, Saul K., *Lügendetektor. Vernehmungen im besiegten Deutschland 1944/45* (Econ Tb., 2001); Botor, Stefan, *Das Berliner Sühneverfahren: die letzte Phase der Entnazifizierung* (Frankfurt am Main: Peter Lang, 2006), Dreist, Markus, *Die Düsseldorfer Bezirksregierung zwischen Demokratisierung, Nazifizierung und Entnazifizierung: eine staatliche Mittelbehörde an der Schnittstelle zwischen Verwaltung und Politik* (Essen: Klartext, 2003), Melis, Damian van, *Entnazifizierung in Mecklenburg-Vorpommern: Herrschaft und Verwaltung 1945-1948* (Munich: Oldenbourg, 1999); Vollnhals, Clemens and Schlemmer, Thomas, *Entnazifizierung: politische Säuberung und Rehabilitierung in den vier Besatzungszonen, 1945-1949* (Munich: Deutscher Taschenbuch Verlag, 1991); Fürstenau, Justus, *Entnazifizierung: ein Kapitel deutscher Nachkriegspolitik* (Berlin: Luchterhand, 1969).

Socialists. They were not concerned with prosecuting those who they perceived to be insignificant or 'nominal' Nazis; a common Russian criticism was that the British and American programmes were too broad.²⁴ In contrast, the Americans were, initially at least, committed to removing Nazis from all spheres of German life. Since their earliest wartime planning, they had been committed to the idea of setting in motion an 'artificial revolution' a policy which was instigated immediately upon their arrival in Germany.²⁵

The British were, in comparison, flexible in their approach – often denazification procedures set down in London were not applied as rigorously as originally intended. For example, denazification regulations stipulated that those suspected of involvement with the Nazi Party should be removed from positions of influence as soon as possible. But those on the ground, particularly those responsible for heavy industry (of which the British Zone, incorporating the industrial Ruhr, had more than any other power) realised that to remove all such individuals immediately, without a thought of replacements could cause industry in their Zone to grind to a complete halt, with

²⁴ On Soviet policy in occupied Germany see Naimark, Norman M., *The Russians in Germany: A History of the Soviet Zone of Occupation, 1945-1949* (Cambridge, Massachusetts and London, 1995); Blessing, Benita, *The Antifascist Classroom: Denazification in Soviet-Occupied Germany, 1945-1949* (London: Palgrave Macmillan, 2006); Vogt, Timothy R., *Denazification in Soviet-Occupied Germany: Brandenburg, 1945-1948* (Boston, Massachusetts and London: Harvard University Press, 2000).

²⁵ On American denazification and occupation policies see Gimbel, John, *Amerikanische Besatzungspolitik in Deutschland 1945-1949* (Frankfurt am Main: Fischer, 1971); Gimbel, John, *A German Community under American Occupation: Marburg 1945-52* (Stanford, California: Stanford University Press, 1961); Gimbel, John, *The American Occupation of Germany: Politics and the Military, 1945-1949* (Stanford, California: Stanford University Press, 1968); Tent, James F., *Mission on the Rhine: Reeducation and Denazification in American-Occupied Germany* (Chicago and London, 1982), especially Chapter 3; Niethammer, Lutz, *Die Mitläuferfabrik: die Entnazifizierung am Beispiel Bayerns* (Dietz: Berlin, 1982); Rupieper, Hermann-Josef, *Die Wurzeln der westdeutschen Nachkriegsdemokratie: der amerikanische Beitrag 1945-1952* (Opladen: Westdeutscher Verlag, 1993); Monod, David, *Settling Scores: German Music, Denazification, and the Americans: 1945-1953* (London and North Carolina: University of North Carolina Press, 2005); Mitchell, Arthur H., *Hitler's Mountain: The Führer, Obersalzberg and the American Occupation of Berchtesgaden* (London: McFarland, 2007).

serious repercussions for production in Germany as a whole.²⁶ Thus, denazification policies in the British Zone and elsewhere evolved and changed as the occupation continued.

Changing Cold War circumstances caused shifts in denazification policy. In terms of British foreign policy, the emerging Cold War was one of the key issues between 1945 and 1950,²⁷ the other of course being the question of withdrawal from Empire.²⁸

²⁶ On economic and industrial regeneration see Stokes, Raymond G., *Opting for Oil: The Political Economy of Technological Change in the West German Chemical Industry, 1945-1961* (Cambridge University Press: Cambridge and New York, 1994); Ritschl, Albrecht, 'Die Währungsreform von 1948 und der Wiederaufstieg der Westdeutschen Industrie' *Vierteljahrshefte für Zeitgeschichte* 33, 1 (1985), pp. 137-65; Cairncross, Alec, *The Price of War: British Policy on German Reparations 1941-1949* (Oxford and New York, 1986); Roseman, Mark, 'The Organic Society and the "Massenmenschen": Integrating Young Labour in the Ruhr Mines 1945-58' *German History* 8, 2 (1990), pp. 163-194.; Roseman, Mark, *Recasting the Ruhr 1945-1958: Manpower, Economic Recovery and Labour Relations* (Oxford and New York: Berg, 1992); Roseman, Mark, 'The Uncontrolled Economy: Ruhr Coal Production, 1945-8' in *Reconstruction in Post-War Germany: British Occupation Policy and the Western Zones, 1945-55*, ed. I. Turner (1989), pp. 93-123; Lüders, Carsten, 'Die Regelung der Ruhrfrage in den Verhandlungen über die politische und ökonomische Westdeutschlands 1947-1949' in *Wirtschaftspolitik im Britischen Besatzungsgebiet 1945-1949*, ed. D. Petzina and W. Euchner (1984), p. 87-103; Milert, Werner, 'Die verschenkte Kontrolle: Bestimmungsgründe und Grundzüge der britischen Kohlenpolitik im Ruhrbergbau 1945-1948' in *Wirtschaftspolitik im Britischen Besatzungsgebiet 1945-1949*, ed. D. Petzina and W. Euchner (1984), pp. 105-119; Balabkins, Nicholas, *Under Direct Controls: Economic Aspects of Industrial Disarmament 1945-1948* (New Brunswick: Rutgers University Press, 1964); Carden, Robert W., 'Before Bizonia: Britain's Economic Dilemma in Germany, 1945-46' *Journal of Contemporary History* 14, 3 (1979), pp. 535-555; Prowe, Diethelm, 'Economic Democracy in Post-World War II Germany: Corporatist Crisis Response, 1945-1948' *Journal of Modern History* 57, 3 (1985), pp. 451-482.

²⁷ There is an extensive literature on British foreign policy during the immediate post-war era. Historians are generally divided into two camps. Writers such as Ovendale and Pelling generally describe the foreign policy of the Labour government in fairly positive terms. The opposite stance is taken by Weiler and Schneer who are much more critical of the British approach. See Ovendale, Ritchie (ed.), *The Foreign Policy of the British Labour Governments 1945-51* (Leicester: Leicester University Press, 1984); Ovendale, Ritchie, 'Britain, the U.S.A. and the European Cold War, 1945-8' *History* 67, 220 (June 1982), pp. 217-36; Ovendale, Ritchie, *The English Speaking Alliance: Britain, the United States, the Dominions and the Cold War 1945-51* (London: Allen and Unwin, 1985); Pelling, Henry, *The Labour Governments, 1945-51* (London: Macmillan, 1984); Schneer, Jonathan, 'Hopes Deferred or Shattered: The British Labour Left and the Third Force Movement, 1945-49' *Journal of Modern History* 56 2 (1984), 197-226; Schneer, Jonathan, *Labour's Conscience: The Labour Left 1945-51* (Boston: Unwin Hyman, 1988); Weiler, Peter, *British Labour and the Cold War* (Stanford: Stanford University Press, 1988); Weiler, Peter, 'British Labour and the Cold War: The Foreign Policy of the Labour Governments, 1945-1951' *The Journal of British Studies* 26, 1 (1987), pp. 54-82. Also see Gimbel, John, 'Cold War Historians and the Occupation of Germany', in Hans Schmitt (ed.), *U.S. Occupation in Europe after World War II* (University of Kansas Press: Kansas, 1978); Mason, John W., *The Cold War, 1945-1991* (Routledge: London, 1997); Raack, R.C., *Stalin's Drive to the West, 1938-1945: The Origins of the Cold War* (Stanford University Press: Stanford, California, 1995); Thomas, Hugh, *Armed Truce: The Beginnings of the Cold War, 1945-46* (Hamilton: London, 1986); Deighton, Anne, *The Impossible Peace: Britain, the Division of Germany and the Origins of the Cold War* (Clarendon Press: Oxford, 1990); Deighton, Anne, 'The "Frozen Front": The Labour Government,

The deteriorating relationship between the western Allies and the USSR was certainly a factor in the handing over of power to the new West German state much sooner than anyone had originally anticipated. To put this in context, the wartime planning for the occupation of Germany had assumed that British troops would be present for at least ten years, indeed in 1945, 71 per cent of British people thought that the occupation

the Division of Germany and the Origins of the Cold War, 1945-7' *International Affairs* 63, 3 (1987), pp. 449-65; Gormly, James L., *From Potsdam to the Cold War: Big Three Diplomacy, 1945-1947* (Wilmington, Del.: Scholarly Resources, 1990); Rothwell, Victor, *Britain and the Cold War 1941-1947* (London: Cape, 1982); Johnson, Edward, 'Early Indications of a Freeze: Greece, Spain and the United Nations, 1946-7' *Cold War History* 6 1 (2006), pp.43-61; Kirby, Dianne, 'Divinely Sanctioned: The Anglo-American Cold War Alliance and the Defence of Western Civilization and Christianity, 1945-48' *Journal of Contemporary History*, 35 3. (Jul., 2000), pp. 385-412; Mueller, Wolfgang, 'Stalin and Austria: New Evidence on Soviet Policy in a Secondary Theatre of the Cold War, 1938-53/55' *Cold War History* 6 1 (2006), pp. 63-84; Gaddis, John Lewis, *The Cold War* (London: Penguin Books, 2007); Vickers, Rhiannon, *The Labour Party and the World Volume I: The Evolution of Labour's Foreign Policy 1900-51* (Manchester and New York: Manchester University Press, 2003); Folly, Martin H., *Churchill, Whitehall and the Soviet Union, 1940-45* (Basingstoke: Palgrave MacMillan, 2000); Reynolds, David, *Britannia Overruled: British Policy and World Power in the Twentieth Century* (London: Longman 1991); Reynolds, David, *From World War to Cold War: Churchill, Roosevelt and the International History of the 1940s* (Oxford: Oxford University Press, 2006); Greenwood, Sean, *Britain and the Cold War, 1945-91* (Basingstoke: Palgrave Macmillan: 1999); Greenwood, Sean "'A War We Don't Want": Another Look at the British Labour Government's Commitment in Korea', *Contemporary British History*, 17 4, 2003, pp. 1-24; Greenwood, Sean, 'Frank Roberts and the "Other" Long Telegram: The View from the British Embassy in Moscow, March 1946', *Journal of Contemporary History* 25 (1990) pp. 103-22; Hennessy, Peter, *The Secret State: Whitehall and the Cold War* (London: Allen Lane, 2002); Curtis, Mark, *The Ambiguities of Power: British Foreign Policy since 1945* (London: Zed, 1995); Keohane, Dan, *Labour Party Defence Policy Since 1945* (London: Continuum, 1993); Dockrill, Michael *British Defence since 1945* (Oxford: Basil Blackwell, 1988); Dockrill, Michael and Young, John, (eds.), *British Foreign Policy 1945-1956* (Basingstoke: Palgrave Macmillan, 1988); Anstey, Caroline, 'The Projection of British Socialism: Foreign Office Publicity and American Opinion, 1945-50', *Journal of Contemporary History* 19 3 (1984), pp. 417-451; Myers, Frank, 'Conscription and the Politics of Military Strategy in the Attlee Government' *Journal of Strategic Studies* 7 1 (1987), pp. 55-73; Goodman, M.S., 'British Intelligence and the Soviet Atomic Bomb, 1945-1950', *Journal of Strategic Studies* 26 2 (2003), pp. 120-151; Callaghan, John and Phythian, Mark, *The Labour Party and Foreign Policy: A History* (London: Routledge, new edition, 2006); Phythian, Mark, *The Labour Party, War and International Relations, 1945-2006* (London: Routledge, 2007); Saville, John, *The Politics of Continuity: British Foreign Policy and the Labour Government, 1945-46* (London: Verso, 1993).

²⁸ On the end of the British Empire see Boyce, D. George, *Decolonisation and the British Empire, 1775-1997* (Basingstoke: Palgrave Macmillan, 1999); Heinlein, Frank, *British Government Policy and Decolonisation, 1945-1963: Scrutinising the Official Mind* (London: Frank Cass, 2002); Darwin, John, *Britain and Decolonisation: The Retreat from Empire in the Post-war World* (Basingstoke: Palgrave Macmillan, 1988); Howe, Stephen, *Anticolonialism in British Politics: The Left and the End of Empire, 1918-64* (Oxford: Clarendon Press, 1993); Hyam, Ronald, *Britain's Declining Empire: The Road to Decolonization 1918-1968* (Cambridge: Cambridge University Press, 2007); Ward, Stuart, (ed.), *British Culture and the End of Empire* (Manchester: Manchester University Press, 2001); Gallagher, John and Seal, Anil, (eds.), *The Decline, Revival and Fall of the British Empire: The Ford Lectures and Other Essays* (Cambridge: Cambridge University Press, 2004); Webster, Wendy, *Englishness and Empire 1939-1965* (Oxford: Oxford University Press, 2005); Gupta, P.S., 'Imperialism and the Labour Government' in J. Winter (ed.) *The Working Class in Modern British History* (1983); Moore, Robin J., *Escape from Empire: the Attlee Government and the Indian Problem* (Oxford: Oxford University Press, 1983); Bayly, C., and Harper T., *Forgotten Armies: The Fall of British Asia 1941-1945* (Cambridge, Massachusetts: Harvard University Press, 2008); Jackson, Ashley, *The British Empire and the Second World War* (London: Hambledon Continuum, 2005).

should last for ten years or more.²⁹ This, in turn, had obvious implications for war crimes trials. Most importantly, the Foreign Office soon became reluctant to jeopardise tentative good relations with Western Germany by pressing on with a programme of trials that many, in any case, considered tedious.

War crimes trials in the British Zone were never approached with anything resembling zeal. The British Foreign Office had realised that some action would have to be taken against those guilty of atrocities, but they were reluctant to commit themselves to anything, only drawing up the procedures legitimising the trials shortly before they were due to begin. Consequently, British trials suffered from a lack of planning and near chaos reigned for at least the first few months. Following an inauspicious start, the British programme continued to be dogged with problems, such as ongoing lack of money, lack of resources and lack of qualified staff.³⁰ Though the British were successful in gaining convictions in many cases, the relatively high rate of acquittal caused worry for Jewish groups such as the World Jewish Congress (WJC) and Board of Deputies of British Jews, as well as individuals such as Hartley Shawcross, Clement Attlee and the MP Vernon Bartlett.³¹ Also of concern was the length of time individual trials were taking.³² Coupled with Cold War considerations,

²⁹ Gallup, *The Gallup International Public Opinion Polls: Great Britain 1937-1975, Volume One 1937-1964* pp. 105-6.

³⁰ See, for example, Broszat, Martin, 'Sieger Justiz oder Strafrechtliche Selbstreinigung: Aspekte der Vergangenheitsbewältigung der deutschen Justiz während der Besatzungszeit 1945-1949' *Vierteljahrshefte Für Zeitgeschichte* 29, 4 (1981), p. 505-6; Report from Robertson to Gilmour Jenkins of the Control Office, 7 March 1947. NA FO 371/64744. C8058; Letter on 'Permanent Presidents for War Crimes Trials', from: C-in-C BAOR to Under Secretary of State, War Office, 2 November 1945. NA WO 309/6; Suggestion of the Lord Chancellor, Lord Jowitt, June 1947. NA FO 371 64713/U734.

³¹ Letter from Easterman (WJC) to JAG, 21 March 1946. University of Southampton Archives (hereafter UoS) MS 241/3/46; Hansard Parliamentary Debates, fifth series (House of Commons) Vol., 416, c. 1910; Memorandum from Clement Attlee to John Lawson, 21 November 1945. NA WO 32 12197.

³² See, for example, memorandum from Clement Attlee to John Lawson, 21 November 1945. NA WO 32 12197.

it was not long (mid 1946) before suggestions of ending the trials process began to be seriously considered.

Added to this complexity was the vexed question “who or what was a Nazi?” By 1945, the terms ‘Nazi’ and ‘German’ had become practically interchangeable in Britain, especially in the press, and for many had become synonymous. This had been partly intentional. In order to mobilise the home front, it had been necessary for British civilians to believe that they were fighting a great evil, and during the war hostile feelings towards Germany and Germans were the norm. In 1943, for example, a Gallup poll revealed that 70 per cent of people felt some degree of bitterness or dislike towards the German people.³³ A year later, 76 per cent of respondents were in favour of an unconditional surrender, while 80 per cent approved of a ‘hard peace’ with Germany.³⁴ There was the sense that not only was Germany a nation of Nazis, but, also that Nazism was the end result of some intrinsic militaristic defect in the German national character.³⁵

There was also the question of public opinion and domestic pressure. The majority of British civilians remained hostile to Germany and many resented the fact Britain was being plunged further into debt as a result of the occupation - a subsidy of £80,000,000 per annum came directly from British taxpayers.³⁶ This animosity,

³³ Gallup, George H., *The Gallup International Public Opinion Polls: Great Britain 1937-1975, Volume One 1937-1964* (Random House, New York, 1976), p. 82.

³⁴ Gallup, George H., *The Gallup International Public Opinion Polls: Great Britain 1937-1975, Volume One 1937-1964* (Random House, New York, 1976), p. 95.

³⁵ Some historians have argued that the origins of Nazism can be seen in the Prussian military tradition, or can even be traced back to Frederick the Great. See, for example, Stargardt, Nicholas, *The German Idea of Militarism: Political and Socialist Critics 1866-1914* (Cambridge University Press: Cambridge, 1994); Wette, Wolfram, *Militarismus in Deutschland 1871 bis 1945: zeitgenössische Analysen und Kritik* (Münster: LIT, 1999); Klein, Karl, *Militarismus: eine Gegenschrift* (Dreieichenhain bei Frankf./M: Plania-Verlag, 1952); Fried, Hans Ernest, ‘German Militarism: Substitute for Revolution’ *Political Science Quarterly* 58, 4 (1943), pp. 481-513.

³⁶ From Marshall, Barbara, ‘German Attitudes to British Military Government 1945-47’ *Journal of Contemporary History* 15, 4 (1980), p. 655.

however, eased as the occupation continued. Asked, in 1947, 'Do you feel friendly or towards the German people as a whole?', 64 per cent of respondents recorded feelings of friendliness or indifference towards the German people while only 36 per cent felt unfriendly.³⁷ Contributing to this change in opinion towards Germany was the fact that the USSR had now replaced her as the biggest perceived threat to British security.³⁸

Among minority groups, most notably the Anglo-Jewish community, attitudes towards Germany were much stronger. Having been concerned with the persecution, brutality and finally extermination inflicted on Jewish people by the Nazis, British Jews were, unsurprisingly, keen to see perpetrators of war crimes punished, and some sort of compensation handed out to the survivors of the camps.³⁹ But British Jews, like Jewish groups worldwide were keen to point out that they were not interested in vengeance:

The Board of Deputies of British Jews is not seeking revenge...but considers it of vital importance, as a measure of justice and for the security of the Jewish people in the future, that the monstrous crime of persecution and

³⁷ Gallup, *The Gallup International Public Opinion Polls: Great Britain 1937-1975, Volume One 1937-1964* p. 148.

³⁸ Gallup Public Opinion Poll November 1947. Taken from Gallup, George H., *The Gallup International Public Opinion Polls: Great Britain 1937-1975, Volume One 1937-1964* (Random House, New York, 1976), p. 165.

³⁹ On the compensation question see Ferencz, Benjamin B., *Less than Slaves: Jewish forced Labor and the Quest for Compensation* (Bloomington: Indiana University Press, 2002); Rathkolb, Oliver, *Revisiting the National Socialist Legacy: Coming to terms with Forced Labor, Expropriation, Compensation, and Restitution* (Innsbruck: Studien, 2002); Zweig, Ronald W., *German Reparations and the Jewish World* (London: Cass, 2001); Konijnenburg, E. van, *Organised Robbery* (The Hague: Government Printers, 1949); Bazylar, Michael J. and Alford, Roger P., *Holocaust Restitution: Perspectives on the Litigation and its Legacy* (London and New York: New York University Press, 2006).

extermination of Jews as Jews shall be internationally denounced...and shall not go unpunished.⁴⁰

(IV) Historiography and the State of Current Research

In the context of post-war Germany, war crimes trials are especially important because they act as a prism through which wider issues can be explored. This research is in two parts. Focusing on the wartime planning of the trials and the immediate post-war period 1942-1952, it is firstly concerned with the mechanics of the trial process in the British Zone – the wartime planning of the trials, issues of who to be prosecuted, the structure of the trials, the trial programme itself and the appeals process. It then explores the evolution of trials policy against the backdrop of the developing Cold War. The first part deals with the war crimes trials. Studies of German post-war trials have been carried out before, but most tend to focus on either the International Military Tribunal (IMT) at Nuremberg or the Zonal proceedings carried out by the United States at Nuremberg and Dachau. There is much fine scholarship on the Nuremberg Trial itself, but for the purposes of this research the Nuremberg Trial is largely peripheral.⁴¹ While any study on post-war war crimes has to be aware of the

⁴⁰ Memorandum from the Board of Deputies on war crimes, March 1945. London Metropolitan Archive (hereafter LMA) ACC/3121/C11/7/2/009. The WJC maintained a similar position. See extract from Goldmann, Nachum, *Our Position in the World of Today and Tomorrow* (World Jewish Congress, 1945), p. 7. UoS MS 238/2/33.

⁴¹ On the IMT see Owen, James, *Nuremberg: Evil on Trial* (London: Headline Review, 2006); Maser, Werner, *Nürnberg: Tribunal der Sieger* (Düsseldorf: Econ Verlag, 1977); Haensel, Carl, *Das Gericht vertagt sich: Tagebuch eines Verteidigers bei den Nürnberger Prozessen* (Wiesbaden, München: Limes, 1980); Tusa, Anne and Tusa, John, *The Nuremberg Trial* (BBC Books: London, 1995); Taylor, Telford, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (London and New York, 1993); Smith, Bradley F., *Reaching Judgement at Nuremberg* (Basic Books: New York, 1977); Smith, Bradley F., *The Road to Nuremberg* (André Deutsch, 1982); Cooper, Robert W., *Der Nürnberger Prozess* (Krefeld: Scherpe, 1947); Knieriem, August and Wahl, Eduard *Nürnberg: rechtliche und menschliche Probleme* (Stuttgart: Klett, 1953); Kochavi, Arie J., *Prelude to Nuremberg: Allied War*

context provided by the trial major criminals, the emphasis here is on Zonal trials; the IMT is interesting primarily for extent to which it influenced the British Zonal war crimes trial programme more generally.

With regard to the pressures acting on the trials, this study is concerned with the ways in which the Cold War contributed to the desire to ‘wind up’ the trials and how this influenced British perceptions of the Nazi era. The extent of the Soviet threat had been fully realised in the upper echelons of the British government well before Churchill made his Iron Curtain speech in March 1946.⁴² Of course, by this time, British war crimes trials in Germany had been going on for several months and the trials programme was not immediately affected by Cold War considerations. In the context of British foreign policy, however, it is clear that by the end of 1946, Germany had become the crucial battleground of the early Cold War. The Western Allies – Britain in particular - were quick to realise that a friendly, democratic and economically stable West Germany was vital if it were to act as a bulwark against

Crimes Policy and the Question of Punishment (Chapel Hill and London, 1998); Overy, Richard, *Interrogations: The Nazi Elite in Allied Hands, 1945* (London and New York, 2001); Woetzel, Robert K., *The Nuremberg Trials in International Law with a Postlude on the Eichmann Case* (Stevens: London, 1962); Harris, Whitney, *Nuremberg and Other War Crimes Trials* (Ladbroke, 1978); Marrus, Michael R., *The Nuremberg War Crimes Trial 1945-46: A Documentary History* (Boston, 1997); Wieland, Günther, *Der Jahrhundertprozess von Nürnberg: Nazi- und Kriegsverbrecher vor Gericht* (East Berlin: Staatsverlag der Deutschen Demokratischen Republik, 1986); Friedrich, Jörg and Wollenberg, Jörg *Licht in den Schatten der Vergangenheit: zur Enttabuisierung der Nürnberger Kriegsverbrecherprozesse* (Frankfurt am Main: Ullstein, 1987); Butterweck, Hellmut, *Der Nürnberger Prozess: eine Entmystifizierung* (Vienna: Czernin, 2005); Kastner, Klaus, *Die Völker klagen an: der Nürnberger Prozess, 1945-1946* (Darmstadt: Primus, 2005); Zentner, Christian, *Der Nürnberger Prozess: Dokumentation, Bilder, Zeittafel* (München: Delphin Verlag, 1984); Ostendorf, Heribert, *Das "Nürnberger Juristengericht": eine kommentierte Dokumentation* (Frankfurt: Campus, 1985).

⁴² This point has been made by several historians. See Deighton, Anne, *The Impossible Peace: Britain, the Division of Germany and the origins of the Cold War* (Oxford: Clarendon Press, 1990); Deighton, Anne, ‘The “Frozen Front”: The Labour Government, the Division of Germany and the Origins of the Cold War, 1945-7’ *International Affairs* 63, 3 (1987), pp. 449-65; Deighton, Anne, ‘Cold-War Diplomacy: British Policy Towards Germany’s Role in Europe, 1945-9’ in *Reconstruction in Post-War Germany: British Occupation Policy and the Western Zones 1945-55*, ed. I Turner (1989), pp. 15-36; Weiler, Peter, ‘British Labour and the Cold War: The Foreign Policy of the Labour Governments, 1945-1951’ *The Journal of British Studies* 26, 1 (1987), pp. 54-82; Rothwell, Victor, *Britain and the Cold War 1941-1947* (London: Cape, 1982); Harbutt, Fraser J., *The Iron Curtain: Churchill, America, and the Origins of the Cold War* (New York: Oxford University Press, 1986).

Communism. The war crimes trials, focused as they were on the past, were viewed as a hindrance to this process.

Of particular interest is the reception of the trials by Jewish communities in Britain, as well as other pressure groups. Particularly important here is the attitude of Anglo-Jewry towards the British trials in Germany. Throughout the war years, Jewish organisations in Britain (including the Board of deputies of British Jews, the British branch of the World Jewish Congress, the Association of Jewish Refugees and sectors of the Jewish press such as the *Jewish Chronicle*) had concentrated on lobbying the government, in increasingly desperate attempts to arrange relief and rescue for Jews on the continent. Once the war was over, however, attention was directed towards the ways in which Holocaust survivors were both treated and represented. Anglo-Jewish groups were keen to ensure that the suffering they had endured was not marginalised in any way, and this objective was central to their concerns about war crimes trials.⁴³

Jewish communities in the British Zone of Germany, of which the overwhelming majority were displaced persons (DPs) and survivors of Hitler's camps, were less concerned with issues of representation than they were with practical matters such as

⁴³ On anti-Semitism in Britain see, Kushner, Tony, *The Persistence of Prejudice: Antisemitism in British Society during the Second World War* (Manchester University Press: Manchester and New York, 1989); Kushner, Tony, 'Beyond the Pale? British Reactions to Nazi Anti-Semitism, 1933-39' in *The politics of Marginality: Race, the Radical Right and Minorities in Twentieth Century Britain* ed. Tony Kushner and Kenneth Lunn (Frank Cass: London, 1990), pp. 143-60; Kushner, Tony 'The Impact of British Anti-Semitism, 1918-1945' in *The Making of Modern Anglo-Jewry* ed. David Cesarani (Basil Blackwell: Oxford, 1990), pp. 191-208; Kushner, Tony, 'An Alien Occupation – Jewish Refugees and Domestic Service in Britain, 1933-1948' in *Second Chance: Two Centuries of German-Speaking Jews in the United Kingdom* ed. Werner E. Mosse et al (JCB Mahr: Tübingen, 1991), pp. 553-578; Holmes, Colin, *Anti-Semitism in British Society, 1876-1939* (London: Edward Arnold, 1979); Rosenberg, David, *Facing up to Antisemitism: How Jews in Britain Countered the Threats of the 1930's* (London: JCARP, 1985); Griffiths, Richard, *Patriotism perverted: Captain Ramsay, the Right Club and English Anti-Semitism, 1939-40* (London: Constable, 1998); Lebzelter, Gisela, *Political Anti-Semitism in England, 1918-1939* (London: Macmillan, 1978); Pendlebury, Alyson Jane, *Portraying "The Jew" in First World War Britain* (London: Vallentine Mitchell, 2006); Lipman, Vivian D, *A History of the Jews in Britain since 1858* (Leicester: Leicester University Press, 1989); Alderman, Geoffrey, *Modern British Jewry* (Oxford: Clarendon Press, 1998).

improving conditions in DP camps and lobbying the British government to allow free immigration to Palestine.⁴⁴

Scholarship on post-war war crimes trials has tended to focus on the IMT, or the American trials programme. This literature, however, is often penned by lawyers and is thus different in approach to research conducted by historians.⁴⁵ The most notable work on this subject by a historian is *The U.S. War Crimes Trial Programme in Germany* by Frank M. Buscher, which despite its title, is primarily concerned with explaining how the U.S authorities coped with the criticisms of their war crimes policy.⁴⁶ Scholarship on British war crimes trials has tended, by comparison, to take a moralistic tone, with authors dismissing the British Zonal trials as disorganised, inefficient and hopelessly inadequate.⁴⁷ Only one historian has devoted considerable academic research to the topic of war crimes trials in the British Zone. Priscilla Dale Jones maintained that the British were extremely reluctant to commit themselves to any sort of trial agenda.⁴⁸ The key problem for the British, she argued, was the lack of legal precedent. There was no basis in international law for trying individuals for war

⁴⁴ On DP's in the British Zone see, for example, Kochavi, Arie J., 'British Policy on Non-Repatriable Displaced Persons in Germany and Austria, 1945-7' *European History Quarterly* 21, (1991), pp. 365-382; Kochavi, Arie J., *Post-Holocaust Politics: Britain, the United States and Jewish Refugees 1945-1948* (The University of North Carolina Press: Chapel Hill and London, 2001); Königseder, Angelika and Wetzel, Juliane, *Waiting for Hope: Jewish Displaced Persons in Post-World War II Germany* (Northwestern University Press: Evanston, Illinois, 2001). On DP's in the American Zone see Mankowitz, Zeev W., *Life between Memory and Hope: The Survivors of the Holocaust in Occupied Germany* (Cambridge University Press: Cambridge and New York, 2002).

⁴⁵ See for example, Lippman, Mathew, 'The Other Nuremberg: American Prosecutions of Nazi War Criminals in Occupied Germany' *Indiana International and Comparative Law Review* 3 (1992), pp. 1-100. This, as we would expect, focuses primarily on the law pertaining to the trying of war criminals and the legal process.

⁴⁶ Buscher, Frank, *The US War crimes Trial Programme in Germany, 1946-1955* (Greenwood Press: Westport, Connecticut, 1989).

⁴⁷ See, for example, Bower, Tom, *Blind Eye To Murder: Britain, America and the Purging of Nazi Germany – A Pledge Betrayed* (Warner Books: London, 1995) and Fox, John P., 'The Jewish Factor in British War crimes Policy in 1942' *English Historical Review* 92 (1977), pp. 82-106.

⁴⁸ Dale Jones, Priscilla, 'British Policy Towards "Minor" Nazi War Criminals, 1939-1958' (D.Phil thesis, University of Cambridge, 1990); Dale Jones, Priscilla, 'British Policy Towards German Crimes Against German Jews, 1939-1945' *Leo Baeck Institute Year Book* 36 (1991), pp. 339-366.

crimes committed against fellow nationals. Indeed, after the Armenian massacre of 1915 it was widely argued that what a country got up to in its own territory – no matter how repellent – was no business of any outside power.⁴⁹ As late as 1943, Foreign Office officials were maintaining that ‘offences against German Jews are not war crimes’.⁵⁰ The British did not successfully resolve these issues until November 1945 – after the start of the Belsen Trial. Dale Jones also demonstrates that from 1946 onwards, British officials both inside and outside Germany were becoming increasingly keen to put a stop to the war crimes trials, arguing the war crimes trials programme only survived because British public opinion demanded that those responsible for high profile crimes such as the Stalag Luft III murders be brought to justice.⁵¹ She does much to illuminate the formal administrative process which characterised this process, but pays relatively little attention to the broader factors inside Germany that contributed to a swift termination of British trials.

⁴⁹ Bass, Gary Jonathan, *Stay the Hand of Vengeance: The Politics of War crimes Tribunals* (Princeton and Oxford, 2000), p. 107. On the Armenian genocide see also Bloxham, Donald, *The Great Game of Genocide: Imperialism, Nationalism and the Destruction of the Ottoman Armenians* (Oxford: Oxford University Press, 2005); Bloxham, Donald, ‘On the memory of the Armenian Genocide and the Holocaust’ *Journal of Holocaust Education* 4 (1995), pp. 74-86; Bloxham, Donald, ‘The Armenian Genocide of 1915-1916: Cumulative Radicalisation and the Development of a Destruction Policy’ *Past and Present* 181 (2003), pp. 141-91; Arslanian, Artin H., ‘British Wartime Pledges, 1917-18: The Armenian Case’ *Journal of Contemporary History* 13, 3 (1978), pp. 517-530; Dadrian, Vahakn N., ‘The Naim-Andonian Documents on the World War I Destruction of Ottoman Armenians: The Anatomy of a Genocide’ *International Journal of Middle East Studies* 18, 3 (1986), pp. 311-360; Dadrian, Vahakn N., ‘The Documentation of the World War I Armenian Massacres in the Proceedings of the Turkish Military Tribunal’ *International Journal of Middle East Studies* 23, 4 (1991), pp. 549-576; Bassiouni, M. Cherif, ‘The United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)’ *American Journal of International Law* 88, 4 (1994), p. 784-805; Hovannisian, Richard G. (ed.), *The Armenian Genocide: History, Politics, Ethics* (Basingstoke: Macmillan, 1992); Hovannisian, Richard G., *The Armenian Genocide in Perspective* (New Brunswick, N. J.: Transaction, 1986); Hovannisian, Richard G., (ed.), *Remembrance and Denial: The Case of the Armenian Genocide* (Detroit, Michigan: Wayne State University Press, 1999); Graber, G.S., *Caravans to Oblivion: The Armenian Genocide, 1915* (New York: Wiley, 1996); Dadrian, Vahakn N., *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anotolia to the Caucasus* (Providence: Berghahn, 1995); Akçam, Taner, *From Empire to Republic: Turkish Nationalism and the Armenian Genocide* (London: Zed, 2004).

⁵⁰ Foreign Office legal advisor Sir William Malkin, 10 August 1943. NA FO 371 34367. 8796/31/62.

⁵¹ Dale Jones, Priscilla, ‘Nazi Atrocities against Allied Airmen: Stalag Luft III and the End of British War crimes Trials’ *Historical Journal* 42, 2 (1998), pp. 543-565.

A more general account of the post-war war crimes processes has been provided by Donald Bloxham. Focusing mainly on British and American policy in the immediate post-war period, he is concerned with two important issues. Firstly, the war crimes trials themselves and secondly, the impact these trials had on the development of a collective 'memory' of the Third Reich. In his view the war crimes trials conducted by the British and Americans were a failure. They increasingly became dominated by narrow self interest (i.e., trying crimes against one's own citizens) and largely ignored or underestimated crimes against the Jews. As a result of these failures, Bloxham argues that the West Germans were able to put off confronting the full extent of Nazi crimes and their complicity in them.⁵² This study builds on Bloxham's work by extending a similar analysis to the British trials - why they took the form they did and how successful they were in practice.

While the British war crimes trial programme in Germany has attracted little attention from historians, overall, one particular trial – that of Erich von Manstein – has generated a certain amount of interest. The Manstein trial was the last to be carried out under the auspices of the British and is interesting not only because the road to trial was so tortuous but because of the public outcry it caused both in Germany and in Britain.⁵³

⁵² Bloxham, Donald, *Genocide on Trial: War crimes Trials and the Formation of Holocaust History and Memory* (Oxford University Press: Oxford and New York, 2001).

⁵³ Several historians have written accounts of the political manoeuvrings that resulted in von Manstein's trial for war crimes see Hoffman, J.H., 'German Field Marshals as War Criminals? A British Embarrassment' *Journal of Contemporary History* 23, 1 (1988), pp. 17-35. Paget, Reginald T., *Manstein: His Campaigns and His Trial* (William Collins: London, 1951); Bloxham 'Punishing German Soldiers During the Second World War: The Case of Erich von Manstein' *Patterns of Prejudice* 33, 4 (1999), pp. 25-45; Böll, Bernd, 'Wehrmacht vor Gericht. Kriegsverbrecherprozesse der Vier Mächte nach 1945' *Geschichte und Gesellschaft* 24 (1998), pp. 570-94.

Moving beyond the British occupation, the way the early Federal Republic dealt with war criminals and how this affected the early 'memory' of the Third Reich has been examined by Norbert Frei, among numerous others.⁵⁴ Frei shows how the waning Allied commitment to denazification and war crimes trials was continued by the Federal Republic. Only in the aftermath of the Eichmann trial in 1961 did a growing public awareness of the horror of the Holocaust and the Nazi regime emerge. While the various studies on *Vergangenheitsbewältigung* disagree on many points, there is a broad consensus that West Germany did not begin to confront (let alone come to terms with) her past until the 1960s.⁵⁵ 'Construction' of the past does not take long to

⁵⁴ Frei, Norbert, *Adenauer's Germany and the Nazi Past: the Politics of Amnesty and Integration* (Columbia University Press: New York, 2002). See also Brochhagen, Ulrich, *Nach Nürnberg: Vergangenheitsbewältigung und Westintegration in der Ära Adenauer* (Berlin: Ullstein, 1999); Brochhagen, Ulrich, 'Vergangene Vergangenheitsbewältigung: Zum Umgang mit der NS-Vergangenheit während der fünfziger und frühen Sechziger Jahre' *Mittelweg* 36 (1992), pp. 145-54; Weber, Jürgen and Steinbach, Peter (eds.), *Vergangenheitsbewältigung durch Strafverfahren? NS-Prozesse in der Bundesrepublik Deutschland* (Munich: Olzog, 1984); Broszat, Martin, 'Siegerjustiz oder Strafrechtliche Selbstreinigung: Aspekte der Vergangenheitsbewältigung der deutschen Justiz während der Besatzungszeit 1945-1949' *Vierteljahrshefte für Zeitgeschichte* 29, 4 (1981), pp. 477-544; Hey, Bernd, 'Die NS-Prozesse - Probleme einer juristischen Vergangenheitsbewältigung' in *Vergangenheitsbewältigung durch Strafverfahren? NS-Prozesse in der Bundesrepublik Deutschland* ed. Jürgen Weber and Peter Steinbach (Olzog: Munich, 1984), pp. 51-70; Sereny, Gitta, *The German Trauma: Experiences and Reflections 1938-2000* (London: Allan Lane, 2000); Merkl, Peter H., *Germany: Yesterday and Tomorrow* (New York and Oxford: Oxford University Press, 1965); Reichel, Peter, *Vergangenheitsbewältigung in Deutschland: die Auseinandersetzung mit der NS-Diktatur von 1945 bis heute* (Munich: Beck, 2001); Kittel, Manfred, *Die Legende von der "Zweiten Schuld": Vergangenheitsbewältigung in der Ära Adenauer* (Berlin: Ullstein, 1993); Hoffmann, Christa and Streim, Alfred, *Stunden Null?: Vergangenheitsbewältigung in Deutschland 1945 und 1989* (Bonn: Bouvier, 1992); Gassert, Philipp and Steinweis, Alan E. *Coping with the Nazi Past: West German Debates on Nazism and Generational Conflict, 1955-1975* (Oxford: Berghahn, 2006); Herf, Jeffery, *Divided Memory: The Nazi Past in the Two Germanies* (Cambridge, Massachusetts: Harvard University Press, 1997); Moeller, Robert, 'War Stories: The Search for a Usable Past in the Federal Republic of Germany' *American Historical Review* 101 (1996), pp. 1008-48; Moeller, Robert, (ed.) *West Germany under Construction: Politics, Society and Culture in the Adenauer Era* (Ann Arbor, Michigan: University of Michigan Press, 1997); Janowitz, Morris, 'German Reactions to Nazi Atrocities' *American Journal of Sociology* 52 (1946), pp. 141-6; Lüdtke, Alf, '“Coming to Terms with the Past”: Illusions of Remembering, Ways of Forgetting Nazism in West Germany' *Journal of Modern History* 65 (1993), pp. 542-72; Buruma, Ian, *Wages of Guilt: Memories of War in Germany and Japan* (Jonathan Cape: London, 1994); Kattago, Siobhan, *Ambiguous Memory: The Nazi Past and German National Identity* (London: Praeger, 2001); Niven, Bill, *Facing the Nazi Past: United Germany and the Legacy of the Third Reich* (London: Routledge, 2001); Evans, Richard J., *In Hitler's Shadow: West German Historians and the Attempt to Escape from the Nazi Past* (London: Tauris, 1989).

⁵⁵ On the way that countries other than Germany went about coming to terms with Nazism see Deak, Istvan and Gross, Jan T., (eds.) *The Politics of Retribution in Europe: World War II and Its Aftermath* (Princeton, 2000). Of particular interest is Tony Judt's article in this collection (pp. 293-323).

develop, as Joanne Reilly has demonstrated in her study on the liberation of Belsen.⁵⁶ In post-war Germany, it needs to be asked how the Allies – and in particular the British – contributed to the desire among Germans to put their past firmly behind them. After all, one of the expressed aims of the occupation was to purge Germany both physically and psychologically of her Nazi elements and, in the process, force Germany to face the reality of the Third Reich. Did the aborted war crimes trial programme in the British Zone mean that Germans in this area could put off having to examine the Nazi era? Were the British, after their initial commitment, happy to leave the Germans to get on with the peace? It is more than possible that the British also subordinated the ideological or re-educative purpose of the war crimes trials to the security demands brought about by growing antagonism with the USSR.

(V) Structure of PhD

This PhD follows a broadly chronological structure spanning the war years and the occupation period. This study is comprised of three broad chapters (i) 'British Policy: Early Policy and Practice' (ii) 'the Middle Phase' and (iii) 'The Winding Down of the Programme'. Each of these three chapters is illustrated by at least one 'showcase' trial which is used to examine wider trends.

The first chapter traces the evolution of British policy on war crimes trials from the wartime planning until the end of 1945. British war crimes trials were always a controversial issue. The wartime planning was far from straightforward, with many in

⁵⁶ See Reilly, Joanne, *Belsen: The Liberation of a Concentration Camp* (Routledge: London and New York, 1998).

the Foreign Office – mindful, among other things, of the disaster of the Leipzig war crimes trials - reluctant to commit HMG to post-war trials. The working out of a trials framework, in fact, did not really begin in earnest until the last months of the war. The Royal Warrant procedures, which provided for war crimes trials in the British Zone, did not come into force until 18 June 1945. As a result of this, planners in Germany were unsure of the framework within which the trials would be conducted. This had obvious repercussions for the so-called Belsen trial, which was the first case to be tried in the British Zone. Almost as soon as the Belsen trial got underway there were rumblings in the Foreign Office that the process was behind schedule and suffering due to a lack of properly trained staff. The weaknesses highlighted by this first trial were to characterise British war crimes policy over the first months of the occupation.

Measures intending to speed up trials were soon taken. Most notably, these included concentrating only on the most serious crimes and crimes against British nationals. These decisions were not the result of a single resolution or proposal but instead represented an evolution of policy. While the British continued to face complex administrative problems, the trying of war criminals was taken extremely seriously by many, who refused to yield to suggestions that they prioritise numbers of convictions over trying the most serious cases. Despite this commitment, many in both the Foreign Office and the War Office were growing weary of the seemingly never-ending trials process, and even the champions of the trials found themselves fighting a losing battle.

The 'Middle Phase' (the beginning of 1946 until the end of 1948) can be characterised as a period of transition. By early 1946 most in the Foreign Office and War Office – with a few significant exceptions had become resolved to ending the trials programme as soon as was decently possible. By mid 1946 the trials had also become increasingly politicised and self interested, in as much as the prosecution of those suspected of crimes against British nationals were instrumental in keeping the trials programme open past 1948. The Stalag Luft III case was of particular importance here. Cold War considerations also began to creep up the agenda in the Foreign Office and the War Office. This contributed to the realisation that war crimes in the British Zone could not be allowed to continue for very much longer; the British authorities were only unwillingly embroiled in the proposed trial of Rundstedt, Brauchitsch, Manstein and Strauss.

1948 marked the official winding down of the British war crimes trial programme in Germany. The period 1946-1948 had seen war crimes trials in the British Zone reduced in prominence and trials in the final phase continued this trend. Partly, this was to do with a pragmatic politics. International security began to take priority over war crimes trials and the policy of re-integrating Western Germany into the wider European community was reckoned to be incompatible with the persistence of trials. After the 1 September 1948, no further cases – with the notable exception of the Manstein trial – began in British Zonal Courts. Outstanding cases were handed over to be tried in either German courts or Control Commission courts, though the British retained some involvement in war crimes cases and questions of amnesty into the 1950s.

CHAPTER ONE

British War Crimes Trials: Early Policy and Practice

(I) Introduction

Between 23 July 1945 and 19 December 1949, British military courts in occupied Europe tried 357 war crimes cases, involving 1,000 axis nationals and collaborators.¹ The British were primarily concerned with cases against Allied nationals and tried defendants in cases where the victims were Polish, French, Belgian, American and Australian among others. In the British Zone, 937 persons were tried on war crimes charges before British military tribunals. Of these 677 were convicted and 230 sentenced to death.² A further 148 individuals were tried before Control Commission courts and an additional 2,180 tried before German courts.

War crimes trials in the British Zone of Germany can be split into three distinct phases. The first phase, comprising the wartime planning for the trials and lasting

¹ See NA WO 235 series.

² Statistics given by the Under-Secretary of State for Foreign Affairs (Mayhew) in reply to a parliamentary question, 28 March 1949. Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 463, c. 829; Maugham, Viscount, *U.N.O and War Crimes* (John Murray: London, 1951), p. 21. Also see *Association of Jewish Refugees Information* (hereafter *AJRI*), Vol. IV., No. 12 (December 1949), p. 2.

until the end of 1945, can be characterised primarily as a period of adjustment. Planning for war crimes trials had not been a high priority for either the Foreign Office (FO) or War Office (WO) during the war and throughout the first eighteen months of the occupation, through trial and error, the British were forced to develop a workable trials policy. This was subject to constant change and evolution as those on the ground struggled to implement orders from London. Administrative problems, most notably lack of qualified staff, were also widespread. During the second phase, between 1946 and 1948, the trials programme was increasingly run down. A strong desire to bring to justice those suspected of crimes against British nationals was instrumental in the continuation of the British Zonal war crimes trials programme during this phase. After 1948, the already reduced trials series became increasingly marginalized as part of a more pragmatic policy of integration with West Germany. British trials policy after 1946 will be discussed in later chapters.³

(II) The Foreign Office

It is worth taking a moment to explore some of the main personalities in the Foreign Office, and the attitude they held towards both war criminals and Germany as a whole. Key here are the views of Robert Vansittart. Vansittart had been the Permanent Under-Secretary of State between 1930 and 1938, and after this Chief Diplomatic Advisor to the government. Throughout his long diplomatic career, and particularly during his time as head of the Foreign Office, Vansittart had been concerned by what he viewed as the militaristic and aggressive policies of Germany.

³ For a brief overview of the trials programme in the British Zone generally, see Glees, Anthony, 'The Making of British Policy on War Crimes: History as Politics in the UK' *Contemporary European History* 1, 2 (1992), pp. 171-97.

Since 1933, he had frequently warned of the threat that Hitler's Germany posed to international security and had loudly denounced the policy of appeasement.

Vansittart's attitude towards war crimes was as uncompromising as his earlier stance had been. Writing in response to the German atrocities in Poland in 1940 he maintained that it was ridiculous these obvious war crimes should not be subject to official condemnation: 'There is no analogy between isolated atrocities such as took place in Belgium in the last war...and...the deliberate attempt to exterminate a whole nation.'⁴ Vansittart's 'Germanophobic' reputation—which became known as Vansittartism—was based not so much on his diplomatic career, however, as on his role as author of anti-German literature following his elevation to the House of Lords as Baron Vansittart of Denham in 1941. In Vansittart's view, Nazism was not an aberration but instead the logical outcome of German history, the result of an innate flaw in the German national character.

In his 1941 pamphlet *Black Record: Germans Past and Present* Vansittart argued that the traditions of militarism, aggression and blind obedience which had been inculcated into Germans throughout history made them uniquely threatening:

Impregnate a race with militarism, imbue it with a sense of superiority, convince it of its mission to enslave mankind for the good of mankind, persuade it that this end justifies any and every means, however filthy; and you produce a race of hooligans which is a curse to the whole world.⁵

⁴ Memorandum from Vansittart to Halifax, 26 February 1940. NA FO 371 24422. C2544.

⁵ Vansittart, Robert Gilbert, *Black Record: Germans Past and Present* (London: Hamish Hamilton, 1941). For more on 'Vansittartism' see Später, Jörg, *Vansittart. Britische Debatten über Deutsche und Nazis 1902-1945* (Göttingen: Wallstein Verlag, 2003); Fromm, Hermann, *Deutschland in der öffentlichen Kriegszielsdiskussion Großbritanniens 1939-1945* (Lang: Frankfurt am Main, 1982);

Even after Vansittart had retired from active government service, similar sentiments could be detected in the upper echelons of the British government. A 1946 memorandum from General Macready (the British Regional Commissioner of Hanover), expressed a still commonly held view. It warned that, 'Nazism is more than a political creed - it is designed to appeal to all the inherent German characteristics of militarism and domination.'⁶ These feelings of hostility towards Germany did not change overnight. Many in the British government, having been at war with Germany twice in one lifetime, found it extremely difficult to view them as anything other than unprincipled warmongers. William Strang of the Central Department suggested that there was no clear distinction between the views of most German people and the Nazi hierarchy and Ernest Bevin famously commented to the commander of the British occupation forces that he despised Germany and its people: 'I tries 'ard, but I 'ates 'em.'⁷

Not everyone subscribed to this line of reasoning, however. The opposing, 'anti-Vansittart' point of view was expressed most prominently by Alexander Cadogan. Cadogan, Vansittart's replacement as Permanent Under-Secretary of State held the

Goldman, Aaron, 'Germans and Nazis: The Controversy over "Vansittartism" in Britain during the Second World War' *Journal of Contemporary History* 14, 1 (1979), pp.155-191; Goldman, Aaron, 'Two Views of Germany: Neville Henderson vs Vansittart and the Foreign Office 1937-1939' *British Journal of International Studies* 6 (1980), pp. 247-77; Brown, Douglas, *Commonsense versus Vansittartism* (London: Independent Labour Party, 1943); Rose, Norman, *Vansittart: Study of a Diplomat* (London: Heinemann, 1978); Hughes, Gerald "'Don't Let's be Beastly to the Germans": Britain and the German Affair in History' *Twentieth Century British History* 17 (2006), pp. 257-283; Ramsden, John, *Don't Mention the War: The British and the Germans Since 1890* (London: Little, Brown, 2006), chapter 5.; Roi, Michael L., *Alternative to Appeasement: Sir Robert Vansittart and Alliance Diplomacy, 1934-1937* (Westport, Connecticut: Praeger, 1997). See also Vansittart's autobiography, Vansittart, Robert Gilbert, *The Mist Procession: The Autobiography of Lord Vansittart* (London: Hutchinson, 1958).

⁶ Memo from General Macready, 16 June 1946. NA FO/1010/27, 229/MG/41/SEC.

⁷ Strang memorandum, 12 July 1941. NA FO 371 26532. C7782/154/17. See also Strang's autobiography, Strang, William, *Home and Abroad* (London: Deutsch, 1956). Bevin quoted in Hitchcock, William I., *The Struggle for Europe* (London: Profile Books, 2004), p. 65.

office between 1938 and 1946. At the time of his appointment, the American *Time* magazine reported that ‘Sir Alexander Cadogan is simply not pro or even anti [German]...he can be presumed to have an open mind’.⁸ Balance and open-mindedness can be seen as the defining characteristic of Cadogan’s tenure as head of the Foreign Office. Although his diaries later revealed that he was at times critical of appeasement⁹, he held no general ill will towards the German people at large. Cadogan criticised Vansittart’s *Black Record* as ‘sterile’ and warned that the application of such a policy would only serve to ‘cement the German people behind their rulers’.¹⁰

(III) Wartime Planning

Until very late in the war, it was by no means certain that war crimes trials would take place at all. Rumours of atrocities had begun to circulate almost as soon as Germany invaded Poland in September 1939.¹¹ Reports of the mass rape and murder of the

⁸ *Time* magazine, 10 January 1938.

⁹ ‘Does Eden realise that *he* is responsible for the great and tragic “appeasement” – not reacting to German occupation of the Rhineland in 1936? How lucky he is – no one has ever mentioned *that* ! and *that* was the turning point’. Cadogan, Alexander (author) and Dilks, David (editor) *The Diaries of Sir Alexander Cadogan, 1938-45* (London: Cassell, 1971), p. 415.

¹⁰ Cadogan memorandum, 7 November 1941. NA FO 371 30928. C647118/18.

¹¹ On the ‘knowledge’ of the Holocaust during the war years see Lichtenstein, Heiner and Kogon, Eugen, *Warum Auschwitz nicht bombardiert wurde* (Cologne: Bund, 1980); Shapiro, Robert M (ed.) *Why Didn’t the Press Shout? American and International Journalism during the Holocaust* (New York: Yeshiva University Press in association with KTAV Publishing House, 2003); Shatzkes, Pamela, *Holocaust and Rescue: Impotent or Indifferent? Anglo-Jewry 1938-1945* (Basingstoke and New York: Palgrave, 2002); Warhaftig, Zorach, *Refugee and Survivor: Rescue Efforts During the Holocaust* (Jerusalem: Yad Vashem: Torah Education Department of the World Zionist Organisation, 1988); Cesarani, David, ‘The London Jewish Chronicle’ and the Holocaust’, R M Shapiro (ed.), *Why Didn’t The Press Shout? American and International Journalism During the Holocaust* (New York: Yeshiva University Press, 2003), pp. 175-195; Medoff, Rafael, “‘Retribution is not Enough’: The 1943 Campaign by Jewish Students to Raise American Public Awareness of the Nazi Genocide’ *Holocaust and Genocide Studies*, 11, 2 (1997), pp. 171-189; Wyman, David S., *The World Reacts to the Holocaust* (Baltimore, MD.: John Hopkins University Press, 1996); Benz, Wolfgang, and Distel, Barbara, *Öffentlichkeit und KZ: was wusste die Bevölkerung?* (Brussels: Comite International de Dachau, 2001); Revell, Catherine Anne, ‘The Attitudes and Actions of British Institutions in Response

civilian population, were validated by both refugees fleeing the country and independent observers on the ground.¹² That this persecution might be targeted towards a particular ethnic group – namely the Jews – was also hinted at and the Polish government-in-exile urged Britain to issue a statement condemning the atrocities.¹³ Mindful of the atrocity stories that had been a common propaganda tactic during the First World War, the British government was reluctant to take action.¹⁴ Many in the Foreign Office at first dismissed reports of crimes against the Jews as exaggerated. A Central Department official who noted that ‘Jewish sources are always doubtful’ expressed by no means a minority view.¹⁵ The same scepticism was also initially applied to reports of massacres in Russia. William Cavandish-Bentink, acting Counsellor and Head of Dominions and Intelligence Department in the Foreign Office, advised extreme caution in reports of atrocities, remarking that even the British Government was not above ‘put[ting] out rumours of atrocities and horrors for

to the Destruction of European Jewry 1933 – 1945’ (Dissertation written for a post-graduate diploma in Hebrew and Jewish Studies from the Oxford Centre for Hebrew and Jewish Studies, 1994); Breitman, Richard, *Official Secrets: What the Nazis Planned, what the British, and Americans Knew* (New York: Hill and Wang, 1998); Laqueur, Walter, *The Terrible Secret : An Investigation into the Suppression of Information about Hitler's "Final solution"* (London: Weidenfeld and Nicolson, 1980); Gilbert, Martin, *Auschwitz and the Allies* (London: Mandarin, 1991); Neufeld, Michael J. and Berenbaum, Michael, *The Bombing of Auschwitz: Should the Allies have Attempted it?* (Washington, D.C.: United States Holocaust Memorial Museum, 2003).

¹² See Stola, Dariusz, ‘Early news of the Holocaust from Poland’ *Holocaust and Genocide Studies* 11, 1 (1997), pp. 1-27; Swiebocki, Henryk, *London has been Informed ... : Reports by Auschwitz Escapees* (Oswiecim: Staatliches Museum Auschwitz-Birkenau, 1997).

¹³ NA FO 371 24422 C2544/2026/18. Letter from the Polish Ambassador Count Edward Raczyński to the Foreign Secretary, Lord Halifax, 31 January 1940. See also Kaciewicz, George V., *Great Britain, the Soviet Union, and the Polish Government in Exile 1939-1945* (The Hague: Martinus Nijhoff, 1979);

¹⁴ For further discussion of these issues see Horne, John and Kramer, Alan, ‘German “Atrocities” and Franco-German Opinion, 1914: The Evidence of German Soldiers’ Diaries’ *Journal of Modern History* 66, 1 (1994), pp. 1-33; Horne, John, and Kramer, Alan, *German Atrocities, 1914: A History of Denial* (London: Yale University Press, 2001).

¹⁵ Minute circulated at the Central Department (signature of author illegible), 16 April 1940. NA FO 371 24472. C5471/116/55. On political anti-Semitism see also Kushner, Tony *The Persistence of Prejudice: Antisemitism in British Society during the Second World War* (Manchester and New York: Manchester University Press, 1989); Kushner, A.R.J., ‘British Antisemitism in the Second World War’, (PhD thesis, Sheffield, 1986); Lebzelter, Gisela, *Political Anti-Semitism in England, 1918-1939* (London: Macmillan, 1978).

various purposes' and speculating that 'this game is widely played'.¹⁶ As A.J.P

Taylor noted:

In the First World War nearly everyone believed the stories of German atrocities, though relatively few were true. In the Second World War nearly everyone refused to believe the stories, though they were true, and German crimes are the most atrocious ever committed by a civilised nation.¹⁷

As dispatches piled up, however, the Foreign Office was forced to conclude that although some individual reports may have been suspect, they could not doubt the general picture of widespread Nazi crimes. A report of Autumn 1941, for example, noted that: 'There is no doubt about the shooting of indiscriminate hostages in Poland... We know that as the German troops have advanced into Russia, the police battalions that followed in the train have...killed literally tens of thousands of civilians.'¹⁸ On 25 October 1941, following reports detailing SS atrocities in Eastern Europe, the Prime Minister Winston Churchill declared that the 'retribution for War Crimes henceforth takes its place amongst the major purposes of the War.'¹⁹ At this stage, however, Churchill's statement was little more than bold rhetoric since no discussions about how 'retribution' would be meted out had yet taken place.

In February of 1942, Alex(ander) Easterman, Political Secretary of the British Section of the World Jewish Congress (WJC) forwarded a report to Eden, then a member of the executive Foreign Office committee, the Political Warfare Executive. Comprising

¹⁶ William Cavandish-Bentink in a minute to Sir Alexander Cadogan (Permanent Under-Secretary, Foreign Office), 16 October 1941. NA FO 371 26540. C11999/287/18.

¹⁷ Taylor, A.J.P, *English History 1914-1945* (London, 1965), p. 19.

¹⁸ Foreign Office Memo on 'German Methods of Warfare and of Occupying Foreign Territory' (undated, but almost certainly late Autumn 1941). NA FO 371 26540. C11999/287/18.

¹⁹ Record of Churchill's comments, 25 October 1941. NA Home Office (HO) 213 1518.

160 pages, this document entitled, 'Jews in Nazi Europe: February 1933 to November 1941' contained graphic reports of both the persecution and later mass murder of the Jews.²⁰ Although Eden took the report seriously, he was disinclined to make any official statement of post-war intent. Increased reports of crimes committed against British airmen and POWs, however, helped along a gradual realisation that some sort of action (not necessarily trials at this stage) would have to be taken against war criminals once the war was over. Though attacks on British POWs were greeted with outrage by most in the Foreign Office and War Office, a stubborn minority doubted that the Wehrmacht - commonly viewed as one of the finest fighting forces in the world – would behave in such a manner.²¹ Even Cyril Gepp, the War Office official eventually entrusted with compiling a list of crimes committed against British soldiers, only included crimes on his list if they met certain rigid criteria.²² This was normally based on how well the eyewitnesses responded to interrogation. If the witness was unimpressive during this interview or there were discrepancies in stories, interrogators decided that the case was 'doubtful', and it was rarely followed up any further.²³

On the advice of the Foreign Office, the British government therefore remained unwilling to issue any public announcements as to the possibility of post-war action. One of the main arguments behind this was that to do so could lead to reprisals against British prisoners of war. Initially, there was no evidence to suggest that this

²⁰ Report compiled by the World Jewish Congress sent by Easterman (WJC) to Eden, 18 February 1942. NA FO 371 30914. C2009/16/18.

²¹ See Searle, Alaric, 'Revising the "Myth" of a "Clean *Wehrmacht*": Generals' Trials, Public Opinion, and the Dynamics of *Vergangensheitsbewältigung* in West Germany, 1948-60' *Bulletin of the German Historical Institute London* 25, 2 (2003), pp. 17-48; Wette, Wolfram and Schneider, Deborah Lucas *The Wehrmacht: History, Myth, Reality* (London: Harvard University Press, 2006); Müller, Rolf-Dieter and Volkmann, Hans-Erich, *Die Wehrmacht: Mythos und Realität* (Munich: Oldenbourg, 1999).

²² Gepp to Roberts (acting First Secretary, Foreign Office), March 1943. NA FO 371 30924. C12452.

²³ Foreign Office correspondence 1941-1942. NA FO 371 30924. C12452.

might be the case, but this line of reasoning was strengthened by the high death rate of Russian POWs captured on the Eastern Front by the Germans. The Foreign Office was reluctant to take any risks with British lives. This argument was still being used by some in the Foreign Office as late as 1942.²⁴

This line of reasoning aside, many in the Foreign Office (including Roger Makins of the Central Department, Alexander Cadogan, the Permanent Under-Secretary of State and William Strang, the Assistant Under-Secretary of State) remained convinced that issuing any statements compelling His Majesty's Government (HMG) to take post-war action would be a mistake.²⁵ The Foreign Secretary, Lord Halifax, was one of the principal proponents of this view. Responding to a memorandum from Sir Robert Vansittart, who argued that it was 'unthinkable that we should...pass a sponge over these wholesale horrors', Halifax wrote that 'A protest to the conscience of the world doesn't mean much *in practice* [emphasis in original] when the world is busy demonstrating, under influence of fear, that it hasn't got one.'²⁶ Richard Law, the Parliamentary Under-Secretary noted, however, that HMG would be in an 'appalling position if these stories should prove to have been true and we have done nothing whatever about them.'²⁷

²⁴ Foreign Office Memo, 8 November 1942. NA FO 371 30922.

²⁵ Makins minute, 26 February 1940, NA FO 371 22422. C3040/2026/18; Codogan minute, 28 February 1940, NA FO 24422. C2901/2026/18; Strang minute, 27 February 1940 NA FO 371 22422. C3040/2026/18.

²⁶ Letter from Vansittart to Halifax, 26 February 1940. NA FO 371 24422. C2544; Letter from Halifax to Vansittart (May 1940) NA FO 371 24422. C2544.

²⁷ Memorandum from Law, November 1942. NA FO 371 30921.

A second reason for Foreign Office lack of enthusiasm for putting war criminals on trial was the fiasco of the Leipzig war crimes trials after the First World War.²⁸

Despite aspirations to try the Kaiser in an international trial, in the end only forty five individuals stood trial in 'token national prosecutions' conducted at the Reichsgericht in Leipzig by the Germans themselves.²⁹ Almost without exception, defendants were either acquitted or give very low prison sentences. In a typical case, two junior officers indicted for the sinking of the hospital ship *Llandovery Castle* (their commanding officer was unavailable for trial) were absolved because they claimed to be following orders. They were found guilty of murdering the survivors in lifeboats, but both escaped from gaol, apparently with the help of the guards, a few months into their prison terms.³⁰ This was repeated in several other cases. The memory of the Leipzig humiliation was still strong in the Foreign Office and frequently referred to – implicitly or explicitly - as a reason why any announcements on the possibility of war crimes trials should be approached with caution. At a Cabinet discussion in July 1942, for example, Anthony Eden stressed that he was reluctant to make any statements of policy which 'might afterwards prove embarrassing.'³¹

A third reason for the reluctance to condemn atrocities against the Jews was the unwillingness within the Foreign Office to acknowledge this group as a separate and distinct people. A July 1942 dispatch noted that 'Jews must be treated as nationals of existing States and are not to be regarded as having a distinct Jewish nationality.'³²

²⁸ For a comprehensive analysis of the planning, execution and aftermath of the Leipzig trials see Willis, James F., *Prologue to Nuremberg: The Politics and Diplomacy of Punishing War Criminals of the First World War* (Westport, Connecticut, 1982).

²⁹ Bassiouni, M. Cherif, 'The United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)' *American Journal of International Law* 88, 4 (1994), p. 786.

³⁰ See Willis, James F., *Prologue to Nuremberg*, p. 131.

³¹ Cabinet discussions, 6 July 1942. NA WO 32 10790.

³² Comments of Godfrey Lias of the Ministry of Information, 30 July 1942. NA FO 371 30917. C7398/61/18.

The Foreign Office remained unbending in their interpretation of this point. Even after 1945, they refused to acknowledge a separate Jewish identity. In the American and French Zones of occupation, Jewish DPs were treated as a distinct group and special camps were established accordingly.³³ The British, on the other hand, insisted on national groupings. Thus Polish Jews were classified as Poles, Czechoslovakian Jews as Czechs and so on. As the Foreign Office explained to the WJC:

It is not possible for His Majesty's Government to treat Jewish persons as possessing a separate Jewish national status as distinct from their political nationality which must remain, as in the case of other religious or racial groups, the decisive factor. Moreover, any form of racial or religious segregation would give rise to anti-Jewish feeling, and might have far reaching repercussions.³⁴

It is likely that Foreign Office fears about segregating Jews on racial or religious grounds had their roots in an extremely sticky political question - Palestine, where Britain held the mandate. As the Head of the Foreign Office Refugee Department noted, 'the extreme Zionist campaign for recognition of a distinct Jewish nationality is part of the propaganda for a Jewish sovereign state in Palestine'.³⁵ The British were therefore wary of issuing any directives that might strengthen the Zionist cause.

³³ See WJC general correspondence 1945-1946, UoS MS 241/3/46; Papers of WJC September 1945 UoS MS 238/2/29.

³⁴ Letter from the British Foreign Office (signed by Paul Mason for the Secretary of State) to the WJC, July 1945. UoS MS 238/2/29.

³⁵ Memorandum from Alec Randall, Head of the Foreign Office Refugee Department, 19 August 1942. NA FO 371 30917. C7398/61/18. On British policy in Palestine see Cohen, Michael J., *Britain and the Middle East in the 1930s: Security Problems, 1935-39* (Basingstoke: Macmillan, 1992); Cohen, Michael J., *Palestine: Retreat from the Mandate: The Making of British Policy, 1936-45* (London: Elek, 1978); Cohen, Michael J., *Palestine to Israel: from Mandate to Independence* (London: Cass, 1988); Ovendale, Ritchie, *Britain, the United States, and the End of the Palestine Mandate, 1942-1948* (Woodbridge: Royal Historical Society, 1989); Ovendale, Ritchie, *Britain, the United States and the Transfer of Power in the Middle East, 1945-1962* (Leicester: Leicester University Press, 1996);

By 1942, then, matters were as fluid as ever. The St. James Conference of January 1942, a meeting of nine governments-in-exile, supported by Churchill, Roosevelt and Stalin, did little to clarify matters. The Allies declared that the punishment of those guilty of war crimes was now considered 'among their principal war aims'.³⁶ This, however, was a rather general statement and stopped short of detailed planning or even concrete commitments from those involved.

This is not to say there were not any discussions as to the course potential post-war action might take. In July 1942, a memorandum circulated by the Foreign Secretary to the War Cabinet had suggested that:

any punishment for war criminals should be disposed of as soon as possible after the end of the war in order to ensure rapid justice, to prevent so far as possible wronged individuals from taking the law into their own hands and to

Chaitani, Youssef, *Dissension Among Allies: Ernest Bevin's Palestine Policy between Whitehall and the White House, 1945-47* (London: Saqi, 2000); Gilbert, Martin, *Britain, Palestine and the Jews: The Evolution of the 1939 Palestine White Paper, 1891-1939* (Oxford: Oxford Centre for Postgraduate Hebrew Studies, 1977); Miller, Rory, *Divided against Zion: Anti-Zionist Opposition in Britain to a Jewish State in Palestine, 1945-1948* (London: Frank Cass, 2000); Trevor, Daphne, *Under the White Paper: Some aspects of British Administration in Palestine from 1939 to 1947* (Jerusalem: Jerusalem Press, 1948); Wasserstein, Bernard, *The British in Palestine: The Mandatory Government and the Arab-Jewish Conflict 1917-1929* (London: Royal Historical Society, 1978); Linthwaite, J.M., 'Zionism and British Policy in Palestine, with Special Reference to the Period 1914-1947' (M.Phil thesis, Nottingham, 1980); Zweig, Ronald W., *Britain and Palestine during the Second World War* (Woodbridge, Suffolk: Boydell Press, 1986); Louis, Roger and Stookey, Robert Wilson (eds.), *The End of the Palestine Mandate* (London: IB Tauris, 1986); Bethell, Nicholas, *Palestine Triangle: Struggle Between the British, the Jews and the Arabs, 1935-48* (London: Deutsch, 1979); Black, Ian, *Zionism and the Arabs, 1936-1939* (London: Taylor & Francis, 1986); La Guardia, Anton, *Holy Land, Unholy War: Israelis and Palestinians* (London: John Murray, 2002); Morris, Benny *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1999* (London: John Murray, 2000); Segev, Tom, *One Palestine Complete: Jews and Arabs Under the British Mandate* (London: Abacus, 2001); Shepherd, Naomi, *Ploughing Sand: British Rule in Palestine 1917-48* (London: John Murray, 2000); Townshend, Charles, 'The Defence of Palestine: Insurrection and Public Security, 1936-1939' *English Historical Review*, CIII, 409, October 1988, pp. 917-949; Charters, David A., *The British Army and Jewish Insurgency in Palestine, 1945-47* (Basingstoke: Palgrave Macmillan, 1989).

³⁶ For more on the Declaration see Sprecher, Drexel A., *Looking Backward-Thinking Forward: A Nuremberg Prosecutor's Memoir* (London: Hamilton Books, 2005), p. 22.

prevent trials dragging on for years and so delaying the return to a peaceful atmosphere in Europe...it may be desirable ultimately to fix a limited period after the termination of hostilities during which all trial should be instituted.³⁷

The memorandum showed uncanny insight. British war crimes policy from 1945 onwards would broadly follow this pattern.

In contrast to the uncertainty that was prevalent between the Allies, there was one group that had both unity and clarity: the Jewish community. From the first war time discussions about war crimes trials, it is noticeable that Jewish groups were united on one point – that whatever form the post-war war crimes trials took and whatever the other charges, the Nazi hierarchy must be made to answer for the crimes committed against the Jews.

Anglo-Jewry was not, in itself, a homogenous group. Numbering between 300,000 and 400,000 people by 1935, the Jewish population was made up of individuals differing widely in religious observance, social status, life experience and nationality. In spite of this, it is possible to speak of a ‘community’ of British Jews. This is because official Anglo-Jewish thinking in this period was represented to a large extent by a London-based ‘establishment’, comprising in particular, the Board of Deputies of British Jews (Board), the British branch of the World Jewish Congress (WJC) and the widely-read newspaper, the *Jewish Chronicle*. The *Jewish Chronicle* was particularly important, ‘provid[ing] an indispensable medium between British Jews and the wider society, interpreting matters of Jewish interest...and offering a response that

³⁷ Memorandum circulated by the Foreign Secretary to the War Cabinet, 6 July 1942. NA FO 371 30917.

amounted, virtually, to the view of Anglo-Jewry.’³⁸ Thus, as Pamela Shatzkes puts it, ‘in this respect, it is possible to speak of an “Anglo-Jewish response”, notwithstanding differences attributed to class, religious and political ideology, and age’.³⁹

Understandably, the Jewish community was keen that it should have some input into what should happen to the perpetrators of these crimes after the war. For the duration of the discussions which proceeded the signing of the St James Declaration, the British Section of the WJC, among other Jewish groups in Great Britain made ‘formal and detailed representations’⁴⁰ requesting the inclusion of specific reference ‘to the suffering of the Jews and to the part played by them in the common struggle.’⁴¹ No mention of anti-Jewish crimes appeared in the Declaration. This omission was explained on the grounds that crimes against the Jews were considered to come within the scope of crimes committed against the nations of the states concerned.⁴² The WJC was dissatisfied with this outcome, but they were powerless to act.

The WJC was not the only group growing more concerned with the problem of war crimes and war criminals. By late 1942, the more mainstream press was also pushing the issue higher up their agendas. An editorial in *The Times*, for example, declared that ‘throughout the world these crimes have excited the indignation of mankind and cry out for vengeance. Nobody who knows Europe can doubt that they will be

³⁸ Cesarani, David, *The Jewish Chronicle and Anglo-Jewry 1841-1991* (Cambridge University Press: Cambridge and New York, 1994), p. ix.

³⁹ Shatzkes, Pamela, *Holocaust and Rescue: Impotent or Indifferent? Anglo-Jewry 1938-1945* (Palgrave: Basingstoke and New York, 2002), p. 10. Also see Shatzkes, P. J, *Anglo-Jewish Rescue and Relief Efforts 1938-1944* (PhD thesis, LSE, 1999) and Bolchover, R, ‘Anglo-Jewish Response to the Holocaust, 1942-1946’ (M.Litt thesis, Oxford, 1987).

⁴⁰ Notes on some phases of the work of the British Section, for the information of the delegates to the Second Plenary Assembly of the World Jewish Congress in Montreux in June/July 1948, UoS MS 241/4/3/1

⁴¹ Joint Committee of the Board of Deputies of British Jews and the Anglo-Jewish Association to the Foreign Office, 12 January 1942. NA FO 371 30914. C487/61/18.

⁴² Remarks attributed to General Sikorski, president of the St. James Conference, UoS MS 241/4/3/1

avenged, or that blood will be exacted for blood at the moment when the Nazi tyranny totters to its fall.'⁴³ These were, however, very broad statements. Little thought was given to what form any future trials mechanism would take.

At this point in time, the 'Big Three' had not yet committed themselves to judicial process, indeed there was no formal action on this front until 1943. The United Nations War Crimes Commission (UNWCC) was established in London in September of that year.⁴⁴ The Lord Chancellor, Lord Simon, outlined its responsibilities in the House of Lords on 7 October 1942:

The Commission will be composed of nationals of the United Nations, selected by their governments. The Commission will investigate war crimes committed against nationals of the United Nations, recording the testimony available, and the Commission will report from time to time to the governments of those nations cases in which such crimes appear to have been committed, naming and identifying wherever possible the persons responsible. The Commission should direct its attention in particular to organised atrocities...The investigation should cover war crimes of offenders irrespective of rank.⁴⁵

The Lord Chancellor suggested that the UNWCC might start with a case 'heard on the wireless' of a Norwegian who had escaped from Oslo after suffering cruelties at the hands of the Gestapo.⁴⁶

⁴³ Editorial in *The Times*, 8 October 1942, p. 5.

⁴⁴ For more see Kochavi, Arieh J., 'Britain and the Establishment of the United Nations War Crimes Commission' *English Historical Review* 107, 423 (1992), pp. 323-349.

⁴⁵ Hansard Parliamentary Debates, fifth series (House of Lords), Vol. CXXIV, cc. 582-583.

⁴⁶ *Ibid.*, c. 583

It was only towards the very end of his speech, however that Lord Simon directly referred to the persecution and atrocities committed against the Jews, and then only in the most general terms: 'The atrocities...surpassed anything known since the darkest and most bestial ages of mankind...The Nazis and their allies...have set no limit to the ferocity with which the innocent inhabitants of occupied territories – the aged, the Jews, the women, the children – have been treated.'⁴⁷ The remit of the Commission to 'investigate war crimes committed against nationals of the United Nations' also tied the hands of the organisation in investigating war crimes committed against German Jews. Indeed, it was not at all clear whether these crimes would be investigated at all.

The UNWCC was a multi-national body (comprising the nine governments-in-exile, Britain, the USA, China, Australia and India) under the Chairmanship of the British Sir Cecil Hurst. Hurst had acted as the Foreign Office Legal Advisor from 1918-1929 and thereafter had sat on the Permanent Court of International Justice. He was a leading authority on international law as it related to war crimes.⁴⁸

The main purpose of the Commission was to gather information on war crimes and war criminals – which amounted to drawing up lists of suspects. The organisation was, however, politically weak and hampered by the fact that it had no investigators and meagre resources. On 30 March 1944, Hurst reported that the UNWCC had come across no more than half a dozen cases that could reasonably be described as 'atrocities'.⁴⁹ The organisation was marginalized by Britain and America and, as a

⁴⁷ Hansard Parliamentary Debates, fifth series (House of Lords), Vol. CXXIV, c. 586.

⁴⁸ Hurst, Cecil, *International Law: The Collected Papers of Sir Cecil Hurst* (London: Stevens, 1950).

⁴⁹ In Taylor, Telford, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (London and New York, 1993), p. 27.

result, the Commission concerned itself with discussing points of international law. The UNWCC was particularly concerned with the contentious issue of how to punish persons guilty of crimes against Jewish citizens of Axis states. Although there was much protracted discussion, it was decided against pursuing a specific plan on the grounds that there was 'no precedent under international law for including as war crimes acts committed by an enemy nation or its nationals against its own subjects or the subjects of other enemy nations.'⁵⁰ The increasingly anxious enquiries from Jewish groups on this issue caused concerned ripples in the Foreign Office.⁵¹ The matter was eventually passed to Roger Allen, a Foreign Office Legal Advisor who reported his findings in November 1944:

- 1) The majority of, if not all, the crimes committed against...the [Jews]...are not in any sense war crimes. To consider them would involve extending the scope of the Commission and it might mean creating a body of ad hoc law. The question is in fact surely too big for the Commission: it is nothing less than a question of indicting Nazi internal policy during the whole period of the regime. This is a political, not a legal issue, and should be dealt with as such.
- 2) It is likely that the war crimes investigated by the Commission will be tried by Military Courts in the countries where the crimes were committed. This could hardly be done in the case of Jews, etc. from Germany. It is difficult to envisage an appropriate Tribunal for this purpose.
- 3) Who would be responsible for collecting the evidence, and how could the United Nations Commission, on which stateless persons and Jews will not, and could hardly be, represented, investigate the crimes?⁵²

⁵⁰ Reported in the 'Final Summary Report of Executive Director, War Refugee Board', William O'Dwyer, Washington, 15 September 1945. UoS MS 238/2/29.

⁵¹ See Foreign Office correspondence September - November 1944. NA FO 371 30920.

⁵² Report of Roger Allen (Foreign Office legal advisor), 9 November 1944. NA FO 371 30920.

Allen thus concluded:

Insofar as Jews are, or were at the beginning of the war, also nationals of Allied states, crimes committed against them by the enemy in the course of the war will be covered by the machinery it is proposed to set up; insofar as they were not nationals of such states, crimes committed against them will fall outside the scope of the United Nations Commission, and should be the subject of political action, if any action is to be taken, rather than of legal procedure.

The British stance could not have been clearer.⁵³ The WJC and the War Refugee Board (WRB) were just two of the organisations that continued to petition the UNWCC to 'regard as war criminals those of our enemies who committed crimes against stateless persons and Axis nationals'.⁵⁴ What is striking is how little these efforts achieved. As a result of additional pressure applied by the U.S State Department however, such a policy was eventually adopted by the UNWCC. In March 1945 the WJC was able to report that 'After years of effort we have succeeded in the main task of getting the American and British governments to accept a definition of war crimes which will cover the specific crimes committed against the Jews'.⁵⁵

⁵³ Nor were the British government over keen to accept refugees who had managed to flee the terrors on the continent. See London, L, 'British Immigration Control Procedures and Jewish Refugees, 1933-1942' (PhD thesis, London, Queen Mary and Westfield College, 1992) and London, Louise, *Whitehall and the Jews 1933-1948: British Immigration Policy and the Holocaust* (Cambridge University Press: Cambridge, 2000).

⁵⁴ Reported in the 'Final Summary Report of Executive Director, War Refugee Board', William O'Dwyer, Washington, 15 September 1945. UoS MS 238/2/29.

⁵⁵ Report of the Activities of the World Jewish Congress, March 1945. UoS MS 241/3/46.

Meanwhile, Hurst was becoming ever more discouraged and frustrated with what he saw as the deliberate lack of co-operation by the British. In November 1944 he wrote to Lord Simon, confessing he was feeling doubtful that 'HMG really means business in connection with the policy...of bringing war criminals to justice'.⁵⁶ The stress and frustration at being unable to complete the role to his satisfaction contributed to Hurst suffering a nervous breakdown in January 1945. He was replaced by Lord Wright, the former Australian Commissioner.⁵⁷ The UNWCC made no significant breakthroughs after this point and the organisation played only a marginal role in the IMT proceedings and Zonal trials.⁵⁸

Probably the most significant declaration on war crimes of the war was the Moscow Declaration of November 1943. Using the strongest language, this stated:

At the time of granting of any armistice to any government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in...atrocities, massacres and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of free governments which will be erected therein. Let those who have hitherto not imbrued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three Allied powers will pursue them to the uttermost ends of the earth and

⁵⁶ Letter from Hurst to Lord Simon, 22 November 1944. NA LCO (Lord Chancellor's Office) 2/2976.

⁵⁷ Kochavi, Arie J., 'Britain and the Establishment of the United Nations War Crimes Commission' *English Historical Review* 107, 423 (1992), pp. 323-349.

⁵⁸ Though a representative of one of the governments-in-exile later claimed that the UNWCC had been a significant force and that the persecution of, and crimes against, the Jews had been 'thoroughly investigated' by the organisation, this is undoubtedly an exaggeration. See 'Nuremberg And The War Criminals' by General M. de Baer, Belgian Commissioner on the UNWCC, *Wiener Library Bulletin* (WLB), No. 1, Vol. 1 (November 1946), p. 3.

will deliver them to their accusers in order that justice may be done...The above declaration is without prejudice to the case of German criminals whose offences have no particular geographical location and who will be punished by joint decision of the governments of the Allies.⁵⁹

The Moscow Declaration, which became the foundation of 'Big Three' war crimes policy, stated that localised offences should be subject to national action. Where possible, those suspected of involvement in war crimes should be sent back to be tried by a court in the home country of their victims. Again, however, what is noticeably absent is any specific mention of the crimes committed against the Jews. In October 1944 the British tentatively decided that those suspected of crimes against their nationals should be put on trial by the British in military courts, the rest should be dealt with according to the Moscow Declaration.⁶⁰ At this stage, the British government was still extremely wary of committing themselves to any action that involved them trying enemy nationals for crimes against other foreign nationals – even if these individuals were their Allies. The main reason for this reluctance was simply that the British were not at all sure there was a basis in international law for such trials.⁶¹

As has been discussed in the introductory chapter, the British were disinclined to commit themselves to any judicial proceedings against the major Nazi criminals. Churchill, in particular, felt a great personal hostility towards those he termed the 'Hitler Gang' and for more than a year he advocated shooting the guilty after a brief

⁵⁹ See appendix I for a copy of the Moscow Declaration.

⁶⁰ Report on Meeting, 4 October 1944. NA FO 371 39004. C14255.

⁶¹ Simon's memorandum to Churchill, July 1942. NA LCO 2/2974; Simon's speech in the House of Lords, 15 December 1942 NA LCO 2/2974; Cabinet Paper entitled 'Treatment of War Criminals', May 1944. NA LCO 2/2976.

hearing. This, he hoped, would avoid the 'tangles of legal procedure'.⁶² Others in the cabinet, most notably Lord Simon, had more legalistic fears about making retrospective law in case of any trial. While the Americans and Soviets led the way in calling for a trial, Lord Simon insisted that, 'I am strongly of the opinion that the method by trial, conviction, and judicial sentence is quite inappropriate for notorious ringleaders...the question of their fate is a political, not a judicial, matter.'⁶³ These fears, however, were largely absent in the cases of 'lesser' war criminals. There was already an international established law on so-called 'conventional' war crimes, laid down in successive Geneva and Hague Conventions, which would not require extensive new legislation.⁶⁴ Conventional war crimes were not associated with many of the problems that had dogged discussions about an international trial, for example issues of *tu quoque* or of making retrospective law.

The key problem for the British in terms of legal precedent for Zonal trials was the absence of a previous example in national or international law for trying individuals accused of committing war crimes against their own fellow nationals, which was a crucial issue if the British were to try Germans for atrocities against German Jews. A related point was whether the British should try Germans for crimes committed against stateless persons who were formerly German, Austrian and Romanian Jews. These issues were raised early on in the war. At the end of January 1940, the Polish

⁶² Overy, Richard, *Interrogations: The Nazi Elite in Allied Hands, 1945* (London and New York, 2001), p. 6

⁶³ In Bass Gary Jonathan, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton and Oxford: Princeton University Press, 2000), p. 188

⁶⁴ For more on the Hague and Geneva Conventions see, for example, Howard, Michael, *Restraints on War: Studies in the Limitation of Armed Conflict* (Oxford university Press: Oxford, 1979); Best, Geoffrey, *Humanity in Warfare: The Modern History of the International Law of Armed Conflicts* (London, 1980); Howard, Michael, Andreopoulos, George J. and Shulman, Mark R. (eds.), *The Laws of War: Constraints on Warfare in the Western World* (New Haven and London, 1994); Roberts, Adam, 'Land Warfare: From Hague to Nuremberg' in *The Laws of War: Constraints on Warfare in the Western World* ed. M. Howard et al (1994), pp. 116-139; McCormack, Timothy L.H., and Simpson, Gerry J. (eds.) *The Law of War Crimes: National and International Approaches* (The Hague, 1997).

government-in-exile approached Viscount Halifax, the Foreign Secretary, with the request that Britain should join the French and Polish governments in signing a declaration calling for Germans guilty of crimes against the Jews to be punished 'according to the full force of the law'.⁶⁵ The Foreign Secretary, however, was not alone in his reluctance to commit Britain to any such post-war action. The declaration was finally accepted by the Cabinet after several re-writes and the guarantee that the Poles clearly understood that the declaration represented a statement of principle rather than a binding obligation.⁶⁶

No firm decision was reached in the Foreign Office, however, and the matter continued to be debated. For much of 1941 and 1942 the general consensus was that the British should not attempt to try Germans for either crimes against their own citizens or stateless persons, on the grounds that according to legal precedent, they were not war crimes and could not be considered as such, undeniable though the need for justice might seem.⁶⁷ The only high-ranking official who consistently dissented from this majority opinion was Vansittart, Chief Diplomatic Advisor at the Foreign Office.⁶⁸

⁶⁵ Letter from the Polish Ambassador Count Edward Raczyński to Halifax, 31 January 1940, NA FO 371 24422 C2544/2026/18.

⁶⁶ War Cabinet Discussions, 12 April 1940. NA FO 371 24422 C2544/2026/18.

⁶⁷ See for example, correspondence between Leon Rosengarten (secretary for the Jewish Aid Committee for Emigration, Zurich) and the Prime Minister, October 1942 NA FO C10560/61/18/30920;; Letter to Halifax, December 1942 NA FO C12490/61/18/30924; Correspondence between the Foreign office and the Board of Deputies, LMA ACC/3121/C11/7/2/009. See also Fox, John P., 'The Jewish Factor in British War Crimes Policy in 1942' *English Historical Review* 92 (1977), pp. 82-106.

⁶⁸ Minute, April 1946. NA FO 371 24422 C2544/2026/18.

As late as 1943, Foreign Office Legal Adviser Sir William Malkin was maintaining that 'offences against German Jews are not war crimes'.⁶⁹ By this time there was a high degree of awareness in the Foreign Office that crimes against the Jews far exceeded anything ever seen before. That such crimes existed was no longer in doubt. What was questionable – and what Malkin was referring to – was the fact that there was no precedent in international law for trying individuals for crimes committed against fellow nationals or stateless persons. It was in this sense that they were not considered war crimes.

The issue of whether or not the British should prosecute Germans for crimes against their own nationals had not been resolved when the occupation began. On 30 January 1945 the Minister of State, Richard Law, had still been maintaining that 'Crimes committed by Germans against Germans are in a different category from war crimes'.⁷⁰ On 5 November 1945 British officials including the Attorney General and the Lord Chancellor met in an attempt to resolve the issue of German crimes against fellow Germans and stateless persons (which were now referred to as 'crimes against humanity') once and for all. Exhaustive discussions concluded with the decision that 'crimes committed by Germans against Germans or against stateless persons...would be dealt with, in the first place, in the most notorious cases before British Military Government Courts'.⁷¹ It was hoped that German courts would be able to take over prosecution of these crimes 'as soon as an example and a precedent of sentences had been set.' Representative of the British occupation authorities would have the power to observe the trial and order a retrial or modify the sentences if they were not

⁶⁹ Foreign Office Legal Adviser Sir William Malkin speaking at a meeting arranged by the Lord Chancellor to consider the jurisdiction for crimes committed against stateless persons in German-occupied territory, 10 August 1943. NA FO 371/34367 C8796/31/62.

⁷⁰ Richard Law's speech, quoted in Board files. LMA ACC/3121/G1/1/24.

⁷¹ Telegram from SHAEF to AGWAR, 2 June 1945. NA WO 309/1.

satisfied. In fact, the November decision clashed with existing Royal Warrant procedures, and there are only a few examples of this type of crimes being tried by British military courts.

Running parallel to discussion about German crimes against fellow nationals, were consultations about how best to deal with those suspected of crimes against British citizens. This was a much less contentious issue and most in the Foreign Office were agreed that action against individuals suspected of involvement of crimes against British citizens – mainly POWs and airmen – would be necessary. These made up only a small proportion of victims of war crimes, but the focus on these crimes was perhaps understandable. The murder of British airmen and POWs had outraged public opinion in Britain and the desire to see justice done was strong. Of particular interest to the public were the Stalag Luft III murders. This POW camp at Sagan in Silesia housed Allied prisoners of war. The case concerned 76 officers who escaped from the camp through an underground tunnel on the night of 24-25 March 1944. 3 men succeeded in making their way to Britain, the rest were re-captured. Of these, 50 were put before a firing squad.⁷²

The Stalag Luft III trial itself will be covered in a later chapter, but the case is useful for illustrating here the strength of feeling in Britain against those who committed crimes involving British subjects. The case caused outrage when it was first reported in May 1944, with even the typically reserved *The Times* newspaper reporting ‘the

⁷² For historical accounts of Stalag Luft III see Durand, Arthur A., *Stalag Luft III: The Secret Story* (Louisiana State University Press, 1988); Rollings, Charles, *Stalag Luft III: The Full Story* (Hyperion Books, 1992). For memoirs see Willatt, Geoffrey, *Bombs and Barbed Wire: My War in the RAF and Stalag Luft III* (Parapress, 1995); McKee, Daniel C., *50 Years Later: Stalag Luft III Diary* (Smithfield Press, 1999).

deepest distress and concern'.⁷³ In June 1944 the Foreign Secretary Anthony Eden responded to public pressure, condemning the murders as 'an odious crime against the laws and conventions of war' and promising that:

His Majesty's Government...record[s] their solemn protest against these cold blooded acts of butchery. They will never cease in their efforts to collect the evidence to identify all those responsible...these foul criminals shall be tracked down to the last man wherever they may take refuge. When the war is over they will be brought to exemplary justice.⁷⁴

What is notable here is that Eden stopped short of promising legal proceedings for those suspected of involvement. An earlier versions of his speech had included the line, 'Those responsible for this crime, whenever they may fall into Allied hands, [should be] brought to trial and punished.'⁷⁵ This was absent from the final draft, in all likelihood because Eden was reluctant to make any solid commitments regarding post-war war crimes policy.

In November 1944, certainly influenced by the Stalag Luft III case, the Cabinet agreed that the War Office should give priority to war crimes alleged to have been committed against British subjects.⁷⁶

⁷³ Editorial, *The Times*, 20 May 1944, p. 5.

⁷⁴ Commons Statement by Eden, 23 June 1944. Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 401, cc. 477-482; NA FO 371 38998 C9295/14/62; NA FO 371/70819. CG2318/34/184. Also see report in *The Times*, 24 June 1944, p. 2.

⁷⁵ Draft of Eden's speech to the Commons. NA FO 371 38998/C9295/14/62.

⁷⁶ Cabinet decision November 1944. NA CAB 65/44.

(IV) War Crimes Trials – The Situation in 1945

In 1945, the German justice system was in pieces – in several senses. The Zonal system meant that there was physical fragmentation. In addition, the court infrastructure was crippled as a result of war and defeat. The British Zone was divided into several districts, Hanover, Westphalia, North Rhine, Schleswig-Holstein and Hamburg. Each had its own legal advisors. The main advisors – and formulators of policy – remained in London. Before they entered Germany, the British were hopeful that they would be able to build on existing German judicial systems. Due to breakdown in infrastructure, however, this proved impossible. Also of issue was the fact that the German judiciary, traditionally a bastion of the Right, had, for the most part, enthusiastically embraced National Socialism. Approximately 90 % of judges had been members of the NSDAP.⁷⁷

The Central Registry of War Criminals and Security Suspects (CROWCASS), a joint venture between the British and Americans, was given the task of tracking down war criminals in occupied Germany. The creation of such an organisation had first been recommended by Eisenhower in November 1944; the group officially came into being in January 1945. Although CROWCASS was based in Paris, it had access to information held by both Scotland Yard and the Federal Bureau of Investigation (FBI). In turn, all Allied nations were granted access to CROWCASS files. The British officer Lieutenant-Colonel William Palfrey was given the job of heading this

⁷⁷ See Noakes, J. and Pridham, G. (eds.), *Nazism 1919-1945: Volume 2 State, Economy and Society 1933-1939* (Exeter, 2000), pp. 289-295. See also Müller, Ingo, *Hitler's Justice: The Courts of the Third Reich* (London: Tauris, 1991); Brodzka, Halina, Drozdzyński, Aleksander and Przegalińska, Danut, *Nazi Judges in West Germany* (Warsaw: Zachodnia agencja prasowa, 1963); Albrecht, Dietmar and Clausen, Holger, *Justiz und Drittes Reich* (Sankelmark: Akademie Sankelmark, 1984); Morison, John, McEvoy, Kieran and Anthony, Gordon (eds.) *Judges, Transition, and Human Rights* (Oxford: Oxford University Press, 2007).

newly created organisation, which was staffed with officers of the four powers occupying Germany. Their first list in May 1945 was a combination of the limited UNWCC list and a more substantial Supreme Headquarters, Allied Expeditionary Forces (SHAEF) 'personality black list', which listed approximately eighty thousand persons. Most of the names on the list (approximately nine-tenths) were Germans considered prosecutable for war crimes, or were suspects in war crimes cases. The rest were wanted as witnesses.⁷⁸ It was the French who led the way in submitting the names of wanted persons. The next most ambitious would-be prosecutors were the Belgians, followed by the Czechs and then the Poles. The CROWCASS file was a far from complete list of those wanted for war crimes, however. When the Foreign Office legal advisor Patrick Dean – who would become one of the few champions of the British war crimes trial process – was asked to comment on it, he reported that he found it incomplete, 'misleading and unreliable.'⁷⁹

The Foreign Office was primarily responsible for war crimes policy in the British Zone. The War Office, acting in consultation with the Foreign Office was in charge of collecting evidence of war crimes and arresting suspects, until the newly formed British War Crimes Group (WCG), based at Bad Oeynhausen in Germany, took over this responsibility in the summer of 1945. The specific task of preparing evidence and charges for war crimes trials was given to the Judge Advocate General (JAG) branch of the army, while the British Army of the Rhine (BAOR) was allocated the task of investigating reported crimes.

⁷⁸ *AJRI* Vol. II, No. 10, October 1947.

⁷⁹ Memorandum by Patrick Dean, 21 June 1945. NA FO 371 51033.

The hunt for those war criminals who were not ‘notorious’ quickly became a paper chase, with many on the ground unsure who they were looking for. Descriptions were issued but they were often limited to remarks such as, ‘Brown hair, medium height, blue eyes’. A not insignificant number of individuals, including members of the Nazi elite such as Himmler, were only identified when they gave themselves up.⁸⁰ All this was complicated by the fact that many individuals made a conscious decision to go underground, often changing their names to avoid prosecution. It has been estimated that the number of these ‘Braun-Schweiger’ or ‘U-Boote’ could have amounted to 80,000 individuals in Germany as a whole.⁸¹ Of course, not everyone who changed their name was a war criminal, but a significant minority were. The mammoth task of tracking down suspects in Germany was not helped by chronic lack of investigators, administrative staff and interrogators. Staff shortages would prove to be a persistent problem for the British throughout the occupation. Interestingly, denunciations by the German public do not seem to have been commonplace – at this early stage in the occupation at least - in the identifying of suspected war criminals. We can perhaps attribute this to the fact that the Germans were still very resentful of the Allies and unwilling to assist their occupiers, or did not regard much of what had occurred under the Third Reich as criminal.

Before the war ended, the British were also keen to seek the promise of neutral countries that they would not grant asylum to those suspected of committing war

⁸⁰ For details of Himmler’s capture and suicide see Overy, Richard, *Interrogations: The Nazi Elite in Allied Hands, 1945* (London and New York, 2001), pp. 109-110. Some writers have made much of the fact that neither the British or American operation to hunt down war criminals had a code name. This was in contrast to ‘Operation Paperclip’, the U.S operation to track down Nazi scientists. See Hunt, Linda, *Secret Agenda: The United States Government, Nazi Scientists and Project Paperclip, 1945 to 1990* (St. Martins Press: New York, 1991); Bower, Tom, *The Paperclip Conspiracy* (Grafton: London, 1988).

⁸¹ In Reichel, Peter, *Vergangenheitsbewältigung in Deutschland: Die Auseinandersetzung mit der NS-Diktatur von 1945 bis heute* (Beck: München, 2001), p. 109.

crimes. Most agreed to this request, even if some (e.g. Spain, Argentina) later went back on their word. Many war criminals were able to escape prosecution by emigrating, most notoriously Adolf Eichmann, who managed to avoid prosecution for more than a decade by fleeing to South America.⁸²

The Nuremberg Trial was concerned with trying the formulators of policy – the ‘major criminals’ who had waged war and instigated genocidal policies even if they had personally never harmed anyone. The British Zonal trials had a different brief. These military proceedings were designed to try the underlings – those ‘minor criminals’ who had carried out the orders of the Nazi hierarchy. Some of those tried were camp guards, some were soldiers, others were civilians accused of murdering British airmen. What they all had in common was that they were accused of directly physically harming or killing someone else. As a result, their crimes were often perceived as having a more direct impact on ordinary people than the crimes of the Nazi hierarchy. As a popular British magazine pointed out in late 1945:

Thousands of people in the towns and villages of countries which suffered Nazi occupation have overwhelming evidence of terrible crimes committed against themselves, their friends and their kinsmen. The smaller fry are of immense importance to them. The murderers and looters and sadists who passed their way are, in a more real sense than the leaders, *their* war

⁸² On the career, capture and trial of Eichmann see for example, Wighton, Charles, *Eichmann: His Career and Crimes* (Odhams Press: London, 1961); Pearlman, Moshe, *The Capture and Trial of Adolf Eichmann* (Weidenfeld & Nicolson: London, 1963); Arendt, Hannah, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Viking Press: New York, 1965); Brin, Herb, *The Eichmann Trial* (California State University: Fullerton, 1973); Aharoni, Zvi et al, *Operation Eichmann: pursuit and Capture* (Cassell Military, 1999); Krause, Peter, *Der Eichmann-Prozess in der deutschen Presse* (Campus Vlg: Frankfurt, 2002); Cesarani, David, *Eichmann: His Life, Crimes and Legacy* (Heinemann: London, 2003); Gouri, Haim, *Facing the Glass Booth: The Jerusalem Trial of Adolf Eichmann* (Wayne State University Press, 2003); Yablonka, Hanna, *The State of Israel Vs. Adolf Eichmann* (Schocken Books, New York, 2004).

criminals. Whether it is logical or not, it is natural, and they will feel that a beginning has been made with democracy in Europe when these men are punished.⁸³

The Royal Warrant procedures, which provided for war crimes trials in the British Zone, limited the British to prosecuting 'violations of the laws and usages of war committed during any war which His Majesty has been or may be engaged at any time after the second day of September, 1939'.⁸⁴ The Warrant came into force on 18 June 1945. The Royal Warrant was converted into Army Order No. 81, which became the apparatus for implementing the policy in the British Zone.⁸⁵ The jurisdiction of the military courts which were to be established was thus restricted to violations of the laws and usages of war as distinct from other documents such as the Italian Terms of Surrender and the Declaration Concerning the Defeat of Germany of 5 June 1945, which spoke of war crimes 'or analogous offences'. Under the terms of the Unconditional Surrender, however, the few remaining German authorities were duty bound to surrender any known war criminals currently in their custody or under their control. The Royal Warrant procedures allowed for several different punishments, depending on the defendants' level of guilt. These were:

- (i) Death
- (ii) Imprisonment for life or for any lesser term.
- (iii) Confiscation (especially appropriate if the accused had profited from his or her war crimes).

⁸³ *Picture Post*, Vol. 29, No. 9, 1 December 1945.

⁸⁴ Text of Royal Warrant. See appendix II.

⁸⁵ Foreign Office discussions on the status of the Royal Warrant, June 1945. NA FO 1032 942.

(iv) Fines.⁸⁶

In imposing a financial punishment, however, the courts were instructed to take account of the accused's financial status since 'a fine of £2,500 [the maximum allowed] awarded against a rich man is a less punishment than a fine of £5 to a labourer.'

In mid 1945 the WJC reported to its members that the courts in the British Zone were:

to be set up are to try those guilty of atrocities committed in Concentration Camps like Belsen. Such atrocities would be treated as war crimes, as "most of the victims were Allied nationals" whether atrocities will be prosecuted where the victims were Jews of enemy or neutral nationality or stateless remains to be seen.⁸⁷

All of this meant that, overall, the British Zonal trials were much less problematic in terms of international law than other trials.⁸⁸ The British were able to avoid many of the legal complications that would trouble the Nuremberg Trial. This was both a strength and a weakness. While the wording of the Warrant meant that the British were able to avoid complex legal questions, the type of war crimes they could try was also considerably curtailed. For example, the fact that the British could not put formulators of policy on trial meant that many white collar 'pen pushers' – those whose administrative skills and ideological commitment contributed to the deaths of

⁸⁶ 'Notes for War Crimes Courts on the Infliction of Penalties' (unsigned and undated – though probably mid 1945). NA WO 309 5. Also see appendix II.

⁸⁷ WJC 'Report and Evaluation of Legal Events' by Dr. P. Weis, May – June 1945. UoS MS 241/3/46.

⁸⁸ For a legalistic explanation of the war crimes trials in the British Zone see Rogers, A.P.V., 'War Crimes under the Royal Warrant: British Practice 1945-1949' *International and Comparative Law Quarterly* 39 (1990), pp. 780-800.

millions by oiling the wheels of the Holocaust machinery - were outside of their sphere of influence. The British could not try individuals for crimes committed before September 1939, which meant that they could not punish people, for example, for crimes carried out inside concentration camps between 1933 and the outbreak of war.

At the same time, the rules for admissible evidence were very different to those used in regular British courts. Hearsay evidence, for example, was accepted in some cases, at the discretion of the presiding judge.⁸⁹ It was permitted to try individuals *in absentia* though, as far as can be gleaned from the War Office and Foreign Office files, nobody was ever tried in this way. The British government also agreed early on that claiming superior orders would be no defence, though it might be considered in mitigation of punishment. It should be emphasised that British war crimes trials in occupied Germany were tried by military courts. These tribunals were similar to those used in British court martial cases and were conducted 'under existing procedure for trial of battle-field crime'.⁹⁰ This framework was inflexible and accustomed to dealing with cases of military discipline, where murder represented a deplorable departure from the norm. These tribunals soon found themselves dealing with cases where murder was not only acceptable, but official state policy. The framework was to prove both restricting and hopelessly inadequate in such cases.

⁸⁹ See WJC discussions, UoS MS 237/6/79; NA FO 1049 237 258/2/45; See also The Summing up of the Judge Advocate'. UNWCC Report Volume II, p. 119.

⁹⁰ Telegram from SHAEF to Adjutant General, War Department (AGWAR), 2 June 1945. NA WO 309/1.

(V) The Belsen Trial

The Belsen trial reveals much about early British attitudes to war criminals and war crimes trials in general. The trial concerned the staff of two camps, Bergen-Belsen and Auschwitz. The reasons for trying crimes committed in these two camps, which had completely different remits, in one trial, will be discussed later. The trial was ill-planned and lacked the necessary clerical staff. Legal staff, particularly the attorneys, were often woefully ill-prepared. Not only were those in the dock (of whom Irma Grese and Josef Kramer were the most notorious) charged with imprecise offences, but the emphasis throughout the trial was very much on the defendants, rather than on the victims. Since much of the evidence was based on affidavits, the victims' voice was 'lost'. More seriously, the Belsen trial underplayed the uniqueness of the Jewish persecution during the Holocaust and perpetuated myths about the role of Bergen-Belsen in the camp system.

The so-called Belsen Trial was the first war crimes trial to take place in occupied Germany. Conducted by the British, the trial began in Lüneburg in Niedersachsen on 17 September 1945, some two months before the Nuremberg proceedings, and lasted until late November 1945, though it was originally envisaged that proceedings would be over in just one month. The trial was concerned with prosecuting forty five individuals who had been stationed at Auschwitz or Bergen-Belsen or both.⁹¹ Many of those in the dock had first worked at Auschwitz – the only extermination camp still operating at full capacity at the end of 1944. When Auschwitz was evacuated as a result of the Soviet advance many of the inmates were marched, together with their

⁹¹ See Phillips, Raymond and Jowitt, Lord, *The Trial of Josef Kramer and Forty-Four Others* (London: Hodge, 1949).

guards, to concentration camps inside Germany, including Buchenwald and Belsen.⁹² Since a significant proportion of the guards had been employed at both Bergen-Belsen and Auschwitz, it was decided to try personnel of both camps jointly. It has been suggested that grouping the two camps together in this way was a mistake, contributing, as it did, to a fundamental errors in the popular understanding of the camp system.⁹³ It should be emphasised that in 1945, the name 'Auschwitz' held no significance in the popular imagination. In Britain and America, Belsen and Buchenwald respectively represented the worst excesses of the Nazi regime.⁹⁴ When knowledge of gas chambers did begin to trickle out, this information was, more often than not, wrongly connected with the western camps.

The trial concerned staff from all levels. The number one defendant, Josef Kramer, commandant of Bergen-Belsen at the time of the liberation and former commandant of Auschwitz No. 2, otherwise called Birkenau, was tried alongside regular camp guards. Not all of those in the dock were German nationals. Among the accused were a number of Poles. These individuals were 'Kapos' – concentration camp staff that had 'risen from the ranks' of the camp inmates. Those in the dock did not constitute

⁹² It has been estimated that at least a third of the 700,000 concentration camp inmates recorded at the beginning of 1945, perished either on the marches or in the overcrowded, disease-rife camps that were their destination. In Reilly, Joanne, *Belsen: The Liberation of a Concentration Camp* (Routledge: London and New York, 1998), p. 11. For more on the *Todesmärsche* see, for example, Rothkirchen, Livia 'The "Final Solution" in its Last Stages' *Yad Vashem Studies* 8 (1970), pp. 7-28; Bauer, Yehuda., 'The Death Marches, January-May 1945' *Modern Judaism* 3, 1 (1983), pp. 1-21; Krakowski, Shmuel., 'The Death Marches in the Period of Evacuation of the Camps in Y. Gutman (ed.) *The Nazi Concentration Camps: Structure and Aims, The Image of the Prisoner, The Jews in the Camps* (Yad Vashem: Jerusalem, 1984), pp. 475-89; Bridgman, J., *The End of the Holocaust: The Liberation of the Camps* (Batsford: London, 1990); Goldhagen, Daniel J., *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (Abacus: London, 1997), chapter 13.

⁹³ See, for example, Bloxham, Donald, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford University Press: Oxford and New York, 2001), pp. 97-101 and Bloxham, Donald, 'The Holocaust on Trial: The War Crimes Trials in the Formation of History and Memory' (PhD thesis, Southampton, 1998).

⁹⁴ For more on the American media and Buchenwald see Frei, Norbert, ' "Wir waren blind, ungläubig und langsam": Buchenwald, Dachau und die amerikanischen Medien im Frühjahr 1945' *Vierteljahreshefte für Zeitgeschichte* 35 (1987), pp. 385-401.

the complete staff of either camp. Both Auschwitz and Bergen-Belsen required large numbers of people to kill and control the inmates and since both camps had been active for several years, there were, of course, individuals who had worked in the camps – and committed atrocities – who had moved on to other employment by the time of the liberation.⁹⁵ Those in the Lüneburg dock had all worked at Belsen in April 1945. They were chosen for trial in the ‘showcase’ proceedings for two main reasons (i) because the British thought their particular crimes represented the worst excesses of the regime at both Auschwitz and Belsen and (ii) they were already in custody. With a few exceptions (in cases where individuals were ill or absconded), all the staff found to be employed by the Bergen-Belsen camp were arrested soon after the British liberated the camp, with the result was that the British were spared weeks or months tracking them down. Those who the British deemed to have committed less severe war crimes, individuals who had worked at either camp before 1945 or had escaped arrest after the British liberated Belsen, were put on trial in the subsidiary Belsen trials.⁹⁶ These proceedings were much shorter and not the subject of the intense media coverage that followed the first trial.

The planning for a trial designed to bring those responsible for the Belsen atrocities to justice had begun soon after the British liberated the camp in April 1945. The liberation of Bergen-Belsen was particularly significant from a British point of view. It was not the first concentration camp to be liberated, nor was it a “death camp” as we now understand the term. But because the British armed forces were accompanied by reporters, photographers and film crews, the images recorded and subsequently broadcast were among the most horrific of all those depicting Nazi crimes and

⁹⁵ See Steinbacher, Sybille, *Auschwitz: A History* (London: Penguin Books, 2005).

⁹⁶ C-in-C BAOR to Under-Secretary of State, War Office and JAG. NA WO 309/1

barbarity. The images of emaciated corpses, mass graves and gaunt survivors shocked British civilian opinion to its core, becoming notorious in Britain as an example of Nazi brutality.⁹⁷ Such strong emotions heightened already vehement anti-German feeling. Responding to this, the *Evening Standard* published a cartoon by David Low. It depicted a city gent standing in front of emaciated Belsen survivors and declaring 'The whole German people should be wiped out for this!' 'Don't forget', one of the survivors reminds him, 'some of us are Germans, friend.'⁹⁸

The *Jewish Chronicle* was no different in its response to the Belsen horrors. Describing the scenes as 'so utterly revolting as to shock the conscience of mankind', the paper was keen to point out that rumours of Nazi 'extermination camps' [sic] could no longer be considered as 'atrocities propaganda'.⁹⁹ This widespread public horror certainly contributed to the joint Foreign Office and War Office decision to make trying the Belsen perpetrators a priority.¹⁰⁰

Preparation for the trial was slow for a number of reasons. Firstly, because the Royal Warrant procedures had not come into force until 18 June 1945, planners were unsure of the framework within which the trial would be conducted. Nor was it possible to gain an impression by reviewing early versions. As late as 25 May 1945, JAG were

⁹⁷ On the liberation of Belsen, see for example, Klob, E., *Bergen-Belsen: From 'Detention Camp' to Concentration Camp, 1943-1945* (Vandenhoeck & Ruprecht: Göttingen, 1986); Reilly, Joanne, Cesarani, David, Kushner, Tony and Richmond, Colin (eds.), *Belsen in History and Memory* (Frank Cass: London and Portland, Oregon, 1997); Reilly, Joanne, *Belsen: The Liberation of a Concentration Camp* (Routledge: London and New York, 1998); Reilly, Joanne, 'Britain and Belsen' (PhD thesis, University of Southampton, 1995) and Brownstone, S.B., 'The Army Film and Photographic Unit and the Liberation of Bergen-Belsen Concentration Camp' (M.Phil thesis, University of Birmingham, 2000).

⁹⁸ *Evening Standard*, 19 April 1945. See appendix III.

⁹⁹ *Jewish Chronicle* 27 April 1945, p. 1.

¹⁰⁰ See correspondence with the Foreign Office, May-June, 1945, NA WO 32 12202/64A.

reporting that the Royal Warrant was in a 'rough draft stage'.¹⁰¹ Gathering evidence also proved to be a time-consuming exercise. Sir Hartley Shawcross, the Attorney General and recently appointed British chief prosecutor at Nuremberg, wrote to Attlee on the Belsen planning, reporting that 'Progress is slow'.¹⁰² Shawcross was sufficiently worried about the length of time the trial was taking to prepare to consult Bevin, the Labour Foreign Secretary. Bevin sympathised but no action was taken as both became preoccupied with more pressing discussions about the forthcoming Nuremberg Trial.¹⁰³

A particular problem for those planning the trial was locating witnesses. British court martial proceedings, on which the military courts in the British Zone were based, had traditionally relied on the testimony of eyewitnesses as the key basis for securing the convictions of defendants. Tracing witnesses in occupied Germany was fraught with difficulties. Many potential witnesses had perished in the camps. Records kept by both Auschwitz and Belsen were patchy in the extreme and even when witnesses could be found, many were reluctant to commit themselves to staying in the British Zone until the trial was over, as this effectively meant residing in DP camps for an unknown quantity of months. A number of affidavits had been taken from ex-inmates of Belsen, but many of the deponents had since left the British Zone. All the prosecution could do was to call the witnesses available and then put the affidavits before the court and ask for the evidence to be accepted.¹⁰⁴ Hearsay rules were relaxed and the court was allowed to accept written statements in place of oral

¹⁰¹ Memorandum from JAG, 25 May 1945. NA WO 309/1.

¹⁰² Letter from Shawcross to Attlee, 24 August 1945. NA WO 32 12202/64A.

¹⁰³ Bevin Memorandum, August 1945. NA WO 32 12202/64A.

¹⁰⁴ 'The Admissibility of Affidavit Evidence'. Law-Reports of Trials of War Criminals, The United Nations War Crimes Commission, Volume II, London, HMSO, 1947 (hereafter UNWCC Report Vol. II), p. 132.

evidence. The result of this was that much of the prosecution case – both at the Lüneburg proceedings and subsequent British Zonal trials - came to rest on affidavits taken from inmates before they were dispersed.¹⁰⁵ This shift in procedure caused problems as many in JAG, not least the Judge Advocate-General, Carl L. Sterling, believed such affidavit evidence to be ‘dangerous material’ on the grounds that it could not be subjected to cross examination in the way a ‘real’ witness could.¹⁰⁶ The British Branch of the WJC was, understandably, keen to ensure that Jewish suffering was recognised by the British courts. Both the WJC and the Board of Deputies believed that there was more chance of an accurate depiction of Jewish persecution if Jewish groups were themselves directly involved in the trials process.¹⁰⁷ Before the start of the tribunals in the British Zone, the WJC requested Jewish representation at all the trials. Specifically, they asked that a Jewish *amicus curiae* (an independent legal advisor) be allowed to assist.¹⁰⁸ This request was turned down, but upon announcement of the first Belsen trial, the British Section of the WJC again asked to be included. Direct involvement in the trial was denied, though the Foreign Office were keen to state their general support ‘the authorities in the British zone in Germany are fully alive to, and view with much sympathy, the position of Jewish persons in the Zone and that, with the cordial support of His Majesty’s Government, they will welcome the practical assistances afforded by the Jewish relief bodies.’¹⁰⁹

¹⁰⁵ ‘The Summing up of the Judge Advocate’. UNWCC Report Volume II, p. 119; NA FO 1049 237 258/2/45. Also see Rogers, ‘War Crimes under the Royal Warrant: British Practice 1945-1949’ *International and Comparative Law Quarterly* 39 (1990), p. 791.

¹⁰⁶ ‘The Summing up of the Judge Advocate’. UNWCC Report, Vol. II, p. 119. Also see Foreign Office discussions, August-October 1945. NA FO 1049 237 258/2/45.

¹⁰⁷ WJC general correspondence, 1945. UoS MS 241/4/3/1; Letter from Stein (Board of Deputies) to Maxwell-Fyfe, 13 June 1945 LMA ACC/3121/C11/7/2/009; Letter from Brodetsky (Board of Deputies) to Maxwell-Fyfe, 27 June 1945, LMA ACC/3121/C11/7/2/009.

¹⁰⁸ WJC general correspondence, 1945. UoS MS 241/4/3/1.

¹⁰⁹ Letter from the Foreign Office, signed Paul Mason, for the Secretary of State (undated, but almost certainly August/September 1945). UoS MS 238/2/29.

Alex Easterman, Political Secretary of the British Section of the WJC and political journalist was, however, granted the status of 'Official Observer' - a position which was also granted to representatives of other interest groups, including the Board of Deputies of British Jews and ten other Allied Governments - and allowed to monitor the trial for the WJC.¹¹⁰ Easterman's status was somewhat token as the WJC had no real power to influence events. They were free to comment and make suggestions about how the trial could be improved, but the British government were under no obligation to heed their proposals.

The WJC seem to have been satisfied with the title of 'Official Observer' granted to Easterman. As he wrote in his report on the first day of the proceedings:

[R]ecognition has been given for all to witness that the Jewish people have their appropriate place among the nations and that they have a rightful and equal seat with the others, great and small, at the Judgement Seat when the violators of the laws of humanity are brought to justice, to answer for their crimes...It is with a deep sense of humility, and pride that it has fallen to my lot to represent my people who have survived to see Hitler laid low in the dust of his Empire, that I took my place this morning in the seat allotted to the World Jewish Congress. Technically, my colleagues and I are designated "Observers"; in actual historical content we sit in judgement upon the perpetrators of savageries committed against our peoples and which have befouled civilised mankind.¹¹¹

¹¹⁰ Report on 'The War Crime against the Jewish People', UoS MS 241/4/3/1. See also Board Committee for Jews in Germany, LMA ACC/3121/C11/07/03D/009.

¹¹¹ Report by A. L. Easterman at the trial of the Belsen Murderers, 17 September 1945, p. 1. UoS MS 238/2/29.

His views were echoed by other WJC members. The Marchioness of Reading, president of the British section of the WJC, for example, summed up majority opinion when she spoke at the Conference of the World Jewish Congress (British Section) stating: 'I think it is in some ways a matter of pride to us, and we say that the World Jewish Congress represents the Jews of the world at that Trial in Germany of War Criminals and what they have done, not only to others, but – and mainly – to the Jews'.¹¹²

The beginning of the trial was accompanied by a flurry of press attention, both in Britain and Germany which catapulted the issue of war crimes trials on to the front page. *The Times*, for example, devoted several pages to the opening of the trial in its 18 September 1945 issue. The paper reported:

[T]hough the story [of Belsen] was well known...it had not lost its power to conjure up horror, pity and anger. All the details that seemed so unlikely at their first telling by frightened, tormented, half crazed refugees and prisoners were repeated with a promise from the prosecution that each one would be proved.¹¹³

In other countries too, the Belsen trial received huge media attention. The Soviet press in particular closely followed the proceedings in Lüneburg. On 12 October 1945, the British embassy in Moscow reported that the 'Soviet press...shows a great and increasing interest in the Lüneburg trials'.¹¹⁴

¹¹² Marchioness of Reading speaking at the Conference of the World Jewish Congress (British Section), 10 October 1945. UoS MS 238/2/30.

¹¹³ *The Times*, 18 September 1945, p.4.

¹¹⁴ Telegram from the British Embassy, Moscow to the Secretary of State for Foreign Affairs, 12 October 1945. NA FO 1049 237 U9251/16/73.

The opening of the Belsen trial in September 1945 was also of tremendous interest to the *Jewish Chronicle*. The *Jewish Chronicle* report of the first day's proceedings, paid particular attention to the evidence of Brigadier Glyn Hughes, who took over the medical responsibility for Belsen on 15 April. His statement, which described in horrifying detail the conditions in the camp, 'confirmed everything that has been said or written about Nazi concentration camps...this evidence should establish for all time that these reports represent the truth and nothing but the truth.'¹¹⁵ More pertinent still, from a Jewish point of view, were the revelations a week later of a Jewish woman, Ada Bimko, who had worked in the camp hospitals at Auschwitz and Birkenau. Her evidence pushed Auschwitz to the forefront of attention for the first time in the trial.

Bimko, who was a doctor by profession, described how she had been taken from her home in Sosnowice, Poland to Auschwitz, along with 5,000 other Jews from the town. Her family had perished in the gas chambers, she revealed, and she had only been spared because someone was needed to work in the camp hospitals. In the week that she arrived, she estimated that '25,000 Jews were exterminated in the gas chambers'.¹¹⁶ On the witness stand, she identified Kramer, Dr. Klein (one of the camp physicians) and SS officer Franz Hoessler, as persons took an active part in selections made at Auschwitz, a process whereby numbers of prisoners were removed from the rest and sent to the gas chambers. She had also seen Kramer at Belsen kicking four Russians who were too weak to work. Kramer arrived at Belsen early in

¹¹⁵ *Jewish Chronicle*, 21 September 1945, p. 7.

¹¹⁶ *Jewish Chronicle*, 28 September 1945, p.1.

December, 1944, and on his arrival roll-calls and beatings commenced.¹¹⁷ Her testimony, which was clearly delivered, explicitly recognised the uniqueness of the Jewish experience in respect to systematic extermination and the role that Auschwitz (as distinct from Belsen) played in this. It was perhaps the only time during the proceedings that this distinction was so unambiguously stated. Although the *Jewish Chronicle* expressed the public shock and disgust at these revelations, the rest of the comment on the trial was limited to discussing the shortcomings of the defence counsel at the trial. In particular, they complained that some comments by the defence ‘may weaken the effect of the trial.’¹¹⁸ More column inches were, in fact, devoted to this than the emerging details about Auschwitz.

Throughout the trial, the actions of Major Winwood, Kramer’s defence lawyer, were singled out for criticism. At one point, Winwood stated that ‘the Concentration Camps contained the undesirable elements from the dregs of the Ghettos of Europe...people with little idea of what to do with their own lives’.¹¹⁹ The WJC were appalled by this slur which, in their view, constituted:

[A] vile calumny against the victims of innocent Jewish men, women and children deliberately murdered by the Nazis in the torture Camps, Gas Chambers and Crematoria in Germany and Nazi-occupied Europe...

This...unwarranted slur against the countless Jewish dead and their

¹¹⁷ Testimony of Ada Bimko. UNWCC Report, Vol. II, p. 11.

¹¹⁸ *Jewish Chronicle*, 28 September 1945, p. 9.

¹¹⁹ Quoted in WJC papers, UoS MS 238/2/30. Also press release by the Board, LMA ACC/3121/G1/1/24.

surviving brothers throughout the world is a gross violation of British fairness and transgresses the just limits of British advocacy.¹²⁰

The Board of Deputies also issued a press release declaring that Winwood's statement 'besmirches the memory of millions of men, women and children who died amid unspeakable horrors or who were murdered for no fault but that they were Jews'.¹²¹

The WJC demanded that Winwood's comments be stricken from the record.¹²² Court rules prevented this, but it was agreed that the words would be withdrawn in Winwood's summing up speech. In addition, a letter of apology was sent to Easterman, as a representative of the WJC.

The *Jewish Chronicle* also responded to Winwood's slur with outrage:

This ultra-wicked submission and this cowardly and abominable heaping of insult upon slaughter was solemnly advanced as an extenuation, if not a complete justification, of the Belsen horrors and apparently passed without a syllable of remonstrance from the Court. Other and more important trials are pending and if the Belsen procedure is repeated then we may see the courts again and again prostituted as sounding for the propagation of anti-Semitism.¹²³

¹²⁰ Cable from the British Branch of the WJC to Major General Barney Ficklin, president war crimes tribunal at Lüneberg, 10 October 1945. UoS MS 238/2/30.

¹²¹ Board Annual Report, 1945. LMA ACC/3121/G1/1/24.

¹²² WJC précis for week October 21-27 1945. UoS MS 238/2/30.

¹²³ *Jewish Chronicle*, 12 October 1945, p. 9.

This fully justified anger, however, had the effect of distracting attention from the evidence presented at the trial. The 'Winwood affair' was then discussed in a further two editorials (on 19 October 1945 and 23 November 1945). The preoccupation with these remarks was, as one historian has put it, 'not helpful in the interests of the popular record.'¹²⁴ On the other hand, the sheer passion of those editorials is extremely useful for demonstrating the extent to which correct representation of the Jewish people was important to the *Jewish Chronicle* and, by extension, the Anglo-Jewish community.

Major Winwood's comments were provocative enough to raise eyebrows in the House of Commons. Eleanor Rathbone, Independent MP for the Combined English Universities, asked the Secretary of State for War if 'appropriate action' would be taken against Winwood. Lawson replied:

Major Winwood is in the position of defending counsel and, as such, is entitled to the privileges of that office. Within the limits of normal legal practice he is obliged to accept and put forward the instructions he receives from the accused he is representing...it would be contrary to all the principles of British justice...if a British officer acting as defending counsel were to be restrained from exercising his normal rights for fear of possible disciplinary action.¹²⁵

It seemed that Major Windwood would escape without any sanctions from the British government.

¹²⁴ Bloxham, *Genocide on Trial*, p. 99.

¹²⁵ Hansard Parliamentary Debates, fifth series (House of Commons) Vol. 414, cc. 1974-1975.

The Belsen trial revealed much about early British attitudes to war criminals and war crimes trials in general. For example, none of defendants was specifically charged with murder. Instead, the charge was that all defendants (except Stanislaw Starotska) were charged with having committed a war crime, in that they 'at Bergen-Belsen, Germany, between 1st October 1942 and 30th April 1945 when members of the staff of Bergen-Belsen Concentration Camp responsible for the well-being of the persons interned there, in violation of the laws and usages of war were together concerned as parties to the ill-treatment of certain of such persons causing the[ir] deaths...'¹²⁶ Starotska, Kramer, Dr. Klein, Weingartner, Kraft, Hoessler, Borman, Volkenrath, Ehlert, Gura, Grese, Lothe, Lobauer and Schreirer were then read the same charge with regard to Auschwitz.¹²⁷ The indictment went on to list the names of several individuals known to have perished in the two camps. The use of the phrases 'Ill-treatment' and 'well-being' point to both a fundamental misunderstanding of the nature of the Holocaust and the differences between the Belsen and Auschwitz camps. From its conception Auschwitz was concerned with systematic murder. Before spring 1944, Belsen had been an 'exchange camp' for so-called 'privileged Jews'. After this, however, the camp guards had instigated a policy of death by deliberate neglect for the inmates – allowing horrific overcrowding, withholding treatment for disease and denying inmates food and clean water.¹²⁸ The wording of the indictment implied that the British saw the mass deaths at both Belsen and Auschwitz as the result of some sort of localised breakdown rather than a coordinated genocide. The indictment also necessarily neglected any specific mention of the Jews, gas chambers, or even

¹²⁶ Charges on the Bergen-Belsen case. UNWCC Report, Vol. II, p. 4.

¹²⁷ Charges on the Auschwitz case. UNWCC Report, Vol. II, p. 4.

¹²⁸ For more see Lattek, Christine, 'Bergen-Belsen: From 'Privileged' Camp to Death Camp' in *Belsen in History and Memory*, ed. J. Reilly et al (Frank Cass: London and Portland, Oregon 1997), pp. 37-71 and Klob, E., *Bergen-Belsen: From 'Detention Camp' to Concentration Camp, 1943-1945* (Vandenhoeck & Ruprecht: Göttingen, 1986).

any reference to mass deaths. The phrase ‘certain persons’ suggested that the deaths that did occur were not on a huge scale. While the wording was the result of the procedures on which the trial was based, it was certainly unfortunate in view of the public record. It is interesting to note that on the first day of the trial, a spokesman for the defence contended that the two charges had been incorrectly joined and that they should be separated and heard separately, preferably by different courts.¹²⁹ The defence submitted that persons accused mainly of offences committed at Belsen would be prejudiced by the fact that at least half of the evidence related to Auschwitz, particularly since the latter evidence would include that concerning gas chambers. The court, however, rejected the application for the severing of charges.¹³⁰

It should be pointed out, however, that whatever difficulties would arise once the trial was underway (compounded by the press reporting), the prosecution unambiguously stated that ‘In respect of Belsen there would not be an allegation that there was a gas chamber’.¹³¹ Likewise, in their closing statement, the prosecution made it perfectly clear that not only had gas chambers existed only at Auschwitz, but that the Jews were singled out for persecution and mass death:

In the camp Birkenau, five gas chambers [were] attached to the crematoria...The persons who were being put into those gas chambers were not people who had committed an offence of any sort, and they were not people who had been submitted to any trial; they were simply persons who were no longer fit to work for the Reich or persons of the Jewish race. There

¹²⁹ ‘Application by the Defence for the Severing of the Two Charges’. UNWCC Report Vol. II, p. 5. Also see *The Times*, 18 September 1945, p. 4.

¹³⁰ ‘Application by the Defence for the Severing of the Two Charges’. UNWCC Report Vol. II, p. 6. Also see Foreign Office discussions, September 1945. NA FO 1049 237 258/2/45

¹³¹ ‘The Opening of the Case for the Prosecution’. UNWCC Report Vol. II, p. 9.

was no doubt whatsoever that, whatever other places may also have been used in the course of this destruction, in Auschwitz alone literally millions of people were gassed for no other reason than they were Jews.'¹³²

The ongoing discussions about how to deal with German crimes against fellow nationals did not cease once the Belsen trial had begun. In his opening statement on 17 September 1945, the chief prosecutor, Lieutenant Colonel T. M. Backhouse of the Legal Staff, Headquarters, BAOR tendered that the offences referred to in the indictment constituted war crimes because both camps had included Allied nationals among their inmates. The Allied nationals in the two camps, contended the prosecution, were either prisoners of war, persons who had been deported from occupied countries or persons who had been interned in the ordinary way. They were all persons who had been placed there without trial, because of their religion, their nationality, or their refusal to work for the enemy, or merely because they were prisoners of war who, it was thought, might conveniently be used or exterminated in such places.¹³³ He made clear that 'we are not, of course, concerned in this trial with atrocities by Germans against Germans'. The Belsen proceedings continued on this basis. The 5 November 1945 decisions (concerning the trying of crimes against humanity in the British Zone) had no bearing on the trial.

On commencement of the trial, the Judge Advocate overseeing the Lüneburg proceedings ruled that being on the staff of a concentration camp, did not in itself constitute a war crime.¹³⁴ This particular decision was instantly controversial, leading

¹³² 'The Closing Speech for the Prosecution'. UNWCC Vol. II., p. 110.

¹³³ 'The Opening of the Case for the Prosecution'. UNWCC Report Vol. II, p. 8.

¹³⁴ See Foreign Office discussions September-October 1945. NA FO 1049 237 U9251/16/73. Also 'The Summing up of the Judge Advocate'. UNWCC Report Vol. II, pp. 119-120.

to a Parliamentary Question in the House of Commons on 21 November 1945. Major Wilkes who posed the question, was concerned that such a ruling would lead to these individuals escaping prosecution.¹³⁵ The Attorney-General was quick to distance himself from this ruling:

Any such statement by the Judge Advocate was an expression of his own opinion and cannot be regarded as a ruling binding on any subsequent Court. The machinery for dealing with the persons referred to depends on action by the International Military Tribunal at Nuremberg, which is being asked to declare that the SA, SS, Gestapo and other bodies are criminal organisations. If that is done members of those organisations, which include most of the guards on concentration camp staffs, can be tried before international military or occupational courts. The exact procedure for these trials is now under consideration.¹³⁶

The Attorney-General's answer did not satisfy all critics, but in any case the ruling of the Judge Advocate stood for the duration of the Belsen trial.

Most of those in the dock (except for three Poles who were defended by Polish officers¹³⁷) were represented by a British lawyer, all of whom were also army officers, though none had a rank higher than Major. Each officer was responsible for the defence of up to four defendants. Winwood, for example had responsibility for the defendants Kramer, Fritz Klein, Weingartner and Kraft.¹³⁸ The trial was modelled on

¹³⁵ See Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 416, c. 553.

¹³⁶ Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 416, c. 554. Also reproduced in NA FO 1049 237 U9251/16/73.

¹³⁷ *The Times*, 17 September 1945, p. 3.

¹³⁸ List of defendants and their counsel. UNWCC Report Vol. II, p. 3.

traditional British court martial proceedings, which were usually concerned with trying members of the armed forces who had strayed from their duties in some way - in only a small percentage of cases did this involve murder. The court martial forum was to prove hopelessly inadequate in dealing with crimes of the magnitude of which the defendants stood accused. The traditional emphasis on eyewitnesses and cross examination did not translate well to the particular circumstances of the Belsen trial. The Foreign Office legal advisor Patrick Dean, pointed out these difficulties while the Lüneburg court was still in session, but he appears to have been a lone voice.¹³⁹ The result was that the court became preoccupied with establishing the facts of a dozen or so individual murders, rather than exposing the reality of the Nazi camp system.

Several problems were also apparent with the way the British went about their prosecution. Evidence from the British liberators, particularly Brigadier Glyn Hughes (the British Medical Officer) and Captain Derrick Sington (of the Intelligence Corps) dominated proceedings for the first two weeks or so. The evidence given by Brigadier Glyn Hughes was certainly emotive:

There were piles of corpses lying all over the camp. Even within the huts there were numbers of bodies, some even in the same bunks as the living. Most of the internees were suffering from some form of gastro-enteritis and were too weak to leave the huts...There were large medical supplies in the stores at Belsen, but issues for the use of the prisoners were inadequate...Kramer, seemed to be quite callous and indifferent to what [he] saw.¹⁴⁰

¹³⁹ Memorandum Patrick Dean, 21 October 1945. NA FO 371 50989.

¹⁴⁰ Testimony of Brigadier Glyn Hughes. UNWCC Report, Vol. II, p. 9.

Likewise, Captain Derrick Sington reported that ‘there was an atmosphere of terror [in the Belsen camp] and the people were behaving like terrified animals’.¹⁴¹ The fact remained, however, that the testimony of British liberation forces necessarily focused attention on their experiences rather than those of the camp victims. By hearing the testimony on the Belsen case first, the court also gave prominence to the crimes committed at Belsen over those committed at Auschwitz.

Even the first survivor of Belsen to appear in the witness box was Harold Le Druillenec, a school teacher from Jersey. Arrested on 5 June 1944 for owning a wireless receiver and hiding a Russian during the German occupation of the Channel Islands, he was sent to Neuengamme and then to Belsen.¹⁴² Le Druillenec was a highly atypical inmate of Belsen, as he was both British and non-Jewish. There were only a handful of British victims at Bergen-Belsen. Le Druillenec became the most well known, though *The Times* also reported that a British naval rating named Keith Meyer had perished at Belsen after being taken prisoner in Norway.¹⁴³

Among the 1,875 death certificates produced at the trial, the nationalities of 15 were recorded as ‘English’. There may have been more than this as many bodies were never identified,¹⁴⁴ but British victims certainly made up only a tiny percentage of the overall total and at least 70 per cent of inmates were Jewish.¹⁴⁵ Le Druillenec’s testimony, however, helped to cement the general impression – both in the court and among the wider British population – that his ordeal was ‘typical’ of Belsen. War

¹⁴¹ Testimony of Captain Derrick Sington. UNWCC Report, Vol. II, p. 10.

¹⁴² See ‘Belsen Testimonies: The Camp and its Liberation’ in *Belsen in History and Memory*, ed. J. Reilly et al (Frank Cass: London and Portland, Oregon 1997), pp. 214-218.

¹⁴³ *The Times*, 17 September 1945, p. 3.

¹⁴⁴ See Kushner, Tony, ‘The Memory of Belsen’ in *Belsen in History and Memory*, ed. J. Reilly et al (Frank Cass: London and Portland, Oregon 1997), pp. 181-205.

¹⁴⁵ Bloxham, *Genocide on Trial*, p. 76.

Office officials were so impressed by Le Druillenec's performance in the witness box that he also went on to give evidence for the prosecution in the trials of staff working at the Neuengamme concentration camp. Although Le Druillenec's testimony was certainly harrowing – he reported disgustingly overcrowded conditions, exhausting roll calls and beatings¹⁴⁶ - there is no acknowledgement in the UNWCC files that his was an unusual case. Jewish witnesses, who had frequently seen far worse horrors at Auschwitz, and indeed at Belsen, appeared later on in the trial, at a point when the press coverage had tailed off. The result of this preoccupation with the British experience of Belsen was that the Jewish voice was 'lost'.

The British were also determined to demonstrate that everyone in the dock was directly and physically responsible for at least one murder or assault. There was no precedence in British military law for collective convictions, and being on the staff of a concentration camp, on its own was not enough to secure a guilty verdict. The court would have to be satisfied that a person was deliberately committing a war crime, identifying themselves with the system in force at the camp; their mere presence on the staff was not of itself enough to justify a conviction.¹⁴⁷ In addition, ex-inmates were often treated less than sympathetically by defence lawyers.

There seemed to be little understanding of the fact that it was often impossible for witnesses to be precise about the date an assault or murder had occurred, or even, given the emaciated state of inmates, if the assault or murder they witnessed was perpetrated against a male or female victim. For example, in his closing address on behalf of the defendant Starotska (accused of crimes at Auschwitz) her lawyer,

¹⁴⁶ Testimony of Harold Le Druillenec. UNWCC Report, Vol. II, p. 11.

¹⁴⁷ 'The Summing up of the Judge Advocate'. UNWCC Report, Vol. II pp. 119-120.

Lieutenant Jedrzejowicz pointed out that the affidavits against his client often contained contradictory statements; for instance Szparago Rozalja's said: 'She killed and tortured 1,000 women', and then later said, 'She killed thousands of women'.¹⁴⁸ Further, he argued, a witness who accused a person of killing a thousand people or more should be able to name at least one specific instance and give a name, a date and description of how it had happened. Nowhere in the cases against his client, he maintained, had this occurred. Mass murders were alleged against the accused in two affidavits, yet none of the thirteen witnesses who had appeared in court had managed to positively identify her. If the allegations against his client were true, he contended, the witnesses would surely have recognised her.

Defence lawyers also accused witnesses of lying. Winwood, for example, suggested that the testimony of Bimko was 'pure invention' made up for the sole purpose of exercising revenge on Kramer, her former commandant. A desire for vengeance, Winwood claimed, also explained why the witness accused his client of taking an active part in the selections at Auschwitz.¹⁴⁹ Many of the defence lawyers also seemed consistently unable to connect descriptions of horrific crimes with the respectable looking individuals in the dock. This would be a problem throughout the trials process in the British Zone.

There were also issues with the way in which the defence lawyers went about arguing their case. Each of the British lawyers was charged with managing the defence of up to four defendants. Many were not well prepared for the trial, having had their

¹⁴⁸ Closing statement on behalf of the defendant Starotska by Lieutenant Jedrzejowicz. UNWCC Report, Vol. II, p. 101.

¹⁴⁹ Closing statement on behalf of the defendant Kramer by Major Winwood. UNWCC Report, Vol. II, p. 80.

assignment thrust upon them only a few days before the Lüneburg proceedings began. On the first day of the trial, one observer noted that ‘the defence...gave the impression of being rather taken aback by the magnitude of the task.’¹⁵⁰ Nor did many fully grasp the enormity of the crimes of which those they were charged with defending stood accused.

So keen were the British to adhere to legal niceties and avoid accusations of victors’ justice, that defence counsel were often allowed to sidetrack the court with complex yet peripheral arguments about the status of concentration camps in German law. Defence lawyers attempted to argue that since the concentration camp system was legal in German law, the system to which their clients owed their primary allegiance, murder inside a concentration camp did not constitute a war crime.¹⁵¹ Colonel Smith, a witness for the defence and professor of international law at the University of London made a similar point. He reasoned that the court was a military court, concerned with prosecuting war crimes. Since concentration camps had been established by Hitler in peacetime, and in accordance with German law, the camps had ‘nothing to do with the war’ and were thus outside of the British sphere of jurisdiction.¹⁵²

Others attempted, more subtly, to imply that the camps had a legal basis. Major Canfield, responsible for defending, among other, Irma Grese – one of the few women in the dock and dubbed the ‘bitch of Belsen’ and the ‘blonde beastess’ by the British press – continually referred to Belsen as a ‘prison camp’, implying that the inmates

¹⁵⁰ Report of observer Cecil King at the Belsen Trial, 17 November 1945. NA FO 1049 237 258/2/45.

¹⁵¹ Initial arguments by the defence. UNWCC Report Vol. II, p. 2

¹⁵² Phillips, Raymond (ed.), *Trial of Josef Kramer and Forty-Four Others* (Hodge: London, 1949), p. 494.

deserved their captivity.¹⁵³ In his opening statement for example, he argued that his clients ‘must be judged as warders and the wardresses in a properly constituted prison, legal under German law, and all political aspects of the matter must be ignored altogether....To throw up one’s hands in disgust at corporal punishment in a prison, even for women, [is] not a proper course for a judicial body to take.’¹⁵⁴ During the planning for the Nuremberg Trial, which was reaching frantic levels as the Lüneburg proceedings continued, the General Council of the Bar, responding to a request by Gustav Krupp to be represented by an English lawyer, issued a statement declaring that ‘It is undesirable that a member of the English Bar should appear for the defence’.¹⁵⁵ This rather overlooked the fact that several members of the English Bar were already conducting the defences of several suspected war criminals at the Belsen trial. It is possible that the criticisms levelled at certain members of the defence counsel (in particular Major Winwood) by certain sectors of the British press influenced the decision of the Bar Council to distance themselves from this issue.

There is evidence too, that some in the Foreign Office were confused about the status of inmates inside the Bergen-Belsen camp. Responding to the notorious occasion when Winwood stated that ‘the Concentration Camps contained the undesirable elements from the dregs of the Ghettos of Europe’,¹⁵⁶ the Foreign Office sent a telegram to Washington maintaining that ‘While HM Government naturally take no responsibility for expressions used by Defence Counsel it seems likely that his plea was in substance merely a reference to...the fact that such camps included a

¹⁵³ See, for example, *The Daily Mirror*, 6 October 1945.

¹⁵⁴ The defence in the case of Irma Grese. UNWCC Report Vol. II, p. 38

¹⁵⁵ General Council of the Bar, statement 22 October 1945. In NA FO 371 8619.

¹⁵⁶ Winwood quoted in WJC papers, UoS MS 238/2/30.

proportion of criminal characters.’¹⁵⁷ This suggests that some in the Foreign Office still believed that some of those imprisoned in the camp deserved their fate.

In his summing up of the case, Sterling, the Judge Advocate instructed the court to dismiss evidence that was too ‘vague’. He considered affidavits to be ‘dangerous material’ and maintained that he had far greater faith in cross-examination as a means of finding the truth.¹⁵⁸ He invited the court to consider the way in which the affidavits were taken, especially on the question of the identity of alleged perpetrators. Sterling also pointed out that sometimes a witness differed in his evidence given in court personally from his affidavit, or that he introduced matters which were not in the affidavit. Some affidavits used indiscriminate and very wide language such as “She threw people to the ground and cruelly beat them and many died”. Such statements, he advised the court, should be used cautiously. Sterling was not alone in his mistrust of this sort of evidence. *The Times* for example, noted that, ‘the court [had] unusually wide powers in the taking of hearsay evidence and of affidavits that would not normally be admissible...a good deal of the evidence has been redundant and some of doubtful value.’¹⁵⁹ Colonel Backhouse, chief counsel for the prosecution, took the opportunity of the end of the trial to vigorously refute the ‘dregs of the ghettos’ comment made by the defence earlier in the trial. ‘To describe them as dregs of the ghettoes in manifestly untrue’ said Colonel Backhouse ‘...Without reference to anything, save race or religion, these people were made slaves until they could no

¹⁵⁷ Telegram from the Foreign Office to Washington, copied to Berlin, 21 October 1945, RE “Dregs of Ghettos” comment. NA FO 1049 237 258/3/45.

¹⁵⁸ ‘The Summing up of the Judge Advocate’. UNWCC Report, Vol. II, p. 119.

¹⁵⁹ *The Times*, 19 November 1945, p. 5.

longer work. Then they were ruthlessly destroyed like animals.’¹⁶⁰ His statement was commended as a fitting end to the proceedings.¹⁶¹

Of the 45 defendants put on trial, 6 individuals, including Kramer and Grese, were found guilty on both charges. 4 of the accused were found guilty on the Auschwitz charge only, 21 on the Belsen charge only. 14 individuals were acquitted.¹⁶² 11 of the convicted, Kramer and Grese among them were sentenced to death by hanging. 1 defendant – Zoddell - was sentenced to imprisonment for life. The rest received finite prison sentences ranging from 1 year to 15 years.¹⁶³ The sentences of death were confirmed by superior military authority and were carried out in Hamelin in December 1945.¹⁶⁴

The majority of those acquitted were not SS personnel or even regular camp guards, but Kapos. Introduced to Belsen by new commandant Josef Kramer in 1944, the Kapo system worked on the principle that the best and most cost effective way to control inmates was by using the inmates themselves.¹⁶⁵ Kapos were concentration camp inmates who had been elevated to the level of guard and charged with supervising other prisoners. Desperate to impress the other guards and avoid ‘demotion’, the brutality of many Kapos surpassed that of the regular guards. The notorious and ‘sinister’¹⁶⁶ Irma Grese was in fact a Kapo.¹⁶⁷ The prosecution acknowledged that, on

¹⁶⁰ Quoted in *Jewish Chronicle*, 23 November 1945, p. 9.

¹⁶¹ Board memorandum, November 1945 LMA ACC/3121/G1/1/24; WJC general correspondence November 1945. UoS MS 238/2/30.

¹⁶² The verdicts of the Belsen case. UNWCC Report, Vol. II, p. 121.

¹⁶³ The sentences of the Belsen case. UNWCC Report, Vol. II, p. 125

¹⁶⁴ ‘Belsen Beasts Executed’, *Jewish Chronicle*, 21 December 1945, p. 8.

¹⁶⁵ Some of the internees had special disciplinary powers over their other inmates. They had various names - Lagerältester, Blockältester, Stellvertreter and Kapo. The first three terms may be translated respectively as Camp Senior, Block Senior and Deputy Camp Senior. A Kapo was a lesser functionary.

¹⁶⁶ Report of observer Cecil King at the Belsen Trial, 17 November 1945. NA FO 1049 237 258/2/45.

the face of it, it might be a little absurd to suggest that it was a war crime for Poles to beat other Poles in concentration camps, but if these individuals, whether to save themselves from being beaten or from any other motive, accepted positions of responsibility in the camp under the S.S. and beat and ill-treated prisoners, acting on behalf of the S.S., they had identified themselves with the Germans, and were as guilty as the S.S. themselves.¹⁶⁸ The court felt, however that the distinction between Kapos and regular staff was an important one, and these individuals – with the notable exception of Grese - tended to receive more lenient sentences.

The Times cautiously applauded the verdicts and sentences; '[they] will accord with the feelings of civilised men...that bestial cruelty such as flourished at Belsen...could not be allowed to go unpunished...they will be accepted generally with approval as a guarantee that punishment has reached some at least of those who were directly responsible.'¹⁶⁹ Although the start of the Belsen trial attracted huge attention from the *Jewish Chronicle*, there was a comparative lack of concern about the close of the proceedings. Since the judgements neither made comment on Nazi policy as a whole, nor specifically referred to the murder of the Jews, necessarily condemning only individuals, the relative lack of attention from the Jewish press is perhaps understandable

We should beware of oversimplifying the criticism directed at the trial. While large sectors of the British press – particularly papers with special interest in the subject of

¹⁶⁷ Memorandum from Christopher "Kit" Steel, CCGBE to Jack Troutbeck of the Foreign Office, 27 September 1945. NA FO 1049 237 258/2/45.

¹⁶⁸ 'The Closing Speech for the Prosecution.' UNWCC Report Vol. II, p. 109.

¹⁶⁹ *The Times*, 19 November 1945, p. 5.

war crimes such as the *Jewish Chronicle*¹⁷⁰ – and indeed senior members of HMG were critical of the Belsen proceedings, there were others who felt that the trial had been unfair as far as the defendants were concerned. Pointing to the widespread admission of hearsay evidence, one defence lawyer whose client was sentenced to death, remarked bitterly that in a regular British court the facts actually proved against her ‘would have got her about 18 months...[she was]...hanged by the Press’¹⁷¹ This was a minority opinion, however, and most felt that the trial had, if anything, been overly generous where defendants were concerned.

Both the verdicts and the relatively high number of acquittals caused some disquiet, both at home and internationally. Though they found the trial to have been carried out in a generally satisfactory fashion, the number of not guilty verdicts was a matter of some concern; Easterman sought assurance from JAG that subsequent trials would attempt to ‘improve’ on the Belsen verdicts.¹⁷² Responding six weeks later due to trial commitments, a JAG official was pleased to report that although the trial he had been involved with was unfortunately once more ‘a lengthy affair’, all fourteen accused were found guilty, eleven whom were sentenced to death and the other three to long imprisonments. ‘So you see’ the official reported ‘we are improving on Belsen’. The Central Committee for Jews in Germany, which represented Jews in the British Zone, were generally impressed with the organisation of the trial, though an observer noted that at times it was a ‘somewhat over-emphasised demonstration of British justice’.¹⁷³ Once again, however, this group singled out the problematic behaviour of defence

¹⁷⁰ See, for example, *Jewish Chronicle* 12 October 1945; 19 October 1945 and 23 November 1945.

¹⁷¹ British army officer (unnamed) speaking in 1945. Reported in *Sunday Telegraph* article (‘Behind the Scenes at Nuremberg’ by Anthony Mann), 16 January 1977. See UoS MS 237/6/79.

¹⁷² Letter from Easterman to JAG, 21 March 1946. UoS MS 241/3/46.

¹⁷³ Report from Norman Bentwich, 8 October 1945 (Minutes of a meeting of the Committee for Jews in Germany) LMA ACC/3121/C11/07/03D/009; UoS MS 241/4/2/4.

counsel, criticising 'the latitude given to the defence of the accused, which at times, in the heat of the argument before the court, assumed the character of harshness towards the victims of camp atrocities, brought before the court as witnesses for the prosecution'. It was also clear that something would have to be done to reign in maverick prosecutors.

The Belsen proceedings received a similarly scathing response from the Russian press. Sir Thomas Brimelow, one of the Foreign Office officials responsible for Soviet Affairs noted that the trial had been 'most damaging' in terms of Anglo-Soviet relations.¹⁷⁴ After the verdicts were delivered, the French asked the British to hand over the acquitted for a new trial. This was refused on the grounds that there was no new evidence and those found not guilty were released.¹⁷⁵ JAG, which had ultimate responsibility for the trial declared that it was 'satisfied that the trial was carried out within the best traditions of British justice'.¹⁷⁶ This was a telling remark. At Lüneburg, the whole set-up demonstrated a preoccupation with making sure legal niceties were adhered to. While this sentiment was admirable in principle and appropriate for cases where murder represented a shocking deviation from official policy, it became farcical when applied to mass murder as legitimised by the state. This point was also noted by some sectors of the British press. *The Economist*, for example, observed that: 'The Belsen trial...suggest[s] that, whatever may be said of Russian methods, the meticulous legal methods preferred by the West are simply not designed to deal with the monstrous inhumanities to which they are being applied.'

¹⁷⁴ Memorandum from Sir Thomas Brimelow of the Foreign Office's Northern Department. NA FO 371 50992/U8804.

¹⁷⁵ Foreign Office memorandum, December 1945. NA FO 371 57579/U4680.

¹⁷⁶ Notes of a conversation between Guy Lambert (deputy under-secretary, War Office) and the under-secretary of state at the Foreign Office, 8 January 1946. NA FO 57560.

Trials on the basis of British justice look like farces.’¹⁷⁷ The magazine judged the proceedings to have been a ‘failure.’¹⁷⁸ Writing some years later, however, an interpreter for the British wrote that ‘the fairness and impartiality of the [British] courts...always deeply impressed me. The defendants were given every possible chance to state their case.’¹⁷⁹ German criticisms appear to have been comparatively muted: at no time during the Belsen trial was the term victors’ justice applied to the prosecuting nation.¹⁸⁰

Neither was everyone in government satisfied with the outcome of the Lüneburg proceedings. In the House of Commons, Vernon Bartlett the MP for Bridgwater, referred to the trial as a ‘farce’.¹⁸¹ Shawcross and Attlee also felt that proceedings had gone awry. Attlee sent a memo to John Lawson, the recently appointed – and somewhat ineffectual – Secretary of State for War:

I am concerned at the delays which have occurred with regard to the prosecution of war criminals particularly in the Belsen trial. It is essential that in BAOR... that the high priority to be accorded to war crimes matters should be carefully understood. I hope that you will see that this is done.¹⁸²

Lawson responded that the main problem in the Belsen trial was that since ‘the whole procedure was new’ it was unsurprising that ‘the machinery did not work well in the

¹⁷⁷ *The Economist*, 13 October 1945, p. 524.

¹⁷⁸ *The Economist*, 24 November 1945, p. 747.

¹⁷⁹ *AJRI*, Vol. V, No. 2 (February 1950), p. 2.

¹⁸⁰ See Broszat, Martin, ‘Siegerjustiz oder Strafrechtliche Selbstreinigung: Aspekte der Vergangenheitsbewältigung der deutschen Justiz während der Besatzungszeit 1945-1949’ *Vierteljahrshefte für Zeitgeschichte* 29, 4 (1981), pp. 477-544.

¹⁸¹ Hansard Parliamentary Debates, fifth series (House of Commons) Vol., 416, c. 1910.

¹⁸² Memorandum from Attlee to Lawson (copied to Shawcross), 21 November 1945. NA WO 32 12197.

early stage'. He blithely reassured the Prime Minister that these problems had now been overcome.¹⁸³ Attlee remained unconvinced by this explanation, as did Shawcross.

It is an interesting aside that the Americans were able to learn the lessons of the Belsen Trial in the way the British never did. The so-called Dachau Series, which was concerned with 'conventional' war crimes, began shortly after the Lüneburg proceedings ended. Those responsible for the Dachau Series were, to an extent, able to avoid the pitfalls demonstrated by the Belsen trial. The first trial began in November 1945. It was well planned and speedy – it lasted just one month and all 40 individuals in the dock were found guilty.¹⁸⁴ Although, like its British counterpart, the first Dachau trial did not really add to popular understanding of the Nazi camp system among the American public, it was at least successful in gaining convictions. The British, however, continued to struggle to keep the planning of the trials short, the proceedings themselves from becoming too lengthy and the acquittal rate too high.

(VI) Towards a Policy

In October 1945, while the Belsen trial was still ongoing, there were mutterings, both in the Foreign Office and in the British press that proceedings were taking too long.

The Times, for example, observed:

¹⁸³ Memorandum from Lawson to Attlee, 30 November 1945. NA WO 32 12202.

¹⁸⁴ See Greene, Joshua, *Justice at Dachau: The Trials of an American Prosecutor* (Broadway Books: New York, 2003) and Overbey Hilton, Fern, *The Dachau Defendants: Life Stories from Testimony and Documents of the War Crimes Prosecutors* (McFarland and Company, 2004).

The wheels of the law are grinding exceedingly small in the Belsen trial...with the evidence for the prosecution far from completed and a virtual certainty that the proceedings cannot be concluded within the month first estimated. International observers and certainly the Germans themselves, are no doubt impressed by the pains taken by the Court to extend all the privileges of British justice to the accused...but with a whole series of war crimes trials now pending...the Belsen case is probably also being watched for the possibility of reducing procedure to a less redundant form.¹⁸⁵

Lengthy trials were a problem for two reasons: (i) the British were already keen to get through the trials quickly and (ii) it was felt the lesson to the German public would be reduced if too much time elapsed between the beginning and end of the trials, especially given that press coverage inevitably tailed off. As early as 1942, a memorandum circulated by the Foreign Secretary to the War Cabinet had recommended that any 'punishment for war criminals should be disposed of as soon as possible after the end of the war'.¹⁸⁶

The various offices of the British government found themselves attempting to develop some sort of policy on war crimes trials at the same time as preparing specific cases for trial. There were endless discussions in the War Office about how best to execute the trials, given the aims of the occupation and limitations in staff and financial resources, but discussions tended to stop short of action.¹⁸⁷ At this stage, the Cabinet was the driving force behind war crimes trials. Shawcross in particular had been

¹⁸⁵ *The Times*, 1 October 1945, p. 3.

¹⁸⁶ Memorandum circulated by the Foreign Secretary to the War Cabinet, 6 July 1942. NA FO 371 30917.

¹⁸⁷ See, for example, discussions between War Office and BAOR, June 1945-May 1946. NA WO 309/1

concerned about the trials situation in Germany since August and became increasingly frustrated by the apparent inability of those on the ground to fashion a workable policy.¹⁸⁸ On 10 October 1945 he wrote to Lawson, informing him that he was planning an inter-departmental meeting to discuss the problem – to which the Secretary of State for War was not invited.¹⁸⁹ Lawson's absence leaves us in little doubt about who Shawcross blamed for the situation in Germany. At the meeting, on 12 October, Shawcross was unambiguous about the Cabinet's wishes:

There are tens of thousands of Germans responsible for millions of murders.

We must set ourselves an absolute minimum of prosecuting at least ten per cent of those criminals in the British Zone. That is about two thousand people. I am setting as an irreducible minimum that we try five hundred cases by 30 April 1946. To achieve that, personnel must be provided as a first priority.¹⁹⁰

A few days later, Lawson wrote to both Bevin and Shawcross, confirming that he had received the minutes of the meeting and assuring both that the target of 500 cases by 30 April was now a priority for his department. He also confirmed that he recognised the importance of recruiting staff and would see to this as a matter of urgency.¹⁹¹

Shawcross, Bevin and Lawson also designated 30 April as the agreed deadline whereby the British would stop investigating crimes committed against non-British citizens, although trials of such cases would continue. Even at this early stage in the occupation, crimes in which British subjects had been the victims took precedence

¹⁸⁸ Shawcross memorandum, August 1945. NA WO 32/12640.

¹⁸⁹ Letter from Shawcross to Lawson, 10 October 1945. NA WO 32/12640.

¹⁹⁰ Notes of meeting between Shawcross and War Office officials, 12 October 1945. NA WO 32/12197.

¹⁹¹ Letter from Lawson to Shawcross, 17 October 1945, carbon copied to Bevin. NA FO 371 46797/C7345.

over the investigation of crimes committed against other nationals. The British Zonal trials process had become self-interested very quickly. Among most of the Cabinet, there was a sense of relief that a deadline had now been agreed upon, and there was little comment on the restrictions that it imposed. There were exceptions, however; Attlee was concerned that such an arbitrary deadline would inevitably leave 'a large number of criminals unpunished and at large'.¹⁹²

Confusion arose when the message outlining the targets set by Shawcross was passed to the War Crimes Group (WCG) in Bad Oeynhausen. Shawcross had made it quite clear that the target was to prosecute 500 cases, which amounted to approximately 2,000 individuals. When the message was relayed to WCG, however, the wording of the telegram was subtly changed to read a 'minimum of five hundred... *individuals* will be tried for war crimes by 30 April 46'¹⁹³ (emphasis in original). Whether by accident or design is difficult to say, but it did lead to further confusion and delay, as well as a further reduction in the scale and scope of the trials.

The sheer number of potential war criminals was also a concern. As a result of investigations and denunciations, which were becoming increasingly common as the occupation wore on, new war crimes cases were being discovered almost daily. In October 1945, a concerned War Office official wrote that 'It is exceedingly difficult to estimate the real size of the task...the numbers might, I am told, run into some 20,000.'¹⁹⁴ In early 1946, the UNWCC produced its twenty sixth inventory of German war criminals which listed an additional 1,488 suspects.¹⁹⁵ The prospect of trying

¹⁹² Letter from Attlee to Bevin (unanswered), 14 October 1945. NA FO 371 50991/U8558.

¹⁹³ Memorandum to War Crimes Group, October 1945. NA WO 32/12202.

¹⁹⁴ War Office memorandum, 22 October 1945. NA WO 32 12197/67A.

¹⁹⁵ Reported in *The Times*, 7 March 1946, p. 8.

potentially thousands of upon thousands of war criminals understandably caused disquiet in many quarters of HMG; the long held aim of disposing of war crimes trials as quickly as possible was not compatible with the length of the new list.

Nevertheless, some individuals did attempt to learn the lessons of the Belsen trial. An early suggestion by the Commander in Chief of BAOR recommended that it would be desirable in future, in cases where there were a large group of defendants, to split them into several smaller ones for separate trial by the same court. He realised that one of the main perceived flaws of the Belsen trial had been its length and although he realised the overall time taken to complete the trial would be longer, he felt that 'public opinion will be more satisfied by several smaller trials being quickly disposed of.'¹⁹⁶ This suggestion was implemented, which is the main reason why the Belsen trial was the longest to be conducted by the British. Action was, however atypical at this point. Stagnation had set in and while there were endless discussions about war crimes trials, there was very little in the way practical of policy decisions.

Others worried that Britain simply did not have the staff in Germany to be able to try even five hundred cases by April 1946. Major-General Chilton, Commander in Chief of the British Army of the Rhine, pointed out that, even if cases were ready to be tried immediately, 'the strain entailed in finding suitable officers for the large number of courts required for this undertaking is enormous.'¹⁹⁷ He requested three further permanent presidents for courts as well as additional clerks. Chilton also emphasised that, in his opinion, all presidents should have the rank of at least Lieutenant Colonel,

¹⁹⁶ Memo from Field Marshal, Commander in Chief (HQ BAOR) to War Office, 3 November 1945. NA WO 309/1.

¹⁹⁷ Letter on 'Permanent Presidents for War Crimes Trials', from: C-in-C BAOR to Under Secretary of State, War Office, 2 November 1945. NA WO 309/6.

since the German public were allowed to view the proceedings and were likely to be less than impressed by officers of inferior rank presiding over the prosecution of war criminals. Shawcross had, of course, already requested that more staff be allocated to those involved in trying war criminals.¹⁹⁸ However, nearly a month after this meeting, those in Germany had seen no sign of additional personnel.

Matters had not been moved much further on by December 1945. Frequent telegrams had passed between the Foreign Office in London and WCG in Bad Oeynhausen and WCG was by now well aware of the original target set by Shawcross.¹⁹⁹ Even so, those in Germany continued to delay. Shawcross became ever more frustrated. He repeatedly stated that five hundred cases objective was to be treated only as a minimum and pointed out that 'The five-hundred-case target only touches the fringe of the problem'.²⁰⁰ On 16 December Chilton wrote to Bridgeman (of the War Office) outlining the problems his department faced:

It is desired to point out that until the Attorney General's target figure became known to this HQ, the policy was to give priority to the more serious and flagrant war crimes, and these are the cases which take time to investigate and prepare. Unless cases are carefully prepared and presented for trial, Military Courts will not convict and an undue number of acquittals will result. In order to comply with the instructions...a modification of this policy would be necessary, and it is probable that only those cases which could be most expeditiously disposed of would be proceeded with, regardless of their relative importance. This point is of fundamental importance and it is

¹⁹⁸ Notes of meeting between Shawcross and War Office officials, 12 October 1945. NA WO 32/12197.

¹⁹⁹ Correspondence, November-December 1945. NA WO 309/7.

²⁰⁰ Letter from Shawcross to Lawson, 14 December 1945. NA WO 12640.

therefore requested that you should confirm...that you agree that it is preferable to try a large number of trivial cases than a few involving more serious offences.²⁰¹

This suggestion was clearly unacceptable to Bridgemann and to the War Office and was summarily rejected. Chilton went on to emphasise that while every effort would be made to complete trials of five hundred individuals by 30 April 1946, since this:

Involves completing the trials of between three and four war criminals every day between now and then, there are certain factors such as the tracing and arrest of accused and obtaining them from other zones, which are not entirely within our control. These factors must inevitably cause delays, and therefore it is very probable that the required figures may not be reached.²⁰²

One of Chilton's main points, however, was that there were insufficient lawyers and other legal staff to make it possible to get through the war crimes trials as quickly as everyone would like. There were problems recruiting British lawyers, mainly because of the very low fee they could expect to receive for their services, especially when compared to remuneration for private practice in England. The standard fee was not increased until 1947, with the result that the problem was eased in the short term.²⁰³ German lawyers were often willing to act for defendants, but easing the burden on British staff by recruiting large numbers of German legal professionals was not feasible because 'most of the accused are without the means to pay for legal

²⁰¹ Memorandum from Chilton, (C-in-C BAOR) to War Office, 16 December 1945. NA WO 309/7.

²⁰² Memorandum from Chilton, (C-in-C BAOR) to War Office, 16 December 1945. NA WO 309/7.

²⁰³ Suggestion of the Lord Chancellor, Lord Jowitt, June 1947. NA FO 371 64713/U734.

assistance.’²⁰⁴ The Legal Division of the Control Commission for Germany (CCfG) suggested that this ‘bottleneck’ could be eased if German lawyers were ‘compelled’ to defend war criminals for free. Almost simultaneously, an Experimental Forces, Army (EXFOR) memo recommended the ‘compulsory detailing [of] German lawyers for defence.’²⁰⁵ Although neither suggestion was implemented as part of British policy, it does give an idea of how serious the shortage of lawyers was taken. Before the occupation began, the British had made the decision not to employ German emigrants – even when these individuals were naturalised British citizens. This applied to all sectors of occupation policy and was based on the assumption that these individuals may have suffered from potentially damaging conflicts of interests.²⁰⁶

(VII) Conclusion

By the end of 1945, it could not be said that a definitive war crimes ‘policy’ yet existed. Responsibilities were still confused, trials were taking too long, and there was no set policy on how to speed them up. In addition, too few staff had been sent from England and it was doubtful whether even 500 individuals would be prosecuted by the end of April. By December 1945, and with the April deadline looming, it was clear that only a fraction of the desired trials would have taken place by then. To complicate matters, the number of known crimes continued to rise. Approximately 240 cases concerning crimes against British citizens and Allied nationals were pending, while 306 cases involving offences solely against British nationals were

²⁰⁴ Memo from: Legal Division (CCG) to BAOR, 25 January 1946. NA WO 309/1.

²⁰⁵ Memo from: Experimental Forces, Army (EXFOR) to War Office AG3(VW), CC JAG (War Crimes Section [WCS]), 28 January 1946. NA WO 309 6.

²⁰⁶ Foreign Office decision 30 March 1944. NA FO 371/39093. C 4542.

ready to go to trial, apart from the not insignificant detail that the alleged perpetrators were yet to be detained. The number of known crimes had risen to 3,678 and the War Crimes Group had 1,281 suspected war criminals in its custody.²⁰⁷ Investigations into concentration camps (of which there were more than 80 in the British Zone) had also been ended. The next phase, 1946-1948, would similarly be characterised by confusion, delays and disagreements about exactly what the British wanted to achieve from their trials programme.

From the outset, British war crimes trials had been a contentious issue. The wartime planning was far from straightforward, with many in the Foreign Office reluctant to commit HMG to any kind of post-war action, be it full scale war crimes proceedings or summary justice. The fact that wartime planning did not begin in earnest until the last months of the war, meant that the final framework for the trials had not been decided upon once the occupation began. The lateness in drafting the Royal Warrant, in particular, meant that the planners of the Belsen trial were not even sure of the framework within which they would have to work. The deficiencies revealed in this first trial were to characterise British war crimes policy over the first months of the occupation. Almost from the first, British trials were behind schedule, suffering most from a lack of trained personnel and resources. Attempting to correct this, measures intending to speed up trials were suggested but, even if they were implemented, had little real effect.

The decision to concentrate primarily on more serious crimes as well as those against British nationals was not the result of a single decision but instead represented an

²⁰⁷ Figures from war office files. NA WO 309 6.

evolution of policy. While the British were dogged with administrative problems, the trying of war criminals was taken extremely seriously by many, who refused to yield to suggestions that they prioritise numbers of convictions rather than concentrating on more serious crimes. Despite this commitment, many in both the Foreign Office and the War Office were growing weary of the seemingly never-ending trials process, even the champions of the trials found themselves fighting a losing battle. Over the next few years, war crimes trials would increasingly be marginalized as political pragmatism took precedence over the desire for justice.

CHAPTER TWO

The Middle Phase: 1946-1948

(I) Introduction

No definitive war crimes policy had existed in late 1945, and the situation was little different as 1946 dawned. An atmosphere of uncertainty prevailed in the upper echelons of the Foreign Office and the War Office. On the one hand, personnel were keen to implement measures to speed up the trials and get them over and done with as soon as was decently possible. On the other, there was a conviction that those suspected of involvement in war crimes (particularly where the victims were British) should not be allowed to – literally – get away with murder. The Foreign Office official, Patrick Dean can be seen as the leader of this particular faction, though it should be pointed out that in the Foreign Office hierarchy, he was a fairly lowly official.

(II) Still Missing Targets

On 17 January 1946, Shawcross wrote to Attlee, saying, with typical reserve that the situation was 'very far from satisfactory...At the present rate the trial of war criminals will go on until the crack of doom'.¹ What he failed to understand however, was that in Germany, war crimes trials were rarely considered to be a top priority. In a country that was still lacking the most basic infrastructure, Brigade Commanders operating in difficult circumstances with inadequate resources, time and trained personnel, did not always put the tracking down of war criminals at the top of their lists. A letter from Brigadier Turpin to Colonel George Bradshaw (deputy director of Personnel Services, War Office) explained this dilemma in the plainest terms: 'We do our best to urge the department of War Crimes Trials, but a Brigade Commander has his own sense of proportion and makes up his own mind about the relative importance of many of the tasks he is ordered to carry out with insufficient manpower and insufficient time.'² Turpin was also unrepentant about the fact that, contrary to expressed instructions, more personnel had not been directed to war crimes trials.

By 30 April, approximately 200 individuals had been tried.³ This failure to get anywhere near even 500 individuals, let alone the agreed target of 500 cases had been long expected. The goal of trying five hundred individual accused was therefore extended until 30 August 1946. Shawcross also suggested that war crime trials should continue until the end of 1946, when they would then be subject to review, with an expectation to ending trials except for the most serious cases and offences against

¹ Letter from Shawcross to Attlee, 17 January 1946. NA FO 371 57529/U958.

² Letter from Turpin to Bradshaw, 15 March 1946. NA WO 32/12197.

³ Internal memorandum, JAG, 1 July 1946. NA WO 309 7/113.

British citizens.⁴ The situation was not entirely bleak, however. By the spring of 1946, the time trials were taking had been reduced considerably, with some trials taking as little as ten days. The trial in Hamburg of Alfred Bauer, Wilhelm Wichman, Max Stahl and Karl Mumm, who stood accused on murdering a group of Poles near Fallingbostel began on 4 April 1946 and was over in just eight days.⁵

Of the approximately 200 people tried in seventy seven separate cases by the deadline, 52 were acquitted.⁶ The fact that a quarter of those tried were eventually found not guilty was a matter of some worry to the Foreign Office. One reason for the high rate of acquittals was that in most cases the British courts insisted on proving that each of the accused had personally committed at least one murder or serious assault. Since this was frequently impossible as witnesses were often dead or untraceable, courts felt they had no choice but to issue a not guilty verdict. In keeping with the traditions of British justice, many judges felt it was better to issue an acquittal if there was any doubt. Basil Newton, a Foreign Office official summed up the majority view: 'If sentences err on the side of leniency that is a fault on the right side and if they vary from death to acquittal that also should help to prove the care and sincerity with which justice was done'.⁷ The British were determined that their trials should be fair, and seen to be so by the German public. Any accusations of victors' justice would not sit well with their occupation aim of demonstrating to the German people the evils of Nazism. Broadly speaking, the British believed that if the innocent were released, the German people would become convinced that those convicted of war crimes were indeed guilty of them.

⁴ Shawcross to Attlee. NA FO 371 57548/U5960/120/73.

⁵ See trial transcripts, April 1946. NA WO 235/232.

⁶ War Crimes Group Progress Report for period up to 30 April 1946. NA WO 32 12202.

⁷ Report by Basil Newton, April 1946. NA FO 371 57458/U5960.

An additional problem was the both quantity and quality of those prosecuting war crimes cases. A memorandum of December 1945 noted an ‘acute and increasing’ shortage of legally qualified officers.⁸ The decision was therefore made to proceed with war crimes cases even this meant employing prosecutors lacking formal legal training. The same memorandum outlined the policy with regard to prosecutors:

- (i) It is noted that prosecuting and defending officers need not necessarily be legally qualified. It is however considered that where the prosecutor is a lawyer the defending officer should be similarly qualified and vice-versa. Furthermore, the standard of prosecutors and defending officers must be maintained if the German public is to be suitably impressed with the merits of the British judicial procedure and the justice of the trial.
- (ii) Nevertheless, wherever possible, that is, in minor cases, non qualified officers will be employed and officers are being detailed war crimes trials “under instruction” to gain experience of the procedure.

Though enthusiastic, many of those responsible for prosecuting often very serious cases, had no formal training as lawyers. Newly recruited prosecutors often had to make do with a short tour of duty with the Rhine Army, a pamphlet entitled ‘Hints to New Prosecutors in War Crimes Trials’ and what they could glean from observing experienced lawyers in the courtroom.⁹ This was hardly sufficient. Many found

⁸ Memorandum from Chilton, (C-in-C BAOR) to War Office, 16 December 1945. NA WO 309/7.

⁹ See Bower, *Blind Eye to Murder*, p. 226 and Memorandum from Chilton, (C-in-C BAOR) to War Office, 16 December 1945. NA WO 309/7.

themselves hopelessly out of their depth when faced with the reality of a war crimes trial.

Legal experience was also not required for tracing or apprehending war criminals.¹⁰ However, investigators for War Crimes Group, who had often spent months tracking down suspects, were dismayed and frustrated when individuals they were convinced were guilty were allowed to go free because the prosecutor was too 'timid and unimpressive' to press his case.¹¹ In contrast, defendants tended to be represented by legally experienced individuals, who were frequently able to run rings around the prosecutor in the courtroom. For example, in cases where members of the SS or Gestapo were tried, many were able to escape long sentences by claiming that although deaths had taken place under their command, these were legal and judicial sentences of death carried out after the victim had been found guilty by a court. In cases such as these, the emphasis was then on the prosecutors to prove that this was not the case, which frequently proved extremely difficult, given that most security service records had been destroyed or were missing.¹² Many prosecutors did not even try.

Although transcripts of war crimes trials were always produced, it was not until 1947 that any formalised feedback on behalf of the prosecutors was introduced. In March 1947, JAG London requested that a short report of war crimes trials proceedings be forwarded to them by prosecutors in the following circumstances:

¹⁰ Memorandum from Chilton, (C-in-C BAOR) to War Office, 16 December 1945. NA WO 309/7.

¹¹ From the Report of Captain Harry Schweiger, an investigator for War Crimes Group, 20 July 1946. NA FO 371 57458/U5960.

¹² Point made by Brigadier Hennessy who acted as president of one of the courts in the British Zone, in a letter to the War Office, July 1946. NA WO 32 12202.

- (i) When there has been an acquittal
- (ii) When the sentence was considered unduly lenient
- (iii) When any untoward incident occurred at the trial.¹³

What an 'untoward incident' might be was not specified, but it is likely to have meant any irregularities in trial procedure or anything that might have caused embarrassment to HMG. The new practice of sending in reports did help to keep the London office of JAG abreast of developments, but it came rather too late.

After the April deadline had passed, the War Office stirred itself and made efforts to increase the numbers of cases tried. For the period up to 30 April 1946, the average number of individuals tried per month in the British Zone was 50.¹⁴ In May 1946 the War Office committed itself to improving on this figure, calculating that if the 'necessary legal personnel can be made available, Rhine Army can run up to eight trials simultaneously' In order to achieve this objective, the first step was to increase the number of permanent court presidents from the current five to ten. This would be accompanied by an increase in both legally qualified and clerical staff. These were, of course, the calculations of the War Office, not JAG who actually had responsibility for trying the cases. Those on the ground had been pressing for extra staff since November 1945, but with little success. It came as no surprise when the promised staff failed to materialise this time. Consequently, the 50 mark was rarely surpassed in the coming months.

¹³ Memorandum to Legal Section (signature illegible), 14 March 1947 NA WO 309 7/67.

¹⁴ Memorandum on War Crimes Trials from War Office (BAOR) to JAG, May 1946. NA WO 309 1.

JAG did, nevertheless, make its own efforts to speed up proceedings. Lieutenant-Colonel J. Leicester-Warren pointed out that at this time of intensive war crimes trials, all individuals should ensure that they were doing all they could to contribute to the speedy disposal of war crimes cases. He noted, however, that some personnel were not taking this remit to heart: 'when I have appeared before Col.. Stanton [a court president], he always gives the impression that there is absolutely no hurry and spins the case out by a considerable number of short adjournments for tea-drinking and by his refusal to sit long hours in any circumstances.' Leicester-Warren called attention to the fact that 'judges on the circuit in England very often sit until 10 o'clock in order to finish a case' and asked that the same spirit 'be imbued into the permanent presidents'. He seemed somewhat unsure of success, timidly predicting that 'I feel that if the matter is properly explained to [the presidents], they will realise the magnitude of the task we are attempting to perform and co-operate in every possible way.'¹⁵ He asked that a 'round robin' be sent out along those lines. Hearing of these further complications from JAG, Patrick Dean, one of the few enthusiastic advocates for war crimes trials in the British Zone gloomily predicted, 'from the point of view of the Germans there is nothing to be gained in acquitting or imprisoning for short terms these terrible murderers. Those that are imprisoned will only be released just when Allied control of Germany begins to relax.'¹⁶

A further setback was the collapse of The Central Registry of War Criminals and Security Suspects (CROWCASS). Based in Paris, CROWCASS was a joint venture between the British and Americans, and had the task of tracking down war criminals in occupied Germany. Some of the reasons for its demise were depressingly familiar.

¹⁵ Internal memorandum from Lieutenant-Colonel J. Leicester-Warren to JAG, June 1946. NA WO 309 7/95.

¹⁶ Minute by Dean, 18 June 1946. NA FO 371 57671. U5804/5488/73.

The organisation had suffered from a lack of appropriately trained and motivated staff who were unable to cope with the mountain of paperwork that came their way. The new chief of the organisation, the British Major C.V.J Lewis, was also hopelessly out of his depth, deficient in both the skills and experience to do the job properly. Illustrative of his lack of administrative competence was the fact that despite supposedly having access to information held by both Scotland Yard and the FBI, CROWCASS had been singularly unsuccessful in tracking down war criminals. In 1946, the CROWCASS 'Wanted List' ran to 624 pages, three volumes and 40,000 names. Bizarrely, even in late 1946, the organisation still listed 'Hitler, Adolf' as 'wanted'. According to Major Lewis, this was because the organisation had 'not been officially told he's dead'.¹⁷ This, more than anything else, illustrates the lack of communication between CROWCASS and the British authorities who had verified Hitler's death way back in the spring of 1945.¹⁸ Although the organisation claimed to have located 145 criminals of the 40,000 it listed, even this small number was a generous estimate. The War Office admitted that the real figure was likely to be half this number.¹⁹

However, there was also a more political reason for the collapse of the organisation. By the beginning of 1946, it was clear that relations between the Western Powers and the USSR were becoming strained. The USSR was adamant that CROWCASS should be uprooted from its Paris base and relocated to Berlin. Once there, the Soviets argued, it could become a genuinely four-power operation. The British and the Americans grudgingly agreed to this request but once the Paris office was closed

¹⁷ *AJRI*, Vol. II, No. 10, October 1947.

¹⁸ The intelligence officer Hugh Trevor-Roper was entrusted by Dick White, head of Counter Intelligence in the British Zone, with verifying Hitler's death. See Trevor-Roper, Hugh, *The Last Days of Hitler* (Papermac: London, 1995).

¹⁹ War Office memorandum, 17 January 1947. WO 32 12197.

down, operations failed to properly resume in Berlin – or anywhere else.

CROWCASS stumbled on for another few months, but suffered increasing marginalisation. The organisation had gone out with a whimper.²⁰ To complicate matters further, by this point there were dozens of lists and sub-lists of war criminals in circulation. Estimates as to the exact number range from 75 to 200. Instead of being an aid to the investigation of accused individuals, the sheer number of lists was often a hindrance to the work of the investigators.

The German authorities in the British Zone had been keen to get involved in war crimes trials since the beginning of the occupation. The Minister President of the British Zone also viewed German involvement as vital, both for the credibility of war crimes trials and to assist Germany in the transition to democracy. The request, however, was not granted immediately. On 20 December 1945 the Control Commission for Germany (CCG) had passed Control Council Law No. 10 (CCL10), in an attempt to establish some uniformity between war crimes trials in the different Zones. In a similar wording to the Nuremberg Charter, crimes against humanity were defined as:

[A]trocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape or other inhumane acts committed against any civilian population, or persecution on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.²¹

²⁰ War office memorandum, 17 January 1947. WO 32 12197.

²¹ In Dale Jones, 'British Policy Towards German Crimes Against German Jews, 1939-1945', p. 363.

CCL10 thus gave countries the power to prosecute individuals for crimes against humanity regardless of whether these crimes violated the domestic law of the time, indicating the primacy of international law over national domestic law. Although the British rarely made use of the full scope of the new law in their Zonal trials, they subsequently issued, in August 1946, BZO No. 47 which gave German courts the power to prosecute Germans for crimes against fellow nationals or stateless persons, under CCL10. The decree gave the Germans some authority to try war criminals in the British Zone. Staff were carefully screened by the British and German proceedings begun in October 1946. Broadly speaking there were four groups of crimes considered by the German courts in the British Zone: (i) Mistreatment of Jews (ii) SS crimes against political enemies, (iii) The shooting of political enemies or defeatists and (iv) Denunciators. The German war crimes trials initially took place under British law. This was contentious. Some legally minded individuals in Germany were concerned about retrospective law and maintained that any war crimes trials should be carried out according to existing German law.²² The problem was that there was no law in Germany that dealt with war crimes on the scale that they had been carried out during the Third Reich. German proceedings lifted the burden on the British slightly, but since all German trials were heavily monitored by the British, who also had the power to intervene if they were not satisfied, handing over some trials to the Germans did little to reduce the British workload overall.

In early July 1946 the Military Deputy of JAG revealed that while his office was 'anxious to complete the target of 500 accused by the 30 August, I am afraid...it will

²² There was also a possible pro-Nazi element at work here. See Broszat, Martin, 'Siegerjustiz oder Strafrechtliche Selbstreinigung: Aspekte der Vergangenheitsbewältigung der deutschen Justiz während der Besatzungszeit 1945-1949' *Vierteljahrshefte für Zeitgeschichte* 29, 4 (1981), passim.

be impossible.’²³ The main issue was once again the problem of finding qualified staff. Although Major-General Chilton, Commander in Chief of the British Army of the Rhine, had observed in December 1945 that ‘the practice of sending over a barrister for one specific case is of little value and leads to unnecessary complications and delays’²⁴, JAG still preferred to employ King’s Counsels (KCs) as presiding Judge Advocates in prominent or particularly complicated trials. The problem was in finding KCs who had experience of war crimes trials proceedings, were reasonably fluent in German and had the inclination to travel to the British Zone. Such individuals were few and far between.²⁵ Further down the scale, but no less important, was the difficulty of finding competent clerical staff. Transcripts of trials had to be produced and shorthand writers were needed for this task. In mid 1946, the decision was taken to employ some civilian shorthand writers, which eased the burden somewhat. Personnel problems, however, dragged on into 1947 and 1948, becoming an unwelcome feature of the trials programme specifically as well as the British occupation more generally. In early 1948, for example, the issue of qualified staff once again raised its head, but this time in relation to interpreters and translators. These individuals were, of course, crucial to the smooth running of war crimes trials as many court officials spoke only broken German and defendants only limited English. By 1948, however, many qualified interpreters and translators had been demobbed, leaving those with inferior knowledge to take over their positions. When sufficient English staff could not be found, the practice of employing German personnel was introduced. These individuals, however, often fared no better than their

²³ ‘Future Programme of Trials’ from the Military Deputy, JAG to BAOR, 1 July 1946. NA WO 309 7/113.

²⁴ Memorandum from Chilton, (C-in-C BAOR) to War Office, 16 December 1945. NA WO 309/7.

²⁵ ‘Future Programme of Trials’ from the Military Deputy, JAG to BAOR, 1 July 1946. NA WO 309 7/113.

English counterparts. For example, Lieutenant Colonel C.B Pensonby, a court president, noted that one of his staff was hopelessly out of his depth:

His knowledge of English is quite inadequate for the work of interpreting. He does not understand the construction of an English sentence and on certain occasions his efforts merely produce a string of unconnected words which, collectively, are meaningless.²⁶

Both Somerhough, the officer in charge of War Crimes Group (WCG), north-west Europe (NWE) and Lieutenant Colonel Luff, another court president, were of the opinion that Germans should only be employed as translators and interpreters at war crimes trials when 'emergency forces us to do so.'²⁷ Since personnel shortages were often acute, the practice of employing German interpreters and translators continued.

September 1946 was something of a turning point in the development of war crimes policy. In mid September, a Ministerial Review on war crimes trials was conducted. The review recommended that the focus would be on the most serious cases and that effort should be made to try the maximum number of cases possible by November 1946, when the position would again be reviewed. In order to ease the workload, investigations into cases of atrocities in concentration camps outside the British Zone (with the exception of Ravensbrück camp – an atypical case in which the British investigated with the support of the U.S authorities) would also cease, and the accused would be handed over to the nation territorially concerned.²⁸ For example, individuals

²⁶ Letter from Lieutenant Colonel C.B Pensonby to Lieutenant Colonel Luff, 7 January 1948. NA WO 309 7.

²⁷ Memorandum from Major Peter E. Forest, 24 January 1948. NA WO 309 7.

²⁸ Telegram from War Office to HQ BAOR, 12 September 1946. NA WO 309/1.

accused of crimes which took place in Poland would be turned over to the Polish authorities. Meanwhile, in view of huge importance attached to trying the maximum number of cases, it was emphasised by the War Office that 'the numbers of personnel engaged on war crimes should not repeat not be reduced without reference to us.'²⁹ In fact, this continued to occur, with the numbers of individuals working on war crimes declining.

In the wake of the Review, further proposals for speeding up the trials were aired. Lord Nathan, of the War Office, made two suggestions to this end. Firstly, he recommended that cases should be dropped against individuals who had already been in custody for over six months and who were unlikely to be sentenced to more than a year in prison.³⁰ Pondering this suggestion, Frederick Garner, head of the British War Crimes Executive (BWCE), from October 1946 responded that 'In my view, it is preferable that some of the less serious cases should not receive full punishment than that Britain's reputation for granting speedy justice should suffer.'³¹ Patrick Dean echoed these sentiments but added the proviso that those who had committed 'serious offences against the British, and so far as possible our allies, should be tried...people who have committed serious crimes should not go unpunished, even if the machinery for trying them is rather slow in working.'³² These conditions were heeded by the War Office and the recommendation was adopted as policy before the end of the year.³³ This meant that charges against individuals in this category were

²⁹ Telegram from War Office to HQ BAOR, 12 September 1946. NA WO 309/1.

³⁰ Memorandum from Lord Nathan, War Office, 19 September 1946. NA FO 371 57429/U6217/120/73

³¹ Memorandum from Frederick Garner to the War Office, 24 September 1946. NA FO 371 57429/U7266.

³² Memorandum from Patrick Dean to the War Office, 24 September 1946. NA FO 371 57429/U7266

³³ War Office telegram, December 1946. NA FO 371/57553/U8112.

dropped completely and the accused released.³⁴ In addition, Lord Nathan also advised that all other less serious cases should be offered to the Control Commission for Germany for trial by military government courts.³⁵ He added that if the Control Commission refused to accept such cases then there would be no option but to drop them altogether since 'British Military Courts will be wholly occupied with the more serious cases for a considerable time to come.'³⁶

The number of reported war crimes was on the increase. 6,000 cases were now listed by War Crimes Group and a further 1,400 were on their 'wanted' list. The problem was that investigations conducted into existing cases continued to unearth evidence of unreported and un-investigated war crimes. In an effort to prevent their workload spiralling out of control, a year into the peace, BAOR made the decision to stop investigating any crimes reported to them that involved foreign nationals as victims.³⁷ Crimes against British citizens, however, continued to be investigated as thoroughly as was possible. In addition, all cases of murder inside concentration camps were to be handed over to the nations concerned, in accordance with the Moscow Declaration. Even with these measures, however, the War Office acknowledged that trials were not likely to be completed before December 1947. This depressing reality of this statement spurred Patrick Dean to suggest that perhaps the situation could be improved by putting it 'to the Attorney General [Shawcross] that the one year imprisonment limit for cases that are to be dropped be increased to a two year limit.'³⁸ Dean's conscience would not allow him to go further than this, however, as he

³⁴ Telegram from the War Office to BAOR, 14 November 1946. NA FO 371/57553/U7988.

³⁵ Memorandum from Lord Nathan, War Office, 19 September 1946. NA FO 371 57429/U6217/120/73. Also see NA FO 371/57429/L/5034.

³⁶ Memorandum from Lord Nathan, War Office, 19 September 1946. NA FO 371/57429/L/5034.

³⁷ War Office telegram, 3 December 1946. NA FO 371/57553/U8112.

³⁸ Telegram from Patrick Dean to the War Office, 23 December 1946. NA FO 371/57553/U8112.

strongly believed in the necessity of the trials. He continually struggled to reconcile his professional pragmatism with his personal conviction that the guilty should not escape justice:

There is a tendency to forget this at present and I feel certain that it would be a mistake to allow persons against whom there is reasonable evidence that they were implicated in these crimes to escape punishment. I am as anxious as anyone else to bring the war crimes trials to an end as soon as possible, but it is of no advantage either to Germany or to the rest of the world that those who have been guilty of such monstrous crimes should be set free without trial.

The problem of reconciling moral integrity with the situation in Germany was not unique to Patrick Dean. Frederick Bellenger, who temporarily replaced the unimpressive Lawson as Secretary of State for War in late 1946, and who was a much more vigorous and dynamic individual than his predecessor, acknowledged that ‘a time limit must be set for the end of war crimes trials...[and] we must of course keep in step over this with the Americans and French over this’. At the same time he recognized that ‘unless a considerable speeding up of the trials can be achieved it must inevitably be that many criminals, perpetrators of serious crimes, will go scot free because our present machinery is inadequate for the task of bringing them all to justice in the time available’. He added that ‘we are extremely adverse as a matter of principle from letting any but trivial offenders go unpunished.’³⁹

³⁹ Telegram from Frederick Bellenger (Secretary of State for War) to J.B. Hynd (MP), 18 December 1946. NA FO 371/57553/U8291.

As the end of 1946 approached, those – like Dean - who saw merit in the trials programme and wished it to continue were increasingly in the minority. Even Bevin, a champion of war crime trials, was forced to compromise, acknowledging that ‘we may have to let the smaller fry go’.⁴⁰ There was also, as Dean had pointed out, a tendency to forget the appalling crimes of which many in British custody stood accused.

In November 1946, the Cabinet formally decided to begin a process of ‘winding down’ the programme of war crimes trials.⁴¹ This decision was greeted enthusiastically, with John Hynd, the Minister responsible for the Control Office readily agreeing to ‘the necessity of speedily disposing of these people.’⁴² Weariness with the whole issue of war crimes trials had been evident in the upper echelons of HMG for some time. David Scott-Fox, the one time head of the British War Crimes Executive later revealed that he was ‘bored’ by the whole trials business by late 1946.⁴³ Even champions of war crimes trials (among whom Shawcross and Bevin were the most prominent) found themselves fighting a losing battle against increasing disillusionment and indifference. In December 1946, the long awaited target, originally scheduled for 30 April 1946, of trying five hundred individuals was finally achieved. The British were still, however, a long way from Shawcross’s original aim of five hundred cases.

⁴⁰ Memorandum from Bevin to Lord Nathan, 4 October 1946. NA FO 371/57429/U7266/5/73.

⁴¹ Cabinet Meeting, 4 November 1946. NA PREM 8 391.

⁴² Letter from John Hynd to Frederick Bellenger, 2 January 1947. NA FO 371 66559/U52/9/73.

⁴³ David Scott-Fox, interviewed by Tom Bower in 1978. See Bower, *Blind Eye To Murder*, p. 228.

(III) The Ravensbrück Case

The Ravensbrück case was an atypical one for the British. In September 1946 the Ministerial Review on war crimes trials had decided that investigations into cases of atrocities inside concentration camps which were outside the British Zone would come to an end and the suspects handed over to the nation territorially concerned.⁴⁴

The exception to this decree was the trial of former guards and personnel of the Ravensbrück camp. Here, the British continued to investigate the crimes – many of a medical nature - with the support of the U.S authorities.⁴⁵ Ravensbrück, situated some 90 kilometres north of Berlin, had been established as a women-only camp in 1939. Although a much smaller men's camp was established later, Ravensbrück remained predominantly a camp for women.⁴⁶ Between 1939 and 1945, approximately 123,000 women (a significant minority of whom were French resistance fighters) and children passed through the camp gates, of whom only 30,000-40,000 survived.⁴⁷ Many of those who died were victims of the slave labour system. Others died of starvation, neglect, or beatings administered by the female camp guards. Others were selected as human guinea pigs for Nazi medical experiments. The experiments commenced in the summer of 1942, and were primarily - but not exclusively - concerned with studying bones, muscles and nerves. Most of the women selected were Polish political

⁴⁴ Telegram from War Office to HQ BAOR, 12 September 1946. NA WO 309/1.

⁴⁵ For more see Schmidt, Ulf 'The Scars of Ravensbrück': Medical Experiments and British War Crimes Policy, 1945–1950' *German History*, 23, 1, (2005), pp. 20-49 and Schäfer, S, 'Zum Selbstverständnis von Frauen im Konzentrationslager: das Lager Ravensbrück' (PhD thesis TU Berlin, 2002).

⁴⁶ See Füllberg-Stolberg, Claus, *Frauen in Konzentrationslagern: Bergen-Belsen, Ravensbrück* (Bremen: Edition Temmen, 1994), Saidel, Rochelle G., *The Jewish Women of Ravensbrück Concentration Camp* (Madison, Wisconsin: University of Wisconsin Press, 2004), Buber Agassi, Judith, *Jewish Women Prisoners of Ravensbrück* (Oxford: Oneworld, 2006), Maurel, Micheline, *Ravensbrück* (London: Brown, Watson, 1958).

⁴⁷ Letter to F. Garner from F. Richards, 23 January 1947. NA FO 371 66585. U199. Also see *The Times*, 13 December 1946, p. 3.

prisoners. The first set of experiments involved the deliberate infection of leg muscles and bones with aggressive strains of bacteria, with the aim of testing the efficiency of sulphonamide drugs.⁴⁸ Further experiments sought to study the processes of bone, muscle and nerve regeneration. A few attempts were also made to transplant bones from one individual to another.⁴⁹ The ultimate aim of the experiments was to find treatments which could be used to save the lives of German soldiers. The experiments were carried out without anesthetic and as a result were excruciatingly painful. Many victims did not survive the experiments and those who did often suffered permanent disabilities and disfigurement, including spinal malformation and blindness.⁵⁰ Other women at the camp were either forced or tricked (on the promise of release) into undergoing sterilization procedures.

The Ravensbrück camp was liberated by the Red Army on 30 April 1945, and the survivors dispersed among the various DP camps established in Germany. So how did the unquestionably horrific crimes committed in a concentration camp that was neither liberated by the British nor in British occupied territory end up being tried in British military courts? Firstly, many of those on the staff of the camp had fled the advancing Russians by moving west. Several key suspects were arrested by the British authorities. It also was considered early on by the British War Crimes Executive (BWCE) that the Ravensbrück camp case would be worth prosecuting as an 'example' of the Nazi concentration camp system.⁵¹ Adding to this tentative decision were the investigations of the British army pathologist Keith Mant. As Officer in

⁴⁸ See War Office reports on Dr. Theo Morell (Hitler's private physician), October 1946. NA WO 309 469.

⁴⁹ Weindling, Paul Julian, *Nazi Medicine and the Nuremberg Trials: From Medical War Crimes to Informed Consent* (Palgrave MacMillan: Basingstoke and New York, 2004), pp. 13-14.

⁵⁰ See *The Times*, 13 December 1946, p. 3.

⁵¹ Comment of Sir Thomas Barnes speaking at a meeting of the BWCE, 14 June 1945. NA LCO 2/2980.

Charge of the Pathological Section of the War Crimes Investigation Team, Mant penned an influential dossier on the medical experiments at Ravensbrück. This evidence coupled with Mant's determination to bring to justice those guilty of terrible crimes was instrumental in persuading JAG to pursue the Ravensbrück case.⁵² The British thus began a more thorough investigation with the assistance of the American authorities, who were concerned with gathering evidence for their forthcoming Nuremberg Medical Trial, and the French who had an interest in proceedings since many of their nationals had perished in the camp. During the course of the investigation, the Soviets asked that several suspects be handed over to their custody. This request was granted.⁵³

The British became so determined to try the Ravensbrück case themselves that they headed off several requests from the Poles to extradite suspects to Poland.⁵⁴ The Poles did have a 'national' interest in the case, but under the terms of CCL10, it was legal for JAG to try the case if they wished to do so. As a War Office official pointed out in 1946:

The principle to be established in this case when it is tried is that such experiments were morally and legally wrong as carried out on human beings and the fact that the human beings were Polish subjects is no more relevant to the decision as to who tries the alleged criminals than the fact that they were black haired or fat.⁵⁵

⁵² See Weindling, *Nazi Medicine and the Nuremberg Trials*, p. 63.

⁵³ For more see Paul Weindling, 'From International to Zonal Trials: The Origins of the Nuremberg Medical Trial' *Holocaust and Genocide Studies* 14 (2000), pp. 367-389; Freyhofer, Horst H., *The Nuremberg Medical Trial: The Holocaust and the Origin of the Nuremberg Medical Code* (Peter Lang: New York, 2004).

⁵⁴ War Office memorandum, May 1946. NA WO 309 468.

⁵⁵ Memorandum from War Office official (unsigned), May 1946. NA WO 309 468.

This begs the rather obvious question of why the same principle was not applied to crimes against the Jews. Planning for the Ravensbrück trial continued on the basis that those in the dock would be some of the most notorious perpetrators of Nazi medical crimes.

In all, a series of seven war crimes trials were conducted by the British against camp officials from Ravensbrück.⁵⁶ The first trial was most significant in terms of numbers of defendants and will be the focus of examination here. Unusually for Military Tribunals carried out in the British Zone of Germany, Madame Aline Chalufour was appointed a place on the prosecution team and a French judge was included on the bench. This was in recognition of the fact that several hundred French Resistance operatives had died in the camp.⁵⁷ The Association of former Deportees and Internees of the Resistance, as well as the French Ravensbrück Association, while welcoming the presence of a French judge, nevertheless lambasted the British for their decision to put on trial only a tiny percentage of those suspected of involvement in criminal activity at Ravensbrück: 'it is a gross miscarriage of justice to try no more than 16 Germans for a series of crimes which cost the lives of nearly 90,000 women of different nationalities.'⁵⁸

Like many of the trials in the British Zone, the Ravensbrück case involved personnel from all levels – camp leaders, medical doctors, camp guards and Kapo's. Reflecting

⁵⁶ Trial 1 (16 defendants), 5 December 1946-3 February 1947; Trial 2 (1 defendant), 5-27 November 1947; Trial 3 (5 defendants), 14-26 April 1948; Trial 4 (5 defendants), May-8 June 1948; Trial 5 (3 defendants), 16-29 June 1948; Trial 6 (2 defendants), 1-26 July 1948; Trial 7 (6 defendants), 2-21 July 1948.

⁵⁷ Letter to F. Garner from F. Richards, 23 January 1947. NA FO 371 66585. U199.

⁵⁸ Quoted in a letter to F. Garner from F. Richards, 23 January 1947. NA FO 371 66585. U199.

the fact that Ravensbrück served as a training camp for female overseers, of the total of 38 defendants tried in the series, 21 were women. The first Ravensbrück trial began in Hamburg on 5 December 1946 – a few days before the U.S Doctors' Trial - and lasted until 3 February 1947. Johann Schwarzhuber, the deputy camp leader, was the prime defendant. Of the remaining 15 defendants, 5 were camp guards, 5 were medical doctors (of whom several were also members of the SS)⁵⁹ and 3 were Kapo's. The remaining individuals in the dock were a Gestapo inspector and a nurse. A further defendant, the former Commandant Fritz Suhren, had humiliated the British military authorities by managing to escape from prison shortly before the trial began. He was finally re-captured in the French Zone in 1949, where he had been living under an assumed name. Suhren was a defendant in the French Ravensbrück trial at Rastatt in 1950.⁶⁰

Defendants were charged with mistreating Allied prisoners, and in some cases causing their deaths. Medical personnel were also accused of conducting illegal experiments on camp inmates. All of those in the dock entered pleas of 'not guilty'. In his opening address, Major S M Stewart from JAG asked the court to consider a crucial question: 'Can this killing, which would normally be murder, can this injury, which would normally be unlawful wounding – be defined as an act of war? If not it will be a war crime.'⁶¹ Some of the first prosecution witnesses to take the stand were not victims of the medical experiments but two 'ordinary' inmates: Odette Otelare was sent to Ravensbrück as a result of her involvement in the French Resistance, while Hermine Salvini was transferred to the camp after being arrested on suspicion of having

⁵⁹ See Dörner, Klaus, *The Nuremberg Medical Trial* (K.G. Saur, 2001)

⁶⁰ War Office discussions, December 1946 – January 1950. NA WO 309 1791. See also Elling, Hanna and Krause-Schmitt, Ursula, 'Die Ravensbrück-Prozesse vor französischen Militärgerichten in Rastatt und Reutlingen' *Informationen, Studienkreis Deutscher Widerstand* 37/38 (1993), pp. 22-36.

⁶¹ Stewart's opening address, December 1946. In NA WO 1014 536.

assisted her husband in his “anti-Fascist” activities.⁶² This kind of testimony, however, tended to focus attention on the atypical experiences of a resistance fighter and an Austrian national rather than on the experiences of the vast majority of Polish camp victims.

Of the 16 original defendants in the dock, 15 were found guilty, the doctor Adolf Winkelmann having died of natural causes midway through the proceedings. 11 of the inmates were sentenced to death including Schwarzhuber as well as 3 other camp doctors and a nurse. 2 of the convicted war criminals managed to escape the hangman’s noose, however. Dr. Percy Treite committed suicide on 8 April 1947, the Kapo Carmen Mory on 9 April 1947.⁶³

The responses of the French press to the Ravensbrück verdicts and sentences was hardly positive. Frederick Garner did wryly remark however, that such was the complex nature of the relationship between Britain and France, ‘I think we all agree that war crimes trials held under British auspices are never likely to evoke much satisfaction in France, particularly among former deportees.’⁶⁴ There was a suspicion among some in JAG and the Foreign Office that much of the criticism was ‘made for political motives.’⁶⁵ JAG did acknowledge, however that the main French criticisms were reserved for British trial procedure. Partly in light of the French criticisms and partly because suspects in the Ravensbrück case continued to be apprehended, the British began planning several more Ravensbrück trials. Six defendants were offered to the French to try themselves, but this offer was declined.

⁶² In *The Times*, 13 December 1946, p. 3.

⁶³ History of the United Nations War Crimes Commission and the Development of the Laws of War. United Nations War Crimes Commission. London: HMSO, 1948: Some Noteworthy War Criminals: VI Medical War Criminals, pp. 533-536.

⁶⁴ Letter to F. Garner from F. Richards, 23 January 1947. NA FO 371 66585. U199

⁶⁵ Letter from JAG to the Foreign Office, 7 May 1948. NA FO 371 70800. CG255.

(IV) 1947 – ‘Disappointing Progress’

The Office of the British War Crimes Executive was finally closed down on the 18 January 1947, as the British commenced their ‘winding down’ process.⁶⁶ This was a political decision made at the 94th Cabinet meeting on 4 November 1946. Thereafter, it was arranged that JAG should take over the whole responsibility, both legal and administrative, for war crimes trials in the British Zone. This excluded, of course, the actual convening of the military courts and the confirmation of the proceedings.⁶⁷ At the same time, Frederick Garner, who was in charge of war crimes in the British Zone, responded enthusiastically to the suggestion that the Control Commission should take over cases involving Allied, as opposed to British victims: ‘This seems encouraging...If the Control Commission are able to take them over it should lead to considerable speeding up as BAOR will be able to concentrate on British cases.’⁶⁸ The British did, at least, remain committed to pursuing individuals suspected of perpetrating crimes against British nationals.

A report of the Law Officers Department to the Prime Minister in January 1947 noted that progress thus far on war crimes trials had been ‘disappointing’.⁶⁹ The total number of cases tried up to the end of December 1946 was 180, involving 598 persons. 49 cases were ready for trial, involving 205 defendants. Not all of these individuals were in British custody, however. A further 447 cases were ready for trial,

⁶⁶ Foreign Office memoranda, January 1947. NA FO 371 66559/U86/9/73.

⁶⁷ Report from the Law Officers Department, to the Prime Minister, 17 January 1947. NA FO 371 66559/U161/9/73. Also see NA WO 32 12197.

⁶⁸ F.F Garner, 16 January 1947. NA FO 371 66559/U91/9/73.

⁶⁹ Report from the Law Officers Department, to the Prime Minister, 17 January 1947. NA FO 371 66559/U161/9/73.

though none of the 1341 defendants involved was in custody. This startling statistic brings home the persistent failure of the British to round up those suspected of war crimes. Having cases prepared against individuals was all very well, but unless they could be found, the British faced the choice of either trying individuals *in absentia* or further delaying trials until they were found. Neither option was particularly desirable.

These figures, however did not include cases which were not yet being dealt with by the Judge Advocate General but were still under investigation or in the early stages of preparation. The number of such cases was around 4000 in December 1946, with approximately 1000 individuals in custody in connection with these alleged crimes. The report suggested that the reasons for backlog could be attributed to 'the grave shortage of suitable personnel, both legal and administrative, and to the apparent impossibility of apprehending in Germany the defendants against whom cases have been completed.'⁷⁰ Since the closure of CROWCASS in May 1946, the meagre resources directed towards the tracking down of suspected war criminals had become more meagre still. To simplify matters, it was therefore decided that the Judge Advocate General's office would take over the whole responsibility – both legal and administrative – for war crimes in all sectors (excluding trials conducted in the Far East). On this basis, the Judge Advocate General estimated that 'the trials are likely to go on throughout 1947...[though] the end should be well in sight by...December [1948].'

In February 1947, both the Lord Chancellor and the Attorney General expressed increasing concern about the disappointingly slow progress of war crimes trials in

⁷⁰ Report from the Law Officers Department, to the Prime Minister, 17 January 1947. NA FO 371 66559/U161/9/73.

Germany. As Frederick Garner pointed out in a letter to the Secretary of State, '[I]t must be remembered that we are often criticised in Allied countries for our alleged indulgence towards war criminals.'⁷¹ This factor, Garner submitted should be borne in mind when a decision is being reached in the matter of war criminals.

During 1946 and 1947, the number of trials being carried out by the British was at its peak. Appeals notwithstanding, this was also a period when the majority of the death sentences were carried out – the British authorities carried out 91 judicial executions between 1 May 1946 and 31 December 1947.⁷² By March 1947, however, a certain rumour was becoming more and more widespread amongst BAOR. This contended that many executions were being botched.⁷³ The Royal Warrant procedures, drawn up at the beginning of the occupation, had stipulated that a sentence of death should be carried out by hanging. Although General Robertson had decreed in October 1945 that any sentences of death should be carried out by shooting in the case of males and judicial hanging in the case of females, this ruling was quickly overturned.⁷⁴ There was an enduring feeling in both the Foreign Office and War Office that death by firing squad could be construed as honourable. Death by firing squad was denied to the Nuremberg Trial defendants Keitel, Jodl and Göring on this basis.⁷⁵ The process of judicial hanging, however, was a specialised task, and as in many other sectors, the British suffered from a shortage of appropriate personnel. The Foreign Office acknowledged, with typical reserve, that executions had been carried out in an 'inefficient' manner on at least one occasion.⁷⁶ So concerned was the Army that it

⁷¹ Letter from Garner to the Secretary of State, 22 February 1947. NA FO 371 66559/U344/9/73.

⁷² Telegram from Lübbecke to the Foreign Office, 4 June 1948. NA FO 371/70819. CG2504/34/184.

⁷³ War Office correspondence, March 1947, WO 32 12210/161A.

⁷⁴ Memorandum from JAG, 16 October 1945. NA WO 309 5/BAOR/37711/149A.

⁷⁵ Allied Control Council meeting, October 1946. NA FO 371 57553.

⁷⁶ War Office correspondence, March 1947, WO 32 12210/161A.

decided to use a firing squad for subsequent executions. On the first occasion that this was administered – on a condemned woman - the procedure was hopelessly botched by inexperienced soldiers. It was a potential public relations disaster, both in Germany and in Britain, and thereafter, the Army reverted to hanging to carry out death sentences.⁷⁷

The number of executions of Germans carried out in the British Zone of Germany and the British Sector of Berlin between 1 May 1946 and 31 December 1947 were as follows:

- (i) As a result of Control Commission sentences in Military Government and CCG Courts: 54 (all by guillotine).
- (ii) As a result of British Military Tribunal Sentences: 91 (90 were judicial hangings and one by firing squad).
- (iii) As a result of German court sentences: 11 (all by guillotine).

The use of the guillotine by Control Commission courts and German courts also caused disquiet in HMG – the feeling was that execution by this method was barbaric and uncivilised. Bevin was a principal proponent of this view. In June 1947, John Simpson, a Control Office lawyer, sent a memorandum to Brigadier-General Henry Shapcott, Military Deputy of JAG, confirming that ‘judicial hanging should be the method of executing sentences of death on war criminals, and on Allied nationals tried by Control Commission courts, and that alternative methods of decapitation and

⁷⁷ Telegram from Lübbecke to the Foreign Office, 4 June 1948. NA FO 371/70819. CG2504/34/184.

shooting should not be used.’⁷⁸ The practice of carrying out executions by guillotine, however, continued until the end of 1947.

By March 1947, nearly two years after the end of hostilities in Europe, it was still not possible to set any definite date for the ending of British war crimes trials in Germany – though several such dates had been proposed.⁷⁹ In these circumstances, Frederick Bellenger, the Secretary of State for War suggested to the Attorney General that it would be advisable not to attempt to fix any further date for the cessation of the trials but to review the whole position the following summer, in consultation with the other three powers.⁸⁰ The seemingly exhaustive task of suggesting measures for speeding up war crimes trials fell to Frederick Garner. Such eminent individuals as the Prime Minister had expressed concern about the slow progress of the proceedings in Germany,⁸¹ and the Foreign Office felt itself under pressure to get results. As Garner explained in a memorandum to the Cabinet Overseas Reconstruction Committee (ORC) on 17 March 1947, the main reason for the slow progress was the same as it had been in 1945 – namely a chronic shortage of experienced and qualified staff:

As a result of demobilization, the staff available for the investigation and preparation for trial of war crimes cases is most inadequate. Furthermore, the

⁷⁸ Memorandum from Simpson to Shapcott, 11 June 1947. NA WO 32 12191. C8745/7675/180.

⁷⁹ The most popular of these proposed dates was the end of 1946, which was subject to much discussion in spring 1946. See particularly the correspondence between Shawcross and Attlee March – April 1946. NA FO 371 57548/U5960/120/73.

⁸⁰ In Memorandum from Garner to the Cabinet Overseas Reconstruction Committee, 17 March 1947. NA FO 371 66559/U357/9/73

⁸¹ On the concerns of the Prime Minister see the correspondence between Lawson and Attlee, November 1945. NA WO 32 12202.

investigation of one case frequently brings to light other cases which have to be investigated in their turn.⁸²

As Garner saw it, there were three possible ways of speeding up war crimes trials; (i) to increase the available staff (ii) to reduce the number of cases by dropping the less serious and (iii) to speed up the trials procedure. Unfortunately, Garner reported, there was no possibility of increasing staff since 'no solicitor or barrister would be prepared to leave his practice just now in order to earn a few hundred pounds a year with the Army.' As for dropping the less serious cases, this had, to an extent, already been done. A War Office recommendation that cases should be dropped against individuals who had been in custody for over six months and who were unlikely to be sentenced to more than a year's imprisonment, had been implemented at the end of 1946.⁸³ This policy could, of course, be extended to cover more serious cases but the political consequences and possible public outcry resulting from such a decision were deemed by the War Office to be prohibitive.

The only remaining option was to attempt to speed up the trials. Such initiatives had been tried before, but had not yielded any great success. The main issue was that war crimes trials in the British zone were subject to a great many procedures (principally the Royal Warrant/Army Order No. 81 of 1945) designed to guarantee a fair trial for defendants, thus ensuring that any accusations of 'prejudice or a revengeful spirit'⁸⁴ on the part of the British would have no grounds. These procedures could not easily be circumvented.

⁸² Memorandum from Garner to the Cabinet Overseas Reconstruction Committee, 17 March 1947. NA FO 371 66559/U357/9/73.

⁸³ War Office Recommendation, November 1946. NA FO 371 57429/U6217/120/73.

⁸⁴ Memorandum from Garner to the Cabinet Overseas Reconstruction Committee, 17 March 1947. NA FO 371 66559/U357/9/73.

There was a suggestion, however, originating with Frederick Garner and supported by JAG, that in order to prevent the trials from dragging on indefinitely, the Secretary of State for War should consider the possibility of establishing summary courts, that is, shorter legal proceedings that were free from the complexities and delays of a full scale trial.⁸⁵ These would be for dealing with the less serious cases only. Courts with summary jurisdiction would have limited powers of sentencing, but it was proposed that they would be able to deal with cases much more swiftly, freeing up the formal military courts for more lengthy and serious proceedings.⁸⁶ The Secretary of State for War, however, considered that such measures of summary justice would be 'incompatible' with the long held principle that persons charged with war crimes must be given a fair and proper trial.⁸⁷ The situation with regard to progress still remained grave and the Lord Chancellor feared that trials might not be completed even in 1948. He somewhat optimistically suggested that it might be possible to make some progress during the Long Vacation if HMG could manage to temporarily secure the service of further members of the Bar.

Apart from war criminals proper, that is, persons who were either charged or convicted in connection with committing specific war crimes, the British Section of the Control Commission was also responsible for dealing with the 27,000 individuals in custody who had been charged with having been members of organizations ruled

⁸⁵ Memorandum from JAG, 23 April 1947, NA WO 32 12197/163A.

⁸⁶ Memorandum from Garner to the Cabinet Overseas Reconstruction Committee, 17 March 1947. NA FO 371 66559/U357/9/73; Memorandum from the Cabinet Overseas Reconstruction Committee, 25 March 1947. NA FO 371 66560/U555/9/73.

⁸⁷ Responses to the memorandum by the Minister of State (25/3/47), 29 April 1947. NA FO 371 66561.

criminal by the Tribunal at the Nuremberg Trial.⁸⁸ These organisations comprised the Leadership Corps of the Nazi Party (though excluded leaders below the level of *Ortsgruppenleiter*), the Gestapo, the SD and the SS. Concerned about the death sentences authorised by CCL10, the judges had strived to ‘make such declaration of criminality so far as possible in a manner to insure that innocent people will not be punished’.⁸⁹ In the cases of the Gestapo and SD, clerical and janitorial staff were deemed exempt from prosecution. Such were the crimes of the SS, however, that ‘all persons who had been officially accepted as members of the SS’ were liable for prosecution.⁹⁰ Dealing with these individuals was now a ‘top priority’ for the British who hoped to have the bulk of those in custody dealt with by the end of 1947, and over a hundred special German courts were established to this end.⁹¹

The Lord Chancellor, William Jowitt, however, remained sceptical that 27,000 persons could be dealt with in such a short space of time – even with the creation of extra courts - and proposed to visit Germany in the spring to look into this matter, and the problem of ‘proper’ war crimes trials, personally.⁹² This visit took place in May 1947. Jowitt was accompanied by the Judge Advocate General, Sir Henry D. Foster MacGeagh, who reported back to the June meeting of the Cabinet Overseas Reconstruction Committee. The British officials on the ground in Germany, Jowitt noted were all in favour of ending war crimes trials as quickly as it could be arranged.

The Lord Chancellor believed that such a course of action would placate public

⁸⁸ Memorandum from Garner to the Cabinet Overseas Reconstruction Committee, 17 March 1947. NA FO 371 66559/U357/9/73.

⁸⁹ Quote from the judges deliberations at the Nuremberg Trial. In Taylor, Telford, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (London and New York, 1993), p. 584.

⁹⁰ Ibid., p. 585.

⁹¹ Memorandum from Garner to the Cabinet Overseas Reconstruction Committee, 17 March 1947. NA FO 371 66559/U357/9/73.

⁹² Minutes of Overseas Reconstruction Committee, 4th meeting of 1947, 23 April 1947. NA FO 371 66561/U623/9/73. Also see Memorandum from the Cabinet Overseas Reconstruction Committee, 25 March 1947. NA FO 371 66560/U555/9/73.

opinion not only in Germany but Britain as well. The British public he reported, were getting increasingly 'restive' about the amount of time war crimes trials had been dragging on.⁹³

The Judgement of the Nuremberg Trial had condemned crimes committed against airmen: 'When Allied airmen were forced to land in Germany, they were sometimes killed at once by the civilian population. The police were instructed not to interfere with these killings, and the Ministry of Justice was informed that no one should be prosecuted for taking part in them.'⁹⁴ British public opinion continued to support the bringing to trial of those accused of crimes against British nationals – in particular British airmen, which were now one of the most common offences to be tried in the British Zone, as well as those suspected of crimes against British POWs.⁹⁵ In light of this and the new cases, which investigators continued to discover, Jowitt advised against setting a deadline for the trials.

The rest of the meeting focused on the issue of war criminals in custody in the British Zone, but who had been 'claimed' for trial by Foreign Governments. The Committee 'agreed that the Foreign Governments concerned should be informed that war criminals claimed by them and under arrest in the British Zone would be released on 1st October [1947] unless they had been taken over by that date.'⁹⁶ The situation was

⁹³ Memorandum from Jowitt to the Overseas Reconstruction Committee, 11 June 1947. NA FO 361 64713/C8850/7675/180.

⁹⁴ Nuremberg Trial Judgement: War Crimes and Crimes Against Humanity, Trial of the Major War Criminals Before the International Military Tribunal (Official Proceedings), Volume XXII (International Military Tribunal: Nuremberg, 1948), p. 472.

⁹⁵ This can be seen in the continuing prominence of such cases in the British press into and beyond the occupation period. See, for example, *The Daily Mirror*, 9 September 1944, *The Daily Mirror*, 15 January 1946; *The Times*, 15 January, 1946; *The Times*, 30 May, 1947; *The Daily Mirror*, 22 March 1951.

⁹⁶ In A.G Somerhough, Situation Report War Crimes Group, North West Europe to Shapcott, 20 September 1947. NA FO 371 64718/C13471/7675/180.

clarified in Somerhough's report of September 1947. Group Captain A.G Somerhough was the officer in charge of War Crimes Group (WCG), north-west Europe (NWE) and his report was addressed to Brigadier-General Henry Shapcott (Military Deputy of JAG). At the time of the report, the British had completed the cases of 669 individuals and trials of a further 36 individuals were in progress. In addition, the British were investigating 54 cases, 37 of which concerned British victims.

Somerhough decided the expression 'Foreign Governments concerned' should be interpreted as meaning Foreign Governments who were members of the United Nations War Crimes Commission (UNWCC). Therefore, the USSR was not included in this category. Additionally, the term 'taken over' was interpreted as meaning that the individuals claimed would have to be 'taken over' on paper and need not be physically collected by the deadline. He felt that it would be unreasonable to expect a physical handover by 1 October, given the ban on extraditions imposed by the CCG that had been in place between the end of May and the middle of July. War criminals who had not been taken over by a UNWCC nation by 1 October would be released immediately. The British authorities remained troubled, however, by this possible mass release of individuals who had been suspected of involvement in war crimes.

The June meeting of the Cabinet Overseas Reconstruction Committee had similarly decided that 'persons under arrest in the British Zone in whom His Majesty's Government is interested should similarly be released on 1st October unless it has

been decided before that date to bring them to trial'.⁹⁷ It took some correspondence with Shapcott before the situation was clarified to everybody's satisfaction.⁹⁸ The term 'persons under arrest in the British Zone in whom His Majesty's Government is interested' was finally defined as follows:

- (i) Accused who have murdered or seriously [underlining in original] ill-treated British or Dominion personnel or persons in the service of the crown.
- (ii) Accused whose trial has been decided upon regardless of the particular Allied nationality of their victims, where the case is serious and for the reason that if the British do not try them nobody else will, or for any other reason.⁹⁹

The British therefore maintained the moral high ground. If other member of the UNWCC refused to try individuals suspected of involvement in serious crimes, the British were left with the option of trying them themselves.

Of the 2, 461 persons held in the British Zone as war criminals before the formation of War Crimes Group in the summer of 1945, 2, 297 individuals previously held as war criminals in the British Zone were released from war crimes categorisation before transfer to the Fischbeck holding centre in Hamburg. 1,964 war criminals were transferred to Fischbeck. The population of the holding centre did not remain static, as some individuals were released and others newly incarcerated. However, in September 1947, the number of individuals held was 1,529.

⁹⁷ In A.G Somerhough, Situation Report War Crimes Group, North West Europe to Shapcott, 20 September 1947. NA FO 371 64718/C13471/7675/180.

⁹⁸ See Somerhough/Shapcott correspondence, 4 September 1947 NA FO 371 WCG/15228/7C/1 and 11 September 1947 NA FO 371 MD/JAG/ES/2A.

⁹⁹ A.G Somerhough, Situation Report War Crimes Group, North West Europe to Shapcott, 20 September 1947. NA FO 371 64718/C13471/7675/180.

Somerhough's report also pointed out, once again, the whole nub of the problem of war crimes trials for the British:

The discovery of cases which may be war crimes is still being made in this Zone and it may be stated that as fast as the Field Investigators Section clear up a case, there is another one ready for investigation. At present there is therefore no sign of the commitment coming to a natural end for lack of material. It must accordingly either continue or be brought to an artificial ending by the imposition of a ban on further investigation.

The worry with the latter course of action, however, was that the British Zone would become something of a sanctuary for war criminals, and that a proclamation as to the ending of war crimes trials would effectively declare an amnesty for war criminals. On the other hand, the Foreign Office and War Office had long been in agreement that war crimes trials in the British Zone could not continue indefinitely. Indeed, there were many voices pressing for an end as soon as possible. Lord Pakenham for example, had urged the ending of denazification procedures and referred to war crimes trials as a 'horrid tiresome business' as early as January 1946.¹⁰⁰

In August 1947, a memorandum penned by Shapcott (Military Deputy, JAG) revealed that a number of cases were being submitted by the Control Commission to War Crimes Group (WCG), North West Europe (NWE) with the request that they should be tried by military courts set up under the provisions of the Regulations for the Trial

¹⁰⁰ Lord Pakenham, January 1946, quoted in Donnison, F.S.V., *Civil Affairs and Military Government: North-West Europe 1944-1946* (Her Majesty's Stationary Office: London, 1961), p.376.

of War Criminals (Army Order 81, 1945). An analysis of these cases revealed that they fell into three main classes:

Group (i) Cases which the crime was committed against Allied nationals but on German soil.

Group (ii) Cases in which the nationality of the victim was doubtful.

Group (iii) Mixed Nationality Cases, i.e., cases in which some of the victims are known to be Allied nationals and some to be Germans.¹⁰¹

These cases were forwarded by WCG, NWE to Shapcott at the War Office. The War Office made the unilateral decision that Shapcott should deal with the cases following the considerations set out below:

Group (i) According to the view now held by the Legal Division of the Control Commission for Germany, as the offences were committed in what is now the British Zone of Germany, the accused should not be handed over even if an Allied Government makes a request to that effect...Many of the cases upon which we are working are of a very serious character and involve crimes against our own nationals. My advice is, therefore, that these cases should not be tried by British Military Courts but should be returned to the Control Commission for Germany for trial by their courts.

Group (ii) In this group of cases the nationality of the victims is obscure, that is to say, they may be Allied nationals, German nationals or nationals of any other country. As you are aware, British Military Courts only have jurisdiction if the nationality of the victim is proved to be Allied. On the other hand, the Control Commission Courts sitting under CCL No. 10 and Ordinance No. 68 have jurisdiction whatever the nationality of the victim may be.

¹⁰¹ Memorandum by Shapcott, 'Cases Submitted by Control Commission for Germany for Trial under Army Order 81 of 1945' to McCreedy, 27 August 1947. NA WO 309/1.

Accordingly, in my opinion the proper tribunal for cases of this class is a German tribunal where the nationality of the victim is German, or a Control Commission Court where nationality cannot be established.

Group (iii) Cases of this class usually arise from the operation of a Work Camp. When the cases are brought to trial the German Prosecutors return them to the Control Commission for Germany because of the fact that German tribunals do not deal with crimes against Allied nationals and the Control Commission for Germany send the cases to be dealt with in respect of the victims who are Allied nationals only. In my opinion, cases of this class should also be returned to the Control Commission as a Control Commission Court has jurisdiction over the cases in both their aspects, that is to say, against Allied victims and against German victims. The accused can be tried, therefore, for their part in the whole of the transaction and the Court which tries them is in a position to assess the responsibility of the accused and to pass sentence in respect of all acts which are proved.¹⁰²

Some of these guidelines were quite radical, particularly the clauses about returning certain cases to Control Commission courts for trial. However, McCreedy (General Officer Commanding-in-Chief) agreed with his proposals: 'It is clear that unless this is done important War Crimes Cases which have a direct British interest will be left untried when the day comes on which War Crimes Trials are due to cease, owing to the inability of the British military courts to handle all the cases concerned.'¹⁰³ Some days later, on 9 September 1947, Shapcott confirmed to his team that McCreedy had agreed that the groups he referred to in his original memorandum should be tried by Control Commission courts and not by military government courts.¹⁰⁴

¹⁰² Memorandum by Shapcott, 'Cases Submitted by Control Commission for Germany for Trial under Army Order 81 of 1945' to McCreedy, 27 August 1947. NA WO 309/1.

¹⁰³ Memorandum from McCreedy to Shapcott (undated). NA WO 309/1.

¹⁰⁴ Memorandum by Shapcott, 9 September 1947. NA WO 309/1.

Around this time there was a controversial proposal from the British Control Commission in Berlin (CCG[BE]). The Office proposed that war crimes trials in the Zone could be dealt with more quickly if they were held on the presumption that the accused was guilty rather than innocent.¹⁰⁵ This suggestion flew in the face of hundreds of years of British legal tradition, and is an indication of the desperate atmosphere that prevailed in much of the CCG(BE) at this time. General Brian Robertson, the deputy military governor, was in broad agreement with the plan.¹⁰⁶ Many Control Office lawyers however, were contemptuous about the mere suggestion of revising the burden of proof for war crimes cases. 'It appears' noted Richard Wilberforce, 'to indicate a lack of energy in approaching the problem'.¹⁰⁷ The proposal was inevitably vetoed by the Cabinet after a scathing report from Jowitt. Jowitt reported that he was extremely 'apprehensive' about the plan and feared that such an experiment was doomed to end in 'chaos'.¹⁰⁸ The proposal was then quietly dropped.

(V) Operation 'Old Lace'

Another way of speeding up the trials was to give the Germans responsibility for trying some individuals themselves. This had already been going on to a limited extent, but Operation 'Old Lace' aimed to broaden the initiative. Commencing in January 1947, 'Old Lace' was primarily a Legal Division responsibility. The

¹⁰⁵ Cable from the British Control Commission in Berlin to the Control Office in London, 6 November 1946. NA FO 945 356/2A.

¹⁰⁶ Memorandum from Brian Robertson, November 1946. NA FO 945/356.

¹⁰⁷ Memorandum from Richard Wilberforce, Control Office lawyer, 29 November 1946. NA FO 945/356.

¹⁰⁸ Jowitt's report to the Cabinet, 11 June 1947. NA FO 371 64713/C8850; ORC (47)27.

Operation was designed to ease the burden on the British by obliging German lawyers to try some of the more minor of the suspected war criminals in German courts. The programme, however, was fraught with difficulties. Jack Rathbone, lawyer and director of 'Old Lace', quickly found himself embroiled in complex legal arguments with his German counterparts, most notably the inspector-general of the 'Old Lace' courts, Dr. M. Abich. The nub of the problem was that since the 'Old Lace' trials were, according to British Ordinance No. 69, to be based on German law, German lawyers argued that Section 54 of the German penal code therefore applied. Section 54 was controversial because it allowed defendants to use *Notstand* (higher orders) as a defence. According to the law, in order to be acquitted, defendants simply had to claim that they had been forced to join an organisation or to commit certain acts against their will and on the threat of death or being sent to a concentration camp. Rathbone was concerned that huge numbers of defendants would seize upon this line of defence, making a mockery of the trials in the process. Rathbone was not the only one who was concerned. Control Office lawyers noted that to give into the Germans on this crucial point risked turning 'Old Lace' into a 'mere farce.'¹⁰⁹ Claiming superior orders had not been allowed as a defence either at the Nuremberg Trial (under Article 8 of the Charter) or in the British Royal Warrant trials. After much discussion between Control Office personnel and German officials the situation was only grudgingly resolved when Rathbone's team realised that anyone claiming *Notstand* or superior orders as a defence would also necessarily have to have first admitted involvement in a crime.

¹⁰⁹ Control Office Memorandum, October 1946. NA FO 937/29.

The Section 54 debate was thus resolved to Rathbone's satisfaction. Even with this difficulty out of the way, however, the fortnightly reports from 'Old Lace' were discouraging to say the least. Although, the maximum sentence that the courts were permitted to pass was ten years in prison, the majority of defendants were either acquitted or given lenient sentences such as fines or a few months' imprisonment. In October 1947, Rathbone noted that 'The general impression gained by Prosecutors is that the Lay Assessors are willing on ordinary facts to convict, but that they often refuse to accept the recommendations of the Prosecution with regard to the sentence to be imposed.'¹¹⁰

The examples below are typical of the conduct of 'Old Lace' courts:

(I) The accused Heyse, for example, was tried at the German court at Hiddesen, indicted on charges of war crimes. He was, he admitted, a dedicated National Socialist who had joined the Allgemeine SS at the first opportunity in 1933, reaching the position of *Scharführer* in 1941. From 1938 onwards he reported directly to the SD on matters concerning the distribution of food at the Stendal camp in eastern Germany, and he was here that the alleged crimes occurred. No sophisticated defence was employed – Heyse simply denied any knowledge of criminal activities. The court acquitted Heyse, finding that he had no more than 'general knowledge' of the criminal activities, and that he had no knowledge that the organisations to which he belonged (both declared criminal in the Nuremberg Judgement) were concerned directly in these activities.

¹¹⁰ Operation 'Old Lace', Report on Trials, 16 September 1947. NA FO 371 64718/C13529.

(II) In another case, the defendant Glaeser was tried for war crimes at an 'Old Lace' court in Bielefeld. He was born in 1920 and volunteered from the Hitler Youth for the SS Verfügungstruppe in 1938. During the war he joined the Waffen-SS, serving in both France and Russia until 1945. Glaeser admitted that he was aware of the existence of concentration camps, but claimed that he was under the impression that they were just ordinary prisons. He categorically denied any knowledge of criminal activities on the Eastern front, as well the persecution of the Jews. The court was unconvinced by Glaeser's denials and he was found guilty. The court imposed a fine of 1000 RM, though this was deemed to have been fulfilled by the time he had already spent in detention.¹¹¹

(III) In a final example, the accused Schäffer, another committed National Socialist and a non-commissioned officer in the SS for twelve years between 1933 and 1945 was put on trial for suspected participation in war crimes during his time as an NCO. Despite this, however, much of the case came to concentrate on the knowledge the defendant had of Nazi atrocities. Schäffer had lived in the vicinity of the Wewelsberg concentration camp, and conceded in court that he was well aware, not only of the existence of the Buchenwald camp, but also of the practices there. On the issue of his own alleged participation in war crimes there was little evidence. Mere knowledge of the camps and the practices there was not sufficient to secure a prosecution and the prosecutor recommended that he be acquitted as he was in delicate health and had a large family to support. Schäffer was in fact found guilty, but as in many other cases,

¹¹¹ Operation 'Old Lace', Report on Trials, 16 September 1947. NA FO 371 64718/C13529.

his sentence of a few months' imprisonment was reckoned to have been served by the time he had spent in internment, and he was released immediately.¹¹²

The 'Old Lace' proceedings were rather more limited in scope than other trials, which meant that the cases from both the prosecution and defence continued '[on the basis of] the facts and no longer on broad principles as happened in earlier trials.'¹¹³ Most of the proceedings were also carried out swiftly, though there was some concern that some of the sentences handed down by judges were too lenient.¹¹⁴ 'Old Lace' was also not the subject of any unfortunate press attention; in fact the whole operation rarely came to media attention at all. As Rathbone noted, 'Public interest in the trials continues to be small. There are rarely more than 6 people watching the proceedings and these are mostly friends or relations of the accused. The press is never represented unless the case is a very important one or of great local interest.'

By 16 October 1947, Rathbone could report the following statistics:

Cases under preliminary investigation, 20,024

Preliminary investigations completed:

by service of indictment, 3,651

by application for summary judgement, 2,244

Cases discontinued:

for lack of evidence, 333

¹¹² Operation 'Old Lace', Reports on Trials, 8 April 1948. NA FO 371/70817.

¹¹³ Operation 'Old Lace', Report on Trials, 16 September 1947. NA FO 371 64718/C13529.

¹¹⁴ Rathbone's remarks on Operation 'Old Lace', Report on Trials, 16 September 1947. NA FO 371 64718/C13529.

for formal, legal reasons, 3, 187.¹¹⁵

The sheer number of cases under preliminary investigation caused concern at the Foreign Office.¹¹⁶ Six months later, in April 1948, the figures for the 'Old Lace' trials were as follows:

Acquitted: 19.7%

Found guilty and sentenced: 80.3%

Of the 80.3% convicted, the sentences given were:

More than 3 years imprisonment: .3%

2-3 years imprisonment: 1%

1-3 years imprisonment: 4.2 %

6 months to 1 year's imprisonment and a fine of RM 5,000: 7.5%

Fines of RM 1,000 to 5,000: 32.7%

Under 6 months imprisonment: 18.5%

A fine of less than RM 1,000: 14.1%¹¹⁷

So although, in the vast majority of cases, the prosecution were successful in securing a conviction, the sentences in most cases were extremely light.

¹¹⁵ Telegram from Rathbone to Berlin (cc Foreign Office, German Section). NA FO 371 64718/C13504. NA FO 371 64718/C13504.

¹¹⁶ Foreign Office correspondence, April 1947. NA FO 371 64718/C13504. NA FO 371 64718/C13504.

¹¹⁷ Brief for Sir William Strang, ORC meeting, 12 April 1948. NA FO 371/70818. CG2134/34/184G.

Once a case had gone to trial, however, this was not necessarily the end of the matter as either the prosecution or defence were entitled to lodge an appeal if they considered the judgements to be legally unsound (though the evidence suggests that defence appeals were more likely to be successful than those brought by the prosecution).¹¹⁸

The mechanisms for the bringing of appeals were identical in both the Royal Warrant and 'Old Lace' trials and like appeals of sentences in Britain itself, appeals against convictions for war crimes often hinged on technical evidence or procedural blunders.

The examples below are typical of 'Old Lace' appeal hearings:

(I) The case of the defendant Drecker. This individual had been born in 1900. He studied medicine and qualified as a doctor in 1923, setting up a practice in Recklinghausen. He joined the NSDAP in 1933. In 1939 he was appointed *Kreisamtsleiter* of the Office for Public Health in which he served throughout the war, except for a spell in the Army Medical Corps between 1941 and 1943. He had been tried by an 'Old Lace' court, who had found him guilty of war crimes and imposed a fine of 1500 RM (deemed as paid through internment). The court of the First Instance held that Dreckler was a "head of office" within the terms of the Nuremberg Judgement and that as such, he must have had general knowledge of the criminal acts of the Leadership Corps, including but not limited to, the persecution of the Jews. The defence disputed this judgement arguing that:

(i) Dreckler was only a technical officer and that a distinction must be drawn in the Nuremberg (IMT) judgement between these subordinate members of staff and the *oberster Leiter* or highest officials.

¹¹⁸ Operation 'Old Lace', Report on Trials, 16 September 1947. NA FO 371 64718/C13529.

(ii) With regard to knowledge, it is not enough to claim that an individual “must” have known of the criminal activities of the Leadership Corps in order to find him guilty. In a technical office, it ought to be proved that an individual had specific knowledge in order to be found guilty.¹¹⁹

The public prosecutor disputed the first argument, but agreed with the second, stating that evidence of “special” knowledge must be cited to prove knowledge in cases where the office concerned is non-political. The Senate of the Court of Appeal decided that:

The wording of the Nuremberg Judgement could not be limited or restricted. Every person who held an Amt (Office) declared a Hauptamt in the organisation book of the NSDAP was a “head” of office and every office within the Party was to some extent political. In the case of technical officers, however, it is not enough that the accused knew what every German knew. Judges in such cases must elicit actual details of his knowledge of criminal acts and that his knowledge was such that he could draw therefrom [sic] the conclusion that his organisation was actually committing criminal acts.

The court therefore quashed the original Drecker judgement on the grounds of point (ii) and sent the case back to the Court of the First Instance for a retrial on this basis.

(II) An individual by the name of Schneider, who had served in the Leadership Corps as a *Kreisbaumeister* in Warsaw and Cracow from 1940 until the end of the war,

¹¹⁹ Operation ‘Old Lace’, Report on Trials, 16 September 1947. NA FO 371 64718/C13529.

lodged an appeal on similar grounds. Schneider had originally been sentenced to five months in prison for war crimes (reckoned as served through internment). His defence team argued that he was (i) a non-political technical officer who was not “head” of his Office and (ii) that “general knowledge” should not have been used to convict him.

The public prosecutor agreed as to point (i), and with the need to have specific evidence for a conviction (ii). Unlike the case of Drecker, however, the prosecutor argued that ‘the accused’s presence in Cracow and Warsaw where the persecution of the Jews reached its highest brutality, was sufficient evidence of knowledge of the criminal activities of the organisation to which he belonged.’ The Appeal Court, however, quashed the judgement in the Schneider case and the case was referred back to the Court of the First Instance for retrial in regard to the accused’s knowledge that the Leadership Corps was involved in the persecution of the Jews in Poland.

(III) The final example, the appeal hearing on the case of the defendant Busse, is unusual because in this case, it was the prosecution rather than the defence who requested the appeal. Busse had joined the regular police force in 1919, but had been granted a transfer to the Gestapo soon after the Nazi seizure of power in 1933. Between 1936 and 1945 he was concerned mainly with anti-sabotage activities inside Germany. The Court of the First Instance at Benefeld had found Busse guilty and imposed a fine of 300 RM (deemed as paid through internment). The prosecution appealed the verdict and sentence on the following grounds:

- (i) The accused had admitted knowledge of and participation in, five criminal activities of his organisation. The Court of the First Instance, however had based its verdict on the fact that he had knowledge of two criminal acts only.

(ii) The Court of the First Instance had wrongly taken into account circumstances to mitigate sentence.¹²⁰

Both the prosecution and the defence submitted that the original judgement should be quashed and the case referred back to the Court of the First Instance for a retrial. However, the Senate upheld the original judgement and rejected the appeal on the grounds that the original judge had not misapplied the law and that the mitigating circumstances were relevant and were properly taken into account.

Based on such cases, the Court of Appeal laid down the following points:

- (i) A technical (as distinct from political) officer of the Leadership Corps serving the Kreis or Gau level, is subject to the Nuremberg Judgement, provided he was the head of an office.
- (ii) In the case of these technical officers, stronger proof of knowledge may be required than in cases of political officers, as it cannot be assumed that policy instructions would come to their notice unless they specifically referred to their technical duties.
- (iii) Appeals against sentence will have to show quite clearly that the Court of First Instance was guided in arriving at the sentence by considerations, which by law, are not allowed to guide it. The Court of Appeal will not quash the sentence merely because it considers that the Court of First Instance evaluated evidence too much in the accused's favour.

The Senate did note, however, that 'The decision as regard appeals against sentence [sic], appears sound, as appeals are restricted to questions of law. However, in practice it will make it more difficult for the Prosecution to appeal against lenient sentences.'

¹²⁰ Operation 'Old Lace', Report on Trials, 16 September 1947. NA FO 371 64718/C13529.

The Courts in the British Zone, were then, not only concerned with the investigation of crimes, the gathering of evidence and the trying of suspected criminals, they were also dedicated to providing a fair and comprehensive appeals system. In the foregoing examples, both of the defendants were appealing against lenient sentences – a 1500 RM fine had been imposed on Drecker while Schneider had been sentenced to five months imprisonment. Both sentences were waived as the men were deemed to have ‘served [their sentences] through internment.’ One can question the wisdom of allowing individuals who had received relatively light sentences to make use of the appeals procedure in this way. Although the cases of Drecker and Schneider were significant in clarifying one important point – namely that specific knowledge of atrocities must be proved in the cases of technical officers – the fact remains that so keen were the British to adhere to legal niceties and avoid accusations of victors’ justice, that they succeeded in clogging up their own system with largely spurious appeals and retrials at the very time that they were most anxious to have the whole business over and done with.

Although the trials themselves continued into early 1949, Rathbone, the director of ‘Old Lace’ made his final report in April 1948.¹²¹ Apart from his initial wrangles with the German legal establishment, Rathbone seems to have been generally pleased with the way the Operation had carried out its remit. The report noted, with some satisfaction, that 80 per cent of prosecutions undertaken had secured a conviction. It should be pointed out, however, that this 80 per cent individuals like Schäffer and Glaeser, who although found guilty of offences, were released immediately because it

¹²¹ Operation ‘Old Lace’, Reports on Trials, 8 April 1948. NA FO 371/70817.

was considered that they had served out their sentences while in custody awaiting trial. The Lord Chancellor William Jowitt was also happy with the overall progress of the Operation, and wrote to Rathbone to congratulate him on his hard work and the 'success' he had made of the Operation.¹²² General Robertson also sent his praise and good wishes.

So encouraged was Rathbone by his perceived success with 'Old Lace' that when a group of German prosecutors approached him with a proposal to extend the programme to try more major war criminals whose crimes had come to light since the end of the war, he agreed that the initiative should go ahead. Rathbone's decision to give the proposal the green light was greeted with horror in the Foreign Office. The Foreign Office was by now committed to a policy of winding down the trials and was dismayed by this plan to extend them, perhaps indefinitely. Lord Pakenham, the minister responsible for the Control Office, personally intervened to withdraw permission and the plan, which would have seen perhaps hundreds of individuals tried for grave war crimes, was dropped.¹²³

What then, is the verdict on Operation 'Old Lace'? The individuals responsible were in broad agreement that the initiative had been a success, but the confident reports only showed part of the story. Although the maximum sentence the 'Old Lace' courts could impose was ten years imprisonment, the longest sentence ever handed out was five years.¹²⁴ Many defendants who admitted either involvement in war crimes or knowledge of offences were acquitted or given risible sentences (fines, a few months imprisonment etc). And, as the above examples support, a significant proportion of

¹²² Operation 'Old Lace' Final Summary, 26 January 1949. NA FO 371/77072.

¹²³ Lord Pakenham correspondence, January 1949. NA FO 371/70819/CG2624.

¹²⁴ Operation 'Old Lace', Reports on Trials, 8 April 1948. NA FO 371/70817.

those found guilty were released immediately as they were deemed to have served their sentences while in internment. The chance to bring to justice some of the more prolific war criminals was also quashed by the Control Office who were committed to bringing the trials programme to a swift end – even if this meant that perhaps hundreds of guilty individuals walked free.

(VI) The Situation in September 1947

By September 1947, the British were investigating only cases that fell into the following categories: (i) cases where the victims were British nationals and (ii) serious cases involving the murder of Allied citizens. The War Office decided that serious cases involving the murder of Allied nationals were, in many cases, better tried in the British Zone of Germany, than in courts of other nations territorially concerned. Somerhough's report of September 1947 noted that, in many cases, German witnesses were 'reluctant to go to Poland, Yugoslavia or Russia to give evidence in war crimes trials'.¹²⁵ The Legal Division of the Control Commission (British Element) were not prepared to force individuals to travel to these countries and testify against their will. The Legal Division was similarly reluctant to extradite the accused to the East on the basis of written evidence only. The only alternative was to try these cases under military courts in the British Zone.

In response to Somerhough's attempt to clarify future trial policy, Shapcott penned a memorandum directed to the Secretary of State for War, the Lord Chancellor and the

¹²⁵ A.G Somerhough, Situation Report War Crimes Group, North West Europe to Shapcott, 20 September 1947. NA FO 371 64718/C13471/7675/180. Also see Shapcott memorandum, 15 October 1947, NA WO 32 12197/O160/2573.

Foreign Office.¹²⁶ He made it clear that he considered the time had now come to establish a clear policy for war crimes trials. The government could either, he suggested, schedule a date for the complete ending of war crimes trials, or attempt to try as many cases as possible by a particular date, after which time a 'skeleton staff' would be kept on to investigate only the serious cases, and cases involving British nationals. Shapcott favoured the latter option, believing that the other would result in a serious 'miscarriage of justice' by allowing some individuals guilty of 'heinous crimes' – including those where British citizens had been the primary victims - to escape punishment simply because they had managed to avoid investigation or arrest by the deadline. Shapcott proposed 31 March 1948 as the target date for his preferred second option. Emanuel Shinwell, who had succeeded Bellenger as the Secretary of State for War in 1947, was in broad agreement with Shapcott's proposals, while the Foreign Office Legal Assistant John Simpson noted that Shapcott's plan struck a balance between ensuring the trials did not continue 'until the crack of doom' (as Shawcross had put it in January 1946¹²⁷) and potentially guilty individuals being set free simply because their cases had not been investigated earlier.¹²⁸ The number of war criminals in British hands was, however, continuing to grow. In October 1947 Shapcott reported, with more than a hint of despair that 'new cases are received almost daily'. This was 'particularly as a result of denunciations by Germans.'¹²⁹ By this time, however, an altogether more contentious issue was causing anxiety in both the Foreign Office and the War Office.

¹²⁶ Shapcott memorandum to the Secretary of State for War, the Lord Chancellor and the Foreign Office, 15 October 1947. NA FO 371 64718/C13471/7675/180.

¹²⁷ Letter from Shawcross to Attlee, 17 January 1946. NA FO 371 57529/U958.

¹²⁸ Simpson Memorandum, 21 October 1947, NA FO 371 64718 C13471/7675/180.

¹²⁹ Memorandum from Shapcott, 15 October 1947. NA WO 32 12197 0160/2573.

(VII) The Proposed Trial of Rundstedt, Brauchitsch, Manstein and Strauss

In 1947, the increasingly tricky question of how to deal with German officers was becoming more pressing. At this time, Britain had four infamous German officers in its custody – Field Marshal Gerd von Rundstedt, Field Marshal Walther von Brauchitsch, Field Marshal Erich von Manstein and Colonel-General Adolf Strauss.¹³⁰

All four men had occupied extremely prominent positions in the armed forces of the Third Reich. Von Rundstedt had been promoted to the rank of field marshal in July 1940. He took part in Operation Barbarossa in 1941, but in 1942 was recalled from the eastern front and placed in charge of the western armies.¹³¹ He was believed to be heavily implicated in war crimes on both fronts.

Von Brauchitsch was Commander-in-Chief of the victorious German armies in the *Blitzkrieg* campaigns of 1939-40. After the victory over France in 1940, he earned the rank of field marshal. He failed, however, to take Moscow in the war against the Soviet Union, earning Hitler's displeasure, and was relieved of duty in December 1941. He had little influence thereafter. Ian Kershaw has described von Brauchitsch as a 'gutless',¹³² 'spineless',¹³³ and compliant individual.¹³⁴

¹³⁰ Several historians have written accounts of the political wrangles and manoeuvrings that resulted in von Manstein's trial for war crimes see Hoffman, J.H., 'German Field Marshals as War Criminals? A British Embarrassment' *Journal of Contemporary History* 23, 1 (1988), pp. 17-35; Bloxham 'Punishing German Soldiers During the Second World War: The Case of Erich von Manstein' *Patterns of Prejudice* 33, 4 (1999), pp. 25-45; Böll, Bernd, 'Wehrmacht vor Gericht Kriegsverbrecherprozesse der Vier Mächte nach 1945' *Geschichte und Gesellschaft* 24 (1998), pp. 570-94.

¹³¹ See Blumentritt, Günther, *Von Rundstedt: The Man and the Soldier* (London: Odhams Press, 1952), Messenger, Charles, *The Last Prussian: A Biography of Field Marshal Gerd von Rundstedt, 1875-1953* (London: Brassey's, 1991).

¹³² Kershaw, Ian, *Hitler, 1936-45: Nemesis* (London: Allen Lane, 2000), p. 147.

¹³³ *Ibid.*, p. 103.

¹³⁴ *Ibid.*, p. 452.

Von Manstein was lauded as one of the greatest military strategists of his generation. Liddell Hart viewed him as a formidable military opponent, arguing that he was able to combine 'modern ideas of manoeuvre, a mastery of technical detail and great driving power'.¹³⁵ As a major-general and Chief of Staff to von Rundstedt, he was one of the principal planners of the invasion of France in 1940 and also received acclaim from Hitler for his initial military successes on the Russian front. Manstein was dismissed from service in March 1944. This was partly the result of the heavy tank losses he had suffered at the battle of Kursk in July 1943 and partly due to his continuing clashes with Hitler over military strategy.¹³⁶ Like Rundstedt and Brauchitsch, Manstein was suspected – by the US at least - of involvement of war crimes on the Eastern front.¹³⁷

Of lower military rank than the other three officers, Adolf Strauss was made Commander of the 9th Army in May 1940. Initially involved in campaigns in the west, Strauss was transferred to the eastern front following Operation Barbarossa in 1941. In January 1942, Strauss was relieved from his position as a result of failing health. Effectively retired from the army, he lived quietly at home until he was recalled by Hitler in autumn 1944. He was appointed Commander-in-Chief of Fortress Area East.

The four former officers had been transported to London in 1946 and had been housed in various British facilities ever since. At the time of their arrival in Britain, a JAG

¹³⁵ Liddell Hart, Basil *The Other Side of the Hill* (London: Pan Books, 1999), p. 94. See also Manstein, Rüdiger and Fuchs, Theodor, *Manstein: Soldat im 20. Jahrhundert, militärisch-politische Nachlese* (Munich: Bernard & Graefe, 1981).

¹³⁶ See Carver, Michael, *The War Lords: Military Commanders of the Twentieth Century* (Boston: Little Brown & Co., 1976), Carver, Michael, 'Manstein' in Correlli Barnett (ed.), *Hitler's Generals* (New York: Quill and Morrow, 1989), pp. 221-248, Engelmann, Joachim, *Manstein, Stratege und Truppenführer: Ein Lebensbericht in Bildern* (Podzun-Pallas Verlag, 1981), Stein, Marcel. *The Janushead: Field Marshal Von Manstein, A Reappraisal* (Solihull: Helion and Company, 2007).

¹³⁷ Telegram from Washington. NA FO 371 66560/U511/9/73.

official had written, 'I am not aware of there being any evidence against...these German generals. If, however, you are in possession of any or wish for any specific enquiries to be made of them, would you please advise me in due course.'¹³⁸ He received no reply. Clearly, the British authorities did not seriously consider the four German officers to be war criminals.

While JAG was reluctant to try these individuals in military courts in the British Zone – hoping, it seems, that there would come a time when they could quietly release them - they were also loath to hand them over to any other foreign power for trial. By late 1946, Manstein et al were attracting a fair amount of attention not only from the British and international press, but also from religious and amnesty groups. For example, in October 1946, the Foreign Office was sent a letter from the Lutheran Bishop Theophil Wurm of Württemberg. Bishop Wurm, Chairman of the Council of the *Evangelische Kirche in Deutschland* (EKD), pleaded amnesty for Manstein. His letter was accompanied by a petition from a well known Christian journalist, echoing Wurm's sentiments but also asking for reassurance that Manstein and his fellow officers would not be turned over to the Russians.¹³⁹

In February 1947 rumours reached the War Office that the United States was making preparations to try Manstein et al, in their proposed trial of the General Staff at Nuremberg.¹⁴⁰ Garner's initial response showed reluctance to hand the group over to the Americans for trial:

¹³⁸ Memorandum from JAG to BAOR, 31 August 1946. NA WO 309 4/226/7.

¹³⁹ Letter from Bishop Wurm (enclosing the petition) to the Foreign Office, 14 October 1946. NA FO 371 66559/U342/9/73. For more on the career of Bishop Wurm see Hockenos, Matthew, D., *A Church Divided: German Protestants Confront the Nazi Past* (Bloomington: Indiana University Press, 2004).

¹⁴⁰ Telegram sent from War Crimes (GP) (NWE) to the War Office, 19 February 1947. NA FO 371 66560/U511/9/73.

These three men are very important men and we shall have to be careful how we dispose of them. Under the Control Council's Law No. 10 the Americans would have priority if [underlining in original] the men were wanted for a crime committed in the U.S Zone and if they were in the custody of the commanders of another Zone of Germany. Neither of these factors applies here. As these three men have all been listed as war criminals by other countries it would be difficult to justify this surrender to the U.S authorities who have not listed them so far.¹⁴¹

The trial of Albert Kesselring by a British military court in Venice, Italy, had given the War Office and Foreign Office some idea of what to expect in trying a prominent German officer.¹⁴² Kesselring, considered by contemporaries and historians alike to be a 'master strategist' was suspected of war crimes in Italy in 1944.¹⁴³ Kesselring's trial, between 17 February and 6 May 1947, had caused problems similar to those promised by any proposed trial of Manstein et al. Kesselring was charged with (i) 'being concerned in the killing as a reprisal of some 335 Italian nationals' in the Ardeatine Caves in March 1944 and (ii) with 'inciting and commanding . . . forces... under his command to kill Italian civilians as reprisals in consequence of which a number of Italian civilians were killed'.¹⁴⁴ Kesselring attempted to argue that he had

¹⁴¹ Telegram from Garner to War Crimes (GP) (NWE), 11 March 1947. NA FO 371 66560/U511/9/73.

¹⁴² See Kesselring, Albert, and Macksey, Kenneth (Introduction), *The Memoirs* (Greenhill Books: London, 1997).

¹⁴³ See, for example, Macksey, Kenneth, *Kesselring: German Master Strategist of the Second World War* (Greenhill Books: London, 2000), Brett-Smith, Richard (ed). *Hitler's Generals* (Presidio Press: San Rafael, California, 1977).

¹⁴⁴ The Charges in the Kesselring case, Law-Reports of Trials of War Criminals, The United Nations War Crimes Commission, Volume VIII (hereafter UNWCC, Vol. VIII), London, HMSO, 1949, p. 9.

simply been following superior orders and doing his duty as a soldier. The reprisal actions he had taken were, he argued, 'hard but just'.¹⁴⁵

This defence was rejected, however and he was found guilty on both charges and sentenced to death by firing squad. The initial verdict against Kesselring was greeted with outrage in many sectors. Questions were asked in the House of Lords and there was a general sense that a serious miscarriage of justice had occurred.¹⁴⁶

Always wary of any embarrassment, the War Office wrote to the Italian Commander Monitoring Force (CMF) on 3 May 1947:

In connection with the death sentences on...Kesselring, I think you should be aware that the attention of the Foreign Office has been drawn to possible embarrassment and inequity likely to arise if [this] sentence [is] carried out and war crimes tried by the Italian government escape extreme penalty owing to the abolition of death sentences except for high treason.¹⁴⁷

The former Prime Minister Winston Churchill (who was later to contribute to Manstein's defence fund) wrote a letter to Attlee protesting against the verdict and voicing the opinion that 'The process of killing the leaders of the defeated enemy has now exhausted any usefulness it may have had.'¹⁴⁸ This was a strong opinion, but it was one that was by no means Churchill's alone. This growing tendency to show sympathy towards the German Field Marshals and Generals was clearly the result of

¹⁴⁵ The case for the defence, UNWCC, Vol. VIII, p. 11. See also on the Ardeatine massacre, Portelli, Alessandro, *The Order Has Been Carried Out: History, Memory, and Meaning of a Nazi Massacre in Rome* (Basingstoke: Palgrave Macmillan, 2004).

¹⁴⁶ Foreign Office, General Correspondence, May 1947. NA FO 371 66570/U646.

¹⁴⁷ Telegram from WO to CMF, 3 May 1947. NA WO 32 12197/091330.

¹⁴⁸ Churchill letter to Attlee, 13 May 1947. NA FO PREM 8/707.

not only a profound misunderstanding of the role of the Germany army in the Holocaust but was also possibly a response to the uneasy international situation.

Patrick Dean, by this time one of the few advocates of war crimes trials in the Foreign Office, noted that 'the protests in the House of Lords against the condemnation of Kesselring who was undoubtedly responsible for some horrible atrocities in Italy against civilians [were] on the grounds that he was an excellent soldier.'¹⁴⁹

Kesselring's sentence was later commuted to life imprisonment.¹⁵⁰ The reasoning behind this decision seems to lend weight to Dean's bitter observation. The British Commander in Italy, General Harding who was responsible for the lifting of the death sentence, insisted that Kesselring was a dedicated career soldier and a superb strategist. At the time of the crimes, Harding noted, Kesselring had only been obeying orders and, apart from the one instance in March 1944, his conduct during the war had been exemplary.¹⁵¹

The rumours of an American plan to try Manstein et al were made concrete in August 1947 when General Lucius Clay, the American High Commissioner, contacted Sir Sholto Douglas, the Military Commander of the British Zone, on the issue of von Rundstedt, von Brauchitsch, von Manstein and Strauss. Clay enclosed a long report from Telford Taylor's team at the Nuremberg subsequent proceedings.¹⁵² The report included extensive passages from the IMT Judgement. Although the Judges at the IMT had ruled that the General Staff and High Command could not be considered a criminal organisation, they did observe that the evidence suggested that many officers

¹⁴⁹ Patrick Dean, memorandum, 7 May 1947. NA FO 371 66570/U646.

¹⁵⁰ Kesselring was released from prison, on grounds on ill health, in 1952.

¹⁵¹ Harding's deliberations on the Kesselring case, 29 June 1947. NA PREM 8/707

¹⁵² Office of Military Government, United States Zone of Germany (OMGUS). In Bower, Tom, *Blind Eye To Murder*, p. 271.

had been involved in war crimes and crimes against humanity. The evidence against many individual officers, the Judges noted, was 'clear and convincing'.¹⁵³ They went on:

They [the officers] have been responsible in large measure for the miseries and suffering that have fallen on millions of men, women and children. They have been a disgrace to the honourable profession of arms. Without their military guidance, the aggressive intentions of Hitler and his fellow Nazis would have been academic and sterile. Although they were not a group falling within the words of the Charter, they were certainly a ruthless military caste. The contemporary German militarism flourished briefly with its recent ally, National Socialism, as well as or better than it had in the generations of the past. Many of these men have made a mockery of the soldier's oath of obedience to military orders. When it suits their defence they say they had to obey; when confronted with Hitler's brutal crimes, which are shown to have been within their general knowledge, they say they disobeyed. The truth is they actively participated in all these crimes, or sat silent and acquiescent, witnessing the commission of crimes on a scale larger and more shocking than the world has ever had the misfortune to know. This must be said.¹⁵⁴

The Judges also stated that 'where the facts warrant it, these men should be brought to trial so that those among them who are guilty of these crimes should not escape

¹⁵³ Trial of the Major War Criminals Before the International Military Tribunal (Official Proceedings), Volume XXII (International Military Tribunal: Nuremberg, 1948), p. 522. See also 'German Field Marshals as War Criminals? A British Embarrassment' *Journal of Contemporary History* 23, 1 (1988), pp. 17-35; Bloxham 'Punishing German Soldiers During the Second World War: The Case of Erich von Manstein' *Patterns of Prejudice* 33, 4 (1999), pp. 25-45.

¹⁵⁴ Trial of the Major War Criminals Before the International Military Tribunal (Official Proceedings), Volume XXII (International Military Tribunal: Nuremberg, 1948), pp. 522-3.

punishment.¹⁵⁵ Taylor emphasised this point. Accompanying the extracts from the IMT Judgement was a dossier containing evidence against the three German field-marshals and one General. Taylor's memorandum suggested that all four officers had been deeply embroiled in horrific war crimes on the Eastern front.¹⁵⁶

Despite the earlier rumours, the memorandum from Clay seems to have taken many in the Foreign Office by surprise. Having heard nothing from the Americans on this matter since February 1947, it is obvious that some considered it closed. Douglas himself, mindful of the furore that had been caused by the Kesselring trial, was apparently concerned not only about the response of the British public, but what he saw as the questionable morality of trying individuals who were old and possibly infirm:

Before Clay is approached by Robertson or myself on this matter, I should like to be satisfied that the equity of our proposed action has been carefully considered. We apparently do not wish to be concerned in these trials because we know that public opinion in England will be revolted. We know that the Americans will make use of a lot of evidence of a very dubious character. Yet we are apparently prepared to send these men, including one who is seventy three, to trial by the Americans. I frankly do not like this. I feel that if the Americans wish to be critical about our inaction in trying war criminals, I should prefer that they should continue to criticise rather than we should commit an injustice in order to avoid their criticism.¹⁵⁷

¹⁵⁵ Ibid., p. 523.

¹⁵⁶ Office of Military Government, United States Zone of Germany (OMGUS). In Bower, Tom, *Blind Eye To Murder: Britain, America and the Purging of Nazi Germany - A Pledge Betrayed* (London: Warner Books, 1995), p. 271.

¹⁵⁷ Telegram from Douglas to Pakenham, 23 October 1947. NA FO 371 64475/C13823.

Thus began some of the most protracted legal wrangles the British Foreign Office were party to during this period. The crux of the matter was, as Douglas's telegram shows, that no-one – either at JAG or in Whitehall - had ever really considered the group to be war criminals and thus no-one was convinced of the necessity of a trial. It is a notable characteristic of the British occupation that despite the damning comments from the Judges at Nuremberg, many British officers (or former officers) felt respect and some degree of comradeship with their German counterparts.¹⁵⁸ There was also a tendency to assume that the Wehrmacht had simply carried out its soldierly duties while the real crimes of the Nazi regime had been carried out by the SS:

There has been a case...of an SS officer who was tried for most brutally massacring British troops...this SS officer was on the spot and brutally took this action of massacring a large number of British prisoners in 1940...The same sort of thing does not apply in any way to these elderly and distinguished officers who fought against us according to their lights as honourable opponents...It was their duty as officers in the German Army to carry out Hitler's orders so long as they served in it.¹⁵⁹

¹⁵⁸ See for example Douglas's (a former RAF Commander) comments, October-November 1947. NA FO 371 64475/C13823.

¹⁵⁹ General Sir George Jeffreys (MP) speaking during a House of Commons debate on the proposed trial of German Generals, 26 October 1948. Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 457, c. 66. This 'myth' of a clean Wehrmacht has been examined by several historians. See, Searle, Alaric, 'Revising the "Myth" of a "Clean Wehrmacht": Generals' Trials, Public Opinion, and the Dynamics of *Vergangenheitsbewältigung* in West Germany, 1948-60' *Bulletin of the German Historical Institute London* 25, 2 (2003), pp. 17-48; Heer, Hannes, and Naumann, Klaus (eds.) *Vernichtungskrieg: Verbrechen der Wehrmacht 1941-1944* (Hamburg: HIS, 1995); Müller, Rolf-Dieter and Volkmann, Hans-Erich, *Die Wehrmacht: Mythos und Realität* (Munich: Oldenbourg, 1999); Wette, Wolfram and Schneider, Deborah Lucas *The Wehrmacht: History, Myth, Reality* (London: Harvard University Press, 2006); Reitlinger, Gerald, *The SS: Alibi of a Nation 1922-1945* (London: Arms and Armour, 1981); Hartmann, Christian, 'Verbrecherischer Krieg – verbrecherische Wehrmacht? Überlegungen zur Struktur des deutschen Ostheeres 1941-1944' *Vierteljahreshefte für Zeitgeschichte* 52, 1 (2004), pp. 1-75; Heer, Hannes, 'Killing Fields: Die Wehrmacht und der Holocaust' in *Vernichtungskrieg: Verbrechen der Wehrmacht 1941-1944* ed. Heer Hannes and Klaus Naumann (HIS: Hamburg, 1995), pp. 57-77.

It was not until April 1948, however, that the Secretary of State for war was invited to circulate a secret memorandum to the Cabinet on the question of whether ‘certain German generals’, who were detained under British control should be brought to trial.¹⁶⁰ The memorandum pointed out that ‘The vast majority of the victims of these crimes were Russians...Our own direct [underlining in original] interest is limited to the responsibility of Rundstedt for passing on of the “Commando” Order in so far as our own Special Air Service troops were killed, pursuant to it’.¹⁶¹ The memorandum also pointed out, however, that ‘Many of the actual perpetrators of these killings have already been tried before British Military Courts.’ The implication being that it would be illogical to allow these high ranking officers to go free when many of their underlings were serving prison sentences.

One of the main bones of contention in the report was whether these ‘certain German Generals’ were fit to stand trial. All four were examined by an Army Medical Board (AMB) under Brigadier A. Terrie. His team concluded that all four officers were very ill: ‘Brauchitsch is in a very poor state of health and likely to have a heart attack at any time...Rundstedt is wasting away from kidney disease...Manstein is also likely to have a heart attack at any time...He is also nearly blind...Strauss also suffers from heart trouble.’ Terrie’s findings were at odds with the opinion of Home Office doctors, who considered that only Brauchitsch was unfit to stand trial.

After protracted negotiations the British, who had remained resolute in their decision not to hand the four officers over to the USSR, were pressed into the uncomfortable position of agreeing to try Manstein et al in British military proceedings. The decision

¹⁶⁰ Minutes of the Cabinet ORC, 12 April 1948. NA FO 371 70817. CG1642/34/184.

¹⁶¹ Memorandum entitled ‘Action against Four German General in British Custody’, April 1948. NA FO 371 70800. CG243.

to try the officers was finally made in August 1948, and the officers were informed accordingly.¹⁶² In the event, out of the four officers only the former field marshal Erich von Manstein was eventually tried. Von Brauchitsch died of heart failure in October 1948, and, after long-drawn-out discussions, it was decided that the other two were in delicate health and unfit to stand trial.¹⁶³

The trial of Erich von Manstein generated what can certainly be seen as a disproportionate amount of interest. Most of the press coverage came out on the side of the former officer. Although *The Economist* noted 'Nobody pretends, at least nobody should pretend, that there is not a formidable indictment against [these officers]. The grounds for protest are the long delay in bringing them to trial...Justice so protracted as this becomes injustice and does more harm than good.'¹⁶⁴ The magazine also observed, however, that the proposed trial 'offends the public conscience.'¹⁶⁵ *The Times*, meanwhile, made a point of listing the great ages of the defendants together with details of their poor health,¹⁶⁶ though its editorial comment section also noted that 'If they have committed acts against the recognised laws of war they should be punished...[but] they have been held far too long in captivity without trial.'¹⁶⁷ The newspaper also printed a lengthy letter from the military historian Captain Basil Liddell Hart reporting 'a real improvement' in the previously 'inhumane' conditions of these 'old and sick men' and calling for them to be allowed

¹⁶² *The Times*, 28 August 1948, p. 4.

¹⁶³ Cabinet discussions, 3 May 1948. NA Cabinet Minutes (CM) 32(49) 4; NA Cabinet Papers (CP) (97)

¹⁶⁴ *The Economist*, 6 November 1948, p. 742.

¹⁶⁵ *The Economist*, 30 October 1948, p. 700.

¹⁶⁶ *The Times*, 28 August 1948, p. 4.

¹⁶⁷ Editorial, *The Times*, 28 August 1948, p. 5.

to return home on parole.'¹⁶⁸ Other publications were not so restrained. Upon the start of the trial in Hamburg, *The Manchester Guardian* declared, with theatrical resonance, 'Heaven is weary of the hollow words, which States and Kingdoms utter, when they talk of truth and justice.'¹⁶⁹

The pre-trial proceedings occurred at a time when the British had all but wound down their trials process (in fact Manstein's trial in Hamburg was the last trial to be carried out under the auspices of a British military tribunal). Why did Manstein – an arrogant and apparently unsympathetic individual in the classic Prussian mould – attract so much interest and (misplaced) compassion? Partly, it was the traditional national empathy for the 'underdog' or those perceived as unfairly oppressed. Even in the House of Commons there was a tendency among supporters of the German Generals to refer to 'these decrepit old men', 'elderly Germans' and 'honourable opponents of this country'.¹⁷⁰

There was, however, a more global reasoning. Many people were unable to understand, why, at the time of the Berlin blockade, the British were wasting time and valuable resources prosecuting an individual for alleged crimes on the Eastern front. Some also feared that a long drawn out trial would endanger tentative cordial relations that were now apparent between Britain and Germany.¹⁷¹ Stokes, the MP for Ipswich voiced these sentiments in the House of Commons in October 1948:

¹⁶⁸ Letter to the editor by Liddell Hart, *The Times*, 21 September 1948, p. 5. Shortly after World War II Liddell Hart interviewed/debriefed many of the highest ranking German Generals and published their accounts as *The Other Side of the Hill* (Pan Books: London, 1999).

¹⁶⁹ Editorial, *The Manchester Guardian*, 5 May 1949.

¹⁷⁰ Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 457, cc. 61-66.

¹⁷¹ Gallup Public Opinion Poll July 1947. Taken from Gallup, George H., *The Gallup International Public Opinion Polls: Great Britain 1937-1975, Volume One 1937-1964* (Random House:, New York, 1976), pp. 160-161.

the whole thing is entirely repugnant to our sense of fair play...quite apart from...people's feelings, the whole policy is so cockeyed, when at the very moment we are trying, as I understand it, to build Germany up, we do something which is objectionable to everybody and is politically most inexpedient.'¹⁷²

Manstein's trial began in Hamburg on 24 August 1949. He was charged with seventeen offences, including involvement, both generally and specifically, in murders and ill-treatment on the Eastern front in 'violation of the laws and customs of war', to which he pleaded not guilty. Chief of the prosecution was Sir Arthur Comyns-Carr. The first three of the charges in the indictment related to the Polish campaign when Manstein was Chief of Staff, and the fourteen others to the Russian campaign where he had held various camp commands.¹⁷³ That 'the foulest crime has...been committed on a very wide scale, particularly in the USSR, in the area of his commands' was, the prosecution contented, not in question. What needed to be proved was Manstein's 'degree of responsibility for them'.¹⁷⁴ Most serious of the charges were the massacres of Jewish populations on the Eastern front. This was a crime 'without parallel for criminality and sheer inhumanity'.

Leading his defence was Reginald Paget, a British barrister and MP for the Labour Party, who offered his services to Manstein free of charge.¹⁷⁵ Paget had previously spoken out against the proposed trial in the House of Commons, arguing that it

¹⁷² Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 457, cc. 58-62.

¹⁷³ *The Times*, 25 August 1949, p. 4.

¹⁷⁴ Sir Arthur Comyns-Carr. Quoted in *The Times*, 25 August 1949, p. 4.

¹⁷⁵ After the trial Paget published an account of Manstein's military record and trial that can only be described as apologist. See Paget, Reginald T., *Manstein: His Campaigns and His Trial* (London: William Collins, 1951).

‘offends every sense of good taste in this country.’¹⁷⁶ In the courtroom, Paget attempted to argue that not only were the charges against his client manifestly untrue, but that the whole legality of the trial was questionable. Amongst other things, he claimed that the Germany army had conducted itself well in Poland, that his client was entirely ignorant of the mass murder of the Jews and that, in any case, he had simply been following superior orders (a defence that had been disallowed by the Nuremberg Judgement).¹⁷⁷ On one notable occasion he questioned testimony relating to the shooting and the wounding of a Pole on the grounds that it was unlikely that a German officer would be so inept as to merely injure – rather than kill – someone he was shooting at.¹⁷⁸ So zealous was Paget in defending his client, that the official Polish observer withdrew from the trial midway through proceedings:

The trial is tending to change its meaning and is developing into a trial of the millions of fighters against Nazi facism [sic] [and the] glorification of Nazism...The defence is advocating the thesis that it is not the murderer but the murdered who is guilty. The defence is daring to plead openly the justification for the moral and legal reasons of the murder itself...Unquestionable crimes are being glorified by the counsel for the defence who are attempting to camouflage crimes by quoting military discipline.¹⁷⁹

Of the 17 charges on which he was indicted, Manstein was acquitted of 8, including the most serious of knowledge of, and complicity in, the mass murder of the Jews. He

¹⁷⁶ Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 457, c. 83.

¹⁷⁷ Discussed in Foreign Office correspondence, NA FO 371/77033.

¹⁷⁸ See Manstein trial transcripts, NA FO 1060; Also see transcripts at the Liddell Hart Centre for Military Archives (hereafter LHCMA).

¹⁷⁹ Letter from Major B. Acht (official Polish observer) to the president of the trial, Sir Frank Simpson, 10 November 1949. NA FO 371/77034.

was convicted on remaining 9 charges and sentenced to 18 years imprisonment. After the sentencing on 19 December 1949, *The Economist* noted that:

The most striking feature of the Manstein trial has been the fact that he was tried before a British court on charges of acts committed exclusively in Poland and Russia. Both Poland and Russia demanded his extradition, and it has never been officially explained on what ground it was refused.

Presumably it was considered that it would have a bad effect on German public opinion at a time when western co-operation with the Russians had broken down and the western allies were beginning to consider German feelings. But, as a compromise, the British Government decided to give Manstein (and others who have been kept from the court by death or illness) a trial by a British court. So Germany has witnessed the strange spectacle of one of its most brilliant generals being tried and sentenced by the British four years after the end of the war for what he did to Russians, thereby showing a disinterested passion for justice which would be impressive if it were not of such limited application.¹⁸⁰

Liddell Hart, however, once again wrote to *The Times*, at pains to point out that not only had Manstein had been cleared of the most serious charges against him, but that he had often taken the initiative in 'mitigating inhumane measures.' He ended 'One may hope...that we shall be led to show a similar sense of humanity in mitigating the savage sentence inflicted on him...His condemnation appears a glaring example either of gross ignorance or gross hypocrisy.'¹⁸¹

¹⁸⁰ *The Economist*, 24 December 1949, p. 1404.

¹⁸¹ Letter to the editor by Liddell Hart, *The Times*, 11 January 1950, p. 8.

(VIII) The Stalag Luft III Case

Stalag Luft III was POW camp at Sagan in Silesia, which housed Allied prisoners of war. On the night of 24-25 March 1944, a long intended escape plan was launched by the inmates. It was originally intended that 200 officers should break out via an underground tunnel nicknamed 'Harry'. However, only 76 men of the expected 200 passed successfully through the tunnel. 4 of these were recaptured by their German guards in the immediate vicinity of the tunnel and immediately returned to the Camp. 3 of the escapees (Van Der Stok, Royal Netherlands Navy and Flight-Lieutenants Muller and Rockland) succeeded in making their way to Britain, the rest were recaptured. Of these, 50 Allied air force officers (including 21 British, 6 Canadian, 6 Polish, 5 Australian, 3 South African, 2 Norwegian, 2 New Zealanders, 1 Greek, 1 French, 1 Lithuanian, 1 Czech and 1 Belgian officer) were taken to woods in the Goerlitz area where they were lined up and shot by the Gestapo, reportedly on a direct order from Hitler.¹⁸² This mass murder of POWs was, Shapcott argued 'in many ways the worst war crime which the Germans committed against our people.'¹⁸³ The judgement of the Nuremberg Trial had additionally condemned the shootings as 'plain murder, in complete violation of international law.'¹⁸⁴

Wing Commander Henry Cuthbert Marshall, who was re-captured after the escape attempt, but spared the firing squad recalls:

¹⁸² In *The Times*, 8 July 1947, p. 3.

¹⁸³ Memorandum from Shapcott to the Foreign Office, 15 October 1947. NA WO 32 12197 O160/2573.

¹⁸⁴ *IMT Judgement : War Crimes and Crimes Against Humanity, Trial of the Major War Criminals Before the International Military Tribunal (Official Proceedings), Volume XXII (International Military Tribunal: Nuremberg, 1948), p. 472.*

It was not until...three weeks later that that we heard that the shooting [of the officers] had been confirmed by the Commandant and that a list had been produced by him to the Senior British Officer giving the names of forty-seven prisoners who had been killed. The names of three more officers who had been killed were supplied later though I cannot remember the exact date. Some time during the summer the urns purporting to contain the ashes of the deceased started to arrive in the camp.¹⁸⁵

Party officials in Berlin attempted to cover up these premeditated murders by constructing faked reports stating that the victims were shot while trying to escape.¹⁸⁶ The shooting of the British officers had enraged British sensibilities: in June 1944 Eden had condemned the killings as 'an odious crime against the laws and conventions of war' and promised that 'these foul criminals shall be tracked down to the last man wherever they may take refuge...they will be brought to exemplary justice.'¹⁸⁷

In line with Eden's stance, a group from the Special Investigation Branch (SIB) of the Royal Air Force was allocated the task of tracing the perpetrators of the Stalag Luft III murderers. Such was the chaotic state of affairs in the British Zone, however, that

¹⁸⁵ Affidavit of Wing Commander Henry Cuthbert Marshall, 5 June 1947. NA WO 235/575.

¹⁸⁶ For more relating to the doctored files 'shot while escaping' see WO 235 432/3/WC9/EPW; *The Times*, 8 July 1947, p. 3.

¹⁸⁷ Commons Statement by Eden, 23 June 1944. Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 401, cc. 477-482; NA FO 371 38998 C9295/14/62; NA FO 371/70819. CG2318/34/184. Also see report in *The Times*, 24 June 1944, p. 2. Priscilla Dale Jones also examines some of these issues. See Dale Jones, Priscilla, 'British Policy Towards "Minor" Nazi War Criminals, 1939-1958' (D.Phil thesis, Cambridge, 1990) and Dale Jones, Priscilla, 'Nazi Atrocities against Allied Airman: Stalag Luft III and the End of British War Crimes Trials' *Historical Journal* 41 (1998), pp. 543-65.

it was not until September 1945 that the SIB officers arrived in Germany.¹⁸⁸ They had quite literally a mammoth task: they were expected to comb Germany for an unknown number of former Gestapo officers. In December 1945, Wing Commander Bowes complained that the nature of the investigation mean that his men were charged with:

[I]nterrogating many thousands of Germans and other nationals in widely scattered parts of the country. And so our team set to work, at times dashing off to undertake journeys of hundreds of miles under all sorts of conditions, to follow some slender clue which very often proved negative.¹⁸⁹

By November 1945 SIB had drawn up an initial list of those wanted in connection with the murders.¹⁹⁰ This file had grown to include some 80 persons by the time Bowes penned his next report in January 1946.¹⁹¹ Why, then, were there only 18 individuals in the Hamburg dock two years later? The answer lies not only in the difficulties inherent in tracing individuals in occupied Germany, but in the fact that those on the British 'wanted' list were often sought by other nations as well. For example, a SIB report of 16 March 1946 named Dr. Hans Wilhelm as 'one of the most badly wanted persons in this case'.¹⁹² However, Wilhelm was also under investigation by the US authorities and as SIB official Flight Lieutenant McKenna made clear, 'The USA authorities have intimated that they will not be able to hand him over or make him available for interview, owing to the fact that he is wanted by themselves in connection with certain serious matters.'

¹⁸⁸ Squadron Leader W.P Thomas' summary of progress following arrival, 17 November 1945. NA AIR 40/2272/1084/45.

¹⁸⁹ Report from Wing Commander Bowes to Provost Marshal. NA AIR 40/2313. Exhibit B16.

¹⁹⁰ Squadron Leader W.P Thomas' summary of progress following arrival, 17 November 1945. NA AIR 40/2272/1084/45.

¹⁹¹ Progress report from Bowes, January 1946. NA AIR 40/2272.

¹⁹² Progress report from McKenna, 3 May 1946. NA AIR 40/2272/11.

In addition, it was not just individuals who were unavailable to investigators but often important documents as well. In the case of the murders that took place in the Saarbrücken area of Germany, the French Security Police, who now occupied that area, were believed to hold documents pertaining to the cremations of two of the Stalag Luft III victims. The Security Policy maintained that these documents were needed for their own investigations into war crimes and refused to make them available to SIB.¹⁹³

The Soviets represented an even bigger challenge. This is best illustrated by the case of Scharpwinkel, the head of the Gestapo in Breslau. SIB had received information from interrogation that this individual was in hospital in the Russian Zone.¹⁹⁴ SIB duly sent a request to the Soviet government, requesting that Scharpwinkel either be released to British custody or, if 'they have a capital charge against him, on temporary loan'.¹⁹⁵ The authorities in Moscow did allow a SIB interrogation of Scharpwinkel, but stopped short of extradition on the grounds of Scharpwinkel's ill health.¹⁹⁶ Flight Lieutenant Lyon noted that the Soviet authorities had been very suspicious of SIB's motives in investigating the Stalag Luft III case:

The Russians [never] really believed our motives in making the investigation.

To them, the murder of fifty officers was a matter of such triviality compared

¹⁹³ Progress report from Bowes, 10 September 1946. NA AIR 40/2272/20.

¹⁹⁴ Statement of Klaus Lorky, 5 October 1945. NA AIR 40/2272/1084/45.

¹⁹⁵ Telegram to Soviet government in Moscow, May 1946. NA FO 371/57595/U7034.

¹⁹⁶ Roberts Telegram from Moscow, June 1946. NA FO 371/57595/U6088.

to their own civilian and military casualties...that they thought we were spies using the investigation as a pretext for our presence.¹⁹⁷

Despite these complications, by January 1947, HMG deemed the SIB investigations to have progressed to a point where prosecutions were possible. SIB had identified and located 25 individuals as being heavily involved in the murder of the 50 officers. However, only 18 individuals were indicted, as a result of a spate of suicides and death sentences handed down by other nations conducting their own war crimes trials.¹⁹⁸

The Stalag Luft III case began in Hamburg on 1 July 1947 and lasted until 3 September 1947. The court was presided over by a Major-General, three Army officers and three representatives of the Royal Air Force, in keeping with the terms set out in section five of the Royal Warrant. 18 were tried in the first of the two Stalag Luft III cases. Max Wielen, an officer commanding the Kripo (criminal police) regional headquarters at Breslau was the principal defendant (Wilhelm Scharpwinkel, the original number one defendant had been removed from proceedings before the trial started).¹⁹⁹ The rest of those in the dock were former members of the Gestapo. All 18 of the accused were charged with:

- (i) Committing a war crime in that they at diverse places in Germany and German occupied territory, between 25th March, 1944, and 13th April, 1944, were concerned together and with SS Gruppenführer Mueller and SS Gruppenführer

¹⁹⁷ SIB officer Flight Lieutenant Lyon quoted in Andrews, Allen, *Exemplary Justice* (London: Corgi Books, 1976), p. 13.

¹⁹⁸ Memorandum from McKenna to Bowes regarding the status of the case, January 1947. NA AIR 40/2272.

¹⁹⁹ See the proceedings on the Stalag Luft III case, NA WO 235/424.

Nebe and other persons known and unknown, in the killing in violation of the laws and usages of war of prisoners of war who had escaped from Stalag Luft III.

(ii) committing a war crime in that they at diverse places in Germany and German occupied territory, between 25th March, 1944, and 13th April, 1944, aided and abetted SS Gruppenführer Mueller and SS Gruppenführer Nebe and each other and other persons known and unknown, in carrying out orders which were contrary to the laws and usages of war, namely, orders to kill prisoners of war who had escaped from Stalag Luft III.²⁰⁰

In the prosecution's interpretation (led by Colonel R. C Halse), these two charges amounted to charges of conspiracy against all the accused jointly for participation in the killing of the 50 British officers.²⁰¹ All of the accused pleaded not guilty.

Without exception, all of those in the dock attempted to argue that they had simply been following superior orders – in this case the orders to kill the escapees came direct from Hitler. The witness Mohr reported to the court that he had received a telegram from the Reich Security Main Office (RSHA). The original could not be found but Mohr paraphrased it thus:

The frequent mass escapes of officer prisoners constitute a real danger to the security of the State. I am disappointed by the inefficient security measures in various prisoner of war camps. The Führer has ordered that as a deterrent, more than half of the escaped officers will be shot. The recaptured officers

²⁰⁰ Charges of the Stalag Luft III case. Law-Reports of Trials of War Criminals, The United Nations War Crimes Commission, Volume XI, London, HMSO, 1949 (hereafter UNWCC Report Vol. XI), p. 31.

²⁰¹ Charges of the Stalag Luft III case. UNWCC Report Vol. XI, p. 32.

will be handed over to Amt 4 for interrogation. After interrogation the officers will be transferred to their original camps and will be shot on the way. The reason for the shooting will be given as “shot whilst trying to escape” or “shot whilst resisting” so that nothing can be proved at a future date. Prominent persons will be exempted. Their names will be reported to me and my decision will be awaited whether the same course of action will be taken.²⁰²

This line of defence was an attempt to show not only that the accused acted under orders, but that to disobey would have meant severe reprisals. During Mohr’s testimony, reference was made to *Sippenhaft*, the policy of making a whole family responsible for the actions of one of its members.²⁰³

During the proceedings of the IMT at Nuremberg, in 1945-1946, Major-General Westhof, who was in charge of prisoners of war for the German army, had also reported an exchange with Field Marshal Keitel (Chief of the Supreme Command of the German Armed Forces) on the subject of the recent Stalag Luft III escapes: ‘Gentlemen, these escapes must stop. We must set an example. We shall take very severe measures. I can only tell you that the men who have escaped will be shot: probably most of them are dead already.’²⁰⁴ Westhof repeated his testimony at the Hamburg trial, but added that though he had been expressly forbidden by Keitel to report to the British Foreign Office about the shootings, he had attempted to do so.²⁰⁵

²⁰² Recollection of the witness Mohr, who had repeatedly dealt with the Stalag Luft III shootings in his department (Amt 5) at the Central Security Office. UNWCC Report Vol. XI, p. 33.

²⁰³ Reported in *The Times*, 4 July 1947, p. 4.

²⁰⁴ Reported in *The Times*, 31 January 1946, p. 4.

²⁰⁵ Reported in *The Times*, 3 July 1947, p. 4.

The plea of superior orders had, of course, been disallowed as a defence by the Nuremberg Judgement. The president of the trial, Major General H.L Longden, and the Judge Advocate, General Carl L. Sterling (a veteran of the equally prominent Belsen trial), refused to consider such a defence in the Stalag Luft III proceedings. On a purely practical level, the president noted that 'this case seems to furnish a practical illustration of the contention that if any other interpretation of the plea of superior orders were to prevail only a very small number of high ranking persons, if anyone at all, could be punished for flagrant breaches of international law.'²⁰⁶ A number of other defendants claimed that that, although they had participated in the shootings, they were acting under duress. So common was this strand of defence argument that *The Times* pointed out:

there was a common theme in the pleas which the defending counsel made for mitigation of sentences – that in Germany in 1944 it was impossible for any individual to act other than the accused had done when confronted with an order coming from Hitler; to disobey was to risk death personally and, under the Nazi practice of collective responsibility, to incur reprisals on near relatives.²⁰⁷

This defence of duress was likewise rejected by the court.²⁰⁸

A more successful defence strategy was to argue that those in the dock – Wielen in particular – were simply scapegoats. The defence pointed out that if there had been any kind of a conspiracy, then the conspirators were Hitler, Goering and Himmler,

²⁰⁶ Notes on the Stalag Luft III case: The plea of superior orders. UNWCC Report Vol. XI, p. 47.

²⁰⁷ Reported in *The Times*, 3 September 1947, p. 3.

²⁰⁸ Notes on the Stalag Luft III case: the plea of duress. UNWCC Report Vol. XI, p. 47.

who had all committed suicide, and Keitel and Kaltenbrunner, who had both been sentenced to death by the International Military Tribunal at Nuremberg in 1946, General Mueller who was dead, and General Nebe, who was executed for involvement in the July 1944 Bomb Plot, and Scharpwinkel, who was in Russian custody. In place of all these individuals, the accused Wielen stood in the dock as a scapegoat.²⁰⁹ Wielen's attorney further claimed that as a Kripo, i.e., a member of the ordinary criminal police rather than the Gestapo, Wielen had been a convenient scapegoat for the Gestapo as well as the British. He contended that there had been significant friction between the Kripo and the Gestapo over the Stalag Luft III shootings. On the witness stand, Wielen quoted Kaltenbrunner (Chief of the RHSA, succeeding Heydrich), who was hanged at Nuremberg, for an order saying that 'everything must be avoided which might bring to light the action of the Gestapo'.²¹⁰

Although all defendants officially pleaded not guilty, some did admit limited involvement in the affair. In his closing statement for the accused Herberg, for example, his British lawyer Dr. Walter Jones pointed out that his client 'has honestly and frankly admitted that part of the fact for which he is responsible, and he has not tried to shift any responsibility away from himself.'²¹¹

Throughout the trial, Wielen's attorney made much of the fact that his client was not originally intended to be the number one defendant. He also argued that Wielen's position as a Kripo meant that he could not have been involved in the murders.²¹²

Apart from Wielen, those in the dock were members of the Gestapo. Not all of them

²⁰⁹ The case for the defence – Max Wielen. UNWCC Report Vol. XI, p. 38.

²¹⁰ Reported in *The Times*, 8 July 1947, p. 3.

²¹¹ Closing statement on behalf of the defendant Herberg. NA WO 235/424

²¹² Closing statement on behalf of the defendant Wielen. NA WO 235/424.

had been high ranking officials, however. The accused Schnieder's primary employment was as a driver. In his closing statement, Schnieder's attorney stated that his client was a 'little miserable man...a simple man of simple education, of a simple way of thinking.'²¹³ He was 'only a tool in the hands of Schermer [his superior officer]. This one, profiting by his personal superiority at that moment, made use of Schnieder's want of willpower, inferior intelligence and servility.'

Schnieder was not saved by the remarks of his lawyer. All of the defendants, with the exception of Wielen, were found guilty of the charges against them. 14 of the accused (Emil Schulz, Walter Breithaupt, Alfred Schimmel, Josef Gmeiner, Walter Herberg, Otto Preiss, Emil Weil, Eduard Geith, Johan Schneider, Johannes Post, Hans Kahler, Oskar Schmidt, Walter Jacobs, Erich Zacharias and Heinrich Boschert) were sentenced to death by hanging. The punishment of life imprisonment was imposed on Max Wielen while Artur Denkmann and Wilhelm Struve were both sentenced to 10 years' imprisonment.²¹⁴ The sentences were generally applauded by the press, though *The Times* did publish a letter from a reader protesting the 'unchivalrous' nature of the death sentences and arguing that the 'dreadful' Stalag Luft III crimes were the fault of the High Command rather than those in the dock.²¹⁵ This can perhaps be seen as a further indication of the softening attitude of the British public towards German war criminals.

All of the defendants, however, appealed their sentences. The death sentence of Boschert was commuted to life imprisonment by General Robertson, but the rest of

²¹³ Closing statement on behalf of the defendant Schnieder. NA WO 235/424.

²¹⁴ Sentences on the Stalag Luft II case, UNWCC Report Vol. XI, pp. 44-45; NA WO 235/424; *The Times* 4 September 1947, p. 3.

²¹⁵ *The Times*, 18 September 1947, p. 5.

the sentences stood.²¹⁶ The sentences of death were carried out on 26 February 1948.

The remainder of the convicted continued to petition for clemency. Pastor Walter Schmidt writing on behalf of Boschert, for example argued that his associate:

Has found [his way] back to God and he is indeed to live as a good Christian amidst his surroundings in jail...it is quite clear Boschert has not directly participated in the shooting of the British officers [and] it was impossible at that time for any functionary openly to show any criticism or disobey orders.²¹⁷

Boschert's four small children (Rudolf, Gisela, Doris and Liselotte) also petitioned the Secretary of State to pardon their father on the grounds that he had been 'drawn into this dreadful crime without his own will.'²¹⁸ Denkmann, meanwhile, pleaded clemency on the grounds of his 'bad health and previous good reputation'²¹⁹ while Otto Preiss maintained that previous to the Stalag Luft III incident he had saved the lives of hundreds of Allied prisoners of war.²²⁰ These petitions were all denied²²¹ and the Stalag Luft III defendants remained in gaol into the 1950s.

The first Stalag Luft III war crimes trial was over, but the case remained open. Since the murders had first come to light in 1944, the War Office had been investigating the crime and was confident that it knew the names and identities of over thirty other individuals (mainly former members of the Gestapo) known to be involved in the murders of the officers. It was entirely possible that that some or all of them would

²¹⁶ General Robertson memorandum, 18 February 1948. WO 235 432/WC288.

²¹⁷ Petition from Pastor Walter Schmidt on behalf of Boschert, 5 April 1949. NA WO 235 432/ CG288.

²¹⁸ Petition on behalf of Boschert, 11 February 1949. NA WO 235 432/ CG288.

²¹⁹ Petition on behalf of Denkmann, April 1949. NA WO 235 432/ CG288.

²²⁰ Petition from Kahe Lamprecht on behalf of Otto Preiss, 22 January 1949. NA WO 235 432/ CG288.

²²¹ Note in file, March 1949. NA WO 235 432/ CG288.

still be apprehended. The War Office in general and Shapcott in particular were determined that 'all of them caught ought to be tried for this crime whenever they come into our hands' and before a British Military Tribunal.²²² Shapcott also advocated that other criminals accused of crimes against British POWs 'ought not to escape punishment', whenever they were apprehended. Those responsible for the massacres at Wormhoudt and Le Paradis in May 1940, for example, where in each case approximately 90 British prisoners of war were killed in 'cold blood', should not be allowed to escape justice. The second Stalag Luft III trial, concerning individuals who had not been apprehended in time for the first trial, began in the British Zone in August 1948.

(IX) Conclusion

The 'Middle Phase' (the beginning of 1946 until the end of 1948) can thus be characterised as a transitional period. For most, the British trials programme had been anything but a moral crusade, and by 1946 most in the Foreign Office and War Office – with a few notable exceptions – believed that HMG had now done her duty with regard to war criminals, becoming resolved to ending the trials programme as soon as was decently possible. The first rumblings that trials should be wrapped up came in early 1946. On 17 January 1946, Shawcross wrote to Attlee, complaining that 'at the present rate the trial of war criminals will go on until the crack of doom'.²²³ Such a situation was clearly unattractive to him and to the Cabinet, and from this period onwards the British launched a series of initiatives with the aim of trying more

²²² Memorandum from Shapcott, 15 October 1947. NA WO 32 12197 0160/2573.

²²³ Letter from Shawcross to Attlee, 17 January 1946. NA FO 371 57529/U958.

suspected war criminals more quickly. Since the investigatory process continued to uncover new war crimes and new war criminals, however, the British found themselves fighting a losing battle – especially as they were unwillingly embroiled in the trial of Manstein et al.

By mid 1946, however, the British trials programme had become increasingly politicised and self interested – in as much as those suspected of crimes against British nationals were given a higher priority and, indeed, were instrumental in keeping the trials programme open past 1948.

CHAPTER THREE

The Winding Down of the Programme

(I) Introduction

As we have seen in previous chapters, by 1948, the British war crimes trial programme had become progressively more marginalized. Between 1946 and 1948, the trials programme had increasingly been run down as political considerations came to the forefront. A strong desire to bring to justice those suspected of crimes against British nationals was instrumental in the continuation of the British Zonal trials programme during this phase. After 1948, the already reduced trials series became further marginalized as part of a more pragmatic policy of integration with what was to become West Germany. The goal of re-integrating western Germany into the European community was deemed incompatible with the persistence of trials.

We should, however, beware of over-simplification. The foreign policy of the Labour government in the immediate post-war era was complex and nuanced, dealing with such diverse issues as the loss of world power status, the withdrawal from empire, the changing relationship with the USA and the emerging tensions with the USSR.

(II) Public Opinion

The unease in the Foreign Office with regard to the Soviet Union was echoed in wider British society. A Gallup poll of 1947 revealed that 48 per cent of respondents thought that Russia was bent on world domination.¹ The same percentage also believed that Russia was the most urgent problem the Government must solve in the next few months.² At the same time, public attitudes towards Germany were softening. At the height of the Second World War, the overwhelming majority of British people (70 per cent) had harboured feelings of bitterness, dislike and contempt for the German population.³ The situation was very different in January 1947, with 64 per cent of individuals reporting either feelings of indifference or friendliness towards the German people.⁴ There was also division of opinion towards the idea of continuing with war crimes trials. As one Foreign Office official put it in December 1947, 'for every man who demands to know why we are continuing to grind the faces of our former enemies, there is another who asks why we have not yet traced and arrested his son's murderer.'⁵ In Germany itself, there was evidence that the German population were becoming restless with the continuing programme of war crimes trials. The *Hamburger Allgemeine Zeitung*, for example, published an article condemning the trials of war criminals and spouting apologist sentiments to the effect that Nazi war crimes were no worse than the atrocities committed by English settlers against Native Americans in 1637 and by the United States against Native American

¹ Gallup Public Opinion Poll July 1947. Taken from Gallup, George H., *The Gallup International Public Opinion Polls: Great Britain 1937-1975, Volume One 1937-1964* (Random House, New York, 1976), pp. 160-161.

² *Ibid.*, p. 165.

³ *Ibid.*, p. 82.

⁴ *Ibid.*, p. 148.

⁵ Memorandum from Barratt to O'Grady, 9 December 1947. NA FO 371 64723. C15911/7675/180.

tribes in 1813.⁶ The article was greeted with outrage among the occupying authorities and the British Element of the Control Commission took steps to have it withdrawn. Tellingly, however, there was no hint of a similar outcry among the Germans. In early 1950, the *Association of Jewish Refugees Information* (AJRI) published an article from an interpreter who had watched 900 war criminals pass through the docks of the British Military Tribunals in the British Zone. Hans Tasiemka offered insight into the reluctance of the Germans to embrace the war crimes trials process:

‘It was always a psychological riddle to me that the German population took so little interest in the trials.’⁷ He observed. Was it simply because the trials were conducted by British Military courts? Or was it because a guilty conscience made them reluctant to avoid these issues?

Was it that the opening of a new kind of Concentration Camps in the Russian Zone of Germany and the reports by returning prisoners about life in the Russian POW Camps influenced them in their opinion on War Crimes? This happened frequently to me: after having been in court for eight hours, listening to the most cruel details of mass killing, I talked in the street to a passer-by about those trials. He did not believe me; he thought a new wave of *Greuelpropaganda* was in preparation.

The writer speculates that the reason for German disinterest in the trials programmes was because the British failed to utilise the press and radio to attract the maximum publicity for their trials. This was also a criticism that the *AJRI* had directed at the

⁶ Reported in *AJRI*, Vol. IV, No. 4 (April 1949), p. 2.

⁷ *AJRI*, Vol. V, No. 2 (February 1950), p. 2.

IMT at Nuremberg.⁸ Both processes, the publication argued 'ought to have been an act of re-educating the German people.' It is clear that the British trials programme – in the short term at least – was left wanting in this fundamental aim.⁹

(III) The International Situation

Anxieties about the potential Soviet threat could be observed in the Foreign Office as early as 1945. These anxieties were picked up by some sectors of the British press. In December 1945, for example, a lead article in *The Economist* noted that:

It is clear that the Russians believe, rightly or wrongly that British and American pressure seeks to go far beyond the redressing of obvious evils. It has been stated in the Russian press that the aim of "reactionary circles" in the West is "the elimination of the Soviet Union from any participation in European affairs"... They believe that it is not a greater measure of democracy the Allies seek, but the elimination of Russian influence.¹⁰

⁸ *AJRI* Vol. I, No. 9 (September 1946), p. 65.

⁹ On public opinion in post-war Germany see, for example, Merritt, Anna J. and Merritt, Richard L., *Public Opinion on Occupied Germany: The OMGUS Surveys, 1945-1949* (Urbana: University of Illinois Press, 1970); Searle, Alaric, 'Revising the "Myth" of a "Clean Wehrmacht": Generals' Trials, Public Opinion, and the Dynamics of *Vergangensheitsbewältigung* in West Germany, 1948-60' *Bulletin of the German Historical Institute London* XXV, 2 (2003), pp. 17-48; Marshall, Barbara, 'German Attitudes to British Military Government 1945-47' *Journal of Contemporary History* 15, 4 (1980), pp. 655-683; Marshall, Barbara, 'German Reactions to Military Defeat, 1945-1947: The British View' in *Germany in the Age of Total War*, ed. Volker R. Berghahn and Martin Kitchen (London, 1981), pp. 218-239. On the process of coming to terms with the Nazi past see Janowitz, Morris, 'German Reactions to Nazi Atrocities' *American Journal of Sociology* 52 (1946), pp. 141-6; Lüdtke, Alf, 'Coming to Terms with the Past': Illusions of Remembering, Ways of Forgetting Nazism in West Germany' *Journal of Modern History* 65 (1993), pp. 542-72; Buruma, Ian, *Wages of Guilt: Memories of War in Germany and Japan* (Jonathan Cape: London, 1994).

¹⁰ *The Economist*, 8 December 1945, pp. 819-20.

Antagonism between the Soviets and the West would become a common theme in the magazine over the next few years.¹¹

By the beginning of 1948, very real splits could be observed between the War Office and the Foreign Office in London and the Office of the Military Governor in Germany. The War Office was against setting any deadline for punishments in the British Zone, believing instead that war crimes trials should continue as long as there were suspected war criminals in custody 'to deal out even justice' and to prevent criminals eventually finding 'sanctuary' in the British Zone – even if this meant prolonging the trials indefinitely.¹² General Robertson, on the other hand, remained unconvinced by this argument. The idea that war crimes trials could possibly continue for 'year after year' was 'strongly repugnant' to him.¹³ He maintained that war crimes were different from 'ordinary' crimes because they 'were not committed for personal gain or hate'. Most were also carried out by perpetrators who were following superior orders because they had a 'terrible fear' for their own safety if they disobeyed. Punishments meted out years after the offence had occurred, as revenge rather than deterrent, were of no use and had no place in a civilised state. Churchill, who had long wished to see war crimes trials in the British Zone come to an end expressed similar sentiments:

The time has come to stop these denazification trials which are taking place throughout Germany...The principal criminals have been executed by their conquerors. There may be some exceptional cases...but the general process

¹¹ See, for example, *The Economist*, 6 December 1947, pp. 911-12 and *The Economist*, 3 July 1948, pp. 1-2.

¹² Quoted in letter from Robertson to Strang, 16 January 1948. NA FO 371/64724 C16445/7675/180.

¹³ Telegram from Robertson to the Foreign Office, 29 January 1948. NA FO 371/70815 CG495/34/184.

of denazification has gone on for too long and should be brought to an immediate end...Revenge is, of all satisfactions, the most costly and long drawn out; retributive persecution is, of all policies, the most pernicious.¹⁴

Robertson also considered that the continuing war crimes programme had wider international consequences as well because it gave Britain's 'so-called allies indefinite opportunity for creating friction and trouble by trumping up charges against those whom they particularly dislike.'¹⁵ Here, he was clearly referring to the Soviets.

Both the War Office and JAG had become convinced that future policy with regard to war crimes trials was strongly entwined with the issue of extradition. The Foreign Office essentially had to decide between two options:

- (i) HMG could either continue searching for war criminals of British interest and extraditing suspects requested by British allies or
- (ii) HMG could stop extraditing suspects requested by allies and also stop investigations against those accused of committing crimes against British citizens.

The Secretary of State for War, Emanuel Shinwell, advocated the first option, General Robertson the second.¹⁶ Robertson was supported by Basil Marsden-Smedley, head of the German General Department and Ivone Kirkpatrick, Superintending Under-Secretary, German General and Political Departments (and future High Commissioner for Germany). Accordingly, the Foreign Office incorporated the Robertson-backed

¹⁴ Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 457, cc. 254-256

¹⁵ *The Times*, 28 August 1948, p. 4.

¹⁶ Letter (unsigned) from the Foreign Office to Barratt 19 January 1948. NA FO 371 70815 CG294/34/184.

proposal in a draft memorandum for the Cabinet Overseas Reconstruction Committee (ORC) in February 1948. The memorandum advocated that Germany should, as soon as possible, move towards 'a more normal situation in regard to all legal matters.'¹⁷

War crimes trials carried out by British Military courts were, in future, to be limited to crimes which were also offences under 'ordinary German law' as defined by the 1872 Extradition Treaty between the United Kingdom and Germany.¹⁸

The Foreign Office had assumed - perhaps naively given the record between the two offices - that most of the cases that the War Office still wished to prosecute would come under the terms of the 1872 treaty. The War Office was worried, however that the treaty as it stood would prevent them from pursuing prosecutions where the accused was suspected of serious ill-treatment causing death, but where it might be difficult to *prove* that ill-treatment caused the victim's death. Instead of abiding by the 1872 extradition treaty, the War Office official Drew suggested that triable offences should be limited to murder, attempted murder and serious ill-treatment.¹⁹

Meanwhile, on 17 March it was confirmed that the United Nations War Crimes Commission (UNWCC) would cease operations at the end of the month.²⁰ The UNWCC had been established in London in September 1943. It was a multi-national body originally under the Chairmanship of the British Sir Cecil Hurst. The organisation was charged with investigating war crimes and identifying those responsible.²¹ In post-war Germany, the remit of the UNWCC was modified slightly, with the organisation responsible not only for drawing up lists of suspected war

¹⁷ Draft ORC memorandum (undated). NA FO 371 70815 CG495/34/184.

¹⁸ Final version of draft ORC memorandum (undated). NA FO 371 70815 CG495/34/184.

¹⁹ Letter from Drew (War Office) to Anderson, 11 March 1948. NA FO 371 70816 CG1270/34/184.

²⁰ Memorandum from BAOR to HQ CCG, Berlin, 17 March 1948. NA FO 371/70817 CG1304/34/184.

²¹ Hansard Parliamentary Debates, fifth series (House of Lords), Vol. CXXIV, cc. 582.

criminals and assisting in the investigation of crimes but also dealing with extraditions of alleged war criminals between Allied nations. This power was granted in the Zonal Executive Instruction (ZEI) Number 70. The imminent closure of the UNWCC raised the immediate problem about how to deal with the extradition process in the future. It was decided that the matter should be referred to the Foreign Office, and as an interim measure 'the terms of the Zonal Executive Instruction No. 70 will stand and no extradition applications should be accepted from members of the United Nations War Crimes Commission which have not been considered by that body.'²² In April 1948 it was decided that ZEI No. 70 would apply to applications made by the U.S authorities.²³

The inter-departmental debate regarding the 1872 treaty, meanwhile, rumbled on. Even opinion in the Foreign Office was divided. Marsden-Smedley, head of the German General Department observed that:

General Robertson is quite clear that there is much to be lost and not a thing to be gained at this stage in the post-war epoch from pursuing these war criminals relentlessly. I think all of us have the same thoughts in mind. The only thing that holds us to the course we have adopted is the undertakings made during the war and certain public feeling in regard to those who actually committed certain cruel and horrible crimes.²⁴

Foreign Office Legal Assistant John Simpson, however, was of the opinion that if the 'typical war crime' of serious ill-treatment was not included then many instances

²² Memorandum from BAOR to HQ CCG, Berlin, 17 March 1948. NA FO 371/70817 CG1304/34/184.

²³ Memorandum from BAOR to HQ CCG, Berlin, 5 April 1948. NA FO 317/70817 CG1603/34/184.

²⁴ Minute Marsden-Smedley, 23 March 1948. NA FO 371/70816 CG1270/34/184.

where the said offence led to death would be virtually impossible to prove. He therefore recommended that “grievous bodily harm” should be included on the list of triable offences.²⁵ Majority opinion went against Simpson, however. If grievous bodily harm was tacked on to the 1872 treaty list then not only would Britain struggle to reach its target of ending war crimes trials as soon as possible but, as an unsigned memorandum euphemistically stated HMG ‘would suffer great harm’ and ‘be liable to serious embarrassment.’²⁶ While it is not overtly stated what the nature of this ‘serious embarrassment’ could be, it is likely that the Foreign Office feared that any disruption in the newly cordial relations between Britain and West Germany could be exploited by the Soviets. In this, as in many other instances relating to war crimes trials, political considerations took precedent over legal matters. Put plainly, the benefits of continuing to extradite and to try war criminals was not perceived to outweigh the political aggravation of carrying on with the programme.

In mid April 1948, Bevin convened a meeting of the Overseas Reconstruction Committee. The purpose of the meeting was to debate the memoranda from the War Office and the Foreign Office (ORC [48] 2 and ORC [48] 12 respectively). The first memorandum by the Secretary of State for War ‘[drew] attention to the substantial number of cases of suspected war criminals still awaiting trial or under investigation’.²⁷ The second memoranda by the Foreign Secretary recommended:

that after 1st June, 1948, extradition from the British Zone should only be granted in the case of those alleged war criminals against whom there was a

²⁵ Minute Simpson, 25 March 1948. NA FO 371/70816 CG1270/34/184.

²⁶ Foreign Office Paper for the ORC (unsigned), 12 April 1948. NA FO 70816 CG1270/34/184.

²⁷ Memorandum by the Secretary of State for War, quoted in the minutes of the Cabinet ORC, 12 April 1948. NA FO 371/70817. CG1642/34/184.

clear prima facie case of responsibility for an offence which was not only a war crime but also an offence against ordinary German law. It was also proposed that war crimes trials before British Military Tribunals should be confined to offences which would be offences against ordinary German law.²⁸

In the following discussion a number of important points were made. Firstly, the Parliamentary Under-Secretary of State for War reported that the present position in terms of war crimes trials was that 803 trials had already been tried in Military Government courts and that a further 208 suspected war criminals were awaiting trial, either in Altona gaol or in internment camps.²⁹ The majority of those whose trials were pending were held in connection with charges of brutal ill-treatment of individuals in concentration camps. This ill-treatment had, in some cases, resulted in the death of the victim. Some of these suspects might be released for lack of evidence, but on the other hand, the outstanding trials might bring to light evidence which incriminated another person against whom separate proceedings would then have to be brought. There were two courses of action open to the Foreign Office:

- (i) To fix a date after which no further trials would be started or
- (ii) To bring to trial as many cases as possible with the existing staff before a specified date, and after that date retain a small staff so that the remaining 'particularly serious' cases could be investigated and tried.

²⁸ Memorandum by the Foreign Secretary, quoted in the minutes of the Cabinet ORC, 12 April 1948. NA FO 371/70817. CG1642/34/184.

²⁹ Minutes of the Cabinet ORC, 12 April 1948. NA FO 371/70817. CG1642/34/184.

These choices had, of course, already been spelled out by Shapcott in his October 1947 memorandum to the Secretary of State for War.³⁰ The War Office was still opposed to the first course of action.

The Cabinet Ministers were also 'greatly concerned' to learn that it was not expected that the British Military Tribunals could dispose of the outstanding cases before the end of September 1948. The committee was of the opinion that it was 'intolerable' that any individual awaiting trial on a charge of murder should be held in custody for over two years. As the minutes note, 'Such inhumanity brought our administration of justice into grave dispute and was liable, under present conditions, to have very unfortunate political effects.'³¹ Again, the government and leading civil servants were anxious to be seen as observing the niceties of justice and were likewise keen not to hand any propaganda victory to the USSR.

It was reiterated once again that every effort should be made to bring to trial the remaining defendants in custody by the deadline of 1 September 1948. There was an exception, however. The prominent German officers Brauchitsch, Rundstedt, Manstein and Strauss were exempt from the ruling.³² In so far as the slow progress was due to a shortage of staff, the War Office should introduce measures to combat this difficulty by such means as the temporary employment of retired officers or of staff on loan from other departments.³³

³⁰ Shapcott memorandum to the Secretary of State for War, the Lord Chancellor and the Foreign Office, 15 October 1947. NA FO 371 64718/C13471/7675/180.

³¹ Minutes of the Cabinet ORC, 12 April 1948. NA FO 371/70817. CG1642/34/184.

³² Minutes of the Cabinet ORC, 12 April 1948. NA FO 371/70817. CG1642/34/184. Also see memorandum from Newton to Dean, 26 August 1948. NA FO 371 70821. CG3440/34/184.

³³ Minutes of the Cabinet ORC, 12 April 1948. NA FO 371/70817. CG1642/34/184.

The issue of extradition was also becoming more important at this time. In a briefing paper for Sir William Strang, political advisor to the military governor, in April 1948, it was noted that there had been some problems with the extraditions process in the British Zone. For example, there had been allegations by some allied governments (particularly the Poles) that the authorities in the British Zone were not taking the proper steps to trace war criminals wanted by other powers.³⁴ There had also been charges in the past that alleged war criminals were extradited to other countries without the knowledge of the German people, without knowing the charges against them and without having a chance to state their case.³⁵ In response to these worries an Extradition Tribunal was established in Hamburg by the Military Governor. The accused appeared before the public tribunal, represented by a lawyer. A *prima facie* case then had to be proved on behalf of the claimant country. Besides standard extradition cases, the tribunal also heard cases against alleged traitors claimed by countries (other than Yugoslavia) for offences against the laws of those countries, who could be traced to the British Zone of Germany.

Yugoslavia had always been a special and complicated case. A significant proportion of the Yugoslav population had fought alongside the Germans and Italians against the Communist Marshal Tito. In some cases these individuals were guilty of war crimes. But there was another group of Yugoslavs who had not collaborated with the fascists but remained loyal to the monarchy of the pre-war period. Their loyalty to the previous regime made them, by definition, enemies of Tito even though most had never committed any war crime.³⁶ In August 1947 G A Wallinger of the War Office

³⁴ See for example, O'Grady minute, 3 May 1948. NA FO 371/70818. CG122/34/184.

³⁵ Brief for Sir William Strang, ORC meeting, 12 April 1948. NA FO 371/70818. CG2134/34/184G.

³⁶ On the history of Yugoslavia and Tito from 1939 see for example, Pavlowitch, Stevan K., *Tito: Yugoslavia's Great Dictator - A Reassessment* (London: Hurst, 1992); Pavlowitch, Stevan K., *The*

sent a note to Christopher ("Kit") Steel at the Foreign Office imploring him to 'make it clear to the Military Governor that there is no such thing as a Yugoslavian war criminal in that no Yugoslav citizen has been listed by the UNWCC.'³⁷ Although some Yugoslav citizens were later identified as war criminals, the Foreign Office was very aware that accusations of war crimes might well be levied against anti-Communists in a cynical bid to eliminate Communist political opposition. Requests for extradition by Yugoslavia were therefore personally considered by the Parliamentary Under Secretary.³⁸

The Foreign Office was also aware that there had been degrees of deception in the past with countries (mainly in Eastern Europe) claiming persons as witnesses for war crimes and then accusing them of war crimes when they were on their soil. Steps were taken to stop this happening by refusing to dispatch witnesses from the British Zone until immediately before the trial and requiring a guarantee that they were released and returned within 60 days.³⁹ In May 1948, it was decided to amend the wording of the extradition agreement to 'Murder as defined in the German penal code'. This change in wording was considered to clear up some outstanding confusion.⁴⁰

Improbable Survivor: Yugoslavia and its Problems, 1918-1988 (London : Hurst, 1988); West, Richard, *Tito and the Rise and Fall of Yugoslavia* (London : Sinclair-Stevenson, 1994); Deak, Istvan and Gross, Jan T., (eds.) *The Politics of Retribution in Europe: World War II and Its Aftermath* (Princeton, 2000). On Britain and Yugoslavia in the same period see Wheeler, Mark C., *Britain and the War for Yugoslavia, 1940-1943* (Boulder, Colorado, East European Monographs, 1980); Modisett, Lawrence E., 'The Four-Cornered Triangle: British and American Policy toward Yugoslavia, 1939-1945' (PhD thesis, Georgetown University, 1981); Lane, Ann, *Britain, the Cold War and Yugoslav Unity: 1941-49* (Brighton: Sussex Academic, 1996); Martin, David, *The Web of Disinformation: Churchill's Yugoslav Blunder* (San Diego: Harcourt Brace Jovanovich, 1990); McConville, Michael, *A Small War in the Balkans: British Military Involvement in Wartime Yugoslavia, 1941-1945* (London: Macmillan, 1986); Deroc, M., *British Special Operations Explored: Yugoslavia in Turmoil 1941-1943 and the British Response* (New York: Columbia University Press, 1988).

³⁷ Memorandum from Wallinger to Steel, 11 August 1947. NA WO 32 12197 10712/97/92.

³⁸ Brief for Sir William Strang, ORC meeting, 12 April 1948. NA FO 371/70818. CG2134/34/184G.

³⁹ Ibid.

⁴⁰ Foreign Office Memorandum, 31 May 1948. NA FO 371/70819. CG2367/34/184.

Announcements were accordingly dispatched to the Americans, Soviets and French governments.

There was of course, also the issue of the extradition of persons *to* the British Zone. In April 1948 it was reported that no progress had been made in attempts to obtain, by quadripartite agreement, the re-instatement of Germany's pre-war Extradition Treaties. It was still impossible, therefore, for an individual to be brought back to the British Zone for a trial before a Control Commission court if they had managed to escape the country before he could be apprehended.⁴¹ There was, however, a possible way around this problem, at least for some cases. Shinwell, the Secretary of State for War proposed an amendment to Section 158 of the Army Act. This would make it possible for an individual to be tried by a court martial up to three years after he had ceased to be subject to military law. The amendment would cover the cases of army officers who had committed offences in Germany, but were no longer resident in the country, having left before their alleged offences came to light. The matter was still under discussion, but it was hoped that legislation could be introduced to this effect. The legislation would also cover any members of the British army who had committed offences in Germany and then left the army, to be tried in the United Kingdom. This tricky and potentially embarrassing question was examined by the Maxwell Committee during its visit to Germany in early 1948. The Committee reported that 'neither the number of offences nor their gravity were sufficient to warrant any concern.'⁴²

⁴¹ Brief for Sir William Strang, ORC meeting (anticipating the Maxwell report), 12 April 1948. NA FO 371/70818. CG2134/34/184G.

⁴² Brief for Sir William Strang, ORC meeting, 12 April 1948. NA FO 371/70818. CG2134/34/184G.

Since the Cabinet had decided to end British Military Tribunals on 1 September 1948 it was believed that this also solved some of the debates about extradition. After 1 September 1948, JAG no longer had to worry about the possibility of other countries taking reciprocal action should the Foreign Office refuse to extradite war criminals to them. There was one cloud on the horizon, however. The ORC observed that 'there can be little doubt that countries east of the Iron Curtain will raise violent protests.'⁴³ To complicate matters, the recommendation that extradition applications should continue to be received up to the 1 September 1948, logically meant that the Extradition Tribunal at Hamburg would have to sit for a considerable period after that date. Marsden-Smedley, head of the German General Department, could not however see 'any alternative' to this course of action.⁴⁴

The British Section of the World Jewish Congress and the Board of Deputies of British Jews, however, were concerned by the waning interest of the western powers in war crimes committed against Jewish peoples. A report to the European Members of the WJC in September 1948, noted that cases which did not involve nationals of the Allied country concerned faced 'considerable opposition'. This was particularly noticeable in the case of Britain.⁴⁵ The WJC was rather late in picking up on what had been a trend – indeed official policy – in the Foreign Office and War Office for some time.

Both the WJC and the Board of Deputies, however, attempted on occasion, to press the Foreign Office to bring suspected war criminals to justice. One example, Dr

⁴³ Minutes of the Cabinet ORC, 12 April 1948. NA FO 371/70817. CG1642/34/184.

⁴⁴ Memorandum from Marsden-Smedley to Ivone Kirkpatrick, 18 May 1948. NA FO 371/70819. CG2163/34/184.

⁴⁵ The Report of the Legal department to the Meeting of the European Members of the World Jewish Congress Executive, 23 September 1948, UoS MS 241/4/3/1.

Wladylaw Alexander Dering, had been identified at the IMT at Nuremberg as a participant in experiments on human beings at Auschwitz – his ‘speciality’ being experiments on x-raying and castration.⁴⁶ After the Nuremberg Trial, the Polish authorities requested that he be extradited for trial. The request was first granted and then withdrawn on the grounds of insufficient evidence. Dering was released from custody shortly afterwards.⁴⁷ The WJC actively participated in the case, collecting additional evidence which was submitted to the Foreign Office.⁴⁸ Alex Easterman, on behalf of the WJC, also wrote to the Foreign Office expressing concern about the possibility of Dering ‘escaping justice’.⁴⁹ The Foreign Office took the concerns of the WJC extremely seriously, but eventually decided that to allow Dering to be extradited to Poland, given the hearsay nature of the evidence against him, would be a violation of international practice.⁵⁰ As it was, Dering made his way to England in 1946, and worked for many years as an NHS doctor in London until he died in 1965.⁵¹ So although the WJC were successful in their aim of bringing cases to the attention of the Foreign Office, they were ultimately unable to bring the case to trial.

Meantime, in Germany, the process of winding up the infrastructure for the war crimes trials programme had already begun. The No. I War Criminals Holding Centre at Fischbeck was originally established to hold individuals who might be tried before

⁴⁶ Trial of the Major War Criminals Before the International Military Tribunal (Official Proceedings), Volume VIII (International Military Tribunal: Nuremberg, 1948), p. 309.

⁴⁷ Board of Deputies Report, 1948. LMA ACC/3121/C11/7/2/009.

⁴⁸ The Report of the Legal department to the Meeting of the European Members of the World Jewish Congress Executive, 23 September 1948, UoS MS 241/4/3/1.

⁴⁹ ‘Short Notes on the activities of the European Secretariat (WJC) between 15 July and 25 September 1948’, UoS MS 241/4/3/1.

⁵⁰ The Report of the Legal department to the Meeting of the European Members of the World Jewish Congress Executive, 23 September 1948, UoS MS 241/4/3/1.

⁵¹ Dering’s former life as a ‘Nazi doctor’ did however come to light in a 1964 libel trial. See Owen, Aron, ‘Crimes that go Unpunished’ *Justice: The International Association of Jewish Lawyers and Jurists* 5 (May 1995), pp. 19-27 and Hill, Mavis Millicent, *Auschwitz in England: A Record of a Libel Action* (London : MacGibbon & Kee, 1965).

a British Military Tribunal or who might be extradited to other countries to be put on trial there. The War Office decided that all persons who were definitely going to be tried (approximately 200 individuals) should be removed from Fischbeck and placed instead at the No. 2 War Criminals Holding Centre at Brunswick. Suspected criminals awaiting appearances before the Extradition Tribunal in Hamburg should also be moved from Fischbeck – this time to the former concentration camp at Neuengamme. The War Office hoped that all transfers would be complete within a month. The Fischbeck camp would then be closed down.⁵²

There were also plans afoot to cut down on the number of high ranking security suspects held in the British Zone. Individuals detained at the Adelheide camp near Delmenhorst had never been charged with a specific offence. They had, instead, been held on general security grounds. These persons consisted of high ranking officers of such Nazi organisations as the SA and HJ, members of the Reich Cabinet since 1933, certain members of the German Intelligence Services and a number of Service Officers held simply as 'militarists'. These individuals were normally career soldiers in the traditional Prussian style 'who by reason of their record and military training have been considered likely to promote the spread of militaristic ideas if given their liberty.'⁵³ These individuals were held not because they were thought to have committed any particular crime but for what was deemed to be the public good.

In January 1948, the Military Governor, Sholto Douglas, had launched a review of all German service personnel held as potential militarists. He proposed to release all except those who had strong Nazi connections and were thus still considered

⁵² Brief for Sir William Strang, ORC meeting, 12 April 1948. NA FO 371/70818. CG2134/34/184G.

⁵³ Report 'Detention of Security Suspects' (signature illegible), 12 April 1948. NA FO 371/70818. CG2134/34/184G.

dangerous.⁵⁴ The initiative was approved and it was hoped that by the end of August 1948 only a small hard core of Nazis (numbering between 20 and 40 individuals) would still be left in the camp. Upon screening the inmates of the Adelheide camp, however, it was decided to release a number of them immediately. The number of persons interned at Adelheide was reduced from 550 at the beginning of January 1948 to fewer than 230 by April 1948.⁵⁵ It was hoped that this number could soon be reduced further with a view to Adelheide being shut down permanently. The Military Governor did, however, retain the right to detain 'dangerous persons' in 'exceptional circumstances' without trial.

Alongside the winding down of the trials process came inevitably the issue of amnesty. In April 1948, the Foreign Office official Patrick Dean noted that in the American Zone alone, there were 350 war criminals who had been sentenced to death but whose sentences had not been carried out.⁵⁶ Dean, a supporter of war crimes trials, was worried that delays in the carrying out of sentences apparent in the U.S Zone would 'discredit' policy in the British Zone:

I do not know how many more death sentences are likely to be carried out in the British Zone but I assume that they are on the decline and that the number of trials for war crimes which are likely to lead to death sentences being imposed will not be very many in the future. On that assumption, I think that the decision whether we should continue to carry out death sentences in the British Zone, while the American delay in doing so in theirs, should be

⁵⁴ Memorandum from Sholto Douglas, January 1948. NA FO 371/70818.

⁵⁵ Report 'Detention of Security Suspects' (signature illegible), 12 April 1948. NA FO 371/70818. CG2134/34/184G.

⁵⁶ Memorandum from Patrick Dean (Foreign Office), 17 April 1948. NA FO 371/70817. CG1697/34/184.

decided solely in accordance with our own ideas of justice and policy and should not be influenced by what is going on or not going on in the U.S Zone.⁵⁷

Dean was also adamant that British policy should not be overly influenced by the possible Russian reaction: 'I do not myself think that we need pay too much attention to what the Russian-controlled eastern press says on this matter and should not think it right to be deterred from carrying out an execution if it is decided that it ought to be carried out as a matter of justice...merely because the Russians may make some propaganda out of it.' Dean was one of the few Foreign Office officials who was largely unconcerned about the Soviet question. The prevailing atmosphere in the Foreign Office was one of suspicion and hostility towards the Russians, coupled with the utmost determination not to hand them any sort of propaganda victory.⁵⁸

On 30 April 1948, Shinwell, the Secretary of State for War, responded to the recommendations made during the ORC meeting two weeks earlier on 12 April. Besides disagreeing with the decision to alter the date for cessation of extraditions to the 1 September and turning down the offer of swelling his staff by taking on staff from other offices on a temporary basis, Shinwell asked that the War Office be allowed to continue the trials of war criminals until the end of September 1948: 'A month does not make much difference as regards the objective of winding up the trials without delay, but it makes all the difference from the point of view of giving us a

⁵⁷ Memorandum from Patrick Dean (Foreign Office), 17 April 1948. NA FO 371/70817. CG1697/34/184.

⁵⁸ See Foreign Office correspondence, December 1947-April 1948. NA FO 371/70817.

proper opportunity of getting the work done.’⁵⁹ Bevin, as chair of the ORC had, of course, stated that all war crimes trials should cease by the beginning of September. Four days later, his office responded on his behalf, stating the ‘The Secretary of State...is most anxious to clear the decks before September.’⁶⁰ Bevin himself replied in stronger terms five days later:

I must now work on the assumption that important developments in Germany may take place in September. Therefore, I consider that it is highly desirable that we shall as far as possible have buried the past by the 1st September. I would deplore having any war crimes trials lingering into that month, and I cannot really agree...to a change in the date.⁶¹

As an alternative, Bevin suggested that the War Office concentrate only on ‘the most serious’ of the remaining cases. Bevin is not explicit as to what these ‘important developments’ he mentions may be. It is likely however, that he was referring to the planned assembling of a Parliamentary Council on 1 September 1948. This Council was due to discuss the foundations of what would become the Federal Republic of Germany. His reference to ‘burying’ the past is also significant. By spring 1948 even Bevin had firmly decided that war crimes trials in the British Zone must cease.

By the time the Berlin blockade began on 24 June 1948, the Western relationship with the USSR had reached an all time low.⁶² The long voiced fears in the Foreign Office

⁵⁹ Letter from Shinwell to Bevin, 30 April 1948. NA FO 371 70818. CG1954/34/184. Also see NA FO 371 70818. CG154/34/184.

⁶⁰ Bevin’s Office to the Head of the War Office, 3 May 1948. NA FO 371/70818. CG154/34/184.

⁶¹ Letter from Bevin to Shinwell, 8 May 1948. NA FO 371/70818. CG154/34/184.

⁶² See Tusa, Anne and Tusa, John, *The Berlin Airlift* (Sarpedon: New York, 1998).

and War Office and indeed the press, had finally come to fruition. As *The Economist* observed:

The essential facts in this situation were predictable six months ago after the four Foreign Ministers failed to agree about the future of Germany in their London meeting. The details were predictable three months ago. The Russians made it clear, by one piece of obstruction after another, that they were ready to hinder [the West]...In a test of nerves, it is no good having weak nerves.⁶³

In some senses, however, the beginning of the Berlin blockade was something of a relief. Now that the battle lines were clearly drawn, HMG could, to a large extent, cease worrying about the Russian reaction to their policies, not least the war crimes trial programme.

(IV) War Crimes Trials and British Victims: The Last Phase

A firm understanding now existed in both the Foreign Office and War Office that 1 September 1948 was the deadline for trying cases in the British Zone of Germany (with the exception of the Brauchitsch, Rundstedt, Manstein and Strauss cases). There was something of a loophole, however. The understanding was that trials should begin by 1 September 1948, but there was nothing to prevent judges opening trials in late August and then immediately adjourning the proceedings until a later date.

⁶³ *The Economist*, 3 July 1948, pp. 1-2.

The discussion of what to do with war criminals where the victims were British, however, rumbled on. Of utmost importance here was the Stalag Luft III case.

Shinwell, the Secretary of State for War, was determined that if further individuals were apprehended who were implicated in the Stalag Luft III murders then they should be tried by the British, even if they were detained after 1 September 1948.

There was something to be said for Shinwell's proposal. Firstly, there was the public outcry that had occurred when information about the atrocity had reached Britain. At the time, the then Foreign Secretary Anthony Eden had promised that HMG 'will never cease in their efforts...to identify all those responsible.'⁶⁴ There was also that fact that there was no time limit imposed upon the arrest and trial of those suspected of murder. Added to this, Shinwell also reported what he saw as a key point - 'It will not cause us any embarrassment if the War Office were to try after 1st September any Stalagluft [sic] III murderers (or similar criminals) who may be apprehended after that date.'⁶⁵

Working against Shinwell's suggestion was the fact that the Secretary of State (Bevin) had already refused Shinwell's request to extend the deadline for war crimes trials from the 1 September to the 30 September. Michael O'Grady of the Foreign Office also noted that Eden's remarks in the Commons were made at a time when the whole country, in the fervour of war, was filled with horror by the Stalag Luft III case. There was certainly a measure of this, O'Grady argued, in Eden's speech. This wholly justifiable anger had 'now passed from the hearts of many British people, perhaps

⁶⁴ Commons Statement by Eden, 23 June 1944. NA FO 371 38998 C9295/14/62. Also see NA FO 371/70819. CG2318/34/184.

⁶⁵ Report from Shinwell to Bevin on the 'Cessation of War Crimes Trials', 25 May 1948. NA FO 371/70819. CG2318/34/184.

even from the majority.’⁶⁶ Although O’Grady saw the logic in trying murderers of British citizens while HMG was still extraditing suspects to other countries for trial, he also controversially believed that ‘there is no reason why we should not set an example of clemency...particularly as there was an element of duress about so many of the murders of prisoners-of-war.’ It is important to note this comment, as it was symbolic of the huge turn around in the thinking of the Foreign Office in cases which concerned British citizens. With regard to the point that war crimes trials were supposed to have a constructive affect on Germany public opinion by highlighting the crimes of the regime, O’Grady noted:

There is likely to be little effect on German public opinion now if we continue with these trials and if the lesson has not been taught already, further trials, even of murderers, will not teach it. It is unlikely that such murderers would expose their own guilt and we shall therefore not be faced with the embarrassment of knowing that self-confessed murderers were at large in the British Zone.

Again, O’Grady was keen to stress that it was unlikely that HMG would suffer any embarrassment as the result of such a policy. All things considered, O’Grady came out against Shinwell’s proposal. Marsden-Smedley was in agreement with O’Grady adding that, even if the victims were British ‘there is nothing further to be gained from unending repetition of the lessons that have already been hard pressed, and there may well be something lost politically.’⁶⁷ This we can understand as another veiled reference to the need to keep Western Germany as an ally.

⁶⁶ O’Grady response to the ‘Cessation of War Crimes Trials’ report, 28 May 1948. NA FO 371/70819. CG2318/34/184.

⁶⁷ Responses from Marsden-Smedley, 28 May 1948. NA FO 371/70819. CG2318/34/184.

In early June, Shinwell was duly informed by the Foreign Secretary that 1 September 1948 would be the final date for war crimes trial, whether the alleged perpetrators were in custody or not:

I quite agree that it is understood amongst all peoples that murderers will be pursued as long as their existence is known, and that there is no time limit upon their arrest and trial. I recall too that my predecessor, [Eden] on the 23rd June, 1944 stated that it was the intention of H.M Government to pursue the Stalagluft [sic] III murderers with unremitting effort. War crimes, however, were committed by individuals often under the influence of the discipline of the body to which they belonged. Their punishment is more a matter of discouraging future generations than meting out retribution to the guilty. If the German people have not learnt their lesson by now, further trials will not teach it and I am sure there is a large body of public opinion in this country which considers that a definite time limit should be fixed to these trials.⁶⁸

We can see here that the Secretary of State for Foreign Affairs was buying into the idea of 'superior orders' as a legitimate defence.

In January 1947, there were just under 1000 individuals held in custody in the British Zone on war crimes charges.⁶⁹ In line with the winding down process, eighteen months later, in June 1948, this figure was 259 individuals. This number could be broken down as follows:

⁶⁸ Telegram from the Foreign Secretary to Shinwell, 9 June 1948. . NA FO 371/70819. CG2318/34/184.

⁶⁹ Report from the Law Officers Department, to the Prime Minister, 17 January 1947. NA FO 371 66559/U161/9/73.

- (i) Total on trial or awaiting trial: 39
- (ii) Total for whom evidence is complete (charges under consideration in London): 42
- (iii) Total number of cases under investigation (of which are estimated to be brought to trial): 78
- (iv) Individuals held at Neuengamme awaiting extradition hearings: 100⁷⁰

Shinwell was understandably bitter that his proposal had been rejected. With more than a hint of sarcasm he observed:

The Foreign Secretary has recently pressed that all War [sic] trials should be brought to an end, and the past buried as far as possible, by 1st September next, even though this may mean leaving untried men guilty of atrocious crimes against our own people, such as the Stalag Luft III murders, who may come into our hands after that date. It is quite consistent with this to embark now on the trial of these Generals [Manstein et al] on charges in which our own direct interest is very small.⁷¹

The policy discussion that took place between Bevin and Shinwell, and to a broader extent the Foreign Office and the War Office, between late 1947 and mid 1948, strongly suggest that the decision to bring an end to war crimes trials was not simply a judicial one. Instead, the inescapable conclusion is drawn that the winding down of the trials process had both a practical element and a key political dimension as well.

⁷⁰ Telegram from Lübbecke to the Foreign Office (information collected for a response to a Parliamentary question asked by Sir Ralph Glyn). NA FO 371/70819. CG2533/34/184.

⁷¹ Shinwell Cabinet memorandum, 30 June 1948. NA CAB 129/28. -

Reiterated in Foreign Office and War Office again and again – both implicitly and explicitly - is the need to build friendly relations with the West Germans as a defence against apparent increasing Soviet hostility.⁷²

Relations with the Soviet authorities had been somewhat strained since 1945. Forced to unite to fight a common enemy, the end of the war brought the ideological differences between the three western democracies and the USSR into sharp relief. In the early years of the occupation, the British Foreign Office and War Office found themselves repeatedly thwarted by what they perceived as petty, obstructive Soviet officialdom. Co-operation between the four powers had suffered a blow when the Soviets had declined to join the War Crimes Commission and made known their contempt of CROWCASS.⁷³ War Crimes Group officials on the ground also reported that the Soviet authorities were often difficult in dealings over extradition – in some cases demanding that certain individuals be handed over to them for trial, in others refusing to hand over suspect criminals to other Zones.⁷⁴ By late 1947, however, this mutual mistrust had deepened to the extent that there was now little contact between the British Foreign Office and their Soviet equivalent.

In July and early August 1948 the priority for the Foreign Office was to obtain agreement from the Commonwealth as to its policy regarding the cessation of war crimes trials. Responding to a memorandum by the Commonwealth Relations Office

⁷² See, for example, NA FO 361 64713/C8850/7675/180; Foreign Office Paper for the ORC (unsigned), 12 April 1948; Memorandum from Patrick Dean (Foreign Office), 17 April 1948. NA FO 371/70817. CG1697/34/184; NA FO 70816 CG1270/34/184; Memorandum from Jowitt to the Overseas Reconstruction Committee, 11 June 1947; Robertson's comments in *The Times*, 28 August 1948, p. 4.

⁷³ War Office memorandum, 17 January 1947. WO 32 12197.

⁷⁴ See for example, discussions of extradition of suspects in the Stalag Luft III case, Telegram to Soviet government in Moscow, May 1946. NA FO 371/57595/U7034; Roberts Telegram from Moscow, June 1946. NA FO 371/57595/U6088.

(CRO) on this point, only New Zealand expressed doubts as to the wisdom of such a strategy.⁷⁵ The CRO assured its members that it did not intend to broadcast its decision to end the trials: 'We do not (repeat not) intend to make a public announcement in advance regarding the final date for starting trials... We are nevertheless, anxious to bury the past and do not (repeat not) feel that we can allow these trials to continue indefinitely.'⁷⁶ In other words, the intended strategy was to allow war crimes trials in Germany to be quietly dropped.

By the September deadline, there were still thirteen cases that were ongoing in British Military courts.⁷⁷ Some – including the Stalag Luft III trial (second case) had begun in the last days of August to beat the deadline, only to be adjourned immediately.

The second of the Stalag Luft III proceedings, pertaining to suspects who had not been in British custody at the time of the first trial, eventually got underway in September 1948. The case, which lasted just under three weeks, was concerned with the trial of three individuals, Erwin Wiecezorek, Richard M. Haensel and Reinhold Bruchardt, who were charged with involvement in the shooting of 50 Allied officers re-captured after an escape attempt on the night of 24-25 March 1944. In contrast to other prominent war crimes trials in British-occupied Germany, all three were represented by German counsel. The charges were as follows:

- (i) (against each of the three accused): Being concerned together and with SS Gruppenfuehrer Nebe and various others, at diverse places in Germany

⁷⁵ Telegram from the New Zealand government to the CRO, 29 July 1948. NA FO 371/70818. CG1954/34/184.

⁷⁶ Telegram from the CRO to the New Zealand government, 7 August 1948. NA FO 371/70818. CG1954/34/184.

⁷⁷ Letter from Barratt to Newton, 10 September 1948. NA FO 371/70822. CG3692/34/184.

and German occupied territory, between 25 March 1944 and 13 April 1944, in the carrying out of an order to kill prisoners of war who had escaped from Stalag Luft III as a result of which said order 50 such prisoners were killed.

- (ii) (against the accused Wieczorek): Being concerned in the killing of four named Allied Air Force Officers prisoners of war, at a place between Hirschberg and Sagan Germany, on or about 29 March 1944 when a member of the Breslau Gestapo.
- (iii) (against accused Wieczorek and Haensel): Being accused in the killing of six named Allied Air Force Officers prisoners of war in the vicinity of Halbau near Goerlitz, Germany on or about 30 March 1944 when members of the Breslau and Goerlitz Gestapo respectively.
- (iv) (against the accused Bruchardt): Being concerned in the killing of four named Royal Air Force Officers prisoners of war in the vicinity of Gross Trampken, Danzig on or about 27 March 1944 when a member of the Danzig Gestapo.⁷⁸

What is notable about the second Stalag Luft III case is the lack of attention it attracted from the British press, especially compared to the first case. The only mention of Stalag Luft III case in the British press during August-September 1948 was a brief mention in a article *Times* which marked the anniversary of the death of Squadron Leader Roger Joyce Bushell who had been murdered by the Gestapo after

⁷⁸ Charges against the accused in the second Stalag Luft III case. NA WO 235 573.

escaping from the camp.⁷⁹ This was indicative of a very definite waning of both media and public interest in the case.

At the end of the three week long trial, Erwin Wieczorek was found guilty on counts 1 and 2 and Reinhold Bruchardt on counts 1 and 4. Richard Haensel was acquitted on both of the charges levied against him. Wieczorek and Bruchardt received sentences of death, though both later had their sentences commuted to life imprisonment.⁸⁰

Shortly after the trial ended, it was announced that the trust fund created as a practical way of helping the widows and dependants of the 50 officers killed, was to be wound up.⁸¹ Remaining funds were transferred to the Stalag Luft III Communal Fund which existed for the relief and rehabilitation of ex-prisoners at the camp and was administered by the RAF Benevolent Fund. This marked the final 'winding up' of the Stalag Luft III case.

In October 1948 the House of Commons was informed that, as of 1 September 1948, the Foreign Office had 'drawn a sponge across the war crimes trials in Germany' and that with the exception of German generals, no further war crimes trials would take place in the British Zone of Germany.⁸² The Government view was that the generals would be put on trial because 'people subordinate to these generals have already been tried, and some of them punished for crimes which...were in pursuance of orders given by [those] generals.'

⁷⁹ *The Times*, 30 August 1948, p.1.

⁸⁰ Sentences against the accused in the second Stalag Luft III case. NA WO 235 573.

⁸¹ *The Times*, 8 October 1948, p. 2.

⁸² Hansard Parliamentary Debates, fifth series (House of Commons), Vol. 457, c. 272. Also see *The Economist*, 6 November 1948, p. 742.

On 28 March 1949, the Under-Secretary of State for Foreign Affairs was able to report to the House of Commons that the final statistics for persons tried in the British Zone were as follows:

War Crimes:

- (i) Persons charged before British Military Tribunals with crimes against the laws and usages of war: 937
- (ii) Acquitted: 260
- (iii) Sentenced to death: 230
- (iv) Sentenced to life imprisonment: 24
- (v) To shorter terms of imprisonment: 423

Crimes against Humanity before Control Commission Courts:

- (i) Persons charged before Control Commission Courts with crimes committed against Allied Nationals: 148
- (ii) Acquitted: 88
- (iii) Sentenced to death: 10
- (iv) Sentenced to shorter terms of imprisonment: 50

Crimes against Humanity before German Courts:

- (i) Persons charged before German Courts with crimes committed against German nationals or stateless persons: 2,180
- (ii) Acquitted: 866
- (iii) Sentenced to death: 4
- (iv) Sentenced to life imprisonment: None

- (v) Sentenced to shorter terms of imprisonment: 1,249
- (vi) Fined: 61⁸³

(V) The Amnesty Question

The question of amnesty for some war criminals - those who were thought to be special cases or particularly vulnerable - was first raised in the British press in 1947. After visiting both Catholic and Protestant churches in the British Zone, a group of British churchmen issued a report to the Control Office for Germany. While they believed that high ranking Nazis should be removed from their post and tried for war crimes if applicable, they also urged the authorities to grant a mass amnesty to all other persons.⁸⁴ Calls for convicted war criminals to be given amnesty were to become common among Christian groups (both Catholic and Protestant and in both Britain and Germany) from 1947 onwards.

Between 1947 and 1948, the British war crimes trial programme was still ongoing and although individual prisoners were occasionally granted clemency, suggestions of any sort of general amnesty were not entertained. By 1949, however, the Soviet authorities were becoming concerned by what they saw as a growing tendency among the western powers to grant amnesty to individuals on dubious grounds. At a four-power meeting in October 1949, for example, the Soviet representative cited the case

⁸³ Statistics given by the Under-Secretary of State for Foreign Affairs (Mayhew) in reply to a parliamentary question, 28 March 1949. Hansard Parliamentary Debates, fifth series (House of Commons); Maugham, Viscount, *U.N.O and War Crimes* (John Murray: London, 1951), p. 21.

⁸⁴ Reported in *The Times*, 27 January 1947, p. 3. On the Issue of the Anglican Church and the Holocaust see Lawson, Tom, *The Church of England and the Holocaust: Christianity, Memory and Nazism* (New York and Suffolk: Boydell Press, 2006).

of Franz Mueller. This individual had been sentenced to ten years imprisonment in 1946. He was granted amnesty because he 'had to take care of his divorced wife and children.'⁸⁵ Rupert Ludl, also imprisoned for ten years in 1946 was released because of 'rheumatism in his legs.' The prisoner was, however, unable to submit proof of his disability to the Medical Commission. These were both American cases, but the Soviets claimed that they could name further examples from both the British and French Zones. The Soviet occupation authorities feared that such measures were paving the way for a more general amnesty of war criminals. The Soviets, as it turned out, were right to be concerned.

In 1949, a Committee was established under Major-General Wade, with the purpose of reviewing all war crimes tried in the British Zone under the Royal Warrant procedures and Army Order No. 81.⁸⁶ 564 prisoners were involved, including 487 Germans, 47 Italians, 9 Austrians and 21 individuals of other nationalities. In August 1949 the Committee recommended that 107 – or almost a fifth – should have their sentences reduced. No prisoner was, however, granted amnesty. The High Commissioner of the British Zone remained the only individual able to pass orders of amnesty to convicted war criminals, though other bodies were of course free to make recommendations that this privilege should be extended to certain individuals.

Meanwhile, on May 23 1949, the Federal Republic of Germany was brought into being. Although the occupation forces remained in residence and the new state would not be declared 'fully sovereign' until May 1955, it did have considerable powers to appoint officials and to pass legislation. One of the first acts of the Federal Republic

⁸⁵ Four power meeting, 24 October 1949. NA FO 1020 164.

⁸⁶ Maugham, *U.N.O and War Crimes*, p. 143.

was to draft the 'Federal Amnesty Law', aimed at granting amnesty to those convicted of war crimes. The British were understandably unconvinced of the wisdom of allowing such a controversial piece of legislation to pass through the new parliament uncontested. Allied fears were calmed, however, by a letter from Konrad Adenauer. Instrumental in the establishment of the Christian Democratic Union (CDU) a successor to the Catholic Centre Party, in 1945, Adenauer had become the first Chancellor of the new Republic in September 1949. In this letter to the Chairman of the Allied High Commission, Adenauer assured the British that 'The Law does not apply to penalties imposed by Courts of the Occupation Authorities.'⁸⁷ The Allied High Commission therefore decided not to 'disapprove the law' which came into force on 31 December 1949.⁸⁸

It is not the purpose of this chapter to discuss in detail the consequences of the Amnesty Law and the more general German desire to draw a veil over the past, as work on this subject has already been carried out by Norbert Frei among others.⁸⁹ Rather, it is to note some of the attitudes towards the amnesties. Most in the Foreign Office and War Office had long been governed by a policy of pragmatism and integration with West Germany as this confidential Foreign Office policy statement illustrates:

It is now our declared object, and that of the French and United States'

Governments, to bring the Federal Republic of Germany into full political

⁸⁷ Letter from Adenauer to the Chairman of the Allied High Commission, 30 December 1949. NA FO 1023 210/4999/132.

⁸⁸ See Foreign Office Correspondence, December 1949. NA FO 1023 210/4999/132.

⁸⁹ See Frei, Norbert, *Adenauer's Germany and the Nazi Past: the Politics of Amnesty and Integration* (Columbia University Press: New York, 2002) and Frei, Norbert 'Das problem der NS-Vergangenheit in der Ära Adenauer' in *Rechttradikalismus in der politischen Kultur der Nachkriegszeit: Die verzögerte Normalisierung in Niedersachsen* ed. Bernd Weisbrod (Hahnsche Buchhandlung: Hanover, 1995), pp. 19-31.

and economic cooperation with the West and discussions are already in progress with a view to enabling Germany to contribute to western defence. When a factor of serious importance emerges, which hinders the implementation of this new policy towards Germany, it is incumbent on...His Majesty's Government to take this factor into consideration and to give it due political weight...It is with the above considerations in mind that the present review of [war crimes] sentences in the United Kingdom Zone is being undertaken.⁹⁰

In October 1951, the Conservative Party was victorious in the General Election. Churchill, as we have seen above, had always been wary of war crimes trials, and particularly the trials of German officers. Realistically, Churchill could not hope to release all such prisoners without recourse to the authorities in the British Zone (and particularly the British High Commissioner, Sir Ivone Kirkpatrick) but he nevertheless attempted to do so.⁹¹ He was eventually persuaded by his Foreign Secretary, Anthony Eden to make a less controversial approach and exploit a 'loophole' whereby time served in prison before trials began could be deducted from the sentences of offenders.⁹² Many German officers benefited, having their sentences immediately reduced.

The flood of amnesties in the early 1950s - initially only of those convicted by German courts - was greeted with disquiet by the British press, even in those newspapers which had long ceased to see any benefit in war crimes trials and

⁹⁰ Confidential memorandum by the Minister of State, 6 February 1951. NA PREM 8 1570 (51) 38.

⁹¹ Memorandum from Churchill to Eden, 29 November 1951. NA FO 800 846.

⁹² Memorandum from Eden to Churchill, December 1951. NA FO 800 846.

repeatedly called for them to be brought to a close, In 1952, the *Manchester Guardian* reported:

Sir Ivone Kirkpatrick, said recently that it was definitely not intended to solve the German war criminals question by means of a general amnesty. The procedure for dealing with this problem had been laid down in the Bonn agreements between the Federal Republic and the Western Powers and would be adhered to scrupulously...He said the fate of the German war criminals was being considered with the greatest care and on a basis of "justice and humanity". War criminals would not be released because of German public opinion.⁹³

Amnesty for war criminals was a tricky issue in the early 1950s, coming as it did amid many other upheavals which included the seemingly permanent division of western and eastern Germany and the question of re-armament.⁹⁴ Since the Wehrmacht was formally disbanded in 1947, there had been no national armed forces in Germany. However, growing tensions between the Soviet Union and the West, especially after the Korean War, combined with the persuasive diplomacy of Konrad Adenauer, contributed to the establishment, in 1950, of the *Amt Blank* (the predecessor to the later Federal Ministry of Defence).⁹⁵

⁹³ The *Manchester Guardian* 14 October 1952, p. 2.

⁹⁴ On the question of German rearmament see, for example, Searle, Alaric, *Wehrmacht Generals, West German Society, and the Debate on Rearmament, 1949-1959* (Westport, Connecticut: Greenwood Press, 2003); Dockrill, Saki, *Britain's Policy for West German Rearmament 1950-1955* (Cambridge: Cambridge University Press, 1991); Large, David Clay, *Germans to the Front: West German Rearmament in the Adenauer Era* (Chapel Hill and London: University of North Carolina Press, 1996); Grosser, Alfred., *Western Germany: From Defeat to Rearmament* (London: Allen & Unwin, 1955); Drummond, Gordon D., *The German Social Democrats in Opposition, 1949-1960: The Case against Rearmament* (Norman: University of Oklahoma Press, 1982).

⁹⁵ On Adenauer and his diplomacy see Benz, Wolfgang, *Zwischen Hitler und Adenauer: Studien zur deutschen Nachkriegsgesellschaft* (Frankfurt am Main: Fischer Taschenbuch Verlag, 1991); Prittie, Terence, *Konrad Adenauer: 1876-1967* (London: Tom Stacey, 1971); Weber, Jürgen and Benz, Wolfgang, *Die Republik der fünfziger Jahr: Adenauer's Deutschlandpolitik auf dem Prüfstand*

In this unique climate, the West German authorities seemed to see nothing contradictory in the policy of releasing some individuals only a few years into their sentences while at the same time continuing to try and convict the few new war crimes cases which came to light.⁹⁶ The British Foreign Office on the other hand, continued to maintain that they would not undertake any general amnesty programme and indeed, continued to encourage the West German authorities to trace war criminals. In late 1949 it emerged that 128 prominent members of the organisations declared illegal by the IMT were still at large. Christopher Mayhew, the Parliamentary Under-Secretary of State, continued to press his German counterparts to trace these individuals as soon as was possible.⁹⁷

The Jewish community unequivocally condemned the early release of convicted war criminals. Indeed, most Jewish organisations continued to insist that all those guilty of war crimes against Jewish peoples should not be allowed to escape justice. The *Wiener Library Bulletin*, (WLI), for example was disturbed to learn, in March 1950, that Germans suspected of war crimes were exploiting the DP camp system to hide from the authorities and gain benefits not granted to 'ordinary' Germans. The *Bulletin* reported:

A person could be a DP in one area but not in another... For some reason

Germans from Upper Silesia who spoke Polish, became DPs. Another case: a

(Munich: Olzog, 1989); Köhler, Henning, Adenauer: *Eine Politische Biographie* (Berlin: Propyläen, 1994); Bösch, Frank, *Die Adenauer-CDU: Gründung, Aufstieg und Krise einer Erfolgspartei 1945-1969* (Stuttgart : Deutsche Verlags-Anstalt, 2001).

⁹⁶ See Müller, Ingo, *Furchtbare Juristen: Die unbewältigte Vergangenheit unserer Justiz* (Droemer Knaur: Auflage, 1989); Frei, Norbert, *Adenauer's Germany and the Nazi Past: the Politics of Amnesty and Integration* (New York: Columbia University Press, 2002).

⁹⁷ Reported in *AJRI*, Vol. IV, No. 11 (November 1949), p. 7.

German girl who in the 20s had married a Greek, returned to her native Munich when the marriage turned out to be a failure. She became an ardent Nazi and worked as a secretary in the SS chemical factory at Auschwitz. She managed to be recognised as a Greek DP, an Allied citizen!⁹⁸

The indignation of Jewish groups about this newly emerged problem did little good, however. By 1950, the war crimes programme in the British Zone had all but wound down and HMG were not overly concerned with what they saw as a few Germans exploiting loopholes.

(VI) The Riga Ghetto Case

The WJC was also worried that those guilty of crimes against the Jews may literally be getting away with murder. One such example was the Riga Ghetto case. Riga, the capital city of Latvia, had been occupied by Soviet forces until it was taken over by the Germans on 1 July 1941. A ghetto was established in the "Moscow quarter" of Riga some three months later.⁹⁹ As with ghettos elsewhere, this area of the city was notorious for its cramped streets, poor housing and inadequate water supply.

Thousands of Jewish men, women and children were incarcerated, and the ghetto sealed, effectively turning it into a concentration camp. Adults who were fit to work

⁹⁸ *WLB*, No. 2, Vol. IV (March 1950), p. 8.

⁹⁹ On the Riga Ghetto see, for example, Angrick, Andrej and Klein, Peter, *Die "Endlösung" im Riga: Ausbeutung und Vernichtung 1941-1944* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2006.); Schneider, Gertrude, *Journey into Terror: The Story of the Riga Ghetto* (Westport, Connecticut: Greenwood Press, 2001); Ezergailis, Andrew, *The Holocaust in Latvia, 1941-1944: The Missing Center* (Washington D.C: United States Holocaust Memorial Museum, 1996); Press, Bernhard, *The Murder of the Jews in Latvia, 1941-1945* (Evanston, Illinois: Northwestern University Press, 2000); Sherman-Zander, Hilde, *Zwischen Tag und Dunkel: Mädchenjahre im Getto* (Ullstein Tb: Auflage, 1984).

were forced to labour for the German authorities. Their tasks included the construction of the Sallaspils concentration camp which was located about ten miles outside of the city, and which was also under the administration of the Riga Ghetto authorities. One former inmate recalls being set to work in freezing conditions and being forced to chop wood, construct barracks and dig ditches.¹⁰⁰

The WJC was concerned firstly with the brutal ill treatment of those housed in the ghetto –the property of up to 40,000 Jews was plundered, with inmates being forced to give up money, gold and other valuables immediately upon their arrival at the ghetto, or face being shot.¹⁰¹ The WJC had information suggesting that General Dr. Drexler, Regional Commissar for the Riga province, may have stolen up 25 lbs of gold and 600,000 roubles of Jewish Russian money.¹⁰² Additionally, many of the ghetto inhabitants had suffered severe ill treatment or even death at the hands of their SS guards. Julius Oppenheimer, a former inmate of the Ghetto, reported that in one instance around April 1943, the entire Camp Police Force of the Sallaspils Camp (composed of camp inmates who were responsible for the enforcement of order) were executed by the SS under the command of one Major Lange:

Major Lange told the members of the Camp Police Force they (the Camp Police) had worked against the authorities, had helped prisoners escaped [sic] and that he didn't trust them, and that they were to be replaced...[He] then ordered the Police Force members into a corner...I saw many bodies lying on

¹⁰⁰ Statement, of Julius Oppenheimer, former inmate of the Riga Ghetto, 23 May 1949 (collected by the WJC then sent to the FO). NA FO 1060/199. See also Jurmann, Ezra, *SS Besatzung des Rigaer Ghettos* (Unpublished memoirs, available from the Wiener Library, London); Mosbach, Erwin, *Ein Bericht aus meinem Leben* (Unpublished memoirs, available from the Wiener Library, London).

¹⁰¹ Statement, of Julius Oppenheimer, former inmate of the Riga Ghetto, 23 May 1949 (collected by the WJC then sent to the FO). NA FO 1060/199.

¹⁰² Statement from Mr. Rafael Schub, survivor of the Ghetto (taken by the WJC and translated from Yiddish), 9 June 1950. UoS MS 241/3/45.

the ground where they had fallen after being shot. The blood was still running out of them'.¹⁰³

Still more individuals died as a result of the starvation level rations imposed by Drexler.

The WJC was also concerned with an individual called Migge, who was suspected of involvement of much the same crimes of Drexler. According to a former inmate of the Riga Ghetto:

Migge enriched himself tremendously with former Jewish property. Not only money and jewels but also with articles of clothing, underwear etc...In every murder action of Jews in the Ghetto since 10th December 1941 [when Migge joined the staff] Migge participated. Not only in selections of Jews, but also in the execution of Jews he personally took part...Migge led a detachment of German and Estonian SS with hand machine guns and took them to the Blech Place of the Kasseler Court in the Ghetto. There 40 Latvian Jews and 2 from the German Ghetto were shot...Migge...himself fired the hand machine gun [underlining in original].¹⁰⁴

Most significantly however, the WJC was also involved with investigations into the massacre of up to 26,000 mainly Jewish persons who, between November and December 1941, were taken to the Rumbuli Forest, a few miles from Riga, and then

¹⁰³ Statement, of Julius Oppenheimer, former inmate of the Riga Ghetto, 23 May 1949 (collected by the WJC then sent to the FO). NA FO 1060/199.

¹⁰⁴ Statement, of Herbert Schultz, former inmate of the Riga Ghetto, February 1948 (collected by the WJC then sent to the FO) NA FO 1060/200.

shot.¹⁰⁵ The problem was that most of the accused had already been tried (and in some case sentenced) on war crimes charges for their involvement in incidents other than the Riga ghetto case. For example, in 1949 proceedings against Emile Kowa were discontinued as she was discovered to already be serving a twenty year sentence in French custody.¹⁰⁶ Several Riga Ghetto subjects were also revealed to have been tried in 'Old Lace' tribunals.¹⁰⁷ Others had been tried and released by denazification courts.

In a statement imploring the British Section of the WJC to intercede with the Foreign Office, Mr. Rafael Schub, a survivor of the Riga ghetto, wrote:

I am certain that he [Drexler] has passed safely the denazification examinations and occupies now once more a governmental post in Germany. I, therefore, turn to you with this appeal to find him and to put him before a tribunal. His description is as follows: tall, white-haired, wearing glasses and gives the appearance of a learned cultural man or professor, but, nevertheless, the shadow of murder lies across his face.¹⁰⁸

The WJC thus continued to press the British authorities to bring to justice those involved in the ill-treatment and massacre. In this they were not alone. As early as June 1948, the *AJRI* published an appeal by the Association of Baltic Jews in Great Britain (ABJGB) requesting that evidence of war crimes committed against the Jews in the Baltic States to be submitted to them. They were particularly concerned with

¹⁰⁵ Figures from Burleigh, Michael, *The Third Reich: A New History* (London: Pan Books, 2000), p. 639. For survivor testimony see Michelson, Frida, *I Survived Rumbuli* (New York: Holocaust Library, 1979).

¹⁰⁶ Memorandum from the Office of the Legal Advisor, Zonal Executive Office, February 1949. NA FO 1060 199. LEGAL/MOJ/52340/3/39.

¹⁰⁷ BAOR memorandum, 27 August 1948. NA FO 160 199.

¹⁰⁸ Statement from Mr. Rafael Schub, survivor of the Ghetto (taken by the WJC and translated from Yiddish) 9 June 1950. UoS MS 241/3/45.

collecting evidence against those individuals who were implicated in the liquidation of the ghettos and especially, the Riga Ghetto.¹⁰⁹ Much of the information they collected (including a hundred or so depositions and statements) was passed on to the British authorities in Germany, who continued to investigate the Riga Ghetto case.¹¹⁰ So diligent were this group in collecting evidence that in early 1949, BAOR reported that 'The volume of the statements is at present increasing at such a rate that there is a danger that the prosecution will be embarrassed by the mere volume of evidence; unless it is decided what charges are to be preferred and what [sic] witnesses are to be required.'¹¹¹

By this point in time, of course, British Military Tribunals in Germany had ceased. German courts and Control Commission courts, were however still actively trying suspected war criminals. JAG remained involved in the investigatory process and acted in an advisory capacity at the trials. One of the main reasons for delay in the Riga Ghetto case was because nobody could decide whether the case should be tried in a German court or a Control Commission Court. In April 1948, the Legal Division of the Zonal Executive Office reported that, in their opinion, Control Commission courts would be the most appropriate venue in which to try the Riga Ghetto case.¹¹² Three months later, in July 1948, Group Captain A.G Somerhough, the officer in charge of War Crimes Group (WCG), north-west Europe (NWE), assured the Foreign Office that the individuals in custody would be charged with crimes against humanity. He stated that the Riga case 'is definitely going to be tried under Control Council Law No. 10 by the Control Commission....I have complete faith that these men will be

¹⁰⁹ *AJRI* Vol. III, No. 6 (June 1948), p.7.

¹¹⁰ Memorandum from Group Captain A.G Somerhough, 28 July 1948. NA WO 309 1823.

¹¹¹ Memorandum from BAOR, 17 January 1949. NA FO 1060 199.

¹¹² Memorandum from the Legal Division, Zonal Executive Office, 19 April 1948. NA FO 1060 199.

brought to trial.'¹¹³ Despite these blithe assurances from British officials, however, the final decision had yet to be made.

Locating suspects was not a problem. In August 1948, BAOR was able to report that it had 14 individuals suspected of involvement in the Riga Ghetto atrocities in custody. These included the notorious Kurt Migge as well as other notable suspects such as Rudolf Seck. Both had been imprisoned after 'Old Lace' proceedings and were therefore available for trial when required.¹¹⁴ Confusingly, the German authorities had also apprehended an individual by the name of Hans Lange. He was a minor character in the Riga Ghetto case, but appears for a time to have been confused with Major Lange, a former SS Commander in the Ghetto, who was wanted for the murder of the Camp Police Force.¹¹⁵ Drexler could not be located, the suspicion being that he may have fled abroad.

The mechanism which would be employed to try these individuals, however, was still unclear. Although Somerhough, among others, had been convinced that the Riga Ghetto accused would be tried in a Control Commission Court, towards the end of 1948, the director of prosecutions in Germany received instructions from the Foreign Office that no more war crimes or crimes against humanity cases were to be tried in Control Commission courts. At this time, however, German courts were not entitled to try cases in which Allied nationals were the victims, being limited to trying only crimes against Axis nationals. It seemed therefore, that there was no forum at all in which the suspects might be tried.

¹¹³ Memorandum from Group Captain A.G Somerhough, 28 July 1948. NA WO 309 1823.

¹¹⁴ BAOR memorandum, 27 August 1948. NA FO 160 199.

¹¹⁵ Minute from the Deputy Legal Advisor, RE: Riga Ghetto Case, December 1949. NA FO 1060 267.

This uncertain situation meant that the British authorities were put in the uncomfortable position of renewing the custody order for the accused every fortnight between October 1948 and January 1949. Unwilling to suffer this indignity, Hans Lange applied for an order of bail under *Habeas Corpus*. The case was heard in January 1949 and the presiding judge issued a bail order on the grounds that 'the Prosecution were quite unable to say when his trial could take place and consequently that his detention without trial for an indefinite period was unjustified.'¹¹⁶

Controversially, Judge Howes also stated that unless evidence satisfying him as to the involvement of Lange in the Riga case was produced within a month of the hearing, he would be unconditionally released. Since the prosecution failed to come up with documentation that the Judge considered acceptable, Lange was released in February 1949. Five days after Lange's release, the five other suspects came up before a Magistrate for further remand. Hearing of the order releasing Lange, however, the Magistrate released all of the men unconditionally.

This was potentially a public relations disaster. The Foreign Office possessed a dossier of statements and affidavits which suggested these six had been deeply involved in a great many dubious incidents at the Riga Ghetto – including mass murder.¹¹⁷ They would have been willing to put them on trial, if only a mechanism existed whereby they could do so. To add to the embarrassment, the British Foreign Office were not immediately informed of the releases, having to learn of it instead from the press.¹¹⁸

¹¹⁶ Minute from the Deputy Legal Advisor, RE: Riga Ghetto Case, December 1949. NA FO 1060 267.

¹¹⁷ See statements and testimonies, NA FO 1060 200.

¹¹⁸ Minute from the Deputy Legal Advisor, RE: Riga Ghetto Case, December 1949. NA FO 1060 267.

Scrambling to minimise British humiliation, the Military Governor of the British Zone requested authority from the Foreign Office to go ahead with the transfer to German courts of 'our few remaining cases of Crimes Against Humanity, where the victims were Allied or United Nations nationals'.¹¹⁹ Suspects would then be charged under the German Penal Code rather than under CCL10. Although the Military Governor made his request in general terms, it is clear that the Riga Ghetto case was the main concern here. The Foreign Office authorised German courts to deal with the case on 11 May 1949.¹²⁰ Just over two months later, on the 25 July 1949, the Riga Ghetto case was formally handed over to the German judicial authorities, who attempted to trace those who had been released in February.¹²¹

Although Jewish groups, notably the WJC, reacted positively to the news that the Riga Ghetto case was to be brought to trial, the ABJGB wrote to Sir David Maxwell-Fyfe (MP and former British prosecutor at the Nuremberg Trial) and to Tom Driberg, MP to protest about the way the case had been handled.¹²² The Committee complained:

- i) that the "five main criminals formerly in British custody" who were originally to have been tried by a Control Commission court for Crimes against humanity were released from custody by the British authorities in February.
- ii) That one of these men – Victor Arajs – following his release was employed by a British Unit at Oldenburg, that the investigating

¹¹⁹ Memorandum from Lübbecke to the Deputy Legal Advisor, April 1949. NA FO 1060 199. ZECO/010113/22/SecG.

¹²⁰ Minute from the Deputy Legal Advisor, RE: Riga Ghetto Case, December 1949. NA FO 1060 267.

¹²¹ Memorandum from Landgerichtsrat, Hamburg, 15 October 1949. NA FO 1060 199.

¹²² See WJC correspondence, May 1949. UoS MS 241/3/45

judge of the Landgericht Hamburg recently issued a warrant of release against him, that the Kriminalpolizei attempted to arrest him at the office of the British Unit but were informed that he was on leave. He did not return from leave and the Committee therefore suspect that he had been warned of the issue of the warrant.¹²³

To add to the embarrassment about the release of the six suspects, the Foreign Office therefore also had to face the fact that they had employed one of these individuals - a wanted war criminal - as a driver in one of their units for two months between August and October 1949, with apparently no awareness of who he was, despite the fact that he had used his real name. The Foreign Office Deputy Legal Advisor defended the British by stating that 'screening of unimportant German employees was not undertaken at this time' but even he had to admit that 'it is certainly a most awkward fact to explain away that we employed a wanted war criminal for two months.'¹²⁴ Additionally, the Foreign Office had to confess that proceedings against Hans Lange had had to be quietly dropped because 'he is not the man we thought he was.'

Since 1948, the WJC had been pressing for those guilty of atrocities in the Riga Ghetto to be brought to justice. We can question however, the extent to which the eventual trial was simply a result of political expediency. The WJC were nonetheless satisfied with the approaching trial and were certain that their efforts had hurried proceedings along. In July 1950 the WJC was able to report:

¹²³ Memorandum from the Foreign Office to Lübbecke, 29 November 1949. NA FO 1060 598. CG3545/15/184.

¹²⁴ Minute from the Deputy Legal Advisor, RE: Riga Ghetto Case, December 1949. NA FO 1060 267.

We learned from a reliable source that the investigation against the first badge [sic] of accused – Reese, Migge, Seck, Teckemeier and Lohse [all former members of the SS] – has practically been completed and that the trial against them will probably take place in the autumn. You may be assured that we are watching developments in this matter with close interest.¹²⁵

In September 1950, the WJC was able to report that ‘the judge has now actually completed his investigation and is handing over the files to the prosecution’ and that the trial was likely to begin in just a few months. Dr. F. L. Brassloff, Assistant Legal Advisor to the WJC in London, also reminded Easterman (Political Secretary of the British Section of the WJC), however, that if the WJC wished to be involved in the trial proceedings now would be the time to:

- a) to contact the public prosecutor and
- b) to consider whether we should make arrangements for individual Jewish victims to participate in the trial as “Nebenklæger” (assistant plaintiffs).

He noted, however, that ‘as far as I can see there is no possibility for the Congress itself to participate in the trial which we can of course, attend as observers (or onlookers).’¹²⁶ It seems that by the 1950s, Jewish groups had given up on the hope that they would be actively involved in any of the trials processes in occupied Germany. Brassloff also asked Easterman to ensure that the forthcoming trial ‘be as fully covered as possible by a Congress reporter and wide and intensive publicity

¹²⁵ Letter to Mr J. Efrat from F. Brassloff (Assistant Legal Advisor, Sub-Committee for the Investigation of Nazi Crimes in the Baltic Countries), 3 July 1950. UoS MS 241/3/45

¹²⁶ Letter to Easterman from Brassloff, Re: Riga Ghetto Case, 1 September 1950, UoS MS 241/3/45.

should be given to the event.' The WJC was not altogether successful in this particular endeavour, as no mention of the Riga Ghetto case appeared in either *The Times* or the *Manchester Guardian*, though the proceedings were covered in the *Jewish Chronicle* as well as 'very cursorily' in the local Hamburg press.¹²⁷ The Foreign Office were also disappointed that there was only a 'meagre attendance' by the public.

The trial came before the German court in Hamburg on 26 November 1951. Four individuals – Rudolf Seck, Kurt Migge, Otto Teckemeier and Rudolf Reese - faced charges relating to their alleged murder of Jews inside the Riga Ghetto (Arajs had not been re-apprehended). Since the case was tried in a German court rather than a Control Commission court, none of the alleged perpetrators could be charged with crimes against humanity. As with many other cases in British occupied Germany, much of the evidence was relayed in the form of sworn statements or affidavits. Partly, this was due to the fact that many potential witnesses had either died or emigrated in the years elapsed between the atrocities and the trial. The Judge rejected the plea put forward on behalf of Migge that he had simply acted on the instructions of SS Commander Lange (the plea of superior orders had, of course, been a null defence since the Judgement of the Nuremberg Trial) pointing out that that was enough eyewitness evidence to convict Migge of murder in the first degree jointly with Lange.¹²⁸ The prosecution, however, failed to convince in their allegations that Reese was guilty of the four instances of ill-treatment with which he was charged. The proceedings were conducted in a brisk, almost cursory manner, with the

¹²⁷ Memorandum from the Land Commissioner's Office, Hamburg to the Foreign Office, December 1951. NA FO 1060 598.

¹²⁸ Letter from the Office of the Legal Advisor to the Foreign Office, January 1952. NA FO 1060 598. 173/1/2/52.

judgement on the case delivered on 29 December 1951. Rudolf Seck was convicted of the murder of eight Jews and was sentenced to life imprisonment. Kurt Migge was found guilty of the murder of five Jews and also received a life sentence. Otto Teckemeier was convicted of assault and sentenced to 6 years imprisonment, while Rudolf Reese was acquitted. The Judge did note, however, that 'from the moral point of view you [Reese] deserve to be punished. The fact that you cannot be punished does not mean that you are guiltless.'¹²⁹ The judge also expressed regret that Reese and Teckemeier could not be tried for crimes against humanity because it would have been easier to convict them on this charge. Against procedure, after issuing the sentences, the presiding Judge, reviewed the cases in an 'exhaustive' two hour judgement in which he explained his sentencing decisions.¹³⁰

The *Jewish Chronicle* for one, was dissatisfied with the way the Riga proceedings had been carried out, arguing:

The Riga ghetto trial...was held several years too late. Only four of the many SS officers and men who helped in the wholesale slaughter of Jews...were put in the dock...From the Jewish point of view the trial was not altogether satisfactory. Though there was enough time to prepare for it, Jewish organisations did not arrange for all witnesses, especially those living outside Germany, to be present at the trial. And there were no Jewish observers at the trial¹³¹

¹²⁹ Quoted in the *Jewish Chronicle* 16 January 1952, p. 11.

¹³⁰ Letter from the Office of the Legal Advisor to the Foreign Office, January 1952. NA FO 1060 598. 173/1/2/52.

¹³¹ *Jewish Chronicle*, 16 January 1952, p. 11.

Like so many other war crimes trials in occupied Germany, the Riga Ghetto case had managed to secure convictions – but only of a tiny majority of those who had committed atrocities there.

(VII) Conclusion

1948 marked the official winding down of the British war crimes trial programme in Germany. The period 1946-1948 had seen war crimes trials in the British Zone reduced in prominence and trials in the final phase followed this trend. Partly, this was to do with a pragmatic politics. The twin goals of re-integrating Western Germany into the wider European community, and of using the new country as a safeguard against Communism, were deemed incompatible with the persistence of trials and continued imprisonment of war criminals. After the 1 September 1948, no further cases – with the notable exception of the Manstein trial – began in British Zonal Courts. Outstanding cases were handed over to be tried in either German courts or Control Commission courts and the British remained involved in war crimes cases into the 1950s. The level of British involvement in the Riga Ghetto case is testament to this.

The 1950s also saw, however, a growing tendency to grant early releases, clemency and amnesty to convicted war criminals. By 1957, there were no German war criminals left in British custody.¹³²

¹³² See Bloxham, Donald, 'British War Crimes Trial Policy in Germany, 1945-1957: Implementation and Collapse' *Journal of British Studies* 42 (2003), p. 116.

Conclusions

In March 1949 the Under-Secretary of State for Foreign Affairs, Christopher Mayhew, was able to report that 937 persons had appeared before British military tribunals charged with war crimes. A further 148 individuals had been indicted on crimes against humanity and had appeared before Control Commission courts and 2,180 had faced the same charge before German courts.¹ These figures, however, masked the complex arguments, wrangles and policy initiatives that had characterised the British war crimes trial process.

Throughout the war, there had been very little consensus on the issues of war crimes and war criminals in the British government. The Foreign Office in particular was deeply divided. On one side, there were the views of Robert Vansittart. While Vansittart's reputation as a vehement 'Germanophobe' may have been somewhat exaggerated, there is no doubt that he harboured deep suspicion towards Germany and its people and was convinced that Britain should take a firm line with war criminals. A more moderate stance was advocated by Vansittart's replacement as Permanent Under-Secretary of State, Sir Alexander Cadogan, who believed that harsh post-war measures towards the German people would simply lead to an entrenchment of

¹ Statistics given by the Under-Secretary of State for Foreign Affairs in reply to a parliamentary question, 28 March 1949. Hansard Parliamentary Debates, fifth series (House of Commons); Maugham, Viscount, *U.N.O and War Crimes* (John Murray: London, 1951), p. 21.

attitudes.² Policy after 1945 continually struggled to reconcile these two opposing points of view.

These debates about the national character of the German people ran alongside more legalistic concerns about war crimes trials. Lord Simon, the head of the judiciary, was particularly vocal in expressing these concerns. In particular, he worried about the application of *ex post facto* law, i.e., the introduction of law that retroactively makes criminal conduct that was not criminal when performed. Although many of these fears were principally about the proposed trial of the Nazi hierarchy, there were also specific legal concerns about the status of international law on acts committed by Axis nations or its nationals against its own subjects or the subjects of other Axis nations.

The Royal Warrant (subsequently Army Order No. 81), which provided the legal basis for British Zonal trials, was not drawn up until the summer of 1945. The procedures limited the British to trying 'violation[s] of the laws and usages of war committed during any war which His Majesty has been or may be engaged at any time since the 2nd September, 1939.'³ The restrictive wording of the Warrant meant that the British were able to avoid complex problems of legal procedure, but it also considerably limited the scope of the trials.

Significant shortages, of both funds and appropriately qualified staff dogged the British Zonal programme. The Foreign Office, the War Office and those on the ground continually struggled to (i) identify suspected war criminals – 'wanted' lists

² Cadogan memorandum, 7 November 1941. NA FO 371 30928. C647118/18.

³ See appendix II.

were often 'misleading and unreliable'⁴ (ii) put them on trial (iii) to complete the trial proceedings speedily and (iv) to secure appropriate sentences. The so-called 'Belsen Trial', the first war crimes trial to be carried out in the British Zone set an unfortunate pattern. In the first instance, only a tiny proportion of the staff at the Auschwitz and Belsen camps appeared at the trial, the proceedings took considerably longer than expected and the sentences were, in many cases, considered too lenient. The trial framework, provided for by the Royal Warrant, which was based on court martial proceedings, proved inadequate to deal with the scale of Nazi crimes. The trials structure was originally designed to deal with cases of military discipline. The tribunals soon found themselves dealing with cases where mass murder had become the norm. The framework was to prove both restricting and hopelessly inadequate in such cases.

The first rumblings that trials should be wrapped up as quickly as possible came quite early in the British occupation. In January 1946, Shawcross wrote to Attlee, complaining that 'At the present rate the trial of war criminals will go on until the crack of doom'.⁵ Such a situation was clearly unattractive, and from this period onwards the British launched a series of initiatives with the aim of trying more suspected war criminals more quickly. Broadly speaking, there were three possible ways of speeding up war crimes trials; (i) to increase the available staff (ii) to reduce the number of cases by dropping the less serious and (iii) to speed up the trials procedures themselves. However, since the investigatory process continued to uncover previously unknown war crimes which had to be investigated in their turn

⁴ Memorandum by Patrick Dean, 21 June 1945. NA FO 371 51033.

⁵ Letter from Shawcross to Attlee, 17 January 1946. PRO FO 371 57529/U958.

and since shortages of both legal and administrative staff persisted, the British found themselves fighting a losing battle.

By mid 1946, however, the British trials programme had become increasingly politicised and self interested – in as much as those suspected of crimes against British nationals were given a higher priority and, indeed, were instrumental in keeping the trials programme open past 1948. As we have seen, the Stalag Luft III case was of particular importance here, and the investigation and trial of the alleged perpetrators was given priority by the British authorities. It is necessary to emphasise that the British were not alone in this. Most nations chose to concentrate on crimes against their own nationals, and, to their credit, the British programme did include many trials of those accused of crimes against citizens of other European states - a record not all other European countries could claim to share. In terms of public opinion, the attitude towards the trials programme was again complex. In general, the British public quickly grew weary of continuing war crimes trials, and this was reflected particularly in the public attitude towards the proposed trial of Rundstedt, Brauchitsch, Manstein and Strauss. However, as one Foreign Office official put it in December 1947, ‘for every man who demands to know why we are continuing to grind the faces of our former enemies, there is another who asks why we have not yet traced and arrested his son’s murderer.’⁶

The British programme did not, however, attempt to expose the extent of Nazi crimes against the Jews, being more concerned with establishing individual guilt than exposing state policy. The brief of war crimes trials was (i) to punish the guilty and

⁶ Memorandum from Barratt to O’Grady, 9 December 1947. NA FO 371 64723. C15911/7675/180.

(ii) to make German citizens aware of the crimes that had been committed by their citizens in their name. However, one of the key legal issues was if and how the trial mechanism should deal with German crimes against fellow nationals. This question was crucial if the British were to try Germans for atrocities against German Jews, but it was one that had still not been resolved when the occupation began. As late as 1943, some in the Foreign Office were maintaining that – in a legal sense - ‘offences against German Jews are not war crimes.’⁷ It was not until November 1945 that it was eventually concluded that ‘crimes committed by Germans against Germans or against stateless persons...would be dealt with, in the first place, in the most notorious cases before British Military Government Courts’.⁸ However, there are only a few examples of this type of crimes being tried in British Zonal courts. As a result, the mechanised, systematic horror of the Holocaust was scarcely hinted at in the British trials.

Since the first rumours of atrocities and mass murder had filtered across the channel in the early 1940s, Anglo-Jewish groups had been persistent in petitioning the British government on the subject of war criminals and war crimes trials. While Anglo-Jewry was clearly successful in providing relief and rehabilitation for Jewish DPs in the British Zone, they were less successful in their efforts to petition the British government with regard to war crimes trials. The *Jewish Chronicle*'s attempts to bring the mass murder of Jews to general public attention was largely unsuccessful, the World Jewish Congress was turned down in its request to have crimes against the Jews specifically made a charge in post-war war crimes trials, they failed to secure the inclusion of Jewish *amicus curiae* in British Zonal trials and were unable to prevent HMG from releasing convicted war criminals before they had completed their

⁷ Foreign Office Legal Adviser Sir William Malkin, 10 August 1943. NA FO 371/34367 C8796/31/62.

⁸ Telegram from SHAEF to AGWAR, 2 June 1945. NA WO 309/1.

sentences. This is not to suggest that Anglo-Jewish groups were wholly ineffective. One notable success was the Riga Ghetto case. The British Branch of the WJC was instrumental in investigating the crimes that took place in the ghetto and persuading the British authorities to bring to justice those involved in the massacre of up to 26,000 mainly Jewish persons between November and December 1941. Assisted by the Association of Baltic Jews in Great Britain (ABJGB), the WJC amassed an impressive amount of evidence. So much so that in early 1949, BAOR reported that 'The volume of the statements is at present increasing at such a rate that there is a danger that the prosecution will be embarrassed by the mere volume of evidence.'⁹ However, because the trial was prosecuted by a German court (British military courts having ceased operation) it was limited in scope, and the consensus from Anglo-Jewry was that it was too little too late. Ultimately, Jewish groups in the UK were only able to influence the trials to a limited degree.

In terms of the general attitude of the personnel responsible for British war crimes trials – both in London and Germany – what is interesting is the degree of consistency we see during this period. The reluctance to wholeheartedly embrace a full programme of war crimes trials was obvious from midway through the war right up until the early 1950s. Once the programme in occupied Germany was established, few either in the British military government or the Foreign Office approached the trials with anything resembling enthusiasm. The Foreign Office legal advisor Patrick Dean, was one of the most consistent advocates of the trials process, but it is important to remember that he was a fairly lowly official. Those who were cynical from the start about the trials were frequently much more senior figures.

⁹ Memorandum from BAOR, 17 January 1949. NA FO 1060 199.

A further characteristic of the British Zonal trials was the desire to adhere to traditions of British justice. Ensuring a fair trial for defendants was seen as crucial if the British trials were to have any credibility with the German public. It is notable that the accusation of 'victors' justice' was never attached to the British trials process. On occasion, however, it can be argued that the British military courts were too lenient where defendants were concerned. During the Belsen trial for example, the defence counsel were permitted to sidetrack the court with lengthy and complicated arguments about the status of concentration camps in German law. In other trials too, many judges were uncomfortable with reliance on affidavit testimony and felt it was better to issue an acquittal if there was any doubt. Basil Newton, a Foreign Office official summed up the majority view in 1946: 'If sentences err on the side of leniency that is a fault on the right side'.¹⁰ Far better to have the possibly guilty walk free than risk accusations of an unfair judicial process.

European and global considerations are also important to the understanding of official policy in the British Zone of Germany. The trials that took place were subjected to a number of pressures from both inside and outside Germany, of which foreign policy was an important part. The foreign policy of the Labour government 1945-51 was complex and nuanced, dealing with such diverse issues as the loss of world power status, the withdrawal from empire, the changing relationship with the USA and the emerging tensions with the USSR. The ending of the British war crimes trial process was certainly affected by the international situation, in particular the emerging Cold War. As we have seen, mid 1946 was something of a turning point in the development

¹⁰ Report by Basil Newton, April 1946. NA FO 371 57458/U5960.

of war crimes policy. In September, a Ministerial Review on war crimes trials recommended that the focus should be on the most serious cases, and those accused of crimes against British citizens, and that effort should be made to try the maximum number of cases as quickly as possible. After 1948, the already reduced trials series became further marginalized as part of a more pragmatic policy of integration with West Germany. In light of the growing Soviet threat, the goal of re-integrating Western Germany into the European community was not believed compatible with the persistence of trials and continued imprisonment of war criminals.

The British Military trials under the Royal Warrant ceased in 1949, the Manstein case being the last to be tried in a British Military Tribunal. What is surprising, given the complications, and numerous domestic and foreign pressures is that they continued for so long.

Appendices

Appendix I: The Moscow Declaration, November 1943

JOINT FOUR-NATION DECLARATION

The governments of the United States of America, United Kingdom, the Soviet Union, and China;

United in their determination, in accordance with the declaration by the United Nations of January, 1942, and subsequent declarations, to continue hostilities against those Axis powers with which they respectively are at war until such powers have laid down their arms on the basis of unconditional surrender;

Conscious of their responsibility to secure the liberation of themselves and the peoples allied with them from the menace of aggression;

Recognizing the necessity of insuring a rapid and orderly transition from war to peace and of establishing and maintaining international peace and security with the least diversion of the world's human and economic resources for armaments;

Jointly declare:

1. That their united action, pledged for the prosecution of the war against their respective enemies, will be continued for the organization and maintenance of peace and security.

2. That those of them at war with a common enemy will act together in all matters relating to the surrender and disarmament of that enemy.
3. That they will take all measures deemed by them to be necessary to provide against any violation of the terms imposed upon the enemy.
4. That they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security.
5. That for the purpose of maintaining international peace and security pending the re-establishment of law and order and the inauguration of a system of general security they will consult with one another and as occasion requires with other members of the United Nations, with a view to joint action on behalf of the community of nations.
6. That after the termination of hostilities they will not employ their military forces within the territories of other states except for the purposes envisaged in this declaration and after joint consultation.
7. That they will confer and cooperate with one another and with other members of the United Nations to bring about a practicable general agreement with respect to the regulation of armaments in the post-war period.

DECLARATION REGARDING ITALY

The Foreign Secretaries of the United States, the United Kingdom and the Soviet Union have established that their three governments are in complete agreement that Allied policy toward Italy must be based upon the fundamental principle that Fascism and all its evil influence and configuration shall be completely destroyed and that the Italian people shall be given every opportunity to establish governmental and other institutions based on democratic principles.

The Foreign Secretaries of the United States and the United Kingdom declare that the action of their governments from the inception of the invasion of Italian territory, in so far as paramount military requirements have permitted, has been based upon this policy.

In furtherance of this policy in the future the Foreign Secretaries of the three governments are agreed that the following measures are important and should be put into effect:

1. It is essential that the Italian Government should be made more democratic by inclusion of representatives of those sections of the Italian people who have always opposed Fascism.
2. Freedom of speech, of religious worship, of political belief, of press and of public meeting, shall be restored in full measure to the Italian people, who shall be entitled to form anti-Fascist political groups.
3. All institutions and organizations created by the Fascist regime shall be suppressed.

4. All Fascist or pro-Fascist elements shall be removed from the administration and from institutions and organizations of a public character.

5. All political prisoners of the Fascist regime shall be released and accorded full amnesty.

6. Democratic organs of local government shall be created.

7. Fascist chiefs and army generals known or suspected to be war criminals shall be arrested and handed over to justice.

In making this declaration the three Foreign Secretaries recognize that so long as active military operations continue in Italy the time at which it is possible to give full effect to the principles stated above will be determined by the Commander-in-Chief on the basis of instructions received through the combined chiefs of staff.

The three governments, parties to this declaration, will, at the request of any one of them, consult on this matter. It is further understood that nothing in this resolution is to operate against the right of the Italian people ultimately to choose their own form of government.

DECLARATION ON AUSTRIA

The governments of the United Kingdom, the Soviet Union and the United States of America are agreed that Austria, the first free country to fall a victim to Hitlerite aggression, shall be liberated from German domination.

They regard the annexation imposed on Austria by Germany on March 15, 1938, as null and void. They consider themselves as in no way bound by any charges effected in Austria since that date. They declare that they wish to see re-established a free and independent Austria and thereby to open the way for the Austrian people themselves, as well as those neighbouring States which will be face with similar problems, to find that political and economic security which is the only basis for lasting peace. Austria is reminded, however that she has a responsibility, which she cannot evade, for participation in the war at the side of Hitlerite Germany, and that in the final settlement account will inevitably be taken of her own contribution to her liberation.

STATEMENT ON ATROCITIES

Signed by President Roosevelt, Prime Minister Churchill and Premier Stalin.

The United Kingdom, the United States and the Soviet Union have received from many quarters evidence of atrocities, massacres and cold-blooded mass executions which are being perpetrated by Hitlerite forces in many of the countries they have overrun and from which they are now being steadily expelled. The brutalities of Nazi domination are no new thing, and all peoples or territories in their grip have suffered from the worst form of government by terror. What is new is that many of the territories are now being redeemed by the advancing armies of the advancing armies of the liberating powers, and that in their desperation the recoiling Hitlerites and Huns are redoubling their ruthless cruelties. This is now evidenced with particular clearness by monstrous crimes on the territory of the Soviet Union which is being liberated from Hitlerites, and on French and Italian territory.

Accordingly, the aforesaid three Allied powers, speaking in the interest of the thirty-two United Nations, hereby solemnly declare and give full warning of their declaration as follows:

At the time of granting of any armistice to any government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in the above atrocities, massacres and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of free governments which will be erected therein. Lists will be compiled in all possible detail from all these countries having regard especially to invaded parts of the Soviet Union, to Poland and Czechoslovakia, to Yugoslavia and Greece including Crete and other islands, to Norway, Denmark, Netherlands, Belgium, Luxembourg, France and Italy.

Thus, Germans who take part in wholesale shooting of Polish officers or in the execution of French, Dutch, Belgian or Norwegian hostages of Cretan peasants, or who have shared in slaughters inflicted on the people of Poland or in territories of the Soviet Union which are now being swept clear of the enemy, will know they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged.

Let those who have hitherto not imbrued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three Allied powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done.

The above declaration is without prejudice to the case of German criminals whose offences have no particular geographical location and who will be punished by joint decision of the governments of the Allies.

Appendix II: The Royal Warrant

THE WAR OFFICE,

18th June, 1945.

ROYAL WARRANT

0160/2498

A. O. 81/1945

Regulations for the Trial of War Criminals

WHEREAS WE deem it expedient to make provision for the trial and punishment of violations of the laws and usages of war committed during any war in which WE have been or may be engaged at any time after the second day of September, nineteen hundred and thirty-nine;

OUR WILL AND PLEASURE IS that the custody, trial and punishment of persons charged with such violation of the laws and usages of war as aforesaid shall be governed by the Regulations attached to this Our Warrant

Given at Our Court at St. James's, this 14th day of June, 1945, in the 9th year of our Reign.

By His Majesty's Command,

P. J. GRIGG

Regulations for the Trial of War Criminals

1. In these Regulations if not inconsistent with the context and subject to any express provision to the contrary the following expressions have the following meanings namely:-

"War Crime" means a violation of the laws and usages of war committed during any war in which His Majesty has been or may be engaged at any time since the 2nd September, 1939. Any expression used in these Regulations has the same meaning as in the Army Act or the Rules of Procedure made pursuant thereto. "Military Court" means a Military Court constituted and held under these Regulations.

2. (a) The following officers shall have power to convene Military Courts for the trial of persons charged with having committed war crimes and to confirm the findings and sentences of such Courts namely:-

(i) Any officers authorized so to do by His Majesty and His Warrant

(ii) Any officers authorized so to do by delegation under the Warrant of any officer referred to under (i) above whom His Majesty has authorized to make such delegation by His Warrant.

(b) Any such Warrants may be addressed to an officer by name or by designation of an office and may be subject to such restrictions, reservations, exceptions and conditions as may seem meet to His Majesty or any such delegating officer as aforesaid.

(c) An officer having authority to confirm the finding and sentence of a Military Court may reserve confirmation of the finding and sentence or of the sentence to any

superior authority competent to confirm the findings and sentences of the like kind of military court convened under these Regulations.

3. Except in so far as herein otherwise provided expressly or by implication the provisions of the Army Act and the Rules of Procedure made pursuant thereto so far as they relate to Field General Courts-Martial and to any matters preliminary or incidental thereto or consequential thereon shall apply so far as applicable to Military Courts under these Regulations and any matters preliminary or incidental thereto or consequential thereon in like manner as if the Military Courts were Field General Courts-Martial and the accused were persons subject to military law charged with having committed offences on active service.

Sections 49, 61, 54 (1) (d) and (7) and 57 (2) and (4) and 57 (A) of the Army Act, and Rules of Procedure 3, 34, 35 (D) [Army Order 127, 1945], 52 (B) [Army Order 108, 1947], 56, 63 (C) [Army Order 108, 1947], 110, 118 (A) and (B), 63 (E) [Army Order 108, 1947] and 120 (C), (D) and (E) made pursuant thereto shall not apply.

Notwithstanding the provisions of Rule of Procedure 63 (E) a Court may after his arraignment, proceed with the trial of an accused in his absence, if satisfied that so doing involves no injustice to such accused. [Army Order 8, 1946]

4. If it appears to an officer authorized under the Regulations to convene a Military Court that a person then within the limits of his command has at any place whether within or without such limits, committed a war crime he may direct that such person if not already in military custody shall be taken into and kept in such custody pending trial in such manner and in the charge of such military unit as he may direct. The commanding officer of the unit having charge of the accused shall be deemed to be

the commanding officer of the accused for the purposes of all matters preliminary and relating to trial and punishments. But such commanding officer shall have no power to dismiss the charge or deal with the accused summarily for a war crime. He shall without any such preliminary hearing as is referred to in Rule of Procedure 3 either cause a Summary of Evidence to be taken in accordance with Rule of Procedure 4 or an abstract of evidence to be prepared as the Convening Officer may direct. The accused shall not have the right of having a Summary taken or of demanding that the evidence at the Summary shall be taken on oath or that any witness shall attend for cross-examination at the taking of the Summary.

5. A Military Court shall consist of not less than two officers in addition to the President, who shall be appointed by name, but no officer, whether sitting as President or as a member, need have held his commission for any special length of time. If the accused is an officer of the naval, military or air force of an enemy or ex-enemy Power the Convening Officer should, so far as practicable, but shall be under no obligation so to do, appoint or detail as many officers as possible of equal or superior relative rank to the accused. If the accused belongs to the naval or air force of an enemy or ex-enemy Power the Convening Officer should appoint or detail, if available, at least one naval officer or one air force officer as a member of the Court, as the case may be.

In default of a person deputed by H. M. Judge Advocate General to act as Judge Advocate, the Convening Officer may by order appoint a fit person to act as Judge Advocate at the trial. If no such Judge Advocate is deputed or appointed, the Convening Officer should appoint at least one officer having one of the legal qualifications mentioned in Rule of Procedure 93 (B) as President or as a member of

the Court, unless, in his opinion, such opinion to be expressed in the Order convening the Court and to be conclusive, no such officer is necessary [Army Order 24, 1946].

Notwithstanding anything in these Regulations the Convening Officer may, in a case where he considers it desirable so to do, appoint as a member of the Court, but not as President, one or more officers of an Allied Force serving under his command or placed at his disposal for the purpose, provided that the number of such officers so appointed shall not comprise more than half the members of the Court, excluding the President.

6. The accused shall not be entitled to object to the President or any member of the Court or the Judge Advocate or to offer any special plea to the jurisdiction of the Court.

7. Counsel may appear on behalf of the Prosecutor and accused in like manner as if the Military Court were a General Court-Martial, and Rules of Procedure 88-93 shall in such cases apply accordingly:

In addition to the persons deemed to be properly qualified as Counsel under Rule of Procedure 93 any person qualified to appear before the Courts of the Country of the accused and any person approved by the Convening Officer the Court shall be deemed to be properly qualified as Counsel for the Defence.

8. (i) At any hearing before a Military Court convened under these regulations the Court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the Court to be of assistance in proving or disproving the charge notwithstanding that such statement or document would not be admissible as evidence in proceedings before a

Field General Court-Martial, and without prejudice to the generality of the foregoing in particular:-

- (a) If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the Court, unable so to attend without undue delay, the Court may receive secondary evidence of statements made by or attributable to such witness
- (b) any document purporting to have been signed or issued officially by any member of any Allied or enemy force or by any official or agency of any Allied, neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof
- (c) the Court may receive as evidence of the facts therein stated any report of the "Comite International de la Croix Rouge" or by any representative thereof, by any member of the medical profession or of any medical service, by any person acting as a "man of confidence" (*homme de confiance*) or by any other person whom the Court may consider was acting in the course of his duty when making the report;
- (d) the Court may receive as evidence of the facts therein stated any depositions or any record of any military Court of Inquiry or (any Summary) of any examination made by any officer detailed for the purpose by any military authority
- (e) the Court may receive as evidence of the facts therein stated any diary, letter or other document appearing to contain information relating to the charge;
- (f) if any original document cannot be produced or, in the opinion of the Court, cannot be produced without undue delay, a copy of such document or other secondary evidence of its contents may be received in evidence;

It shall be the duty of the Court to judge of the weight to be attached to any evidence given in pursuance of this Regulation which would not otherwise be admissible.

(ii) Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as prima facie evidence of the responsibility of each member of that unit or group for that crime.

In any such case all or any members of any such unit or group may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the Court [Army Order 127, 1945].

(iii) The Court shall take judicial notice of the laws and usages of war.

(iv) Unless the Convening Officer otherwise directs a finding of guilty and the sentence shall be announced in Open Court by the President, who shall at the same time state that such finding and sentence are subject to confirmation. If such announcement is not made in Open Court the President shall notify the accused of the finding and sentence under sealed cover at the termination of the Proceedings and record in the Proceedings that this has been done. A finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation or be subject to be revised and shall be pronounced at once in Open Court, but the Court shall not thereupon release the accused, unless otherwise entitled to be released.

(v) The sittings of Military Courts will ordinarily be open to the public so far as accommodation permits. But the Court may on the ground that it is expedient so to do

in the national interest or in the interests of justice, or for the effective prosecution of war crimes generally, or otherwise, by order prohibit the publication of any evidence to be given or of any statement to be made in the course of the proceedings before it, or direct that all or any portion of the public shall be excluded during any part of such proceedings as normal take place in Open Court, except during the announcement of the finding and sentence pursuant to paragraph (iv) above.

(vi) A record shall be made of the Proceedings of every Military Court.

9. A person found guilty by a Military Court of a war crime may be sentenced to and shall be liable to suffer any one or more of the following punishments, namely:-

(i) Death;

(ii) Imprisonment for life or for any less term;

(iii) Confiscation;

(iv) A fine.

In a case where the war crime consists wholly or partly of the taking, distribution or destruction of money or other property the Court may as part of the sentence order the restitution of such money or other property and in default of complete restitution award a penalty equal in value to that which has been so taken, distributed or destroyed or not restored.

Sentence of death shall not be passed on any person by a Military Court without the concurrence of all those serving on the Court if the Court consists of not more than three members, including the President, or without the concurrence of at least two-

thirds of those serving on the Court if the Court consists of more than three members, including the President.

10. The accused may within 14 days of the termination of the Proceedings in Court submit a Petition to the Confirming Officer against the finding or sentence or both provided that he gives notice to the Confirming Officer within 48 hours of such termination of his intention to submit such a Petition. The accused shall have no right to submit any Petition otherwise than as aforesaid.

Provided that if such Petition is against the finding it shall be referred by the Confirming Officer, together with the Proceedings of the trial, to His Majesty's Judge Advocate General or to any Deputy of his approved by him for that purpose in the Command overseas where the trial took place for advice and report

11. The finding and any sentence which the Court had jurisdiction to pass may be confirmed and, if confirmed, shall be valid, notwithstanding any deviation from these Regulations, or the Rules of Procedure or any defect or objection, technical or other, unless it appears that a substantial miscarriage of justice has actually occurred.

12. When a sentence passed by a Military Court has been confirmed, the following authorities shall have power to mitigate or remit the punishment thereby awarded or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said Court; that is to say h rank of

(i) The secretary of State for War or any officer not below the rank of Major-General authorized by him; and

(ii) Where so agreed between the said Secretary of State for War and the Secretary of State for Foreign Affairs (a) the Secretary of State for Foreign Affairs, or (b) where an offender convicted by a military court is undergoing sentence in the British Zone of Germany, or in the British Zone of Austria, the High Commissioner in Germany or in Austria (as the case may be) designated by His Majesty's Government, if authorized by the Secretary of State for Foreign Affairs, or any other person, so authorized, who may, for the time being, be discharging the functions of the High Commissioner as aforesaid [Army Order 116, 1949].

13. In any case not provided for in these Regulations such course will be adopted as appears best calculated to do justice.

Appendix III

Cartoon by David Low, referring to the liberation of the Bergen-Belsen Camp

First published by *The Evening Standard* on 19 April 1945



Source: The British Cartoon Archive, University of Kent:
<http://library.kent.ac.uk/cartoons/about/aims.php#archive>. Accessed 20/7/07.

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