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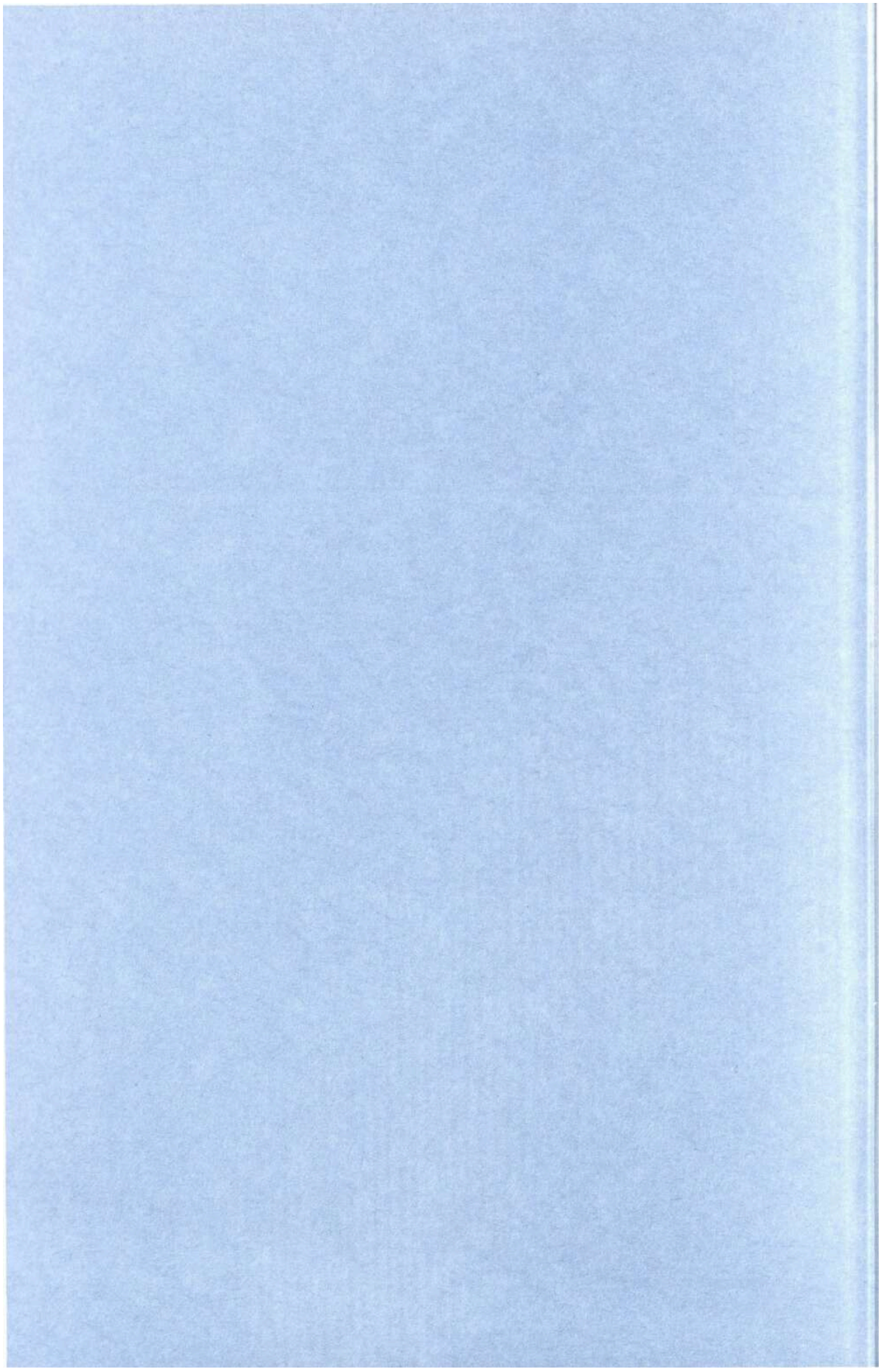
The Parliament of the Commonwealth of Australia

REVIEW OF MATERIAL RELATING TO THE ENTRY OF SUSPECTED WAR CRIMINALS INTO AUSTRALIA

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Review of material relating to the entry of suspected war criminals into Australia

Department of the Special Minister of State

REVIEW OF MATERIAL RELATING TO THE ENTRY OF SUSPECTED WAR CRIMINALS INTO AUSTRALIA

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Review of Material Relating to the Entry of Suspected War Criminals into Australia

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28 November 1986

The Hon. Michael J. Young
Special Minister of State
House of Representatives
CANBERRA ACT 2600

Dear Minister

As requested in the letter of the Acting Special Minister of State of 25 June 1986, I have conducted a Review of Material Relating to the Entry of Suspected War Criminals into Australia and I now present to you my Report on the results of the Review.

Yours sincerely

A.C. MENZIES
Person conducting the Review

ACKNOWLEDGEMENTS

In presenting my Report, I wish to place on record the very great contribution that the staff of the Review has made to the conduct of the Review and the writing of this Report.

In numbers, the staff has been quite small but, working as a team, bound by a common interest to determine the true facts, each made a very positive contribution, appropriate to his or her professional background or specialized skills.

As Secretary to the Review, Dr H.J.W. Stokes provided not only organization and method to the wide-ranging activities of the Review, but also his professional skills as historian and archivist.

Other members of the research staff were Mr Tony McInerny, Mrs Marie Nicholson and Mr John Rau, respectively an administrator with experience in like inquiries, a historian and a legal practitioner. Each provided skills and experience of great value to the Review.

The administrative staff, Mrs Vickie Tibbett, Mrs Wendy Stokman and last but not least, my able and dedicated Secretary Mrs Sandra Buick, at all times responded with zeal, good humour and efficiency to the often unreasonable requirements of the Review.

In Chapter 3 of the Report, I acknowledge the co-operation received by the Review from all Departments and Agencies. However, I must record my appreciation of the special contribution of Mr Geoffrey Dabb, Counsellor (Legal), Australian Embassy, Washington who, by patient but determined inquiries, helped resolve some of the questions that the Review was called on to answer.

REPORT ON REVIEW OF MATERIAL RELATING TO THE ENTRY OF SUSPECTED WAR CRIMINALS INTO AUSTRALIA

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LIST OF ABBREVIATIONS

A.B.C.	Australian Broadcasting Corporation
A.F.P.	Australian Federal Police
A.S.I.O.	Australian Security Intelligence Organization
B.D.C.	Berlin Document Centre
C.I.C.	Counter Intelligence Corps (United States)
C.I.S.	Commonwealth Investigation Service
C.M.O.	Chief Migration Officer
C.R.O.W.C.A.S.S.	Central Registry of War Criminals and Security Suspects
D.I.E.A.	Department of Immigration and Ethnic Affairs
D.O.B.	Date of Birth
D.P.	Displaced Person
D.P.P.	Director of Public Prosecutions
G.A.O.	General Accounting Office (United States)
I.C.E.M.	Intergovernmental Committee on European Migration
I.N.S.	Immigration and Naturalization Service (United States)
I.R.O.	International Refugee Organization
N.S.D.A.P.	Nationalsozialistiche Deutsche Arbeiter Partei (Nazi Party)
O.S.I.	Office of Special Investigations
P.C.I.R.O.	Preparatory Commission of the International Refugee Organization
P.I.C.M.M.E.	Provisional Intergovernmental Committee for Movement of Migrants from Europe
S.A.	Sturmabteilung (Storm Troopers)
S.D.	Sicherheitsdienst (Security Service)
S.S.	Schutzstaffel Allgemeine S.S. - General S.S. Waffen S.S. - Military S.S.
U.K.	United Kingdom
U.N.	United Nations
U.N.H.C.R.	United Nations High Commissioner for Refugees
U.N.R.R.A.	United Nations Relief and Rehabilitation Administration
U.N.W.C.C.	United Nations War Crimes Commission
U.S. or U.S.A.	United States of America
U.S.S.R.	Union of Soviet Socialist Republics

PART 1

PRELIMINARY

CHAPTER 1

SCOPE OF INQUIRY

TERMS OF REFERENCE

1.1 On 25 June 1986, I was requested by the Special Minister of State to conduct a review of material relating to the entry of suspected war criminals into Australia with Terms of Reference as follows:

> '1. To conduct a review of all material, encompassing material held by relevant Commonwealth departments and agencies, relevant records held by the United Nations, or relevant material otherwise supplied to the Review, relating to the entry into Australia of persons alleged to be or suspected of being war criminals as defined in paragraph 4, and to submit a report within three months to the Special Minister of State, embodying as appropriate findings and recommendations, on:
>
> (a) whether war criminals are now or have been resident in Australia and, if so, when and how they obtained entry to Australia;
>
> (b) whether the material reveals any breach of law, breach of duty or impropriety by any person or persons in relation to the entry into Australia of any person mentioned in paragraph (a);
>
> (c) whether there was any policy by any Government of Australia to allow or assist the entry of known or suspected war criminals into Australia;
>
> (d) whether further investigations are required; and
>
> (e) any other consideration relevant to (d).
>
> 2. The Reviewer is to have complete access to Commonwealth officials and all relevant records, including papers, documents, vouchers and books of any kind in the possession of any department or agency of the Government of Australia and is authorised to seek further information on inquiries conducted in the United States and Canada into alleged or suspected war criminals.
>
> 3. During the review, established security procedures are to be followed with regard to the Review staff and the handling of classified information; and all steps necessary are to be taken to preserve

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- the secrecy of sources of classified information within Australia; and

- the security of information provided to Australia in confidence by other nations.

4. The term "war criminals" means persons who committed war crimes related to the activities of Germany during World War II'.

EXTENSION OF TIME FOR REPORTING

1.2 At my request, the Special Minister of State extended the time within which my Report should be submitted to 30 November 1986.

DIVISION OF REPORT INTO PUBLIC AND CONFIDENTIAL PARTS

1.3 As regards by far the greater part of the Report, I see no reason why it should not be published. There are, however, a small number of matters publication of which would not appear to be in the national interest. I have placed these matters in a confidential Part that I recommend should not be published.

INTERPRETATION OF TERMS OF REFERENCE

1.4 As to the meaning of the expression 'war crimes' in paragraph 4 of the Terms of Reference, I have had the benefit of a submission by the Attorney-General's Department which appears as Attachment 'A'. I agree with the Attorney-General's Department's conclusion that for the purposes of the Terms of Reference, I should have regard to the crimes defined by Article 6 of the Charter of the Nuremburg International Military Tribunal which tried the major war criminals of the European Axis powers. This referred to:

'(a) Crimes against peace: ...;

(b) War crimes: ...;

(c) Crimes against humanity: namely, murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated'.

1.5 Attorney-General's Department also suggests that the list of crimes in the instrument of appointment referred to in section 3 of the War Crimes Act 1945 (which is attached to Attorney-General's reply) would provide guidance as to the type of offences to be considered by the Review, but the Review should not be confined to crimes committed in the circumstances covered by the War Crimes Act, namely, crimes against Australian residents, British subjects and citizens of allied nations. I agree with this suggestion.

'RELATED TO THE ACTIVITIES OF GERMANY DURING WORLD WAR II'

1.6 Having regard to paragraph 1.4, particularly the phrase 'related to the activities of Germany during World War II', I have interpreted the Terms of Reference to refer to persons who, as members of the forces of, or acting on behalf of, Germany or countries allied with Germany in World War II, or as collaborators with such forces or countries, committed war crimes.

CONVICTIONS FOR COLLABORATION

1.7 While unquestionably a number of persons convicted in their original countries of, in effect, collaborating with German forces have come to Australia since the War after serving their sentence (see Chapter 5 for full details), the offences of which these persons were convicted were relatively minor and I do not propose to regard these offences as war crimes for the purposes of the Review.

EXTENT AND NATURE OF INQUIRIES

1.8 The Terms of Reference clearly indicate that I should be given complete access to Commonwealth officials and all relevant records. I have been freely accorded that access by all Commonwealth Departments and agencies concerned and staff of the Review have made exhaustive and wide ranging searches of all relevant records. Officials of these Departments and agencies have, I believe, provided all information requested of them within their ability to provide. Further, the many former officers of the Commonwealth who were concerned with Australian immigration and selection activities in Europe in post-war years whom I have approached for information readily responded, some travelling substantial distances to Canberra for the purpose of interview. Others resident outside Australia supplied information by letter. Sir Charles Spry, Director-General of Australian Security Intelligence Organization (A.S.I.O.) 1950-1970 agreed to be interviewed and supplied significant information.

1.9 It is, however, reasonably clear that my Terms of Reference do not authorize me to conduct what may be described as 'in the field' investigations, particularly investigations by way of interviews of suspects and witnesses seeking to establish the truth or otherwise of allegations as to commission of war crimes and I have not done so. However, for the reasons stated in subsequent Chapters, particularly Chapter 19, these limitations have not, I believe, prevented me from satisfactorily establishing the true facts as to the matters covered by the Review.

POST-ENTRY ACTIVITIES

1.10 My Terms of Reference do not, I believe, authorize me to inquire into activities of any suspect person after his entry into Australia, except in so far as those activities throw light on the circumstances of his entry.

ALLEGATIONS TO BE CONSIDERED

1.11 The allegations requiring consideration by the Review came from a number of sources.

1.12 First were the allegations or contentions raised in a series of radio programs on Australian Broadcasting Corporation (A.B.C.) radio commencing on 13 April 1986 called 'Nazis in Australia' and on the A.B.C. T.V. program on 22 April 1986 called 'Don't Mention the War'.

1.13 Essentially, the contentions advanced in these programs, so far as they were relevant to the Review, were that substantial numbers of Nazi war criminals were allowed to enter Australia and this in part came about by American and U.K. intelligence agencies deceiving or withholding information from Australian officers and even by the involvement of these Australian officers in the deception.

1.14 A resolution of the New South Wales Legislative Assembly on 16 April 1986 said (amongst other things):

> '1. This House expresses its deep concern at facts revealed by recent U.S. State Department, British Foreign Office and ASIO files which establish:
>
> (i) Large number of Nazi War Criminals were knowingly admitted to Australia by the Menzies Liberal Government in the 1950's.
>
> (ii) Although the records of these Nazis were drawn to the attention of the Menzies Government they were not only allowed to stay but protected even to the extent of that Government misleading the Commonwealth Parliament'.

1.15 Assertions to similar effect have been made in the Commonwealth Parliament.

1.16 Material naming persons as allegedly having committed war crimes was received by the Review from a number of sources, which are discussed in more detail in Chapter 10.

CHAPTER 2

SHOULD THE CHAPTER NOW BE CLOSED?

2.1 In the House of Representatives on 22 March 1961 the Acting Minister for External Affairs, Sir Garfield Barwick, in explaining the Government's decision to refuse a request from the Soviet Government for extradition of an alleged war criminal, Erwin Viks, referred to what he called two deep-seated human interests which came into conflict. On one hand, he said, there was the utter abhorrence felt by Australians to the offences against humanity known as war crimes. On the other hand, there was the right of this nation by receiving people into this country to enable men to turn their backs on past bitterness and to make a new life for themselves and for their families in a happier community.

2.2 He went on to say that Australia had developed a thorough but not infallible system for sifting and screening the hundreds of thousands of migrants who had enriched our national life since the war and, in default of a binding obligation requiring Australia at this point of time to do otherwise, those who had been allowed to make their homes here must be able to live in security new lives under the rule of law. While distinguishing the case of Adolf Eichmann, who was then facing trial in Israel, he thought that in 1961 'the time has come to close the chapter'.

2.3 With the exception of one member (Mr James (Hunter)), the then Opposition did not express dissent from the decision.

2.4 For many years this view permeated the thinking of the Australian Government when dealing with persons in Australia who were the subjects of allegations of war crimes. In Chapter 16 I shall discuss in detail how this view was responsible for Australia initially insisting that an extradition treaty with West Germany should not apply to events before 1966.

2.5 It was not an entirely new attitude because, after an initial period of activity in dealing with war criminals after the close of World War II when Australia participated in the International Military Tribunal at Tokyo which dealt with major Japanese war criminals and Australia by itself conducted approximately 1000 trials by military courts of minor criminals in the Pacific, there set in a mood of impatience when the process extended over several years. There was a strong feeling that the war was over and the community should get on with the task of post-war reconstruction. Nevertheless, the last Australian war crimes trial was not completed until April 1951.

2.6 Thus, in Parliament on 14 May 1947, Dame Enid Lyons suggested that a limitation should be placed on the time within which suspected war criminals could be arrested. On 24 February 1950, the Menzies Government, concerned that justice delayed is justice denied, announced its decision to try as expeditiously as possible persons accused of war crimes where there was enough evidence and to release suspects where there was insufficient evidence. The Government reserved its right to make a re-arrest should fresh material appear which seemed to justify a prosecution. When Parliamentary debate on this subject resumed on 16 March 1950, the then Leader of the Opposition, Mr Chifley, said:

> 'I could not see much purpose in continuing investigations aimed at the tracing of war criminals. That sort of thing could go on for the next twenty years, and new criminals could be located almost daily. I do not attempt, of course, to condone atrocities such as the honourable member for Grayndler (Mr Daly) mentioned. The situation has stirred up considerable public feeling, and has caused some criticism, not only of the former Government, but also of this Government. Many people ask how long these trials and investigations are to continue. Church representatives have criticized the long drawn-out trials at Nuremburg'.

2.7 Similar impatience at the length of time taken to complete the war crime trial process had developed even earlier in the United Kingdom. Thus, the Secretary of State for Commonwealth Relations sent a cable to the Dominions on 13 July 1948 in these terms:

'Trials of suspected German war criminals. We have been considering question of final date for completing trials in United Kingdom Zone of Germans who are suspected of war crimes.

2. It is now proposed that

(a) As many as possible of cases which are still awaiting trial should be disposed of by 31st August 1948 (uncompleted trials which began before that date would continue).

(b) In general no fresh trials should be started after 31st August 1948. This would particularly affect cases of alleged war criminals not now in custody who might subsequently come into our hands.

3. In our view punishment of war criminals is more a matter of discouraging future generations than of meting out retribution to every guilty individual, moreover in view of future political developments in Germany envisaged by recent tripartite talks we are convinced that it is now necessary to dispose of the past as soon as possible.

4. If Commonwealth Governments have any comments on arrangements proposed we should be glad to receive these by 26 July'.

2.8 No Australian record can be found of an Australian reply to this cable and indeed U.K. documents record that Australia did not reply, although it is possible that the Australian Minister for External Affairs, Dr H.V. Evatt, discussed the matter when he visited London shortly afterwards. It should be noted that the cable referred to trials in the British zone of Germany, a matter in which Australia had a limited interest. In any event, as I have said, Australia continued to conduct war crimes trials in the Pacific until 1951.

2.9 Moving forward to the present day, it must be said that a new generation has come forward, one at first dimly aware of the atrocities committed in the war period but in recent years increasingly conscious of the depravity and scale of these crimes. A fresh look at the whole matter has been taken by many people.

2.10 The arguments against now taking action remain and they are not insubstantial. These matters occurred over 40 years ago. In so far as persons now in Australia are concerned, most (but not all) have lived apparently blameless lives in Australia for many years and acquired Australian citizenship. Their crimes were committed in an entirely different environment and not against Australians. They would all now be of advanced years.

2.11 Indeed, except in the case of really serious war crimes, these arguments should, I suggest, prevail. That is to say, I suggest we exclude from further consideration allegations of collaboration, membership (by itself) of particular military or political organizations and damage to, or plunder of, property and the like. These offences, while undoubtedly warranting action in the immediate post-war period, do not, it seems to me, after the passage of more than 40 years now call for action.

2.12 But allegations have been recorded by the Review (see Chapter 10) that persons guilty of serious war crimes, indeed crimes involving the murder of many persons, in some cases hundreds of persons, in circumstances of the utmost cruelty and depravity, have entered Australia. In the case of such crimes, the argument that the culprits, by coming to this country, have turned their back on such events has, in my view, no validity. At the same time I must make clear that the Review has not in any final way investigated these allegations and I express no opinion as to the guilt of persons referred to in these allegations.

2.13 In the Australian system of justice, lapse of time has never been regarded as justification for withholding prosecution action for the most serious crimes such as murder. Neither has a blameless life after the crime, although this is certainly a matter to be considered in mitigation of sentence. Some of the offences the subject of allegations recorded by the Review are of such seriousness that, if the allegations are confirmed by a full investigation, justice, however long delayed, should be, and be seen to be, administered. In this way, the Australian community

would express its determination that the offences should not re-occur and its deep felt abhorrence of the crimes.

2.14 Therefore, in my view, the Chapter should not be closed in regard to serious war crimes and I recommend that the Government make a clear and positive statement to that effect and that it will take appropriate action under the law to bring to justice persons who have committed serious war crimes found in Australia. At the same time, the statement should, I suggest, indicate that the Government contemplates no reduction in the standards of justice to be applied in such cases or the safeguards now available under Australian law to persons accused of serious offences. Further, it should be made clear that action would only be taken against individuals where charges were fully supported by evidence, mere allegations would not suffice, that action would not be directed against ethnic groups nor should it be construed as in any way a slur on a particular ethnic group.

2.15 What further action should, in my view, be taken will be discussed in the succeeding Chapters.

CHAPTER 3

METHOD OF OPERATION

EXAMINATION OF COMMONWEALTH GOVERNMENT RECORDS

3.1 The Review identified seven Commonwealth Government departments and authorities whose records were likely to hold material relevant to the Terms of Reference. In each case an initial meeting was held with senior officers of the department or authority concerned in order to make known the Review's objectives and to establish appropriate procedures for the identification and examination of records of possible relevance. Members of the Review staff then worked directly with records management staff or other specialist officers from each agency. The co-operation received by the Review was uniformly willing and generally of a high standard. The Department of Immigration and Ethnic Affairs, the Department of Foreign Affairs, the Australian Security Intelligence Organization and the Australian Federal Police in particular assisted the Review by making available specialist officers to assist in research.

3.2 In view of the fact that material of interest to the Review proved to be widely scattered through more than 1000 files it was decided that the Review could operate most effectively by photocopying all relevant documents and placing the copies on new files arranged to cover the various subjects and individuals under examination in the most coherent way possible. The original files were then returned to the agency which had created them or to Australian Archives as appropriate. At the request of the Australian Security Intelligence Organization and the Australian Federal Police all photocopies of material received from those organizations were held on separate files which were transferred to the originating agency for secure storage when the work of the Review was complete.

3.3 In undertaking research, the staff of the Review were conscious at all times of the sensitivity of the matters under investigation and of the need to ensure that information relating to named individuals was held in strict confidence. This information was communicated to officers of other Commonwealth Government agencies only on a 'need to know' basis and records held by the Review have been kept at all times in secure storage.

3.4 The results of the Review's examination of the records of the seven agencies is as follows:

DEPARTMENT OF IMMIGRATION AND ETHNIC AFFAIRS (D.I.E.A.)

3.5 The Department's records were the single most important source of information for the Review. They provided a comprehensive account of the formulation and administration of Australian migration policy and also many examples of the security screening process in relation to individual cases. Regrettably, most of the older records of Australian migration offices in Europe appear to have been destroyed many years ago, but much material originating from those offices has fortunately survived in the Department's Canberra records.

3.6 The Department's records provided information on a large majority of individuals who were of interest to the Review. Documents relating to the selection of individual migrants from 1947 onwards were subsequently sent to Australia and are now mainly held in Australian Archives in Canberra. The selection documents provided photographs and details of personal and family background which were crucial for the definite identification of individuals of interest to the Review. They also included the migrant's account of his whereabouts and occupation during World War II. Location of relevant selection documents proved to be a complex task which made considerable demands on the Review's staff resources, but this commitment was fully justified by the information obtained.

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3.7 In addition to selection documents the Department also supplied the Review with naturalization details of all individuals of interest who were granted Australian citizenship at some time after their arrival in Australia. This information provided a further check on identity and gave leads on the current whereabouts of the individual concerned. However, difficulty was experienced in locating records on some migrants who left Australia permanently without taking out Australian citizenship. These cases should in theory have been traceable through the Department's Aliens' Register, but this is now incomplete.

DEPARTMENT OF FOREIGN AFFAIRS

3.8 This Department holds extensive records on Australian participation in the formulation and implementation of United Nations policy on the apprehension of war criminals during and after World War II. However, Australia was mainly concerned with crimes committed by Japanese forces against Australian citizens. Although there were some cases in which Australian prisoners of war were victims or witnesses of war crimes in Europe, no evidence has been found that any person accused of these crimes subsequently migrated to Australia. The most relevant of the Department's records related to the handling of a number of cases in which Australian residents had been accused of committing war crimes in Europe. The Department also gave valuable assistance in locating 75 of the 80 volumes of the United Nations War Crimes Commission lists and several sets of the Central Register of War Criminals and Security Suspects lists. Further reference to these lists will be made below.

DEPARTMENT OF DEFENCE

3.9 This Department's war crimes records deal predominantly with crimes committed by the Japanese against Australian service personnel. With the exception of one specialised issue the Department's records did not provide a significant amount of

relevant material not already located in the records of other agencies.

DEPARTMENT OF THE PRIME MINISTER AND CABINET

3.10 An extensive search of this Department's records provided material relating to immigration policy, security screening procedures and some individual cases involving war crimes accusations. However, in general, relevant material located in the Department's records was duplicated and elaborated by the records of other agencies. Having regard to the question raised by my Terms of Reference as to whether there was any policy by any Australian Government to allow or assist the entry of known or suspected war criminals into Australia, particular attention was directed to the possible existence of files of this Department recording, indicating or implying policy decisions of this nature.

ATTORNEY-GENERAL'S DEPARTMENT

3.11 All records relating to the formulation of Australian policy on war crimes were examined together with extradition requests and other individual cases involving war crimes. The Department's records provided the Review with a significant amount of relevant material.

AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION

3.12 A.S.I.O. records were an important resource for the Review in three areas. Firstly, they provided information in general terms on the work of Australian immigration security screening in Europe from 1948 onwards. As in the case of the Department of Immigration and Ethnic Affairs, most of the other records created in immigration selection offices in Europe have been destroyed, but copies of large numbers of reports and other documents originating from the European offices have survived in A.S.I.O. headquarters records. Secondly, A.S.I.O. records include

correspondence between A.S.I.O. and the Department of Immigration on general problems relating to the security screening of migrants and on the handling of individual cases. The consideration and resolution of these problems had a significant effect on the development of security screening policy. Thirdly, A.S.I.O. records include information relating to a considerable number of individuals of interest to the Review. This information has been gathered either because A.S.I.O. has been involved in the investigation of specific war crimes allegations or because the individual concerned had been in contact with an organization of security interest or involved in activities of security interest at some time after his arrival in Australia. In many cases information held by A.S.I.O. on World War II activities of individuals of interest to the Review is neither voluminous nor conclusive, but in conjunction with material from other sources it substantially assisted the work of the Review.

3.13 Regrettably, however, the only records that can be found of the actual security checks carried out on applicants in Europe are records of rejections which were sent to A.S.I.O. Headquarters and these only from certain dates as follows:

Germany	1960
Italy	1956
Denmark	1966
Austria	1959
France	1960

3.14 No records have been found of the checks resulting in acceptance, although searches have been made in all likely places in Europe and Australia. They have apparently been destroyed, although no record of their destruction has been found. This has meant that, in practically every case of interest to the Review, it was not possible to establish definitely whether any security check was made, the nature of the check or its results. It was only possible to say what security checks should have been carried out according to standing procedures. While acceptance of a person for migration to Australia in itself suggests that the

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check had revealed nothing sufficiently adverse to call for rejection, it does not of course follow that nothing adverse had been revealed in such a case. The absence of these records has made the task of the Review considerably more difficult than it would otherwise have been.

3.15 The initial identification of A.S.I.O. records likely to relate to the Terms of Reference of the Review was undertaken by A.S.I.O. staff in consultation with members of the staff of the Review. In order to ensure that all relevant material had been identified, the Secretary to the Review subsequently carried out a detailed check of all subjects and names of interest to the Review against the subject and name indices in A.S.I.O. Headquarters Registry. This check confirmed that no material of significance to the Review had been overlooked in the original search undertaken by A.S.I.O. staff. I am satisfied that I have had unrestricted access to all surviving A.S.I.O. records relevant to the Terms of Reference.

AUSTRALIAN FEDERAL POLICE (A.F.P.)

3.16 A.F.P. records provided a substantial amount of information on individuals of interest to the Review. Many accusations relating to war crimes have been investigated at some time by the A.F.P. or its predecessors while in other cases information relevant to war crimes has come to light in the course of police investigations in other fields. The Review also examined A.F.P. files relating to certain organizations.

QUESTIONS SUBMITTED TO COMMONWEALTH DEPARTMENTS AND AUTHORITIES

3.17 At the commencement of the Review, I submitted a detailed list of questions relevant to the Terms of Reference to the Department of Immigration and Ethnic Affairs, the Australian Security Intelligence Organization and the Australian Federal Police. In subsequent discussions with the Department of Immigration and Ethnic Affairs it was agreed that an officer of

that Department would be seconded to the staff of the Review so that the Department's response to the questions would in effect be provided by the Review's own research. A.S.I.O. and the A.F.P. submitted detailed written responses to the questions and information from these responses has been incorporated in this report. It should be noted that the object of the questions was to supplement rather than to replace research by members of the Review's staff, who also examined the records on which the A.S.I.O. and A.F.P. responses were based.

INTERVIEWS WITH FORMER IMMIGRATION AND SECURITY OFFICIALS

3.18 During the course of my investigations, I interviewed seven former Department of Immigration and Ethnic Affairs officers and five former A.S.I.O. officers, all of whom had been directly involved in the selection and security screening of migrants in Germany, Austria, Italy and the Netherlands between 1947 and 1955. I also interviewed Sir Charles Spry (Director-General of Security between 1950 and 1970) and I corresponded with two former Department of Immigration and Ethnic Affairs officers now resident in Europe. Some of the interviews lasted for several hours and provided much valuable information which filled many of the gaps in written records available to the Review. The former officers freely and frankly provided the information requested of them. The interviews were conducted on a confidential basis and I have not considered it appropriate in the Report to name particular officers.

3.19 The purpose of the interviews was primarily to establish how the various migration schemes were established and operated, what the selection and security checking processes were and how they operated and to determine as far as possible how persons the subject of allegations as to commission of war crimes passed through the selection and checking processes.

3.20 While, given the passage of more than 30 years, the memory of these former officers as to general procedures and processes was generally excellent, the officers usually had no recollection of particular cases with which, according to the records, they had dealt. In a number of such cases, the selection or security officer was dead.

3.21 However, in addition to serving this primary purpose, these interviews afforded me a most valuable insight into the way in which the selection and security screening officers undertook their duties. I am satisfied that in the great majority of cases these officers were at least as competent as could be expected in the circumstances. Certainly most displayed a high degree of dedication in carrying out a difficult task in working and living conditions which were often far from ideal. It is clear that these officers found their work in the chaos of post-war Europe a memorable and, at times, moving experience and that they were very conscious of the importance to Australia of the successful operation of the mass migration schemes. Inevitably, there were a very limited number of exceptions: the performance of one selection officer (now deceased) was considered sufficiently unsatisfactory for him to be recalled to Australia.

WAR CRIMINAL LISTS

UNITED NATIONS WAR CRIMES COMMISSION LISTS

3.22 Between December 1944 and May 1948 the United Nations War Crimes Commission (U.N.W.C.C.) issued 80 lists containing the names of nearly 37 000 individuals considered to be war criminals, suspected war criminals or witnesses to war crimes. In general the lists included the name, rank, unit and in some cases age or birthplace of the individual accused, together with a summary of their alleged crimes and the name of the government which made the allegation. Allegations relating to war crimes committed in Europe were filed by the Governments of the United States, the United Kingdom, France, the Netherlands, Belgium,

Luxemburg, Norway, Poland, Czechoslovakia, Yugoslavia and Greece and by the United Nations War Crimes Commission itself.

3.23 At least one set of the U.N.W.C.C. lists was sent to the Commonwealth Government at the time of issue and the Department of Foreign Affairs has located copies of 75 of the 80 lists, together with a four volume index covering the first 40 lists, among records now held by Australian Archives. A prolonged search failed to locate copies of the remaining five lists (numbers 45-49) but microfiche copies of these lists were kindly supplied to the Review by the United States Office of Special Investigations. Index volumes do not appear to have been issued for lists 41-80. There is no indication that the Department of Foreign Affairs used the volumes held by it and it certainly does not appear to have been aware in recent times of their existence. A copy does not appear to have ever been held by A.S.I.O., although its officers stationed in Europe said that they had access to copies held by British or U.S. intelligence agencies.

3.24 Review staff checked the name of every individual of interest to the Review against each of the 80 U.N.W.C.C. lists. It found two cases where the persons could be definitely identified as having migrated to Australia. Copies of the U.N.W.C.C. dossiers on these individuals were subsequently obtained from the United Nations. Two considerations must be noted in relation to these lists. Firstly, the Soviet Union and Hungary did not participate in the work of the U.N.W.C.C., so that allegations relating to war crimes committed in Estonia, Latvia, Lithuania, Byelorussia, the Ukraine and Hungary were not listed. Secondly, while crimes alleged to have been committed by Germans or Italians in Yugoslavia were listed, crimes alleged to have been committed by Yugoslavs against other Yugoslavs were not.

CENTRAL REGISTRY OF WAR CRIMINALS AND SECURITY SUSPECTS LISTS

3.25 The Central Registry of War Criminals and Security Suspects (C.R.O.W.C.A.S.S.) was established by the Allied military authorities in Paris early in 1945 to co-ordinate the listing of war criminal suspects. The organization moved to Berlin in June 1946 and was placed under the Legal Directorate of the Allied Control Council for Germany. C.R.O.W.C.A.S.S. was wound up in 1948. The Review made enquiries as to the existence of copies of the C.R.O.W.C.A.S.S. lists in Australia and it was discovered that A.S.I.O. held a two volume consolidated list issued in July 1945 and the Department of Foreign Affairs held 12 volumes including a three volume consolidated list issued in December 1947 and two of the three volumes of the final consolidated list issued in June 1948. Review staff checked the name of every individual of interest to the Review against the consolidated C.R.O.W.C.A.S.S. lists, but in only one case was an individual known to have migrated to Australia definitely identified.

BERLIN DOCUMENT CENTRE

3.26 The Berlin Document Centre (B.D.C.) was established by the United States Army in 1945 to bring together a huge volume of captured records relating to ethnic Germans who had served the Nazi regime, most notably as members of the Nationalsozialistiche Deutsche Arbeiter Partei (Nazi Party or N.S.D.A.P.), Schutzstaffel (S.S.) and Sturmabteilung (S.A.). The Centre is now administered by the United States State Department. The Review submitted to the Centre the names of all individuals about whom records might be held and in several cases information of substantial relevance was obtained. However, the Centre's records have significant limitations. As Allan Ryan, a previous Director of the United States Office of Special Investigations (O.S.I.), pointed out in his book Quite Neighbours at page 21:

> '... the BDC contained only records that had been generated in Berlin. For German or Austrian applicants, this was fine; if they were Nazi party or SS members, their records would be in the BDC.

> But Hitler's record keepers had shown no interest in sympathizers in the Ukraine, the Baltic countries, or most other areas of Eastern Europe. Indeed, members of the Ukrainian militia, or the Latvian political police, or the Estonian Selbstschutz, or the Croatian Ustashi, or the Hungarian Arrow Cross were usually not members of the Nazi party of Germany, but of their own local fascist organizations. Their records were simply not in Berlin, and never had been, so the "BDC check" was utterly useless for these people. The records the Army needed - personnel rosters, paybooks, membership cards, and so forth from German-occupied areas - were either destroyed or behind the Iron Curtain, far from the reach of the United States Army'.

SUBMISSIONS

3.27 Advertisements were placed in major capital city newspapers on 28 June 1986 summarising the Terms of Reference and inviting members of the public to submit relevant information to the Review. More than 30 written submissions were received, together with some approaches by telephone. The majority of submissions did not significantly assist the work of the Review, but several raised matters of substantial relevance. The latter group included:

(1) Executive Council of Australian Jewry

3.28 The Council provided the Review with a paper discussing the legal aspects of taking action against alleged war criminals, together with material on the history of Australian immigration policy.

(2) Australian Federation of Ukrainian Organizations

3.29 The Federation provided the Review with a submission and other literature relating to the use of evidence originating from the Soviet Union in court proceedings involving war crimes accusations. Similar material was received from several other ethnic organizations.

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(3) Mr Mark Aarons on behalf of the Australian Broadcasting Corporation

3.30 In view of the extensive coverage of allegations relating to war criminals in A.B.C. radio and television programmes in April and May 1986 I wrote to the Managing Director of the A.B.C., Mr Geoffrey Whitehead, on 7 July 1986 seeking access to documents which had been quoted or referred to in A.B.C. programmes. Mr Whitehead replied on 14 July 1986 stating that the A.B.C. was anxious to co-operate with the Review, but that it would be impossible to make documents available to the Review in the absence of the Background Briefing programme producer, Mr Mark Aarons, who had proceeded to Yugoslavia on long service leave. It was essential in my view that documents on which statements made in the Background Briefing series had been based should be available to the Review. Accordingly, I recommended to the Special Minister of State that suitable arrangements should be made to bring Mr Aarons back to Australia to locate and submit relevant documents to the Review. The Minister approved this course of action and Mr Aarons returned to Australia for a period of approximately two weeks during August 1986. Mr Aarons co-operated fully with the Review and provided copies of all documents requested by me together with additional relevant material and a submission relating to the Terms of Reference. Material supplied by the A.B.C. was subjected to the same checks of accuracy and authenticity as all other material located by or provided to the Review.

(4) Approach to Mr Simon Wiesenthal

3.31 I received a number of submissions suggesting that Mr Simon Wiesenthal of Vienna, whose efforts to trace Nazi war criminals have been known internationally for many years, might hold information relevant to the Terms of Reference. I therefore dispatched a copy of the Terms of Reference to Mr Wiesenthal and I subsequently wrote to him again seeking further information about an individual to whom he had referred in a radio broadcast. I also invited Mr Wiesenthal to bring to my attention any other material which he believed to be relevant to the Terms of Reference. I have not received a reply from Mr Wiesenthal.

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3.32 However, on 1 October 1986, the Simon Wiesenthal Centre of Los Angeles supplied to the Minister for Foreign Affairs (Mr Hayden) in New York a list of 40 names of alleged war criminals said to be now in Australia. These names and the associated allegations have been examined in the same way as all other material which came to the notice of the Review.

CONSULTATION WITH UNITED KINGDOM AUTHORITIES

3.33 Many of the contentions raised in the A.B.C. series referred to United Kingdom officers and records and I thus considered it necessary to raise these matters with United Kingdom authorities. On 9 July 1986 I met Mr Dougall, the United Kingdom Deputy High Commissioner in Canberra and discussed with him the matters on which I would be seeking information and assistance from United Kingdom authorities.

3.34 I subsequently provided Mr Dougall with copies of documents of United Kingdom origin received from the A.B.C. for authentication. At the same time a statement of the issues on which I sought information from his Government and questions relating to particular aspects were provided. On 1 September 1986, I met senior officers of the United Kingdom Cabinet Office and Foreign Office in London and oral answers were provided to the questions raised with the Deputy High Commissioner. They confirmed the authenticity of the documents received from the A.B.C. purporting to be copies of documents obtained from the Public Record Office. Arising out of discussions at the meeting, British officials obtained and supplied to me copies of additional documents from the Public Record Office which threw new light on some aspects of the matters inquired into. Generally, British officials were most helpful.

3.35 They were not, however, able to meet my request for information as to data held in the post-war years by the British intelligence centre in Germany. The security checks made in the

course of the screening process for migrants for Australia involved the use of this data. British officials said that a very large quantity of records of the centre had been returned from Germany, but the records had not been indexed and it would be an extremely time consuming task to determine now the data held from time to time.

CONSULTATION WITH CANADIAN AUTHORITIES

3.36 On 7 February 1985 the Canadian Government announced the establishment of a Commission of Inquiry under Mr Justice Jules Deschenes to investigate whether Nazi war criminals entered Canada and to advise as to action which might be taken to bring such criminals to justice.

3.37 The Commission has a substantial staff and has undertaken a very comprehensive program which included public hearings.

3.38 I visited Mr Justice Deschenes in Ottawa on 25 August 1986 and we had extensive discussions on the method of operation and progress of his enquiry. At that date, Mr Justice Deschenes expected to submit his report to the Canadian Government on 30 September 1986. However, he was subsequently granted an extension of time for reporting to 30 November 1986 and at the date of completion of this Report, he has apparently not submitted his Report to the Canadian Government.

CONSULTATION WITH UNITED STATES AUTHORITIES

3.39 Because matters raised in Parliament and in the A.B.C. series referred to U.S. officers and records, contact was made with U.S. officers and departments in three different ways:

(1) through the U.S. Office of Special Investigations;

(2) by Australian officials at the Australian Embassy, Washington communicating with their counterparts in U.S. Departments;

(3) through A.S.I.O.'s liaison facilities with U.S. intelligence agencies.

3.40 The Office of Special Investigations was established within the United States Justice Department in 1979 with the task of identifying alleged war criminals living in the United States and undertaking legal proceedings to seek their denaturalization and deportation: see further discussion of the activities of this Office in Chapter 15. Although there are significant differences between the Australian and United States legal environments, the work of O.S.I. was clearly of considerable relevance to the Review and I made contact with Mr Neal Sher, Director of O.S.I., through the Australian Embassy in Washington. Mr Sher subsequently visited the Review in Canberra on 7 August 1986 during the course of a private visit to Australia and I met Mr Sher again on 29 August 1986 when I visited the Office of Special Investigations in Washington.

3.41 Mr Sher and his staff gave me considerable assistance and I found the opportunity to discuss the work of an organization with extensive practical experience in matters relevant to the Terms of Reference very valuable. In particular, I discussed with Mr Sher the legal aspects of taking action against alleged war criminals, the possibility of taking evidence in overseas countries, procedures for the more effective exchange of information relating to war criminal suspects known or believed by O.S.I. to have resided in Australia and necessary administrative arrangements.

3.42 As regards the other means of communication with U.S. agencies listed above, in the Klaus Barbie matter (see Chapter 8), the contact by Australian Embassy officials produced very relevant information. In other cases, a substantive response had not been received from U.S. officials when the Report was completed. This was apparently due to bureaucratic inertia resembling the failure of Australian officials to respond in 1981-1985 to U.S. requests for information as discussed in

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Chapter 14. I do not think that the information sought is of such significance that delivery of the Report should be deferred in the hope that the information would ultimately be provided.

PART II

HISTORICAL

CHAPTER 4

THE POST-WAR IMMIGRATION SCHEMES

4.1 Post-World War II migration from Europe to Australia represented one of history's largest movements of population from one hemisphere to another. Between 1946 and 1959, approximately 1.2 million people migrated to Australia, of whom almost 250 000 were refugees unable or unwilling to be repatriated to their country of origin after the war.

4.2 Australia's post-war immigration policy was shaped by the firm belief that the security of the country required an increase in population. Consequently, a prominent feature of this policy was to encourage immigration by government financial assistance. Thus, as well as those who paid their own way, there were a number of assisted mass migration schemes which operated under agreements between the Australian Government and other governments or international organizations.

4.3 The greatest number of assisted migrants to arrive between 1947 and 1959 were the 347 740 British migrants who came to Australia under the United Kingdom Free and Assisted Passage Agreements in operation from March 1947. For non-British migrants, the first and most important mass migration scheme was the Displaced Persons Scheme which was followed by a succession of schemes based on migration agreements with particular countries. At the same time, Australia continued to receive unassisted aliens under the Landing Permit Scheme which was based on the sponsorship of persons by residents of Australia. A discussion of each of these schemes follows.

DISPLACED PERSONS SCHEME

4.4 The Australian Displaced Persons Scheme was part of an international programme to resettle refugees and displaced persons (D.P.s) after World War II.

4.5 The United Nations Relief and Rehabilitation Administration (U.N.R.R.A.), which comprised 45 nations, was the first international agency authorized to deal with the problem of the liberation, care and repatriation of displaced persons in post-war Germany. In 1947, it was succeeded by the International Refugee Organization (I.R.O.) and its Preparatory Commission (P.C.I.R.O.).

4.6 On the initiative of the first Minister for Immigration, Mr Arthur Calwell, Australia entered into an agreement with the I.R.O. on 21 July 1947 to resettle in Australia refugees and displaced persons under the protection of that body. Australia received a total of 170 695 persons under this scheme with over 70 000 arriving in each of the peak years of 1949 and 1950.

4.7 The Constitution of the International Refugee Organization dated 15 December 1946 defined the terms 'refugee' and 'displaced person'. According to Section A of Part I of Annex I of the I.R.O. Constitution, the term 'refugee' applied to:

> 'a person who has left, or who is outside of his country of nationality or of former habitual residence, and who, whether or not he had retained his nationality belongs to one of the following categories:-
>
> a) victims of the Nazi or Fascist regimes which took part on their side in the Second World War, or of the quisling or similar regimes which assisted them against the United Nations, whether enjoying international status as refugees or not;
>
> b) Spanish Republicans and other victims of the Falangist regime in Spain, whether enjoying international status as refugees or not;
>
> c) persons who were considered refugees before the outbreak of the Second World War, for reasons of race, religion, nationality or political opinion'.

4.8 Subject to certain provisions, the term 'refugee' also applied to a person other than a displaced person who was:

'... outside of his country of nationality or habitual residence, and who, as a result of events subsequent to the outbreak of the Second World War, is unable or unwilling to avail himself of the protection of the Government of his country of nationality or former nationality'.

4.9 Similarly the term also applied to persons who:

'... having resided in Germany or Austria and being of Jewish origin or foreigners or stateless persons were victims of Nazi persecution and were detained in, or were obliged to flee from, and were subsequently returned to, one of those countries as a result of enemy action, or of war circumstances, and have not yet been firmly resettled therein'.

4.10 The term 'displaced person' applied to a person who:

'... has been deported from or has been obliged to leave his country of nationality or of former habitual residence, such as persons who were compelled to undertake forced labour or who were deported for racial, religious or political reasons'.

4.11 The following were considered to be 'valid objections' to repatriation to the country of origin:

'(i) persecution, or fear of persecution because of race, religion, nationality or political opinions ...

(ii) objections of a political nature ...

(iii) compelling family reasons arising out of previous persecution, or, compelling reasons of infirmity or illness'.

4.12 Under the Agreement between Australia and the I.R.O., Australia agreed to submit to the I.R.O. particulars of numbers and qualifications of desired migrants and the I.R.O. was responsible for 'such preliminary selection procedure as may be required by the Commonwealth'. However, while I.R.O. eligibility officers determined who was eligible for I.R.O. assistance, Australian migration officers had the right of final selection.

4.13 The need for manpower as much as humanitarian reasons appears to have led the Australian Government to enter into the

agreement with the I.R.O. In June 1947 Brigadier White, Head of the Australian Military Mission in Berlin reviewed the main groups of displaced persons in Germany to determine who would make suitable migrants for Australia. He decided that the 'best material' was 'probably that of the Baltic races'.

> 'A wide range of professions and trades is represented among them, particularly the Estonians ... Many of them are quite well educated and they give the impression that they would be fairly easily assimilated into Australian society.
>
> The Baltic refugees are as a whole in a somewhat different category from other races in that they do not consist of depressed classes ... Generally speaking they appear to be hard working and law abiding'.

4.14 Mr Calwell subsequently agreed to take 4000 Baltic displaced persons in 1947 and 12 000 a year thereafter if the I.R.O. could provide ships. As it turned out, only 840 arrived in 1947 and just under 10 000 in 1948. The I.R.O. met all costs involved in moving selected migrants to Australia and was responsible for providing shipping. Australia contributed about two per cent of the administrative and operational expenses of the I.R.O. and made an ex-gratia payment of 10 pounds Sterling per adult to the I.R.O. because of the long voyage to Australia. In addition, the Commonwealth undertook the reception of displaced persons at Australian ports, placement in employment and care after arrival. At the time of selection, each migrant entered into an undertaking to accept employment specified by the Commonwealth Government for a period of two years. Displaced persons were not granted permanent residence in Australia in the first instance, but were placed under certificates of exemption of two years duration. If any individual was considered unlikely to prove a desirable citizen, his certificate of exemption could be cancelled and the person concerned returned to Europe in accordance with provisions of the I.R.O. agreement.

4.15 In a cable to Prime Minister Chifley dated 18 July 1947, the Minister for Immigration expressed his perception of the urgent need to set up the scheme immediately:

> 'So many countries are now alive to the possibility of displaced persons as a source of manpower that we must act quickly otherwise we will be left with their rejects. Many missions are already operating on behalf of other countries particularly from North and South America. Australia is so much further removed from Europe than these countries that we must tackle the task now if we are to successfully compete with them'.

4.16 The Minister himself immediately began to organize staff already in Europe to establish the scheme and to provide the necessary medical and security checks. Mr Calwell had read a report on 'local conditions from a security angle' by an officer of the Australian Military Mission which convinced him that the appointment of an Australian Military Officer to carry out security checks was 'absolutely essential'. Consequently, he arranged for this officer to be loaned by the Department of the Army to the Department of Immigration for organizing and security work for a period of two years. However, in the event this officer was engaged in selection duties rather than security screening. In addition, two experienced Australian Immigration selection officers were loaned by the Chief Migration Officer in London to assist in the establishment of the Displaced Persons Scheme and to begin the selection process for the first shipload of Baltic migrants which left Bremerhaven on 15 October 1947.

4.17 In the first year the I.R.O. worked on a quota system to bring forward D.P.s for the Australian selection team to interview. The Australian Mission would send the details of the Government's requirements to I.R.O. headquarters in Geneva who would pass these to I.R.O. Zonal headquarters. In the early stages of the scheme, the quota would specify the numbers and eligible categories required for each ship. Later, the requirements would be specified for a period of time. The I.R.O. Zonal headquarters would then apportion the Australian requirement over the various camps in the different German States according to the number of eligible volunteers in the various camps.

4.18 The Australian team aimed to distribute a copy of a pamphlet publicising the Australian scheme to every D.P. in the I.R.O. camps. According to selection officers involved with the D.P. Scheme, Australia was almost unknown to the displaced person and most of them looked to the United States or Canada to provide their fresh start. Any D.P. who was interested could fill out the enclosed 'volunteer' form. The I.R.O. area resettlement officers interviewed volunteers with a view to rejecting those who did not comply with the conditions set down by the Australian Government. For example, for the first shipment, only single Baltic men were required from the British Zone and persons volunteering for employment as farm workers or builders labourers were supposed to have had some experience in these trades. In addition, any displaced person who had served in enemy combatant forces during World War II should have been excluded.

4.19 Those persons who were regarded as eligible and suitable filled in an application form. This application form was checked by the I.R.O. against the individual's application for I.R.O. assistance form which was intended to be an authentic and complete record of the applicant. According to the Chief Migration Officer in Europe, this pre-selection process took about 14 days from the time the applications were called for to the time the I.R.O. had its applicants ready to be assembled at a Processing Centre.

4.20 There were three Processing Centres in the British Zone and six in the American Zone. These Centres were completely equipped and staffed for processing and it was there that the selection teams of all resettling countries worked. The timing and co-ordination of the processing of large numbers of D.P.s involved considerable administrative and organizational effort on the part of the I.R.O. Before the arrival of the selection team, volunteers were moved to a Processing Centre. I.R.O. headquarters arranged x-rays, Wasserman tests for venereal disease and, when possible, preliminary medical examinations by I.R.O. doctors. When the selection team arrived, it usually found enough D.P.s

assembled to keep it occupied for a number of weeks. Folders containing their completed application form, medical history, x-rays, Wasserman test results, two copies of a resettlement record and in some cases a D.P. history card were given to selection officers for examination before they interviewed the D.P. concerned.

4.21 In the early days of the scheme, the selection officers sat as a panel to interview each D.P. and asked questions on the basis of a formal questionnaire. Interpreters were used when necessary and the questionnaire included security questions. Later, when selection officers were thought to have become more experienced, they conducted interviews separately. The Australian team doctor examined each D.P., completed the medical form and returned the form to the selection officer who then recommended either acceptance or rejection based on the current selection policy which was laid down in a series of Berlin Instructions. At this stage a tentative ship's nominal roll was prepared. When the I.R.O. received the nominal roll it sent the particulars of each selected D.P. to the Combined Travel Board for the issue of a Temporary Travel Document. Until May 1949 when Australian security officers arrived, the principal security check was made at this stage.

4.22 From the Processing Centre the files resulting from the examinations were sent to Berlin or, after December 1949, to Cologne. These were checked against the existing index record with a view to detecting previous rejects and other undesirables and doubtful questions of eligibility were settled by the Chief Migration Officer.

4.23 When the selected D.P.s were ready, they were transferred to the Zonal pre-embarkation camp. The selection team would then proceed to this camp to make a final examination, issue visas, complete documentation and check all the documents which were to accompany the migrant to Australia. The D.P.s were then ready to depart by train to the embarkation port. On sailing day they were

taken by I.R.O. to the embarkation port and all necessary documents were issued to them as they embarked.

4.24 The Australian selection teams soon found that the field of single people from the Baltic States was shrinking rapidly. By May 1948 Brigadier F.G. Galleghan, White's replacement as Head of the Military Mission, was advised that Balts, Yugoslavs, Ukrainians and Czechs should have equal priority in recruitment and the field could also be extended to Polish displaced persons, but on a 'more exacting basis' than was applied to other nationalities. A few months later the Minister also approved of selection from the 30 000 Hungarian D.P.s in Germany. By the end of May 1949 Brigadier Galleghan, being considered 'thoroughly familiar' with the Department's selection standards and other requirements and selection teams having had 'considerable experience', was given the discretion to approve of the selection of all nationalities of displaced persons including German nationals provided they were recognised as displaced persons by the I.R.O. However, these extensions were all subject to the rule that not more than 15% of any one group was to be Jewish.

4.25 According to the then Chief Migration Officer (C.M.O.), in 1949 and 1950 when the scheme reached its peak there were 11 selection teams and a total of about 50 Australians on his staff. The Australian selection teams had to travel long distances. They often had to spend a full day travelling each way to and from an I.R.O. state headquarters. There they would spend a period which would range from several days to several weeks selecting at a rate of up to 100 D.P.s per day. For 1950 for example, the average monthly totals of displaced persons sailing for Australia were approximately 7 000 per month, but there were several examples of much higher totals during that time. When the I.R.O. wound up its activities in 1951, the Commonwealth Government agreed to receive displaced persons already accepted for migration whose passages were still to be arranged. The last of these arrived in 1953.

4.26 By mid-1951, the I.R.O. had processed and transported for resettlement in various parts of the world almost 1 million refugees and displaced persons. Australia's intake of these migrants was second only to that of the United States of America. For comparison, the total number of refugees resettled in the four leading resettlement countries under government selection schemes as well as by individual nomination were by the end of 1950: United States of America 238 006; Australia 170 543; Israel 120 766 and Canada 94 115.

4.27 When the I.R.O. was terminated, its functions were apportioned between two bodies: legal and political functions were invested in the office of the United Nations High Commissioner for Refugees (U.N.H.C.R.) which was created on 14 December 1950 and its resettlement functions were taken over by the Provisional Intergovernmental Committee for Movement of Migrants from Europe (P.I.C.M.M.E.) of which Australia was a founding member. P.I.C.M.M.E. later became the Intergovernmental Committee on European Migration (I.C.E.M.).

4.28 In Germany, the German authorities assumed responsibility for, and began organizing, the Processing Centres. Although some of the experienced I.R.O. staff retained their jobs under P.I.C.M.M.E., considerable confusion and disorganization occurred in the transition. Australian selection teams managed to continue to recruit displaced persons at a rate of about 500 per month in Germany, but for some time processing in Austria, Italy and Trieste was more seriously delayed while disagreements over staff and finances between P.I.C.M.M.E. and Government agencies were resolved.

4.29 In order to supplement the numbers of British migrants and to maintain an annual migrant intake of 200 000, when the D.P. scheme ended, Australia entered into assisted mass migration agreements with a number of European governments:

DUTCH MASS MIGRATION

4.30 The Netherlands-Australia Migration Agreement was concluded in February 1951 and commenced operation on 1 April of that year. The passage costs were met by the Australian and Netherlands Governments, I.C.E.M. and a contribution from the migrant. By the end of 1959, 51 449 Dutch migrants had settled in Australia under this agreement.

ITALIAN MASS MIGRATION

4.31 On 29 March 1951, Australia entered into a migration agreement under which selected Italian migrants were given assistance to migrate to Australia with costs organized in a way similar to the Netherlands agreement. From 1 August 1951 to 31 December 1959 arrivals under this agreement totalled approximately 39 000 persons. In addition almost 10 000 migrants, consisting of Triestian refugees and a quota of selected refugees of other nationalities, also arrived in Australia from Italy during this period.

GERMAN MASS MIGRATION

4.32 Notwithstanding the considerable organized opposition to German mass migration from about 1950, particularly from the Australian Jewish community, a migration agreement was signed between the Australian Government and the Government of the Federal Republic of Germany on 29 August 1952. Migrants moved under this agreement travelled almost free of charge. The Australian Government contributed 100 pounds per head with I.C.E.M. making up the balance derived in part from an annual contribution made to the Committee by the Government of the Federal Republic of Germany. The first shipload of German migrants under this scheme sailed from Bremerhaven on the S.S. "Nelly" on 30 October 1952 and arrived in Melbourne on 5 December of that year.

4.33 The first 1000 of these migrants were specially selected for Broken Hill Proprietary Company Limited and other employees. Up to the end of 1959, just over 50 000 German assisted migrants had arrived in Australia.

OTHER INTERGOVERNMENTAL AGREEMENTS

4.34 Under similar intergovernmental arrangements between late 1952 and the end of 1959, Australia received approximately 14 000 Austrian and 25 000 Greek migrants. In addition, a General Assisted Passage Scheme encouraged nearly 11 500 persons from the United States, Switzerland and the Scandinavian countries to migrate to Australia.

THE LANDING PERMIT SCHEME

4.35 From as early as 1939, Australia had received a limited number of 'refugees and displaced aliens' under the Landing Permit Scheme. Just after World War II, most of the landing permit cases were Jewish people of German nationality with some Poles and stateless people.

4.36 This scheme was based on the sponsorship of individuals by relatives or friends in Australia who could guarantee accommodation and maintenance of the migrant. The landing permit holder had to arrange his own passage at his own expense and was not processed in the same way as those in the mass migration schemes. Their sponsors in Australia were security checked and the Immigration Department in Canberra had the final say on special cases. If there was no security objection to the applicant and other departmental requirements were satisfied, a landing permit was issued and forwarded to Australian representatives overseas who were responsible for their distribution.

4.37 The landing permit holders themselves were not selected by the overseas organization of the Department of Immigration but migration officers were expected to check the suitability of these migrants before visas were issued. After the identity of the person presenting the landing permit had been checked as far as possible, applications were made to the Military Government for an exit permit to leave Germany. Field security screening was carried out as part of the process of clearance through the Combined Travel Board which controlled entries and exits for the whole of Germany. In a number of cases, although the sponsors had been found to be satisfactory, Australian authorities in Europe cancelled landing permits because nominees were thought to be security risks.

4.38 In countries from where there was little migration to Australia, the landing permit was made available in Australia for transmission to the nominee, but the Australian Consular representative (who might be British) provided the visa for Australia. Significantly, until 1951, landing permit holders in France and Italy were not subject to the normal security screening procedures which operated in Germany.

4.39 There was apparently a marked difference in quality between the average selected displaced person and the approved landing permit holder. In August 1950 the Minister for External Affairs, Mr Percy Spender, reported to the Minister for Immigration, Mr Harold Holt, that he felt strongly that the system of personal selection of landing permit holders was not sufficiently reliable. He recommended that, as well as an investigation of the sponsors in Australia, it was necessary to investigate the nominee at the point where the landing permit was normally issued to approved cases. Thus, the permit would only be issued by the overseas office of the Immigration Department if the applicant satisfied all immigration requirements. Alternatively he suggested that landing permits should continue to be issued in Canberra, but delivered to the nominee only if Australian representatives considered the nominee suitable after

a personal interview. Either of these alternatives would improve the Landing Permit Scheme by granting larger discretionary powers to migration officers and thereby, in Spender's words, maintain 'reasonable standards' as well as assure that security was 'properly safeguarded'.

4.40 The Review also noted that there had been a number of cases of persons attempting to enter Australia under the landing permit process after being rejected under the D.P. scheme by Australian Immigration selection teams on either medical or security grounds.

4.41 As the volume of work involved with the Displaced Persons Scheme declined from early in 1951, security officers were increasingly used to check landing permit holders in Germany. This experience led to recognition of the need to check all landing permit holders. By July 1952, uniform procedures for security screening of all applicants for visas for Australia were established. Thus landing permit holders were also to be fully checked against all records available. In addition, all applicants were to be interviewed by a selection officer and doubtful cases referred to security officers for reinterview.

4.42 The following details of permits issued during 1950 illustrate the volume and spread of landing permit work in Europe:

'Italian permits granted - 18 058 covering 22 087 persons
Dutch permits granted - 379 covering 596 persons
German permits granted - 1 177 covering 1 712 persons
Austrian permits granted - 405 covering 621 persons'

SPECIAL WORKERS SCHEMES

4.43 There was also a special class of landing permit holder selected on trade qualifications and general suitability by officials dealing with special projects. These project workers were intended to be subject to a final examination by Australian Immigration Department selection teams to determine whether or

not they were suitable migrants and satisfied the security and medical criteria.

4.44 Up to 1951, Dutch, Italian and German people were selected for Australian projects, including the Snowy Mountains hydro-electric Scheme, Tasmanian Hydro-Electric schemes, Commonwealth and South Australian Railways and pre-fabricated housing projects.

EMPLOYMENT OF SCIENTIFIC AND TECHNICAL ENEMY ALIENS SCHEME (E.S.T.E.A.)

4.45 An additional special scheme known as the E.S.T.E.A. which had been in operation since 1946 for the recruitment of highly specialised scientists and technicians from former enemy countries (chiefly Germans, Austrians and Italians) must also be noted. This scheme was jointly inaugurated by the Department of Immigration and the Commonwealth Department of Industrial Development and the persons selected under it were brought to Australia at their prospective employer's expense.

4.46 Between 1946 and the end of 1950, only about 80 scientists and technicians arrived in Australia under E.S.T.E.A. They were primarily engaged in pure research and industry rather than secret defence research, as in other Allied countries. In all cases, these people were subjected to a preliminary security screening in Germany and were engaged only where a favourable security report was given. Further, they were on probation for nine months after their arrival in Australia. After this time, provided that there was no security objection, approval could be given for the admission of their wives and families. All documents examined by the Review indicated that normal security clearances needed to be obtained and that scientists were rejected if they were considered unacceptable due to their association with the Nazi Party.

CHAPTER 5

SECURITY SCREENING POLICY AND ITS IMPLEMENTATION

SECURITY SCREENING CRITERIA

5.1 When mass migration of non-British migrants from Europe to Australia commenced in 1947 with the inception of the Displaced Persons Scheme, it was apparently not thought necessary to draw up a security screening policy for Australia's special needs. Instead, reliance appears to have been placed on the screening steps that I.R.O. would, it was assumed, take and the general common sense of Australian officers engaged in the selection process.

5.2 The constitution of the I.R.O. specifically stated that no international assistance should be given to traitors, quislings and war criminals and that nothing should be done to prevent in any way their surrender and punishment. Part II of Annex I to the Constitution specified the persons who would not be the concern of the I.R.O. as follows:

> '1. War criminals, quislings and traitors.
>
> 2. Any other person who can be shown:
>
> (a) to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations; or
>
> (b) to have voluntarily assisted the enemy forces since the outbreak of the second world war in their operations against the United Nations'.

5.3 A further exclusion was persons 'of German ethnic origin, whether German nationals or members of German minorities in other countries'.

5.4 The I.R.O. produced a manual for eligibility officers which set out the rules for determining who was the concern of the organization. For the guidance of I.R.O. eligibility officers, the manual also provided some historical background on

European areas of interest and case studies of persons who had been found either within or outside the mandate of the I.R.O.

5.5 Thus, for example in pages 53 to 57, it explained that, during the German occupation of the Baltic States between July 1941 and August 1944, compulsory military service was enforced but there was evidence to indicate that large numbers of the first battalions of units formed by the Germans in the Baltic States were volunteers. The I.R.O. eligibility manual provided the dates of the mobilisation decrees for military service. Therefore, although the manual stated that members of the S.S. Police Regiments, the Sicherheitsdienst (Security Service), the Einsatzgruppen and the Schutzmannschaften were prima facie outside the mandate of the I.R.O., if an applicant from the Schutzmannschaften (para-military organization) or the Waffen S.S. could produce evidence that he was conscripted and satisfied I.R.O. officers that he did not commit atrocities or otherwise persecute civilian populations, then he could be considered for I.R.O. assistance.

1949

5.6 During 1948, a number of press reports appeared in Australia alleging entry of Nazis and Communists among European immigrants under the Displaced Persons Scheme. The Director of Military Intelligence, Colonel C.C.F. Spry, as he then was, saw the need for two Australian Military Intelligence officers to be posted to Europe to handle the security checking of migrants and this was accepted by the Government.

5.7 Two Military Intelligence officers were seconded to the Department of Immigration and were responsible for advising the Head of the Australian Military Mission on security matters affecting the Displaced Persons Scheme. They were responsible for West Germany, Berlin and Austria. Although they were given no executive authority, Colonel Spry envisaged that their advice would carry sufficient weight to make this unnecessary. He

directed them to evolve suitable counter-measures to minimise the risk of espionage in Australia by opposing the entry to Australia of persons: who were at the time, or could have possessed attributes of, intelligence workers; who could foster subversion; or, whose background suggested unsuitability for assimilation into the Australian community.

5.8 Thus, the two Australian Military Intelligence officers were instructed to initiate arrangements with British, American and French intelligence agencies and also to keep the Director informed of matters of general intelligence interest not affecting the migration scheme. A month after their arrival in April 1949, they produced an operational directive laying down the general security procedure based on their application of Colonel Spry's directions. However, the directive did not attempt to state the criteria to be employed by them in security checking of applicants.

5.9 According to these officers, the decision as to whether or not a person was a security risk was based on 'very broad and general criteria' and much could 'depend on interpretation'. However, they stressed that they always tried to be consistent in their assessments. As far as the Displaced Persons Scheme was concerned, membership of the Nazi Party and certain affiliated formations was sufficient for rejection on security grounds.

5.10 However, one of the security screening officers reported that, for Landing Permits, special cases and the German Workers Scheme, the Department of Immigration would not always accept this criterion by itself as grounds for rejection. He stated that

> 'Security Officers almost invariably recommended rejection on the grounds that the Nazi Party was an elite organization and that all available evidence furnished little support for the deprecations of the "I was forced" or "I did not know" variety of membership disclaimer'.

5.11 In his view membership of the Nazi Party was 'a clear, indication of ideological preference'. Of more current security

interest at that time were the political extremists, both of the left and of the right. However, not infrequently, they were overruled by the Chief Migration Officer.

1950

5.12 From later documents, it appears that in June 1950 the Minister for Immigration approved the first statement of criteria for security checking of European migrants for Australia, although the record of the actual decision cannot be found. These criteria appear to have been:

(a) admission to Australia of residents of Iron Curtain countries or persons who had left those countries within 12 months should be restricted to close relatives unless specifically authorized by the Minister or Secretary;

(b) persons holding extreme political views, for example, members of the Communist Party and members of the Nazi Party not cleared by a Denazification Tribunal were not eligible for admission;

(c) in the case of Germans, only persons nominated by Australian residents and skilled in a trade or suitable for employment in an under-manned occupation should be accepted.

1951

5.13 When negotiation commenced for the mass migration schemes with Holland, Italy and Germany to replace the Displaced Persons Scheme, it became obvious that two officers could not cope with the security screening. Thus, in May 1951, two officers of the Australian Security Intelligence Organization were posted to Holland and Italy. These were in addition to the two Military Intelligence officers already stationed in Germany.

5.14 At the end of 1951, a special sub-committee of the Immigration Advisory Council, which included the Director-General of A.S.I.O., the Secretary and Assistant Secretary of the

Department of Immigration and a representative of the Australian Council of Trade Unions, considered the security aspects of immigration. Its conclusions were approved by the Minister on 28 December 1951.

5.15 The December 1951 policy was expressed as follows:

'(i) that existing policy in relation to the admission of the nationals of Iron Curtain countries and of aliens resident in China and Israel should be varied to provide, as suggested by the Director-General of A.S.I.O., that the general rule governing the admission of such persons shall be that exceptional circumstances outweigh the security objection to them;

Note: Existing policy restricts the admission of residents of Iron Curtain countries and Israel and nationals of those countries who have left the country within twelve months prior to the date of application to wives, husbands, children, grandchildren, sisters, brothers and parents of nominators. Nationals who have been outside such countries for more than twelve months are eligible for admission on the same conditions as other aliens.

Aliens resident in China are eligible for admission, subject to compliance with normal requirements, provided they are nominated by residents of Australia who are of good repute and not adversely recorded from a security angle.

(ii) that the phrase "exceptional circumstances" used in recommendation (i) should include close relationship to residents of Australia (wives, husbands, minor children, grandchildren, sisters, brothers and parents),

(iii) that, in dealing with aliens generally (including visitors, persons holding extreme political views and Germans) it should continue to be the policy that admission should not be approved if, in the opinion of A.S.I.O., a substantial security risk attached to the individual's entry - the security tests to be applied (e.g. membership of certain organisations) being a matter for A.S.I.O. to determine; but

(iv) that it should be reserved to the Department of Immigration to depart from the general rule in cases presenting special features, provided that any such person is not reported to be a substantial security risk'.

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5.16 The significance of membership of organizations was left to the Director-General of A.S.I.O. to decide. In relation to Germans, the view of the Director-General was that the following should be excluded:

'Ex-Servicemen

(a) Military S.S.
(b) Military intelligence service.

Civilians

(a) Members of the Nazi Party and affiliated organizations
(b) Civilian S.S.
(c) Storm Troopers
(d) Secret Police
(e) Security Service'

5.17 Additional exclusions included participants in war crimes and crimes against humanity. The Director-General was also of the view that Nazi Party members not cleared by a Denazification Tribunal and, if prominent in the movement, even if cleared, should not be accepted.

1952

5.18 In February 1952, the Director-General communicated these views to the Senior Security Officer at The Hague and then went on to say:

'5. The intention of both the Department of Immigration and A.S.I.O. is to exclude those Germans who could be a security risk in this country. Bearing in mind that service in the Armed Forces or in some other part of the war effort would be normal and in fact compulsory for all able-bodied Germans, we do not wish to forbid entry of desirable types solely on these grounds. On the other hand, a satisfactory screening standard is essential because any action to repatriate migrants due to an adverse background in Europe or to their activities here after arrival is confined to extremely bad cases.

6. I would like your views at an early date, in the light of your experience in Germany, on the categories of persons who should not be permitted to migrate. In particular, your advice is desired as to the standards desirable in screening members of the Nazi Party. Perhaps some distinction can be made between Party executives and ordinary rank and file members, or on the other hand, some demarcation based on De-Nazification Tribunal records might be practicable.

7. In view of the fact that a German mass scheme is about to commence, I desire your reply to be treated as urgent'.

5.19 The first migrants under the German Mass Migration Scheme in fact arrived in Australia on 5 December 1952.

5.20 The Senior Security Officer's reply explained in considerable detail the steps taken by the Allies to deal with members of the Nazi Party and affiliated organizations in the post-war period. He recommended a system of assessment using standards based on rank and position similar to those used by Allied interrogation staff in the immediate post-war period. Because of doubts as to efficacy and integrity of the Denazification Tribunals operating in post-war Germany, the Senior Security Officer recommended that the decisions of these Tribunals be disregarded.

5.21 Persons recommended for automatic rejection were:

'(1) all persons released from civilian internment camps in Category I;

(2) all ex-members of the Abwehr;

(3) all ex-members of the Sicherheitsdienst (S.D.) including typists, clerks, etc;

(4) all ex-members of the Gestapo:

(5) all members of the S.S. Totenkopfverbande;

(6) all members of the Allgemeine S.S. of and above the rank of Scharfuhrer (Sergeant);

(7) all members of the Waffen S.S. of and above the rank of Oberscharfuhrer (Staff Sergeant) except those compulsorily transferred into the Waffen S.S. from other military branches after June 1943;

(8) all members of the N.S.D.A.P. holding the appointments of or above Ortsgruppenleiter (District Leader) or Gauhauptstellenleiter (State leader) which were normally held by persons holding the rank of Gemeinschaftsleiter (First Lieutenant); and ordinary members who joined the N.S.D.A.P. before or during 1933 and remained members until 1945, except during periods of military service;

(9) Reichstag members between 1934 and 1945, all members of the Reichleitung of the Party and its affiliates and subsidiary organizations;

(10) all members of the S.A. of and above the rank of Hauptsturmfuhrer (Captain)'.

5.22 The Director-General approved this recommendation (it was within his authority under the December 1951 decision) and wrote to the Secretary of the Department of Immigration on 9 April 1952 informing him of the change to his original recommendation that all members of the N.S.D.A.P. and affiliated organizations be excluded from admission into Australia. He said:

'Further consideration has been given to this subject, and as a result of our screening experience in Germany since my original recommendation, which is confirmed by the British Intelligence Division, I am now of the opinion that membership of the N.S.D.A.P. (and some affiliates) does not of itself constitute grounds for raising a security objection'.

5.23 However, he pointed out that, while the admission of ordinary rank and file members and certain low grade officials and ranks may not have been 'embarrassing from a security view point', their entry into Australia may have been 'obnoxious to certain racial or religious groups and could result in adverse publicity'. Thus, there was no press release on the change in policy which allowed low ranking members of the Nazi Party to migrate to Australia. Apparently, this policy was not made public until January 1960.

5.24 Colonel Spry perceived this approach to membership of the N.S.D.A.P. and its affiliates as providing the necessary flexibility to meet migration requirements while at the same time allowing 'a considerable degree of latitude to screening officers'. Nevertheless Colonel Spry indicated his priorities regarding security screening by his officers in Europe. His instructions were:

> '... while adhering generally to the classifications listed ... bear in mind that the primary factor is the applicant's current security status'.

5.25 However, he did ask officers in Germany to provide Headquarters with reports showing the records and travel details of any members of N.S.D.A.P. or affiliated organizations who were permitted to migrate to Australia.

5.26 Further, in a memorandum to his Senior Security Officer in The Hague on 29 April 1952, the Director-General stressed that A.S.I.O. was almost totally dependent on the security staff in Europe to prevent politically undesirable migrants entering Australia. He directed that specific questions to elicit whether or not people had been members of the 'the Communist Party of a European country or of the Nazi or Fascist Parties' be put to intending migrants by the Australian selection teams, and that these questions and answers were to be recorded on each migrant's papers.

5.27 He went on to explain that the reason for this was that:

> 'while you may reject any application without proof, once an alien has evaded the security screen, a strong case is essential before deportation proceedings may be approved by the Minister for Immigration, upon my recommendation'.

1955

5.28 In May 1955 the Director-General of Security sent the Secretary of the Department of Immigration a copy of revised security criteria for German nationals seeking to enter Australia

both as migrants and as visitors. A copy of the document was also sent to the Prime Minister. The Director-General drew the Secretary's attention to the more limited categories for automatic rejection and to the point that membership of the Nazi Party was 'not of itself ground for security objection either as a business visitor or as a migrant'.

5.29 German applicants for permanent residence in Australia including those in the assisted passage scheme and the landing permit applicants were to be divided into two security categories. Firstly, those to be rejected immediately upon application; and secondly, those to be subject to detailed investigation and consideration with the decision based on the merits and circumstances of each case.

5.30 Rejection categories were:

(a) war criminals found guilty of crimes against humanity;

(b) members of any resurgent Nazi groups;

(c) members of the Communist Party of Germany (K.P.D.);

(d) agents of hostile intelligence services;

(e) members of the German civilian security police (Sicherheitsdienst or S.D.) and of similar German-controlled organizations in occupied territories;

(f) members of the Gestapo (secret police); and

(g) concentration camp staff, including the Totenkopfverbande or Deaths Head formations of the Waffen S.S. and camp staff who were recruited from the Allgemeine S.S.

5.31 Categories for consideration and investigation were:

(a) individuals on the United Nations War Crimes Commission (U.N.W.C.C.) list or on the Central Register of War Criminals and Security Suspects (C.R.O.W.C.A.S.S.);

(b) all ranks of the Allgemeine S.S. and Waffen S.S.;

(c) prisoners of war and civilians interned in Russia particularly those who had attended ANTIFA (anti-Fascist) schools;

(d) members of the East Zone Communist Party (S.E.D.);

(e) officials of the Nazi Party of Ortsgruppenleiter (District Leader) or above;

(f) members of the Abwehr (German military intelligence);

(g) certain elements of the Hitler Jugend (Hitler Youth) selected for their fanatical devotion to Nazism;

(h) applicants submitting fraudulent documentation;

(i) persons suspected of potential subversive activities;

(j) members of East Zone para military forces;

(k) members of the S.A. (Sturmabteilung)

5.32 German business visitors who were in those categories listed for rejection of migrants would be likewise rejected.

5.33 The factors taken into account when arriving at a decision on particular cases were to be:

(a) degree of activity;

(b) length of membership;

(c) rank attained and salary;

(d) date and circumstances of recruitment;

(e) false statements by the applicant.

5.34 Despite the explicit security screening categories which were introduced in 1952 and modified in 1955, a memorandum from the Director-General to his Senior Security Officer in The Hague of 28 July 1953 advised that 'it would be unwise to lay down any hard and fast rules for determining the exact basis for the raising of a security objection'. He also thought that, because security procedure dealt with the 'human element', it had to be sufficiently elastic to allow for a reasonable decision in varying circumstances.

5.35 Thus, in the Director-General's view 'the various policy directives which you have received from time to time are designed more to guide, than to bind you to a specific course'. He therefore provided some general considerations for the assessment of particular cases. In general security screening officers were to give every consideration to the raising of a security objection if the applicant's background showed a history of:

'(a) acts in the nature of espionage;

(b) association with foreign agents;

(c) public statements which can reasonably be considered as seditious or treasonable to the Commonwealth or friendly powers;

(d) affiliation with any organization which seeks to alter the form of Government of the Commonwealth of Australia;

(e) being influenced by or subject to the dictates of any foreign power;

(f) advocacy of revolution or use of force to bring about political or economic changes'.

5.36 The Director-General thought that in mass migration schemes the problem was 'relatively simple':

'Where necessary, doubtful cases should be subject of discussion between you, the selection officers and the Chief Migration Officer. The interpretation of "doubt" should be a matter for you alone'.

5.37 However, in landing permit cases where sponsorship was involved, 'a little intelligent anticipation' was required. A.S.I.O. officers were informed that in the majority of these cases it could be accepted, almost beyond doubt, that an appeal would be made. Security officers must be prepared to support their decisions in such cases with details when challenged.

CURRENT SITUATION

5.38 Since the commencement of the A.S.I.O. Act 1979 (1 June 1980), A.S.I.O. has been subject to the constraints of

that Act regarding advice to D.I.E.A. in the form of security assessments on applicants for entry to Australia.

5.39 Thus, communication by A.S.I.O. to D.I.E.A. of information that an applicant was, or was suspected of being, a war criminal could only be justified on the basis that it was in some way relevant to security as defined in that Act.

5.40 In a communication to D.I.E.A. dated 20 June 1986, A.S.I.O. said:

> 'Please be advised that ordinary membership of the Nazi Party unconnected with evidence of criminal activity or of membership of an agency associated with war crimes, has not been ground for security objection since the mid-50's. Security checking was directed towards identifying those migrants who may practise or be expected to practise neo-Nazi beliefs in Australia - the security check was seen as dealing with current threats not historical ones. This situation is reflected in the definitions of security in the ASIO Act.
>
> 2. The issue of whether or not former members and/or officials of the Nazi Party and/or officials of German state organs and/or military and accused or convicted war criminals should be admitted to Australia involves a security question only where such persons may be thought to pose a threat to Australia by seeking to carry out similar activities. Given the age of those who fought in World War II it is considered that the number of former war criminals and/or member of the Nazi Party seeking to migrate to Australia would be extremely small'.

5.41 The Report of the Royal Commission on Australia's Security and Intelligence Agencies in relation to A.S.I.O. said at p.232:

> '10.17 There is a danger, in the absence of clear guidance as to its purpose, that a security checking procedure such as that applied to people wanting to enter Australia can become ineffectual. I see a clear need for delineation of the object of the process by reference to, but in more specific terms than, the ASIO Act's definition of security. There should be a statement of the kind of people whom it is desired to keep out of Australia'.

5.42 The Commission recommended that action be taken to determine formally the appropriate criteria to be applied by A.S.I.O. in assessing whether a foreign person seeking to enter

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or stay in Australia constitutes a security risk. However, to date, this has not been done.

COMMENT

5.43 Until the December 1951 statement, the criteria made no specific reference to exclusion on the grounds of war crimes. The absence of any specific criterion or direction on the subject before that date is probably explained by an unconscious assumption that the very elaborate and apparently comprehensive and thorough system for arrest and prosecution of war criminals set up by the Allies in Europe at the end of World War II, coupled with the preliminary selection processes of I.R.O., removed any possibility of a war criminal reaching the Australian selection officers.

5.44 Australian security and selection officers who served in Europe at the relevant time whom I interviewed emphatically asserted that 'it went without saying' that war criminals should be rejected for selection and that they unquestionably proceeded on this basis. While it would undoubtedly have been much better if the security criteria for selection had, from the outset, specifically referred to war criminals so that the minds of selection and security officers would have been clearly focused on the issue. However, it cannot, I think, be inferred from the omission of a specific reference to war crimes during this early period that there was a tacit policy to admit war criminals.

5.45 Beginning in December 1951, the criteria certainly referred to war crimes and provided varying rules for distinguishing between different classes of membership of Nazi Party and like organizations. This probably reflected a dawning appreciation of the limitations of the previous security checking process, the newly assumed role of A.S.I.O. as to security checking in Europe, the increasing number of Germans accepted for immigration and the pending German Mass Migration Scheme. It may be noted that the 1955 criteria limited automatic rejection as

regards war crimes to persons found guilty of crimes against humanity while persons on the U.N.W.C.C. list or the C.R.O.W.C.A.S.S. were placed in the category for consideration and investigation. As to this, it must be remembered that by 1955, seven years had elapsed since compilation of the U.N.W.C.C. list and even longer since C.R.O.W.C.A.S.S. It may well have been thought that, by that date, inclusion of a person's name on either list, not followed by conviction, was a matter more appropriate for investigation than automatic rejection.

5.46 A conspicuous feature in the changing criteria was, of course, the relaxation by stages of the rules as to significance of membership of the Nazi Party and like organizations. The December 1951 criteria required the rejection of any member of the Nazi Party, but this was a more severe approach than that taken by the International Military Tribunal in 1946 which declared criminal only the Leadership Corps of the Party. This restriction was substantially relaxed in April 1952 and by 1955 only membership above a certain level required consideration. Most people would recognize this relaxation as the inevitable result of the passage of the years, springing from a desire that the great bulk of Germans should not be shut out from the peace-time world. However, it would have been wiser to disclose this relaxation to the general public when it occurred rather than several years later. Not only was the public entitled to know of the decision, but publication would have avoided confusion when instances of admission of Nazi Party members came to light.

5.47 As to the present position, in the light of the present age of the persons involved, the question of entry of World War II war criminals into Australia in the future is probably of very little practical significance. However, the Government should note that A.S.I.O. is constrained by its present legislation in the advice that it can give to D.I.E.A. as to persons convicted of, or suspected of having committed, war crimes; communication of such information by A.S.I.O. on the basis of mere abhorrence by the Australian community as to such crimes would not be

authorized by the Act. On the other hand, nothing in the A.S.I.O. Act prevents D.I.E.A. obtaining information as to commission of war crimes from police authorities in the applicant's country of origin as it now obtains information as to ordinary criminal convictions.

5.48 A possible practical course is that D.I.E.A. should, in the case of the few applicants for immigration born before, say, 1924, take steps to ensure that it receives information as to possible commission of war crimes.

5.49 Consideration could, however, also be given to amendment of the A.S.I.O. Act to remove so far as persons seeking to enter Australia are concerned, the present requirement of the Act that the obtaining and communication of information should be for the purposes of security. Circumstances are conceivable where A.S.I.O. overseas comes into possession of information that a proposed migrant has committed a crime, whether in World War II or in some subsequent conflict, of such an abhorrent nature that the Australian community would object to his presence in Australia.

5.50 Yet the circumstances of the deed may make repetition in Australia highly unlikely and it will thus be debatable whether communication of the information by A.S.I.O. to D.I.E.A. would be for 'purposes relevant to security' in terms of paragraph 17(1)(b) of the A.S.I.O. Act. It seems to me that such doubt should be removed by amendment of the Act to permit A.S.I.O., in relation to persons seeking entry into Australia, to obtain and communicate information, not only for purposes relevant to security, but also as to commission of a war crime which could be defined in terms of Article 6 of the Charter of the Nuremburg International Military Tribunal quoted in paragraph 1.4 above but not confined to crimes in World War II.

REGIONAL DIRECTOR'S LETTER OF 14 FEBRUARY 1952

5.51 The A.B.C. series drew attention to a letter of 14 February 1952 from the Regional Director, N.S.W. to the Director-General indicating a lack of knowledge as to the criteria applying from time to time as to exclusion of members of the Nazi Party from migrant selection.

5.52 The A.B.C. series deduced from this letter that 'there were no criteria for screening Nazis, even high ranking Nazi officials, even Nazi war criminals, from entering Australia'.

5.53 Certainly at the date of the letter, criteria as to exclusion of war criminals and Nazi Party members had been articulated although not long before. The writer of the letter is now dead and when I interviewed Sir Charles Spry, I sought his explanation for this letter. His answer was that the writer of the letter had not been stationed overseas nor had he worked at A.S.I.O. Headquarters. He could thus have been unaware of the criteria applied at overseas posts for selection of migrants for Australia.

THE IMPLEMENTATION OF THE SECURITY SCREENING POLICY

5.54 I shall discuss this under three headings:

(1) In Germany
(2) In Italy
(3) In Holland

(1) IN GERMANY

5.55 Most of the individuals of interest to the Review entered Australia from Germany under the Displaced Persons Scheme. Therefore, the security aspect of the immigration selection procedure and the security screening procedure in that country will be covered here in considerable detail. The Review's examination of the system indicates that, although precautions were taken, there were gaps in the security screening net through which unwanted persons inevitably slipped.

5.56 It will be convenient if I discuss this in three stages - what happened before the arrival of two Australian security officers in April 1949, what happened after their arrival and what happened after A.S.I.O. officers assumed responsibility for security checking of migrants in Europe.

Before the arrival of Australian security officers in April 1949

5.57 From the first shipment of displaced persons for Australia in November 1947 until April 1949, there were in effect three steps in the security checking of migrants:

(1) the I.R.O. screening for eligibility;

(2) the interview by Australian selection officers; and

(3) the check by the Combined Travel Board before issue of a travel permit.

(1) I.R.O. screening

5.58 The first stage of the screening was the responsibility of the I.R.O. Applicants for I.R.O. assistance were required to provide evidence that they were 'bona fide' refugees within the I.R.O. mandate. It will be clear from the criteria stated in paragraph 5.2 above that this process, if it had operated as intended, would have eliminated war criminals, collaborators and persons who had voluntarily assisted the Axis forces.

5.59 The screening process was intended to involve questioning of applicants as to their war-time activities. I.R.O. officials were also instructed to require applicants to produce their personal identity documents which should, in most cases, have disclosed those activities. As to the questioning, much of course depended on the experience and interest of the questioner and the truthfulness of the applicant. The I.R.O. screening documents for Germany seen by the Review suggest that I.R.O. officers by and large attempted to ascertain the applicants' war-time activities and indeed, it must be said, the details in these documents compare favourably with the information recorded by Australian selection officers at the later selection interview.

5.60 Identity documents were of course a conspicuous feature of life in war-time Europe and particularly Germany, but documents could be forged and absence of documents in respect of a crucial period could be (and were) accounted for by fire, theft or loss during evacuation.

5.61 In Quiet Neighbours, Ryan said:

> ' But the IRO's investigations were superficial and, in the eyes of some, corrupt. One employee of the DP Commission who worked closely with IRO staff resigned in disgust, calling the IRO certification process "a complete racket." Many of the IRO clerks, he charged, were former collaborators themselves who coached the applicants in the techniques of successful deception or who simply filled out the papers on behalf of applicants, submitting them for rubber-stamp approval by unsuspecting IRO officials'.

5.62 Several former Australian selection officers reported rumours as to corruption in I.R.O. Most, after several years experience, were convinced that I.R.O. screening processes were not reliable and were ineffective in many cases in screening out ineligible persons. No evidence came to the notice of the Review of corruption on the part of I.R.O. officers. (Of course my inquiries were not directed to this matter). Many instances, however, have come to notice where this screening was ineffective to remove ineligible persons. In most cases, this appears to have occurred because the applicant failed to disclose relevant information or gave false information to I.R.O. officials.

5.63 Several instances are recorded where the I.R.O., in presenting D.P.s for selection for migration to Australia, ignored the criteria laid down by Australia. In July 1949 the Chief Migration Officer informed the Head of Mission of 'a bad lapse on I.R.O.'s part' allowing D.P.s who had been deferred or rejected to be included in a train party for the embarkation port of Naples. The error was not detected until well after the sailing dates. One of these people had been rejected in February of that year because he had no papers. The I.R.O., as they did on numerous occasions, presented the man again in March of that year. This time the Chief Migration Officer, in view of doubts

about his suitability, rejected him. Disregarding the 'clear noting by the I.R.O. man himself that the D.P.s were either deferred or rejected' and the understanding that only cleared cases would go to Naples, the I.R.O. included these D.P.s in the train parties. These people were subsequently allowed by I.R.O. to proceed by ship from Naples to Australia, undetected by Australian officials.

5.64 Before leaving the I.R.O. part in the screening process, I should mention that the A.B.C. series asserted that Major-General Galleghan, the Head of the Australian Military Mission, was 'Head' of the I.R.O. and 'in a unique position to assist the immigration to Australia of persons who had been of assistance to allied intelligence organisations'. While Major-General Galleghan, now deceased, was an Australian delegate to I.R.O., and, for one year Chairman of the Executive Committee comprising representatives of member Governments, this office carried no administrative functions. The Executive Head of I.R.O. was the Director-General. I would not think that Major-General Galleghan could be described in any real sense as 'Head of I.R.O.'. He would have had considerable influence as to major policy decisions, but was unlikely to have been involved in the day to day operations of I.R.O.

(2) The interview by Australian selection officers

5.65 The second stage of the security screening procedure at this time was the check made by the Australian selection team. It consisted of an interview by selection officers and a medical examination by an Australian doctor.

5.66 The first version of the selection report form included spaces for details on aliases, war service, membership of organizations, for example, N.S.D.A.P. and German Labour Front (D.A.F.). In addition, the interviewing officer was meant to indicate whether or not the interviewee was a German citizen or a collaborator and the details of his D.P. camp record. These details were substantially completed in the forms seen by the Review.

5.67 In 1948, however, the selection report format was modified. It was printed on both sides of a five by eight inch card, allocating only five eighths of an inch to security details. Under the heading 'security' there was '(a) Reason for coming to Germany etc.', then the letters '(b)' and '(c)' with no indication of what security questions were to be covered. A number of former selection officers informed the Review that they always questioned D.P.s on their war-time occupation and their political affiliations. However, the majority of selection cards examined by the Review do not record these questions and answers. The reason for coming to Germany was usually recorded in brief terms, such as 'fled from Russians' or 'forced labour', but other security questions and answers were not recorded at all. In most cases a bracket was drawn around the letters '(b)' and '(c)' with the word 'passed' written beside it in the selection officer's handwriting. In other cases, '(b)' and '(c)' were left blank.

5.68 Certainly, as I have said, the details completed by Australian selection officers in the new form compare unfavourably with the information recorded in most I.R.O. documents seen by the Review. In fairness, however, it must be noted that the selection documents examined by the Review are those of persons now the subjects of allegations of war crimes and are therefore not a representative sample. Further, no records are now available of persons rejected by selection officers at time of interview.

5.69 However, the overall impression derived from perusal of the selection documents is that the questions asked by Australian selection officers as to the war-time activities of the applicant were limited and not of a very searching nature. In the early stages, the limitations of the I.R.O. screening process were not generally perceived and reliance was probably placed on that process by Australian selection officers.

5.70 By all accounts, the great majority of Immigration selection officers were conscientious young ex-servicemen.

However, they were given virtually no training for their interviewing task, many lacked European experience and very few had any facility with foreign languages. Australian selection officers were confronted with the strange and difficult situation of a still chaotic Germany. The selection teams were under constant pressure from both the I.R.O. and the Immigration Department to process the requisite number of displaced persons to fill the ships scheduled to leave at specific times. When the pressure was on, they were not only required to travel from one processing centre to another, but also to work long hours with very little free time. On these occasions, it was not unusual to process 100 displaced persons per day. In the view of one selection officer, the processing system for displaced persons was too often 'like an assembly line'. He had hoped that the I.R.O. was carrying out its responsibilities properly because his uppermost concern was with filling the ship. In retrospect, he believed that selection officers had placed a 'naive trust' in the I.R.O.

5.71 One former selection officer who spoke fluent German told the Review that he had always used an interpreter and did not allow the interviewee to know about his ability. In this way, he was more able to detect misinterpretations and attempted deception. Further, he was able to check and translate information written in German on I.R.O. forms. He believed Australian selection officers were handicapped by their lack of knowledge of European languages.

5.72 Displaced persons often presented stories which appeared plausible but which could not, in most cases, be easily verified. For example, in answer to the question as to why they had come to Germany, the explanations were usually of two kinds: first, that they had been forcibly conscripted for labour camps in Germany; or second, that they had fled from the Russians. The date that they crossed the border was taken as an indication of the accuracy of their statements; those who had entered Germany prior to September 1944 (other than as forced labourers) were liable to

be suspected of having collaborated with the Nazis. Another problem related to applicants who claimed to have been students, farm labourers or minor clerical workers in eastern Europe during the war years, even though their age, bearing and apparent abilities might have suggested a wider experience. Forged documents were not difficult to obtain, so documents were, it was claimed, carefully inspected at the time of interview, but there was usually not much time available for this.

5.73 Two cases came to the notice of the Review involving Austrians who had emigrated to Australia under false identities using I.R.O. identity documents purchased from Latvian medical students who had been given displaced persons status by the I.R.O. After arrival, one of these people made a statement disclosing the circumstances under which he secured his passage to Australia. Subsequent investigations revealed a further undetected person who had emigrated under the same circumstances and uncovered a number of persons connected with the sale of false papers. Both of these illegal immigrants, one of whom was also a security suspect, were deported from Australia as an example to others.

5.74 After some time in the field, the more conscientious selection officers were able to build up their knowledge of the European war-time situation. Some thought that they had developed a certain 'instinct' for detecting undesirable applicants for migration. In the case of S.S. members, their suspicions could be confirmed by the blood group tattoo under the upper arm or the scar from its removal. Australian team doctors were alerted to examine applicants for these signs.

5.75 The Australian selection team was particularly concerned that the first shipment of displaced persons was of a very high standard. The Review was told that they were conscious of the possibility of S.S. camp guards being recognized in Australia by former concentration camp victims thereby jeopardizing the whole Displaced Persons Scheme. In spite of what was thought to be a very thorough check for this first shipment, two former S.S.

members managed to pass through the Australian selection team to reach the pre-embarkation camp at Diepholz, probably by causing other persons to substitute for them at the medical examination which should have revealed the S.S. tattoo. They were, however, detected and steps were taken to prevent a repetition.

5.76 This strict checking procedure may have been relaxed for later shipments. Early in 1948, there were allegations made to the Commonwealth Investigation Service (C.I.S.) in Western Australia that former S.S. members had been included among Baltic immigrants. A number of D.P.s were scrutinized by a Military Intelligence officer and discovered to have slight scars which may have been from the removal of tattoos. However, in the opinion of the Minister for Immigration, Mr Calwell, the report on this matter from the C.I.S. was 'a farrago of nonsense' and the Secretary of the Department subsequently informed the Director of C.I.S. that such markings were grounds for rejection by selection officers. The Secretary's veiled message to the Director of C.I.S. was that this was Immigration business. Moreover, he stated that:

> '... hasty conclusions as to the security risk of certain classes of migrants ... do much harm not only to worthy people but, to our immigration plans ...'.

5.77 Former selection officers stressed that, although the emphasis was on numbers of D.P.s to fill ships, the rule they used for selection was 'when in doubt, reject outright'. Their rejection rate was thought to have been higher than selection teams of other resettling countries and Australians had the reputation of being 'tough'.

5.78 In a report to the Secretary on 12 October 1950, the then Chief Migration Officer stated that in order to 'combine a reasonable rate of work with the optimum quality of work' the number of D.P.s to be selected by the 11 Australian selection teams should be between 1000 and 1200 per week. He reported that their 'best figures' for 11 teams under the D.P. scheme averaged 1500 to 2000 per week and their 'worst' between 600 and 800.

(3) Check by the Combined Travel Board before issue of a travel permit

5.79 Before May 1949, the third and principal security check was made after the I.R.O. sent the particulars of each selected D.P. to the Combined Travel Board in Bad Salzuflen. The Combined Travel Board issued persons security cleared with Temporary Travel Documents (in lieu of passports) and Exit Permits which were required for anyone leaving occupied Germany.

5.80 The Combined Travel Board comprised representatives of the security and intelligence services of the British, the United States and French occupation forces. Before the travel permits were issued, the personal details of each D.P. were submitted to the three Western intelligence authorities: the British Intelligence Division at Herford; the U.S. Army Office of the Director of Intelligence at Heidelberg; and the French Surete at Baden Baden. Objection by any one intelligence organization was sufficient for permit issuing officers to refuse a permit. The particulars of any objection were sent by letter to the Combined Travel Board at Bad Salzuflen.

5.81 However, it cannot be ascertained from Australian records what was done by each agency. It was assumed by Australian officers at the time that it involved a check with the B.D.C. but the limitations of that process are discussed in paragraph 3.26 above.

5.82 This checking stage was probably quite effective for Germans, but for non-Germans it was of doubtful efficacy.

<u>After the arrival of two Australian security officers in Europe</u>

5.83 As previously stated, in April 1949, two Australian Military Intelligence officers were posted in Europe and made responsible for advising on security matters affecting the Displaced Persons Scheme. Before their arrival, there was no Australian security officer performing duties in relation to the scheme. A person intended by Mr Calwell for security work had become a selection officer.

5.84 Shortly after their arrival, the officers drew up a directive covering their functions reading:

'a) To carry out such security duties or investigations that may be allotted by the Head of the Mission or the Chief Migration Officer.

b) To report on security matters to the Chief Migration Officer and to keep him informed regarding the security aspect of all immigrants, Displaced Persons, Landing Permit Holders and German Workmen.

c) To co-operate and work with all Selection Teams in the field.

d) To institute checks on all applicants for immigration to Australia and to make recommendations to the Chief Migration Officer according to the result of these checks.

e) Interrogate and assess doubtful cases on which 'no trace' is disclosed by agency checks.

f) To keep all Selection Teams and other interested officers informed on those aspects of general information and security which will be helpful to them in the execution of their duties.

g) To liaise and co-operate as closely as possible with the various Security and Intelligence Agencies such as Combined Travel Board; British Intelligence Division; Counter Intelligence Corps, U.S. Army; Intelligence Organisation, (British Troops Austria); British Army Intelligence and Security Service; Berlin Document Centre, French Surete and various others, so that their wide resources are made as far as is possible available to the Mission. This includes their carrying out records checks on all immigrants, making special investigations and making available any information which is helpful to maintaining the Security of Australia.

h) To maintain a current index of all potential applicants whose immigration is considered undesirable.

i) By use of contacts in D.P. Camps and I.R.O. Establishments to establish an unofficial information network.

j) To check, investigate and report from the security angle upon conditions in the various camps and Processing Centres so as to minimise malpractices, adverse propaganda etc.

k) To carry out "snap" checks against Exit Permits and ensure that the normal documentation checks are being carried out and are reliable.

l) With the backing of the British and American authorities to ensure that certificates offered by prospective immigrants, (especially German Police certificates), are genuine.

m) To work through those U.S. and British Army agencies in direct contact with the German Polezei Praesidium on cases of subversive activities affecting the Australian Migration Scheme'.

5.85 It was intended that the activities of these officers would be super-imposed on the pre-existing three stage security checking system.

5.86 The actual steps taken by these officers by way of security checking are recorded in a report by one of these officers compiled in February 1964 as follows:

> 'Lists of applicants or individual cases were submitted to the Security Office, Cologne where local checks were carried out against local records which included Canadian and American and Australian security rejections. Checks were then initiated with the principal agencies - Berlin Document Centre, Intelligence Division and Counter Intelligence Corps. Depending upon the background of the applicant and when deemed necessary, checks were also made through the following channels:
>
> > Intelligence Organisation and C.I.C. Austria, French and Belgian Surete, Swiss Police, British and United States Army Intelligence, Field Security Sections and Regional Intelligence Offices'.

5.87 In addition, applicants whose background was considered by selection officers to be doubtful were subject to an additional interview by the security officers. The report noted that:

> '... from 1st January to 30th June, 1951, some 12,000 applicants were screened of whom approximately 500 were rejected on security grounds'.

5.88 One of these officers operated in the U.S. Zone and one in the British Zone. They were expected to visit Australian selection teams operating at particular centres as required to

interview applicants put aside by selection officers on security grounds for further questioning.

5.89 By all accounts, the advent of these officers brought about a marked improvement in the security checking process:

- by personal contact with the British and U.S. intelligence centres they were able to obtain speedier reports and, where appropriate, additional information;
- by contact with their Canadian counterparts and others, they were able to build up their own lists of persons who should be rejected;
- they were able to conduct effective interviews of applicants put aside on security grounds.

5.90 Apparently it took one year, that is, until May 1950, to establish close relationships with British, Canadian and U.S. intelligence organizations. By the end of 1950, the Australian security checking system had significantly improved.

5.91 However, important gaps remained in the net. The first related to the limitations in the data held by the B.D.C. as to East Europeans. These limitations appear to have been echoed in the data held by the British and U.S. intelligence agencies in West Germany, but it has proved very difficult to determine what that data encompassed. One would expect, for instance, that the data included the C.R.O.W.C.A.S.S. and U.N.W.C.C. lists but the fact that two persons on the latter list and one person on both lists were accepted for migration to Australia, presumably after being cleared by these agencies, raises doubt in that regard. Neither of these lists were held by the Australian officers, but they said that at times they consulted copies held by other agencies.

5.92 The second gap lay in the geographical limits of responsibility of the two officers. France for instance was not covered by them. While there was no mass migration scheme in

relation to that country, a number of migrants came from there by way of landing permit card. Until 1951, these persons were not security checked. Similarly, persons resident in the U.K., but coming from the Continent seeking Australian landing permits, were not security checked in Europe. In this way, several persons of interest to the Review entered Australia. Italy was another significant gap, but this will be dealt with separately.

5.93 However, many people were detected as undesirable and rejected on security grounds. The figures of persons rejected on security grounds for three months ending 31 December 1951 are of interest:

German workers selected for special projects . . . 146 (29%)

Displaced persons selected in Germany 127 (15%)
(This does not include persons rejected by selection officers)

Landing permit holders in Germany 23 (3%)
(This low figure may be explained by security officers' doubts as to their role in these cases)

<u>After A.S.I.O. officers were posted to Europe for screening purposes</u>

5.94 A.S.I.O. was established in 1949 and Colonel Spry was appointed Director-General in June 1950. Following negotiations with the Department of Immigration, an A.S.I.O. officer was posted to The Hague in May 1951 as Senior Security Officer. This was followed by the posting of A.S.I.O. officers to Italy (June 1951) Germany (to replace the Military Intelligence officers), Greece (January 1952), Austria (November 1954), U.K. (1956) and Denmark (1957).

5.95 A conference of security officers and the C.M.O. held in Cologne on 8 September 1951 identified the need to clarify questions of security criteria and procedure. Subsequently, Colonel Spry with the help of his Senior Security Officer in The Hague, developed the policy on security criteria for European Migrants (see paragraph 5.15) and issued instructions to ensure uniformity of screening procedures throughout Europe. These

instructions were based on the procedures already established in Germany.

5.96 From an early stage, differences of views arose between the Department of Immigration and A.S.I.O. The Department asserted that the C.M.O. must have the final say as to selection of migrants and A.S.I.O. officers (who were paid by the Department) must be subordinate to him. A.S.I.O., for its part, asserted that it must have the final say on questions of security but conceded that it did not have the executive authority to prevent persons entering Australia.

5.97 The tensions between the two organizations are apparent in documents relating to the embarkation of a number of migrants from Germany without security clearances from 1953 to 1958. These clearly establish that, on numerous occasions during this period, the C.M.O. and his successor from 1954 allowed migrants under the German mass migration scheme to leave Germany for Australia before security inquiries had been completed.

5.98 In a letter to the Secretary of his Department dated 2 November 1954, the C.M.O. answered a complaint by the Director-General which quoted 'concrete cases' of migrants who had embarked for Australia before security inquiries were complete. He indicated that, from the time the Australian-German Migration Agreement came into effect in August 1952, there had been a consistent problem with filling ships at short notice without time to build up a backlog of migrants waiting for embarkation. He therefore believed that he was 'compelled' to notify applicants that they had been accepted before security clearances were available or in some cases complete. Relying on the fact that in most cases the results became available before departure, the C.M.O. took it upon himself to 'anticipate clearance' to give 'the great bulk of applicants who were certain to be cleared sufficient time to prepare themselves for embarkation'. He explained that:

> '... even though there was clearly a small chance that someone would get away who should not get away on this system, the only alternative to using it was empty, or partly empty, ships and unrealised departmental programmes'.

5.99 A number of these migrants were discovered to have security histories that would have warranted rejection on the criteria then applying. The reaction of the security officers concerned was one of alarm and frustration. In a memorandum to the Director-General of Security dated 15 June 1953, the Senior Security Officer had written:

> 'This raises a most important aspect of the security checking. In the first place, it is not possible to continue to bring pressure to bear on the checking agencies. Secondly it is undesirable and contrary to instructions that migrants should be allowed to embark for Australia before completion of the security check. Thirdly, it is not possible to prevent migrants from being embarked if the Chief Migration Officer directs that they are to be taken to Australia'.

5.100 Further correspondence ensued but the problem was not resolved. Clearly the responsibility that the Department perceived to fill quotas and adhere to arrangements with the I.C.E.M. took precedent over compliance with security screening procedures. The Department was willing to accept the risk involved, maintaining that it was small.

5.101 There are additional instances of a later C.M.O. granting visas to migrants, some of whom actually departed for Australia, before results from security checking agencies had been received. The most striking example of these was a member of the Totenkopf unit of the S.S. notorious for providing concentration camp guards, who was granted a visa by the Chief Migration Officer, Cologne in May 1958 before security inquiries were completed. In a subsequent letter the Director-General remonstrated with the Secretary asserting that the record of this case 'could be used as a serious reflection on the effectiveness of the screening of migrants and would reflect adversely on both your Department and this organization'.

5.102 The Director-General, however, accepted that there were mitigating factors, in particular the youth of the migrant who may have been genuinely unaware of the atrocities committed by the unit and the fact that his service was actually in the Tank Division of the Totenkopf. The Review has not been able to determine whether or not this particular person was actually permitted to embark for Australia.

What gaps remained in the security screening process after the arrival in Europe of A.S.I.O. officers?

5.103 Undoubtedly, the screening process in some respects at least became more effective. The problem as to limited numbers of security officers and geographical distribution largely disappeared. Screening criteria were formulated. Uniform screening procedures were developed and applied. Between 1951 and 1955, there appears to have been some improvement in access to screening data.

5.104 Problems, however, remained. There was the tension described above between A.S.I.O. and Immigration. Clearly, the Department took risks in allowing persons to leave Europe before security clearances were given and this resulted in persons being accepted who should have been rejected under the criteria then applicable. However, no instance has come to notice where a person so accepted could be described as a war criminal for the purposes of this Review.

5.105 The gaps in the B.D.C. data as to non-Germans remained. As in the case of the pre-April 1951 period, it has not been possible to establish what relevant data was held in the U.S. or British intelligence centres but correspondence between the security officer stationed in Germany and the British intelligence centre of June 1959 sheds some light on the position at that date.

5.106 This reveals that at that date the British centre recorded:

' (i) "War Criminals Unreleased - British Zone - at 1st November, 1953"

(ii) The survivors of those War Criminals whose names appear in a Foreign Office Research Department publication dated June 1949 entitled "Some Noteworthy War Criminals (Tried by Courts other than German)"

These names will all be of persons actually sentenced'.

5.107 The letter went on to say that records would only be retained of particularly obnoxious Nazis but records of Gestapo and S.D. would be retained. Names in C.R.O.W.C.A.S.S. had never been registered at the British centre.

5.108 It is fair to say that the British letter indicates a marked diminution in the perceived need to detect war criminals not yet convicted. Sir Charles Spry when shown this correspondence said that he had not previously seen it. Certainly, in that same year he wrote to the Department of Immigration strongly urging the retention of the B.D.C. checks. He said:

'Party members who were major war criminals are well known even outside Intelligence circles, and ordinary membership of the National Socialist Party is nowadays disregarded, as being something which a German could not well avoid. Hence the main value of check is to show up senior officials of the Party (who can be taken to be fully indoctrinated and fanatical Nazis) and minor war criminals such as concentration camp guards. The exclusion of such from Australia is primarily a matter of general Government policy, taking account of public opinion, and, in particular, New Australian public opinion ... Personally, I would oppose on principle the abandonment of any check, which offered a reasonable possibility of yielding useful information ...'.

(2) IMPLEMENTATION OF SECURITY SCREENING POLICY IN ITALY

5.109 Until the establishment of the Italian Mass Migration Scheme in June 1951 Italians entered Australia under the landing permit system, which required that every applicant must have a sponsor resident in Australia. Sponsors were checked by

authorities in Australia and their nominees were rejected if these checks proved unsatisfactory. Security checking was also carried out in Italy, but Australian officials differed in their assessment of its reliability. The Australian Minister in Rome stated in June 1951 that names were checked with both the British and Italian authorities, but the senior Australian security screening officer in Europe reported that the screening of migrants from Italy was most unsatisfactory because of a combination of a lack of centralized records and corruption and disinterest among local officials.

5.110 Late in June 1951 an Australian security screening officer took up duty in Rome for the first time and he immediately began negotiations with the Italian authorities to establish more effective screening procedures. The Ministry of the Interior in Rome held information only on individuals involved in serious crimes or allegations and it was therefore necessary also to establish direct contact with many of the 91 Italian provincial police administrations. The information supplied by the police was relatively brief, but it did include statements of criminal record, moral standing in the community and membership by the applicant and his/her close relatives of extremist political organizations, including World War II Fascist organizations. This system appears to have worked adequately and in 1952 it was decided to discontinue the checking of sponsors in Australia on the grounds that checking procedures in Italy were now satisfactory. Where appropriate, names were also checked with authorities outside Italy.

5.111 In addition to Italian nationals, Australia also selected migrants from displaced persons of many nationalities in I.R.O. camps at Bagnoli (near Naples) and Trieste. This selection was undertaken either by members of Australian migration teams in Germany sent to Italy on short-term missions or by officers at the Australian pre-embarkation camp which operated at Bagnoli. Until June 1951, there was, as I have said, no Australian security officer in Italy and any security checking was confined

to routine checks in Germany of the list of persons accepted. As I shall say in Chapter 6, this was of limited efficacy.

5.112 Former Australian selection officers who had been stationed in Italy state that they were aware of the lack of security screening facilities for displaced persons and they did their best to compensate for it by questioning applicants closely about their background at interview and rejecting any case in which they retained doubts about the veracity of the applicant. Certainly this system was far from perfect, and some persons of special interest to the Review appear to have thus entered. However, the number of such persons from Italy is small.

(3) IMPLEMENTATION OF SECURITY SCREENING POLICY IN THE NETHERLANDS

5.113 Until 31 March 1951, Netherlands citizens entered Australia under the landing permit system. Information on applicants was obtained from Netherlands local government authorities by Australian migration selection officers but, in the view of at least one Australian security screening officer who subsequently worked in the Netherlands, this information was not always reliable. In particular there were cases in which information was provided in relation to the criminal background of an applicant, but not in relation to other circumstances affecting the acceptability of the applicant from a security point of view.

5.114 Following the establishment of the Netherlands Mass Migration Scheme on 1 April 1951, an Australian security screening officer took up duty in The Hague in May 1951. This officer established comprehensive screening procedures in co-operation with the relevant Netherlands authorities, notably the police, who agreed to check all applicants for migration to Australia and advise of any evidence of criminal activity, collaboration with the Germans or membership of the Dutch Nazi Party. These procedures appear to have operated effectively and

between May 1951 and September 1952 more than 1600 applicants were rejected on criminal or political grounds.

5.115 The screening process in the Netherlands was materially assisted by the very extensive investigation of more than 100 000 cases of collaboration which the Netherlands authorities had themselves conducted after World War II. Each allegation relating to war crimes or collaboration was considered by a legal official, who referred serious allegations to a Special Court and minor cases (those involving actions considered to be disloyal rather than criminal) to a Tribunal. Persons convicted were imprisoned and/or deprived for a number of years of their rights to vote, to be elected to representative bodies, to serve in the armed forces or to hold official posts. Thus Netherlands war criminal suspects had been very largely dealt with and recorded before the Australian mass migration scheme began.

5.116 The most significant matter of concern to Australian security screening officers in the Netherlands was the introduction in October 1952 of new procedures under which the vetting of applicants for migration to all countries was handled by the Netherlands migration authorities. Australian officials expressed reservations about the new system because it cut them off from direct access to sources of criminal and political information on individual applicants. The Netherlands authorities made available this information to Australia in cases in which they themselves did not endorse an application, but, in cases in which they supported an application, they did not inform Australia of any adverse information on record about the applicant. It is therefore possible that Australia received some migrants who might have been rejected if all information about them had been available to the Australian authorities; records examined by the Review include references to a small number of cases in which adverse criminal or political information concerning a migrant subsequently came to light. However it is unlikely, given the generally high standard of Netherlands co-operation and record-keeping, that there was more than a small

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number of such migrants. Indeed, it appears unlikely that any individual convicted or accused of serious war crimes in the Netherlands was able to enter Australia.

1956

5.117 In 1956, Australian policy on the migration of Netherlands citizens who had been found guilty of collaboration was reviewed. On 7 August of that year the Secretary of the Department of Immigration wrote to the Director-General of Security to suggest that, in view of the passage of time and the adoption of a more lenient attitude by the Netherlands authorities, it might be appropriate to reconsider the existing policy that in general Netherlands citizens who had been found to have collaborated with the Germans would not be accepted as migrants. The Secretary recommended that Australia should continue to reject informers, profiteers or participants in or accessories to Nazi excesses, but that applicants who had merely passively accepted the Nazi occupation or collaborated only to the extent necessary to safeguard themselves and their families should not be automatically rejected. The Director-General of Security, however, in a reply dated 27 August 1956, held firmly to the view that any collaborator convicted by Netherlands courts and tribunals had been dealt with after due consideration of any mitigating circumstances. In consequence the existing policy of rejecting them as a matter of principle should, he said, be maintained.

5.118 The matter was then referred to The Hague for comment by Australian migration and security officers and it became apparent that selection policy on collaborators was in fact already less rigid than had been understood in Canberra. The policy was summarised in a memorandum prepared in The Hague on 30 November 1956:

'In assessing a case from the security viewpoint it is impossible to observe as more than a general guide any system of categories indicating degrees of collaboration. In a very great number of cases this would in fact lead to a very incorrect assessment and resultant injustice. Examples could be readily quoted where persons would appear, by the categories allotted to them to be completely ineligible, yet who have been accepted on account of mitigating circumstances. Similarly there have been cases where persons have been rejected for what might appear, by the category allotted to them to be minor acts of collaboration. It is the detailed report which assists in placing deeds in their correct perspective.

The punishments meted out by the Dutch courts for collaboration have not been consistent. Courts in different areas varied in the severity of their sentences. Again, it is self-evident that, as time passed, the tense atmosphere which prevailed in courts gradually lessened, so that the earlier cases were at a distinct disadvantage. It is therefore not the policy in assessing these cases to use the punishment as more than a very general guide, and it is never used at all without due consideration of the date of the sentence'.

5.119 As an illustration of how the screening policy had recently been working in the Netherlands, the memorandum noted that between 1 May 1956 and 30 November 1956, 106 migration applications from individuals who had been convicted of collaborating with the Germans had been considered; 67 of these persons had been cleared for migration and 39 had been rejected. In the light of this information the Secretary of the Department of Immigration and the Director-General of Security agreed early in 1957 that applications from Netherlands citizens who had been convicted of collaboration would continue to be assessed on an individual basis. However, the convictions do not appear to have related to what could be described as serious war crimes and, as I have said above, it is unlikely that any individual convicted of a serious war crime in the Netherlands subsequently came to Australia.

DEPORTATION AND REPATRIATION - THE FINAL SAFEGUARD?

5.120 From the inception of the Displaced Persons Scheme it was frequently said in defence of existing arrangements that a person discovered to be undesirable on security grounds after arrival in Australia could be returned within two years under the agreement with I.R.O.

5.121 On a number of occasions, the Minister for Immigration, Mr Holt included a reference to deportation in response to criticism of the security screening procedure. For example, Hansard records that on 7 November 1951 Mr Holt said:

> 'I do not say that it is impossible for a Nazi, or a Communist for that matter, to get through the screen, but I contend that it is highly improbable that such a person would succeed in doing so. I have pointed out to the House on a previous occasion that if, after their arrival here, people reveal themselves as undesirable in the eyes of the Australian Government and the Department of Immigration, we have ample powers to deport them to the countries from which they came. Indeed, we have exercised these powers in recent times'.

5.122 Displaced persons and certain classes of non-British migrants were admitted under exemption so that, if the conduct of any particular person provided unsatisfactory, cancellation of the certificate of exemption would ensure his removal from Australia. The Government was not limited to action within two years. Action could be taken after the expiration of two years either under the Immigration Act 1901 (now repealed) or the Aliens Deportation Act 1948 (also now repealed).

5.123 In its researches to date, the Review has found four cases where D.P.s were removed from Australia on security grounds after their arrival in Australia but there may have been additional instances.

5.124 However, as recognized in a letter dated 29 April 1952 from the Director-General to the Senior Security Officer at The Hague:

'once an alien has evaded the security screen, a strong case is essential before deportation proceedings may be approved by the Minister for Immigration on my recommendation'.

COMMENT ON IMPLEMENTATION GENERALLY

5.125 As to implementation of the security screening policy generally, it must be said that, in the initial phase with no Australian security officer in Europe, the Australian security screening net had very substantial gaps, particularly in relation to non-Germans who would not have been detected by a check made with the B.D.C.

5.126 The arrival of the first two Australian security officers and later the advent of A.S.I.O. officers brought about marked improvements. The problem as to gaps in security checking data, however, remained. By the late 1950s it would seem that limited reliance could be placed on British intelligence data for the purpose of detecting unconvicted war criminals.

5.127 It seems unlikely that any war criminals entered Australia as migrants from Holland, although that country presented special problems in regard to security screening.

5.128 Before the advent of Australian security officers to Italy, there was a significant gap in the security screening net in regard to that country.

CHAPTER 6

PARTICULAR INSTANCES

6.1 I shall now discuss some particular cases which illustrate more general remarks in the preceding Chapter. Except in the case of one person whose name is not on public record, I shall refer to these persons by name.

SRECKO ROVER

6.2 The A.B.C. radio series 'Nazis in Australia' focused in considerable detail on Mr Rover and Mr Lyenko Urbancic, advancing the argument in effect that, having regard to the alleged war-time activities of each person, the selection of either for migration to Australia suggests that U.K. or U.S. intelligence officers misled Australian selection officers as to these persons.

6.3 In relation to Mr Rover, it was alleged that he was an active and decorated member of the Yugoslav Ustashi organization. As a matter of history, this organization is notorious for commission of acts of extreme brutality and cruelty, not only against its military opponents, but also against Yugoslav civilians. The specific crimes alleged against Mr Rover were that he was a member for about seven weeks in 1941 of what was called a mobile court-martial, which operated in an extremely summary way in various parts of Yugoslavia.

6.4 With a view to proving this contention, the A.B.C. produced copies of Yugoslav newspapers reporting Mr Rover's membership of this court-martial, death sentences imposed by that body and executions subsequently carried out. Mr Rover, on the other hand, has denied participation in these activities, asserting that at this time he was a student at Zagreb University.

6.5 While the reported activities of the mobile court-martial would appear to warrant further investigation as possible war crimes, newspaper reports do not of course amount to evidence in a legal sense of the matters purporting to be reported in them.

6.6 As I have said, I have not considered it appropriate under my Terms of Reference to interview persons the subject of allegations as to commission of war crimes. Accordingly, I did not seek to interview Mr Rover or embark on the wider inquiry that would be necessary to determine the truth or otherwise of these particular allegations. This must be left to another investigation.

6.7 At the conclusion of the war, Mr Rover took refuge in Italy and he has admitted to Australian Police that he returned to Yugoslavia with others in 1947-1948 for guerilla activities. The A.B.C. has in its possession a statement by a fellow Yugoslav which asserts that Mr Rover was arrested in Austria by British Field Security Service and Austrian Police in 1946, and there is some confirmation of this in U.S. records.

6.8 Some documents presented to the Review suggest that Mr Rover may have worked for or with a U.S. intelligence agency in or about this period. This was queried with U.S. officials, but this was one of the matters on which they failed to respond (see paragraph 3.42). On the other hand, British officials at my London meeting stated that Mr Rover was not employed by U.K. intelligence agencies.

6.9 At no time was the repatriation of Mr Rover sought by the Yugoslav government on grounds of commission of war crimes but U.K. and U.S. records indicate that he was arrested in May 1947 in a round up of Yugoslav refugees at Bagnoli I.R.O. camp as an alleged Ustashi officer under the alias Josip Kovacevic but was soon released.

6.10 In September 1948 he was accepted by the I.R.O. as eligible for settlement. The absence of answers to many questions appearing in the I.R.O. form suggests that his application received a very cursory examination by I.R.O. officers.

6.11 Apparently he remained in I.R.O. camps in Italy, until he, together with his wife and father, applied for migration to Australia. On 18 July 1950 he was interviewed by an Australian selection officer at Bagnoli camp Italy and accepted for migration. Under the heading of 'security' in the selection document this was recorded:

'(a)	Reason for coming to Germany etc.	YG 1940-45. Student - 1945. Realised no future in YG - fled to Austria. Sent by Allies to Italy.
(b)}		
(c)}	passed'	

6.12 I have interviewed this officer who has since retired. While unable to recall the case of Mr Rover, he could recall reasonably clearly the circumstances applying at Bagnoli camp in July 1950.

6.13 The former officer said that he was sent from Germany to Bagnoli for a very limited period to carry out the duties of selection officer. He had with him only a medical officer. In Bagnoli at that time, he said, no security checks were carried out by Australian officers in respect of migrant applicants (apart from questions asked during the selection interview), it being expected that the I.R.O. would have made adequate checks before presenting the person for selection. At that date there was no Australian security officer i Italy. He also understood that no later security check would be made. In the case of Mr Rover, he would probably have been influenced, the former officer said, by the assertion in the selection document that Mr Rover during 1948-1950 had been chief of Police for I.R.O. He would have had no knowledge of Mr Rover's war-time activities and he had received no requests from U.K. or U.S. intelligence officers in Italy to accept particular persons.

6.14 It is reasonably clear that no security check was made on Mr Rover in Italy by an Australian officer. However, contrary to the former selection officer's understanding, both the former Chief Migration Officer (now retired and living in Europe) and a former security officer, who had been stationed in Europe at the time, assert that the list of persons accepted in Bagnoli would probably have been routinely checked with British and U.S. intelligence centres in Germany before these persons embarked. There is no record of such a check but, as I have said, there is a total absence of records of checks made at that time.

6.15 A check made on my behalf with the B.D.C. revealed no record of Mr Rover and all former security officers stationed in Europe at this time express doubt that the intelligence centres in Germany would have recorded information as to the war-time activities in Yugoslavia of a Yugoslav not of major significance. This means that, if a check had been made in Germany against Mr Rover's name in the list, it may well have produced nothing. A security check in Italy where he had resided for some years, on the other hand, would, they said, have been far more likely to have produced a positive result.

6.16 The explanation for how Mr Rover came to be accepted for migration to Australia appears to be this. Nothing adverse was put before the Australian selection officer by I.R.O., Mr Rover and his family were physically presentable, he apparently gave an incomplete account of his war-time activities and finally, because no Australian security officer was located in Italy, a security check was not made in the location where it would be effective. A routine check in Germany, even assuming such a check was made, was not good enough.

6.17 How Mr Rover came to be accepted by the I.R.O. and appointed a Chief of Police, given that U.K. and U.S. authorities had suspected him three years previously of being a Ustashi officer, is another question which I am not in a position to answer.

6.18 A.S.I.O.'s records indicate that Mr Rover was unknown to them until 1953 and its decision not to object to Mr Rover's naturalization in 1956 can be explained by the limited information then held on him.

6.19 It is to be deplored that, by reason of the absence of an Australian security officer in Italy at the relevant time, the security control net as regards migrants from that country was not fully effective. However, it is clear that, as regards the selection by Australian officers of Mr Rover, there is no evidence that U.S. or U.K. intelligence officers supplied false information to, or withheld relevant information from, Australian officers or requested Mr Rover's selection.

6.20 His varied activities after entry into Australia fall outside the Terms of Reference of the Review. I do not think that they throw any light on the circumstances of his entry into Australia.

LYENKO URBANCIC

6.21 So far as it is relevant for the purposes of the Review, the thrust of the A.B.C. series in relation to Mr Urbancic, was:

. he had been a propagandist for the war-time puppet Slovenian Government;

. when the Yugoslav Government sought his surrender as 'a propagator of collaboration with Germany' the British, after perfunctory inquiries as to his war-time activities, refused his surrender;

. nevertheless he was held in custody by the British for some months after this decision with a view to final screening;

. the absence of any records as to his final screening was linked to an alleged 'common practice among intelligence agencies to classify the files of their informants for a 75 year period in order to protect them';

. in the context of the whole series, there is an unspoken inference that Mr Urbancic's suggested connection with a U.K. or U.S. intelligence agency accounted in some way for his selection for migration to Australia.

6.22 The Australian officer who selected Mr Urbancic is dead but, after examining additional British documents produced after my London visit and speaking to surviving Australian former officers, a different picture has emerged.

6.23 Before discussing these matters, I should first mention that, for the reasons I have given in relation to Mr Rover, I did not seek to interview Mr Urbancic. Therefore, I express no view whether he engaged in collaborator activities. I note however that, while the activities alleged in the Yugoslav Government request, if they occurred, should have denied him acceptance by the I.R.O. and selection for migration to Australia, they would not have amounted to war crimes, at least crimes of such a nature to require action now.

6.24 Undoubtedly, the Yugoslav Government sought the return of Mr Urbancic in June 1946 as 'a propagator of collaboration with Germany' and the British Government, after consulting the U.S. Government, and making what would now appear to be very limited inquiries, refused in June 1947 to surrender him on the grounds that there was insufficient evidence to establish a prima facie case against him. Moreover, the British Government having taken Mr Urbancic into custody in Germany at some date before 9 September 1947, continued to hold him for screening until at least 9 November 1947.

6.25 However, some documents produced by British officials after my London visit throw some new light on what then happened. The first is a report of the Special Refugee Commission, Germany dated 21 November 1947 which describes, amongst other matters the membership of the group, known as the Damjanovic group in which Mr Urbancic was found in Germany and who were nearly all located at Munster camp. Damjanovic was a Serbian General, leader of some Serbians in exile.

6.26 Mr Urbancic was described in the report as in effect a lesser propagandist and 'a possible candidate for the handover'. Apparently the writer, who had served as a British officer in Yugoslavia during the war, had more information than the first inquiry produced. Members of the group had, it seems, been subjected to detailed interrogation.

6.27 A further letter dated 19 May 1948 from the Foreign Office to British Embassy, Belgrade describes the fate of these persons. It suggests, as I read the letter, that Mr Urbancic, although not named in the letter, was included in a group of 108 released before that date. This represented all inmates of the camp except 18 serious war criminals designated for surrender, most of whom had escaped. This was followed by a Government statement in the House of Commons on 26 July 1948 that it had decided not to surrender any further war criminals or collaborators to Yugoslavia except 19 named persons who were believed to be responsible for serious war crimes, but apparently were not then in custody. (Mr Urbancic was not included). Earlier documents suggest that the decision stemmed from the distrust that had developed by that date as to the standard of justice administered by Yugoslavian tribunals dealing with war criminals and collaborators. A further document records that the Special Refugee Commission destroyed all its records in Germany before returning to the U.K. which helps to explain the lack of records as to this period.

6.28 The supposed mystery as to Mr Urbancic's release from custody thus disappears. British officials at my London discussions stated that their intelligence agencies had no record in relation to Mr Urbancic. Their searches of records (which included records to which public access was denied) indicated that Urbancic's surrender was refused merely because a prima facie case had not be made out. While they acknowledged that the files of U.K. intelligence agencies were never made available for public access, there was no rule, they said, that public access should be denied for 75 years to a record of a department merely because it referred to a person who had been an employee of an intelligence agency.

6.29 Nothing I have found in British records produced to the Review, either by the A.B.C. or British officials, suggests that, contrary to the British assertion, Mr Urbancic was employed by a British intelligence agency. Whether Mr Urbancic had been employed by a U.S. agency was one of the several queries addressed to U.S. officials to which a response had not been received when this Report was completed (see paragraph 3.42).

6.30 I now turn to the circumstances of Mr Urbancic's selection for migration to Australia. He was examined by an I.R.O. doctor on 11 November 1949 but there is no other record of any other examination or investigation by I.R.O. of his case.

6.31 On 13 December 1949 he was interviewed by an Australian selection officer, now dead at Munster in the British Zone of Germany. Under the heading 'security' the officer made these notations:

'(a)	Reason for coming to Germany etc.	Forced labour concentration camp Italy	1942
(b)			
(c)		Came to Germany	1947'

6.32 Under the heading 'employment in own country' appeared '~~Teacher~~/Student Factory work 6 months'. He and his wife were accepted for migration to Australia.

6.33 According to standard procedures, his name should have been checked by an Australian security officer located at Cologne and I have interviewed the former security officer who would ordinarily have dealt with the matter. He cannot recall this particular case but he has a recollection of the procedure that should have been applied in such a case, that is, a check should have been made with the Berlin Document Centre and U.K. intelligence Headquarters at Herford and U.S. Counter Intelligence Corps (C.I.C.) Headquarters. The Review caused a check to be made with the Berlin Document Centre and this reported no record in relation to Mr Urbancic.

6.34 A written record of the security check with the U.K. headquarters has not been found but, as I have said, no record of any like check has been located. The possibility cannot therefore be excluded that, for one reason or another, a check was not made in this particular case.

6.35 We know that the British Foreign Office had documents in relation to Urbancic including the report of the Special Refugee Commission. However, whether the British intelligence centre had any record in relation to him cannot now be ascertained. A former A.S.I.O. officer, who at the relevant time worked in the Centre as a British officer, advised me that the Centre was unlikely to have held information on an alleged Yugoslav collaborator merely as such. It may have held information on Mr Urbancic as a person held in custody in the British Zone a year and a half previously, but again it may not, because of the peculiar nature of that custody (by the Special Refugee Commission). Whether the U.S. C.I.C. Headquarters had relevant information seems to be equally in doubt.

6.36 The conclusions I reach on this material are:

(1) assuming the notations made by the deceased selection officer on the selection document represented a correct and exhaustive statement of what Mr Urbancic said to him, Mr Urbancic gave an incomplete account of his activities in Yugoslavia;

(2) the I.R.O. checks, if any, probably failed to reveal further information;

(3) a check made with the Berlin Document Centre would certainly have failed to reveal any information;

(4) It cannot now be determined whether either the British intelligence centre or the U.S. C.I.C. Headquarters at December 1949 held any record in relation to Mr Urbancic, but there is doubt that either did.

(5) There seems to me to be clearly no evidence that Mr Urbancic was employed by a U.K. intelligence agency. Putting aside the failure of U.S. officials to answer queries on Mr Urbancic (which, as I have said in paragraph 3.42, appears to be due to bureaucratic inertia), there is no evidence to suggest that he was employed by a U.S. intelligence agency. The theory that a U.K. or U.S. intelligence officer influenced Australian selection officers in the acceptance of Mr Urbancic is not supported by hard facts and the far more likely explanation for that acceptance is that Mr Urbancic gave an incomplete account to the Australian selection officer and either no check was made with the British or U.S. intelligence centres for reasons not now clear or, if these checks were made, the results, because of absence of relevant recorded data, were not adverse.

6.37 Mr Urbancic's activities in Australia do not throw any new light on the circumstances of his entry into Australia and I shall not discuss them. A.S.I.O. had no record in relation to him before 1962. The A.B.C. series mentioned an A.S.I.O. index card referring to a 1952 report on Mr Urbancic. The card to which the series referred was created by C.I.S., not A.S.I.O., and is now held by the Australian Archives. However, the report to which it refers cannot be located. Like many other C.I.S. records, it has probably been destroyed.

6.38 I finally mention that among the documents furnished by Mr Aarons to the Review was what was said to be the charge prepared by the Yugoslav War Crimes Commission against Mr Urbancic. This included an additional charge that he had informed to the Germans on some Slovenes resulting in the capture and death of some. The charge was not, however, considered by the U.N.W.C.C. because the Yugoslav Government did not furnish to that body charges against its own citizens. Nor does it appear to have been furnished to the British Government. In the present context, this document does not appear significant.

LASZLO MEGAY

6.39 On 20 May 1957, Mr E.J. Ward M.P. asked the Minister for Immigration the following question on notice:

> '(a) Has his department received information regarding a Mr. Laszlo MEGAY, now resident in Australia, who is alleged to have been guilty of a number of grave offences in Hungary when a resident of that country?
>
> (b) If so, what action has been taken to ascertain whether these allegations have any basis?'

6.40 A.S.I.O., at the request of Department of Immigration, made overseas inquiries. The report from Australian Embassy Migration Officer, Cologne dated 12 June 1957 contained the following passage:

> '4. From our American friends we have received the following information which is furnished in toto:-
>
> "A Personal History Statement compiled 15 April 1947 contains the following information on Laszlo MEGAY:
>
> Occupation: Burgomaster
> Religion: Catholic
> Marital status: Married
> Education: 1922-1927 University of BUDAPEST.
> Employment: 1931 - 1938 City Administration, KAREJUAR - official.
> 1938 - 1944 City Administration, UNGVAR - burgomaster
> 1944 - 1945 City Administration, KOMARON - first burgomaster.

MEGAY was arrested by Allied Forces at REGENSBURG on 1st September 1946, charged with being a war crimes suspect. He was received at Internment Camp DACHAU on 12 April 1947.

Specific allegations were made that MEGAY, as mayor of UNGVAR, had done nothing to improve the conditions under which the Jews were being held at UNGVAR and further, had actually played a part in the confinement and later shipment of these Jews to DACHAU.

In a signed, undated statement, MEGAY asserted that he had, in fact, attempted to improve the conditions under which the Jews were being held, but had been unable to do so. He further stated that because of his efforts to help them, he had been de-moted and transferred to KOMARON.

The findings of the War Crimes Commission, dated 15 April 1947, were as follows: "MEGAY held the position of town mayor in UNGVAR, Hungary. He never was a member of the party (NSDAP) nor did he ever serve in the armed forces. MEGAY is an Hungarian National. He never fell under automatic arrest category and has been cleared by War Crimes Commission". MEGAY was released from DACHAU on 17 April 1947".'

6.41 This was communicated to the Department of Immigration by memo dated 31 July 1957. Based on this information, the Minister supplied on 27 August 1957 the following written answer to Mr Ward's question:

'(1) Some time ago a letter published in a New York Hungarian periodical, named "Az Ember", was brought under the notice of my Department. This letter dealt with the alleged conduct of Mr. Megay when he held the position of Town Mayor of Ungvar, Hungary. Mr. Megay left Hungary in 1945.

(2) Full enquiries have been made in regard to the allegations contained in that article. These enquiries revealed no evidence to support the allegations made.

Mr. Megay was cleared by the War Crimes Commission in 1947'.

6.42 Mr Ward then asked a further question on 6 November 1957 reading:

'(1) To what particular War Crimes Commission did the Minister refer in his answer to the question of which I gave notice on 20th May concerning a Mr. Laszlo MEGAY?

(2) Will he state the name under which Megay was charged, the nature of the alleged offence and the date and place where the trial was held?'

6.43 The Department of Immigration then inquired of A.S.I.O. by telephone what War Crimes Commission was referred to. The answer given was that it could only be assumed that it was the Allied War Crimes Commission. No further overseas checks were made.

6.44 The Department of Immigration also checked with an officer of Department of Foreign Affairs who had assisted Lord Wright, Australia's representative on the War Crimes Commission. A file note suggests that it was concluded on the basis of information in the Cologne report that Megay had been cleared before being charged by a U.S. war crimes court.

6.45 The file note assumes that a national war crimes court would be 'under the aegis of the United Nations War Crimes Commission'. (While a national court could have dealt with offences listed by the U.N.W.C.C., it could not really be said to be 'under the aegis' of the Commission). Apparently on the basis of this assumption and the reference to 'cleared by the War Crimes Commission' in the A.S.I.O. advice, the answer prepared for the Minister assumed that it was appropriate to refer to the U.N. War Crimes Commission rather than a U.S. war crimes court.

6.46 This answer, which was accepted by the Minister, read:

'(1) The United Nations War Crimes Commission.

(2) Mr. Megay was arrested under his own name as a war crimes suspect by the Allied Forces.

The findings of the War Crimes Commission dated 15th April, 1947, were as follows -

"MEGAY held the position of town mayor in Ungvar Hungary. He never was a member of the party (N.S.D.A.P.) nor did he serve in the armed forces. Megay is an Hungarian national. He never fell under automatic arrest category and has been cleared by War Crimes Commission"'.

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6.47 Against this, the list issued by the U.N. War Crimes Commission in February 1948 included the name Dr Laszlo Megay d.o.b. 11.3.02 Mayor Civilian, Komarno (Czech.) 44-5 Wanted 'misc crimes' by Czechoslovakia. A similar reference appeared in C.R.O.W.C.A.S.S.

6.48 Further, while in New York, I obtained from the Archivist of the United Nations a copy of the relevant file of the U.N.W.C.C. which is kept in the custody of U.N. Archives. This shows that on 26 February 1948 the Commission accepted a charge presented against Laszlo Megay d.o.b. 11.3.1902 that, as Mayor of Komarno, he pillaged in March 1945 500 000 Penzo, three private cars and three cars belonging to the Fire Brigade, typewriters and other property of the city of Komarno. The Commission ceased operations in March 1948. Certainly in relation to the Czechoslovakian charge, it could not be said that Megay had been cleared by the War Crimes Commission in 1947.

6.49 The story is, however, confused by the fact that allegations have been made against Mr Megay of commission of war crimes in a different location and at an earlier period than those recorded with the U.N.W.C.C. The alleged earlier war crimes relate to a period in 1944 when Mr Megay was Mayor of Ungvar in Hungary. The allegations are of a much more serious nature and concern ill-treatment of a large number of Jews. These are the allegations repeated in the A.B.C. series of 27 April 1986. Further, they seem to be the same allegations as in the material said to be received from U.S. sources contained in the report of 12 June 1957 . This material also refers to Mr Megay's term as Mayor of Ungvar and relate to ill-treatment of Jews.

6.50 It is possible that Megay was dealt with by a war crimes court in the U.S. Zone of Germany in respect of these allegations but, as no other record is held in the records of the U.N.W.C.C. relating to Megay, it is unlikely that any charge against him, other than the February 1948 Czechoslovakian charge, reached the U.N.W.C.C. or was dealt with by that body.

6.51 Clarification of the matter was sought from U.S. officials but this was one of the matters as to which a response had not been received at the date of completion of the Report (see paragraph 3.42).

6.52 I can only conclude that erroneous information was supplied by these sources in 1957, clearance by a U.S. War Crimes Court or a U.S. prosecuting branch being confused with clearance by the U.N.W.C.C. In the result, the Australian Parliament was given incorrect information by the Minister in consequence of incorrect information having been supplied by U.S. sources to A.S.I.O.

6.53 Mr Megay was accepted for migration to Australia on 12 January 1950. The former selection officer who accepted Mr Megay, when interviewed, could not recall the case. He said that he did not himself have access to the U.N.W.C.C. list and he relied on the security check by the Australian security officer. There is no written record of the security check made in this case. (This applies to all checks made at that date). The former security officer who would probably have made the check cannot recall the case. He himself did not have in his possession a copy of the U.N.W.C.C. list or the C.R.O.W.C.A.S.S. list, but had access to both. He assumed that U.S. centre with whom he would probably have checked would have checked the name against both lists. However, he would not personally have seen this done.

6.54 How Mr Megay passed the security checking process for migration to Australia must remain a mystery. In the absence of any record establishing that an Australian request was in fact made, it cannot be assumed that a U.S. officer in responding to a request in 1950 deliberately or even negligently supplied wrong information. There are alternative explanations, namely, that an Australian request was not made or the data against which the check was made did not, for some reason or other, include this information. However, in responding to the later request in 1957, the U.S. agency, as I have said above, clearly appears to have supplied wrong information.

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6.55 It is recorded that Mr Megay worked for Americans at a camp at Passau in Germany, but lost his position as camp leader because of fraud, falsification and drunkenness. Mr Megay was naturalized in 1955 and has since died.

6.56 Certainly, the 1945 crimes recorded in both lists against Mr Megay by contrast to the alleged 1944 Ungvar crime were not of a really serious nature and, if Mr Megay were still alive, would probably not warrant further investigation at this stage.

KONRADS KALEJS

6.57 Mr Kalejs of Latvian origin was accepted in Germany for migration to Australia on 11 July 1950 under the Displaced Persons Scheme.

6.58 While according to Australian selection documents, he appears to have claimed to have been only a farm worker in Latvia, I.R.O. documents indicate that he revealed to I.R.O. officers that he had been a lieutenant in the Latvian Army in 1941, but was demobilised in that year by the Russians and became a farmer and later university student. He claimed that a fire in a Displaced Persons Camp in 1947 destroyed his documents.

6.59 Mr Kalejs was granted Australian citizenship in August 1957 and in 1959 he migrated from Australia to the United States where he is still resident, although retaining his Australian citizenship.

6.60 In 1984, following an investigation by the O.S.I., the U.S. Department of Justice and the Immigration and Naturalization Service commenced deportation proceedings against Mr Kalejs.

6.61 It is alleged in these proceedings that Mr Kalejs was an officer in the Arajs Commando, a Latvian unit responsible for the murder of thousands of Jews in forests surrounding Riga from July 1941 to January 1942. These proceedings are still current

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before a United States tribunal and I express no view as to Mr Kalejs' guilt or innocence of these charges. It must, however, be observed that, if a deportation order is made against Mr Kalejs, the United States Government will presumably ask the Australian Government to accept the return of Mr Kalejs on grounds that he is an Australian citizen.

6.62 If Mr Kalejs does so return, it will be the first instance of a person in Australia in respect of whom there is a judicial decision (albeit of a foreign country) in effect determining his guilt of a war crime. But of course at this point, there is no such decision.

6.63 As to the explanation for acceptance of Mr Kalejs for migration to Australia, the B.D.C. would not have recorded his war-time activities (whatever they were) and it is doubtful that these activities would have been revealed by checks with British or U.S. intelligence centres. His account of these activities, coupled with his explanation for missing documents (a fire), was accepted by the I.R.O. and Australian selection officers.

6.64 There is no evidence or suggestion that Mr Kalejs was employed by a U.S. or U.K. intelligence agency.

MR A.

6.65 This person's name has not appeared on the public record, so I shall not disclose it.

6.66 Mr A. was accepted for migration to Australia at Linz, Austria in November 1949. His case should have received special consideration because he was first determined by I.R.O. to be ineligible on grounds that he had held a position of importance in a munitions plant, but this was reversed by the I.R.O.'s Review Board. Further, his I.R.O. form recorded that he was a member of the Hlinka Slovakische Volkspartei from 1928 to 1945.

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This Slovakian political party was originally nationalist and separatist, but later became fascist and had an armed force called the Hlinka Guard which corresponded to the German S.S.

6.67 All that appeared in the Australian selection card under the heading of 'security' was:

'(a) Reason for coming to Austria etc. - Fled from Russ

(b)]

(c)] Pass'

6.68 Against 'Employment in own country' was 'Clerk'. This suggests a hasty and superficial questioning but of course other questions may have been asked, although not recorded.

6.69 Worse, however, was to follow. In spite of the fact that Mr A. was recorded in the U.N.W.C.C. as an agent of the Gestapo and a member of the Hlinka Guard accused of complicity in arrests and ill-treatment of Slovak citizens between September 1944 and February 1945, he apparently passed the final security checking process.

6.70 I contacted the Australian selection officer, who is now retired and living overseas. His reply is interesting:

> 'In view of the lapsed time and the fact that I interviewed over 10 000 cases in the course of my service, I can not recall more than 20 or 30 individual ones. Mr [A]. is not one of them.
>
> In the early migration days there was very considerable pressure to reduce the number of camp residents and to get migrants on ships. An interviewing schedule of 30 cases was not unusual. The time factor precluded in depth interviewing but the interviewing lists were submitted by the I.R.O. resettlement officer and it can be assumed that he/she was anti-Nazi to a degree and had contacts with U.S. intelligence. Added to this, refugee camp life with thousands of inmates was anything other than a private affairs and a person's background usually seeped through.

> As to the UN War Crimes Commission's list of war criminals, I have never had possession of or access to such a list and indeed had never heard of such a list until two or three months ago when it received considerable publicity in Austria concerning the war record of one of the Austrian presidential candidates'.

6.71 According to procedures operating in November 1949, there should have been a check by an Australian security officer with B.D.C. and intelligence centres in Austria but, as in all other cases, no record of this check can be found. How this check (assuming it was made) failed to reveal the U.N.W.C.C. record cannot now be explained. There is no evidence or even suggestion that Mr A. was ever employed by a U.S. or British intelligence agency.

CHAPTER 7

DIVERGENCES FROM STANDARD PRACTICES TO MEET REQUESTS OF OVERSEAS INTELLIGENCE AGENCIES

7.1 In the confidential Part of the Report, I discuss arrangements made with U.K. and U.S. intelligence agencies for reception into Australia of persons at the request of either of such agencies and the precautions taken to protect Australian interests in such cases.

7.2 I report in that Part that, to the knowledge of Australian authorities, no person admitted into Australia under these arrangements appears to have been the object of charges or allegations as to commission of war crimes. I mention the possibility that former agents of U.K. or U.S. intelligence agencies may have entered Australia, particularly before 1956, without the knowledge of Australian authorities and state that one instance has come to notice of a person now in Australia and the subject of allegations of commission of war crimes having been employed by any such intelligence agency and there is suspicion of another like incident. As discussed in Chapter 6, contentions that British or U.S. intelligence agents had influenced the selection for migration to Australia of particular persons the subject of allegations as to commission of war crimes by supplying false information to, or withholding information from, Australian selection officers proved to be unsupported on a detailed examination of the facts.

7.3 The Review found that A.S.I.O. files record a number of cases where A.S.I.O. officers had contact with persons in respect of whom the Review has recorded allegations of commission of war crimes some time after their entry into Australia and obtained information from them for A.S.I.O. purposes not related to the war crimes allegations. There is no evidence, however, that A.S.I.O. was involved in the circumstances of the entry of any of these persons into Australia.

7.4 Finally, I mention that in preparing this part of the Report, I have taken into account the June 1985 Report of the U.S. General Accounting Office (G.A.O.), which was directed by Congress to inquire into whether there was any post World War II U.S. Government program to help Nazi war criminals and collaborators immigrate to the United States and to conceal their backgrounds.

7.5 The G.A.O. reported that, while it found no evidence of any U.S. agency programme specifically designed to aid Nazis or Axis collaborators to immigrate to the United States, U.S. intelligence agencies on occasion aided these types of aliens on an individual basis. G.A.O. identified five aliens with undesirable or questionable backgrounds who were aided by intelligence agencies to migrate to the U.S. These comprised two alleged war criminals, a former Nazi S.S. officer, a convicted conspirator in an assassination and a traitor. The G.A.O. also reviewed the Ryan Report on Barbie (see Chapter 8), but found no discrepancies between that Report and documents and files reviewed and individuals interviewed.

7.6 The G.A.O. Report does not provide any information directly related to the question of admission of former U.S. intelligence agents into Australia, but it does quite starkly reveal the attitudes of a limited number of U.S. intelligence officers towards re-settlement of their former agents. It is significant background material that had to be taken into account in writing this portion of the Report.

CHAPTER 8

KLAUS BARBIE. WAS THERE AN AUSTRALIAN CONNEXION?

8.1 In the Senate on 29 May 1986, Senator Baume referred to a series of documents produced by the Department of Foreign Affairs under the Freedom of Information Act. These were:

- a letter from the U.S. Army to Office of the Army Attache, Australian Embassy, Washington received on 15 August 1983 stating that in processing Army-originated records concerning Klaus Barbie, an attached classified document originating from the Australian Government was located; the letter inquired whether there was objection to release of the information to the general public;
- a letter dated 25 June 1952 (which was the attachment to the first letter) signed by D. Okey, Immigration Attache, Australian Embassy, Cologne to 66th Det U.S. Army, Stuttgart. This reads as follows:

> 'As agreed in conversation with you on the 10th June, I forward herewith copies of various forms for application for migration to Australia.
>
> 2. For your information the Displaced Persons scheme is being discontinued as from the 30th June. It will, therefore, not be possible for persons to be sent through this channel as was discussed with you.
>
> 3. The present schemes operating are as follows:
>
> (a) A Landing Permit scheme in which an application is made by a sponsor in Australia for a relative living in Germany.
>
> (b) Selected Workmen scheme whereby persons with special trade qualifications are being trade-tested, and selected at various centres throughout Germany.
>
> 4. The two schemes of the previous paragraph relate principally to persons of German nationality, but the Landing Permit scheme may apply to persons of any nationality.

> 5. It is proposed that a new German Migration scheme will start in the near future; a delegation from Bonn has just returned from discussions in Australia with the Australian Government. To date the terms of the agreement are not known to this Embassy.
>
> 6. Cases such as those you proposed in our discussions would come under a special category. In this connection representations have been made to Australia, the special conditions mentioned by you being placed before them. I am now awaiting a decision and you will be informed when it is known'.

. a Department of Foreign Affairs minute dated 25 October 1983 by Bryan Matthews, General Legal Section, discussing what response should be made to the U.S. inquiry. The minute contained the following passage:

> '2. I agree with Washington that on its own the letter appears innocuous. Seen in the context of its existence on a US Army Intelligence file on Klaus Barbie, however, the letter suggests that the Australian Government was, at the request of the United States, giving consideration to the resettlement of Klaus Barbie in Australia. Paragraph 6, set out below, is quite specific on this point:
>
> > "6. Cases such as those you proposed in our discussion we would consider a special category. In this connection representations have been made to Australia, the special conditions mentioned by you being placed before them. I am now awaiting a decision and you will be informed when it is known."
>
> The use of the plural "cases such as those..." implies that the enquiry was not restricted to just Klaus Barbie'.

8.2 On the basis of these documents, it has been suggested that at one time there was a question of Klaus Barbie coming to Australia.

8.3 A full account of the dealings of United States officers with Klaus Barbie appears in Klaus Barbie and the United States Government. (The Report with documentary appendix to the Attorney-General of the United States by Allan Ryan). In brief, Klaus Barbie, a Gestapo officer, who is waiting trial in a French court on charges of committing serious war crimes in France, was

employed by a U.S. intelligence agency in Germany between 1947 and 1951.

8.4 In November 1949, the French Government sought the extradition of Barbie from Germany. However, Barbie remained hidden in a safe-house maintained by the agency. In January 1951 the agency used what has been termed 'a rat line' maintained by another U.S. intelligence body, that is, a process by which fugitives might leave Europe, to move Barbie under a false name to Genoa. On 23 March 1951, he left by ship to Buenos Aires and eventually Bolivia where he remained until 1983 when he was expelled to France.

8.5 In his report, Mr Ryan concluded that, until at least May 1949, the first agency had no reliable indication that Barbie was suspected of war crimes or crimes against humanity but, by its decision in May 1950 not to co-operate with efforts to obtain Barbie's surrender and by its false statements to higher command that his whereabouts were unknown, responsible officers of the Army had interfered with the lawful administration of justice. Mr Ryan further reported that no other case was found where a suspected Nazi war criminal was placed in the rat line, but the use of the rat line in Barbie's case was a final step in the agency's obstruction of higher command's attempt to carry out its lawful obligation to decide on the extradition of Barbie.

8.6 Statutory time limitations prevented the prosecution of the officials concerned, but Mr Ryan recommended that the U.S. Government express regret to the French Government for its responsibility in delaying the due process of the law in the case of Barbie. The U.S. Government acted on this recommendation.

8.7 I turn now to Australian records. Mr D. Okey is now dead. However, a report by Mr Okey to his superior officer dated 16 June 1952 has been found which refers to the episode mentioned in his letter to the U.S. Army dated 25 June 1952 described in paragraph 8.1 above. This report makes it clear that the

conversation referred to in the letter of 25 June 1952 dealt with the future of certain Russians or 'Russian allied' persons who had served U.S. intelligence agencies. As Barbie was German (not Russian), the discussion could not have concerned him. In any event, Barbie had left Europe in March 1951 and did not return until expelled from Bolivia in 1983.

8.8 The probable explanation for the presence of the Okey letter in 'Army-originated records concerning Barbie' emerged in discussions which Australian Embassy officials had at my request with U.S. officers. This was that the Australia-related documents were simply part of a large bundle of documents that had been collated for the purposes of the Ryan inquiry for the Justice Department mentioned in paragraph 8.3. The Ryan inquiry had requested all defence records relating to the re-settlement of useful intelligence informants after World War II. The papers that U.S. Army put together for this purpose included documents dealing with quite routine exchanges between officials about entry procedures for immigrants into various countries including Australia.

8.9 Having regard to this material, there is clearly no evidence that Australian officials were involved in any proposal to re-settle Barbie in Australia.

8.10 I would finally mention that Klaus Barbie and the United States Government supra at page 501 contains a photo-reproduction of Barbie's request in the name of Altmann to enter Bolivia and the name of Father Roque Romac, Guardian of the Franciscan Community of Sacaba, appears in the request as a person in Bolivia known to the applicant. As a matter of general interest, it may be noted that Father Romac came to Australia in 1955 and, after obtaining Australian citizenship in 1962, died in 1970. However, there is no known connexion between Father Romac and Australia in 1951 and the document does not suggest any Australian involvement in Barbie's departure from Europe in that year.

CHAPTER 9

DID BRITISH OR U.S. INTELLIGENCE OFFICERS WITHHOLD INFORMATION FROM, OR OTHERWISE MISLEAD, AUSTRALIAN OFFICERS AS TO COMMISSION OF WAR CRIMES BY APPLICANTS FOR AUSTRALIAN MIGRATION?

9.1 Because of the contentions to this effect advanced in the A.B.C. series, the Review looked most diligently for any evidence to support this notion. It examined the material produced by the A.B.C., particularly copies of U.K. and U.S. official documents. It was alert to any indication supporting this argument in information supplied by former officers in the course of interviews and in the files of A.S.I.O. and Commonwealth departments examined by the Review. All former officers interviewed denied that any such thing had happened to their knowledge.

9.2 The Review examined in particular detail the two cases of Mr Rover and Mr Urbancic which were put forward in the A.B.C. series to support these contentions. As indicated in Chapter 6, no reason was found in the detailed examination of these cases to conclude that a U.K. or U.S. intelligence officer had influenced the selection of either person for migration to Australia by supplying false information to, or withholding information from, Australian selection officers.

9.3 Further, the review has established that there was an explanation, quite apart from the possibility of such influence, to account for persons the object of suspicions as to commission of war crimes passing the Australian selection process, namely, limitations in numbers and geographical spread of Australian security officers and gaps in checking data.

9.4 In the whole course of the Review, no evidence was found to establish that in any instance a U.K. or U.S. intelligence officer had withheld information from, or otherwise misled, Australian officers as to commission of war crimes by applicants for migration to Australia.

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9.5 The two cases where persons were accepted for migration to Australia in spite of the fact that they were recorded in the U.N.W.C.C. as wanted war criminals must be mentioned in this regard. But, particularly in view of the absence of any record establishing that a check was in fact made, it cannot be assumed that a U.K. or U.S. officer supplied wrong information to an Australian officer. There are several alternative explanations, namely, an Australian request was not made or the data against which the check was made did not include the information.

9.6 It is of course more difficult to establish the negative (that something did not happen) than the positive (that something did happen) and it should not be surprising that the Review could not establish positively that Australian officers were not misled by U.K. or U.S. officers in any case. The Review did identify one instance where an applicant for migration to Australia, who had previously been wanted by a British War Crimes Group, appears to have been employed by a U.S. intelligence agency and this employment was not disclosed to Australian officers by the U.S. agency when a query in regard to the case arose some years later. However, whether the U.S. agency knew that the person was wanted for war crimes and what information was supplied by the agency to Australian officers at the time of the person's selection cannot now be established.

9.7 On all the information available to the Review, it would seem likely that, if any instances occurred where information as to war crimes was withheld by U.S. or U.K. intelligence officers from Australian officers, these instances would have been very limited in number and Australian officers would not have been a party to the deception. In the overwhelming number of cases where persons the objects of suspicions of commission of war crimes passed through the Australian selection process, this would have been due to limitation in numbers and geographical spread of Australian security officers and gaps in data against which checks were made. A somewhat similar conclusion was reached by Ryan in Quiet Neighbours at p.327 as to the entry of war criminals into the U.S.

9.8 It was not practicable for me to interview former I.R.O. officials who were of course not Australian. I therefore can express no views as to what influences, if any, were brought to bear on these officials in regard to their acceptance of persons for I.R.O. assistance.

CHAPTER 10

SUMMARY OF MATERIAL RELATING TO INDIVIDUAL ALLEGATIONS

ACTION BY A.S.I.O. AND POLICE BEFORE THE REVIEW WAS SET UP

10.1 From 1949 onwards, allegations were received by both the Commonwealth Investigation Service and A.S.I.O. as to the entry of Nazis or war criminals into Australia. Neither organization, however, had any set rules or procedures for dealing with such allegations.

10.2 In the case of the Commonwealth Investigation Service and its successor police organizations, while sometimes the allegations were investigated in considerable depth, usually the investigation was confined to questioning the suspect on his war-time activities. On other occasions, the allegation was merely recorded or investigated to a very limited extent. The alleged crime would have been committed outside Australia and the Police were uncertain what role, if any, they had in such cases. No direction was given to them by any Government as to their responsibility in such cases.

10.3 In the case of A.S.I.O., on a few occasions, a fairly detailed investigation was conducted but more usually it either interviewed the suspect to provide him with the opportunity to give an explanation or confined action to recording the allegation in the personal file (if any) of the individual. Of course, there is a question whether it is within the charter of A.S.I.O. to conduct investigations of this kind.

10.4 Thus, before the Review commenced operations, there was no comprehensive or systematic investigation into allegations of commission of war crimes by persons in Australia nor does any investigation into particular allegations appear to have reached a definitive conclusion as to whether the alleged crime had or had not been committed. Some investigations, however, concluded that there had been a mistake in identity.

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10.5 I shall now discuss what action was taken by the Review as to allegations coming to its notice.

SOURCES OF ALLEGATIONS

10.6 The Review has examined allegations as to commission of war crimes by nearly 200 persons known to have migrated to Australia since World War II. In addition, the Review examined a small number of cases where persons, the object of such allegations, were said to have entered Australia but the Review was not able to establish positively whether they had or had not entered Australia.

10.7 The allegations came to the notice of the Review in the following ways:

(1) submissions received by the Review from organizations and individual members of the public;

(2) previous approaches to the Commonwealth Government by foreign governments for the surrender or extradition of persons accused of war crimes;

(3) information received from the United States O.S.I. relating to persons under investigation by it who had previously resided in Australia, or to persons now resident in Australia about whom allegations had come to light in the course of O.S.I. investigation of U.S. residents;

(4) information gathered by A.S.I.O. or A.F.P. in the course of criminal or security investigations;

(5) information communicated to other Commonwealth Government Departments and authorities before the establishment of the Review;

(6) allegations contained in publications in Australia and elsewhere including a number of publications in the Soviet Union.

TREATMENT OF ALLEGATIONS

10.8 As I have already noted, I do not believe that my Terms of Reference authorised me to conduct investigations involving the interviewing of suspects and witnesses with a view to establishing the truth or otherwise of allegations as to commission of war crimes. The locating of witnesses could, in itself have been a prolonged task as many must be overseas. This task will, I believe, be more appropriately and effectively performed by the proposed specialized unit that I recommend in Chapter 18.

10.9 What the Review has done in this regard has been to:

(1) put together all the allegations in respect of each identifiable person;

(2) search D.I.E.A., A.S.I.O. and A.F.P. records for any information relevant to each such person;

(3) search U.N.W.C.C. and C.R.O.W.C.A.S.S. lists for information relating to each such person;

(4) consult with the U.S. O.S.I. and the B.D.C. with a view to obtaining information on each such person; where appropriate, overseas archival institutions were approached.

10.10 The Review then examined all the material so collected in relation to each such person, putting aside cases where:

(a) the allegations were too vague and imprecise to warrant further consideration;

(b) the alleged crime was not of a serious nature; or

(c) the suspect did not appear to be directly involved in, or clearly linked to, the alleged crime.

10.11 The Review next sought to establish whether each of the remaining persons is alive and, if so, his present address. Time and the limited resources of the Review did not permit this to be achieved in all cases. However, unless their death was established, the names of the remaining persons, their last known addresses and details of the offences alleged in respect of each were listed. The total number of such names is 70. Nine other names would have been included in the list if it had not been established definitely that the individuals concerned were dead or had left Australia and no longer held Australian citizenship.

SIGNIFICANCE OF LIST

10.12 I cannot emphasize too strongly that the inclusion of a name in the list does not signify a belief in the guilt of the person or even that a prima facie case has been established in respect of the offence. Nevertheless, the dimensions of the list are significant and in themselves may well suggest a need for further investigation. However, there is another important consideration, the experience of comparable countries, and of these, I make particular reference to the United States.

10.13 In spite of a much smaller population than other participating countries, Australia came second only to the United States in numbers of displaced persons taken. While Australia's selection processes were not identical with those of the United States, basically the same security checking data was used, that is the B.D.C., U.S., U.K. and French intelligence data and even, in the case of the U.S. zone in Germany, the same U.S. intelligence centres.

10.14 Due to an active and, in recent years, well directed program for the detection and prosecution of war criminals, the presence in the United States of such persons (who mainly came as

displaced persons) is now well established. There has been no like program in Australia so the absence of a judicial decision establishing the guilt of any person now in Australia has limited significance.

10.15 Given the similarity of sources for these migrants and the same essential flaws in the checking processes, it would be surprising if Australia had escaped the problem as to war criminals identified in the United States. The dimensions of the list prepared by the Review makes it probable that it did not.

NATURE OF ALLEGATIONS LISTED

10.16 It would clearly be inappropriate for the list to be published. In only one case (where there was a request for extradition by a foreign state supported by evidence), are there more than mere allegations. In some cases, the allegations are not even specific as to date and location of the alleged offence.

10.17 However, so that the Government may gain some appreciation of the extent and seriousness of the alleged crimes, I shall give a general description of the allegations, necessarily in very broad terms.

10.18 The alleged crimes fall into three broad groups as follows:

(1) participation in police or so called 'security' units which had the task of deporting, ill-treating or murdering persons on racial or political grounds; in some cases these people worked under German orders, in other cases they operated largely independently;

(2) participation as guards or administrators in the operation of German established concentration camps or prisons at which large numbers of people were murdered or ill-treated;

(3) participation in national or local puppet governments under Nazi German direction at an executive level, allegedly involving direct responsibility for the deportation, ill-treatment or murder of persons on racial or political grounds.

10.19 They are for the most part allegations as to commission of crimes of a very serious nature.

10.20 In compiling the list, I put aside a number of allegations as to membership of, or demonstrated sympathy for, various fascist organizations in Nazi controlled Europe. Allegations as to production of fascist propaganda were similarly treated.

10.21 However repugnant the views expressed and the propaganda published are to the general Australian community, they do not appear to warrant attention as war crimes after the passage of more than 40 years.

10.22 Similarly, membership of the German armed forces or armed forces allied to, or recruited by, Germany has never been regarded as a war crime. The International Military Tribunal in 1946 treated as criminal only the leadership corps of the Nazi party and S.S. At this stage, we should, I suggest, only be concerned where a member is directly involved in a specific crime, although membership of a very limited class of unit, such as S.S. concentration camp guards, calls, I believe, for further investigation.

10.23 Finally, it must be observed that the crimes were allegedly committed in Eastern and South-eastern Europe; no allegation has been recorded in relation to a crime in Western Europe. The alleged offenders are very largely, but not entirely, non-Germans originating from Eastern or South-eastern Europe. The explanation for this is clearly not a propensity to such crimes on the part of inhabitants of those regions, but rather the limitations in information sources and weaknesses of the

Australian migrant selection processes previously discussed in relation to persons from these areas. The persons listed are a minute proportion of the enormous numbers of persons who came to Australia from these areas and who have made such a significant contribution to Australia's development. No slur on the great mass of such people should be seen in these remarks.

FUTURE ACTION ON THE LIST

10.24 In the light of the matters discussed in this Chapter, an investigation into the allegations recorded in the list is, I believe, called for. In Chapter 18 I recommend the setting up of a specialized unit to investigate allegations as to commission of war crimes and to take appropriate further action. With a view to the taking of action of this kind, or such other action as the Government considers appropriate, I shall deliver the list in a separate envelope to the Special Minister of State when delivering this Report. I recommend that the list should not be published and should only be given to whatever body is charged with taking further action on this Report.

10.25 I must emphasize that the list is not intended to be treated as a final and exhaustive list of suspected war criminals in Australia. Whatever body is charged with further investigations may well uncover evidence in respect of persons not named in this list. It will inevitably find in the case of some persons listed that sufficient evidence cannot be assembled for effective action. The list merely represents a statement by the Review based on the material revealed at the close of its operations. It is a starting point for whatever body is charged with further investigations.

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CHAPTER 11

ARE WAR CRIMINALS NOW, OR HAVE THEY BEEN, RESIDENT IN AUSTRALIA AND IF SO, WHEN AND HOW DID THEY OBTAIN ENTRY TO AUSTRALIA (TERM OF REFERENCE 1(a))?

11.1 It follows from the matters discussed in Chapter 10 that it is more likely than not that a significant number of persons who committed serious war crimes in World War II entered Australia and some of these are now in Australia; certainly the likelihood of this is such that some action needs to be taken. At the same time, because of the limited nature of the Review, it is not possible for me to name specific persons in this regard.

11.2 As to how these persons entered Australia, it is not possible to be specific but the considerations discussed in Chapter 5, namely, the serious limitations, particularly in the early years, in numbers and geographical spread of staff available to do the necessary checking and the equally serious gaps in the data against which Australian security officers would have made their checks provide the probable explanation for how the overwhelming majority of these persons were able to pass through the security control net and enter Australia.

11.3 While it was not possible to establish positively that in no case did this occur by reason of a British or U.S. intelligence officer misleading, or concealing facts from, an Australian officer, these instances, if any, would have been very few in number and there is no evidence whatsoever that Australian officers were parties to any such deception.

CHAPTER 12

DID ANY BREACH OF LAW, BREACH OF DUTY OR PROPRIETY BY ANY PERSON OR PERSONS OCCUR IN RELATION TO THE ENTRY OF WAR CRIMINALS INTO AUSTRALIA (TERM OF REFERENCE 1(b))?

12.1 As I am not able to state that any person guilty of a war crime has entered Australia, I am not, of course, able to give a direct answer to this question. However, I shall answer it, as far as possible, in relation to the persons the subject of allegations as to commission of war crimes referred to in Chapter 10.

12.2 First, the relevant legislation will be the law applying at the time of each person's entry into Australia and in all but a very small number of cases, this will be the Immigration Act 1901 as amended rather than the Migration Act 1958, the relevant parts of which did not come into operation until 1 June 1959.

12.3 In regard to the great bulk of persons who entered at the time of application of the Immigration Act 1901, the law did not make apt provision for the situation now discussed. Under section 5, a person who obtained entry into Australia by virtue of a document obtained by false representations could be required to pass a dictation test and, if he failed to do so, was then deemed to be a prohibited immigrant and thereupon committed an offence. But the offence was not committed until he failed in the dictation test. No other relevant offence applied.

12.4 I have considered whether charges could be brought in such cases under section 29B of the Crimes Act 1914 (imposing upon the Commonwealth by an untrue representation with a view to obtaining a benefit or advantage), but the relevant acts or omissions would have occurred outside Australia and the Crimes Act was not given extra-territorial application until 1960.

12.5 In the case of the very small number of persons who entered after 1 June 1959 when the Migration Act came into force, that Act, as it stood until amended in 1983, made it an offence for an immigrant to enter Australia 'after having produced to an officer for the purpose of securing entry into Australia a permit ... or other document which was ... obtained by false representations' (section 27). This might have possible relevance but for the fact that the time for prosecution of an offence against section 27 is one year after commission of the offence and this has long since expired in the case of all persons listed.

12.6 There is no time limit for prosecutions under section 29B of the Crimes Act dealt with on indictment, but very few persons on the list were selected for migration to Australia after 13 December 1960 when the Crimes Act was given extra-territorial application. In any event, it would not be in accord with the general prosecution policy of the Commonwealth to prosecute under the general provisions of the Crimes Act to avoid the time limitations of the specific legislation (the Migration Act).

12.7 In short therefore it can be said, without the need to consider what evidence is available, that it would not now be practicable to prosecute for possible offences committed by any of the listed persons in relation to their entry into Australia.

12.8 As regards selection officers and other officers of the Commonwealth, no evidence of any breach of law, breach of duty or propriety has come to notice. There were no doubt errors from time to time, but these would appear to be errors of judgment inevitable in the administration of such a large scheme as the post-war migration to Australia.

CHAPTER 13

WAS THERE A POLICY BY ANY GOVERNMENT OF AUSTRALIA TO ALLOW OR ASSIST THE ENTRY OF KNOWN OR SUSPECTED WAR CRIMINALS INTO AUSTRALIA (TERM OF REFERENCE 1(c))?

13.1 To answer the question raised by this Term of Reference, the Review made exhaustive searches of all Government decisions of any possible relevance, whether at Cabinet, Ministerial or official level. Decisions of particular relevance were those made from time to time within Government as to the security checking criteria for applicants for migration to Australia which are discussed in detail in Chapter 5.

13.2 However, for the purpose of this Term of Reference, the Review did not confine its examination to written or formal records of decisions. In my interviews of the former officers, I was alert to note any indication that oral instructions had been given that were inconsistent with or varying from written directions so as to give effect to an unwritten policy by an Australian Government of a kind referred to in this Term of Reference.

13.3 Assuming that, at least in the context of my Terms of Reference, the term 'war criminal' does not apply to persons merely by reason of their past membership of the Nazi Party or like organizations, I can report, without reservation, that no evidence was found in the written records of decisions or in the interviews of former officers that there was a policy of any Australian Government to allow or assist the entry of known or suspected war criminals into Australia. Indeed, so far as the records and interviews indicate, the policy of all Australian Governments has been to the contrary.

13.4 There remains the possible argument that the insufficiency of action to prevent the entry of persons who are the subject of allegations as to commission of serious war crimes recorded by the Review evidences the existence of such a policy on the part of the then Government, although unwritten and unrecorded.

13.5 It is of course easy to be wise after the event. Instead, we must look to the facts as known at the relevant time.

13.6 The Review has identified two principal factors making possible the entry of suspected war criminals into Australia. The first is the total lack of Australian security officers in the initial phase of the mass migration scheme and the later limitation in numbers and geographical spread of such officers. The second is gaps in data against which security checks were made.

13.7 As to the first, whenever proposals were made to Government for increased numbers of security officers in Europe and posts at which they would be located, the proposals appear to have been substantially accepted. Thus, the numbers of officers and posts steadily increased between 1951 and 1957 from two officers and one post to 11 officers and seven posts.

13.8 As to the second factor (gaps in data against which security checks were made), the full extent of these gaps in relation to non-German applicants does not appear to have been identified until the Review completed its examination. Certainly, the security officers stationed in Europe were aware of the gaps in the B.D.C. records in relation to non-Germans. However, those interviewed appeared to think that this deficiency would be made good by checks with British or U.S. intelligence records, although none had any real knowledge of what these records covered. In short, they very largely took on trust the reports on the checks supplied by the British or U.S. Perhaps they had no practical alternative. The Australian Government did not pay for the service. Sir Charles Spry, when interviewed by me, said he was not aware of the limitations in the B.D.C. records now revealed.

13.9 In August 1951, Sir Raymond Huish, President of the Queensland Branch of the Returned Sailors, Soldiers and Airmen's Imperial League of Australia, in a report submitted to the Government and his Association following a comprehensive

inspection of Australian migration operations in Europe, discussed in detail the adequacy of screening and security procedures then being applied in Europe.

13.10 Sir Raymond visited the B.D.C. and British and U.S. intelligence centres. Certainly speaking in the context of the proposed German mass migration scheme, Sir Raymond said:

> ' I believe I have a very complete picture of the security system which is in operation and which is made available to the Australian authorities and which, in my opinion, provides every reasonable safeguard in the screening of German migrants. I doubt if any other part of Europe could supply us with greater protection than that which is available in Germany. I am of the opinion that the security side of any German Mass Migration Scheme can be adequately taken care of'.

13.11 Nothing in his report referred to the limitations in screening data in relation to non-Germans presenting themselves for selection in Germany. (It did refer to deficiencies in selection procedures in Italy, which appear to have been largely rectified soon after). It therefore appears unlikely that these limitations and their potential for admission of war criminals among such persons was known to the Government in Australia at the relevant time.

13.12 Certainly reports appeared in the media and elsewhere from 1949 onwards that suspected war criminals had entered Australia and it can be argued that the Government should have been alerted by these and taken corrective action more promptly and more effectively.

13.13 The question raised by this Term of Reference is not whether anything more could or should have been done to prevent the entry of war criminals into Australia. Instead, it is whether there was a policy by any Australian Government to allow or assist the entry of such persons into Australia.

13.14 The facts as now ascertained, in my view, fall far short of establishing such a policy.

CHAPTER 14

AUSTRALIAN HANDLING OF UNITED STATES REQUESTS FOR INFORMATION

14.1 The National Times newspaper of 3-9 May 1985 included an article by Marian Wilkinson entitled 'Fraser Government Inaction Hampered Nazi War Crime Investigation'. The article alleged that a request made by the United States Justice Department in 1981 for information relating to a Lithuanian, Kazys Simkus, had never received a response from the Australian authorities, despite the dispatch of two reminders. The United States authorities wished to obtain evidence from Simkus, who was believed to have emigrated to Australia after World War II, in relation to the trial of another Lithuanian, Jurgis Juodis.

14.2 A similar allegation was made by Mr Eli Rosenbaum, formerly an officer of the United States Office of Special Investigations, on the A.B.C. radio program Background Briefing on 11 May 1986. Mr Rosenbaum also criticised Australia in more general terms, as being the only country which had not enthusiastically assisted United States war crimes investigations.

14.3 On 25 June 1985 an officer of the Department of the Prime Minister and Cabinet advised the Department of Foreign Affairs that the Prime Minister had expressed concern that there may have been inadequacies in the way such requests had been handled in the past and had emphasised that it was to be made absolutely clear to all departments and agencies that there was to be no suggestion of unco-operation by Australia in pursuing war crimes enquiries. The Prime Minister had also directed that any requests received by the Department of Foreign Affairs in the future concerning the location of war crimes witnesses or suspects should be referred expeditiously to the Australian Federal Police for action.

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INVESTIGATION OF THE SIMKUS REQUEST

14.4 The Review has investigated the Simkus request and the relevant facts are as follows.

14.5 The United States Embassy in Canberra wrote to the Department of Foreign Affairs on 30 December 1981 to seek information on the whereabouts of Mr Simkus, who was of interest to the Office of Special Investigations as a possible witness in the Juodis case. The Office of Special Investigations noted that, as Mr Simkus himself may have been implicated in the crimes under investigation, it was desired that he should not be made aware of O.S.I. interest in him at that time. After considering issues of principle raised by the request the Department of Foreign Affairs acknowledged it on 5 February 1982 and referred it to the Department of Immigration and Ethnic Affairs on the same day. The Department of Foreign Affairs also referred the matter to the Attorney-General's Department for policy advice on 18 March 1982, since the communication of the address of an Australian citizen without that citizen's consent was contrary to departmental consular policy.

14.6 The Department of Immigration and Ethnic Affairs advised the Department of Foreign Affairs on 19 March 1982 of the date on which Mr Simkus had been granted Australian citizenship and his last known address but, as the matter had by then been referred to the Attorney-General's Department, this information was not passed on to the United States Embassy.

14.7 At this point, confusion unfortunately developed in communications between Department of Foreign Affairs and Attorney-General's Department. One officer of Attorney-General's has recorded that on 11 June 1982, he orally advised an officer of Foreign Affairs that the matter should be referred to Australian Federal Police. Following receipt of a further memo from Foreign Affairs dated 27 July 1982, he recorded that he orally repeated that advice to the same officer. However, a different officer of Foreign Affairs recorded in November 1982

that he had discussed the matter with a different (and more junior) officer of Attorney-General's who advised that, from a legal point of view, there was little scope to assist the U.S.

14.8 It is regrettable that none of this advice was confirmed by memorandum, as would have been usual. Apparently because of uncertainty and lack of written advice, the Department of Foreign Affairs made no written response to the U.S. requests, although its records indicate that the U.S. Embassy was orally advised on 29 October 1982 that the question of assistance had been referred to the Attorney-General's Department.

14.9 Further written requests for a reply to the Simkus request were received from the United States Embassy on 8 September 1982, 17 February 1983, 10 November 1983 and 3 June 1985. Following the receipt of the last of these requests and of related representations and publicity, the Attorney-General's Department advised the Department of the Prime Minister and Cabinet in writing on 21 June 1985 that requests for information relating to war crimes prosecutions clearly fell within the area of law enforcement rather than consular assistance. In consequence, it would be appropriate to supply the information requested and any subsequent requests of this nature should be referred directly to the Australian Federal Police for action. The Simkus request was itself referred to the Australian Federal Police, who advised on 25 July 1985 that Mr Simkus had died in 1968. Relevant documentary evidence was provided. This information was passed to the United States Embassy on 1 August 1985.

14.10 The United States Government has also requested information from the Commonwealth Government on four other individuals in connection with war crimes investigations. Details of these cases are as follows (names are omitted unless previously made public):

CASE 1

14.11 On 6 August 1981, the United States Embassy in Canberra requested the Department of Foreign Affairs to provide information on an unsuccessful application for migration to Australia made in 1949 by a Lithuanian who had served as an S.S. guard at Auschwitz concentration camp. The Department of Foreign Affairs acknowledged the enquiry on 11 August 1981 and also forwarded it to the Department of Immigration and Ethnic Affairs. On 8 September 1981, the latter Department advised that it had no record of the individual of interest to the United States authorities, but that records were held relating to the migration to Australia in 1949 of an individual with the same surname and born in the same town, but with a different given name and date of birth. This information was communicated to the United States Embassy in Canberra on 2 December 1981.

14.12 On 19 August 1982, the United States Embassy advised the Department of Foreign Affairs that the individual identified by the Department of Immigration and Ethnic Affairs was in fact the older brother of the individual of interest to the United States authorities. The older brother was also believed to have served in an S.S. unit at Auschwitz and the United States authorities therefore wished to interview him as a witness in connection with legal action being taken against his brother. The Department of Foreign Affairs was asked to advise as expeditiously as possible whether the older brother was still resident in Australia, so that a formal request could be made for the United States Office of Special Investigations to interview him.

14.13 The Department of Foreign Affairs acknowledged this communication on 27 August 1982, but no reply was sent because of the doubts that had arisen in the Simkus case as to the propriety of communicating information concerning Australian citizens to foreign governments without the consent of the citizen concerned.

14.14 On 4 January 1983, the United States Embassy advised the Department of Foreign Affairs that the individual concerned had voluntarily left the United States and that the case was therefore closed.

CASE 2

14.15 On 6 April 1982, the United States Embassy in Canberra requested the Department of Foreign Affairs to provide information on the current whereabouts of an individual born in Poland who was believed to have participated in the shooting of civilian men, women and children in Byelorussia during World War II. The individual concerned was believed to have migrated to Australia. The request was referred to the Department of Immigration and Ethnic Affairs on 19 April 1982, but the latter Department advised on 20 May 1982 that, after a careful check, it had been unable to find any trace of the individual sought. This information was apparently not passed on to the United States Embassy, since the Embassy on 25 October 1982 renewed its original request. The Department of Foreign Affairs advised the United States Embassy on 29 October 1982 that no record could be found of the individual sought.

14.16 On 4 November 1982, the United States Embassy provided the Department of Foreign Affairs with further details of the individual sought, including the date and ship on which he entered Australia in 1949. Despite further enquiries from the United States Embassy on 17 February 1983 and 10 November 1983, no further action appears to have been taken on the request by the Department of Foreign Affairs.

14.17 In August 1986, documents relating to the selection, migration and naturalization of the individual sought were located by the Review among the records of the Department of Immigration and Ethnic Affairs. This information was made available to the United States authorities, but advice was

received on 20 August 1986 that the individual concerned was no longer of interest to the Office of Special Investigations.

CASE 3

14.18 On 15 September 1982, the United States Embassy in Canberra requested the Department of Foreign Affairs to provide all available information on Konrads Kalejs, a Latvian who was alleged to have committed war crimes. Kalejs migrated to Australia in 1950 and to the United States in 1959. The request was repeated on 17 February 1983 and 10 November 1983. No action appears to have been taken on the request by any Australian authority until selection documents were located by the Review among the archived records of the Department of Immigration and Ethnic Affairs in August 1986. The Review provided copies of these documents to the Office of Special Investigations.

CASE 4

14.19 On 10 November 1983, the United States Embassy in Canberra requested the Department of Foreign Affairs to provide copies of any documents relating to an individual born in Poland who was believed to have migrated to Australia in 1950 and subsequently entered the United States from Australia. The individual concerned was alleged to have participated in the murder of Polish and Jewish civilians and also to have served as an S.S. guard at Maidanek concentration camp. On 21 November 1983 the United States Embassy advised that the individual concerned was now a naturalized American citizen. The Department of Foreign Affairs apparently concluded from this advice that no further action on the matter was required. This was not an unreasonable conclusion.

14.20 In July 1986, the United States Embassy renewed its request for information on the individual concerned. The Department of Foreign Affairs referred the request to the Review

for action and a search was made of the records of the Department of Immigration and Ethnic Affairs. As in some other cases involving migrants who did not subsequently become Australian citizens, it proved very difficult to locate relevant documents, but these documents were eventually located by the Review in November 1986 and the United States authorities advised accordingly.

COMMENT

14.21 Requests from the United States for information concerning war crimes suspects and witnesses were handled by Australian Departments in an unsatisfactory manner. In retrospect, the United States authorities would have been better advised to make the initial approach at law enforcement rather than consular level. Nevertheless, Australian Departments should have acted in a much more co-ordinated and energetic manner to ensure either that the information sought was provided or that reasons for failing to provide it were communicated without unreasonable delay to the United States.

14.22 On the credit side, it may be noted that Australia has acceded to five requests from foreign States for the taking of evidence in Australia in war crimes matters.

14.23 The present position is that, of the five requests received from the United States between 1981 and 1983, four have been satisfied and one has been withdrawn. As to the future, requests of this nature will come under the Mutual Assistance Bill 1986 recently introduced into Parliament. Assuming the Bill becomes law, future U.S. requests for information as to war crimes should be forwarded to Attorney-General's Department, which will act as the Central Office for Australia in these matters. Attorney-General's Department should, I suggest, transmit the request to the proposed specialized unit, the establishment of which is recommended in Chapter 18.

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CHAPTER 15

THE UNITED STATES EXPERIENCE

15.1 In the immediate post-war years, the United States migration laws were policed by the Immigration and Naturalization Service (I.N.S.) a separate offshoot of the Justice Department. 'Quiet Neighbours' by Allan Ryan, a former Director of the Office of Special Investigations, describes the initial post-war inactivity of the I.N.S in regard to war criminals found in U.S.A. While this was followed in the 1970s by a period of greater activity as the public and the authorities became aware of the presence of these persons in the United States, the I.N.S., despite this greater activity, had only limited success in dealing with the problem.

15.2 The I.N.S. could only bring deportation proceedings against aliens because U.S. citizens (as Australian citizens) cannot be deported. Before deportation action could be taken against naturalized persons, denaturalization proceedings had first to be brought by the Justice Department.

15.3 Due to the I.N.S.'s lack of success in dealing with war criminals found in the United States, in 1979 an Office of Special Investigations was established within the Department of Justice dedicated to dealing with war criminals in the United States. This Office was given a substantial budget and acquired a staff of lawyers, historians, investigators, researchers and analysts.

15.4 The charter of the O.S.I. is to deal with aliens who 'ordered, incited, assisted or otherwise participated in the persecution of any person because of race, religion, national origin or political opinion'. It may proceed by seeking revocation of citizenship followed by deportation or by extradition or by taking the two processes in parallel. However, there is no provision in United States law for prosecution of

offenders in the United States which is in any way comparable to the Australian War Crimes Act.

15.5 It is sufficient ground for revocation of citizenship that the person entered the United States illegally. Contrary to Australian law, it is not necessary to show illegality in the naturalization process. Unlike Australia, the United States is not a party to the Convention on Reduction of Statelessness, so the question of inconsistency between the Convention and United States law in this regard does not arise.

15.6 The O.S.I. claims a considerable degree of success:

> Three persons have been extradited (to West Germany, Israel and Yugoslavia).
>
> At least nine have been deported, but others have left after the commencement of deportation proceedings, but before the final order.
>
> Eighteen have been denaturalized.

15.7 The O.S.I. admits that it has had difficulty in effecting the removal of deportees from the United States and some have remained for years after the final order (see discussion of like difficulties in Australia in Chapter 16), but states that at present, no person the subject of a final deportation order remains in the United States. In any event, public opinion in the United States would appear to regard deprivation of citizenship as in itself a very significant punishment. The deportation proceedings are brought before administrative tribunals which are, however, subject to review by the ordinary courts. Denaturalization proceedings are brought in a federal district court.

15.8 The O.S.I. firmly holds the view that extradition is a more effective and appropriate course than denaturalization and deportation. For this reason, the United States Government has approached the West German Government with a view to facilitating

extradition requests by that country, particularly in respect of crimes committed in countries in the war-time occupation of the Third Reich. The West German Government agreed to co-operate on a case by case basis although pointing out that only charges of murder survive its Statute of Limitations.

15.9 Witnesses to the events in issue have frequently been located in the Union of Soviet Socialist Republics (U.S.S.R.) and the O.S.I. has reached arrangements with the U.S.S.R. on a case by case basis for the evidence of these witnesses to be taken before U.S.S.R. officials, when they are unwilling to come to the United States. The evidence is taken in the presence of O.S.I. counsel and defence counsel are also given an opportunity to participate. The proceedings are video-taped.

15.10 The question of reception in United States courts of evidence taken in this way in the U.S.S.R. has been the subject of much controversy and has been referred to in several submissions furnished to me. One submission attached a publication Soviet Evidence in North American Courts by S. Paul Zumbakis criticising in considerable detail the practices of the O.S.I. in this regard. These criticisms have been echoed in Australian newspapers. When the present Director of the O.S.I. (Mr Neal Sher) visited me in Canberra on 8 August 1986, these criticisms were discussed and later Mr Sher gave me a memorandum which responds to these criticisms in detail, a copy of which is Attachment 'B'.

15.11 The Canadian Deschenes Royal Commission also considered the question of taking evidence in the U.S.S.R. In an interim decision dated 14 November 1985, the Commission noted the arguments for and against reception of Eastern Bloc evidence as follows:

Arguments Against

'a) Soviet-supplied evidence cannot be trusted, because of fabrication, intimidation, denial of right to independent counsel, lack of full cross-examination and general dis-regard for the principles of fundamental justice;

b) Access to Soviet archives is severely limited, when it is not totally prevented;

c) The same observation applies to access to sites of crimes and to potentially exculpatory witnesses;

d) The use of Soviet-supplied evidence would constitute a mockery of justice and would represent the worst form of McCarthyist witch hunts;

e) The U.S.S.R. places no value on the rights of the individual; it is intent on attacking any ethnic group which opposes the Soviet State;

f) By travelling to the U.S.S.R., the Commission would legitimize the political claims of the U.S.S.R. on the Baltic States and the Ukraine;

g) By the same token, the Commission would give legitimacy to the Soviet legal system, which is but a pawn in the hands of the Soviet government;

h) It would be ludicrous to foresee trials in Canada which would depend on a wholesale obtaining of Soviet evidence'.

Arguments For

'a) The Commission must go where the evidence is;

b) Documents are in Soviet archives, or German archives seized by the Soviets;

c) Eyewitnesses are for the most part in the countries where crimes were allegedly committed;

d) Victims of the Holocaust should not be deliberately excluded as witnesses and thus doubly victimized;

e) Soviet motives should not invalidate Eastern European evidence;

f) Soviet-supplied evidence was used and accepted by the courts at Nurnberg and in the Rauca case in Canada;

g) There is no known instance in Europe or in North America of a Soviet-supplied document having been falsified or of an Eastern Bloc witness having perjured himself;

h) Use of evidence from Eastern Europe will not legitimize the Soviet political or legal systems;

i) Opposition to the use of Soviet-supplied evidence is a declaration of non-confidence in the Canadian judicial system and its ability to sort out good evidence from bad'.

15.12 In the result, the Commission decided that it was legal and advisable for it to hear and collect evidence available in foreign countries whichever these may be. Further, the U.S.S.R. met the Commission's requirements as to how this evidence should be taken. However, in the ultimate, time constraints prevented the Commission from taking this course.

15.13 As to how this experience can be made use of in Australia, in Chapter 18 I recommend that a unit be set up dedicated to dealing with war criminals. This unit should, I suggest, examine carefully and report to Government on the possibility of taking evidence in Eastern bloc countries for use in Australian courts on the lines followed by the O.S.I. Somewhat different considerations are, however, involved - Australian proceedings are more likely to be strictly criminal involving jury trials, while United States proceedings in which Soviet evidence has been used are civil in nature, although the Government is subject to a high onus of proof. Ultimately, Australian courts would make up their own mind on the issue having regard to, but not necessarily following, United States decisions.

PART III

HOW MAY WAR CRIMINALS FOUND IN AUSTRALIA BE BROUGHT TO JUSTICE?

In this Part, I shall first discuss the law and possible changes in that law then discuss what organization is required to operate under these laws. The latter is as important as the former because, no matter how excellent the laws, unless there is an effective and dedicated body of persons charged with carrying them into effect, the desired objective will not be fully achieved.

CHAPTER 16

EXISTING LAW AND PROCEDURES

EXTRADITION

16.1 Extradition is the delivery of a person who has been convicted of a crime, or is accused of having committed a crime, in one country by the authorities of another country in which he has taken refuge. The delivery is made to the authorities of the country where the crime was committed or allegedly committed. It is thus distinguished from deportation, which is the process by which a person who is not an Australian citizen is removed from this country.

16.2 In Australia, extradition is governed by the Extradition (Commonwealth Countries) Act 1966 in the case of Commonwealth countries and the Extradition (Foreign Countries) Act 1966 in the case of other countries. Before those Acts came into operation, the process was governed by the Fugitive Offenders Act 1881 and the Extradition Acts 1870 to 1935 of the Imperial Parliament read with the Extradition Act 1903 of the Commonwealth Parliament. A request for extradition of a war criminal is unlikely to be made to Australia by a Commonwealth country, so attention in this Chapter will be directed to the Extradition (Foreign States) Act which will be referred to as 'the Australian Act'.

16.3 This Act does not make special provision for the case of war criminals. On the other hand, in so far as war crimes amounted to murder, infliction of serious bodily harm, rape and like serious offences they would, in most cases, come within the ambit of the Act.

16.4 Until 1974, the Australian Act required the existence of a treaty between Australia and the foreign State in question. However, a 1974 amendment authorized the application by regulation of the Act in relation to a foreign State where the Governor-General was satisfied that the laws of that State would

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permit the surrender to Australia of a person accused of an extraditable crime.

16.5 In the past, several requests by foreign countries to Australia for the handing over or extradition of alleged war criminals have sought to invoke one or all of the following international instruments:

(a) The Moscow declaration of 30th October 1943, made by the United Kingdom, the United States and the Soviet Union.

(b) The agreement of 8 August 1945, establishing the International Military Tribunal for the trial of major war criminals, in conformity with which the Nuremburg trials took place.

(c) The resolution of the General Assembly of the United Nations of 13 February 1946, recommending that member nations take forthwith all necessary measures to cause the arrest of war criminals and to send them back to the countries in which their deeds were committed.

(d) The resolution of the General Assembly of 31 October 1947, re-affirming the last mentioned resolution and recommending that member nations which desired the surrender of war criminals should make their request as soon as possible and should support the request with sufficient evidence to establish a reasonable prima facie case of identity and guilt.

16.6 On this aspect, the Attorney-General's Department has furnished an opinion which appears as Attachment 'C'. The Attorney-General's Department concludes that, for the reasons given, these instruments no longer have direct application in relation to the extradition of war criminals in Australia, that is, they do not give rise to any legal obligation at international law to extradite. The Attorney-General's Department also concludes that, apart from the question whether Australia

has international obligations arising from these instruments, the Government's power to extradite under domestic law is probably limited to that provided by the Australian Act or the Extradition (Commonwealth Countries) Act, referring to Barton v. Commonwealth (1974) 131 C.L.R. 477. I agree with these conclusions.

16.7 Since World War II, requests have been made to Australia by foreign States for the extradition or handing over of six alleged war criminals excluding cases where the person named did not appear to have entered Australia. I shall only name persons where names have previously been published. In relation to five of these persons, Australia advised that it was either unable or unwilling to comply with the request. In the sixth case (Mr B.), after extremely prolonged negotiations, the foreign State (the Federal Republic of Germany) advised that 'after renewed study of all available evidence', the prosecution had come to the conclusion that the evidence was not sufficient. The request was therefore withdrawn.

16.8 Details of these cases are given in Attachment 'D'. In relation to three persons, Ivanovich, Lukic and Rajkovic, the Australian Government's refusal stemmed from the nature and circumstances of the allegations and general suspicion of the bona fides of the charges. In the case of the Czechoslovakian request for extradition of Mr A., the refusal appeared to stem from disinclination to extradite to a Communist State, although the stated ground was that, as a naturalized citizen, he was excluded from the operation of the relevant extradition treaty.

16.9 In the case of the Soviet Union's request for the extradition of Viks in 1961, the refusal was based on the view that the four international instruments discussed in paragraph 16.5 invoked by the Soviet Union no longer had application, that there was no extradition treaty with Russia (the Imperial Extradition Act then required the existence of a treaty) and the alleged crimes had been committed in Estonia, which Australia did not then recognize as part of Russia. Sir Garfield Barwick, as

Attorney-General and acting Minister for Foreign Affairs, in stating the Government's attitude in the House of Representatives on 22 March 1961 added that in this type of case 'the time had come to close the chapter'. Continuation of this attitude appears to explain the refusal of the Australian Government before the decision of Attorney-General Murphy in July 1974 (see Attachment 'E') to agree to the application of the Australian/German draft extradition treaty to offences committed before 1966.

16.10 Thus, for one reason or another, Australia has not granted extradition of any alleged war criminal. However, since the first requests were made for extradition of alleged war criminals, Australia's ability to respond to such requests has significantly improved:

- Australia now has an extradition treaty or arrangement with most western European states. There are also inherited extradition treaties with some eastern European states. There are no extradition treaties or arrangements with Bulgaria, the German Democratic Republic or the U.S.S.R.;

- Since 1974, a treaty is not essential if an arrangement in terms of sub-section 10(4) of the Australian Act is in place; such an arrangement could be limited to war crimes, provided these could be satisfactorily defined;

- No Australian extradition treaty is restricted in application to events since World War II;

- While under a number of treaties the Australian Government is given a discretion as to extradition of Australian citizens, it is only prevented by treaty in the case of three European countries (France, Hungary and Greece) from extraditing an Australian citizen;

- Since the amendments made in 1985 to sub-section 4(8) of the Australian Act, the application of the Act is not restricted to acts or omissions within the territory of the requesting

State; (however, the treaty with Israel gives the discretion to refuse extradition where the act or omission occurs outside the territory of the requesting State and the law of the required State does not allow prosecution for the same category of offence when committed outside the territory);

. Extradition treaties recently negotiated by Australia will, when they come into force, enable extradition from Australia without the requirement that the offence in question falls within an exhaustive list of offences contained in earlier treaties. Older treaties, however, retain these requirements.

16.11 Nevertheless, before extradition could be used to remove a war criminal from Australia, there would need to be:

(a) a request by a foreign State for extradition of the person; this is a matter in the discretion of the foreign State, not Australia;

(b) Australia must either have an extradition treaty with that foreign State or have, or be prepared to enter into, an arrangement, limited or general, in terms of sub-section 10(4) of the Australian Act with that State for extradition of such persons;

(c) where a treaty is applicable and the treaty contains an exhaustive list of offences for which extradition can be granted, the offence for which extradition is sought must come within the list. If the war crime is in effect murder, infliction of serious bodily harm or rape, it would come within any such list, but other alleged war crimes may not;

(d) to be extraditable, an offence must carry a maximum penalty of not less than 12 months imprisonment and the relevant act or omission must constitute, if committed in Australia, an offence against Australian law;

(e) except in the case of some recently negotiated treaties, prima facie evidence of commission of the offence in the form of authenticated depositions will be required; and

(f) certain safeguards written into the Australian Act must be observed, in particular, section 14 requires that the Attorney-General not give effect to an extradition from Australia where there are substantial grounds for believing that:

> '(a) the requisition for the surrender of the fugitive, although purporting to have been made in respect of an offence for which, but for this section, he would be liable to be surrendered to that state, was made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
>
> (b) if the fugitive is surrendered to that state, he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions'.

the Attorney-General's decision on this issue can be challenged in the courts.

16.12 To sum up, the Australian Act does not distinguish between extradition of alleged war criminals and alleged perpetrators of other offences. Thus, an application for extradition of an alleged war criminal would need to satisfy the requirements and safeguards of the Australia Act. Further, any request for extradition of a war criminal should, I suggest, be subject to the requirement that the requesting State establish a prima facie case. However, if the Australian Government makes up its mind that, contrary to the Barwick statement, the chapter as to war crimes is not closed and that, within the limits and subject to the safeguards provided by Australian law, there should be co-operation with foreign States seeking extradition of war criminals in serious cases, and there is an effective organization dedicated to dealing with war criminals, extradition should be more effective than it has been in the past as a means

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of removing war criminals from Australia and ultimately bringing them to justice.

16.13 Extradition should therefore, in my view, be first looked to as the means for dealing with a particular war criminal. This is not, of course, to say that extradition will be effective in every case. In some cases, other processes may have to be looked to. Further, I do not suggest that it is appropriate for the Government to enter into extradition relations with all countries. It is a matter for the judgement of the Government, having regard to whether, amongst other matters, the system of justice in a particular country is of such a standard that it is appropriate for Australia to enter into a binding extradition commitment with that country.

16.14 Before leaving the subject of extradition, I note that, while as I have said, Australia has not granted extradition of any war criminal, it has, on five occasions, acceded to requests by foreign States to take evidence from witnesses in Australia for criminal proceedings in the foreign State in respect of war crimes committed in Europe.

DEPORTATION

16.15 Deportation is the process by which persons who are not Australian citizens are removed from Australia. In contrast to extradition, deportation should not be effected with a view to the person being dealt with in courts of the country to which he goes so that the deportation would be a disguised or de facto extradition. Barton v. The Commonwealth (1974) 131 C.L.R. 477. and Shearer Extradition in International Law pp. 26 to 93. Effective deportation requires another country willing to receive the deportee. Under international law, only the country of the deportee's nationality is obliged to receive the person.

16.16 The Migration Act 1958 provides for deportation by order of the Minister in three different circumstances:

- deportation of a non-citizen sentenced to imprisonment for not less than one year for an offence committed in Australia before the person attained ten years permanent residency;

- deportation of a non-citizen present in Australia as a permanent resident for less than ten years on grounds that he is a threat to the security of the Commonwealth or (regardless of period of residence), has been convicted of certain offences relating to security;

- deportation of prohibited non-citizens (this includes not only non-citizens who enter Australia without an entry permit but also, inter alia, non-citizens who make false statements or produce false documents at time of entry).

16.17 If a person was not an Australian citizen and it could be established that he obtained his entry permit by a false representation, he would be subject to deportation regardless of period of residence but in respect of persons who have acquired citizenship, deportation is not available. Indeed, under existing law, it is doubtful that deportation is possible in respect of such a person even after revocation of citizenship.

16.18 Many of the persons who are the subject of allegations to commission of war crimes have become Australian citizens. Nearly all have been permanent residents for over ten years. Most of the persons named in the list of suspects referred to in Chapter 10 have acquired citizenship.

REVOCATION OF CITIZENSHIP

16.19 There are several ways by which persons may lose Australian citizenship but, for present purposes, it is only necessary to consider the procedure provided by section 21 of the Australian Citizenship Act 1948.

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16.20 Under this provision, the Minister may revoke the Australian citizenship of a person who became an Australian citizen otherwise than by birth, and:

(a) who has been convicted of an offence against section 50 in relation to the application for his certificate of citizenship; (this section makes it an offence to make a false representation or statement or conceal a material circumstance for a purpose of, or in relation to, the Act) or

(b) who, after applying for Australian citizenship, is convicted of an offence (either under Australian or foreign law) for which he is sentenced to not less than 12 months imprisonment, the offence being committed before grant of citizenship.

16.21 Only (a) is likely to have application in the circumstances under consideration, but the application of even that paragraph is limited by the fact that prosecutions for offences under section 50 of the Australian Citizenship Act must be commenced within ten years of commission of the offence.

16.22 Even assuming that a person in respect of whom allegations have been made of commission of war crimes made a false or misleading statement or concealed a material circumstance in relation to his application for citizenship, the period of ten years has probably expired in most cases. However, cases may emerge where it has not. Where it has expired, no action could be taken under existing laws to revoke the citizenship of such a person in the circumstances under discussion.

16.23 In the last 30 years, only two persons have been deprived of Australian citizenship. Neither of these cases concerned war crimes. In only one of these cases was any attempt made to deport the person. In that case, the person had been a U.S. citizen before becoming an Australian citizen. After revocation of the person's Australian citizenship, U.S. authorities informed the

Australian Government that the person was an alien so far as U.S. law was concerned and he would not be accepted in the U.S. Action to deport the person was therefore dropped.

16.24 In fact, since the Nationality and Citizenship Act 1948 came in force, no person has been deported following revocation of his Australian citizenship.

16.25 Looking at the forms of application for grant of citizenship used in the past, it must be noted that the written questions asked of applicants do not directly refer to the question of commission of war crimes. Even apart from the time limit of ten years for prosecution, there could be difficulties in establishing that a person, against whom a war crime could be proved, had made a false or misleading statement or concealed a material circumstance in relation to his application for citizenship. In each case, it would be necessary to examine the statements made by the suspect in relation to his application for citizenship, what could be established as to his war-time activities and the matters as to which he was required by the Citizenship Act, as it stood at the relevant time, to satisfy the Minister.

16.26 It may be noted that U.S. law permits revocation of citizenship, not merely when it is obtained by misrepresentation or concealment, but also when the person was ineligible for admission into U.S. and his citizenship was thus illegally procured: Fedorenko v. U.S. 449 U.S. 490.

16.27 As to possible changes in Australian law, the provisions of the Convention on Reduction of Statelessness must be taken into account. Australia is a party to this Convention, but U.S.A. is not. By the Convention, contracting States undertake not to deprive a person of nationality if this would render him stateless. While the Convention permits a contracting State to deprive a person of the nationality of that State where the nationality was obtained by misrepresentation or fraud, it does

not permit deprivation of nationality by reason of misrepresentation or fraud in the original entry into the country.

16.28 Thus, the Convention would not prevent Australia from removing the time limit on prosecutions under section 50 and on citizenship revocation action based on convictions under that section. However, the Convention would prevent Australia from enlarging the grounds for revocation of citizenship to include, in line with U.S. law, misrepresentation or concealment of material circumstance or other illegality at point of entry into Australia. It would also prevent Australia from enacting a law, as suggested in one submission received by the Review, making citizenship revocable on the grounds of commission of a war crime.

CHAPTER 17

POSSIBLE CHANGES TO THE LAW

17.1 As previously stated, persons who have acquired Australian citizenship cannot be deported. They would first have to be deprived of Australian citizenship and even then, under existing law, it is doubtful that present deportation provisions apply to such persons. Further, under existing law, it is not possible to revoke citizenship for misrepresentation or concealment of facts in relation to the citizenship application more than ten years after the event.

17.2 I see no reason why, quite apart from the need to deal with war criminals, the Migration Act should not be amended to remove doubt as to power to deport a person who has been deprived of Australian citizenship. However, while in broad principle an amendment of the Australian Citizenship Act to remove the time limit for action to revoke citizenship where the person had made a false statement or representation or concealed circumstances relevant to his commission of a war crime could be justified (and this would not be inconsistent with the Convention on the Reduction of Statelessness referred to in Chapter 16), it is another matter whether the amendment would ever serve a useful purpose.

17.3 In proceedings under the amended legislation, it would not only be necessary to prove that the defendant had made a false or misleading statement or concealed a material circumstance in relation to his application for citizenship (a difficult task in itself given the limited records available), but the prosecution would also need to show the necessary connexion with the commission of a war crime by the defendant. The prosecution would indeed have a very heavy burden of proof.

17.4 Even assuming success in the legal proceedings:

(a) at the end of the process, Australia would need to find a country prepared to take the proposed deportee who, at this point, would probably be a stateless person. U.S.A. has had considerable difficulty in arranging for such deportations and Australia is in a far less advantageous position than U.S.A. as regards persuading foreign States to take deportees whom they are under no obligation under international laws to receive.

While U.S. courts have permitted deportation to a country that clearly intended to prosecute the deportee on arrival (United States v. Linnas 685 F.2d 427) Australian courts would not necessarily follow the decision; an Australian court might hold that this was a de facto extradition which could only be effected under the Extradition (Foreign Countries) Act;

(b) it must be questioned whether deportation of a serious war criminal to a country that does not intend to prosecute him is a real answer to the problem.

17.5 For all these reasons, I refrain from recommending an amendment to the Australian Citizenship Act to remove the present time limitation on proceedings directed to revocation of citizenship on the basis that, in the final result, it is unlikely to serve a useful purpose. Moreover, it would create expectations in the public that inevitably would not be met.

17.6 Where extradition is not practicable and in the case of an Australian citizen the time limit has not expired (such cases will be very few), consideration can be given to the course of revocation of citizenship and deportation (assuming the Migration Act is amended to remove doubt in that regard); in the case of a non-citizen, deportation can be considered. But generally, in the case of war criminals who are Australian citizens, a more comprehensive solution must be found elsewhere.

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CAN WAR CRIMINALS BE PROSECUTED IN AUSTRALIA?

17.7 The only way in which a person who committed a war crime outside Australia could be prosecuted in Australia is under the War Crimes Act 1945 of the Commonwealth Parliament.

17.8 By this Act, enacted immediately after the close of World War II, provision was made for punishment of war crimes defined as:

(a) a violation of the laws and usages of war; or

(b) any war crime within the meaning of the instrument of appointment of the Board of Inquiry appointed 13 September 1945

committed in any place whatsoever whether within or beyond Australia during any war. The instrument of appointment referred to contained a long list of crimes.

17.9 Under the Act as it now stands, however, trial of any crime under the Act may only be conducted in a military court. Penalties that could be imposed by such a court for any war crime range from fine and confiscation of property to imprisonment for life. The Act applies to war crimes committed against a person who was at any time resident in Australia or against a British subject or citizen of a power allied or associated with His Majesty in any war. The Act was applied in a great number of trials in the Pacific area in the immediate post-war years, but has not since been invoked. It does not appear in the Administrative Arrangements Order, but is nevertheless in force.

17.10 However, the Act in its present form requires trial by military court and it is, I suggest, unthinkable that civilians resident in Australia 41 years after the close of World War II, be tried by military court for activities in that war. Another difficulty as regards present application of the Act is that the same range of serious penalties is provided for any war crime.

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17.11 A final consideration is that there is some doubt whether it would apply to crimes committed against persons resident in the Baltic States during World War II because Australia has not recognized the U.S.S.R. annexation of those States, except for a period 1973-1976. A big proportion of the crimes coming to the notice of the Review were committed against these persons.

17.12 These difficulties could be removed by amendment of the Act which would:

(a) invest jurisdiction to deal with war crimes in civil courts;

(b) either limit the offences to serious war crimes warranting higher penalties or provide for a range of penalties for a range of offences; and

(c) declare that war crimes against persons resident in the Baltic States were covered by the Act.

17.13 There is of course a question whether the amendments would so change the Act so as to make the legislation retrospective in substance.

17.14 However, it should be noted that the Act was enacted <u>after</u> the conclusion of the war, that is, after the commission of the acts in question. The Act assumes that, independently of it, war crimes arise under general international law; the Act merely provides for the trial of these crimes. This is consistent with the Charter of the International Military Tribunal at Nuremburg which dealt with the major German war criminals.

17.15 Concerning the Charter, the International Military Tribunal said:

> 'The Charter is not an arbitrary exercise of power on the part of the victorious nations, but in the view of the Tribunal, as will be shown, it is the expression of international law existing at the time of its creation; and to that extent is itself a contribution to international law'.

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17.16 A further passage in the judgment of the Tribunal is relevant:

> ' It was submitted that international law is concerned with the actions of sovereign States, and provides no punishment for individuals; and further, that where the act in question is an act of state, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, both these submissions must be rejected. That international law imposes duties and liabilities upon individuals as well as upon States has long been recognised.
> .....
> Many other authorities could be cited, but enough has been said to show that individuals can be punished for violations of international law. Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced'.

17.17 It should be noted that Article 15 of the International Covenant on Civil and Political Rights, while declaring that no one should be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed, goes on to say that nothing in the Article should prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

17.18 In the result, amendment of the War Crimes Act to make it effective in present day circumstances could, I believe, be reasonably defended as not offending against either the International Covenant or any rule against retrospectivity, although it would be a very unusual step that would arouse controversy.

17.19 Nevertheless, there are other important considerations that the Government would want to take into account before embarking on the course of amending the War Crimes Act and commencing prosecutions in Australia.

17.20 Given that the necessary witnesses to the crimes are more likely to be found in the State where the crime was allegedly committed than in Australia, it will probably be much more difficult and expensive to prosecute the crime in Australia than in the country where it was committed. This is so even though recent amendments to the Evidence Act 1905 would permit the evidence to be taken in the foreign State. (See Chapter 15 where I discuss the controversies that have arisen in North America in relation to taking of evidence in Eastern Bloc countries). Therefore, it seems to me that amendment of the law with a view to prosecution of these crimes in Australia is a step to be taken only if it appears that very serious war criminals cannot otherwise be brought to justice.

17.21 Whether the Government, if it decides to follow this general course, should, instead of amending the War Crimes Act, proceed to enact entirely new legislation to the same effect is a matter for political judgment by the Government.

CHAPTER 18

WHAT ORGANIZATION IS REQUIRED?

18.1 The lesson to be learned from United States experience is that a clearly identified organization dedicated to the task of dealing with war criminals is required. Such an organization will build up the needed special expertise and an accumulated bank of information and acquire experience in obtaining and evaluating evidence from foreign countries and in dealing with foreign authorities for that purpose.

18.2 What it should be called is a matter of choice, but the United States name 'Office of Special Investigations' is not inapt. As to where it should be located, the statutory functions of the Director of Public Prosecutions as to conducting of prosecutions and extradition proceedings suggest that it could be located as a discrete area in the Office of the Director. Possibly, the required additional functions could be conferred on the Director by regulation made under paragraph 6(2)(b) of the Director of Public Prosecutions Act 1983 but, having regard to the special significance of the proposed functions, the Government may well think it more appropriate to amend the Act to provide for this discrete area and to make clear that the Office's role extended to the conduct of investigations in this special type of case. In that event, I would suggest that the provisions to be inserted by this amendment be subject to a five year 'sunset clause' because the task of this discrete area should not last indefinitely.

18.3 Particularly initially, the unit should be very small. However, if the law is amended to provide for prosecutions in Australia of war crimes committed overseas, the unit would probably need to be significantly enlarged. The important consideration is that the members of the unit, particularly the leader, should be very carefully selected and charged with this specific task.

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18.4 A possible alternative course would be to use the Special Prosecutors Act 1982, appointing a Special Prosecutor charged with this task. However, past experience suggests that the organization required by a Special Prosecutor would be substantially greater than under the course I propose above. Some amendments of the Special Prosecutors Act would also be required.

RECOMMENDED FUTURE ACTION

18.5 As explained in Chapter 10, I have listed in a separate communication to the Minister, the names of a number of persons who are alleged to have committed war crimes. Having regard to the Terms of Reference of the Review, it was not appropriate for me to investigate these allegations beyond assembling all material found in Commonwealth files relevant to each person, checking with United States and United Nations records and the Berlin Document Centre and ascertaining or endeavouring to ascertain whether the person is still living and his present whereabouts.

18.6 Obviously, I can express no opinion as to the guilt or otherwise of these persons but, as explained in Chapter 10, in my view, some further investigation is called for. This, I believe, would best be done by the proposed special unit. I suggest that, at a preliminary stage, the unit should provide the suspect with an opportunity to answer the allegations. United States experience is that many cases are disposed of in this way. If the evidence warranted it, the investigation could lead to action by way of extradition, revocation of citizenship, followed by deportation where citizenship was acquired less than ten years ago, deportation in the case of a non-citizen or prosecution within Australia (assuming the amendments to the War Crimes Act discussed above were made) as was appropriate in each case. I contemplate that the unit would, through the Director of Public Prosecutions, report to the Attorney-General and not take action, such as suggesting extradition action to a foreign state or initiating a prosecution within Australia, without the approval

of the Attorney-General. The ultimate decision whether to accede to a foreign state's request for extradition would remain, as at present, with the Attorney-General.

18.7 For the reasons given in Chapter 2, it is important that this action be preceded by a statement by the Government that, as regards serious war crimes, it does not regard the chapter as closed (contrary to the Barwick statement in 1961).

18.8 Thus my recommendations as to future action as regards bringing war criminals to justice can be summarized as follows:

(1) The Government make a clear and positive statement to the effect that, as regards serious war crimes, it does not regard the Chapter as closed (contrary to the Barwick statement in 1961) and that it will take appropriate action under the law to bring to justice persons who have committed serious war crimes found in Australia. At the same time, the statement should, I suggest, indicate that the Government contemplates no reduction in the standards of justice to be applied in such cases or the safeguards now available under Australian law to persons accused of serious offences. Further, it should be made clear that action would only be taken against individuals where charges were fully supported by evidence, mere allegations would not suffice, that action would not be directed against ethnic groups nor should it be construed as in any way a slur on a particular ethnic group.

(2) The Government establish a very small unit in the Director of Public Prosecutions' Office (the D.P.P. Act may need to be amended) on the lines of the U.S. O.S.I., but much smaller, particularly in the initial stages.

(3) The functions of the O.S.I. unit would be:

(a) to deal with requests for extradition of alleged war criminals; (the requests would be submitted for decision by the Attorney-General who would be advised

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in this regard by Attorney-General's Department as at present);

(b) to make preliminary investigations of the remaining cases listed by the Review as appropriate for investigation. This investigation would encompass requesting evidence from overseas countries and providing an opportunity to the suspect to answer the allegations made against him. At the conclusion of this investigation, the unit would, through the Director of Public Prosecutions, report to the Attorney-General placing the suspect in one of the following three categories:

(i) cases that could be put aside on various grounds, including the offence not being sufficiently serious, or insufficiency of evidence now available or likely to be available;

(ii) cases where the alleged offence was committed in the territory of a State with whom Australia had extradition arrangements or in such circumstances that such a State was likely to make a valid extradition request. In these cases, the unit, if it thought appropriate, would seek the approval of the Attorney-General to approach the foreign State to suggest an extradition request;

(iii) cases where the offence was not committed in the territory of a State with whom Australia had extradition arrangements and it was unlikely that any State with whom Australia had such arrangements would make an extradition request.

(4) In the event of the unit reporting a case falling within 3(b)(iii) above, the Government should consider whether it was appropriate to enter into an extradition arrangement with the State in question. If it was not thought

appropriate, (and, as I state in Chapter 16, this is a matter for the judgment of the Government having regard to, amongst other matters, the system of justice in that country) consideration should be given to proceeding by way of revocation of citizenship and deportation in the case of citizens who acquired citizenship less than ten years ago and deportation in the case of non-citizens. If this is not practical or appropriate and there are a significant number of such cases, the Government should consider amending the War Crimes Act so as to permit a civil court to deal with a war crime.

(5) Any request to extradite an alleged war criminal from Australia should be subject to the requirement that the requesting State establish a prima facie case. Generally there should be no reduction in safeguards built in to existing extradition legislation.

(6) In the event of the War Crimes Act being so amended, the unit would be charged with the task of assembling evidence (including evidence from overseas) for the purpose of the prosecution and conducting the prosecution. (The unit would probably need to be enlarged when this stage is reached).

(7) The Migration Act should be amended to remove doubt as to ability to deport a person who has once held Australian citizenship.

CHAPTER 19

ARE FURTHER INVESTIGATIONS NECESSARY?

19.1 As explained in the previous Chapter, I believe that further investigations by a specialized unit of certain of the allegations noted by the Review are necessary with a view to action as described in that Chapter. There remains the question whether some further examination of all or some of the questions in issue by some body other than my Review, such as a Royal Commission, is required.

19.2 The answer is, I believe, 'No'.

19.3 While I have not had the statutory powers of a Royal Commissioner, I have received the fullest co-operation from all Government Departments and agencies and their officers. Former officers of these Departments and agencies have also fully co-operated and have, I believe, frankly and truthfully responded to all questions put to them. It is true that a Royal Commissioner would be able, if he thought fit, to examine persons in respect of whom allegations of commission of war crimes had been made while I, having regard to my Terms of Reference, did not seek to interview such persons. However, what would be achieved by this examination needs to be considered.

19.4 One purpose of the examination of suspects, it may be suggested, would be to determine the truth or falsity of the allegations that have been made against particular suspects. However, to do this, it would almost certainly be necessary for the Royal Commission to examine not only the individual suspects but also to seek to locate and examine witnesses to the occurrence. Most of these witnesses would be found overseas.

19.5 Certainly the matter having reached this stage, it is more appropriate, in my view, that the suspects and witnesses be interviewed by the proposed specialized unit in the course of

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applying the processes earlier discussed. It must be remembered that evidence given by a suspect before a Royal Commission would not, subject to exceptions not relevant for present purposes, be admissible against him in subsequent legal proceedings.

19.6 A second possible reason for examining suspects would be to seek to learn more about the circumstances of their entry into Australia. Conceivably, some further insight might so be obtained in some cases but the remedial action I have recommended would be delayed considerably by establishment of a Royal Commission. Having regard to the extent of information already obtained by the Review, I would not myself think that the possibility of shedding some additional light on this question justified that delay.

19.7 It should also be noted that, as regards information from international organizations, overseas governments, their officers and persons outside Australia, a Royal Commissioner would have no powers of coercion and indeed would be in a no stronger legal position than I have been, except in the unlikely event that an overseas government granted him a parallel commission.

19.8 Establishment of a Royal Commission now would delay for a substantial period the taking of necessary remedial action and this should be avoided if at all possible. I believe that I have satisfactorily demonstrated the truth of the matters covered by the Report. Finally, it seems to me that it would be more appropriate, and in the long run more effective, to create as soon as possible the specialized unit that I have recommended so that it may proceed to take all necessary action including interviewing suspects and locating and interviewing witnesses, rather than set up a Royal Commission to do these things.

19.9 For all these reasons, I do not recommend the establishment of a Royal Commission.

PART IV

FINDINGS AND RECOMMENDATIONS

FINDINGS

On the basis of the material discussed in the preceding Chapters, I now find:

(1) It is more likely than not that a significant number of persons who committed serious war crimes in World War II have entered Australia and some of these are now resident in Australia; certainly the likelihood of this is such that some action needs to be now taken. (Chapter 10).

(2) A large number of allegations that particular persons now in Australia have committed serious war crimes have been noted by the Review and the more significant instances are recorded in a list that I shall give to the Special Minister of State when delivering this Report with the recommendation that it should not be divulged, except to whatever body is charged with taking further action on this Report. While as much information as is available from official records and other records open to the public has been collated for each person, I have not attempted, because of the nature of the Review, to establish the guilt or innocence of the persons in question; this must be left to further investigation. (Chapter 10).

(3) While Australian officers in Europe endeavoured to prevent the acceptance for migration to Australia of persons responsible for war crimes, and these endeavours must have prevented many war criminals from entering Australia, there were serious limitations, particularly in early years, in numbers and geographical spread of staff available to do the necessary checking and equally serious gaps in the data against which Australian security officers would have made their checks, particularly in relation to non-Germans. These limitations and gaps would have made possible the entry of persons responsible for war crimes although the number of persons so admitted would have been a minute proportion of the enormous number of persons who migrated to Australia in the post-war years. (Chapters 5 and 10).

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(4) As discussed in Chapter 7, no person admitted into Australia under arrangements with U.K. or U.S. intelligence agencies, to the knowledge of Australian authorities, appears to have been the object of charges or allegations as to commission of war crimes although there is a possibility that, particularly before 1956, former employees of such agencies may have entered Australia without the knowledge of Australian authorities.

(5) A.S.I.O. officers in a number of cases had contact with persons some time after their entry into Australia in respect of whom the Review has recorded allegations of commission of war crimes and obtained information from them for A.S.I.O. purposes not related to the war crimes allegations but there is no evidence that A.S.I.O. was involved in the entry of any of these persons into Australia. (Chapter 7).

(6) It has not been possible to establish definitively how each of the persons in the list referred to in (1) came to be accepted for migration to Australia; however, even assuming their guilt of the charges or allegations, the limitations in numbers and geographical spread of checking staff and gaps in security checking data would, by itself, appear to provide an explanation for the acceptance of these persons. (Chapter 10).

(7) In view of the contentions advanced in the A.B.C. 'Background Briefing' series, the Review diligently looked for any evidence that a U.K. or U.S. intelligence officer withheld information from, or otherwise misled, an Australian officer as to commission of war crimes by a applicant for migration to Australia; it found no direct evidence as to this. While I could not establish positively that in no instance this occurred, no evidence was found, in the whole course of the Review, to establish that in any instance a U.K. or U.S. intelligence officer had withheld

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information from, or otherwise misled, Australian officers as to commission of war crimes by applicants for migration to Australia. Generally it would appear that, if any concealment by U.K. or U.S. officers of information as to commission of war crimes by Australian migrant applicants did occur, this would have been confined to a very limited number of cases and the explanation mentioned in (6) (limitations in numbers and geographical spread of Australian checking officers and gaps in checking data) would account for the acceptance for migration to Australia of the overwhelming number of cases of suspected war criminals. (Chapter 9).

(8) The Review found no evidence whatsoever that an Australian officer had knowingly allowed a war criminal to migrate to Australia. (Chapter 12).

(9) Because of time limits and other considerations explained in Chapter 12, it is not possible to prosecute any person named in the list referred to in (2) for any offence committed in relation to his entry into Australia.

(10) The facts as ascertained by the Review did not establish any policy by any Australian Government to allow or assist the entry of known or suspected war criminals into Australia. (Chapter 13).

(11) There is no evidence that any Australian official was involved in any proposal to re-settle Klaus Barbie in Australia. (Chapter 8).

(12) In 1957, the Australian Parliament was given by the then Minister for Immigration incorrect information to the effect that Laszlo Megay had been cleared by the United Nations War Crimes Commission of alleged war crimes. This occurred in consequence of incorrect information having been supplied by U.S. sources to A.S.I.O. (Chapter 6).

(13) Requests from the United States for information concerning war criminals were handled by Australian Departments in an unsatisfactory way and these Departments should have acted in a much more co-ordinated and energetic manner to ensure either that the information sought was provided or the reasons for failing to provide it were communicated without unreasonable delay to the United States. (Chapter 14).

RECOMMENDATIONS

I make the following recommendations:

(1) The Government make a clear and positive statement to the effect that, as regards serious war crimes, it does not regard the Chapter as closed (contrary to the Barwick statement in 1961) and that it will take appropriate action under the law to bring to justice persons who have committed serious war crimes found in Australia. At the same time, the statement should, I suggest, indicate that the Government contemplates no reduction in the standards of justice to be applied in such cases or the safeguards now available under Australian law to persons accused of serious offences. Further, it should be made clear that action would only be taken against individuals where charges were fully supported by evidence, mere allegations would not suffice, that action would not be directed against ethnic groups nor should it be construed as in any way a slur on a particular ethnic group.

(2) The Government establish a very small unit in the Director of Public Prosecutions' Office (the D.P.P. Act may need to be amended) on the lines of the U.S. O.S.I., but much smaller, particularly in initial stages.

(3) The functions of the unit would be:

(a) to deal with requests for extradition of alleged war criminals; (the requests would be submitted for

decision by the Attorney-General who would be advised in this regard by Attorney-General's Department as at present);

(b) to make preliminary investigations of the remaining cases listed by the Review as appropriate for investigation. This investigation would encompass requesting evidence from overseas countries and providing an opportunity to the suspect to answer the allegations made against him. At the conclusion of this investigation, the unit would, through the Director of Public Prosecutions, report to the Attorney-General placing the suspect in one of the following three categories:

(i) cases that could be put aside on various grounds, including the offence not being sufficiently serious, or insufficiency of evidence now available or likely to be available;

(ii) cases where the alleged offence was committed in the territory of a State with whom Australia had extradition arrangements or in such circumstances that such a State was likely to make a valid extradition request. In these cases, the unit, if it thought appropriate, would seek the approval of the Attorney-General to approach the foreign State to suggest an extradition request;

(iii) cases where the offence was not committed in the territory of a State with whom Australia had extradition arrangements and it was unlikely that any State with whom Australia had such arrangements would make an extradition request.

(4) In the event of the unit reporting a case falling within 3(b)(iii) above, the Government should consider whether it was appropriate to enter into an extradition arrangement

with the State in question. If it was not thought appropriate, (and, as I state in Chapter 16, this is a matter for the judgment of the Government having regard to, amongst other matters, the system of justice in that country) consideration should be given to proceeding by way of revocation of citizenship and deportation in the case of citizens who acquired citizenship less than ten years ago and deportation in the case of non-citizens. If this is not practical or appropriate and there are a significant number of such cases, the Government should consider amending the War Crimes Act so as to permit a civil court to deal with a war crime.

(5) Any request to extradite an alleged war criminal from Australia should be subject to the requirement that the requesting State establish a prima facie case. Generally there should be no reduction in safeguards built in to existing extradition legislation.

(6) In the event of the War Crimes Act being so amended, the unit would be charged with the task of assembling evidence (including evidence from overseas) for the purpose of the prosecution and conducting the prosecution. (The unit would probably need to be enlarged when this stage is reached).

(7) The Migration Act should be amended to remove doubt as to ability to deport a person who has once held Australian citizenship.

(8) D.I.E.A. should, in the event of receiving an application for immigration from a person born before 1924, take steps to ensure that appropriate checks are made as to possible commission of war crimes.

(9) The A.S.I.O. Act should be amended to permit A.S.I.O., in relation to persons seeking entry into Australia, to obtain overseas and communicate information, not only for the

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purposes of security, but also as to commission of a war crime defined in terms of Article 6 of the Charter of the Nuremburg International Military Tribunal but not confined to crimes in World War II.

Review of material relating to the entry of suspected war criminals into Australia.

No. 74

AGREEMENT FOR THE PROSECUTION AND PUNISHMENT OF THE MAJOR WAR CRIMINALS OF THE EUROPEAN AXIS

Signed at London, 8 August 1945.

INTRODUCTORY NOTE. In the course of World War II the Allied Governments issued several declarations concerning the punishment of war criminals. On 7 October 1942 it was announced that a United Nations War Crimes Commission would be set up for the investigation of war crimes. It was not, however, until 20 October 1943, that the actual establishment of the Commission took place. In the Moscow Declaration of 30 October 1943, the three main Allied Powers (United Kingdom, United States, U.S.S.R.) issued a joint statement that the German war criminals should be judged and punished in the countries in which their crimes were committed, but that, "the major criminals, whose offences have no particular geographical localization," would be punished "by the joint decision of the Governments of the Allies." The Agreement reprinted below was drafted at a conference held in London from 26 June to 8 August 1945.

The International Military Tribunal for the Far East (Tokyo 1948) was established by a special proclamation of General MacArthur as the Supreme Commander in the Far East for the Allied Powers.

ENTRY INTO FORCE: 8 August 1945.

AUTHENTIC TEXTS: English, French, Russian. The text below is reprinted from *UNTS*, Vol. 82, pp. 280-300.

TEXT PUBLISHED IN: *UNTS*, Vol. 82, pp. 280-311, No. 251 (Engl., French, Russ.); Hudson, Vol. IX, pp. 632-636 (Engl., French); *GBTS*, 1946, No. 27, Cmd. 6903 (Engl., French, Russ.); *U.S. Statutes at Large*, Vol. 39, pp. 1544-1589 (Engl., French, Russ.); *AJIL*, Vol. 39. 1945, Suppl., pp. 257-264 (Engl.); Friedman, pp. 883-893 (Engl.); *Mezhdunarodnoe pravo*, Vol. III, pp. 393-403 (Russ.); *Sbornik dogovorov SSSR* vyp. XI, 1955, pp. 165-172 (Russ.).

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Appendix One

THE LONDON AGREEMENT

The London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and the Charter of the International Military Tribunal

Whereas the United Nations have from time to time made declarations of their intention that War Criminals shall be brought to justice;

And whereas the Moscow Declaration of the 30th October, 1943, on German atrocities in Occupied Europe stated that those German officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes 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 the free Governments that will be created therein;

And whereas this Declaration was stated to be without prejudice to the case of major criminals whose offences have no particular geographical location and who will be punished by the joint decision of the Governments of the Allies;

Now therefore the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics (hereinafter called "the Signatories") acting in the interests of all the United Nations and by their representatives duly authorised thereto have concluded this Agreement.

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APPENDIX ONE

ARTICLE 1

There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offences have no particular geographical location whether they be accused individually or in their capacity as members of organisations or groups or in both capacities.

ARTICLE 2

The constitution, jurisdiction and functions of the International Military Tribunal shall be those set out in the Charter annexed to this agreement, which Charter shall form an integral part of this Agreement.

ARTICLE 3

Each of the Signatories shall take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal. The Signatories shall also use their best endeavours to make available for investigation of the charges against and the trial before the International Military Tribunal such of the major war criminals as are not in the territories of any of the Signatories.

ARTICLE 4

Nothing in this Agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.

ARTICLE 5

Any Government of the United Nations may adhere to this Agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.

ARTICLE 6

Nothing in this Agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any Allied territory or in Germany for the trial of war criminals.

ARTICLE 7

This Agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject to the right of any Signatory to give, through the diplomatic channel, one month's notice of intention to terminate it. Such termination shall not prejudice any proceedings already taken or any findings already made in pursuance of this Agreement.

In witness whereof the Undersigned have signed the present Agreement.

Done in quadruplicate in London this 8th day of August, 1945, each in English, French and Russian, and each text to have equal authenticity.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

JOWITT

For the Government of the United States of America:

ROBERT H. JACKSON

For the Provisional Government of the French Republic:

ROBERT FALCO

For the Government of the Union of Soviet Socialist Republics:

I. NIKITCHENKO

A. TRAININ

APPENDIX ONE

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

I.—Constitution of the International Military Tribunal

ARTICLE 1

In pursuance of the Agreement signed on the 8th August, 1945, by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called "the Tribunal") for the just and prompt trial and punishment of the major war criminals of the European Axis.

ARTICLE 2

The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the Signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his incapacity for some other reason to fulfil his functions, his alternate shall take his place.

ARTICLE 3

Neither the Tribunal, its members nor their alternates can be challenged by the prosecution, or by the Defendants or their Counsel. Each Signatory may replace its member of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a Trial, other than by an alternate.

ARTICLE 4

(*a*) The presence of all four members of the Tribunal or the alternate for any absent member shall be necessary to constitute the quorum.

(*b*) The members of the Tribunal shall, before any trial begins, agree among themselves upon the selection from their number of a President, and the President shall hold office during that trial, or as may otherwise be agreed by a vote of not less than three members. The principle of rotation of presidency for successive trials is agreed. If, however, a session of the Tribunal takes place on the territory of one of the four Signatories, the representative of that Signatory on the Tribunal shall preside.

(*c*) Save as aforesaid the Tribunal shall take decisions by a majority vote and in case the votes are evenly divided, the vote of the President shall be decisive: provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.

ARTICLE 5

In case of need and depending on the number of the matters to be tried, other Tribunals may be set up; and the establishment, functions, and procedure of each Tribunal shall be identical, and shall be governed by this Charter.

II.—Jurisdiction and General Principles

ARTICLE 6

The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organisations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(*a*) *Crimes against peace:* namely, planning, preparation, initiation or waging of á war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan of conspiracy for the accomplishment of any of the foregoing;

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(*b*) *War crimes:* namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(*c*) *Crimes against humanity:* namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organisers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

ARTICLE 7

The official position of Defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

ARTICLE 8

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

ARTICLE 9

At the trial of any individual member of any group or organisation the Tribunal may declare (in connection with any act

of which the individual may be convicted) that the group or organisation of which the individual was a member was a criminal organisation.

After receipts of the Indictment the Tribunal shall give such notice as it thinks fits that the prosecution intends to ask the Tribunal to make such declaration and any member of the organisation will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organisation. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

Article 10

In cases where a group or organisation is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organisation is considered proved and shall not be questioned.

Article 11

Any person convicted by the Tribunal may be charged before a national, military or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organisation and such court may, after convicting him, impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organisation.

Article 12

The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has not been found or if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.

APPENDIX ONE

ARTICLE 13

The Tribunal shall draw up rules for its procedure. These rules shall not be inconsistent with the provisions of this Charter.

III.—Committee for the Investigation and Prosecution of Major War Criminals

ARTICLE 14

Each Signatory shall appoint a Chief Prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The Chief Prosecutors shall act as a committee for the following purposes:

(*a*) to agree upon a plan of the individual work of each of the Chief Prosecutors and his staff,

(*b*) to settle the final designation of major war criminals to be tried by the Tribunal,

(*c*) to approve the Indictment and the documents to be submitted therewith,

(*d*) to lodge the Indictment and the accompanying documents with the Tribunal,

(*e*) to draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by Article 13 of this Charter. The Tribunal shall have power to accept, with or without amendments, or to reject, the rules so recommended.

The Committee shall act in all the above matters by a majority vote and shall appoint a Chairman as may be convenient and in accordance with the principle of rotation: provided that if there is an equal division of vote concerning the designation of a Defendant to be tried by the Tribunal, or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular Defendant be tried, or the particular charges be preferred against him.

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ARTICLE 15

The Chief Prosecutors shall individually, and acting in collaboration with one another, also undertake the following duties:

(*a*) investigation, collection and production before or at the Trial of all necessary evidence,
(*b*) the preparation of the Indictment for approval by the Committee in accordance with paragraph (*c*) of Article 14 hereof,
(*c*) the preliminary examination of all necessary witnesses and of the Defendants,
(*d*) to act as prosecutor at the Trial,
(*e*) to appoint representatives to carry out such duties as may be assigned to them,
(*f*) to undertake such other matters as may appear necessary to them for the purposes of the preparation for and conduct of the Trial.

It is understood that no witness or Defendant detained by any Signatory shall be taken out of the possession of that Signatory without its assent.

IV.—Fair Trial for Defendants

ARTICLE 16

In order to ensure fair trial for the Defendants, the following procedure shall be followed:

(*a*) The Indictment shall include full particulars specifying in detail the charges against the Defendants. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the Defendant at a reasonable time before the Trial.
(*b*) During any preliminary examination or trial of a Defendant he shall have the right to give any explanation relevant to the charges made against him.

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(*c*) A preliminary examination of a Defendant and his Trial shall be conducted in, or translated into, a language which the Defendant understands.

(*d*) A Defendant shall have the right to conduct his own defence before the Tribunal or to have the assistance of Counsel.

(*e*) A Defendant shall have the right through himself or through his Counsel to present evidence at the Trial in support of his defence, and to cross-examine any witness called by the Prosecution.

V.—Powers of the Tribunal and Conduct of the Trial

ARTICLE 17

The Tribunal shall have the power

(*a*) to summon witnesses to the Trial and to require their attendance and testimony and to put questions to them,

(*b*) to interrogate any Defendant,

(*c*) to require the production of documents and other evidentiary material,

(*d*) to administer oaths to witnesses,

(*e*) to appoint officers for the carrying out of any task designated by the Tribunal including the power to have evidence taken on commission.

ARTICLE 18

The Tribunal shall

(*a*) confine the Trial strictly to an expeditious hearing of the issues raised by the charges,

(*b*) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever,

(*c*) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges.

ARTICLE 19

The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value.

ARTICLE 20

The Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.

ARTICLE 21

The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various Allied countries for the investigation of war crimes, and the records and findings of military or other Tribunals of any of the United Nations.

ARTICLE 22

The permanent seat of the Tribunal shall be in Berlin. The first meetings of the members of the Tribunal and of the Chief Prosecutors shall be held at Berlin in a place to be designated by the Control Council for Germany. The first trial shall be held at Nuremberg, and any subsequent trials shall be held at such places as the Tribunal may decide.

ARTICLE 23

One or more of the Chief Prosecutors may take part in the prosecution at each Trial. The function of any Chief Prosecutor may be discharged by him personally, or by any person or persons authorised by him.

The function of Counsel for a Defendant may be discharged at the Defendant's request by any Counsel professionally qualified to conduct cases before the courts of his own country, or by any other person who may be specially authorised thereto by the Tribunal.

APPENDIX ONE

Article 24

The proceedings at the Trial shall take the following course:

(*a*) The Indictment shall be read in court.

(*b*) The Tribunal shall ask each Defendant whether he pleads "guilty" or "not guilty."

(*c*) The Prosecution shall make an opening statement.

(*d*) The Tribunal shall ask the Prosecution and the Defence what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.

(*e*) The witnesses for the Prosecution shall be examined and after that the witnesses for the Defence. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defence.

(*f*) The Tribunal may put any question to any witness and to any Defendant, at any time.

(*g*) The Prosecution and the Defence shall interrogate and may cross-examine any witnesses and any Defendant who gives testimony.

(*h*) The Defence shall address the court.

(*i*) The Prosecution shall address the court.

(*j*) Each Defendant may make a statement to the Tribunal.

(*k*) The Tribunal shall deliver judgment and pronounce sentence.

Article 25

All official documents shall be produced, and all court proceedings conducted, in English, French and Russian, and in the language of the Defendant. So much of the record and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting, as the Tribunal considers desirable in the interests of justice and public opinion.

NUREMBERG

VI.—Judgment and Sentence

ARTICLE 26

The judgment of the Tribunal as to the guilt or the innocence of any Defendant shall give the reasons on which it is based, and shall be final and not subject to review.

ARTICLE 27

The Tribunal shall have the right to impose upon a Defendant, on conviction, death or such other punishment as shall be determined by it to be just.

ARTICLE 28

In addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

ARTICLE 29

In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences, but may not increase the severity thereof. If the Control Council for Germany, after any Defendant has been convicted and sentenced, discovers fresh evidence which, in its opinion, would found a fresh charge against him, the Council shall report accordingly to the Committee established under Article 14 hereof for such action as they may consider proper, having regard to the interests of justice.

VII.—Expenses

ARTICLE 30

The expenses of the Tribunal and of the Trials shall be charged by the Signatories against the funds allotted for maintenance of the Control Council for Germany.

SIGNATURES AND ACCESSIONS [1]

1. *Signatory Governments*	*Date of Signature*
France	8 August 1945
Union of Soviet Socialist Republics	8 August 1945
United Kingdom	8 August 1945
United States of America	8 August 1945

2. *Acceding Governments*	*Date of Accession*
Australia	5 October 1945
Belgium	5 October 1945
Czechoslovakia	26 September 1945
Denmark	10 September 1945
Ethiopia	9 October 1945
Greece	10 September 1945
Haiti	3 November 1945
Honduras	17 October 1945
India	22 December 1945
Luxemburg	1 November 1945
Netherlands	25 September 1945
New Zealand	19 November 1945
Norway	20 October 1945
Panama	17 October 1945
Paraguay	14 November 1945
Poland	25 September 1945
Uruguay	11 December 1945
Venezuela	17 November 1945
Yugoslavia	29 September 1945

RESERVATIONS

None

[1] Based on a communication from the Foreign and Commonwealth Office of Great Britain of 23 May 1978.

COMMONWEALTH OF AUSTRALIA.

WAR CRIMES ACT 1945.

COPY OF INSTRUMENT OF APPOINTMENT REFERRED TO IN DEFINITION OF "WAR CRIME" IN SECTION 3.

NATIONAL SECURITY (INQUIRIES) REGULATIONS.

NATIONAL SECURITY (GENERAL) REGULATIONS.

WHEREAS by Instrument dated the eighth day of June, One thousand nine hundred and forty-four, the Honourable Sir William Flood Webb, Kt., Chief Justice of the Supreme Court of the State of Queensland, was appointed to inquire into and report to the Attorney-General and Minister of State for External Affairs on the matters set out in the said Instrument:

And whereas it is desirable that further inquiry should be made into the said matters and into certain other matters (all of which matters are set out hereunder), except in so far as the said matters have already been inquired into by the said the Honourable Sir William Flood Webb, and that a report on the said matters should be made to the Attorney-General and Minister of State for External Affairs:

Now therefore I, Herbert Vere Evatt, the Attorney-General and Minister of State for External Affairs of the Commonwealth, in pursuance of the powers conferred by regulation 3 of the National Security (Inquiries) Regulations, do hereby appoint—

The Honourable Sir WILLIAM FLOOD WEBB, Kt., Chief Justice of the Supreme Court of the State of Queensland;

The Honourable ALAN JAMES MANSFIELD, a Justice of the Supreme Court of the State of Queensland; and

His Honour RICHARD CLARENCE KIRBY, a Judge of District Courts of the State of New South Wales,

to be a Board of Inquiry to inquire into and report on the following matters (except in so far as the said matters have already been inquired into by the said the Honourable Sir William Flood Webb) being matters in relation to the public safety and the defence of the Commonwealth, namely:—

1. Whether any war crimes have been committed by any subjects of any State with which His Majesty has been engaged in war since the second day of September, One thousand nine hundred and thirty-nine, against any persons who were resident in Australia prior to the commencement of any such war whether members of the Defence Force or not, or against any British subject or against any citizen of an allied nation.

2. If any war crimes have been so committed, whether in the opinion of the said Board particulars of the said war crimes should, from time to time, be communicated by the Government of the Commonwealth to the United Nations Commission for the investigation of war crimes.

3. With respect to the war crimes the particulars of which should be so communicated, what evidence is available of those war crimes.

For the purposes of the said inquiry—

(*a*) any member (either alone or with any other member) shall constitute a quorum of the Board, and shall have and may exercise all the powers of the Board, and for the purpose of the exercise of those powers is hereby appointed to inquire into the matters above-mentioned; and

(*b*) the expression "war crime" includes the following:—

(i) Planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.
(ii) Murder and massacres—systematic terrorism.
(iii) Putting hostages to death.
(iv) Torture of civilians.
(v) Deliberate starvation of civilians.
(vi) Rape.
(vii) Abduction of girls and women for the purpose of enforced prostitution.
(viii) Deportation of civilians.
(ix) Internment of civilians under inhuman conditions.
(x) Forced labour of civilians in connexion with the military operations of the enemy.
(xi) Usurpation of sovereignty during military occupation.
(xii) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
(xiii) Attempts to denationalize the inhabitants of occupied territory.
(xiv) Pillage and wholesale looting.
(xv) Confiscation of property.
(xvi) Exaction of illegitimate or of exorbitant contributions and requisitions.
(xvii) Debasement of the currency and issue of spurious currency.
(xviii) Imposition of collective penalties.
(xix) Wanton devastation and destruction of property.
(xx) Deliberate bombardment of undefended places.
(xxi) Wanton destruction of religious, charitable, educational and historic buildings and monuments.
(xxii) Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers and crew.

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(xxiii) Destruction of fishing boats and of relief ships.
(xxiv) Deliberate bombardment of hospitals.
(xxv) Attack and destruction of hospital ships.
(xxvi) Breach of other rules relating to the Red Cross.
(xxvii) Use of deleterious and asphyxiating gases.
(xxviii) Use of explosive or expanding bullets and other inhuman appliances.
(xxix) Directions to give no quarter.
(xxx) Ill-treatment of wounded and prisoners of war including—
(a) transportation of prisoners of war under improper conditions;
(b) public exhibition or ridicule of prisoners of war; and
(c) failure to provide prisoners of war or internees with proper medical care, food or quarters.
(xxxi) Employment of prisoners of war on unauthorized work.
(xxxii) Misuse of flags of truce.
(xxxiii) Poisoning of wells.
(xxxiv) Cannibalism.
(xxxv) Mutilation of the dead.

And in pursuance of regulation 71 of the National Security (General) Regulations, I hereby authorize the said board, any two members of the said Board and each member of the said Board, to require any person to furnish or produce to a person specified in any such requirement any information or article in his possession as is so specified, being information or an article which the said Board, or any member of the said Board, considers it necessary or expedient in the interests of the public safety or the defence of the Commonwealth to obtain or examine.

Dated this third day of September, 1945.

H. V. EVATT
Attorney-General and Minister of State for External Affairs.

By Authority: L. F. Johnston, Commonwealth Government Printer, Canberra.

ATTACHMENT A



TEL: 71 9111

ROBERT GARRAN OFFICES
NATIONAL CIRCUIT
BARTON A.C.T. 2600

PLEASE QUOTE:
YOUR REF:

30 July 1986

Mr A.C.C. Menzies, O.B.E.,
Review of Material Relating to the
Entry of Suspected War Criminals into Australia,
PO Box 237,
CIVIC SQUARE. A.C.T. 2608

Dear Mr Menzies,

I refer to your letter dated 30 June 1986 seeking advice as to the meaning of the expression "war crimes" in the terms of reference of your Review of material relating to the entry of suspected war criminals into Australia, and to discussions with Messrs Willheim and Burmester of this Department on 22 July 1986.

Your terms of reference define "war criminals" to mean "persons who committed war crimes related to the activities of Germany during World War II". The terms of reference do not define "war crimes".

The expression "war crimes" may be used in a narrow, technical, sense to mean crimes against the laws of war (e.g. the Fourth Hague Convention of 1907 concerning the Laws and Customs of War on Land). "War crimes" is, however, generally understood as having a wider meaning covering not only crimes against the laws of war in this narrow, technical, sense but also crimes against peace and crimes against humanity. In the context of the Second World War (the context in which the expression is used in your terms of reference), the expression "war crimes" is used to cover all the matters within the jurisdiction of the Nuremburg Tribunal. I attach a copy of the Charter of the International Military Tribunal annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis. Article 6 of the Charter conferred jurisdiction on the Tribunal

> '... to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organisations, committed any of the following crimes.
>
> The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes against peace: ...;

(b) War crimes: ...;

(c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.'

I particularly draw to your attention that Article 6 conferred jurisdiction in respect of crimes against any civilian population. It did not matter whether the crimes were "in violation of the domestic laws of the countries where perpetrated". The Tribunal did not regard acts committed before 1939 as within its jurisdiction, but its jurisdiction extended to the murder of German Jews and Jews and others from co-belligerents of Germany. Jurisdiction was exercisable by an international tribunal, on the basis that the offences were crimes against international law. (For further background on the Nuremburg Tribunal, see Brownlie, Principles of Public International Law, 3rd ed., 561-3, Schwelb, 'Crimes against Humanity' (1946) 23 BYBIL 178).

The scope of war crimes and crimes against humanity has subsequently been elaborated (e.g. the Convention on the Prevention and Punishment of the Crime of Genocide) but, in light of the temporal limitation in your terms of reference, I do not think it necessary to analyse later developments.

So far as Australia is concerned, "war crimes" has been given a statutory meaning for the purposes of the War Crimes Act 1945. Section 3 of that Act defines "war crime" to mean:

(a) A violation of the laws and usages of war; or

(b) Any war crime within the meaning of the instrument of appointment of the Board of Inquiry appointed on 3 September 1945 under the National Security (Inquiries) Regulations.

A copy of the instrument of appointment of 3 September 1945 is attached. The instrument defines "war crimes" by reference to an extensive list, which is inclusive but not exhaustive. The list is based on a list of war crimes compiled by the United Nations War Crimes Commission which itself adopted the list used by the Responsibilities Commission of the Paris Peace Conference in 1919 (see generally Schwelb, 'United Nations War Crimes Commission', (1946) 23 BYBIL 363, 366). Items (i), (xxxiv) and (xxxv) have been added to that list.

The jurisdiction of the Board of Inquiry appointed on 3 September 1945 was confined to war crimes committed "by any subjects of any State with which His Majesty has been engaged in war ... against any persons who were resident in Australia prior to the commencement of (the Second World War) ... or against any British subjects or against any citizen of an allied nation". I mention that the War Crimes Act itself applies "in relation to war crimes committed, in any place whatsoever, whether within or beyond Australia, against British subjects or citizens of any Power allied or associated with His Majesty in any war, in the like manner as they apply in relation to war crimes committed against persons who were at any time resident in Australia" (s.12). The Act and the jurisdiction of the Board of Inquiry do not, however, extend to crimes committed by citizens of the Axis powers against their own civilian populations.

Your Review is not, of course, established pursuant to legislation, and the War Crimes Act is not, therefore, directly applicable. Nevertheless, it seems to me to be appropriate that the Review proceed on the basis that the list of crimes in the Instrument of Appointment dated 3 September 1945, as well as the crimes referred to in Article 6 of the Nuremburg Charter, provides guidance as to the types of offences that may constitute war crimes for the purposes of your definition. I do not, however, consider your Review to be confined to crimes committed in the circumstances covered by the War Crimes Act and the instrument of appointment dated 3 September 1945 (crimes against Australian residents, British subjects and citizens of allied nations). Your terms of reference refer to "the activities of Germany during World War II". It seems to me that these words are intended to embrace a wider range of circumstances so as to bring the scope of your Review closer to the jurisdiction of the Nuremburg Tribunal and to include, for example, crimes against the civilian populations of Germany and its allies (e.g. against German Jews).

As discussed with you, this Department would, of course, be available to give more detailed advice in relation to the circumstances of any particular act or acts.

Yours sincerely,

(ERNST WILLHEIM)
For Secretary

Contact Officer: Henry Burmester
71 9412

ATTACHMENT B

U.S. Department of Justice

MEMORANDUM

TO: Andrew Menzies
Chief, Australian War
Crimes Inquiry

FROM: Neal M. Sher
Director
Office of Special
Investigations

Re: Australian Newspaper Articles Concerning OSI

The following is a response to assertions recently made in the Sydney Morning Herald and The Age, copies attached, which relate to OSI's use of Soviet evidence. Since these articles are replete with inaccuracies, I believe it necessary to set the record straight.

I. General Comments

The Op-Ed pieces by Messrs. Havryliv and Lawrisky suggest that Soviet-supplied evidence offered by OSI in American cases has been proved false. In fact, the reverse is true: American courts have routinely admitted into the Court record evidence obtained from the U.S.S.R and other Eastern bloc countries. United States v. Kowalchuk, 773 F.2d 488 (3rd Cir. 1985) (en banc), cert. denied, 106 S.Ct. 1188 (1986); United States v. Kungys, No. 83-5884 (3rd Cir. filed June 20, 1986), petition for cert. filed, 55 U.S.L.W. ____ (U.S. August 9, 1986) (No. 86-228); United Sates v. Kairys, 600 F. Supp. 1254 (1984), aff'd, 782 F.2d 1384 (1986), cert. denied, 54 U.S.L.W. 3772 (U.S. May 27, 1986) (No. 85-1752); United States v. Palciauskas, 559 F. Supp. 1294 (M.D. Fla. 1983), aff'd 734 F.2d 624 (11th Cir. 1984); United States v. Koziy, 540 F. Supp. 25 (S.D. Fla. 1982), aff'd, 728 F.2d 1314 (11th Cir. 1984), cert. denied, 105 S.Ct. 130 (1984); United States v. Linnas, 527 F. Supp. 426 (E.D.N.Y. 1981), aff'd, 685 F.2d 427 (2d Cir. 1982), cert. denied, 459 U.S. 883 (1982); United States v. Osidach, 513 F. Supp. 51 (E.D. Pa. 1981); In re Maikovskis, File No. A 8 194 566 (BIA filed August 14, 1981), aff'd sub nom. Maikovskis v. INS, 773 F.2d 435 (2d Cir. 1985), cert. denied, 91 L.Ed.2d 544 (1986).

Moreover, American courts in OSI cases have applied the common-sense rule that evidence should not be prejudged for its admissibility or credibility and that therefore the taking of testimony in the U.S.S.R. should not be barred in limine. United

States v. Schuk, 565 F. Supp. 613, 615 (E.D. Pa. 1983); Matter of Maikovskis, File No. A8 194 566 (BIA filed January 9, 1981). The actual attitude of American courts to Soviet-supplied evidence in OSI cases thus clearly contradicts Lev Havryliv's claim that American jurists have experienced "difficulties" with the use of Soviet-supplied evidence ...." In a recent decision by the United States Court of Appeals in the Kungys case, the judges ruled that "... we reject the suggestion that all depositions taken in the Soviet Union should be automatically excluded from evidence." (Opinion, p. 6 fn. 2).

II. Specific Responses

A. The Kungys Case

In his commentary for The Age, Michael Lawrisky cites Judge Debevoise's decision against OSI in the Kungys case as proof that American jurists "have expressed grave doubts about Soviet evidence." However, Judge Debevoise's decision was recently reversed by the Third Circuit Court of Appeals, which ordered Kungys denaturalized. United States v. Kungys, No. 83-5884, reversing 571 F. Supp. 1104 (1983). As noted earlier, the appellate court held that each deposition -- regardless of the country of origin -- should be judged on its own merits on a case by case basis.

B. The Kairys Case

Both Havryliv and Lawrisky cite Paul Zumbakis's account of how an original Soviet-supplied case was shown to be a possible "forgery." Although not specifically cited, they are referring to the Kairys case, involving a Lithuanian who served at the SS labor camp in Treblinka, Poland. In fact, the document -- an SS personnel card -- was admitted into evidence as an OSI exhibit by the trial court. The trial judge specifically ruled that it was an authentic document; the Court of Appeals affirmed and the U.S. Supreme Court refused to hear on appeal. United States v. Kairys, 600 F. Supp. at 1261, aff'd, 782 F.2d 1384 (1986), cert. denied, 54 U.S.L.W. 3772 (May 27, 1986). Moreover, the following can also be stated in response to Zumbakis's criticism of this document:

1. It is true that the document contained several erasures. However, a government forensic document expert explained that the erasures were probably caused by the filling in of information on the document by pencil and the subsequent and contemporaneous removal and then typing over of the same information. This explanation was found to be "plausible" by the trial court. United States v. Kairys, 600 F. Supp. at 1260. Indeed, the document expert retained by defendant testified that such erasures might in fact be indicative of authenticity rather than fabrication.

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2. It should be added that the paper of the original document was found by the expert to be "old" and "consistent with paper in existence during 1942" (the date in question). Id.

3. Also supporting the document's authenticity was the presence on it of Kairys's own admitted thumbprint in ink. "The evidence was undisputed that there is no known feasible way for the print to appear on that paper except by a natural person pressing his inked thumb to that paper." Id. at 1261. Thus, not only was the document legitimate, the presence of the defendant's fingerprint was overwhelming evidence that he served at the SS facility.

4. Most tellingly, the trial judge ruled that "no expert (including no defense expert) testified to the conclusion that the document was not authentic or that it was a forgery." Id.

5. Zumbakis (as cited by Havryliv and Lawrisky) is simply wrong in asserting that the "defense attorney was allowed to examine the document only at the Soviet Embassy in Washington and investigators were refused permission to examine it scientifically." In truth, the original document was brought before the trial court and both parties in Chicago for examination. Furthermore, the defense expert was permitted to analyze the document; he refused, however, to testify that it was a forgery. On the contrary, on cross examination he gave significant testimony supporting the authenticity of the document.

The attorneys for Kairys -- and Kairys himself -- centered their defense on a challenge to Soviet evidence claiming that their client was the target of Soviet propoganda and misinformation. The evidence -- as found by American courts, applying American law and holding the government to a heavy burden of proof -- left no doubt that Kairys served as a guard at the notorious Treblinka labor camp, which service he concealed deliberately from U.S. immigration authorities.

C. The Walus Case [1/]

As an example of the witch-hunting and false accusations

1/ The Walus case did not involve the use of Soviet evidence by the prosecution. It is discussed herein only because it is raised in incomplete fashion by Lawrisky in his criticism of OSI. Indeed, evidence from another Eastern bloc country -- Poland -- was relied upon by Walus and was relevant to the Government's decision to dismiss the action.

which he claims characterize the prosecution of alleged Nazi persecutors in the United States, Lawrisky cites the case of Frank Walus, who was the subject of denaturalization proceedings in Chicago, Illinois. It is true that Walus, who was accused of assisting the Nazi regime in Poland in the persecution of Jews, ultimately prevailed against the Government's efforts to denaturalize him. United States v. Walus, 616 F.2d 283 (7th Cir. 1980), rev'g and remanding 453 F. Supp. 699 (N.D. Ill. 1978). However, it is untrue that the Walus case proves that prosecutions brought by OSI are inherently suspect. Indeed, OSI was not even in existence when the Walus case was tried. In fact, it was OSI which moved to dismiss the denaturalization case against Walus after it had been remanded to federal district court by the Seventh Circuit Court of Appeals. OSI's motion was granted, and its action commended, by the district judge. United States v. Walus, No. 77 C 279 (N.D. Ill. filed November 26, 1980).

D. Regarding Defense Discovery In The Soviet Union

Havryliv is incorrect in claiming that not once has the Soviet government produced a witness or document for the defense in OSI cases. At least three OSI defendants -- Edgars Laipenieks, Arnolds Trucis, and Basil Artishenko -- have been provided discovery in and by the U.S.S.R. In the Artishenko case, for example, defense counsel secured production of at least six Soviet witnesses even though he had only requested it on the day of his arrival in the U.S.S.R. for OSI depositions.

Havryliv also ignores (or is ignorant of) the fact that evidence supplied by the Soviet government in OSI cases has sometimes inured to the benefit of defendants. For example, Soviet witnesses deposed by OSI in the Ukraine for the case against Mykola Kowalchuk -- a case brought prior to OSI's creation -- provided evidence that the defendant had not been active in a wartime, Nazi-directed police unit. Consequently, OSI dropped the denaturalization action against him.

E. Regarding The Allegations Reported In The Los Angeles Times

In his Op-Ed piece, Lawrisky cites two April 1986 articles in the Los Angeles Times, reporting (through unnamed, uncorroborated sources) that the Soviet government had tried to deceive OSI with evidence supplied to the United States by the U.S.S.R. Contrary to Lawrisky's contention, OSI did not 'dismiss' this allegation regarding Soviet disinformation. Rather, OSI conducted an inquiry into the allegation and found no evidence that fabricated testimony or evidence had been supplied.

I hope that the above information will be useful in your inquiry.

A lesson for Aust's Nazi hunters

Recent programs and articles on Nazi war criminals in Australia have led to a new inquiry into the subject. Here LEV HAVRYLIV argues Soviet evidence on the subject should not be treated as impartial.

THE recent resurgence of interest in investigating suspected Nazi war criminals has spread to Australia. Although World War II ended more than 40 years ago, we owe to victims and survivors alike the obligation to track down perpetrators of Nazi and other war crimes. There is much merit in the argument that the statute of limitations should not apply.

Calls for an Australian investigation into the possibility that war criminals migrated here in the 1940s and 1950s have led to the setting up of an internal Government review by Andrew C. Menzies.

The Canadian and US experience suggests, however, that there are serious legal, moral and technical problems in investigating suspected war criminals. These difficulties, which have been recently highlighted by some North American jurists and US, Canadian and Australian citizens of East European origin, concern the use of Soviet-supplied evidence and the risks of defamation of innocent individuals and communities.

Many of the countries in which war crimes, both Nazi and Soviet, took place have been under Soviet control for several decades. They are often the sole source of documentary evidence and witnesses.

During the past six years, the US Government Nazi-hunting agency, the Office of Special Investigations (OSI), has relied heavily on Soviet-sourced material in its prosecutions. The OSI cannot try suspects for war crimes but may de-naturalise and deport US citizens who provided false information concerning their war-time activities when making emigration visa applications.

Last year, in response to claims that thousands of war criminals may have settled in Canada, a commission of inquiry headed by Justice Jules Deschenes was established and is to release its findings in late September.

There has been a tendency to regard Soviet-Western co-operation in seeking out war criminals as laudable and an all-too-infrequent example of identity of interests between the two superpowers. To be sure, the Soviet Government has been eager to help Western Nazi hunting agencies by providing witnesses and documents against alleged war criminals.

Soviet motivation in the war criminals issue deserves close scrutiny in view of the following. For decades Soviet Government sources have attempted to discredit anti-Communist and nationalist East European leaders and communities in the West by accusing them of collaboration with the Nazis. Human rights and national independence activists of Latvian, Lithuanian, Estonian and Ukrainian origins have frequently come under attack. In a 1973 Soviet press article, for example, Roman Kupchinsky, an American writer of Ukrainian origin, was accused of being a Nazi and editor of an anti-Semitic newspaper during the war. Soviet readers had little opportunity to discover that Kupchinsky was born in 1943.

State controlled Soviet press, television, radio, films and popular literature abound with exposés of the criminal acts of "Ukrainian bourgeois nationalists" and their devotion to the Nazi cause. Prominent Ukrainians in the West are often named.

It is important to realise that political cases in the Soviet Union are under the control of the KGB, not the courts or judicial system. Trials against dissidents are considered political or state security cases. For example, the KGB initiated the proceedings against Victor Krasin, a Jewish dissident, and negotiated the judgment, the sentence and the parole. A recent Amnesty International report claims there has never in Amnesty's experience been an acquittal of a political defendant in the Soviet Union.

The Soviet Union views OSI cases as political or security cases, and these are also under KGB supervision. Thus OSI collaboration with the Soviet judicial system is in effect co-operation with the KGB.

After nearly six years of OSI investigations the KGB has not produced a single witness or document for the defence.

Perhaps the most important flaw in OSI procedures is the severe restriction placed on the rights of US defence lawyers to properly cross-examine Soviet witnesses. Contrary to accepted Western judicial standards in OSI defence cross-examinations the person judging whether a particular question is allowed is not a US judge but a KGB procurator.

Paul Zumbakis, author of the book *Soviet Evidence in North American Courts*, and defence attorney in several OSI cases, tells of a suspected forged Soviet-supplied document which had 23 erasures on the document, including the signature line, the date of birth, and place of birth. The defence attorney was allowed to examine the document only at the Soviet Embassy in Washington and investigators were refused permission to examine it scientifically.

Deliberations of the Canadian Deschenes Commission took an interesting turn early this year when the Commission sought to obtain evidence from the Soviet Union but laid down six legal safeguards which the Soviet Government would be required to accept before any Soviet evidence was received. The safeguards were: protection of reputation by confidentiality; the use of independent interpreters; access to original documents; freedom of examination of witnesses in accordance with Canadian rules of evidence; videotaping of examinations.

After a silence of five months, the Soviet Government rejected the legal safeguards proposed by the Deschenes Commission, but repeated its offer to the commission to visit the Soviet Union. Not surprisingly the commission announced last month that it would not travel to the Soviet Union to collect evidence regarding suspected war criminals.

To the ire of Justice Deschene and his staff, Soviet Embassy spokesmen in Ottawa then publicly denounced the commission for covering up evidence, and accused it of not really being serious about the investigation of Nazi war criminals.

It remains to be seen whether Australia will learn or benefit from the American OSI and Canadian Deschenes experience.

Dr Lev Havryliv is the chairman of the education committee of the Australian Federation of Ukrainian Organisations.

"SYDNEY MORNING HERALD" 8 AUG 1986.

The Age 7 August 1986

Soviets give little help in Nazi hunt

By MICHAEL LAWRISKY

THE DUKE OF WELLINGTON, on being taken for a Mr Smith, apparently replied: "If you believe that, sir, you will believe anything." It is also the reply which British historian Nikolai Tolstoy has made to certain North American assertions about the veracity of Soviet supplied evidence in cases brought against alleged Nazi war criminals by the US Office of Special Investigations ('Trial and Error', Justinian Press, Toronto).

In several US cases judges have expressed grave doubts about Soviet evidence. For instance, in US vs Kungys, Judge Debevoise commented on Soviet immunity to US laws: "The Soviet authorities are outside of the jurisdiction of the United States judicial system. Consequently it is impossible to provide the usual safeguards of trustworthiness of the evidence having its source in the Soviet Union."

Yet in a recent article Mr Isi Leibler, ('The Age', 30 July) as regional head of the World Jewish Congress, argues that Australian investigators should, if the need arises, consider Soviet evidence because their "track record" indicates that "there are ways" it can be utilised.

The appalling Soviet record of false documentation, begining with the 1924 "Zinoviev letter" has been tracked by Nikolai Tolstoy. In a recent deportation case cited by US lawyer, J. Paul Zumbakis, the examination of a key Soviet supplied document went like this:

"We were allowed to examine it only at the Soviet embassy, on their terms... we were not allowed to take the document outside to examine it in the sunlight, which is the best way. Ink samples could not be taken. The question of forgery arose because there were 23 erasures on the document."

The 'Los Angeles Times' has featured a two-part article by Robert Gillette (27 and 28 April), who states that according to US Government sources, a Soviet official "warned the US nearly three years ago that Moscow was trying to deceive the US Justice Department through evidence it has supplied against alleged Nazi war criminals..." The Office of Special Investigations however, dismissed the instance by arguing that the official was "disgruntled".

To be sure, Mr Leibler warns of the danger of witch-hunts and false accusations, but does not drive this point home with specific. North American examples. Take the case of Frank Walus, a Polish immigrant who was accused of having killed Jews. Witnesses were produced and he was found guilty.

A Chicago newspaper even suggested he be tied up and dumped into the ocean. Then his lawyer went to Germany and was able to prove he had worked as a forced laborer during the war. He lost his health, his friends and $200,000 in legal expenses. This case is outlined in the book 'Ukraine during World War II' edited by Yuri Bozhyk.

But Walus was lucky when we consider the fate of a Tscherim Soobzokov of Paterson, New Jersey. He died on 6 September, last year after a pipe bomb exploded at his house. On the same day the house of Elmars Spogis of Brentwood, New York, was bombed and a bystander was critically wounded. The Office of Special Investigations had attempted to strip both men of their citizenship for their alleged Nazi activities, but the US federal courts had not sustained the effort. The FBI is investigating.

This is not to suggest that efforts to bring war criminals to justice, even after 40 years, should be abandoned. In my view they should not. Members of my own family suffered in Nazi prison camps (and others in communist prison camps).

But institutionalised Nazi-hunting on the Office of Special Investigations model is dangerous. Some theories of regulation suggest that there is always a danger that due to vested interests such bodies can spin out of control. In the US questions are being raised about the Office of Special Investigations' refusal to submit to Congressional oversight hearings.

Furthermore, little is being made public about the curious relationship between the Office of Special Investigations and the Soviet Chief Procurator, Roman Rudenko, who simultaneously oversees political show trials and the imprisonment of numerous (including Jewish) Soviet dissidents.

In view of the ABC's recent anti-Israeli radio programs I am amazed at Mr Leibler's apparent confidence in their 'Nazis in Australia' series. At one stage a producer of that series alleged that a puppet government existed in Ukraine during the war and Mr Leibler has repeated that wrong accusation in his article. In other words, he has already fallen victim to his own warnings.

The ABC series, while concerned with Eastern Europe, failed to mention any instance of communist war crimes, nor was a clear distinction made between the concepts of "war criminal" and "collaborator". It was standard practice that anyone accused of collaboration with the Germans was branded a Nazi. Under this logic Churchill and Roosevelt could be classed as communists, by virtue of their collaboration with Stalin, a mass murderer whose crimes against humanity were known to them.

In spite of requests for a fair trial by media the ABC has refused to sponsor an open debate on the issues.

In Australia, as in Canada, the media initially got off to a bad start in carrying stories of an alleged 150 Nazi war criminals in Australia. In Canada, the initial estimates fluctuated between 650 and 3000. In the end the Canadian commission of inquiry got down to an investigation of eight suspects, and now it appears that it will not seek evidence in the Soviet Union. The Canadian media has become much more cautious and even-handed, having had its fingers burnt.

Now no one in Australia seems to be willing to own up to who invented our figure of 150, or who has the alleged list which has not been presented to anyone.

Dr Michael Lawriwsky is a senior lecturer in the school of economics at La Trobe University and is director of public affairs of the Australian Federation of Ukrainian Organisations.

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ATTACHMENT C

ATTORNEY-GENERAL'S DEPARTMENT

TEL: 71 9111

ROBERT GARRAN OFFICES
NATIONAL CIRCUIT
BARTON A.C.T. 2600

8 August 1986

PLEASE QUOTE: CL86/8720:DF
YOUR REF:

A C C Menzies Esq
P O Box 237
CIVIC SQUARE ACT 2608

Dear Mr Menzies

Entry of suspected war criminals into Australia

I refer to your letter of 26 June 1986, in which you requested this Department's advice as to the current application of a number of international instruments.

A copy of an advice prepared by General Counsel Division in accordance with your request, is attached for your information.

Yours sincerely

D A Chaikin

(DR. DAVID A. CHAIKIN)
for Secretary

RECEIVED
12 AUG 1986

Commonwealth of Australia

ATTORNEY-GENERAL'S DEPARTMENT

CANBERRA

GC/86/10106

Review of material relating to the entry of suspected war criminals into Australia

First Assistant Secretary
Criminal Law & Security Division

I refer to your minute of 17 July 1986 asking whether certain international instruments now have any application in relation to extradition of war criminals in Australia.

2. The instruments in question are:

(a) The Moscow declaration of 30th October 1943, made by the United Kingdom, the United States and the Soviet Union.

(b) The agreement of 8th August, 1945, establishing the International Military Tribunal for the trial of major war criminals, in conformity with which the Nuremburg trials took place.

(c) The resolution of the General Assembly of the United Nations of 13th February 1946, recommending that member nations take forthwith all necessary measures to cause the arrest of war criminals and to send them back to the countries in which their deeds were committed.

(d) The resolution of the General Assembly of 31st October 1947, re-affirming the last mentioned resolution and recommending members nations which desired the surrender of war criminals should make their request as soon as possible and should support the request with sufficient evidence to establish a reasonable prima facie case of identity and guilt.

3. In my view these instruments no longer have any direct application in relation to the extradition of war criminals in Australia, that is, they do not give rise to any legal obligations at international law to extradite.

K
23/7

Reasons

Instrument (a)

4. Australia was not a party to the Moscow declaration and cannot, therefore, be bound by any legal obligations to which it may give rise. (I note that there is real doubt as to whether it gave rise to legally binding obligations even between the signatories.)

Instrument (b)

5. Australia was a party to the agreement of 8 August 1945. Article 3 of that agreement required signatories to 'take the necessary steps to make available for the investigation of the charges and trials the major war criminals detained by them who are to be tried by the International Military Tribunal'. The International Military Tribunal was established by the Charter of the International Military Tribunal pursuant to the agreement of 8 August 1945. This Tribunal is no longer in existence. As it was established for the 'just and prompt trial and punishment of the major war criminals of the European axis' (Art. 1 of the Charter of the International Military Tribunal), its purpose would appear to be entirely spent. In these circumstances, any obligations under this Instrument to extradite which may have bound Australia in the past can no longer be considered to exist.

Instruments (c) and (d)

6. These instruments are resolutions of the United Nations General Assembly. Such resolutions cannot, of their own force, bind a state, regardless of whether or not the state voted in favour of the resolution. These instruments therefore do not give rise to any legal obligations upon Australia. Nor, in my view, are they reflective of any customary law obligations to extradite.

7. I note, also, that whether or not Australia had international obligations arising from these instruments, the government's power to extradite under domestic law is probably limited to that provided by legislation. (Compare the power to request or accept the surrender of a fugitive; Barton v Commonwealth (1974) 131 CLR 477; discussed in Shearer, I.A. 'Extradition and Asylum' in Ryan (ed.) International Law in Australia, 2nd edition 1984, pp. 180 and 183.) Current Australian legislation on extradition comprises the Extradition (Foreign States) Act 1966 and the Extradition (Commonwealth Countries) Act 1966. Apart from those crimes covered by the Geneva Conventions Act 1957, it is not clear that other crimes referred to in the four instruments are extraditable offences under these two

Acts. I note, for example, that the War Crimes Act 1945 does not expressly constitute the acts there defined as 'war crimes' as offences under Australian domestic law.

(H BURMESTER)
for First Assistant Secretary
Counsel 2 Branch
General Counsel Division

22 July 1986

Action Officer: Kathy Leigh
Telephone: 71 9410

ATTACHMENT D

DETAILS OF THE CASES REFERRED TO IN PARAGRAPH 16.8

BRANISLAW BRANA IVANOVICH

On 27 March 1950, the Yugoslav Consulate General requested that Mr Ivanovich be handed over to the Yugoslav authorities as a war criminal. It was alleged that he was Assistant Minister of Transport in the Yugoslav wartime Government collaborating with this Axis, that he organized a spy network for occupation forces causing one official to be arrested and executed, that he dismissed a large number of officials from his Ministry causing them to be subjected to the observation of the Gestapo and special police, that he was an associate and accessory in the creation of a Punishment Camp and on his proposals arrests and releases from the camp were made, that he accepted bribes from families who had a relative in prison and that he performed political and military service for enemy occupation forces.

The request was declined by the Department of Foreign Affairs on 24 August 1950 on the grounds that it had not been possible to identify the person in Australia. There was certainly a discrepancy between the details furnished by the Yugoslav authorities and those applying to a Yugoslav immigrant who arrived in Australia in June 1949, but records indicate that the Department of Immigration and A.S.I.O. were prepared to accept that the two persons were identical and the real reasons for refusal to hand over would appear to be the United Kingdom decision, announced by the Under Secretary for Foreign Affairs, Mr Mayhew, in the House of Commons on 26 July 1948, not to surrender further persons to the Yugoslav Government other than 19 persons specified (who did not include Mr Ivanovich). Another consideration was that Mr Ivanovich's past history had, it was said, been thoroughly examined before he was accepted for settlement in Australia and he was cleared in every respect.

The legal authority for the extradition was not discussed either in the Yugoslav note or Australian Government records. It may have been assumed by the Yugoslav Government that the four international instruments discussed in paragraph 16.5 provided such authority but the better view, as there explained, is that they would not. Further, it is doubtful that the Imperial Extradition Acts which then governed extradition from Australia would have supplied authority because the alleged offences do not appear to have been extraditable offences for the purposes of that legislation.

MILORAD LUKIC AND MIHAILO RAJKOVIC

On 8 May 1951, the Yugoslav Consulate General requested Australia to deliver Milorad Lukic and Mihailo Rajkovic to the Yugoslav authorities as war criminals. Reference was made to the Allied Declaration of 1943 concerning the trials of war criminals in the particular country in which, or against which, the crimes were perpetrated.

The crimes alleged against Mr Lukic were that during the war, he served the Gestapo and fascist Germany in a prisoner of war camp at Nuremburg. It was further alleged that he spied on and denounced Yugoslav prisoners of war who were sympathetic to the Allies, organized Fascist groups to oppose Allied war aims, advocated loyalty to the war enemy and disseminated hate towards the Allies. Many Yugoslav internees, it was alleged, lost their lives because Lukic denounced them to the Gestapo as communists. The Consular General then went on to make allegations as to Mr Lukic's conduct in Australia.

The allegations against Mr Rajkovic were that, while in a prisoner of war camp in Albania, he drew up a list of 53 prisoners which was submitted to the camp commandant, resulting in the persecution and ill-treatment of those prisoners. Further, it was alleged, he succeeded in having the food supply for the prisoners halved to force them to join a 'National Movement' to serve the occupation forces.

No reasons were given for the Australian refusal of the request on 22 November 1951. However, available records and an answer given in the Senate on 15 November 1951 by the Minister representing the Minister for Immigration to a Parliamentary question indicate that the considerations behind the refusal in the case of Mr Lukic were that security investigations in Europe had revealed nothing to substantiate the allegations and the Yugoslav Government had made no request for his return or placed his name on a list of Yugoslav war criminals in the immediate post-war years when Mr Lukic was in Germany and had drawn attention to himself by operating a newspaper which was anti-communist and anti-Tito. Further, it was suspected that the Yugoslav Government's current interest in him stemmed from his publication of a Yugoslav language newspaper in Western Australia which, by its persistently anti-communist tone and growing influence, appeared to have disturbed the Yugoslav Government.

The considerations for the refusal in the case of Mr Rajkovic were that security investigations into his background in Europe had proved satisfactory and his association with Mr Lukic in the production of a Yugoslav language newspaper in Western Australia was thought to be the cause of the Yugoslav Government's request.

The question of the application or otherwise of the international instruments referred to in paragraph 16.5 did not appear to have been seriously considered.

For the reasons discussed in paragraph 16.6, these instruments would not have provided the necessary legal authority for extradition nor would the Imperial Extradition Acts which then applied because the alleged offences were not extraditable offences.

MR C. AND MR A.

On 9 April 1958 the Czechoslovak Embassy, London in a note addressed to the Australian High Commission, London sought the

return of Mr C. and Mr A. to Czechoslovakia for punishment for certain war crimes.

It was alleged against Mr C. that he was District Commander of the Hlinka Guards who had taken part in mass murders in Czechoslovakia in 1944. Mr A. was alleged to have been an officer of the shock troops of the Hlinka Guards and Liaison Officer with the staff of the S.S. Subsequently depositions by witnesses as to Mr A.'s participation in atrocities was supplied.

The request was refused by the Australian Government on the stated grounds in the case of Mr C. that there was no record of his ever entering Australia and in the case of Mr A. that, being a naturalized Australian, he was excluded from the application of the extradition treaty with Czechoslovakia.

It must be noted that the extradition treaty in question, the 1924 Treaty between Great Britain and Czechoslovakia which was inherited by Australia, gave either Party the right to refuse to surrender its own subjects but such a refusal was at the discretion of the requested State. A naturalized citizen was thus not necessarily excluded from its operation. Examination of the files of the Department of Foreign Affairs suggests that the real reason for the decision was disinclination to extradite to a communist country.

Further, the offences in question, which were essentially murders, were extraditable offences for the purposes of the Imperial Extradition Act and the relevant Treaty.

Mr A. is the person referred to as Mr A. in Chapter 6.

ERVIN RICHARD ADOLF PETROVICH VIKS

On 24 February 1961, the Russian Government delivered a note to the Australian Embassy, Moscow requesting the extradition of Mr Viks from Australia for certain war crimes. The Russian note

invoked the four international instruments discussed in paragraph 16.5.

The crimes alleged against Mr Viks were that he was Deputy Chief of the Special Department in one of the biggest concentration camps in Tartu, Estonia and he participated in the mass shooting of persons in that vicinity where 12 000 persons were shot. It was further alleged that in late 1941, he was Chief of Political Police of the Tallin Kharyn prefecture where, under his guidance, 2499 persons were shot and over 6000 thrown into concentration camps. In 1943, it was said, he was Chief of a Department of the Estonian Security Police until Estonian territory was liberated from the Germans. As such, it was said, he guided directly punitive activities, personally passed death sentences and participated in executions.

On 15 March 1961, Australia declined the request for extradition on the grounds that there was no extradition treaty between Australia and Russia and the international instruments referred to in the Russian note had no application. It was added that it was not conceded that the place where the alleged offences occurred was in the territory of the Soviet Union. A statement to like effect was made in the House of Representatives in 22 March 1961 by Sir Garfield Barwick as Attorney-General and acting Minister for External Affairs. However, Sir Garfield went on to say that 'we think the time has come to close the chapter' in this kind of case.

It may be noted that in 1961, there was no equivalent in applicable Imperial legislation of present sub-section 10(4) of the Extradition (Foreign States) Act 1966 which permits the Australian Government, in the absence of a treaty, to make an arrangement with a foreign government for the extradition of a requested person.

In January 1962, Viks and others were tried in absentia in Russia and condemned to death.

MR B.

On 28 April 1967, the Embassy of the Federal Republic of Germany, Canberra delivered a note stating that Mr B. was suspected of certain war crimes and requesting that he be observed by Australian authorities until his extradition was officially requested.

Mr B. was suspected, it was said, of having murdered a still unknown number of persons, but at least four Jews, in Bialystock and to have contributed to the 'forceful deportation' of an unknown number of Jewish persons into Treblinka concentration camp.

There were subsequent protracted negotiations with the Federal Republic's representatives. A number of obstacles were perceived by Australian officials to delivery of Mr B. to German authorities. First, the provisions of the Migration Act 1958 did not permit, it was thought, the deportation of Mr B. in these circumstances. Secondly, there was no existing extradition treaty between Australia and the Federal Republic.

Thirdly, while negotiations for a draft extradition treaty with the Federal Republic had commenced, the draft treaty did not extend to crimes committed before 1966 (Australia refused such extension). Fourthly, the War Crimes Act 1945 was not seen as providing a solution as it provided for trial by a military court.

The matter was considered by Attorney-General Murphy on 15 July 1974. Acting on advice provided by the Solicitor-General and Professor Colin Howard, Senator Murphy decided that the extradition treaty with the Federal Republic should be completed so that the treaty covered the case of Mr B.

The Federal Republic was informed of the decision to remove legal obstacles on 12 February 1975 and that Australia would agree to removing the time limit in the current draft of the Treaty,

excluding offences committed before 1966. Clarification was also sought as to Mr B.'s status at the relevant time and the Embassy was advised as to Australia's evidentiary requirements.

The next development was that the Embassy informed the Department of Foreign Affairs on 30 July 1975 that 'after a renewed study of all available evidence leading to charges of being a joint accomplice to a crime of murder in two cases, the prosecution came to the conclusion that the evidence is not sufficient anymore to justify a request for the extradition of Mr B.'. It further said that a new prosecution for other charges would be opened in due course, but no further communication was received from the Embassy on the subject.

Finally, it must be mentioned that the extradition treaty with Germany is still not in force (approval by the Federal Republic's provinces of the treaty as required by its Constitution is awaited) but an arrangement with the Federal Republic under sub-section 10(4) of the Extradition (Foreign States) Act is in operation.

Australia's refusal before 1974 to agree to extension of the draft treaty to offences committed before 1966 appears to have been a continuation of the attitude voiced by Sir Garfield Barwick in Viks case that 'the time had come to close the chapter'.

SECRET

ATTACHMENT E

67/2301

ATTORNEY-GENERAL OF AUSTRALIA
CANBERRA

15 JUL 1974

My dear Minister,

In accordance with arrangements made at our recent conference concerning Mr and the Federal Republic of Germany, I have obtained advice from the Solicitor-General and Professor Howard concerning what course should be followed. They have advised that the appropriate course to follow is to complete the extradition treaty with the Federal Republic of Germany so as to ensure that the treaty covers the case.

I have given instructions that the extradition treaty with the Federal Republic of Germany should be completed without delay. I have written to our colleague, the Minister for Foreign Affairs, in similar terms.

Yours sincerely,

Lionel Murphy

LIONEL MURPHY

The Honourable C.R. Cameron, M.P.,
Minister for Labour and Immigration,
Parliament House,
CANBERRA. A.C.T. 2600

SECRET